

Initial Notes pre-debrief

Notes in debrief

Graeme Sturgeon (the driver of the vehicle) is a well documented 1080 protestor, having a long affiliation with anti-1080 movements.

The Vehicle in question was also seen at the protest action at Kaimarama road.

Graeme entered the premises via the no-exit "one way" parked his vehicle at the front of the DOC main door then deliberately drove down the one way and into our operational loading area despite being requested to stop by security.

According to Heli Resources staff when security approached and requested mr sturgeon to remove his vehicle he opened the door and lashed out.

When Mr Sturgeon drove his vehicle down the one-way road, into our loading site and then subsequently assaulted security he became an immedaite Health & Safety issue, inside our place of work and that his intent was malicious. He was then escorted from the loading site.

Myself and Steve Bolton only arrived on the scene after the fact.

Mr Sturgeon, while agitated did not seem in any immediate need of medical attention. He was engaging with the security contractors, Wendy Pond and Diane Halstead.

Despite being requested Mr Sturgeon nor Diane Halstead would move their vehicle.

The Heli Resource operators were required to back their vehicles up and exit on the JA russel side of the building.

Immediate thoughts for full debrief

* Happy with the loading time. This work was done after other business in the block had closed. As the right-of-way is for loading and unloading of good after 1800hrs no traffic is observed.

* Focus on reducing reduce time spent on site. The loading took some time. This likely gave time for protestors to mobilise to the site.

* Put up threshold signs at all known access points to the proximity zone. While Cones were in place on the way-in side and HR staff positioned to address any traffic, no codes were placed at the NO-ENTRY / ONE-WAY side of the right of way. This was managed by security personell.

* Put up fences, barriers or barrier tape. (Cones were in place) To much infrastructre may slow down the process and create hazards on site

* If necessary, provide a person at access points to re-direct or warn the public to ensure their safety. (Security had approached the vehicle and asked him to stop) - traffic warden staff with high viz on site ?

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Penny Loomb

From: Nick Kelly
Sent: Wednesday, 25 October 2017 5:31 p.m.
To: David Speirs
Subject: RE: Police investigation re - assault charges

I would hope this would be the case - we have been compiling supportive evidence today - and my initial discussions are looking positive. I have the Security contractor coming over tomorrow morning to discuss the situation in more detail.

Nick

From: David Speirs
Sent: Wednesday, 25 October 2017 5:28 p.m.
To: Nick Kelly <nkelly@doc.govt.nz>
Subject: RE: Police investigation re - assault charges

Section 9(2)(g)(i)

David

From: Nick Kelly
Sent: Wednesday, 25 October 2017 4:47 p.m.
To: David Speirs <dspeirs@doc.govt.nz>
Subject: Police investigation re - assault charges

Hi David

Quick update for you. I have spent several hours with the police today providing them with the footage / support with regard to Rick Lane (Exim) security's filing of an assault charge.

They have indicated that the evidence supplied by the surveillance footage is contrary to statements of events provided by Graeme Sturgeon. They are waiting for statements from Heli-Resources to complete their investigation. The outcome of which will certainly have impact on the news / social media reports that are circulating at the moment.

Out of scope of request

[Redacted content]

Kind regards

Nick

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Penny Loomb

From: Herb Christophers
Sent: Wednesday, 22 November 2017 9:08 a.m.
To: David Speirs; Nick Kelly; Des Williams
Cc: Section 9(2)(c)(ii)
Subject: RE: Graeme Sturgeon Charged

Agree.

In light of the fact that this is subject to a Police prosecution and that it is not directly a DOC issue, we say nothing.

From: David Speirs
Sent: Wednesday, 22 November 2017 7:45 a.m.
To: Nick Kelly <nkelly@doc.govt.nz>; Des Williams <DWILLIAMS@doc.govt.nz>
Cc: Section 9(2)(c)(ii)
Subject: Re: Graeme Sturgeon Charged

Ok. that is a positive outcome. Des, Herb I take it that our response will be not to comment given that this is a charge brought by police based on a complaint from a third party.

David

Sent from my Samsung device

----- Original message -----
From: Nick Kelly <nkelly@doc.govt.nz>
Date: 22/11/17 8:54 AM (GMT+12:00)
To: Des Williams <DWILLIAMS@doc.govt.nz>, David Speirs <dspeirs@doc.govt.nz>
Cc: Section 9(2)(c)(ii)
Subject: Graeme Sturgeon Charged

Morning guys. I see this has hit the social media this morning.

The police are charging Mr Sturgeon with assault. I have yet to have a catchup with Rick from Exim security about this.

The police indicated that this may be the intended course of action.

<https://m.facebook.com/groups/1627924527453142?view=permalink&id=2066212046957719>

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Penny Loomb

From: David Speirs
Sent: Tuesday, 9 January 2018 1:40 p.m.
To: Gemma White; Nick Kelly
Subject: RE: Media - Fish and Outdoors, December 2017, 'DoC thugs attack senior citizens'

Hi Gemma, yes I've seen this and discussed it with Des before Christmas. You will note that almost none of the learned articles in this noble publication have an author listed with them but there is a list of "contributors" on the inside front page. The significant effort that these contributors put into research and seeking a balanced view from all parties is evidenced throughout this and every other opinion piece and this is nothing new.

Des has raised this with them in the past with no luck.

Section 9(2)(g)(i)

David

From: Gemma White
Sent: Tuesday, 9 January 2018 1:29 p.m.
To: David Speirs <dspeirs@doc.govt.nz>; Nick Kelly <nkelly@doc.govt.nz>
Subject: Media - Fish and Outdoors, December 2017, 'DoC thugs attack senior citizens'
Importance: High

Hi David and Nick,

I just wanted to draw your attention to this article, 'DoC thugs attach senior citizens', on page 1 and 2 of the Fishing and Outdoors Newspaper, which I assume is a free monthly publication.

It's interesting to note that no author is recognised as part of the article, neither does it seem that comment has been sought from the Department before going to print.

I wonder if it worth considering a response?

Best wishes, Gemma

Gemma White
 Statutory Manager (Hauraki-Waikato-Taranaki) - *Pou Ture Whenua*
 Department of Conservation - *Te Papa Atawhai*
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 Conservation leadership for our nature *Tākina te hī, tākina te hā, o te ao tūroa*
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Penny Loomb

From: Nick Kelly
Sent: Friday, 1 December 2017 1:44 a.m.
To: Des Williams; David Speirs
Subject: 1080 Articles

Hi guys

FYI, a couple of articles circulating at the moment and an update from Graeme's appearance today from social media.

<http://fishingoutdoors.org/122017/FLASH/index.html>

"Update on Graeme Sturgeon . Outcome of court today. Graeme remanded to appear in court on 16 January 2018. He was told Hamilton but could be Thames again who knows. He was in good spirits, will fight this to the end. Asked me to pass on his regards and to thank those for the messages of support. He will be keeping Carol Sawyer up to date with any progress as he will be staying low key. Has an excellent lawyer who is working with a QC. His case is Judge only, he wanted Judge and jury but the system has made sure his case carries less than 12 months sentence if convicted so therefore doesn't qualify for Judge and jury, how convenient."

Kind regards

Nick

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Penny Loomb

From: Nick Kelly
Sent: Friday, 15 December 2017 6:14 p.m.
To: David Speirs
Subject: POLICE v GRAEME WILLIAM STURGEON

Currently circulating the media :

NZ Police

SUMMARY OF FACTS

POLICE v GRAEME WILLIAM STURGEON
DOB 24/07/1948 (69)

Charge Common Assault(Crimes Act)manually
Crimes Act 1961 Section 196
1 Year imprisonment

CIRCUMSTANCES

On Tuesday the 17th October 2017 the Defendant, Graeme William STURGEON, was part of a 1080 protest group at the Department of Conservation offices situated on Joan Gaskell Drive, Whitianga.

At about 7:40pm he then drove his Toyota vehicle towards trucks that were being used to transport 1080 at the rear of the premises.

He was then signalled to stop by a security guard, the victim in this matter, Richard Steven Perry LANE, but he continued past him and parked beside the front truck.

The victim then approached the driver's door of the vehicle and opened it, concerned as to the risk the occupant posed.

The Defendant then kicked the driver's door open fully and kicked out at the victim, striking him in the stomach.

The Defendant then punched the victim to his jaw, before being restrained by the victim at arm's length.

The Defendant then attempted to punch the victim in the head area a further three times, before he was calmed down by people present.

INJURIES TO VICTIM

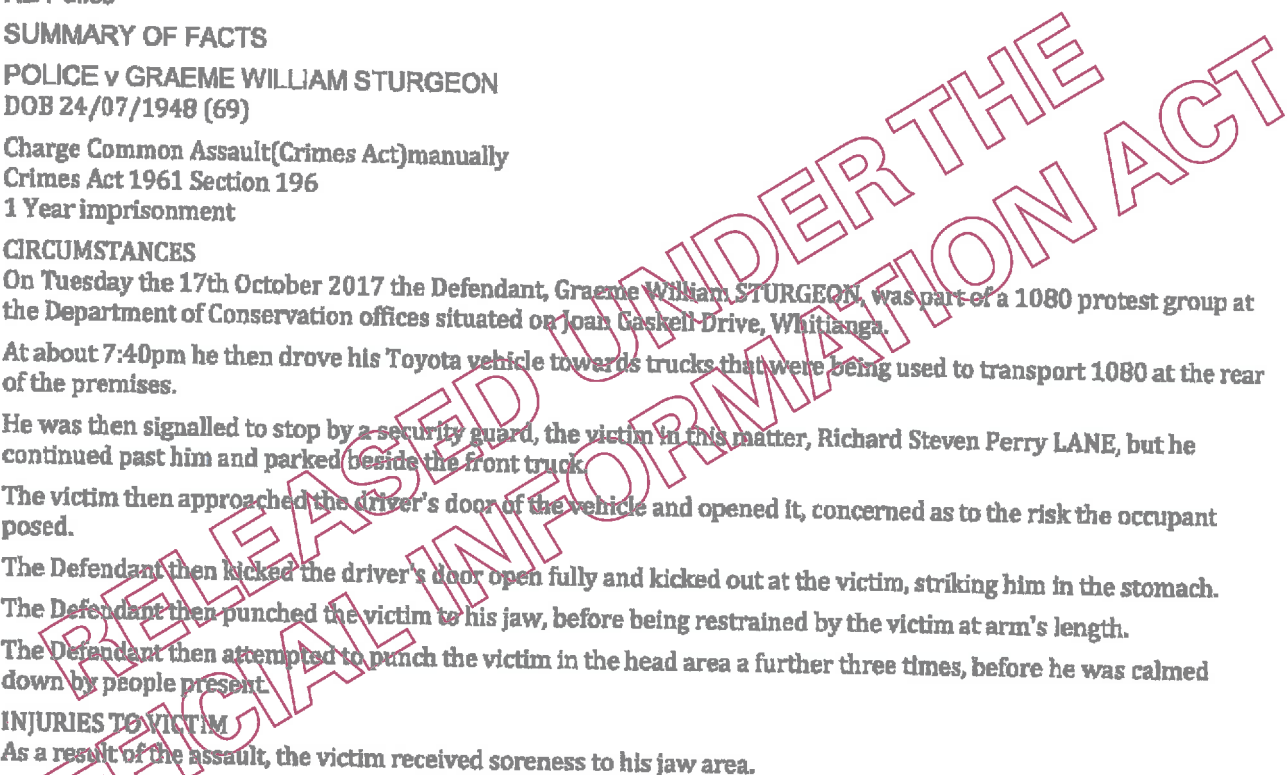
As a result of the assault, the victim received soreness to his jaw area.

DEFENDANT COMMENTS

When spoken to by Police, the Defendant denied the facts as outlined and stated that he was the one assaulted.

The Defendant is 69 years old, is currently an accommodation provider, and has previously appeared before the court.

Sergeant MORRISON
AMD990



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Penny Loomb

From: David Speirs
Sent: Wednesday, 10 January 2018 2:47 p.m.
To: Nick Kelly; David Hunt; Herb Christophers
Cc: Section 9(2)(c)(ii)
Subject: RE: Fishing and Outdoors article on 1080

Agreed. I would like us to let this lie until after Mr Sturgeons case has been heard and he has been sentenced. At that point we should review the situation.

This is just one of dozens of similar statements on social media platforms, local rags etc. If we react to every one we will run out of time to do anything useful

David

—Original Message—

From: Nick Kelly
Sent: Wednesday, 10 January 2018 2:14 p.m.
To: David Hunt <dhunt@doc.govt.nz>; Herb Christophers <Hchristophers@doc.govt.nz>; David Speirs <dspeirs@doc.govt.nz>

Section 9(2)(g)(ii)

Subject: RE: Fishing and Outdoors article on 1080

Hi guys

Based on video surveillance evidence Mr Sturgeon has been formally charged by the police for assault on the security operator. He appeared in court last year and has been carried over and due to appear again on Tuesday the 16th of this month.

Our thoughts at this stage were to hold of any sort of response until the completion of this trial and the results made public, as this could profoundly alter the nature of our response.

Kind regards

Nick

—Original Message—

From: David Hunt
Sent: Wednesday, 10 January 2018 1:50 p.m.
To: Herb Christophers <Hchristophers@doc.govt.nz>

Section 9(2)(g)(ii)

Subject: Fishing and Outdoors article on 1080

Hi Herb

I would be keen to hear your views of what we do next with this article?

<http://fishingoutdoors.org/122017/FLASH/index.html>

Do we prepare and submit a rebuttal or let it lie?

Regards

Dave Hunt

National Advisor Operations (Kaiwhiri Ruruku ā Motu) Operations | Department of Conservation | PO Box 10-420, Wellington - 6143| 18-32 Manners Street, Wellington - 6011
VPN: 8628 | DDI: +64 4 494 1428| FAX: +64 4 381 3057 | MOBILE: +64 27 273 4949 | E-Mail: dhunt@doc.govt.nz

-----Original Message-----

From: Chris Manawaiti
Sent: Wednesday, 10 January 2018 11:39 a.m.
To: David Hunt <dhunt@doc.govt.nz>
Subject: Fishing and Outdoors article on 1080

FYI

In the interests of information sharing, I've had an article regarding the handling of 1080 for BFOB Coromandel brought to my attention. It relates to the treatment by DOC staff of some elderly protestors.

The article maybe found at this web address:

<http://fishingoutdoors.org/122017/FLASH/index.html>

Kind Regards

ChrisM

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Penny Loomb

From: Nick Kelly
Sent: Wednesday, 17 January 2018 6:57 a.m.
To: David Speirs
Subject: Graeme Sturgeon court appearance Thames

Morning David

Quick heads up. Mr Sturgeon appeared in court yesterday and has now had his trial date set for 13 Feb.

Nick

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Penny Loomb

From: Des Williams
Sent: Tuesday, 20 February 2018 2:32 p.m.
To: \SLT; \MediaCommunications; David Speirs
Cc: [Redacted]
Subject: Graeme Sturgeon appears in Court



Internal media advisory

Status: High/Urgent/Confidential
Date: 20 February 2018
To: SLT, Directors, Media Comms, Peter Morton, HWT managers
From: Des Williams
Topic: 1080 Activist Graeme Sturgeon appears in Thames Court

Topic Summary

Long-time anti-1080 activist Graeme Sturgeon is presently before the Court at Thames [yesterday and today], facing charges of common assault brought by the New Zealand Police. Sturgeon arrived at the Department of Conservation Office at Whitianga on 17 October 2017 (after hours) when cereal baits for Coromandel Battle for our Birds projects at Moehau and Papakai were being loaded for transport to the operational loading sites.

A 'confrontation' occurred between Sturgeon and the security firm officers employed by the Department and the NZ Police was called to the site. Investigations carried out at the time, including viewing of security camera footage which recorded some but not all of the action. Claims by Sturgeon that he had been attacked by the security officer were not supported by the camera footage.

The trial before a Judge is expected to end this afternoon [20 Feb] and a decision may be released today.

Key contacts

- David Speirs, HWT Regional Operations Director (or delegate).
- Des Williams (Communications Advisor HWT, phone 0275 366 891).

Key messages

Mr Sturgeon faces charges of common assault against a security officer employed at the time by the Department of Conservation.

The charges were brought against Mr Sturgeon by NZ Police.

The Department will accept the findings of the Court without further comment.

Action required

- Note the action taking place in the Thames Courtroom.
- Expect adverse publicity against the Department from 'Stop Poisoning Coromandel Peninsula' Facebook groups and allies if the decision goes against Sturgeon.

Additional information

Include any other relevant information i.e. links to websites or other documents

Doc-5421333

Des Williams
Communications Advisor
Kaitohu Whakapa
Hauraki-Waikato-Taranaki Region

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Conservation leadership for our nature *Tākina te hī, Tiakina te hā, o te Āo tūroa*

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DDG BPG Approval Cover Sheet

Ref: DOCDM1556206 Date: 11th February 2015 Deadline: 12th February 2015

Approval sought from: DDG, BPG /CFO Christeen Mackenzie

SUBJECT: Agreement to Lease for Whitianga Premises

Tier 3 Name: Peter Noble Manager, Business Shared Services Signed: 

Tier 4 Name: Don Cooper Manager, National Property Services Signed: 

COMMENT:

The Agreement to Lease has been prepared following consultation with Director for Services to house additional staff following the Delivery Review and the rationalisation of Coromandel and Whitianga services.
The rental increase in this rationalisation is \$18,910 + GST pa. Property did receive funding from the Delivery Project and is part of the overall Property budget.
Capital costs have been scoped and estimated at \$229,500 for both Whitianga and Coromandel against a F2014/15 capital plan allocation of \$258,000. This will be subject to a detailed Business case being presented shortly

CONSULTATION:

Services	yes	Kahui Kaupapa Atawhai	NA
Partnerships	yes	Legal Advice	yes
Policy and Regulatory Services	NA	NGO/Other Community	NA

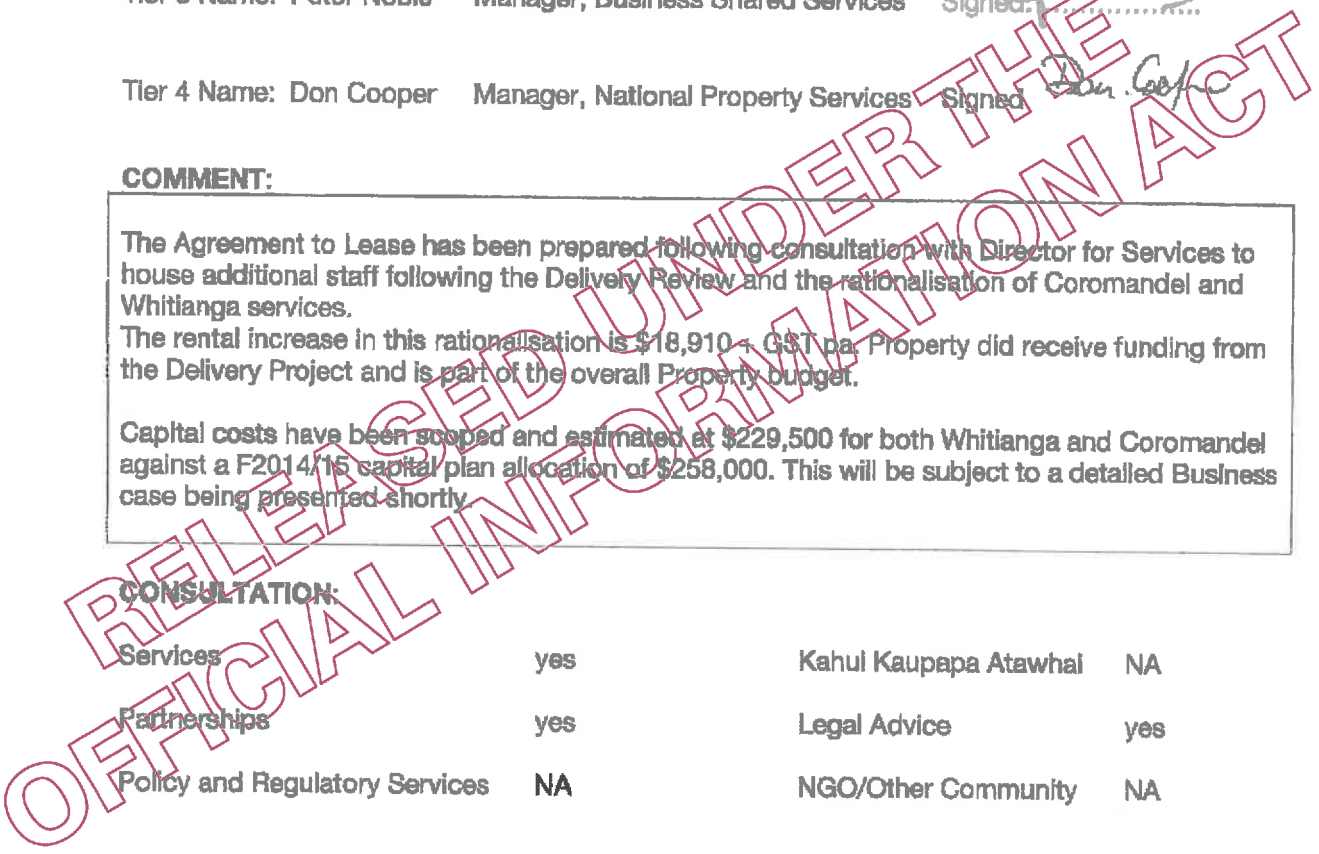
RECOMMENDATION FROM TIER 3 MANAGER:

To approve the leasing of 20 Joan Gaskill Drive Whitianga.
To sign the Agreement to Lease which both Legal and Property have reviewed and agree that the document is in order for the DDG BPG to sign.
To approve the commitment for DOC to fitout 20 Joan Gaskill Drive at \$102,900 of the proposed total spend of \$229,500 for both Whitianga and Coromandel.
To note a detail business case for the total capital spend will be submitted shortly.

APPROVAL: endorsed / approved / declined / noted

Signed: 
Name: Christeen Mackenzie

Date: 12/02/15



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Department of
Conservation
Te Papa Atawhai

Date: 9 February 2015

To: Christeen Mackenzie

CC: Peter Noble

From: Don Cooper

Subject: Whitianga / Coromandel Accommodation

Purpose

To approve the leasing of new accommodation at Whitianga and to sign the subsequent Agreement to Lease.

To approve the commitment of capital funds for Whitianga fitout of \$102,900 of a total requirement for both these sites at \$229,500.

A business case will follow outlining the capital and operating costs for the rationalisation of current premises in Whitianga and Coromandel.

Background

Following the Delivery Project review, additional staff requirement was identified for services at Whitianga (increased to 8 staff) along with a rationalisation of services at Coromandel, namely the Bio Security store (quarantine operation) for the northern Coromandel peninsular move from Coromandel to Whitianga.

Temporary premises were leased on 1 September 2013 at the Marina in Whitianga to house additional staff until permanent accommodation could be found.

The rationalisation of 4 sites to 2 between Whitianga and Coromandel and the resources located in the right location will provide fit for purpose for the current and future needs of DOC.

Proposal

Existing premises have been identified at 20 Joan Gaskill Drive Whitianga and a draft Agreement to Lease agreed subject to DDG Business Performance approval.

The lease will be a Govt Sector gross lease for 9 years plus 3 renewals of 3 years each with rental at \$51,000 + GST pa for Unit 2 and \$27,410 + GST pa for Unit 4. These units will house offices & quarantine and storage, including boat and workshop.

The proposal sees two leased buildings in Whitianga and one leased building in Coromandel closed along with additional space added to the Coromandel workshop (DOC owned on Leasehold title) for the Coromandel staff.

The total rental is estimated at \$78,410 plus Coromandel \$15,000 (subject to new ground lease or Licence) plus GST per annum versus the existing total rental of \$74,500 + GST. The difference is a shortfall of \$18,910 + GST pa which will be funded by Property.

Property did receive funding from the Delivery Project and is part of the overall Property Budget.

Capital costs have been scoped and estimated at \$229,500 for both Whitianga and Coromandel against a F2014/15 capital plan allocation of \$258,000. This will be subject to a detailed Business case being presented shortly.

As part of the Agreement to Lease the Owner will commit to upgrading the building to meet DOC specifications at an approximate cost of \$115,000 while DOC's fitout will include IT and electrical, furniture and signage.

The costs for Whitianga have been based on quotes.

A detail business case covering capital costs for both Whitianga and Coromandel will be completed shortly following pricing being received for Coromandel.

Recommendation

It is recommended that you

approve the leasing of 20 Joan Gaskill Drive Whitianga. ✓ Yes

Approve the commitment for DOC to fitout 20 Joan Gaskill Drive at \$102,900 of the proposed total spend of \$229,500 for both Whitianga and Coromandel ✓ Yes

note the Agreement to Lease will require execution. noted

note a detail business case for the total capital spend will be submitted shortly. noted

Approval


Christeen Mackenzie
DDG Business Performance / CFO

12/02/15
Date

AGREEMENT TO LEASE

This form is approved by Auckland District Law Society Inc and the Real Estate Institute of New Zealand Inc

GENERAL address of the premises:
20 Jean Gaskell Drive Whittanga

DATE: 12th FEBRUARY 2015

LANDLORD: RG Price Family Trust

TENANT: Director General of Conservation

~~GUARANTOR:~~

THE LANDLORD agrees to grant and the Tenant agrees to take a lease of the premises and the carparks (if any) described in the First Schedule together with the right to use the common areas of the property for the term from the commencement date and at the annual rent (subject to review if applicable) as set out in the First Schedule.

THE LANDLORD AND TENANT agree:

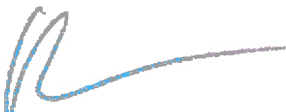
- (1) as set out in the First, Second and Third Schedules
- (2) that the Landlord's fixtures, fittings and chattels retained in the premises are those described in the Fourth Schedule.

THE GUARANTOR (and if more than one, each Guarantor) in consideration of the Landlord entering into this Agreement at the Guarantor's request, agrees with the Landlord to guarantee to the Landlord the obligations of the Tenant and to sign the Lease as a guarantor.

SIGNED by the Landlord



SIGNED by the Tenant



~~SIGNED by the Guarantor~~

BRUCE WEN MCKENZIE
DDB BUSINESS PERFORMANCE
DEPARTMENT OF CONSERVATION
ACTING UNDER DELEGATION FOR DIRECTOR GENERAL

WARNINGS (These warnings do not form part of this contract)

1. This contract is binding on all parties upon signing. All parties should seek legal advice before signing.
2. Before signing this contract the Tenant should make sure that the status of the property under the Resource Management Act 1991 is satisfactory for the Tenant's intended use of it.
3. The parties should agree upon and record the Landlord's fixtures, fittings and chattels and their condition in the Fourth Schedule.
4. The parties are advised to insert a clause requiring inclusion of a report of the condition of the premises as at the commencement of the lease.



FIRST SCHEDULE

1. **PREMISES:** Unit 2 and Unit 4 20 Joan Gaskill Drive Whittanga

2. **CAR PARKS:**

3. **TERM:** 9 years

4. **COMMENCEMENT DATE:** On completion of landlords works and issue of compliance or public use certificate

5. **RIGHTS OF RENEWAL:** 3 x 3 years each

6. **RENEWAL DATES:** From commencement date

7. **FINAL EXPIRY DATE:** From commencement date

8. **ANNUAL RENT:** (Subject to review if applicable)

Premises	\$	Unit 2	\$51,000 + GST	plus GST
		Unit 4	\$27,410 + GST	plus GST
Car Parks	\$			plus GST
TOTAL	\$			plus GST

9. **DEPOSIT:** (advance rent) \$2 months rent plus GST

10. **RENT REVIEW DATES:** Market rent (with a 3 years review from Commencement Date)
 (Specify review type and insert dates for initial term, renewal dates and renewal terms. Unless dates are specified there will be no reviews. Where there is a conflict in dates, the market rent review date will apply.)



11. **DEFAULT INTEREST RATE:** (subclause 5.1 of the Lease) As per Deed of Lease 1st Schedule clause 15 % per annum

12. **BUSINESS USE:** Commercial offices, warehouses, storage and car parks and any other use permitted by the Thames-Coromandel District Council (Schedule 1, point 16) (subclause 14 of the Lease)

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13. **LANDLORD'S INSURANCE:**
~~(subclause 23.1 of the Lease)~~
~~(subclause 23 of the Lease)~~
 (Delete or amend extent of cover as appropriate)

(Delete either (a) or (b); if neither option is deleted, then option (a) applies)

(Delete option (i) and complete option (ii) if required. If option (i) is not deleted and option (ii) is completed then option (ii) applies)

(1) Cover for the building against damage and destruction by fire, flood, explosion, lightning, storm, earthquake, and volcanic activity; on the following basis:

(a) Full replacement and reinstatement (including loss damage or destruction of windows and other glass).

OR

~~(b) Indemnity to full insurable value (including loss damage or destruction of windows and other glass):~~

(2) Cover for the following additional risks:

(a) ~~(i) 12 months~~

OR

~~(ii) _____ months~~

~~Indemnity in respect of consequential loss of rent and outgoings~~

~~(b) Loss damage or destruction of any of the Landlord's fixtures, fittings and chattels.~~

~~(c) Public liability~~

14. ~~NO ACCESS PERIOD:~~ (1) ~~0 months~~
~~(subclause 27.2 of the Lease)~~

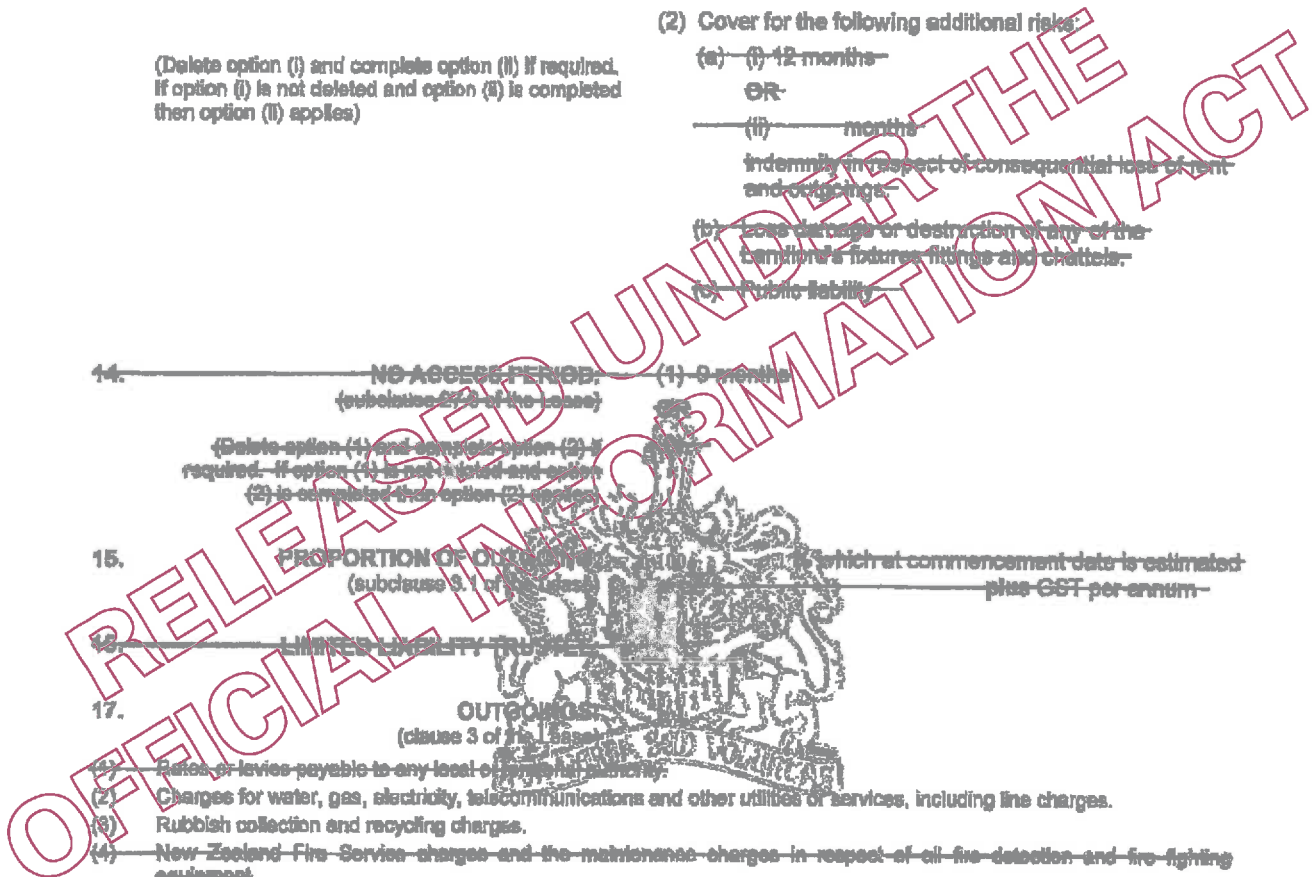
~~(Delete option (1) and complete option (2) if required. If option (1) is not deleted and option (2) is completed then option (2) applies)~~

15. ~~PROPORTION OF OUTGOINGS:~~ (1) ~~100%~~ which at commencement date is estimated plus GST per annum
~~(subclause 9.1 of the Lease)~~

16. ~~LIMITED LIABILITY TRUSTS~~

17. ~~OUTGOINGS:~~
~~(clause 3 of the Lease)~~

- ~~(1) Rates or levies payable to any local or regional authority;~~
- ~~(2) Charges for water, gas, electricity, telecommunications and other utilities or services, including line charges;~~
- ~~(3) Rubbish collection and recycling charges;~~
- ~~(4) New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and fire-fighting equipment;~~
- ~~(5) Any insurance excess (but not exceeding \$2000) in respect of a claim and insurance premiums and related valuation fees;~~
- ~~(6) Service contract charges for air conditioning, lifts, other building services and security services;~~
- ~~(7) Cleaning, maintenance and repair charges including charges for repainting, decorative repairs and the maintenance and repair of building services to the extent that such charges do not comprise part of the cost of a service maintenance contract, but excluding charges for structural repairs to the building (minor repairs to the roof of the building shall not be a structural repair), repairs due to defects in design or construction, inherent defects in the building and renewal or replacement of building services;~~
- ~~(8) The provisioning of toilets and other shared facilities;~~
- ~~(9) The cost of maintenance of lawns, gardens and planted areas including plant hire and replacement, and the cost of repair of fences;~~
- ~~(10) Yard and carparking area maintenance and repair charges but excluding charges for repaving or resealing;~~
- ~~(11) Body Corporate charges for any insurance premiums under any insurance policy effected by the Body Corporate and related valuation fees and reasonable management administration expenses;~~
- ~~(12) Management expenses;~~
- ~~(13) The costs incurred and payable by the Landlord in supplying to the territorial authority a building warrant of fitness and obtaining reports as required by sections 108 and 110 of the Building Act 2004 but excluding the costs of upgrading or other work to make the building comply with the Building Act 2004.~~



Handwritten signature or initials.

SECOND SCHEDULE

DEFINITIONS, NOTICES AND INTERPRETATION

1.1 Definitions

- (1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meaning as in section 4 of the Property Law Act 2007 and the Lease.
- (2) "Agreement" means this document including the front page, any further terms and any schedules and attachments.
- (3) "Working day" means any day of the week other than:
 - (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and
 - (b) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January in the following year, both days inclusive; and
 - (c) the day observed as the anniversary of any province in which the premises are situated.
- (4) A Working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.
- (5) Any act done pursuant to this agreement by a party after 5.00 pm on a Working day, or on a day which is not a Working day, shall be deemed to have been done at 9.00 am on the next succeeding Working day.
- (6) Where two or more acts (including service of notice) done pursuant to this Agreement are deemed to have been done at the same time, they shall take effect in the order in which they would have taken effect but for subclause 1.1(5).

1.2 Notices

All notices must be in writing and must be served by one of the following means:

- (1) In the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and
- (2) In all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:
 - (a) in the manner authorised by sections 354 to 361 of the Property Law Act 2007, or
 - (b) by personal delivery, or by posting by registered or ordinary mail, or by facsimile, or by email.
- (3) In respect of the means of service, a notice is deemed to have been served:
 - (a) in the case of personal delivery, when received by the addressee;
 - (b) in the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand;
 - (c) in the case of facsimile transmission, when sent to the addressee's facsimile number;
 - (d) in the case of email, when acknowledged or received in any other manner or by return email or otherwise in writing except that return emails generated automatically shall not constitute an acknowledgement.
- (4) In the case of a notice to be served on the Tenant, if the Landlord is not aware of the Tenant's last known address in New Zealand or the Tenant's facsimile number, the notice placed conspicuously on any part of the premises shall be deemed to have been served on the Tenant on the day on which it is affixed.
- (5) A notice shall be valid if given by any director, general manager, lawyer or other authorised representative of the party giving the notice.
- (6) Where two or more notices are deemed to have been served at the same time, they shall take effect in the order in which they would have been served but for subclause 1.1(5).
- (7) Any period of notice required to be given under this agreement shall be computed by excluding the date of service.

1.3 Interpretation

- (1) Headings are for information only and do not form part of this Agreement.
- (2) The terms, conditions and covenants contained in this Agreement shall not merge insofar as they either have not been fulfilled at the time of the execution of the Lease or are not reflected in the Lease but shall remain in full force and effect.

1.4 If there is more than one Landlord or Tenant, the liability of the Landlords or the Tenants as the case may be is joint and several.

1.5 Where the Tenant executes this Agreement with provision for a nominee or on behalf of a company to be formed, the Tenant shall remain liable for all the obligations on the part of the Tenant hereunder until such time as the Tenant and the Guarantor have signed the Lease.

1.6 This agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Communication of execution of this agreement may be made by each party transmitting by facsimile or email to the other party or their respective agents a counterpart of this agreement executed by the party sending the facsimile or email.

DEPOSIT

2.1 The Tenant shall pay as a deposit an advance rental payment of the amount specified in the First Schedule. The deposit shall be payable to the Landlord or the Landlord's agent immediately upon execution of this Agreement by all parties and/or at such other time as is specified in this Agreement. The person to whom the deposit is paid shall hold it as a stakeholder until this Agreement is unconditional or is avoided.

2.2 The Landlord shall not be entitled to cancel this Agreement for non-payment of the deposit unless the Landlord has first given to the Tenant three working days' notice in writing of intention to cancel and the Tenant has failed within that time to remedy the default. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.

- 2.3 Without prejudice to any of the Landlord's rights or remedies, including any right to claim for additional expenses and damages, if the deposit or any portion thereof is not paid upon the due date for payment the Tenant shall pay to the Landlord interest at the default interest rate on the portion of the deposit so unpaid for the period from the due date for payment until payment. Unless a contrary intention appears on the front page or elsewhere in this agreement the default interest rate is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the default interest is payable, plus 5 per cent per annum.

LEASE PAYMENTS

- 3.1 The Tenant shall pay the annual rent by equal monthly payments in advance as from the commencement date specified in the First Schedule.
- 3.2 The Tenant shall pay the Goods and Services Tax payable by the Landlord in respect of the rent and other payments payable by the Tenant pursuant to the Lease.
- 3.3 In addition to the rent the Tenant shall pay the outgoings specified in the First Schedule and where any outgoing is not separately assessed in respect of the premises then the Tenant shall pay such proportion thereof as is specified in the First Schedule or if no proportion is specified then a fair proportion.

4.1 The tenant shall enter into a formal lease with the Landlord to be prepared by the tenant's lawyer at the cost of tenant using the Government Standard Deed of Lease - LC - Version 2014.1.

- 4.1 The Tenant shall enter into a formal lease with the Landlord to be prepared by the Landlord's lawyer using the current Auckland District Law Society Inc Deed of Lease form amended in accordance with the provisions of this Agreement ("Lease"). Each party will pay their own costs of the negotiation and preparation of the Lease and any deed recording a rent review or renewal.
- 4.2 Unless otherwise set out in the Third Schedule, it is agreed that the Landlord's fixtures, fittings and chattels contained in the premises as more particularly described in the Fourth Schedule are in a good state of repair.
- 4.3 Notwithstanding that the Lease may not have been executed, the parties shall be bound by the terms, covenants and provisions contained in this Agreement and in the Lease as if the Lease had been duly executed.

DISPUTE RESOLUTION

- 5.1 Unless otherwise provided in this Agreement, if a party considers that there is a dispute in respect of any matters arising out of, or in connection with this Agreement, then that party shall immediately give notice to the other party setting out details of the dispute. The parties will endeavour in good faith to resolve the dispute between themselves within five (5) working days of the receipt of the notice, failing which the parties will endeavour in good faith within a further ten (10) working days to appoint a mediator and resolve the dispute, time being of the essence.
- 5.2 Neither party will commence legal proceedings or seek relief for injunctive relief before following the procedure set out in subclause 5.1.

NO ASSIGNMENT

- 6.1 The Tenant shall not assign or agree to assign the Tenant's interest under this Agreement and the Tenant shall not register any caveat against the Landlord's interest under this Agreement. The Tenant shall not be entitled to exercise the right of assignment contained herein until such time as the Tenant has signed the Lease.

AGENT

- 7.1 If the name of a licensed real estate agent is mentioned in this Agreement it is acknowledged that the lease evidenced by this Agreement has been made through that agent whom the Landlord appoints as the Landlord's agent to effect the Lease. The Landlord shall pay the agent's charges including GST for effecting such Lease.

LIMITATION OF LIABILITY

- 8.1 If any person enters into this Agreement as trustee of a trust, then:
- (1) That person warrants that:
 - (a) that person has power to enter into this Agreement under the terms of the trust; and
 - (b) that person has properly signed this Agreement in accordance with the terms of the trust; and
 - (c) that person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this Agreement; and
 - (d) all of the persons who are trustees of the trust have approved entry into this Agreement.
 - (2) If that person has no right to or interest in any assets of the trust except in that person's capacity as a trustee of the trust, that person's liability under this Agreement will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time ("the limited amount"). If the right of that person to be indemnified from the trust assets has been lost or impaired as a result of fraud or gross negligence that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.
- 8.2 Notwithstanding subclause 8.1, a party to this Agreement that is named in item 16 of the First Schedule as a limited liability trustee, that person's liability will not be personal and unlimited but limited in accordance with subclause 8.1(2).

THIRD SCHEDULE

FURTHER TERMS (if any)

9.0 Schedule of works

9.1 The landlord will reconfigure the interior layout of Unit 2, at their cost and in accordance to the attached plans and specifications. The tenant will assist with the project management with agreement of the landlord.

9.2 The tenant is to supply and install airconditioning units at the tenant's cost.

9.3 There are no landlord's works for unit 4.

10.0 Signage

It is agreed that the landlord will provide to the tenant signage opportunities subject to mutual agreement.

11.0 Clause 25.1a of the Lease is amended to 20 working days.

12.0 Unit 2 and Unit 4 will be assessed as separate units for market rental purposes on rental review.

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Handwritten signature or initials.

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FOURTH SCHEDULE

LANDLORD'S FIXTURES, FITTINGS AND CHATTELS (if any)

(Subclause 4.2)

Floor coverings (carpet, tile and vinyl), light fittings, partitioning, intruder and fire alarm and window treatments.

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JK

DATED _____

BETWEEN

Landlord Rodney Price

Ph 0272767662

Fax _____

Email price@extra.co.nz

AND

Tenant Department of Conservation

Ph National Office 04 471 0726

Fax _____

Email _____

AGREEMENT TO LEASE

© This form is copyright to
Auckland District Law Society Inc

General address of the premises:

Landlord's lawyer (indicate individual acting)

Tenant's lawyer (indicate individual acting)

Solicitor's office

Address

Date paid

LEASE NEGOTIATED BY:

Licensed Real Estate Agent

Office _____

Address _____

Telephone _____

Manager _____

Salesperson _____

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Deed of Lease

[insert address]

[insert address]

[insert address]

Between

TBC

Landlord

and

The Sovereign in right of New Zealand acting by and through the TBC

Tenant

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Deed dated

2015

Parties

- 1 TBC (the Landlord)
- 2 The Sovereign In right of New Zealand acting by and through TBC (the Tenant)

Background

- A The Landlord leases to the Tenant and the Tenant takes on lease the Premises and the Carparks (if any) described in Schedule 1, together with the right to use the Common Areas, for the term, from the commencement date and at the annual rent (subject to review if applicable) as set out in Schedule 1.
- B The Landlord and the Tenant covenant as set out in the schedules of this lease.

Execution

Signed by and on behalf of *[Insert Landlord's name]*
as Landlord by:

Director's signature

Director's signature

Director's name

Director's name

Witness signature

Full name

Occupation

City/Town

Signed by and on behalf of **The Sovereign In right of New Zealand**
as Tenant by:

Authorised signatory's signature

Authorised signatory's signature

Authorised signatory's name and title

Authorised signatory's name and title

Witness signature _____

Full name _____

Occupation _____

City/Town _____

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Schedule 1 Lease Details

- 1 Land** All that parcel of land situate at *{insert street address}*, being Lot [] Deposited Plan [] comprised and described in computer freehold register [] ([] Registry) upon which the Building is erected.
- 2 Building** The building situate on the Land and known as *{insert building name}* as at the date of this lease.
- 3 Premises** Those parts of the Building comprising a total rentable area of [] made up as follows:
- | | | |
|-----------|----------------|----------------|
| Level [] | comprising [] | m ² |
| Level [] | comprising [] | m ² |
| Level [] | comprising [] | m ² |
| Level [] | comprising [] | m ² |
- and as shown on the plans attached as Schedule 5.
- 4 Carparks** Insert figure allocated, non-stacked, non-tandem, carparks located at/in/on insert location and as shown on the plans attached as Schedule 5.
- 5 Term** insert
- 6 Commencement Date** insert
- 7 Further Terms** insert
- 8 Renewal Dates** insert
- 9 Final Expiry Date (Including all renewals)** insert
- 10 Gross Annual Rent** \$insert amount per annum plus GST (including the Carparks) comprising:
- | | | | |
|------------|--------------|----------------|-------------------------------|
| a Premises | insert floor | insert area | @ \$ insert amount plus GST |
| | | m ² | per m ² per annum. |

insert floor insert area @ \$ insert amount plus GST
m² per m² per annum.

Total insert total = \$ insert total amount plus
Premises rent area m² GST per annum.

b Carparks

insert carparks insert @ \$ insert amount plus GST
number per annum (being \$ insert
amount plus GST per carpark
per week).

insert carparks insert @ \$ insert amount plus GST
number per annum (being \$ insert
amount plus GST per carpark
per week).

Total Carpark insert total = \$ insert total amount plus
rent number GST per annum

c Storage areas

insert storage insert area @ \$ insert amount plus GST
area m² per m² per annum.

insert storage insert area @ \$ insert amount plus GST
area m² per m² per annum.

Total storage insert total = \$ insert total amount plus
areas rent area m² GST per annum

d Total Annual Rent

= \$ insert total amount plus GST per annum

11 Monthly Payments of Rent

\$ insert amount per calendar month plus GST

12 Rent Commencement Date

insert

13 Rent Payment Dates

The first day of each month commencing on the insert day day
of insert month and year.

14 Rent Review Dates

a insert date (the first review date)

b insert date

c Each renewal date (or insert date - if not
applicable)

15 Default Interest Rate

3% per annum above the 90 day bank bill buy rate disclosed on
Reuters screen page BKBM (or its successor page) at 11.00am

on the date of commencement of the default.

16 Business Use

- a **Permitted use:** Any use permitted pursuant to the District Plan of the territorial Authority having jurisdiction in respect of the Premises.
- b **Actual Crown use:** Commercial offices for the provision of government or professional services, storage and carparks.

17 Insurance

Cover on the basis set out in clause 23.1 or clause 23.2 if applicable against a comprehensive range of risks including, without limitation, loss, damage or destruction by fire, flood, explosion, lightning, storm, earthquake, volcanic activity and such other risks as the parties may agree.

18 Addresses for service of notices

a **Landlord:** C/- insert address
Email: *[insert email]*

b **Tenant:** C/- insert address
Email: *[insert agency generic address for example officeservices@agency.govt.nz relating to property management]*

19 Schedules

- a **Schedule 1** Lease details
- b **Schedule 2** Covenants
- c **Schedule 3** Fixtures and Fittings
- d **Schedule 4** Premises Condition Report
- e **Schedule 5** Plans
- f **Schedule 6** Building Performance Specifications

Schedule 2 Covenants

1 Rent

- 1.1 The Tenant will pay the annual rent by equal monthly payments in advance on the rent payment dates. The first monthly payment (together with annual rent calculated on a daily basis for any period from the rent commencement date to the first rent payment date) will be payable on the first rent payment date.
- 1.2 All annual rent will be paid by direct payment to the Landlord or as the Landlord may reasonably direct.
- 1.3 Notwithstanding anything to the contrary, the Tenant will not be liable to commence paying the annual rent for the [enter period of months] period commencing on the commencement date and ending on the day before the rent commencement date (both days included).

2 Rent Review

- 2.1 The annual rent payable from each rent review date may be reviewed on each of the rent review dates in accordance with the following provisions of this clause 2.
- 2.2 At any time not earlier than six months and not later than three months prior to each of the rent review dates (time being of the essence), the Landlord may give written notice (**Landlord's Rent Notice**) to the Tenant specifying the annual rent proposed by the Landlord as the market rent for the Premises and the Carparks as at that rent review date. The Landlord's Rent Notice must be accompanied by a report from a registered valuer which:
- a substantiates that the Landlord's proposed rent is the market rent as at the rent review date;
 - b provides evidence of comparable rents and analysis and reconciliation of the evidence to the market rent for the Premises and the Carparks; and
 - i is otherwise compliant with the New Zealand Institute of Valuers Valuation standards.
- 2.3 If the Landlord has not given the Landlord's Rent Notice three months prior to the rent review date, then the Tenant may at any time thereafter commence the review of the annual rent by giving to the Landlord written notice (**Tenant's Rent Notice**) specifying the annual rent proposed by the Tenant to be the market rent for the Premises and the Carparks as at that rent review date. The Tenant's Rent Notice must be accompanied by a report from a registered valuer which:
- a substantiates that the Tenant's proposed rent is the market rent as at the rent review date;
 - b provides evidence of comparable rents and analysis and reconciliation of the evidence to the market rent for the Premises and the Carparks; and
 - c is otherwise compliant with the New Zealand Institute of Valuers Valuation standards.
- 2.4 If the proposed annual rent specified in the Landlord's Rent Notice or the Tenant's Rent Notice is accepted by the other party, then the Tenant will commence paying such annual rent from the relevant rent review date.

- 2.5 If within 20 Working Days of receipt of the Landlord's Rent Notice or the Tenant's Rent Notice, the party receiving the notice gives the other party a written notice (Disputing Party's Notice) which:
- a disputes that the amount specified in the Landlord's Rent Notice or the Tenant's Rent Notice (as the case may be) as the market rent is the market rent as at the relevant market rent review date;
 - b specifies the annual rent considered by that party to be the market rent; and
 - c is accompanied by a report from a registered valuer which:
 - i substantiates that the rent specified pursuant to clause 2.5b is the market rent as at the rent review date;
 - ii provides evidence of comparable rents and analysis and reconciliation of the evidence to the market rent for the Premises and the Carparks; and
 - iii is otherwise compliant with the New Zealand Institute of Valuers Valuation standards;

then the market rent will be determined in accordance with the provisions of clauses 2.13 to 2.24.

- 2.6 If a Disputing Party's Notice is not given in accordance with clause 2.5 within the 20 Working Day period (time being of the essence) then the proposed annual rent specified in the Landlord's Rent Notice or the Tenant's Rent Notice (as applicable) will be deemed to have been accepted in accordance with clause 2.4.

Interim rent and adjustment

- 2.7 Pending the determination of the new annual rent, the Tenant will pay an interim rent equal to the rent that was payable by the Tenant immediately prior to the relevant rent review date.
- 2.8 Any variation in the annual rent resulting from the determination of the market rent will take effect on and from the relevant rent review date notwithstanding that the market rent may have been determined after that rent review date.
- 2.9 A tax invoice (where there is a rent shortfall) or credit note (where there is a rent overpayment) will be issued by the Landlord for the rent adjustment within 15 Working Days of the determination of the annual rent.
- 2.10 Where the annual rent has increased following review, the rent adjustment will be made by the Tenant making a payment to the Landlord of the amount of the tax invoice no later than the date that is 15 Working Days following receipt by the Tenant of the tax invoice issued pursuant to clause 2.9.
- 2.11 Where the Landlord is required to issue a credit note pursuant to clause 2.10, the rent adjustment will be made at the Tenant's option by either:
- a a refund payment by the Landlord to the Tenant of the amount of the credit note within 60 Working Days of the determination of the annual rent; or
 - b by deduction from the monthly rent payments due under this lease regardless of who the Landlord is at the time of such deduction but without prejudice to the rights of the Tenant against any previous Landlord.

Negotiations and disagreement

- 2.12** If either party serves on the other party the Disputing Party's Notice or if the parties cannot agree on the annual rent payable from a renewal date in accordance with clause 28.1a (as applicable) then the following provisions will apply:
- a** The Landlord and the Tenant either themselves or through their registered valuers or both will immediately enter into negotiations to agree the market rent.
 - b** The negotiations (including all correspondence), the registered valuers' reports referred to in clauses 2.2 and 2.3 will be admissible at the determination or arbitration or any other proceedings pursuant to clauses 2.13 to 2.24.
 - c** If the parties are unable to reach agreement within 30 Working Days from receipt of the Disputing Party's Notice, then the new annual rent will be determined either:
 - i** by one party giving written notice to the other requiring the new annual rent to be determined by arbitration pursuant to clauses 37.7 and 37.8; or
 - ii** if the parties agree by registered valuers acting as experts, and not as arbitrators, in accordance with the following provisions of this clause 2.

Expert determination

- 2.13** Each party will:
- a** appoint a registered valuer (who has been a registered valuer for at least five years specialising in valuing office space) (collectively the valuers); and
 - b** give written notice of the appointment to the other party within 10 Working Days (time being of the essence) of the parties agreeing to so determine the new annual rent.

The written notice will detail the consequences set out in clause 2.14 of a party failing to appoint a valuer.

- 2.14** If a party fails to appoint a valuer within the 10 Working Day period (time being of the essence) then the valuer appointed by the other party will determine the new annual rent and such determination will be binding on both of the parties.

- 2.15** Within 10 Working Days of the date that both parties have appointed their valuers and given written notice of the appointment to each other the valuers will agree and appoint a third expert who must be a registered valuer (who has been a registered valuer for at least five years specialising in valuing office space). If the valuers or the parties fail to agree upon the appointment of a third expert then either party may request the President of the New Zealand Institute of Valuers to appoint a third expert as follows.
- a** the President will provide the parties with three possible experts;
 - b** the parties may advise the President of any objections or preferences which the parties may have in respect of the experts;
 - c** the President will have regard to any such objections or preferences when appointing the third expert; and

- d the third expert appointed must be a registered valuer who has no conflict of interest and has sufficient knowledge of the local market.

2.16 The valuers will enter into discussions to endeavour to determine the market rent. If the valuers fail to agree the annual rent within 30 Working Days of the appointment of the third expert, or within such other time as agreed by the Landlord and Tenant, then the new annual rent will be determined by the third expert. The third expert will:

- a act as an expert and not as an arbitrator in determining the new annual rent;
- b take into consideration all documents, information and representations submitted by the valuers and/or the parties which the third expert in his or her absolute discretion considers relevant but will not be bound by such documents, information or representations;
- c give each party the reasonable opportunity to provide submissions in response to any documents, information and representations submitted by the other party but will not be bound by such submissions;
- d have the right to require the parties' to make oral representations but the parties have no right to a formal hearing; and
- e not be expected or required to obtain or refer to any other documents or information, but may do so if he or she considers it necessary.

The parties will agree the terms of the third expert's engagement (including any indemnities and liability for negligence). The third expert's determination will be final and binding on the parties.

2.17 Notwithstanding anything to the contrary, the new annual rent payable from the rent review date will not be less than the rent specified in the Tenant's Rent Notice or more than the rent specified in the Landlord's Rent Notice.

Regards

2.18 In determining the market rent the valuers, the third expert or the arbitrator (as applicable) will have regard to:

- a the actual Crown use as recorded in of Schedule 1,16b for so long as the Crown is the Tenant;
- b the provisions of this lease;
- c the condition of the Premises as set out in the Premises Condition Report and any subsequent deterioration in, or degradation of, or adverse, harmful or deleterious condition of, the Premises or the Building or the Land, including any failure to meet the Building Performance Specifications or the functioning of the Building Services;
- d any failure of the Landlord to perform any of the Landlord's maintenance, repair, replacement, structural repair or structural replacement obligations and any other of the Landlord's obligations under this lease in accordance with industry best practice;
- e any inherent defect in the Premises, the Building or the Land;
- f any breach by the Landlord of clauses 9.13 to 9.27;

- g any flooding or land subsidence as it may affect the Tenant's use and enjoyment of the Premises;
- h any faulty design, construction, workmanship or repair in the Premises or the Building;
- i any fault or failure in the Building or the Premises which results in the Building or the Premises (including the Building Services) failing to operate and perform in good operational repair (unless caused by the Tenant);
- j the effective rent payable in respect of any recent leaseings in [enter name of City] of premises which are comparable to the Premises;
- k any inducements (including incentives and key money) offered to tenants of comparable premises used or quoted to determine the effective market rent of those comparable premises; and
- l the Tenant's obligation to pay the consumables under clause 3.

Disregards

- 2.19 In determining the market annual rent, the valuers, the third expert or the arbitrator (as applicable) will completely disregard and not treat as an enhancement in any way or attribute a rent premium to:
- a the value of any goodwill attributable to the Tenant's business and the value of the Tenant's fixtures and fittings in the Premises;
 - b the Tenant's improvements to the Premises or the Building and any alterations and additional services and modifications to the Landlord's base building works and services paid for by the Tenant;
 - c the Tenant's signage rights or naming rights (if any);
 - d the Excluded Areas;
 - e the business use and the effects of clause 14; and
 - f the provisions of clause 15.

- 2.20 The rent at any rent review date will not be assessed upon the basis of retail or showroom space.

Determination

- 2.21 When the new annual rent has been determined in accordance with this clause 2, the person(s) determining the rent will give written notice of the new annual rent and the reasons as to the basis of the determination of the new annual rent to the parties.
- 2.22 The costs incurred in any expert determination of the new annual rent will be borne by the parties in the following manner:
- a Subject to clauses 2.22b and 2.22c, each party will be responsible for the cost of its own appointed valuer.
 - b Where the determination is made by a single valuer pursuant to clause 2.14, the cost of his or her determination will be apportioned equally between the Landlord and Tenant.

- c The Landlord and Tenant will equally share the costs on the third expert, unless any party has acted capriciously or unreasonably in any of the proceedings pursuant to the provisions of this clause 2, in which case the third expert may determine the manner in which these costs will be apportioned between the Landlord and Tenant.
- 2.23 The costs incurred in any arbitration to determine the new annual rent will be borne by the parties in the following manner:
- a Each party will be responsible for its own costs incurred, including costs of counsel and witnesses.
- b The Landlord and Tenant will equally share the other costs of the arbitration, including the costs of the arbitrator, unless any party has acted capriciously or unreasonably in any of the proceedings pursuant to the provisions of this clause 2 and clause 37, in which case the arbitrator may determine the manner in which these costs will be apportioned between the Landlord and Tenant.
- 2.24 A deed will be prepared by the Tenant's solicitors to document the new annual rent. Each party will meet its own the legal costs of and incidental to the preparation and completion of such deed.
- 2.25 Notwithstanding anything to the contrary, where the Tenant is the Crown, the Tenant may disclose the following to other agency departments or any other entity comprising the Crown or a Crown organisation and its professional advisers:
- a the annual rent payable from a rent review date however determined in accordance with this clause 2;
- b any registered valuers' certificates, any registered valuers' reports and the evidence of comparable rents and the analysis of the same; and
- c the determination of the annual rent by any arbitrator, or third expert.

Postponement of Rent Review

- 2.26 Where any statute, regulation, order or other lawful requirement imposing any rent moratorium or freeze has the effect of:

- a postponing any periodic review of the annual rent in accordance with the provisions of this lease; or
- b postponing the commencement date for the payment of any varied annual rent which would be payable following a review of the annual rent;

then either party may elect to exercise the review by postponing the rent review date to a day on or after the date that the rent moratorium or freeze ceases to apply to this lease. If that occurs the new annual rent will then be established at, and be payable from, such postponed rent review date.

- 2.27 The postponement of any rent review date pursuant to clause 2.26 will not prevent a review of the annual rent taking place on the next rent review date or otherwise postpone such subsequent rent review date.

3 Tenant's other payments

Consumables

3.1 The Tenant will promptly pay the costs of all properly and reasonably incurred charges for the Tenant's consumables used by the Tenant in the Premises, including:

- a** electricity (but excluding any cost of the supply to the Building Services) consumed in the Premises by the Tenant;
- b** energy actually consumed by the Building Services where Building Services are required by the Tenant within the hours of [6.30] pm (on a Working Day) until [6.00] am (the next following day), and at any time on a non-Working Day;
- c** telephones (except for charges for the emergency telephones in the lifts, and any other telephones for security, fire protection or other emergency services and systems, including central plant, of the Landlord);
- d** cable or satellite services including wireless networks supplied to and used in the Premises by the Tenant, including but not limited to the supply of broadband;
- e** cleaning of the interior of the Premises, including the interior face of any exterior windows (but excluding any of the Common Areas);
- f** hygiene supplies; and
- g** the collection of rubbish and recycling from the Premises (unless the Tenant elects for the Landlord to be responsible for such collection).

3.2 The Tenant may, at the Tenant's sole option, select and use the supplier of any services which are paid for by the Tenant pursuant to clause 3.1, including energy suppliers, and the Landlord will not object to or obstruct the selection of supplier of the Tenant or require the Tenant to purchase any services from or through the Landlord.

3.3 If the Premises are not separately assessed for any of the Tenant's consumables detailed in clause 3.1, then the Tenant will pay a fair proportion of the same provided that the Landlord will pay for the cost of separately metering energy costs so as to clearly identify any energy costs which are the Tenant's responsibility under this lease.

3.4 Appropriate consumable adjustments will be made promptly in respect of periods current at the commencement and the expiration, or sooner determination, of the term.

3.5 The Tenant will not be liable for any Outgoings or consumables where any Outgoings or consumables are caused by, result from, or are attributable to, the wilful or negligent act or omission of the Landlord, its employees, contractors or agents or for any breach of the Landlord's obligations under this lease.

3.6 Notwithstanding clause 3.1, the Tenant will not be liable to pay for any increase in consumables which the Tenant is liable for under this lease to the extent the increase is as a result of any of the following matters and the Tenant will not be liable for any additional consumables as a result of any of the following matters:

- a** any inherent defect in the Building Services;

- b damage to the Building Services caused by flooding (except to the extent that the same is caused or contributed to by the wilful or negligent act or omission by the Tenant), land subsidence or seismic activity;
 - c in respect of the Building Services, faulty design, faulty construction and faulty workmanship undertaken by, or a failure to repair by, the Landlord or persons under the control of the Landlord except to the extent that the same is caused or contributed to by the wilful or negligent act or omission by the Tenant; or
 - d where and to the extent any consumables are caused by, result from, are attributable to, or increased by the wilful or negligent act or omission of the Landlord, its employees, contractors or agents or for any breach of the Landlord's obligations under this lease.
- 3.7 The Tenant will not be liable to perform any maintenance, repair or replacement obligations, to pay for any Outgoings or consumables under this lease, or to pay for any other costs where the same are necessary as a result of or are occasioned by, arise from or are in any way attributable to any of the following matters:
- a inherent defect in the Building or the Premises;
 - b flooding, land subsidence or seismic activity; or
 - c faulty design, construction, workmanship, repair or fault in the Premises or the Building (including the Building Services).
- 3.8 The tenant will not be liable for any charges in relation to the Building Services owned by the Landlord or any charges in relation to any alterations and additional services and modifications to the Landlord's base building works and services paid for by the Tenant.

4 Goods and Services Tax

- 4.1 The Tenant will pay to the Landlord or as the Landlord directs, or as is otherwise required, the GST payable by the Landlord in respect of the annual rent and any other payments which are the Tenant's responsibility under this lease.
- 4.2 The Tenant will pay the GST payable in respect of the consumables payable by the Tenant in accordance with clause 4.1 directly to the supplier of such supplies and services, if appropriate in the circumstances.
- 4.3 The GST in respect of the annual rent will be payable on each occasion when any annual rent payment falls due for payment. The GST in respect of any other payment to the Landlord, which is the Tenant's responsibility under this lease, will be payable by the Tenant upon the receipt of an appropriate GST invoice.
- 4.4 If the Tenant defaults in the payment of the annual rent or any other moneys payable under this lease and the Landlord becomes liable to pay Default GST, then the Tenant will on demand pay to the Landlord the Default GST
- 4.5 The Landlord will provide to the Tenant one scheduled multiple tax invoice in respect of the annual rent payable detailing;
- a such separate supply made identified as follows;
 - i the annual rent payable for the Premises on a per floor basis;

- ii the annual rent payable for the Carparks;
 - iii the annual rent payable for the bike storage areas (if any);
 - iv the annual rent payable for the storage areas (if any);
- b the due date for payment for each such supply; and
 - c the GST inclusive amount payable in respect of each such supply.
- 4.6 The Landlord will provide the scheduled multiple tax invoice referred to in clause 4.5 to the Tenant within 15 Working Days of:
- a the commencement date in respect of the period from and including the commencement date up to but not including the first review date; and
 - b each rent review date or the determination of the new market rent (whichever is the later) in respect of the period from and including such rent review date up to but not including the next rent review date.

5 Interest on unpaid money

- 5.1 If the Landlord or the Tenant defaults in the payment or the repayment of any annual rent or any other moneys payable or reimbursable under this lease for 20 Working Days (or for such lesser period as may be specified in this lease) after such payment or repayment becomes due, then the Landlord or the Tenant (as applicable) will pay on demand interest to the other party at the default interest rate on the unpaid moneys from the due date for payment until the date of actual payment.

6 Costs

- 6.1 Each party will pay its own costs of and incidental to the negotiation and preparation of this lease and the preparation or review of any rent review, renewal, variation, or surrender relating to this lease.
- 6.2 The Tenant will pay the Landlord's reasonable legal costs (as between solicitor and client) which directly result from the enforcement or attempted enforcement of the Landlord's rights and remedies under this lease. Such legal costs will only be recoverable should the need for enforcement, or attempted enforcement, directly arise from the wilful or negligent act or omission of the Tenant or through the Tenant otherwise failing to observe and perform the Tenant's obligations under this lease.
- 6.3 The Landlord will pay the Tenant's reasonable legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Tenant's rights and remedies under this lease. Such legal costs will only be recoverable should the need for enforcement, or attempted enforcement, arise from the wilful or negligent act or omission of the Landlord or through the Landlord otherwise failing to observe and perform the Landlord's obligations under this lease.

7 Landlord to pay outgoing

- 7.1** The Landlord will pay all outgoing, costs and consumables in respect of the Premises, the Building (including the Building Services) and the Land other than the consumables payable by the Tenant directly to the supplier in accordance with clause 3.

8 Tenant's maintenance and care of Premises

- 8.1** The Tenant will keep and maintain the interior of the Premises in good, clean, order, repair and condition having regard to the condition of the Premises as set out in the Premises Condition Report. The Tenant will at the end or sooner determination of the term yield up the same in good, clean, order, repair and condition but having regard to the age of the Premises at the end or sooner determination of the term.
- 8.2** The obligations of the Tenant detailed in clauses 8.1, 8.4 and 8.5 do not include responsibility for:

- a** fair wear and tear;
- b** any damage caused by fire, flood, explosion, lightning, storm, earthquake, or volcanic activity or the occurrence of any other peril;
- c** inherent defects, faulty design, construction, workmanship, repair or any other fault in the Premises or the Building (including the Building Services and dirty or stained ceiling tiles), unless such defects or faults are attributable to a negligent act or omission of the Tenant;
- d** maintenance, repair, and replacement of the whole or any part of the Building Services, unless the provisions of clauses 8.3a and 8.3b apply;
- e** cleaning the Landlord's ceiling tiles and any equipment of the Landlord which is located in the underside of the ceiling of the Premises, including the Landlord's air-conditioning diffusers (if any) and the Landlord's lighting equipment (except those items referred to in clause 8.3c), all of which are the responsibility of the Landlord. Notwithstanding that the Tenant has no responsibility for cleaning the items referred to in this subclause, the Tenant may at its sole option clean those items.

8.3 The Tenant will:

- a** repair all breakage or damage to all doors, glass, windows, light fittings and the power points of the Premises which is directly and clearly caused by the Tenant or persons under the control of the Tenant;
- b** repair any damage which is directly caused by any abnormal, improper or careless use of the Building, including the Building Services and the Premises, by the Tenant or persons under the control of the Tenant; and
- c** after the first anniversary of the commencement date, replace all damaged or non-operative light bulbs, globes and tubes in the Premises;

provided that the provisions of this clause 8.3 will not apply if such damage is covered by the Landlord's insurance policy. Prior to the first anniversary of the commencement date, the Landlord will, at its cost, replace all damaged or non-operative light bulbs, globes and tubes in the Premises.

8.4 Redecoration:

- a For so long as the Tenant is the Crown or a Crown Organisation, the Tenant will have no obligation to redecorate the Premises but may paint and decorate to a reasonable standard those parts of the interior of the Premises which have previously been painted and decorated, as and when considered desirable by the Tenant, at the Tenant's sole discretion;
- b If the Tenant is not the Crown or a Crown Organisation, then the Tenant will paint and redecorate those parts of the interior of the Premises which have previously been painted and decorated when reasonably necessary and to a specification approved by the Landlord. The Landlord will not unreasonably withhold its approval to a specification which is no less than the specification which applied as at the Commencement Dates.

8.5 The Tenant will keep all floor coverings in the Premises clean and tidy, excepting fair wear and tear. Notwithstanding anything to the contrary, the Tenant is not obligated to replace the Landlord's floor coverings.

8.6 The toilets, sinks and drains will only be used by the Tenant for their designed purposes.

8.7 The Tenant will keep the Premises free of rubbish and will keep the Tenant's rubbish bins or containers in a tidy condition. The Tenant will also at its expense remove all of the Tenant's trade waste, boxes and any other goods or rubbish not removable in the ordinary course by the relevant territorial Authority.

9 Landlord's maintenance and care of the Building and the Premises

Maintenance of roof and exterior

9.1 The Landlord will, at its cost, during the term and any renewal term keep and maintain the exterior of the Building, (including the exterior fabric, the roof, the exterior doors and the external windows) watertight, weather tight, clean, in good, order, repair and condition, and in compliance with the Building Performance Specifications.

9.2 The Landlord will, when reasonably necessary and required by the Tenant, repaint, clean or otherwise redecorate, the exterior of the Building including the roof, external entrance-ways, verandas, exterior doors and exterior windows.

9.3 Water damage:

- a If any goods, merchandise or property of any kind which may be in the Premises during the term or any renewal term are damaged or destroyed by water or otherwise, or through inflow or leakage of water, then subject to clause 9.3b the Landlord will be liable in respect thereof.
- b The Landlord will not be liable under this clause 9.3 where:
 - i the Tenant was aware of any defect in the roof or exterior of the Building liable to cause such damage and did not give prior notice to the Landlord of such defect; or
 - ii the Tenant becomes aware of the defect when it is too late to prevent such damage occurring, but does not give the Landlord notice of the defect as soon as reasonably practicable following becoming aware of such defect; or

- iii want of repair or damage caused to the Premises has been caused by or contributed to or results from any act or default or negligence of the Tenant or any persons under the control of the Tenant.

Structural maintenance, repair and replacement

- 9.4 The Landlord is responsible for all structural maintenance, structural repairs and structural replacements (including any roofing repairs) required in respect of the Building and the Premises except where such work is:
- a required by reason of any change of use or alteration to the Premises (not ordinarily associated with the business use) initiated by the Tenant for its own convenience; or
 - b the number or sex of the persons employed on the Premises by the Tenant; or
 - c the express responsibility of the Tenant under this lease.

Building and its equipment

- 9.5 The Landlord will, at its cost:
- a maintain the Building in Good Operational Repair; and
 - b make good design defects, construction defects, workmanship defects and repair defects in the Building;
- as soon as reasonably possible.

Maintenance Contracts

- 9.6 The Landlord will enter into and keep current, at the Landlord's cost and to the Tenant's reasonable satisfaction:
- a comprehensive maintenance, service, repair and replacement contracts to ensure that the Landlord complies with its obligations pursuant to clause 10 (Maintenance Contracts); and
 - b warranties for all Building Services.

- 9.7 The Landlord will give the Tenant prior written notice before it enters into any Maintenance Contracts and, if requested by the Tenant, will submit the Maintenance Contracts to the Tenant, as soon as reasonably practicable, for its prior approval. The Tenant's response will be promptly given and approval will not be unreasonably withheld and the Landlord will supply the Tenant with copies of the signed Maintenance Contracts within a reasonable time of receipt.

- 9.8 The Landlord will:
- a advise the Tenant of all reports and any other relevant information that it receives relating to the Building Services; and
 - b if requested by the Tenant, at the Landlord's cost, promptly supply the Tenant with copies of all reports and other information requested.

Sundry exterior Landlord obligations

- 9.9 The Landlord will at its cost:

- a promptly remove graffiti from the exterior of the Building;
- b clean the exterior of the Building, (including the roof, any exterior spandrels, solar shading and the exterior doors) as and when reasonably necessary, but not less than four times a year computed from the commencement date;
- c use reasonable endeavours to keep pigeons and other birds from perching or roosting on or in the Building; ;
- d clean and remove any pigeon, other bird, animal, rodent, and pest effluent and detritus from the exterior of the Building;
- e clean the exterior windows of the Building on a regular basis and as and when reasonably necessary but not less than four times a year computed from the commencement date;
- f clean the gutters and down pipes of the Building as and when reasonably necessary, but not less than two times a year computed from the commencement date;
- g clean and maintain the Common Areas on a daily basis;
- h clean and maintain any canopies, verandas, atriums or skylights which are fixed to, or which are part of the Building as and when reasonably necessary but not less than four times a year computed from the commencement date; and
- i keep the Land (including fences, internal and external landscaping and paved areas (if any)) and the Building clean, tidy, free from rubbish and weeds and in good order, repair and decorative condition.

Landlord alterations and Common Areas

9.10 The Landlord will not alter the entrance foyer(s), the Common Areas, the directory signage of the Building or the colour of the exterior of the Building without having first obtained the prior written consent of the Tenant, not to be arbitrarily or unreasonably withheld.

9.11 The Landlord will ensure that a reasonable supply of replacement tiles and standard light fittings are readily available for the ceilings in the Common Areas and the Premises.

9.12 The Landlord will replace the Landlord's floor coverings in the Premises and the Common Areas when reasonably requested by the Tenant with floor coverings of at least the same quality and standard and a similar colour as the floor coverings laid in the Premises as at the commencement date and identified in the Premises Condition Report.

Seismic rating

9.13 The Landlord warrants that as at the commencement date, the Building will perform to *{insert %NBS as warranted by the Landlord as at the commencement date}%* or more of the new building seismic standard in NZS1170.5:2004 (or any replacement standard) assuming Building Importance Level 2 detailed in clause A3 of the New Zealand Building Code (or any equivalent replacement) (NBS).

9.14 For the purposes of clauses 9.14 to 9.25 :

- a **Evaluation** means a detailed engineering evaluation of the Building which is obtained pursuant to clause 9.16.

- b **Expert Engineer** means an appropriately qualified structural engineer appointed to act as an expert pursuant to clause 9.24.
- c **Minimum Standard** means 70% of the then current equivalent of NBS at the time an Evaluation is obtained pursuant to clause 9.17 or if NBS is discontinued and not replaced, the nearest equivalent to NBS as agreed by the parties or falling agreement, as determined by the Expert Engineer.
- d **NBS** means the new building seismic standard in NZS1170.5:2004.
- e **Required Standard** means the standard required in accordance with clause 9.18.
- f **Structural Works** means the works (if any) required to the Building in accordance with clause 9.18.
- g **[insert name of City] City** means all the land within the district of which the [insert name of City] City Council (as constituted as at the date of this agreement) is the territorial authority as at the date of this agreement.
- 9.15 The Landlord will ensure that at all times during the term the Building complies with any other applicable requirements of any Authority in relation to seismic rating.
- 9.16 The Tenant may obtain a detailed engineering evaluation of the Building (Evaluation) at any time after:
- a an earthquake which:
- i measures MM7 or higher on the New Zealand Modified Mercalli Intensity Scale (or any equivalent standard); or
- ii is classified as 'severe' or greater than 'severe' by GNS Science GeoNet;
- b any changes to the Building Act 2004 or the building code made under the Building Act 2004 in relation to the seismic resistance of buildings.
- 9.17 If the Tenant elects to obtain an Evaluation pursuant to clause 9.16:
- a the Tenant will provide the Landlord with prior written notice;
- b the Landlord will promptly and fully cooperate with the Tenant and its consultants in relation to the obtaining of the Evaluation including providing the Tenant and its consultants with access to those parts of the Building not comprising the Premises as reasonably required and subject to the provisions of any applicable leases and in accordance with the Landlord's reasonable requirements;
- c the parties will each meet half of the cost of obtaining the Evaluation; and
- d the Tenant will provide the Landlord with a copy of the Evaluation.
- 9.18 If an Evaluation establishes that the Building will perform to less than [insert %NBS agreed during negotiations] of the NBS, then the Tenant may at its sole discretion:
- a require the Landlord to carry out the works required to the Building so that it will perform to [insert %NBS agreed during negotiations]% of the NBS, such works to be carried out on terms acceptable to the Tenant; or

- b terminate this lease by giving written notice to the Landlord advising the date on which this lease will terminate.
- 9.19 No costs involved in the Structural Works or related to the seismic rating of the Building (except half the cost of the Evaluation) will be recoverable from the Tenant.
- 9.20 If the Landlord decides to undertake the Structural Works, the Landlord will, at its cost:
- a direct its consultants to prepare plans and specifications which identify the Structural Works which are necessary to ensure that the Building will perform to the Required Standard; and
 - b ensure that the plans and specifications are provided to the Tenant within 3 months (or within any further period agreed by the parties) of the Landlord's decision to undertake the Structural Works for its approval not to be unreasonably withheld provided that the Tenant's structural engineer acting reasonably is satisfied that the Structural Works identified will ensure that the Building will perform to the Required Standard.
- 9.21 The Tenant must provide its approval, or advise the Landlord of its objections if the Tenant withholds its approval, of the plans and specifications within 4 months of receipt of the plans and specifications. If the tenant withholds its approval:
- a the parties will consult and negotiate to resolve the Tenant's objections; and
 - b if resolved, the Landlord will amend and provide the Tenant with the plans and specifications, with all amendments clearly identified, for the Tenant's approval. Clause 9.21b will apply in respect of the amended plans and specifications.
- 9.22 If the parties do not resolve the Tenant's objections within 2 months (or within any further period agreed by the parties of the date that the Tenant gives the Landlord notice pursuant to clause 9.22, then either party may, at any time before the dispute is resolved, refer the dispute to the Expert Engineer who will make a determination. Following the Expert Engineer's determination, if applicable the Landlord will amend and provide the Tenant with the plans and specifications within 3 months with all amendments clearly identified, for the Tenant's approval. Clauses 9.21b and 9.22 will apply in respect of the amended plans and specifications provided however that the Tenant must provide its approval, or advise the Landlord of its objections if the Tenant withholds its approval, of the plans and specifications within 2 months of receipt of the amended plans and specifications.
- 9.23 If during the development of, or following the Tenant's approval of, the plans and specifications the Landlord, the Tenant, the Landlord's contractor, any of the Landlord's consultants, or any of the Tenant's consultants become aware of any matter which may have an impact on the ability of the Building to perform to the Required Standard following the completion of the Structural Works, then the parties will agree the amendments (if any) required to the plans and specifications or the Structural Works which the parties' engineers consider necessary to ensure that following the completion of the Structural Works, the Building will perform to the Required Standard.
- 9.24 If the parties cannot agree then either party may, at any time before the dispute is resolved, refer the dispute to the Expert Engineer who will make a determination.
- 9.25 If:
- a the parties cannot agree the terms on which the Structural Works will be carried out in accordance with clause 9.20; or

b the Structural Works are not undertaken for any reason;

then the Tenant may terminate this lease by giving written notice to the Landlord advising the date on which this lease will terminate.

9.26 Nothing in these clauses 9.15 to 9.25 will prejudice the Tenant's rights pursuant to clauses 23 and 24 or will prohibit the Tenant being a Crown Organisation or the Crown from obtaining at any time an evaluation of the Building for its own or the Crown's purposes provided however that the Landlord will not be required to take any action in relation to an evaluation obtained by the Tenant for its own purposes pursuant to this clause.

9.27 The Tenant may exercise any of its rights pursuant to clauses 9.13 to 9.21 notwithstanding how the Tenant may have previously exercised or not exercised such rights.

10 Annual maintenance programme

10.1 The Landlord will meet with the Tenant once a year on each anniversary of the commencement date to discuss and agree the Landlord's annual maintenance programme for the Building (including the Building Services, the Common Areas and the Premises) and the Land. The Landlord will then promptly provide the Tenant with a written copy of the agreed Landlord's annual maintenance programme. Without limiting the generality of the foregoing, the Landlord will if required by the Tenant provide an annual commissioning report to the Tenant in respect of the Building Services.

10.2 The Tenant will not be liable for any costs related to the annual maintenance programme or the carrying out of any maintenance agreed as part of the annual maintenance plan.

10.3 The Tenant may, at its option, engage its own facilities manager (which may be an employee of the Tenant or a third party engaged by the Tenant) for the Premises. The Landlord will at all times liaise, consult and cooperate with such manager as if that manager were the Tenant if requested by the Tenant in writing.

10.4 If:

a the Building (including the Building Services, the Common Areas and the Premises) fails to continuously operate or perform satisfactorily; or

b any aspect of the Building Performance Specification fails to be continuously met;

then the Tenant may, at its option and after giving the Landlord 10 Working Days' prior written notice, obtain consultants' reports (including technical audits) in order to identify the cause of such problems and to recommend remedial actions. The consultants' reports (including technical audits) will be obtained at the cost of the Landlord and will be without prejudice to any other rights which the Tenant may have under this lease, at law, in equity, or otherwise.

10.5 The Landlord and the Tenant will each appoint and notify the other from time to time a person (together with that persons contact details) who will be the first point of contact on matters arising under this lease.

11 Notification of defects

11.1 The Tenant will give the Landlord notice of any damage to or defect in the Building (including the Building Services and the Premises) which the Tenant becomes aware of.

12 Landlord's rights of access

12.1 The Landlord is entitled to enter the Premises, at all reasonable times during business hours:

- a** to view the condition of the Premises;
- b** to carry out inspections and repairs to the Premises or to the Building and to install, inspect, repair, renew or replace any part of the Building (including the Building Services) where the same are not the responsibility of the Tenant; and
- c** for re-letting or sale purposes;

in accordance with the provisions of this clause 12.

12.2 Prior to exercising the Landlord's right to enter the Premises pursuant to clause 12.1, the Landlord must give the Tenant prior written notice which should be at least 48 hours' prior written notice except in the case of an emergency or if a longer period is specified in this lease.

12.3 The Landlord must give the Tenant at least 72 hours' prior written notice to exercise its right to enter the Premises for re-letting or sale purposes pursuant to clause 12.1c and the Landlord may only enter the Premises for re-letting purposes during the three month period which immediately precedes the expiration of the term.

12.4 For the purposes of this clause 12, the Landlord may authorise the following persons to enter the Premises:

- a** employees, contractors and agents for the purposes of viewing the condition of the Premises;
- b** employees, any building certifier, independent person or any contractor for the purposes referred to in clause 12.1b; and
- c** duly authorised agents, prospective tenants of the Premises or prospective purchasers of the Building or the Land.

If required by the Tenant, such persons must be accompanied by a representative of the Tenant (at the Tenant's sole discretion), be accompanied by a representative of the Landlord, and hold written authorisations from the Landlord to enter the Premises for the relevant purpose.

12.5 If required by the Tenant, the Landlord will immediately replace any persons undertaking any matters requiring access to the Premises for or on behalf of the Landlord with persons acceptable to the Tenant.

12.6 The Landlord and any persons accessing the Premises, the Building (including the Building Services and the Common Areas) and the Land and carrying out any works pursuant to this clause 12 must do so with the least possible inconvenience to the Tenant.

12.7 If the Tenant's use and enjoyment of the Premises is materially disrupted because of any works carried out in accordance with this clause 12, then during the period from when the works are commenced until the works are completed and all disruption has ceased a fair proportion of the annual rent will cease to be payable but without prejudice to the Tenant's rights if the disruption is due to a breach by the Landlord of the Landlord's obligations under this lease.

12.8 The Landlord and any persons accessing or carrying out any works in accordance with this clause 12:

- a will comply with the Tenant's reasonable security requirements and protocols;
- b will comply with the Tenant's reasonable confidentiality requirements; and
- c without limitation will not access, use, retain or disclose to any person or organisation any information on the Premises (including confidential information) relating to the Tenant's clients or their identity, and the Tenant's or other person's business.

13 Parties rights to remedy default

Tenant's compliance

13.1 If the Landlord gives the Tenant written notice of any failure by the Tenant to comply with any of the Tenant's obligations under this lease then the Tenant will comply with all reasonable speed.

13.2 If:

- a the Tenant defaults in the due and punctual compliance with any notice given pursuant to clause 13.1; or
- b any repairs which are the Tenant's responsibility are required to be undertaken as a matter of urgency;

(Tenant's Outstanding Works)

then without prejudice to the Landlord's other rights and remedies, the Landlord may, subject to clause 12, enter the Premises, with all necessary equipment and materials, to execute the Tenant's Outstanding Works. The Tenant's Outstanding Works must be carried out with the least possible inconvenience to the Tenant.

13.3 Any moneys reasonably expended by the Landlord in carrying out the Tenant's Outstanding Works will be payable by the Tenant to the Landlord within 20 Working Days of receipt by the Tenant of a GST Invoice until the date of repayment by the Tenant. If the Tenant fails to pay the costs within the 20 Working Day period the Tenant will pay interest on such costs, or the balance thereof which remains outstanding, at the default interest rate from the due date for payment to the date of payment.

Tenant's right to remedy Landlord's default

13.4 Where there is a failure of:

- a any of the Building Services to meet, operate or perform in accordance with the relevant Building Performance Specification; or
- b the Landlord to otherwise comply with its repair, maintenance or replacement obligations under this lease;

then, without prejudice to the Tenant's other rights and remedies, the Tenant may give the Landlord written notice specifying the failure and requiring the Landlord to remedy the failure (Tenant's Failure Notice).

13.5 If the Landlord fails to remedy any failure set out in a Tenant's Failure Notice (and in the case of a recurring failure fails to permanently remedy the failure) within a reasonable time after receipt of the Tenant's Failure Notice (having regard to the nature, extent and urgency of the failure in any

particular case), then after giving the Landlord 5 Working Days' notice of its intention to do so, the Tenant may enter such parts of the Building or the Land as are reasonably necessary to effect such works as are required to remedy the failure.

13.6 In the event of an emergency or the Landlord being unwilling or unable to urgently undertake emergency repairs or replacements that are the Landlord's obligations under this lease, then the Tenant will not be required to give the Landlord the periods of notice set out in clauses 13.4 and 13.5 prior to carrying out such works as are required to remedy the failure in accordance with clauses 13.4 to 13.10.

13.7 If:

- a the Tenant elects not to exercise its right to effect works pursuant to clause 13.5; and
- b the Landlord has not remedied any failure set out in a Tenant's Failure Notice;

then a fair proportion of the annual rent will abate according to the nature and extent of the failure (having regard to the part of the Premises adversely affected by the failure). The abatement will apply for each and every day (or part day) from the applicable date of any such failure until the date that:

- c such failure has been made good by the Landlord to the Tenant's reasonable satisfaction; and
- d the Building (including the Building Services, the Common Areas and the Premises) is again meeting, operating and performing in accordance with the Building Performance Specification.

The Tenant in carrying out such work will, when reasonably possible, not do anything which may render void any warranties or guarantees obtained by the Landlord in respect of the Building or the Land (provided that the Tenant has first been provided with a copy of the Landlord's warranties and guarantees).

13.8 Any action by the Tenant pursuant to clause 13.5, will not release the Landlord from any liability in respect of the breach or non-observance by the Landlord of any of the Landlord's express or implied obligations under this lease.

13.9 The Tenant will be entitled to recover from the Landlord all actual costs incurred by the Tenant in rectifying the failure (including any legal and other consultant's costs). The Landlord will pay all costs 10 Working Days after the date that the Tenant provides the Landlord with a tax invoice (Due Date). If the Landlord fails to pay all costs on the Due Date, then the Landlord will pay interest on such amount at the default interest rate from the Due Date until the date of payment.

13.10 If the Landlord fails to reimburse the Tenant for the costs by the Due Date, the Tenant may (at the Tenant's sole option and without prejudice to the Tenant's other rights and remedies against the Landlord or any previous Landlord) set-off the costs and interest against future rent payments due under this lease provided that the Tenant will first give the Landlord 10 Working Days' notice of its intention to do so.

13.11 The Landlord will reimburse the Tenant for all damage or loss to the Tenant directly resulting from a negligent act or omission of or a breach of this lease by the Landlord or persons under the control of the Landlord. The Landlord will be liable to reimburse the Tenant only to the extent that the Tenant is not fully reimbursed under any insurance policy.

14 Use of Premises

Business use

- 14.1 The Tenant will not, without the prior written consent of the Landlord, use or permit the whole or any part of the Premises to be used for any use other than the business use. The Landlord's consent will be given for any proposed use which is:
- a not in substantial competition with the business of any other occupant of the Building which might be unreasonably affected by the use;
 - b reasonably suitable for the Premises; and
 - c compliant with the Resource Management Act 1991 or any other statutory provision relating to resource management.
- 14.2 For so long as the Crown is the Tenant under this lease, nothing in clause 14.1 will prevent the Tenant from operating its normal business activities at the Premises.
- 14.3 If any change in use by the Tenant renders any increased or extra premium payable in respect of any insurance policy on the Building then the Landlord as a condition of granting any consent may require the Tenant to pay the increased or extra premium.
- 14.4 The Tenant will pay the Landlord's reasonable and proper costs in respect of any request by the Tenant for a change of the business use provided that the Landlord will not demand payment of any fine, or payment in the nature of a fine, in relation to such consent.

No noxious use or nuisance

- 14.5 The Tenant will not:
- a bring upon or store within the Premises, or allow to be brought upon or stored within the Premises, any machinery, goods or things of an offensive, noxious, illegal or dangerous nature, or of such weight, size or shape as is likely to cause damage to the Building, the Premises or to any surfaced area of the Land;
 - b use the Premises, or allow them to be used, for any noxious, illegal or offensive trade or business;
 - c cause or permit Contamination to the Building or the Land (as defined in clause 14.7); or
 - d allow any act or thing to be done which may be, or become, a nuisance, disturbance or annoyance to the Landlord or other tenants of the Building.
- 14.6 The carrying on by the Tenant of the actual Crown use recorded in Schedule 1, 16b or any other use of the Premises to which the Landlord has consented will not be deemed to be a breach of clause 14.5.

Removal of Contaminants

- 14.7 Contamination means any change to the physical, chemical, biological or other condition of the Land or the Building by a 'contaminant', as that word is defined in section 2 of the Resource Management Act 1991, and includes any other illegal, detrimental, dangerous, combustible or unhealthy substance.

- 14.8 The Tenant may require the Landlord to promptly, at the Landlord's cost and risk, undertake all works necessary to remove any Contamination from the Land or the Building immediately upon becoming aware of the same.
- 14.9 The Landlord will indemnify and keep the Tenant indemnified against all direct and indirect costs, losses and expenses of the Tenant which may arise as a result of any Contamination (including those arising in the event that the Tenant, at the Tenant's sole option, temporarily relocates its operations to another site until the Land and the Building are free of all Contaminants to the Tenant's reasonable satisfaction).
- 14.10 Clauses 14.8 and 14.9 do not apply to any Contamination caused directly by the Tenant, who will at its cost promptly remove any such Contamination from the Land or the Building.

15 Use of Building by Landlord and other tenants

- 15.1 This tenancy will only relate to the Premises, the Carparks and the Common Areas and will include the Tenant's unimpeded Ingress and egress rights (with or without cars, as applicable) to the Building, including its Common areas, the Premises and the Carparks.
- 15.2 The Landlord will not, without the Tenant's prior written consent (which may be withheld at the Tenant's sole discretion), use or permit the whole or any part of the remainder of the Building or the Land to be used for any use which is:
- a inconsistent, incompatible or in conflict with, or likely to have a detrimental effect on, the Tenant's:
 - i corporate or public image;
 - ii the business use and, for so long as the Crown is the Tenant under this lease, the Tenant's normal business activities at the Premises; or
 - iii use and enjoyment of the Premises, the Building and the Land (including the safety of the Tenant's employees and visitors);
 - b not reasonably suitable for the Building or the Land and is of a nature which is likely to cause disturbance to the Tenant (including noise, dust, vibration or any other interference); or
 - c for:
 - i medical or educational services (except for routine onsite educational training carried out by and for the occupiers of the Building);
 - ii consulates or embassies;
 - iii the supply of sexual services or adult entertainment;
 - iv the preparation or the sale of party pills;
 - v the preparation and/or sale of food or beverages (including licenced premises)
 - vi gambling operations and/or nightclubs;
 - vii video and parlour games;
 - viii pet stores and supplies;

- ix funeral directors and suppliers;
- x dangerous goods and supplies; and
- xi industrial manufacturing purposes.

15.3 These uses set out in clause 15.2c and any uses of a similar nature which are noisome, illegal or offensive, are strictly prohibited in the Building and on the Land.

15.4 When the Landlord seeks the Tenant's prior written consent in accordance with clause 15.2 will provide the Tenant with details as to the business use and the restriction or limitations that relate to that business use (if any) to ensure that the provisions of subclauses 15.2ci to 15.2cxi will be complied with.

16 Neglect of other tenant

16.1 Except as otherwise provided in this lease, the Landlord will not be responsible to the Tenant for any act default or neglect of any other tenant, licensee or occupier of the Building or the Land. However, the Landlord will:

- a not enter into any lease or licence or other occupancy agreement of the Building or the Land which by doing so breaches this lease; and
- b strictly enforce all of the terms of any tenancy with any other tenant, licensee or occupier of the Building or the Land so as to preserve the Tenant's rights under this lease.

17 Signage rights

17.1 The Landlord will, at its costs, provide:

- a readily visible signage on the exterior of the Building clearly identifying the street address of the Building (such signage including the location to be approved by the Tenant. Such approval will not be unreasonably withheld).
- b

17.2 The Tenant will not affix, paint or exhibit any sign, nameplate, signboard or advertising device of any description on or to the exterior of the Building without the prior written approval of the Landlord.

17.3 The Tenant's signage will be installed in:

- a accordance with the requirements of all competent territorial Authorities;
- b a substantial and proper manner and so as to cause no unreasonable damage to the Building or any unreasonable interference to any tenant or other occupant of the Building.

17.4 The Tenant will at the determination of the term remove the Tenant's signage and make good any damage caused by such removal.

17.5 The Landlord will, at its cost, provide directory boards at the entrance or within the Building and signage for the Tenant on the directory boards.

17.6 The Landlord will not without the Tenant's prior written consent:

- a permit any other tenant or occupier of the Building or any other third party to erect any sign, name plate, signboard or advertising device of any description on or to the exterior of the Building or on the Land; or
- b grant naming rights entitling any other tenant or occupier of the Building or any other third party to name the Building.

The Tenant will not unreasonably or arbitrarily withhold its consent where such sign, name plates, signboard or advertising device, and/or the name of the Building, does not:

- c conflict with the signage of the Tenant; and
- d have or is not likely to have a detrimental effect on or be inconsistent with or incompatible with the public image of the Tenant or the Tenant's use and enjoyment of the Premises and the Building.

18 Tenant's aerials, microwave dishes and transmitters

18.1 For the purposes of clause 18 and 19 'Equipment':

- a means aerials, microwave dishes, electronics, and telecommunications and other equipment, installed by the Tenant on the roof; and
- b includes associated wires, ducts and cabling installed by the Tenant on the roof or in the walls of the Building for the purposes of operating the Equipment.

18.2 The Tenant will, at no cost to the Tenant, have the rights to access and the use of those parts of the Building (including the roof and walls of the Building) and the Land which the Tenant needs in order for the Tenant to locate any Equipment in or on the Building so as to enable the Tenant to undertake its business use and enjoy the Tenant's rights under this lease.

18.3 The Tenant will not be liable to pay rent for its rights pursuant to this clause 18 nor will these rights be treated as an enhancement for rent review purposes.

18.4 The Tenant will at its cost:

- a provide the Landlord with a plan for cabling required in relation to installing the Equipment;
- b obtain the Landlord's approval to the plan and to the size, specifications and locations of the Equipment; and
- c obtain and maintain any consents required by any Authority for the Equipment.

18.5 The Tenant will at its cost:

- a comply with all laws in relation to the installation and operation of the Equipment;
- b make good any resulting damage to the Building as a result of the installation of the Equipment;
- c access the location of the Equipment by the route approved by the Landlord; and
- d maintain the Equipment in good, proper and safe order and condition.

19 Electromagnetic and harmonic interference

19.1 For the purposes of this clause 19:

'Interference' means any disturbance or interference by electromagnetic, microwave, electronic, harmonic, radio or other transmissions or emissions that interferes with the operation of the Tenant's electronic or other equipment in the Premises (including but not limited to the Equipment).

19.2 Without limitation to the Building Performance Specification, the Landlord acknowledges that it is essential to the Tenant that there is no Interference with the Tenant's use of the Premises and the Tenant's operations and equipment in the Premises and the Building (Including the Equipment).

19.3

19.4 The Landlord will ensure that there is no Interference (Including any electromagnetic, microwave, electronic, harmonic, radio or other transmissions or emissions) from the Building or the Land which may in any way impair or disturb the Tenant's operations in the Premises.

19.5 The Landlord will not permit, without the prior written consent of the Tenant (which may be withheld at the Tenant's sole option), any licensee or other person to locate or operate any Equipment on the roof or the interior or the exterior of the Building on the Land which may cause any Interference or which may in any way impair or disturb the Tenant's operations in the Premises.

19.6 Notwithstanding any consent given by the Tenant pursuant to clause 19.5, the Landlord will remain responsible for, and will fully indemnify the Tenant from and against, all damage, loss, disturbance, costs, charges or expenses of whatever nature and how so ever arising which are suffered or incurred by the Tenant in consequence of, or arising from, the Landlord permitting any person to carry out any of the activities detailed in clause 19.5.

20 Tenant additions and alterations

20.1 The Tenant will not make any alterations or additions to the Premises without first supplying the Landlord with plans and specifications of the proposed alterations or additions to the Landlord for consent (such consent to be at the Landlord's cost).

20.2 The Landlord will not, as a term of the Landlord's consent required pursuant to clause 20.1, require the Tenant's compliance with any redecoration, make good, or any other reinstatement obligations to the Premises, other than the Tenant's compliance with the provisions of clauses 21.1 to 21.3 (as applicable). The provisions of clauses 21.1 to 21.3 will not be deemed to be a valid reason for the Landlord to withhold its consent pursuant to clause 20.1.

20.3 Where the Tenant carries out any building work (either as part of its fitout or in the course of making alterations to the Premises or the Building), then the Tenant will at all times comply with the requirements of the Building Act 2004, the then current building code pursuant to that Act and the provisions of any building consent issued under that Act. Such compliance will only be required in so far as any legislative or other requirements relate specifically to the Tenant's actual fitout or alterations to the Premises (**Actual Tenant's Works**).

20.4 Notwithstanding anything to the contrary, if any work is required to the Premises or to the Building in order to ensure that on completion of the Actual Tenant's Works the Premises or the Building meet, or will meet, the requirements of the Building Act 2004 then:

- a to the extent that the work required is as a direct result of the Actual Tenant's Works, then the Tenant will at its cost carry out such work to the Premises; and
- b to the extent that the required work relates to parts of the Building and the Land other than the Premises, then the Landlord will at its cost carry out such work;

20.5 Where the use of the Building or alterations to the Building including the Premises by the Landlord or by any previous tenant, licensee or other occupier did not comply with the requirements of the Building Act 2004 or the then current building code pursuant to that Act, and as a result of such non-compliance the Tenant incurs additional costs, losses and expenses in carrying out the Actual Tenant's Works, then the Landlord will reimburse the Tenant for such additional costs, losses and expenses.

21 Removal of Tenant's fixtures, fittings and chattels

21.1 Notwithstanding anything to the contrary, prior to the expiration of the term or within a reasonable period following any earlier determination of the term (including any date(s) of partial surrender or relinquishment provided for in this lease), the Tenant may, at the Tenant's sole option, but will not be required by the Landlord to:

- a leave all or part (as applicable) of the Premises and the Building (including its services) as they then are;
- b leave all or part of the Tenant's partitions, alterations, equipment, wiring, chattels, fixtures, fittings and improvements then in, on or attached to the Premises, or any surrendered part of the Premises (as applicable) in their then existing condition; or
- c remove all or part of the Tenant's (or any prior tenant's) partitions, alterations, equipment, wiring, chattels, fixtures, fittings and improvements in, on or attached to all or part of the Premises in which event the Tenant will make good any damage caused to any parts of the Premises affected by any such removal (except where clause 24.10 applies).

21.2 Any of the Tenant's (or any prior tenant's) property left in, on or attached to the Premises or any part of the Premises (as applicable) pursuant to clause 21.1:

- a for more than 10 Working Days; or
- b following the expiration of a reasonable period where clause 24.10 applies;

after the expiration or any earlier or partial determination of the term (if and as applicable) will be deemed to have become the property of the Landlord, at no cost to the Landlord.

21.3 The Landlord will have no further claim whether at law, in equity or otherwise against the Tenant for any matter arising from any such removal, leaving, non-redcoration or abandonment of the Tenant's partitions, alterations, equipment, wiring, chattels, fixtures, fittings, improvements and the Premises provided that the Tenant complies with clause 21.1.

21.4 Notwithstanding anything to the contrary, at the expiry of the term or any earlier surrender, partial surrender or other date of relinquishment of all or part of the Premises, the Tenant is not obligated to paint or redecorate or replace floor coverings in any part of the interior of the Premises.

22 Compliance with legislation

Landlord's compliance obligations

- 22.1 The Landlord will, at its cost, comply with all statutes, ordinances, regulations, bylaws, requisitions, notices and the requirements of all competent Authorities relating to the Building or the Premises including any notice or requisition issued under the Resource Management Act 1991, the Building Act 2004, the Health and Safety in Employment Act 1992, or any regulation or code made under any of those Acts or like legislation except in those cases where this lease expressly places the responsibility and costs for such works on the Tenant. The Tenant will also comply with the reasonable requirements of the Landlord's building health and safety plan (if provided).

Tenant's compliance obligations

- 22.2 The Tenant will comply with:

- a the provisions of all statutes, ordinances, regulations and by-laws; and
- b the provisions of all licences, requisitions and notices which are issued by any competent Authority or person;

In respect of the use of the Premises by the Tenant except as is otherwise provided in this clause 22 and this lease.

- 22.3 Notwithstanding anything to the contrary, the Tenant will not be required to make any structural repairs or alterations or any other alterations or repairs to the Premises or the Building (including the Building Services and the Landlord's fixtures and fittings) other than those required by reason of:

- a any change of use of, or alteration to, the Premises which is initiated by the Tenant; or
- b the number or sex of the persons employed on the Premises by the Tenant.

Smoke Free Environments Act 1990

- 22.4 Each party will comply with the provisions of the Smoke Free Environments Act 1990 and:

- a the Landlord will use its best endeavours to designate the Building a smoke free area and will use all reasonable endeavours to enforce such smoke free status; and
- b the Tenant will use all reasonable endeavours to ensure that its employees comply with the smoke free status of the Building and only smoke in areas that are designated by the Landlord as smoking areas (if any).

23 Insurance

Landlord will insure

- 23.1 The Landlord will at all times during the term keep and maintain the Building insured for the cover set out in Schedule 1, 17 on a full replacement and reinstatement (including loss, damage or destruction of windows and other glass) basis except where clause 23.2 applies.

23.2 If at any time the Landlord is unable to obtain Insurance on a full replacement and reinstatement basis for any or all of the risks set out in Schedule 1, 17 because such insurance:

- a is not available for the Building; or
- b is only available at a cost or on terms that are unacceptable to the Landlord and the Tenant;

then the Landlord will keep and maintain the Building insured for the cover set out in Schedule 1, 17 on such other basis which is acceptable to the Tenant. The Landlord will provide the Tenant with evidence (acceptable to the Tenant) that the Landlord is unable to insure the Building in accordance with clause 23.1.

23.3 The insurance required to be held by the Landlord pursuant to this clause 23 must be effected:

- a on terms which are acceptable to the Tenant who may obtain independent insurance advice;
- b with an insurer which has a minimum long term Standard & Poor's credit rating acceptable to the Tenant; and
- c on terms which comply with the requirements of the New Zealand Insurance Council Incorporated.

23.4 Prior to the Landlord effecting insurance pursuant to this clause 23, the Landlord must provide the Tenant with a copy of the proposed insurance policy for the Tenant's prior approval in accordance with clause 23.3. The Tenant will advise the Landlord in writing within 10 Working Days of receipt as to whether or not the basis of insurance, the terms of the insurance and the insurer are acceptable to the Tenant. If the proposed insurance policy is not acceptable to the Tenant:

- a the parties will consult regarding the Tenant's objections and concerns; and
- b the Landlord will provide the Tenant with a copy of a revised insurance policy for approval on the basis set out in this clause 23.4.

23.5 At each anniversary of the commencement date, or at any time upon the receipt of a written request from the Tenant, the Landlord will promptly supply the Tenant with:

- a evidence, including a certificate as to currency furnished by the Landlord's insurer, that the current insurance cover required by this clause 23 is held by the Landlord; and
- b confirmation that all insurance premiums due have been paid by the Landlord.

23.6 If at any time the Standard & Poor's credit rating of the Landlord's insurer falls below the credit rating accepted by the Tenant in accordance with clause 23.3b, then the Landlord must:

- a provide the Tenant with written notice; and
- b if required by the Tenant, effect replacement insurance within a reasonable time with an insurer which has a minimum long term Standard & Poor's credit rating acceptable to the Tenant. Such replacement insurance must be obtained in accordance with clauses 23.1 to 23.5 above.

Tenant will insure

23.7 The Tenant will keep current at all times during the term a public liability insurance policy applicable to the Premises and the business carried on from the Premises for an amount not less

than **\$/insert amount**] (being the amount which may be paid out arising out of any one single accident or event).

- 23.8 The Tenant will, if requested by the Landlord from time to time, supply the Landlord with the certificate of currency for that policy.

Tenant not to void Insurances

- 23.9 The Tenant will not carry on or allow upon the Premises any trade or occupation or allow to be done any act or thing which the Tenant knows:

- a will make void or voidable any policy of insurance on the Building and the Land; or
- b may render any increased or extra premium payable for any policy of insurance except where in circumstances in which any increased premium is payable, the Tenant will have first obtained the consent of the Landlord and paid the Landlord the amount of any such increased or extra premium as may be payable.

- 23.10 The carrying on by the Tenant in a reasonable manner of the business use, or of any use to which the Landlord has consented, will be deemed not to be a breach of clause 23.9.

When Tenant to have benefit of Landlord's Insurance

- 23.11 Sections 268 to 272 of the Property Law Act 2007 apply to this lease. Accordingly, where the Premises, the Building or the Land are damaged or destroyed by one or more of the following events:

- a fire, flood, explosion, lightning, storm, earthquake or volcanic activity; or
- b the occurrence of any other peril against the risk of which the Landlord is insured or has covenanted with the Tenant to be insured;

then except as provided for in clause 23.13:

- c the Landlord must not require the Tenant to:
 - i meet the cost of making good the destruction or damage; or
 - ii indemnify the Landlord against the cost of making good the destruction or damage; or
 - iii pay damages in respect of the destruction or damage; and
- d the Landlord must indemnify the Tenant against the cost of carrying out any works to make good the destruction or damage if the Tenant is obliged by the terms of this lease to carry out those works.

- 23.12 Clause 23.11 applies even though an event that gives rise to the destruction or damage is caused or contributed to by the negligence of the Tenant or a person for whose acts or omissions the Tenant is responsible (Tenant's Agent), subject always to the Landlord's rights under section 270 of the Property Law Act 2007.

- 23.13 Clause 23.11c does not excuse the Tenant from any liability to which the Tenant would otherwise be subject, and the Landlord does not have to indemnify the Tenant under clause 23.11d, if and to the extent that:

- a the destruction or damage was intentionally done or caused by the Tenant or the Tenant's Agent; or
- b the destruction or damage was the result of an act or omission by the Tenant or the Tenant's Agent that:
 - i occurred on or about the Premises or on or about the whole or any part of the Land; and
 - ii constitutes an imprisonable offence within the meaning of the Summary Proceedings Act 1957; or
- c any insurance moneys that would otherwise have been payable to the Landlord for the destruction or damage are irrecoverable as a direct result of an act or omission of the Tenant or the Tenant's Agent.

24 Damage to or destruction of Premises

Total destruction

24.1 If the Premises or any portion of the Building is destroyed or so damaged:

- a as to render the Premises untenable then the term will at once terminate from the date of destruction or damage; or
- b as to require demolition or reconstruction in the reasonable opinion of the Landlord or the Tenant, then the Landlord or the Tenant may within two months of the date of such damage or destruction give the other party 20 Working Days' written notice to terminate and the term will terminate upon the expiry of such notice.

Partial destruction

24.2 Subject to clause 24.5, if the Premises or any portion of the Building is damaged but not so as to render the Premises untenable then the Landlord will with all reasonable speed expend all of the insurance moneys received by the Landlord in respect of the damage towards repairing such damage or reinstating the Building and the Premises.

24.3 Any repair or reinstatement may be carried out by the Landlord using such materials, form of construction and according to such plans as the Landlord thinks reasonably fit subject to the Tenant's consent (not to be unreasonably or arbitrarily withheld). Any such repair or reinstatement will be sufficient so long as it is reasonably adequate for the Tenant's use, enjoyment and occupation of the Building and the Premises provided that the repaired and reinstated Building, Building Services and the Premises will be of no lesser quality, standard and usefulness to the Tenant than existed prior to being damaged. Notwithstanding anything to the contrary, the repaired and reinstated Building, Building Services and the Premises must meet the Building Performance Specifications.

24.4 The whole (or a fair proportion, having regard to the nature and extent of the damage and the extent to which the Tenant can lawfully conduct its business from the Premises) of the rent shall cease to be payable for the period starting on the date of the damage and ending on the date when the repairs and reinstatement have been completed and the Tenant can lawfully occupy all the Premises.

24.5 If:

- a any necessary permit or consent is not obtainable; or
- b the insurance moneys received by the Landlord, through no fault of the Landlord, will be inadequate for the repair or reinstatement of the Building and the Premises and the Landlord elects not to provide the requisite additional funding; or
- c the Landlord has not, or the Tenant can at any time establish with reasonable certainty that the Landlord will not have, repaired or reinstated the Building and the Premises in accordance with clause 24.2 within 6 months or more of the date of damage;

then the Tenant may at any time thereafter by notice in writing to the Landlord terminate this Lease. The term shall terminate upon service of such notice on the Landlord.

24.6 For the purposes of this clause 24, the term 'insurance moneys received' means the insurance moneys paid out or agreed to be paid out by the Landlord's insurer (whether to the Landlord, the Landlord's mortgagee or any other party) plus an amount equal to the applicable excess.

Emergency

24.7 If as a result of an Emergency the Tenant is unable to gain access to all parts of the Premises or to fully and lawfully conduct its business from the Premises (for example) because:

- a access to the Premises, or their use, is not feasible or suitable for health and safety reasons or because of physical impediments to access;
- b the Premises are situated within a prohibited or restricted access cordon;
- c the Premises are unable to be used pending the assessment or completion of structural engineering or other reports and appropriate certifications that the Premises are fit for use;
- d access to or occupation of the Premises is prohibited or restricted by civil defence, national, territorial, defence, police or other emergency authorities; or
- e access to or occupation of the Premises is not feasible as a result of the suspension, dislocation or unavailability of services such as energy, water, sewerage or air conditioning;

then the Tenant's obligations under this lease will be suspended and the whole (or a fair portion, having regard to the extent to which the Tenant can lawfully conduct its business from the Premises) of the annual rent will cease to be payable for the period starting on the date when the Tenant became unable to gain access to all parts of the Premises or to fully and lawfully conduct its business from the Premises (as the case may be) and ending on the date when:

- f such inability ceases; or
- g where clause 24.1 applies, the repair and reinstatement have been completed and the Tenant can lawfully occupy all the Premises;

whichever is the later date. This clause shall apply regardless of whether or not the Premises or the Building are damaged.

24.8 If as a result of an Emergency the Tenant is, or can at any time establish with reasonable certainty that the Tenant will be, unable to gain access to all parts of the Premises or to fully and lawfully conduct its business from the Premises for a period of more than 6 months from the date

of the Emergency, the Tenant may by notice in writing to the Landlord terminate this Lease. The Lease shall terminate upon service of such notice on the Landlord.

Termination

24.9 Any termination pursuant to this clause 24 will be without prejudice to the rights of either party against the other in relation to any breach prior to the date of damage or destruction.

24.10 If the lease is terminated pursuant to this clause 24:

- a the annual rent shall cease to be payable as from the date of such damage or destruction; and
- b any annual rent which the Tenant has paid past the date of such damage or destruction shall be promptly refunded by the Landlord to the Tenant.

24.11 Notwithstanding any termination of this lease pursuant to this clause 24:

- a the Tenant will be entitled to remove all or any of its fixtures, fittings and chattels from the Premises within a reasonable period following such termination;
- b if required by the Tenant, the Landlord will provide with Tenant with all reasonable assistance to do so including gaining access to the Premises; and
- c the Tenant will be relieved of any obligations pursuant to clause 21.1c to make good any damage caused by the removal of its fixtures, fittings and chattels from the Premises.

24.12 Notwithstanding anything to the contrary, no payment of the annual rent by the Tenant at any time or any agreement by the Tenant as to an abatement of the annual rent will prejudice the Tenant's rights, pursuant to this clause 24, to:

- a assert that this lease has terminated;
- b exercise a right of termination or cancellation;
- c claim an abatement of the annual rent; or
- d claim a refund of any annual rent paid for any period beyond a termination or in respect of which an abatement applies or should, by the terms of this lease, have applied.

25 Re-entry

25.1 Subject to clause 25.2 and Part 4 Subpart 6 of the Property Law Act 2007, the Landlord may re-enter the Premises at the time or at any time thereafter if:

- a the annual rent is in arrears 10 Working Days after any of the rent payment dates; or
- b the Tenant breaches any covenant or agreement on the Tenant's part expressed or implied in this lease and has not remedied it within a reasonable time after the Landlord has given written notice to the Tenant requiring that breach to be remedied.

The term will terminate on such re-entry, but without prejudice to the rights of either party against the other arising prior to such re-entry.

25.2 For so long as a Crown Organisation is the Tenant in possession then the Landlord will not re-enter the Premises.

26 Arrears of annual rent

26.1 The acceptance by the Landlord of arrears of annual rent will not constitute a waiver of the Tenant's continuing obligation to pay the annual rent.

27 Quiet enjoyment

27.1 The Tenant will be entitled to quietly and peaceably hold and enjoy the Premises throughout the term without any interruption by the Landlord, persons under the control of the Landlord or any person claiming under the Landlord.

28 Renewal of term

28.1 If the Tenant has given the Landlord written notice to renew the lease at least three months before the end of the then current term, the Landlord will grant a new lease of the Premises for the next further term from the applicable renewal date on the following terms:

- a** The annual rent payable from the renewal date will be agreed upon by the parties within a period of 30 Working Days from the date of the Tenant's notice to renew the lease. Failing agreement, the annual rent will be determined in accordance with clauses 2.12 to 2.24 provided that the annual rent will be the then market rent of the Premises and the Carparks.
- b** Subject to clause 28.1a, the renewed lease will otherwise be upon and subject to the expressed and implied terms and conditions in this lease provided that the term of this lease (including any further terms) will expire on or before the final expiry date.
- c** The annual rent will be subject to review during the renewed term on the rent review date(s) set out in this lease.
- d** Pending any determination of the annual rent for any renewal of this lease, the Tenant will pay an interim rent in accordance with clause 2.7.

28.2 The Tenant may elect to renew this lease pursuant to clause 28.1 in respect of:

- a** the whole of the Premises occupied by the Tenant immediately prior to the applicable renewal date; or
- b** the whole of the Premises occupied by the Tenant immediately prior to the applicable renewal date, less either one whole floor of the Building or one half-floor of the Building; and
- c** all of the Carparks leased by the Tenant immediately prior to the applicable renewal date; or
- d** some of the Carparks leased by the Tenant immediately prior to the applicable renewal date.

28.3 Any notice of renewal given by the Tenant pursuant to clause 28.1 will specify the portion of the Premises (if any) and the number of Carparks (if any) to be excluded from the renewed lease pursuant to clause 28.2b above.

28.4 If any portion of the Premises excluded from the Tenant's notice comprises one half-floor of the Building then the area to be excluded must:

- a** be subdivided to facilitate a dual tenancy on the relevant floor of the Building;
- b** be a discrete contiguous area on that floor;

- c have reasonable ingress and egress;
- d have practical ability for that area to be connected to services; and
- e comprise no more than or no less than half the net rentable area of the relevant floor plus or minus a tolerance of 10%.

The Tenant will meet the cost of erecting any required inter-tenancy wall and the reasonable cost of relocating or reconfiguring any affected Building Services.

29 Assignment or subletting

29.1 The Tenant will not assign, sublet or otherwise part with the possession of the Premises, or any part of the Premises, or all or any of the Carparks without first obtaining the written consent of the Landlord. The Landlord will give its consent if the following conditions are fulfilled:

- a The Tenant proves to the reasonable satisfaction of the Landlord that the proposed assignee or subtenant is (or in the case of a company that the shareholders of the proposed assignee or subtenant are) respectable, responsible and has (or have) the financial resources to meet the Tenant's obligations under this lease or in the case of a sublease, the subtenant's obligations under the sublease;
- b All annual rent and other moneys payable have been paid;
- c There is no significant subsisting breach of any of the Tenant's obligations under this lease;
- d In the case of an assignment, a deed of covenant in the customary form approved or prepared by the Landlord is duly executed by the Tenant and delivered to the Landlord;
- e The Tenant will pay the Landlord's reasonable and proper costs in respect of the approval or preparation of any deed of covenant or guarantee, and all reasonable fees and charges payable in respect of any reasonable inquiries made by or on behalf of the Landlord concerning any proposed assignee, subtenant or guarantor. These costs will only be payable by the Tenant if the proposed assignment or subletting proceeds.

29.2 The Landlord will not demand payment of any fine or sum of money in the nature of a fine in relation to such consent.

29.3 Where the Landlord consents to a subletting the consent will extend only to the subletting. Notwithstanding anything contained or implied in such sublease, the Landlord's consent will not permit any subtenant to deal with the sublease in any way in which the Tenant is restrained from dealing without consent.

29.4 Where the Tenant is a company which is not listed on the main board of a public stock exchange in New Zealand or Australia, then any change in the legal or beneficial ownership of any of its shares or the issue of new capital where in either case there is a change in the effective management or control of the company, will require the Landlord's consent.

29.5 Notwithstanding clauses 29.1 to 29.4, where the Tenant is a Crown Organisation the Tenant may:

- a assign or sublet or otherwise part with possession of all or any part of the Premises or the Carparks to any other Crown Organisation; or
- b share possession of the Premises or the Carparks with any other Crown Organisation;

without the consent of the Landlord (unless the consent of the Landlord is required pursuant to clause 14.1) provided that the Tenant gives at least 10 Working Days prior notice to the Landlord.

- 29.6 In the event that the Tenant being a Crown Organisation assigns the Tenant's interest under this lease, then the Tenant will not be liable under the lease beyond the effective date of such assignment, but without prejudice to the Landlord's rights for any prior breach by the Crown as the Tenant.

30 Unit titling

- 30.1 The Landlord warrants that as at the commencement date the Land and the Building does not comprise all or part of a unit or strata title.
- 30.2 Notwithstanding anything to the contrary, the Landlord (and any successor or assigns of the Landlord, mortgagee in possession or a purchaser of the Landlord's interest in the Land, the Building or this lease) undertakes to the Tenant that, so long as the Tenant is the Crown, or a Crown organisation, it will not create separate unit or strata titles (whether leasehold or freehold) including under the Unit Titles Act 2012 for any level or part of the Premises, the Building and the Land.

31 Carparks

- 31.1 The Landlord agrees that:
- a each of the Carparks will be a single fixed bay, easily accessible, weather proof and secure;
 - b *[insert number of carparks suitable for disabled access]* of the Carparks will be suitable for disabled access; and
 - c the location of the Carparks will remain unvaried during the term.
- 31.2 The Tenant and those for whom the Tenant is responsible may use the Carparks 24 hours a day, 7 days a week, 365 days a year.
- 31.3 The Tenant and those for whom the Tenant is responsible will have all reasonable means of ingress to and egress from the Carparks.
- 31.4 The Tenant grants to the Landlord and the other tenants and licensees of the Building and the Land a licence to pass and repass over the Carparks when they are not in use by the Tenant.
- 31.5 The Landlord grants to the Tenant access to all designated parts of the Building and the Land which are required to enable the Tenant to have vehicular and pedestrian access to and from the Carparks.
- 31.8 The Landlord will ensure that:
- a the Carparks are adequately secured in accordance with the Tenant's requirements;
 - b vehicular and pedestrian access to the Carparks, and to that part of the Building in which the Carparks are situate, will be controlled by key or access card system; and
 - c the Carparks are numbered or named in accordance with the Tenant's requirements.

31.7 The Landlord will be responsible to maintain adequate lighting for the Carparks and will be responsible for the removal of rubbish and graffiti from the areas on which the Carparks are situated.

31.8 The Landlord will keep and maintain the surface of the Carparks sealed and free of potholes and will reseal the surface as reasonably required by the Tenant from time to time.

32 Holding over

32.1 If the Landlord permits the Tenant to remain in occupation of the Premises after the expiration or sooner determination of the term, then such occupation will be:

- a a monthly tenancy only;
- b terminable by 20 Working Days' written notice by either party; and
- c at the same annual rent payable immediately prior to the expiration or sooner determination of this lease and otherwise on the same terms and conditions (in so far as they are applicable to a monthly tenancy) as are expressed or implied in this lease.

33 Suitability

33.1 The Landlord warrants as essential terms of this lease that the Building (including the Building Services, the Common Areas and the Premises) is at the commencement date and will for the term remain:

- a actively maintained by the Landlord, operating and performing properly and fully complying with the Building Performance Specifications;
- b weatherproof and watertight in all respects, free of contaminants and noxious materials and substances which are a threat to health and safety, and free from any inherent or potential defect;
- c watertight, free of any polychlorinated biphenyls, ODP (zero levels), or refrigerant emissions and any other Contamination; and
- d fully compliant with all legislative, competent territorial authority and any other competent person's requirements, including that:
 - i the use of the Premises by the Tenant will comply with the by-laws, ordinances or other requirements of any Authority; and
 - ii a current building warrant of fitness and current compliance schedule(s) pursuant to sections 108 and 110 of the Building Act 2004 (or any equivalent sections) are, and will be, currently held by the Landlord.

Asbestos

33.2 The Landlord warrants as an essential term of this lease that:

- a the Premises and the Building have no asbestos content; or
- b if the Premises or the Building have any asbestos content, then the Landlord will, at the Landlord's cost in all things, remove or fully encapsulate any asbestos within 20 Working

Days of being requested to do so in writing by the Tenant or by such later date as may be agreed between the parties (time being of the essence in all things).

33.3 If the Tenant elects to relocate part or all of its operations from the Premises during the carrying out of any work required pursuant to clause 33.2, the Landlord will pay:

- a the rent for the temporary premises selected by the Tenant;
- b all costs associated with the Tenant's temporary relocation to and from the temporary premises; and
- c any other Tenant costs reasonably incidental to the foregoing;

and the Tenant will continue to pay the annual rent payable under this lease.

33.4 The Landlord acknowledges that the Tenant will not be obliged to reoccupy the Premises until they are certified (to the reasonable satisfaction of the Tenant) by an asbestos testing laboratory to be completely free of all asbestos products and to have an asbestos free air content.

34 No waiver

34.1 Unless the parties both agree in writing, no condition of this lease will be deemed to have been waived and no breach, delay or detail of this lease will be construed as having been excused. No waiver or failure to act by:

- a the Landlord in respect of any breach of this lease by the Tenant; and
- b the Tenant in respect of any breach of this lease by the Landlord;

will operate as a waiver of another breach.

35 Land transfer title and mortgagee's consent

35.1 If the Tenant requires this lease to be registered the Landlord will be required to do all acts or things necessary to enable this lease to be registered provided that the Tenant meets the costs of the registration.

35.2 The Landlord will supply to the Tenant a copy of the written consent of all mortgagees of the Building or the Land to the terms and existence of this lease.

36 Notices

36.1 All notices must be in writing and must be served by one of the following means:

- a in the manner prescribed by sections 354 to 361 of the Property Law Act 2007; or
- b in all other cases by:
 - i personal delivery;
 - ii posting by registered or ordinary mail;
 - iii email; or
 - iv receipted courier pack.

- 36.2 In respect of the means of service specified in clause 36.1b, a notice will be deemed to have been served:
- a in the case of personal delivery, when received by the addressee;
 - b in the case of posting by mail, on the second Working Day following the date of posting to the addressee's last known address in New Zealand;
 - c in the case of email, when acknowledged by the addressee by return email or otherwise in writing except that return emails generated automatically will not constitute an acknowledgement.
- 36.3 The parties' addresses for the service of notices are as set out in Schedule 1, 18. A party may from time to time, advise the other party in writing of a different physical, postal or email address for the service of notices.
- 36.4 If either party is unaware of the other party's last known address in New Zealand, then any notice placed conspicuously on any part of the premises at the last known address of the other party, will be deemed to have been served on the other party on the day on which it is affixed.
- 36.5 A notice will be valid if given by any authorised representative of the party giving the notice.
- 36.6 Notices served after 5:00pm on a Working Day, or served on a day which is not a Working Day, will be deemed to have been served on the next succeeding Working Day.

37 Resolution of disputes

Avoiding disputes

- 37.1 The parties acknowledge and declare the importance to each of them that differences in respect of this lease should be avoided or minimised. The parties agree that in the event of any differences arising each party will discuss them fully and openly and will meaningfully negotiate with the other party with a view to a speedy resolution of such differences.

Mediation

- 37.2 Failing satisfactory resolution of such differences within [*Insert number of Working Days*] Working Days of the difference or dispute arising any difference or dispute between the parties arising out of this lease may be referred for settlement by mediation by the service of notice in writing to the other party. Such mediation will be based upon a joint written statement setting out the areas at issue.
- 37.3 The mediator will be agreed by the parties or failing agreement will be appointed, at the request of either party, by the President of the Arbitrators and Mediator's Institute of New Zealand as follows:
- a the President will provide the parties with three possible mediators;
 - b the parties may advise the President of any objections or preferences which the parties may have in respect of the mediators; and
 - c the President will have regard to any such objections or preferences when appointing the mediator.

37.4 The mediation will be carried out in accordance with guidance and instructions issued by the appointed mediator.

Acceptance in writing by both parties will be deemed to be the full and final settlement of any dispute or difference between the parties.

37.5 The costs of any mediation proceedings will be borne equally between the parties.

37.6 If agreement is not reached by mediation then the dispute will be referred to arbitration in accordance with clause 37.7.

Arbitration

37.7 Any dispute, difference or question arising between the parties:

- a as to the construction of this lease; or
- b concerning anything contained in or arising out of this lease; or
- c as to the rights, liabilities or duties of the parties pursuant to this lease; or
- d as to any other matter touching upon the relationship of the parties in respect of this lease (including claims in tort as well as in contract);

which is not resolved by mediation in accordance with the preceding clauses; or

- e if one party gives written notice to the other requiring the new annual rent to be determined by arbitration pursuant to clause 2.12ci;

then the dispute, difference or question will be submitted to the arbitration of one arbitrator who will conduct the arbitral proceedings in accordance with the Arbitration Act 1996.

37.8 The arbitrator will be agreed on by the parties or failing agreement within 10 Working Days of the dispute, difference or question being referred to arbitration will be appointed, at the request of either party, by the President of the [insert name of City] Branch of the New Zealand Law Society or the President of the New Zealand Law Society as follows:

- a the President will provide the parties with three possible arbitrators;
- b the parties may advise the President of any objections or preferences which the parties may have in respect of the arbitrators;
- c the President will have regard to any such objections or preferences when appointing the arbitrator; and
- d if the arbitration is for the purposes of determining the new annual rent pursuant to clause 2.12ci, then the arbitrator appointed must be a solicitor acting as a barrister with not less than 5 years experience at the independent bar.

Exemptions

37.9 The procedures prescribed in the foregoing provisions of this clause 37 will not prevent the Landlord or the Tenant from:

- a taking proceedings for the recovery of any annual rent or any other moneys payable or repayable under this lease which remain outstanding; or

- b from exercising the rights and remedies (if any), in the event of any default or consequence described in this lease.

38 No implied terms

38.1 The covenants, conditions and powers implied in leases by virtue of the Property Law Act 2007 (whether pursuant to Schedule 3 of that Act or otherwise) will not apply to and are excluded from this lease, to the extent legally permissible.

38.2 Sections 224 and 266(1)(b) of the Property Law Act 2007 will not apply to and are excluded from this lease. This clause does not affect the operation of sections 225 to 229 of the Property Law Act 2007.

39 Interpretation and definitions

Interpretation

39.1 In this lease:

- a If any provision on strict interpretation is found to be invalid, void, illegal or unenforceable then that provision may be construed in such a reasonable manner as may be necessary to ensure that, for the purposes of this lease, it is not invalid, void, illegal or unenforceable. In the event that any such provision, or part of such provision, cannot be so construed then such provision will be deemed to be void and severable and the remaining provisions of this lease will not be affected or impaired by such a provision.
- b Any reference in this lease to any Statute or Regulation will be deemed to include all codes, regulations, amendments, revisions, consolidations and replacements made from time to time to, or under, that statute or regulation and any statute or regulation made in substitution.
- c A person and a competent person will include (as the context requires or admits) any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, or authority, in each case whether or not having a separate legal personality.
- d The clause, subclause, section and the sub-section headings and the contents page appear only for the sake of convenience and will not affect the construction of this lease, but with the exception of:
 - i clause and subclause numbering which will (if the context requires or admits) affect the construction of this lease; and
 - ii if a clause heading in this lease is marked **Not Applicable**, then such clause is not applicable to this lease.
- e Whenever words or terms appear in this lease that also appear in Schedule 1, then those words or terms will mean and include the details supplied after them in Schedule 1.
- f All covenants will be joint and several between multiple parties included within the same definition.
- g Any obligations in this lease not to do something, includes an obligation not to allow or to cause that thing to be done.
- h The Schedules of this lease are deemed to form part of this lease.

- i** Unless otherwise stated, references to clauses and subclauses are references to clauses and subclauses within the Schedule of this lease in which they appear.
- j** Where the context requires or admits, words importing the singular will import the plural, and vice versa. Words importing one gender include the other gender, as the case may require.
- k** **Landlord's consent or Landlord's approval:**
- i** Where the Landlord's consent or the Landlord's approval is required pursuant to any provisions of this lease, such consent or approval will be promptly given and will not be arbitrarily or unreasonably withheld or delayed or given subject to unreasonable conditions.
- ii** The Landlord must, promptly after its consent or approval has been requested, give the Tenant written notice advising that the Landlord's consent or approval is granted or withheld.
- iii** The Landlord's consent or approval will be required for each separate occasion, despite any prior consent or approval obtained for any similar purpose on a prior occasion.
- l** Where the words **at the Tenant's sole option** or **at the Tenant's sole discretion**, or similar, appear in this lease then such sole option or sole discretion (as applicable) of the Tenant will be construed as being absolute, unfettered, unchallengeable and completely binding on the Landlord.
- m** Where the words **including** or **include** appear in this lease then they will be construed without limitation to their generality, as the context requires or admits.
- n** The rule of the interpretation known as 'contra proferentum' will not apply to the interpretation of this lease.

Definitions

39.2 In this lease, unless a contrary intention appears:

- a** **Authority** means any local, regional, territorial, government, statutory or other competent authority having jurisdiction or authority in respect of the Land, the Building, including the Building Services, the Premises, the Common Areas or their use.
- b** **Building** (if appropriate and the context admits) means the building(s) referred to in Schedule 1, 2 and includes (whether or not referred to or detailed in full or in part(s) in this lease as applicable):
- i** the Landlord's fixtures and fittings set out in Schedule 3, 1;
- ii** the Building Services;
- iii** any other equipment provided by the Landlord to service the Building and the Premises; and
- iv** any subsequent extensions or additions to the Building by the Landlord which comprise or contain the Premises.
- c** **Building Performance Specification** means those specifications as set out in Schedule 6.

d **Building Services** means the following items located in the Building and any items installed in replacement of or in addition to any such item:

- i fire detection or protection systems;
- ii security systems;
- iii heating ventilation and air conditioning (HVAC) systems;
- iv automatic doors;
- v traffic control systems for car parking areas;
- vi lifts and escalators;
- vii water, gas, mechanical, electrical, plumbing and drainage systems,;
- viii power generator equipment, switchboards and distribution boards;
- ix building management system
- x any other systems and services in, on, or to the Premises, the Building or the Land; and

all associated plant and equipment including pipework, controls, sensors, monitors, speed drives, valves, strainers, insulation, dampers, associated measuring devices, interconnecting wiring, distributed controllers, and heating/cooling coils. **Building Services** or **services** excludes any services which may be installed or provided by the Tenant in, on or serving the Premises.

e **Carparks** means the carparks specified in Schedule 1, 4 and also includes motorcycle parking and bicycle parking spaces.

f **Common Areas** means those parts of the Building and the Land (if any) the use of which is necessary for the enjoyment of the Premises and which are or may be shared with other tenants, licensees and occupiers of the Building or the Land.

g **Crown** means the Sovereign in right of New Zealand including all ministers of the Crown, government departments, offices of Parliament, Crown entities (as defined in section 7(1) of the Crown Entities Act 2004) and state enterprises (as defined in the State-owned Enterprises Act 1986).

h **Crown Organisation** means the Crown and includes but is not limited to all instruments of the Sovereign in right of New Zealand and includes, but is not limited to:

- i the Executive Government of New Zealand and all Ministers of the Crown;
- ii the Departments of the Public Service, as set out in Schedule 1 of the State Sector Act 1988;
- iii all non-public service Departments;
- iv the Reserve Bank of New Zealand, as continued under section 5 of the Reserve Bank of New Zealand Act 1989;
- v the entities listed in Schedule 4 to the Public Finance Act 1989; and

vi the entities listed in Schedule 1 and Schedule 2 to the Crown Entities Act 2004, together with their subsidiaries under section 8(2) of the Crown Entities Act 2004.

i Default GST:

i means any additional GST, penalty, interest, or other sum imposed on the Landlord under the Goods and Services Tax Act 1985 or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this lease.

ii does not include any sum levied against the Landlord by reason of a default or delay by the Landlord after payment by the Tenant to the Landlord of the GST.

j Emergency means a situation that:

i is a result of any event, whether natural or otherwise, including an explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, fire, leakage or spillage of any dangerous gas or substance, infestation, plague, epidemic (including any pandemic), failure of or disruption to an emergency service, war, invasion, rebellion, act of terrorism, national emergency; or

ii any extraordinary occurrence which may cause loss of life or serious injury, illness or seriously endanger the safety of people or property;

and the situation is not caused by any act or omission of the Tenant.

k Excluded Areas means:

i any balconies, decks, terraces, internal courtyards, and lightwells of the Building;

ii the ground floor entranceway or any other main entrance way(s), foyer, lift foyer and the dockway of the Building (if any, and as applicable);

iii all stairs and stairwells;

iv all areas excluded under the PCNZ/PINZ Guide for the Method of Measurement of Rentable Areas current as at the date of this lease; and

v any areas of the Premises in excess of *(insert area (if any))* m².

l GST means goods and services tax charged under the Goods and Services Act 1985 and includes any similar tax charged in substitution for that tax.

m Land means the land described in Schedule 1, 1.

n The Landlord and the Tenant means (where the context admits and as applicable) the executors, administrators, successors, permitted assigns and any duly authorised employees, agents, contractors and representatives of the Landlord and the Tenant. References to the parties will be construed accordingly.

o Month and monthly respectively mean calendar month and calendar monthly.

p persons under the control of the Tenant means the Tenant's authorised subtenants and licensees, employees and contractors and any person on the Premises at the request or invitation of the Tenant.

- q **persons under the control of the Landlord** includes the Landlord's employees and contractors and the Landlord's other tenants and licensees in the Building or on the Land and any person in the Building or on the Land at the request or invitation or with the authority of the Landlord or its other tenants.
- r **Premises** means the premises described in Schedule 1, 3 and includes the Landlord's fixtures and fittings set out in Schedule 3, 1.
- s **Premises Condition Report** means the report attached as Schedule 4.
- t **Working Day** means any day of the week except for:
- i Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, New Zealand's anniversary day, and the provincial anniversary day as observed at the place where the Premises are situated; and
 - ii any day in the period commencing with the 24th day of December in any year, and ending with the 5th day of January in the following year.

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Schedule 3 Fixtures and Fittings

1 Inventory of Landlord's fixtures and fittings

Item	Brand / model	Specifications	Other comments

2 Inventory of Tenant's fixtures and fittings

All fixtures and fittings located in the Premises except for the Landlord's fixtures and fittings detailed in Schedule 3, 1 and includes as at the date of this lease:

Item	Brand / model	Specifications	Other comments

Schedule 4 Premises Condition Report

[The Premises Condition Report attached must accurately detail the condition of the Premises including the Landlord's fixtures and fittings as at the commencement date. Photographs should be included.]

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Schedule 5 Plans

Premises plans

(to be inserted)

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Carpark plans

(to be inserted)

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Schedule 6 Building Performance Specifications

(to be inserted)

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