

AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

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

DATE: 18 AUGUST 2020

VENDOR: Flight Limited

PURCHASER: Oyster Property Holdings Limited

and/or nominee

The vendor is registered under the GST Act in respect of the transaction evidenced by this agreement and/or will be so registered at settlement:

Yes/No

PROPERTY

Address: 75 Wainui Road, Lower Hutt, Wellington

Estate: **FREEHOLD** **LEASEHOLD-** **STRATUM IN FREEHOLD-**
~~STRATUM IN LEASEHOLD~~ ~~CROSS-LEASE (FREEHOLD)~~ ~~CROSS-LEASE (LEASEHOLD)~~

If none of the above are deleted, the estate being sold is the first option of freehold.

Legal Description:

Area (more or less):	Lot/Flat/Unit:	DP:	Record of Title (unique identifier):
2.2215 hectares	Lot 1	532424	871447
4123 square metres	Lot 1	11199	WN458/158
1.8033 hectares	Part Lot 1	7704	WN465/182

PAYMENT OF PURCHASE PRICE

Purchase price: \$ 29,400,000

Plus GST (if any) OR ~~Inclusive of GST (if any)~~
 If neither is deleted, the purchase price includes GST (if any).

GST date (refer clause 13.0): The settlement date.

Deposit (refer clause 2.0): \$ 750,000 in accordance with clauses 2 and 25.

Balance of purchase price to be paid or satisfied as follows:

(1) By payment in cleared funds on the settlement date which is _____

OR

(2) In the manner described in the Further Terms of Sale.

Interest rate for late settlement: 12 % p.a.

CONDITIONS (refer clause 9.0)

Finance required (subclause 9.1):	Yes/No	OIA consent required (subclause 9.6):	Yes/No
Finance date:		OIA date (subclause 9.8):	
LIM required (subclause 9.3):	Yes/No	Land Act consent required (subclause 9.7):	Yes/No
Building report required (subclause 9.4):	Yes/No	Land Act date (subclause 9.8):	
Toxicology report required (subclause 9.5):	Yes/No		

TENANCIES

Name of Tenant(s):

Yes/No

Particulars of any tenancies are set out in Schedule 3 or another schedule attached to this agreement by the parties.

SALE BY:

CBRE
 Bruce Catley
 Managing Director
 021 729 004
 Bruce.catley@cbre.co.nz
 Licensed Real Estate Agent under Real Estate Agents Act 2008

It is agreed that the vendor sells and the purchaser purchases the property, and the chattels listed in Schedule 2, on the terms set out above and in the General Terms of Sale and any Further Terms of Sale.

GENERAL TERMS OF SALE

1.0 Definitions, time for performance, notices, and interpretation

1.1 Definitions

- (1) Unless the context requires a different interpretation, words and phrases not otherwise defined have the same meanings ascribed to those words and phrases in the Goods and Services Tax Act 1985, the Property Law Act 2007, the Resource Management Act 1991 or the Unit Titles Act 2010.
- (2) "Accessory unit", "owner", "principal unit", "unit", and "unit plan" have the meanings ascribed to those terms in the Unit Titles Act.
- (3) "Agreement" means this document including the front page, these General Terms of Sale, any Further Terms of Sale, and any schedules and attachments.
- (4) "Associated person", "conveyancer", "offshore RLWT person", "residential land purchase amount", "RLWT", "RLWT certificate of exemption" and "RLWT rules" have the meanings ascribed to those terms in the Income Tax Act 2007.
- (5) "Building", "building consent", "code compliance certificate", "commercial on-seller", "compliance schedule" and "household unit" have the meanings ascribed to those terms in the Building Act.
- (6) "Building Act" means the Building Act 1991 and/or the Building Act 2004.
- (7) "Building warrant of fitness" means a building warrant of fitness supplied to a territorial authority under the Building Act.
- (8) "Cleared funds" means:
 - (a) An electronic transfer of funds that has been made strictly in accordance with the requirements set out in the PLS Guidelines; or
 - (b) A bank cheque, but only in the circumstances permitted by the PLS Guidelines and only if it has been paid strictly in accordance with the requirements set out in the PLS Guidelines.
- (9) "Commissioner" has the meaning ascribed to that term in the Tax Administration Act 1994.
- (10) "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the vendor (or where the vendor is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this agreement but does not include any such sum levied against the vendor (or where the vendor is or was a member of a GST group its representative member) by reason of a default or delay by the vendor after payment of the GST to the vendor by the purchaser.
- (11) "Electronic instrument" has the same meaning as ascribed to that term in the Land Transfer Act 2017.
- (12) "Going concern", "goods", "principal place of residence", "recipient", "registered person", "registration number", "supply", "taxable activity" and "taxable supply" have the meanings ascribed to those terms in the GST Act.
- (13) "GST" means Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985.
- (14) "Landonline Workspace" means an electronic workspace facility approved by the Registrar-General of Land pursuant to the provisions of the Land Transfer Act 2017.
- (15) "Leases" means any tenancy agreement, agreement to lease (if applicable), lease, sublease, or licence to occupy in respect of the property, and includes any receipt or other evidence of payment of any bond and any formal or informal document or letter evidencing any variation, renewal, extension, review, or assignment.
- (16) "LIM" means a land information memorandum issued pursuant to the Local Government Official Information and Meetings Act 1987.
- (17) "LINZ" means Land Information New Zealand.
- (18) "Local authority" means a territorial authority or a regional council.
- (19) "OIA consent" means consent to purchase the property under the Overseas Investment Act 2005.
- (20) "PLS Guidelines" means the most recent edition, as at the date of this agreement, of the Property Transactions and E-Dealing Practice Guidelines prepared by the Property Law Section of the New Zealand Law Society.
- (21) "Proceedings" means any application to any court or tribunal or any referral or submission to mediation, adjudication or arbitration or any other dispute resolution procedure.
- (22) "Property" means the property described in this agreement.
- (23) "Purchase price" means the total purchase price stated in this agreement which the purchaser has agreed to pay the vendor for the property and the chattels included in the sale.
- (24) "Regional council" means a regional council within the meaning of the Local Government Act 2002.
- (25) "Remote settlement" means settlement of the sale and purchase of the property by way of the purchaser's lawyer paying the moneys due and payable on the settlement date directly into the trust account of the vendor's lawyer, in consideration of the vendor agreeing to meet the vendor's obligations under subclause 3.8(2), pursuant to the protocol for remote settlement recommended in the PLS Guidelines.
- (26) "Residential (but not otherwise sensitive) land" has the meaning ascribed to that term in the Overseas Investment Act 2005.
- (27) "Rules" means body corporate operational rules under the Unit Titles Act.
- (28) "Secure web document exchange" means an electronic messaging service enabling messages and electronic documents to be posted by one party to a secure website to be viewed by the other party immediately after posting.
- (29) "Settlement" means (unless otherwise agreed by the parties in writing) the moment in time when the vendor and purchaser have fulfilled their obligations under subclause 3.8.
- (30) "Settlement date" means the date specified as such in this agreement.
- (31) "Settlement statement" means a statement showing the purchase price, plus any GST payable by the purchaser in addition to the purchase price, less any deposit or other payments or allowances to be credited to the purchaser, together with apportionments of all incomings and outgoings apportioned at the settlement date.
- (32) "Tax information" and "tax statement" have the meanings ascribed to those terms in the Land Transfer Act 2017.
- (33) "Territorial authority" means a territorial authority within the meaning of the Local Government Act 2002.
- (34) "Title" includes where appropriate a record of title within the meaning of the Land Transfer Act 2017.

- (35) "Unit title" means a unit title under the Unit Titles Act.
- (36) "Unit Titles Act" means the Unit Titles Act 2010.
- (37) "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;
 - (b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
 - (c) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January (or in the case of subclause 9.3(2) the 15th day of January) in the following year, both days inclusive; and
 - (d) the day observed as the anniversary of any province in which the property is situated.
 A working day shall be deemed to commence at 9.00 am and to terminate at 5.00 pm.

1.2 Unless a contrary intention appears on the front page or elsewhere in this agreement:

- (1) the interest rate for late settlement 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 interest rate for late settlement is payable, plus 5% per annum; and
- (2) a party is in default if it did not do what it has contracted to do to enable settlement to occur, regardless of the cause of such failure.

1.3 Time for Performance

- (1) Where the day nominated for settlement or the fulfilment of a condition is not a working day, then the settlement date or the date for fulfilment of the condition shall be the last working day before the day so nominated.
- (2) Any act done pursuant to this agreement by a party, including service of notices, after 5.00 pm on a working day, or on a day that is not a working day, shall be deemed to have been done at 9.00 am on the next succeeding working day.
- (3) Where two or more acts done pursuant to this agreement, including service of notices, 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 1.3(2).

1.4 Notices

The following apply to all notices between the parties relevant to this agreement, whether authorised by this agreement or by the general law:

- (1) All notices must be served in writing.
- (2) Any notice under section 28 of the Property Law Act 2007, where the purchaser is in possession of the property, must be served in accordance with section 353 of that Act.
- (3) All other notices, unless otherwise required by the Property Law Act 2007, must be served by one of the following means:
 - (a) on the party as authorised by sections 354 to 361 of the Property Law Act 2007, or
 - (b) on the party or on the party's lawyer:
 - (i) by personal delivery; or
 - (ii) by posting by ordinary mail; or
 - (iii) by email; or
 - (iv) in the case of the party's lawyer only, by sending by document exchange or, if both parties' lawyers have agreed to subscribe to the same secure web document exchange for this agreement, by secure web document exchange.
- (4) In respect of the means of service specified in subclause 1.4(3)(b), a notice is deemed to have been served:
 - (a) in the case of personal delivery, when received by the party or at the lawyer's office;
 - (b) in the case of posting by ordinary mail, on the third working day following the date of posting to the address for service notified in writing by the party or to the postal address of the lawyer's office;
 - (c) in the case of email:
 - (i) when sent to the email address provided for the party or the party's lawyer on the back page; or
 - (ii) any other email address notified subsequently in writing by the party or the party's lawyer (which shall supersede the email address on the back page); or
 - (iii) if no such email address is provided on the back page or notified subsequently in writing, the office email address of the party's lawyer's firm appearing on the firm's letterhead or website;
 - (d) in the case of sending by document exchange, on the second working day following the date of sending to the document exchange number of the lawyer's office;
 - (e) in the case of sending by secure web document exchange, on the first working day following the date of sending to the secure web document exchange.
- (5) Any period of notice required to be given under this agreement shall be computed by excluding the day of service.

1.5 Interpretation

- (1) If there is more than one vendor or purchaser, the liability of the vendors or of the purchasers, as the case may be, is joint and several.
- (2) Where the purchaser executes this agreement with provision for a nominee, or as agent for an undisclosed or disclosed but unidentified principal, or on behalf of a company to be formed, the purchaser shall at all times remain liable for all obligations on the part of the purchaser.
- (3) If any inserted term (including any Further Terms of Sale) conflicts with the General Terms of Sale the inserted term shall prevail.
- (4) Headings are for information only and do not form part of this agreement.
- (5) References to statutory provisions shall be construed as references to those provisions as they may be amended or re-enacted or as their application is modified by other provisions from time to time.

2.0 Deposit

- 2.1 The purchaser shall pay the deposit to the vendor or the vendor's agent immediately upon execution of this agreement by both parties and/or at such other time as is specified in this agreement.

- 2.2 If the deposit is not paid on the due date for payment, the vendor may at any time thereafter serve on the purchaser notice requiring payment. If the purchaser fails to pay the deposit on or before the third working day after service of the notice, time being of the essence, the vendor may cancel this agreement by serving notice of cancellation on the purchaser. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.
- 2.3 The deposit shall be in part payment of the purchase price.
- ~~2.4 The person to whom the deposit is paid shall hold it as a stakeholder until:~~
- ~~(1) the requisition procedure under clause 6.0 is completed without either party cancelling this agreement; and~~
 - ~~(2) where this agreement is entered into subject to any condition(s) expressed in this agreement, each such condition has been fulfilled or waived; and~~
 - ~~(3) where the property is a unit title:
 - ~~(a) a pre-settlement disclosure statement, certified correct by the body corporate, under section 147 of the Unit Titles Act, and~~
 - ~~(b) an additional disclosure statement under section 148 of the Unit Titles Act (if requested by the purchaser within the time prescribed in section 148(2)),~~have been provided to the purchaser by the vendor within the times prescribed in those sections or otherwise the purchaser has given notice under section 149(2) of the Unit Titles Act to postpone the settlement date until after the disclosure statements have been provided; or~~
 - ~~(4) this agreement is:
 - ~~(a) cancelled pursuant to:
 - ~~(i) subclause 6.2(3)(c); or~~
 - ~~(ii) sections 36 or 37 of the Contract and Commercial Law Act 2017; or~~~~
 - ~~(b) avoided pursuant to subclause 9.10(5); or~~~~
 - ~~(5) where the property is a unit title and the purchaser, having the right to cancel this agreement pursuant to section 151(2) of the Unit Titles Act, has cancelled this agreement pursuant to that section, or has elected not to cancel by giving notice to the vendor, or by completing settlement of the purchase.~~
- ~~2.5 Where the person to whom the deposit is paid is a real estate agent, the period for which the agent must hold the deposit as a stakeholder pursuant to subclause 2.4 shall run concurrently with the period for which the agent must hold the deposit under section 123 of the Real Estate Agents Act 2008, but the agent must hold the deposit for the longer of those two periods, or such lesser period as is agreed between the parties in writing as required by section 123 of the Real Estate Agents Act 2008; but in no event shall the deposit be released prior to the expiry of the requisition period under clause 6.0, unless the requisition period is expressly waived in writing after the effect of the same is explained to the purchaser by the agent or by the purchaser's lawyer or conveyancer.~~

3.0 Possession and Settlement

Possession

- 3.1 Unless particulars of a tenancy are included in this agreement, the property is sold with vacant possession and the vendor shall so yield the property on the settlement date.
- 3.2 If the property is sold with vacant possession, then subject to the rights of any tenants of the property, the vendor shall permit the purchaser or any person authorised by the purchaser in writing, upon reasonable notice:
- (1) to enter the property on one occasion prior to the settlement date for the purposes of examining the property, chattels and fixtures which are included in the sale; and
 - (2) to re-enter the property no later than the day prior to the settlement date to confirm compliance by the vendor with any agreement made by the vendor to carry out any work on the property, the chattels and the fixtures.
- 3.3 Possession shall be given and taken on the settlement date. Outgoings and incomings in respect of the settlement date are the responsibility of and belong to the vendor.
- 3.4 On the settlement date, the vendor shall make available to the purchaser keys to all exterior doors that are locked by key, electronic door openers to all doors that are opened electronically, and the keys and/or security codes to any alarms. The vendor does not have to make available keys, electronic door openers, and security codes where the property is tenanted and these are held by the tenant.

Settlement

- 3.5 The vendor shall prepare, at the vendor's own expense, a settlement statement. The vendor shall tender the settlement statement to the purchaser or the purchaser's lawyer a reasonable time prior to the settlement date.
- 3.6 The purchaser's lawyer shall:
- (1) within a reasonable time prior to the settlement date create a Landonline Workspace for the transaction, notify the vendor's lawyer of the dealing number allocated by LINZ, and prepare in that workspace a transfer instrument in respect of the property; and
 - (2) prior to settlement:
 - (a) lodge in that workspace the tax information contained in the transferee's tax statement; and
 - (b) certify and sign the transfer instrument.
- 3.7 The vendor's lawyer shall:
- (1) within a reasonable time prior to the settlement date prepare in that workspace all other electronic instruments required to confer title on the purchaser in terms of the vendor's obligations under this agreement; and
 - (2) prior to settlement:
 - (a) lodge in that workspace the tax information contained in the transferor's tax statement; and
 - (b) have those instruments and the transfer instrument certified, signed and, where possible, pre-validated.

- 3.8 On the settlement date:
- (1) the balance of the purchase price, interest and other moneys, if any, shall be paid by the purchaser in cleared funds or otherwise satisfied as provided in this agreement (credit being given for any amount payable by the vendor under subclause 3.12 or 3.13, or for any deduction allowed to the purchaser under subclause 5.2, or for any compensation agreed by the vendor in respect of a claim made by the purchaser pursuant to subclause 10.2(1), or for any interim amount the purchaser is required to pay to a stakeholder pursuant to subclause 10.8);
 - (2) the vendor's lawyer shall immediately thereafter:
 - (a) release or procure the release of the transfer instrument and the other instruments mentioned in subclause 3.7(1) so that the purchaser's lawyer can then submit them for registration;
 - (b) pay to the purchaser's lawyer the LINZ registration fees on all of the instruments mentioned in subclause 3.7(1), unless these fees will be invoiced to the vendor's lawyer by LINZ directly; and
 - (c) deliver to the purchaser's lawyer any other documents that the vendor must provide to the purchaser on settlement in terms of this agreement, including where this agreement provides for the property to be sold tenanted, all leases relating to the tenancy that are held by the vendor and a notice from the vendor to each tenant advising them of the sale of the property and directing them to pay to the purchaser as landlord, in such manner as the purchaser may prescribe, all rent or other moneys payable under the leases.
- 3.9 All obligations under subclause 3.8 are interdependent.
- 3.10 The parties shall complete settlement by way of remote settlement, provided that where payment by bank cheque is permitted under the PLS Guidelines, payment may be made by the personal delivery of a bank cheque to the vendor's lawyer's office, so long as it is accompanied by the undertaking from the purchaser's lawyer required by those Guidelines.

Last-Minute Settlement

- 3.11 If due to the delay of the purchaser, settlement takes place between 4.00 pm and 5.00 pm on the settlement date ("last-minute settlement"), the purchaser shall pay the vendor:
- (1) one day's interest at the interest rate for late settlement on the portion of the purchase price paid in the last-minute settlement; and
 - (2) if the day following the last-minute settlement is not a working day, an additional day's interest (calculated in the same manner) for each day until, but excluding, the next working day.

Purchaser Default: Late Settlement

- 3.12 If any portion of the purchase price is not paid upon the due date for payment, then, provided that the vendor provides reasonable evidence of the vendor's ability to perform any obligation the vendor is obliged to perform on that date in consideration for such payment:
- (1) the purchaser shall pay to the vendor interest at the interest rate for late settlement on the portion of the purchase price so unpaid for the period from the due date for payment until payment ("the default period"); but nevertheless, this stipulation is without prejudice to any of the vendor's rights or remedies including any right to claim for additional expenses and damages. For the purposes of this subclause, a payment made on a day other than a working day or after the termination of a working day shall be deemed to be made on the next following working day and interest shall be computed accordingly; and
 - (2) the vendor is not obliged to give the purchaser possession of the property or to pay the purchaser any amount for remaining in possession, unless this agreement relates to a tenanted property, in which case the vendor must elect either to:
 - (a) account to the purchaser on settlement for incomings in respect of the property which are payable and received during the default period, in which event the purchaser shall be responsible for the outgoings relating to the property during the default period; or
 - (b) retain such incomings in lieu of receiving interest from the purchaser pursuant to subclause 3.12(1).
 - (3) If the parties are unable to agree upon any amount payable under this subclause 3.12, either party may make a claim under clause 10.0.

Vendor Default: Late Settlement or Failure to Give Possession

- 3.13 (1) For the purposes of this subclause 3.13:
- (a) the default period means:
 - (i) in subclause 3.13(2), the period from the settlement date until the date when the vendor is able and willing to provide vacant possession and the purchaser takes possession; and
 - (ii) in subclause 3.13(3), the period from the date the purchaser takes possession until the date when settlement occurs; and
 - (iii) in subclause 3.13(5), the period from the settlement date until the date when settlement occurs; and
 - (b) the vendor shall be deemed to be unwilling to give possession if the vendor does not offer to give possession.
- (2) If this agreement provides for vacant possession but the vendor is unable or unwilling to give vacant possession on the settlement date, then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement:
- (a) the vendor shall pay the purchaser, at the purchaser's election, either:
 - (i) compensation for any reasonable costs incurred for temporary accommodation for persons and storage of chattels during the default period; or
 - (ii) an amount equivalent to interest at the interest rate for late settlement on the entire purchase price during the default period; and

- (b) the purchaser shall pay the vendor an amount equivalent to the interest earned or which would be earned on overnight deposits lodged in the purchaser's lawyer's trust bank account on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date but remains unpaid during the default period less:
- (i) any withholding tax; and
 - (ii) any bank or legal administration fees and commission charges; and
 - (iii) any interest payable by the purchaser to the purchaser's lender during the default period in respect of any mortgage or loan taken out by the purchaser in relation to the purchase of the property.
- (3) If this agreement provides for vacant possession and the vendor is able and willing to give vacant possession on the settlement date, then, provided the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the purchaser may elect to take possession in which case the vendor shall not be liable to pay any interest or other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 3.13(2)(b) during the default period. A purchaser in possession under this subclause 3.13(3) is a licensee only.
- (4) Notwithstanding the provisions of subclause 3.13(3), the purchaser may elect not to take possession when the purchaser is entitled to take it. If the purchaser elects not to take possession, the provisions of subclause 3.13(2) shall apply as though the vendor were unable or unwilling to give vacant possession on the settlement date.
- (5) If this agreement provides for the property to be sold tenanted then, provided that the purchaser provides reasonable evidence of the purchaser's ability to perform the purchaser's obligations under this agreement, the vendor shall on settlement account to the purchaser for incomings which are payable and received in respect of the property during the default period less the outgoings paid by the vendor during that period. Apart from accounting for such incomings, the vendor shall not be liable to pay any other moneys to the purchaser but the purchaser shall pay the vendor the same amount as that specified in subclause 3.13(2)(b) during the default period.
- (6) The provisions of this subclause 3.13 shall be without prejudice to any of the purchaser's rights or remedies including any right to claim for any additional expenses and damages suffered by the purchaser.
- (7) If the parties are unable to agree upon any amount payable under this subclause 3.13, either party may make a claim under clause 10.0.

Deferment of Settlement and Possession

- 3.14 If
- (1) this is an agreement for the sale by a commercial on-seller of a household unit; and
 - (2) a code compliance certificate has not been issued by the settlement date in relation to the household unit,
- then, unless the parties agree otherwise (in which case the parties shall enter into a written agreement in the form (if any) prescribed by the Building (Forms) Regulations 2004), the settlement date shall be deferred to the fifth working day following the date upon which the vendor has given the purchaser notice that the code compliance certificate has been issued (which notice must be accompanied by a copy of the certificate).
- 3.15 In every case, if neither party is ready, willing, and able to settle on the settlement date, the settlement date shall be deferred to the third working day following the date upon which one of the parties gives notice it has become ready, willing, and able to settle.
- 3.16 If
- (1) the property is a unit title;
 - (2) the settlement date is deferred pursuant to either subclause 3.14 or subclause 3.15; and
 - (3) the vendor considers on reasonable grounds that an extension of time is necessary or desirable in order for the vendor to comply with the warranty by the vendor in subclause 8.2(3),
- then the vendor may extend the settlement date:
- (a) where there is a deferment of the settlement date pursuant to subclause 3.14, to the tenth working day following the date upon which the vendor gives the purchaser notice that the code compliance certificate has been issued, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice; or
 - (b) where there is a deferment of the settlement date pursuant to subclause 3.15, to the tenth working day following the date upon which one of the parties gives notice that it has become ready, willing, and able to settle, provided the vendor gives notice of the extension to the purchaser no later than the second working day after such notice.

New Title Provision

- 3.17 (1) Where
- (a) the transfer of the property is to be registered against a new title yet to be issued; and
 - (b) a search copy, as defined in section 60 of the Land Transfer Act 2017, of that title is not obtainable by the tenth working day prior to the settlement date,
- then, unless the purchaser elects that settlement shall still take place on the agreed settlement date, the settlement date shall be deferred to the tenth working day following the later of the date on which:
- (i) the vendor has given the purchaser notice that a search copy is obtainable; or
 - (ii) the requisitions procedure under clause 6.0 is complete.
- (2) Subclause 3.17(1) shall not apply where it is necessary to register the transfer of the property to enable a plan to be deposited and title to the property to be issued.

~~4.0 Residential Land Withholding Tax~~

- ~~4.1 If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons, then:~~
- ~~(1) the vendor must provide the purchaser or the purchaser's conveyancer, on or before the second working day before the due date for payment of the first residential land purchase amount payable under this agreement, with:~~
 - ~~(a) sufficient information to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction whether section 54C of the Tax Administration Act 1994 applies to the sale of the property; and~~

- (b) ~~if the purchaser or the purchaser's conveyancer determines to their reasonable satisfaction that section 54C of the Tax Administration Act 1994 does apply, all of the information required by that section and either an RLWT certificate of exemption in respect of the sale or otherwise such other information that the purchaser or the purchaser's conveyancer may reasonably require to enable the purchaser or the purchaser's conveyancer to determine to their reasonable satisfaction the amount of RLWT that must be withheld from each residential land purchase amount,~~
- (2) ~~the vendor shall be liable to pay any costs reasonably incurred by the purchaser or the purchaser's conveyancer in relation to RLWT, including the cost of obtaining professional advice in determining whether there is a requirement to withhold RLWT and the amount of RLWT that must be withheld, if any, and~~
- (3) ~~any payments payable by the purchaser on account of the purchase price shall be deemed to have been paid to the extent that.~~
- (a) ~~RLWT has been withheld from those payments by the purchaser or the purchaser's conveyancer as required by the RLWT rules, and~~
- (b) ~~any costs payable by the vendor under subclause 4.1(2) have been deducted from those payments by the purchaser or the purchaser's conveyancer.~~
- 4.2 ~~If the vendor does not have a conveyancer or the vendor and the purchaser are associated persons and if the vendor fails to provide the information required under subclause 4.1(1), then the purchaser may.~~
- (1) ~~defer the payment of the first residential land purchase amount payable under this agreement (and any residential land purchase amount that may subsequently fall due for payment) until such time as the vendor supplies that information, or~~
- (2) ~~on the due date for payment of that residential land purchase amount, or at any time thereafter if payment has been deferred by the purchaser pursuant to this subclause and the vendor has still not provided that information, treat the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT.~~
- 4.3 ~~If pursuant to subclause 4.2 the purchaser treats the sale of the property as if it is being made by an offshore RLWT person where there is a requirement to pay RLWT, the purchaser or the purchaser's conveyancer may.~~
- (1) ~~make a reasonable assessment of the amount of RLWT that the purchaser or the purchaser's conveyancer would be required by the RLWT rules to withhold from any residential land purchase amount if the sale is treated in that manner, and~~
- (2) ~~withhold that amount from any residential land purchase amount and pay it to the Commissioner as RLWT.~~
- 4.4 ~~Any amount withheld by the purchaser or the purchaser's conveyancer pursuant to subclause 4.3 shall be treated as RLWT that the purchaser or the purchaser's conveyancer is required by the RLWT rules to withhold.~~
- 4.5 ~~The purchaser or the purchaser's conveyancer shall give notice to the vendor a reasonable time before payment of any sum due to be paid on account of the purchase price of.~~
- (1) ~~the costs payable by the vendor under subclause 4.1(2) that the purchaser or the purchaser's conveyancer intends to deduct, and~~
- (2) ~~the amount of RLWT that the purchaser or the purchaser's conveyancer intends to withhold.~~

5.0 Risk and insurance

- 5.1 The property and chattels shall remain at the risk of the vendor until possession is given and taken.
- 5.2 If, prior to the giving and taking of possession, the property is destroyed or damaged, and such destruction or damage has not been made good by the settlement date, then the following provisions shall apply:
- (1) if the destruction or damage has been sufficient to render the property untenable and it is untenable on the settlement date, the purchaser may:
- (a) complete the purchase at the purchase price, less a sum equal to any insurance moneys received or receivable by or on behalf of the vendor in respect of such destruction or damage, provided that no reduction shall be made to the purchase price if the vendor's insurance company has agreed to reinstate for the benefit of the purchaser to the extent of the vendor's insurance cover; or
- (b) cancel this agreement by serving notice on the vendor in which case the vendor shall return to the purchaser immediately the deposit and any other moneys paid by the purchaser, and neither party shall have any right or claim against the other arising from this agreement or its cancellation;
- (2) if the property is not untenable on the settlement date, the purchaser shall complete the purchase at the purchase price less a sum equal to the amount of the diminution in value of the property which, to the extent that the destruction or damage to the property can be made good, shall be deemed to be equivalent to the reasonable cost of reinstatement or repair;
- (3) in the case of a property zoned for rural purposes under an operative District Plan, damage to the property shall be deemed to have rendered the property untenable where the diminution in value exceeds an amount equal to 20% of the purchase price; and
- (4) if the amount of the diminution in value is disputed, the parties shall follow the same procedure as that set out in subclause 10.8 for when an amount of compensation is disputed.
- 5.3 The purchaser shall not be required to take over any insurance policies held by the vendor.

6.0 Title, boundaries and requisitions

- 6.1 The vendor shall not be bound to point out the boundaries of the property except that on the sale of a vacant residential lot which is not limited as to parcels the vendor shall ensure that all boundary markers required by the Cadastral Survey Act 2002 and any related rules and regulations to identify the boundaries of the property are present in their correct positions at the settlement date.
- 6.2 (1) The purchaser is deemed to have accepted the vendor's title ~~except as to objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the earlier of:~~
- (a) ~~the tenth working day after the date of this agreement; or~~
- (b) ~~the settlement date.~~

- ~~(2) Where the transfer of the property is to be registered against a new title yet to be issued, the purchaser is deemed to have accepted the title except as to such objections or requisitions which the purchaser is entitled to make and notice of which the purchaser serves on the vendor on or before the fifth working day following the date the vendor has given the purchaser notice that the title has been issued and a search copy of it as defined in section 60 of the Land Transfer Act 2017 is obtainable.~~
- ~~(3) If the vendor is unable or unwilling to remove or comply with any objection or requisition as to title, notice of which has been served on the vendor by the purchaser, then the following provisions will apply.~~
- ~~(a) the vendor shall notify the purchaser ("a vendor's notice") of such inability or unwillingness on or before the fifth working day after the date of service of the purchaser's notice,~~
- ~~(b) if the vendor does not give a vendor's notice the vendor shall be deemed to have accepted the objection or requisition and it shall be a requirement of settlement that such objection or requisition shall be complied with before settlement,~~
- ~~(c) if the purchaser does not on or before the fifth working day after service of a vendor's notice notify the vendor that the purchaser waives the objection or requisition, either the vendor or the purchaser may (notwithstanding any intermediate negotiations) by notice to the other, cancel this agreement.~~
- ~~6.3 In the event of cancellation under subclause 6.2(3), the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid under this agreement by the purchaser and neither party shall have any right or claim against the other arising from this agreement or its cancellation. In particular, the purchaser shall not be entitled to any interest or to the expense of investigating the title or to any compensation whatsoever.~~
- ~~6.4 (1) If the title to the property being sold is a cross-lease title or a unit title and there are:~~
- ~~(a) in the case of a cross-lease title:~~
- ~~(i) alterations to the external dimensions of any leased structure, or~~
- ~~(ii) buildings or structures not intended for common use which are situated on any part of the land that is not subject to a restricted use covenant,~~
- ~~(b) in the case of a unit title, encroachments out of the principal unit or accessory unit title space (as the case may be); then the purchaser may requisition the title under subclause 6.2 requiring the vendor.~~
- ~~(c) in the case of a cross-lease title, to deposit a new plan depicting the buildings or structures and register a new cross-lease or cross-leases (as the case may be) and any other ancillary dealings in order to convey good title, or~~
- ~~(d) in the case of a unit title, to deposit an amendment to the unit plan, a redevelopment plan or new unit plan (as the case may be) depicting the principal and/or accessory units and register such transfers and any other ancillary dealings in order to convey good title.~~
- ~~(2) The words "alterations to the external dimensions of any leased structure" shall only mean alterations which are attached to the leased structure and enclosed.~~
- 6.5 The vendor shall not be liable to pay for or contribute towards the expense of erection or maintenance of any fence between the property and any contiguous land of the vendor but this proviso shall not enure for the benefit of any subsequent purchaser of the contiguous land; and the vendor shall be entitled to require the inclusion of a fencing covenant to this effect in any transfer of the property.

7.0 Vendor's warranties and undertakings

- 7.1 The vendor warrants and undertakes that at the date of this agreement the vendor has not:
- (1) received any notice or demand and has no knowledge of any requisition or outstanding requirement:
- (a) from any local or government authority or other statutory body; or
- (b) under the Resource Management Act 1991; or
- (c) from any tenant of the property; or
- (d) from any other party; or
- (2) given any consent or waiver, which directly or indirectly affects the property and which has not been disclosed in writing to the purchaser.
- 7.2 The vendor warrants and undertakes that at the date of this agreement the vendor has no knowledge or notice of any fact which might result in proceedings being instituted by or against the vendor or the purchaser in respect of the property.
- 7.3 The vendor warrants and undertakes that at settlement:
- (1) The chattels included in the sale listed in Schedule 2 and all plant, equipment, systems or devices which provide any services or amenities to the property, including, without limitation, security, heating, cooling, or air-conditioning, are delivered to the purchaser in reasonable working order, but in all other respects in their state of repair as at the date of this agreement (fair wear and tear excepted) but failure to do so shall only create a right of compensation.
- (2) All electrical and other installations on the property are free of any charge whatsoever and all chattels included in the sale are the unencumbered property of the vendor.
- (3) There are no arrears of rates, water rates or charges outstanding on the property and where the property is subject to a targeted rate that has been imposed as a means of repayment of any loan, subsidy or other financial assistance made available by or through the local authority, the amount required to remove the imposition of that targeted rate has been paid.
- (4) Where an allowance has been made by the vendor in the settlement statement for incomings receivable, the settlement statement correctly records those allowances including, in particular, the dates up to which the allowances have been made.
- (5) Where the vendor has done or caused or permitted to be done on the property any works:
- (a) any permit, resource consent, or building consent required by law was obtained; and
- (b) to the vendor's knowledge, the works were completed in compliance with those permits or consents; and
- (c) where appropriate, a code compliance certificate was issued for those works.
- (6) Where under the Building Act, any building on the property sold requires a compliance schedule:
- (a) the vendor has fully complied with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
- (b) the building has a current building warrant of fitness; and

- (c) the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
- (7) Since the date of this agreement, the vendor has not given any consent or waiver which directly or indirectly affects the property.
- (8) Any notice or demand received by the vendor, which directly or indirectly affects the property, after the date of this agreement:
- from any local or government authority or other statutory body; or
 - under the Resource Management Act 1991; or
 - from any tenant of the property; or
 - from any other party,
- has been delivered forthwith by the vendor to either the purchaser or the purchaser's lawyer, unless the vendor has paid or complied with such notice or demand. If the vendor fails to so deliver or pay the notice or demand, the vendor shall be liable for any penalty incurred.
- 7.4 If the property is or includes part only of a building, the warranty and undertaking in subclause 7.3(6) does not apply. Instead the vendor warrants and undertakes at the date of this agreement that, where under the Building Act the building of which the property forms part requires a compliance schedule:
- to the vendor's knowledge, there has been full compliance with any requirements specified in any compliance schedule issued by a territorial authority under the Building Act in respect of the building;
 - the building has a current building warrant of fitness; and
 - the vendor is not aware of any reason, that the vendor has not disclosed in writing to the purchaser, which would prevent a building warrant of fitness from being supplied to the territorial authority when the building warrant of fitness is next due.
- 7.5 The vendor warrants and undertakes that on or immediately after settlement:
- If the water and wastewater charges are determined by meter, the vendor will have the water meter read and will pay the amount of the charge payable pursuant to that reading; but if the water supplier will not make special readings, the water and wastewater charges shall be apportioned.
 - Any outgoings included in the settlement statement are paid in accordance with the settlement statement and, where applicable, to the dates shown in the settlement statement, or will be so paid immediately after settlement.
 - The vendor will give notice of sale in accordance with the Local Government (Rating) Act 2002 to the territorial authority and regional council in whose district the land is situated and will also give notice of the sale to every other authority that makes and levies rates or charges on the land and to the supplier of water.
 - Where the property is a unit title, the vendor will notify the body corporate in writing of the transfer of the property and the name and address of the purchaser.

~~8.0 Unit title and cross-lease provisions~~

~~Unit Titles~~

- ~~8.1 If the property is a unit title, sections 144 to 153 of the Unit Titles Act require the vendor to provide to the purchaser a pre-contract disclosure statement, a pre-settlement disclosure statement and, if so requested by the purchaser, an additional disclosure statement.~~
- ~~8.2 If the property is a unit title, the vendor warrants and undertakes as follows:~~
- ~~The information in the pre-contract disclosure statement provided to the purchaser was complete and correct.~~
 - ~~Apart from regular periodic contributions, no contributions have been levied or proposed by the body corporate that have not been disclosed in writing to the purchaser.~~
 - ~~Not less than five working days before the settlement date, the vendor will provide:~~
 - ~~a certificate of insurance for all insurances effected by the body corporate under the provisions of section 135 of the Unit Titles Act, and~~
 - ~~a pre-settlement disclosure statement from the vendor, certified correct by the body corporate, under section 147 of the Unit Titles Act. Any periodic contributions to the operating account shown in that pre-settlement disclosure statement shall be apportioned. There shall be no apportionment of contributions to any long-term maintenance fund, contingency fund or capital improvement fund.~~
 - ~~There are no other amounts owing by the owner under any provision of the Unit Titles Act.~~
 - ~~There are no unsatisfied judgments against the body corporate and no proceedings have been instituted against or by the body corporate.~~
 - ~~No order or declaration has been made by any Court against the body corporate or the owner under any provision of the Unit Titles Act.~~
 - ~~The vendor has no knowledge or notice of any fact which might result in:~~
 - ~~the owner or the purchaser incurring any other liability under any provision of the Unit Titles Act, or~~
 - ~~any proceedings being instituted by or against the body corporate, or~~
 - ~~any order or declaration being sought against the body corporate or the owner under any provision of the Unit Titles Act.~~
 - ~~The vendor is not aware of proposals to pass any body corporate resolution relating to its rules nor are there any unregistered changes to the body corporate rules which have not been disclosed in writing to the purchaser.~~
 - ~~No lease, licence, easement, or special privilege has been granted by the body corporate in respect of any part of the common property which has not been disclosed in writing to the purchaser.~~
 - ~~No resolution has been passed and no application has been made and the vendor has no knowledge of any proposal for:~~
 - ~~the transfer of the whole or any part of the common property,~~
 - ~~the addition of any land to the common property,~~
 - ~~the cancellation of the unit plan, or~~

- ~~(d) the deposit of an amendment to the unit plan, a redevelopment plan, or a new unit plan in substitution for the existing unit plan,
which has not been disclosed in writing to the purchaser.~~
- ~~(11) As at settlement, all contributions and other moneys payable by the vendor to the body corporate have been paid in full.~~
- ~~8.3 If the property is a unit title and if the vendor does not provide the certificates of insurance and the pre-settlement disclosure statement under section 147 of the Unit Titles Act in accordance with the requirements of subclause 8.2(3), then in addition to the purchaser's rights under sections 149 and 150 of the Unit Titles Act, the purchaser may:~~
- ~~(1) postpone the settlement date until the fifth working day following the date on which that information is provided to the purchaser, or~~
- ~~(2) elect that settlement shall still take place on the settlement date.~~
- ~~8.4 If the property is a unit title, each party specifies that:~~
- ~~(1) any email address of that party's lawyer provided on the back page of this agreement, or notified subsequently in writing by that party's lawyer shall be an address for service for that party for the purposes of section 205(1)(d) of the Unit Titles Act, and~~
- ~~(2) if that party is absent from New Zealand, that party's lawyer shall be that party's agent in New Zealand for the purposes of section 205(2) of the Unit Titles Act.~~
- ~~8.5 If the property is a unit title, any costs owing by the purchaser to the vendor pursuant to section 148(5) of the Unit Titles Act for providing an additional disclosure statement shall be included in the moneys payable by the purchaser on settlement pursuant to subclause 3.8(1). Such costs may be deducted from the deposit if the purchaser becomes entitled to a refund of the deposit upon cancellation or avoidance of this agreement.~~
- ~~8.6 Unauthorised Structures – Cross-Leases and Unit Titles~~
- ~~(1) Where structures (not stated in clause 6.0 to be requisitionable) have been erected on the property without:~~
- ~~(a) in the case of a cross-lease title, any required lessors' consent, or~~
- ~~(b) in the case of a unit title, any required body corporate consent,~~
- ~~the purchaser may demand within the period expiring on the earlier of:~~
- ~~(i) the tenth working day after the date of this agreement, or~~
- ~~(ii) the settlement date,~~
- ~~that the vendor obtain the written consent of the current lessors or the body corporate (as the case may be) to such improvements ("a current consent") and provide the purchaser with a copy of such consent on or before the settlement date.~~
- ~~(2) Should the vendor be unwilling or unable to obtain a current consent, then the procedure set out in subclauses 6.2(3) and 6.3 shall apply, with the purchaser's demand under subclause 8.6(1) being deemed to be an objection and requisition.~~

9.0 Conditions and mortgage terms

- ~~9.1 Finance condition~~
- ~~(1) If the purchaser has identified that finance is required on the front page of this agreement, this agreement is conditional upon the purchaser arranging finance for such amount as the purchaser may require from a bank or other lending institution of the purchaser's choice on terms and conditions satisfactory to the purchaser in all respects on or before the finance date.~~
- ~~(2) If the purchaser avoids this agreement for failing to arrange finance in terms of subclause 9.1(1), the purchaser must provide a satisfactory explanation of the grounds relied upon by the purchaser, together with supporting evidence, immediately upon request by the vendor.~~
- ~~9.2 Mortgage terms~~
- ~~(1) Any mortgage to be arranged pursuant to a finance condition shall be upon and subject to the terms and conditions currently being required by the lender in respect of loans of a similar nature.~~
- ~~9.3 LIM condition~~
- ~~(1) If the purchaser has indicated on the front page of this agreement that a LIM is required:~~
- ~~(a) that LIM is to be obtained by the purchaser at the purchaser's cost,~~
- ~~(b) the purchaser is to request the LIM on or before the fifth working day after the date of this agreement, and~~
- ~~(c) this agreement is conditional upon the purchaser approving that LIM, provided that such approval must not be unreasonably or arbitrarily withheld.~~
- ~~(2) If, on reasonable grounds, the purchaser does not approve the LIM, the purchaser shall give notice to the vendor ("the purchaser's notice") on or before the fifteenth working day after the date of this agreement stating the particular matters in respect of which approval is withheld and, if those matters are capable of remedy, what the purchaser reasonably requires to be done to remedy those matters. If the purchaser does not give a purchaser's notice the purchaser shall be deemed to have approved the LIM. If through no fault of the purchaser, the LIM is not available on or before the fifteenth working day after the date of this agreement and the vendor does not give an extension when requested, this condition shall not have been fulfilled and the provisions of subclause 9.10(5) shall apply.~~
- ~~(3) The vendor shall give notice to the purchaser ("the vendor's notice") on or before the fifth working day after receipt of the purchaser's notice advising whether or not the vendor is able and willing to comply with the purchaser's notice by the settlement date.~~
- ~~(4) If the vendor does not give a vendor's notice, or if the vendor's notice advises that the vendor is unable or unwilling to comply with the purchaser's notice, and if the purchaser does not, on or before the tenth working day after the date on which the purchaser's notice is given, give notice to the vendor that the purchaser waives the objection to the LIM, this condition shall not have been fulfilled and the provisions of subclause 9.10(5) shall apply.~~
- ~~(5) If the vendor gives a vendor's notice advising that the vendor is able and willing to comply with the purchaser's notice, this condition is deemed to have been fulfilled, and it shall be a requirement of settlement that the purchaser's notice shall be complied with, and also, if the vendor must carry out work on the property, that the vendor shall obtain the approval of the territorial authority to the work done, both before settlement.~~

- ~~9.4 Building report condition~~
- ~~(1) If the purchaser has indicated on the front page of this agreement that a building report is required, this agreement is conditional upon the purchaser obtaining at the purchaser's cost on or before the fifteenth working day after the date of this agreement a report on the condition of the buildings and any other improvements on the property that is satisfactory to the purchaser, on the basis of an objective assessment.~~
 - ~~(2) The report must be prepared in good faith by a suitably-qualified building inspector in accordance with accepted principles and methods and it must be in writing.~~
 - ~~(3) Subject to the rights of any tenants of the property, the vendor shall allow the building inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of preparation of the report.~~
 - ~~(4) The building inspector may not carry out any invasive testing in the course of inspection without the vendor's prior written consent.~~
 - ~~(5) If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to subclause 9.10(5), the purchaser must provide the vendor immediately upon request with a copy of the building inspector's report.~~
- ~~9.5 Toxicology report condition~~
- ~~(1) If the purchaser has indicated on the front page of this agreement that a toxicology report is required, this agreement is conditional upon the purchaser obtaining at the purchaser's cost on or before the fifteenth working day after the date of this agreement, a toxicology report on the property that is satisfactory to the purchaser, on the basis of an objective assessment.~~
 - ~~(2) The purpose of the toxicology report shall be to detect whether the property has been contaminated by the preparation, manufacture or use of drugs including, but not limited to, methamphetamine.~~
 - ~~(3) The report must be prepared in good faith by a suitably-qualified inspector using accepted principles and methods and it must be in writing.~~
 - ~~(4) Subject to the rights of any tenants of the property, the vendor shall allow the inspector to inspect the property at all reasonable times upon reasonable notice for the purposes of carrying out the testing and preparation of the report.~~
 - ~~(5) The inspector may not carry out any invasive testing in the course of the inspection without the vendor's prior written consent.~~
 - ~~(6) If the purchaser avoids this agreement for non-fulfilment of this condition pursuant to subclause 9.10(5), the purchaser must provide the vendor immediately upon request with a copy of the inspector's report.~~
- 9.6 OIA consent condition
- (1) If the purchaser has indicated on the front page of this agreement that OIA consent is required, this agreement is conditional upon OIA consent being obtained on or before the OIA date shown on the front page of this agreement on terms and conditions that are satisfactory to the purchaser, acting reasonably, the purchaser being responsible for payment of the application fee.
 - (2) If the purchaser has indicated on the front page of this agreement that OIA consent is not required, or has failed to indicate whether it is required, then the purchaser warrants that the purchaser does not require OIA consent.
- ~~9.7 If this agreement relates to a transaction to which the Land Act 1940 applies, this agreement is conditional upon the vendor obtaining the necessary consent by the Land Act date shown on the front page of this agreement.~~
- ~~9.8 If the Land Act date or OIA date is not shown on the front page of this agreement that date shall be the settlement date or a date 65 working days from the date of this agreement whichever is the sooner, except where the property comprises residential (but not otherwise sensitive) land in which case that date shall be the settlement date or a date 20 working days from the date of this agreement, whichever is the sooner.~~
- ~~9.9 Resource Management Act condition~~
- ~~(1) If this agreement relates to a transaction to which section 225 of the Resource Management Act 1991 applies then this agreement is subject to the appropriate condition(s) imposed by that section.~~
- 9.10 Operation of conditions
- If this agreement is expressed to be subject either to the above or to any other condition(s), then in relation to each such condition the following shall apply unless otherwise expressly provided:
- (1) The condition shall be a condition subsequent.
 - (2) The party or parties for whose benefit the condition has been included shall do all things which may reasonably be necessary to enable the condition to be fulfilled by the date for fulfilment.
 - (3) Time for fulfilment of any condition and any extended time for fulfilment to a fixed date shall be of the essence.
 - (4) The condition shall be deemed to be not fulfilled until notice of fulfilment has been served by one party on the other party.
 - (5) If the condition is not fulfilled by the date for fulfilment, either party may at any time before the condition is fulfilled or waived avoid this agreement by giving notice to the other. Upon avoidance of this agreement, the purchaser shall be entitled to the immediate return of the deposit and any other moneys paid by the purchaser under this agreement and neither party shall have any right or claim against the other arising from this agreement or its termination.
 - (6) At any time before this agreement is avoided, the purchaser may waive any finance condition and either party may waive any other condition which is for the sole benefit of that party. Any waiver shall be by notice.

10.0 Claims for compensation

- 10.1 If the purchaser has not purported to cancel this agreement, the breach by the vendor of any term of this agreement does not defer the purchaser's obligation to settle, but that obligation is subject to the provisions of this clause 10.0.
- 10.2 The provisions of this clause apply if:
- (1) the purchaser claims a right to compensation for:
 - (a) a breach of any term of this agreement; or
 - (b) a misrepresentation; or
 - (c) a breach of section 9 or section 14 of the Fair Trading Act 1986; or
 - (d) an equitable set-off, or

- (2) there is a dispute between the parties regarding any amounts payable:
- (a) under subclause 3.12 or subclause 3.13; or
 - (b) under subclause 5.2.
- 10.3 To make a claim under this clause 10.0:
- (1) the claimant must serve notice of the claim on the other party on or before the last working day prior to the settlement date (except for claims made after the settlement date for amounts payable under subclause 3.12 or subclause 3.13, in respect of which the claimant may serve notice of the claim on the other party at any time after a dispute arises over those amounts); and
 - (2) the notice must:
 - (a) state the particular breach of the terms of the agreement, or the claim under subclause 3.12, subclause 3.13 or subclause 5.2, or for misrepresentation, or for breach of section 9 or section 14 of the Fair Trading Act 1986, or for an equitable set-off; and
 - (b) state a genuine pre-estimate of the loss suffered by the claimant; and
 - (c) be particularised and quantified to the extent reasonably possible as at the date of the notice.
- 10.4 If the claimant is unable to give notice under subclause 10.3 in respect of claims under subclause 10.2(1) or subclause 10.2(2)(b) by the settlement date by reason of the conduct or omission of the other party, the notice may be served on or before the working day immediately preceding the last working day on which settlement must take place under a settlement notice served by either party under subclause 11.1.
- 10.5 If the amount of compensation is agreed, it shall be deducted from or added to the amount to be paid by the purchaser on settlement.
- 10.6 If the purchaser makes a claim for compensation under subclause 10.2(1) but the vendor disputes the purchaser's right to make that claim, then:
- (1) the vendor must give notice to the purchaser within three working days after service of the purchaser's notice under subclause 10.3, time being of the essence; and
 - (2) the purchaser's right to make the claim shall be determined by an experienced property lawyer or an experienced litigator appointed by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the New Zealand Law Society. The appointee's costs shall be met by the party against whom the determination is made.
- 10.7 If the purchaser makes a claim for compensation under subclause 10.2(1) and the vendor fails to give notice to the purchaser pursuant to clause 10.6, the vendor is deemed to have accepted that the purchaser has a right to make that claim.
- 10.8 If it is accepted, or determined under subclause 10.6, that the purchaser has a right to claim compensation under subclause 10.2(1) but the amount of compensation claimed is disputed, or if the claim is made under subclause 10.2(2) and the amount of compensation claimed is disputed, then:
- (1) an interim amount shall be paid on settlement by the party required to a stakeholder until the amount of the claim is determined;
 - (2) if the parties cannot agree on a stakeholder, the interim amount shall be paid to a stakeholder nominated on the application of either party by the president for the time being of the New Zealand Law Society;
 - (3) the interim amount must be a reasonable sum having regard to all of the circumstances, except that where the claim is under subclause 3.13 the interim amount shall be the lower of the amount claimed, or an amount equivalent to interest at the interest rate for late settlement for the relevant default period on such portion of the purchase price (including any deposit) as is payable under this agreement on or by the settlement date;
 - (4) if the parties cannot agree on the interim amount, the interim amount shall be determined by an experienced property lawyer, an experienced litigator, or, where the claim for compensation is made under subclause 5.2, an experienced registered valuer or quantity surveyor appointed by the parties. The appointee's costs shall be met equally by the parties. If the parties cannot agree on the appointee, the appointment shall be made on the application of either party by the president for the time being of the New Zealand Law Society;
 - (5) the amount of the claim determined to be payable shall not be limited by the interim amount;
 - (6) the stakeholder shall lodge the interim amount on an interest-bearing call deposit with a bank registered under the Reserve Bank of New Zealand Act 1989 in the joint names of the vendor and the purchaser;
 - (7) the interest earned on the interim amount net of any withholding tax and any bank or legal administration fees and commission charges shall follow the destination of the interim amount;
 - (8) apart from the net interest earned on the interim amount, no interest shall be payable by either party to the other in respect of the claim for compensation once the amount of the claim has been determined, provided that if the amount determined is in excess of the interim amount, the party liable to make payment of that excess shall pay interest to the other party at the interest rate for late settlement on the amount of that excess if it is not paid on or before the third working day after the date of notification of the determination, computed from the date of such notification until payment.
- 10.9 Where a determination has to be made under subclause 10.6(2) or subclause 10.8(4) and the settlement date will have passed before the determination is made, the settlement date shall be deferred to the second working day following the date of notification to both parties of the determination. Where a determination has to be made under both of these subclauses, the settlement date shall be deferred to the second working day following the date on which notification to both parties has been made of both determinations.
- 10.10 The procedures prescribed in subclauses 10.1 to 10.9 shall not prevent either party from taking proceedings for specific performance of the contract.
- 10.11 A determination under subclause 10.6 that the purchaser does not have a right to claim compensation under subclause 10.2(1) shall not prevent the purchaser from pursuing that claim following settlement.
- 10.12 Where a determination is made by a person appointed under either subclause 10.6 or subclause 10.8, that person shall not be liable to either party for any costs or losses that either party may claim to have suffered in respect of the determination.

11.0 Notice to complete and remedies on default

- 11.1 (1) If the sale is not settled on the settlement date, either party may at any time thereafter serve on the other party a settlement notice.
- (2) The settlement notice shall be effective only if the party serving it is at the time of service either in all material respects ready, able, and willing to proceed to settle in accordance with clauses 3.0 and 10.0 or is not so ready, able, and willing to settle only by reason of the default or omission of the other party.
- (3) If the purchaser is in possession, the vendor's right to cancel this agreement will be subject to sections 28 to 36 of the Property Law Act 2007 and the settlement notice may incorporate or be given with a notice under section 28 of that Act complying with section 29 of that Act.
- 11.2 Subject to subclause 11.1(3), upon service of the settlement notice the party on whom the notice is served shall settle:
- (1) on or before the twelfth working day after the date of service of the notice; or
- (2) on the first working day after the 13th day of January if the period of twelve working days expires during the period commencing on the 6th day of January and ending on the 13th day of January, both days inclusive, time being of the essence, but without prejudice to any intermediate right of cancellation by either party.
- 11.3 (1) If this agreement provides for the payment of the purchase price by instalments and the purchaser fails duly and punctually to pay any instalment on or within one month from the date on which it fell due for payment then, whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up the unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
- (2) The date of service of the notice under this subclause shall be deemed the settlement date for the purposes of subclause 11.1.
- (3) The vendor may give a settlement notice with a notice under this subclause.
- (4) For the purpose of this subclause a deposit is not an instalment.
- 11.4 If the purchaser does not comply with the terms of the settlement notice served by the vendor then, subject to subclause 11.1(3):
- (1) Without prejudice to any other rights or remedies available to the vendor at law or in equity, the vendor may:
- (a) sue the purchaser for specific performance; or
- (b) cancel this agreement by notice and pursue either or both of the following remedies, namely:
- (i) forfeit and retain for the vendor's own benefit the deposit paid by the purchaser, but not exceeding in all 10% of the purchase price; and/or
- (ii) sue the purchaser for damages.
- (2) Where the vendor is entitled to cancel this agreement, the entry by the vendor into a conditional or unconditional agreement for the resale of the property or any part thereof shall take effect as a cancellation of this agreement by the vendor if this agreement has not previously been cancelled and such resale shall be deemed to have occurred after cancellation.
- (3) The damages claimable by the vendor under subclause 11.4(1)(b)(ii) shall include all damages claimable at common law or in equity and shall also include (but shall not be limited to) any loss incurred by the vendor on any bona fide resale contracted within one year from the date by which the purchaser should have settled in compliance with the settlement notice. The amount of that loss may include:
- (a) interest on the unpaid portion of the purchase price at the interest rate for late settlement from the settlement date to the settlement of such resale; and
- (b) all costs and expenses reasonably incurred in any resale or attempted resale; and
- (c) all outgoings (other than interest) on or maintenance expenses in respect of the property from the settlement date to the settlement of such resale.
- (4) Any surplus money arising from a resale shall be retained by the vendor.
- 11.5 If the vendor does not comply with the terms of a settlement notice served by the purchaser, then, without prejudice to any other rights or remedies available to the purchaser at law or in equity the purchaser may:
- (1) sue the vendor for specific performance; or
- (2) cancel this agreement by notice and require the vendor forthwith to repay to the purchaser any deposit and any other money paid on account of the purchase price and interest on such sum(s) at the interest rate for late settlement from the date or dates of payment by the purchaser until repayment.
- 11.6 The party serving a settlement notice may extend the term of the notice for one or more specifically stated periods of time and thereupon the term of the settlement notice shall be deemed to expire on the last day of the extended period or periods and it shall operate as though this clause stipulated the extended period(s) of notice in lieu of the period otherwise applicable; and time shall be of the essence accordingly. An extension may be given either before or after the expiry of the period of the notice.
- 11.7 Nothing in this clause shall preclude a party from suing for specific performance without serving a settlement notice.
- 11.8 A party who serves a settlement notice under this clause shall not be in breach of an essential term by reason only of that party's failure to be ready and able to settle upon the expiry of that notice.

12.0 Non-merger

- 12.1 The obligations and warranties of the parties in this agreement shall not merge with:
- (1) the giving and taking of possession;
- (2) settlement;
- (3) the transfer of title to the property;
- (4) delivery of the chattels (if any); or
- (5) registration of the transfer of title to the property.

13.0 Goods and Services Tax

- 13.1 If this agreement provides for the purchaser to pay (in addition to the purchase price stated without GST) any GST which is payable in respect of the supply made under this agreement, then:
- (1) the purchaser shall pay to the vendor the GST which is so payable in one sum on the GST date;
 - (2) where the GST date has not been inserted on the front page of this agreement the GST date shall be the settlement date;
 - (3) where any GST is not so paid to the vendor, the purchaser shall pay to the vendor:
 - (a) interest at the interest rate for late settlement on the amount of GST unpaid from the GST date until payment; and
 - (b) any default GST;
 - (4) it shall not be a defence to a claim against the purchaser for payment to the vendor of any default GST that the vendor has failed to mitigate the vendor's damages by paying an amount of GST when it fell due under the GST Act; and
 - (5) any sum referred to in this clause is included in the moneys payable by the purchaser on settlement pursuant to subclause 3.8(1).
- 13.2 If the supply under this agreement is a taxable supply, the vendor will deliver a tax invoice to the purchaser on or before the GST date or such earlier date as the purchaser is entitled to delivery of an invoice under the GST Act.
- 13.3 (1) Without prejudice to the vendor's rights and remedies under subclause 13.1, where any GST is not paid to the vendor on or within one month of the GST date, then whether or not the purchaser is in possession, the vendor may immediately give notice to the purchaser calling up any unpaid balance of the purchase price, which shall upon service of the notice fall immediately due and payable.
- (2) The date of service of the notice under this subclause shall be deemed the settlement date for the purposes of subclause 11.1.
- (3) The vendor may give a settlement notice under subclause 11.1 with a notice under this subclause.

14.0 Zero-rating

- 14.1 The vendor warrants that the statement on the front page regarding the vendor's GST registration status in respect of the supply under this agreement and any particulars stated by the vendor in Schedule 1 are correct at the date of this agreement and will remain correct at settlement.
- 14.2 The purchaser warrants that any particulars stated by the purchaser in Schedule 1 are correct at the date of this agreement.
- 14.3 Where the particulars stated on the front page and in Schedule 1 indicate that:
- (1) the vendor is and/or will be at settlement a registered person in respect of the supply under this agreement;
 - (2) the recipient is and/or will be at settlement a registered person;
 - (3) the recipient intends at settlement to use the property for making taxable supplies; and
 - (4) the recipient does not intend at settlement to use the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act,
- GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act.
- 14.4 If GST is chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act, then on or before settlement the purchaser will provide the vendor with the recipient's name, address, and registration number if any of those details are not included in Schedule 1 or they have altered.
- 14.5 (1) If any of the particulars stated by the purchaser in Schedule 1:
- (a) are incomplete; or
 - (b) alter between the date of this agreement and settlement,
- the purchaser shall notify the vendor of the particulars which have not been completed and the altered particulars as soon as practicable before settlement.
- (2) The purchaser warrants that any added or altered particulars will be correct as at the date of the purchaser's notification.
- (3) If the GST treatment of the supply under this agreement should be altered as a result of the added or altered particulars, the vendor shall prepare and deliver to the purchaser or the purchaser's lawyer an amended settlement statement, if the vendor has already tendered a settlement statement, and a credit note or a debit note, as the case may be, if the vendor has already issued a tax invoice.
- 14.6 If
- (1) the particulars in Schedule 1 state that part of the property is being used as a principal place of residence at the date of this agreement; and
 - (2) that part is still being so used at the time of the supply under this agreement,
- then, the supply of that part will be a separate supply in accordance with section 5(15)(a) of the GST Act.
- 14.7 If
- (1) the particulars stated in Schedule 1 indicate that the recipient intends to use part of the property as a principal place of residence by the recipient or a person associated with the recipient under section 2A(1)(c) of the GST Act; and
 - (2) that part is the same part as that being used as a principal place of residence at the time of the supply under this agreement,
- then the references in subclauses 14.3 and 14.4 to "the property" shall be deemed to mean the remainder of the property excluding that part and the references to "the supply under this agreement" shall be deemed to mean the supply under this agreement of that remainder.
- 14.8 If the particulars stated on the front page and in Schedule 1 indicate in terms of subclause 14.3 that GST will be chargeable on the supply under this agreement at 0% pursuant to section 11(1)(mb) of the GST Act, but any of the particulars stated by the purchaser in Schedule 1 should alter between the date of this agreement and settlement, such that GST no longer becomes chargeable on the supply at 0%, then:
- (1) the purchase price shall be plus GST (if any), even if it has been expressed as being inclusive of GST (if any) on the front page of this agreement; and

- (2) if the vendor has already had to account to the Inland Revenue Department for the GST which is payable in respect of the supply under this agreement and did so on the basis that in accordance with subclause 14.3 the GST would be chargeable at 0%, the purchaser shall pay GST and any default GST to the vendor immediately upon demand served on the purchaser by the vendor (and where any GST or default GST is not so paid to the vendor, the purchaser shall pay to the vendor interest at the interest for late settlement on the amount unpaid from the date of service of the vendor's demand until payment).

15.0 Supply of a Going Concern

- 15.1 If there is a supply under this agreement to which section 11(1)(mb) of the GST Act does not apply but which comprises the supply of a taxable activity that is a going concern at the time of the supply, then, unless otherwise expressly stated in this agreement:
 - (1) each party warrants that it is a registered person or will be so by the date of the supply;
 - (2) each party agrees to provide the other party by the date of the supply with proof of its registration for GST purposes;
 - (3) the parties agree that they intend that the supply is of a taxable activity that is capable of being carried on as a going concern by the purchaser; and
 - (4) the parties agree that the supply made pursuant to this agreement is the supply of a going concern on which GST is chargeable at 0%.
- 15.2 If it subsequently transpires that GST is payable in respect of the supply and if this agreement provides for the purchaser to pay (in addition to the purchase price without GST) any GST which is payable in respect of the supply made under this agreement, then the provisions of clause 13.0 of this agreement shall apply.

16.0 Limitation of Liability

- 16.1 If any person enters into this agreement as trustee of a trust and 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, then 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").
- 16.2 If the right of that person to be indemnified from the trust assets has been lost or impaired, 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.

17.0 Counterparts

- 17.1 This agreement may be executed and delivered in any number of counterparts (including scanned and emailed PDF counterparts).
- 17.2 Each executed counterpart will be deemed an original and all executed counterparts together will constitute one (and the same) instrument.
- 17.3 This agreement shall not come into effect until each person required to sign has signed at least one counterpart and both vendor and purchaser have received a counterpart signed by each person required to sign.
- 17.4 If the parties cannot agree on the date of this agreement, and counterparts are signed on separate dates, the date of the agreement is the date on which the last counterpart was signed and delivered to all parties.

18.0 Agency

- 18.1 If the name of a licensed real estate agent is recorded on this agreement, it is acknowledged that the sale evidenced by this agreement has been made through that agent whom the vendor has appointed as the vendor's agent according to an executed agency agreement.
- 18.2 The scope of the authority of the agent under subclause 18.1 does not extend to making an offer, counteroffer, or acceptance of a purchaser's offer or counteroffer on the vendor's behalf without the express authority of the vendor for that purpose. That authority, if given, should be recorded in the executed agency agreement.
- 18.3 The vendor shall be liable to pay the agent's charges including GST in accordance with the executed agency agreement.

19.0 Collection of Sales Information

- 19.1 Once this agreement has become unconditional in all respects, the agent may provide certain information relating to the sale to the Real Estate Institute of New Zealand Incorporated (REINZ).
- 19.2 This information will be stored on a secure password protected network under REINZ's control and may include (amongst other things) the sale price and the address of the property, but will not include the parties' names or other personal information under the Privacy Act 1993.
- 19.3 This information is collected, used and published for statistical, property appraisal and market analysis purposes, by REINZ, REINZ member agents and others.
- 19.4 Despite the above, if REINZ does come to hold any of the vendor or purchaser's personal information, that party has a right to access and correct that personal information by contacting REINZ at info@reinz.co.nz or by post or telephone.

FURTHER TERMS OF SALE

See Further Terms of Sale attached.



FURTHER TERMS OF SALE

20. DEFINITIONS

20.1 Definitions

In these Further Terms of Sale, unless the context requires a different interpretation:

"Agreement" means this agreement.

"Asbestos Report" means the three documents which together comprise the report of asbestos at the Property, being those contained in the "Asbestos Documents" folder in the Dataroom prior to the Execution Date.

"Board Approval Date" means the date which is five (5) Working days after the Execution Date.

"Business SPA" means the sale and purchase agreement dated on or around the date of this Agreement between, amongst others, Flight Plastics Limited and Alto Packaging Limited for the acquisition of Flight Plastics Limited's business assets by Alto Packaging Limited.

"Business SPA Condition Date" means 31 March 2021.

"Completion" means completion under the Business SPA.

"Contamination" has the same meaning as the definition of "Contamination" included in the Lease and without limiting the foregoing, includes asbestos and other dangerous, harmful and/or unsafe materials.

"Dataroom" means the electronic due diligence data room established by CBRE (being accessed at the following electronic link; <http://75wainuiroad.cbreinvest.co.nz/> and to which the Purchaser has been provided electronic access) and containing documents and information relating to the Property for the purposes of the Purchaser's Due Diligence Investigation, the content of such dataroom being that which is present as at the date which is two (2) Working days prior to the Due Diligence Date.

"Deposit" has the meaning given in clause 25.1.

"Due Diligence Date" means the date which is thirty (30) Working Days after the date on which the condition contained in clause 24 is satisfied or waived.

"Due Diligence Investigation" means the due diligence investigation of the Property undertaken by the Purchaser and its solicitors, consultants and advisers prior to the Execution Date and following the Execution Date pursuant to clause 22 including, but not limited to, the review of all documents disclosed in the Dataroom.

"Due Diligence Period" means the period commencing on the Execution Date and ending at 5pm on the Due Diligence Date.

"Environmental Obligations" means the Environmental Laws, Environmental Consents and Environmental Orders.

"Environmental Laws" means the Resource Management Act 1991, the Building Act 2004 and all current and future laws (including the common law and any statutes), relating to or concerning the environment and all applicable rules regulations and bylaws.

"Environmental Consents" means all consents, licences, authorisations and approvals, relating to Environmental Laws.

"Environmental Orders" means all orders and notices relating to Environmental Laws made or given by any relevant local authority, Court, or other lawful authority.

"Execution Date" means the date this Agreement is signed by the last of the Vendor and the Purchaser and dated.

"Lease" means the lease to be entered into between the Purchaser (as landlord) and the Lessee (as tenant) on Settlement, the form of which is attached to these Further Terms of Sale as Schedule 5.

"Legislation" means all statutes, ordinances, regulations, by-laws or other enactments (in place from time to time) relating to the Property including, without limitation, the Resource Management Act 1991.

"Lessee" means Alto Packaging Limited.

"NBS" means the new building standard in accordance with the New Zealand Building Code (including AS/NZS 1170.5);

"Outgoings" means all outgoings, costs, expenditure and expenses relating to the Property.

"Property" means the property described on the front page of this Agreement together with the improvements thereon.

"Seismic Agreement" means the agreement to be entered into by the Purchaser and the Lessee on Settlement in respect of certain seismic upgrade works to be undertaken to certain buildings on the Property by the Purchaser, the form of which is attached to these Further Terms of Sale as Schedule 6.

"Seismic Report" means the detailed seismic reports listed in Schedule 3 and which identify that certain buildings situated on the Property have an NBS rating of less than 67%.

"Settlement Date" means (unless the Vendor and the Purchaser otherwise agree in writing and the purchaser under the Business SPA similarly agrees in writing) the date that is ten (10) Working Days after the Unconditional Date, provided that the Settlement Date shall not be earlier than 16 November 2020 (and, where the Settlement Date would otherwise be earlier than that date, the Settlement Date shall be 16 November 2020).

"Unconditional Date" means the date of satisfaction or waiver of the last of the conditions contained in clauses 21, 22 and 24.

"Warranties" means the warranties provided to the Purchaser by the Vendor as detailed in clauses 7 and 32.1.

"Working Day" means any day other than:

- (a) a Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday in New Zealand, Wellington Anniversary Day, Auckland Anniversary Day and Labour Day in New Zealand;
- (b) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday;
- (c) a day in the period commencing on the 24th day of December in any year and ending on the 8th day of January in the following year, both days inclusive; and
- (d) any other statutory public holiday in Wellington, New Zealand, Adelaide, Australia or Melbourne, Australia.

A Working Day shall be deemed to commence at 9.00am and to terminate at 5.00pm.

21. BUSINESS SPA CONDITION

- 21.1 This Agreement is conditional upon the Business SPA becoming unconditional and the vendors and the purchaser under the Business SPA confirming that they are ready to proceed to Completion, save for:
- (a) the condition in the Business SPA that this Agreement becomes unconditional; and
 - (b) the condition in clause 16.1(b) of the Business SPA (being that no Material Adverse Event (as defined in the Business SPA) occurs), which condition shall be satisfied upon Completion,
- on or before 5:00pm on the Business SPA Condition Date.
- 21.2 The condition contained in clause 21.1 may not be waived by either party and is for the benefit of both parties.
- 21.3 At the Execution Date the Vendor warrants that the Business SPA:
- (a) is, or will be on the Execution Date, fully executed, dated and binding on all parties to the Business SPA; and
 - (b) is conditional only on the conditions set out in Schedule 4.
- 21.4 The Vendor agrees that it shall:
- (a) regularly update the Purchaser as to its progress towards satisfying the condition contained in clause 21.1, including following any reasonable request from the Purchaser to do so and proactively in the event that it becomes aware of any matter or circumstance that may result in the relevant condition not being fulfilled; and
 - (b) use its reasonable endeavours to satisfy the condition contained in clause 21.1 (including by not deliberately and unreasonably doing anything or omitting to do anything which is intended to prevent or hinder fulfilment of the condition (except as required by law)) provided that where it is apparent to the Vendor that it will be unable to satisfy such condition (acting reasonably), which shall include without limitation any rejection from the Commerce Commission in respect of the transaction(s) contemplated by the Business SPA, it shall notify the Purchaser of non-satisfaction of such condition as soon as practicable.
- 21.5 In the event that the condition in clause 21.1 is not satisfied by the Vendor by the Business SPA Condition Date, the Vendor shall reimburse the Purchaser its actual external adviser costs reasonably incurred in connection with the acquisition of the Property (which shall include without limitation, legal and consultancy costs) up to a maximum of \$200,000 plus GST (if any). The Vendor shall pay such costs within five (5) Working Days of receipt of a valid tax invoice (together with such supporting documentation as the Vendor may reasonably require) from the Purchaser. This clause 21.5 shall survive any avoidance or termination of this agreement. For the avoidance of doubt, no amount shall be payable under this clause 21.5 in the event that either party avoids this agreement as a consequence of the condition contained in clause 22 having not been satisfied.

22. DUE DILIGENCE CONDITION

- 22.1 This Agreement is conditional upon the Purchaser confirming to the Vendor on or before 5:00pm on the Due Diligence Date, that it is satisfied (acting entirely at its own discretion) with the results of its Due Diligence Investigation in all respects of all matters which the Purchaser, in the Purchaser's sole discretion, deems pertinent. The Purchaser shall not be obliged to state any reason for, or to justify, its conclusion as to whether or not the results of such Due Diligence Investigation are satisfactory to it or not.
- 22.2 Notwithstanding anything contained in this agreement, as part of its Due Diligence Investigation the Purchaser shall notify the Overseas Investment Office (or Minister) (**OIO**) of this transaction and use its reasonable endeavours to procure that the OIO issues a direction order under Part 3 of the Overseas Investment Act 2005 (New Zealand) (**OIA**) notifying that the transaction contemplated by this agreement can proceed without any conditions imposed upon it. The Purchaser shall not be entitled to confirm or waive the condition contained in clause 22.1 until the occurrence of either:
- (a) the Purchaser novating (with the consent of the Vendor) its interest in this agreement to an entity which is not required to notify the OIO of this transaction in accordance with Part 3 of the OIA (and providing the Vendor with evidence of the same (to the Vendor's reasonable satisfaction));
 - (b) a direction order being issued by the OIO in respect of this transaction without any conditions imposed or, if conditions are imposed, those conditions being confirmed as being acceptable by both parties (acting reasonably); or
 - (c) the emergency notification regime under Part 3 of the OIA ceasing to apply (being when section 53 of the Overseas Investment (Urgent Measures) Amendment Act 2020 (New Zealand) comes into force).

The Vendor acknowledges that the warranty given by the Purchaser pursuant to clause 9.6(2) of the General Terms shall be deemed not to be given until such time as one of the occurrences set out in subclauses (a) or (b) or (c) has taken place and, in any event, the Purchaser agrees that the warranty shall be deemed to be given again by the Purchaser on Settlement.

- 22.3 The Purchaser shall retain access to the Dataroom and the Vendor shall promptly (and in any event within two (2) Working Days) respond to any requests for further information submitted to the Vendor by the Purchaser or any consultants engaged by the Purchaser in connection with its Due Diligence Investigation. On the Execution Date the Vendor shall notify the Purchaser of the name and contact details for the representative of the Vendor to whom requests for further information may be addressed.
- 22.4 The condition contained in this clause 22 is for the sole benefit of the Purchaser and may (subject to clause 22.2) be waived by the Purchaser.

23. KEPT CONFIDENTIAL

- 23.1 The Purchaser acknowledges that the Vendor has provided or will provide to the Purchaser certain information and material as the Purchaser reasonably requires to enable the Purchaser to undertake its Due Diligence Investigation of the Property.

23.2 Subject to clause 39.10 the Purchaser and its representatives shall keep all records, plans, data and other information to which it has been given access by or on behalf of the Vendor strictly confidential and shall use the same solely for the purpose of its Due Diligence Investigation into the Property. If this Agreement does not become unconditional or is cancelled the Purchaser undertakes to return all such information to the Vendor forthwith on request or (at the Purchaser's discretion) destroy all such information.

24. AGREEMENT CONDITIONAL ON BOARD APPROVAL

24.1 This Agreement is conditional upon the board of directors of Flight Limited ("**Board**") approving the entering into of this Agreement by the Vendor on or before 5:00pm on the Board Approval Date. The Board may grant or withhold its approval acting entirely at its own discretion and shall not be obliged to provide any reason for or to justify any failure to provide such approval.

24.2 The condition contained in clause 24.1 is inserted for the sole benefit of the Vendor and may be waived by the Vendor.

25. DEPOSIT

25.1 The Purchaser must pay the sum of \$750,000 plus GST (if any) ("**Deposit**") to the Vendor's solicitors on the Unconditional Date.

25.2 The Vendor's solicitors shall be instructed to hold the Deposit as stakeholder in an interest bearing trust account until:

- (a) completion of the Vendor's settlement obligations on Settlement in which case the Deposit shall be released to the Vendor; or
- (b) this Agreement is validly cancelled in accordance with this Agreement in which case the Deposit shall be paid in accordance with this Agreement.

25.3 Interest on the Deposit (less withholding tax, commission, bank fees and any other deductions required by law) will be paid to the recipient of the Deposit under clause 25.2.

25.4 In the case of dispute between the parties as to the payment of the Deposit by the Vendor's solicitors the Vendor's solicitors shall be entitled to apply for directions from the court in which case:

- (a) the Vendor's solicitors shall deduct the costs of so doing from the Deposit; and
- (b) the Vendor and Purchaser shall top up the Deposit by an amount equal to that deducted from the Deposit pursuant to clause 25.4(a) in the proportions that may be directed by the court or in the absence of such direction in equal shares.

25.5 The Vendor and the Purchaser acknowledge that the provisions of this clause 25 are also for the benefit of, and intended to be enforced by, the Vendor's solicitors under the provisions of the Contract and Commercial Law Act 2017.

26. SETTLEMENT

- 26.1 The parties agree that Settlement shall take place on the Settlement Date and be effected contemporaneously with Completion.
- 26.2 Settlement is conditional on Completion occurring and it is agreed that Completion and Settlement are entirely interdependent. The Vendor shall provide reasonable notice to the Purchaser of the anticipated date of Completion (having regard to the proviso contained in clause 26.1) so as to ensure that the Purchaser has a reasonable period of time to prepare for Settlement.
- 26.3 The parties agree that if Completion does not take place or the Business SPA is cancelled, then this Agreement is void and of no further effect. If this Agreement is avoided on that basis, the Vendor shall reimburse the Purchaser the Deposit (plus interest) if already paid by the Purchaser, and the actual costs reasonably incurred by the Purchaser associated with its acquisition of the Property and in relation to this agreement (which shall include without limitation, legal, consultancy costs and other costs reasonably attributable to its proposed acquisition of the Property) up to a maximum of \$200,000 plus GST (if any). The Vendor shall pay such costs within five (5) Working Days of receipt of a valid tax invoice (together with such supporting documentation as the Vendor may reasonably require) from the Purchaser. This clause 26.3 shall survive any avoidance or termination of this agreement. For the avoidance of doubt, no amount shall be payable under this clause 26.3 in the event that either party avoids this agreement as a consequence of the condition contained in clause 22 having not been satisfied. For the avoidance of doubt, if clause 21.5 applies then the Purchaser shall not be entitled to any reimbursement under this clause 26.3 (and under no circumstances shall the Vendor be liable for any reimbursement in excess of \$200,000 plus GST (if any) in aggregate).
- 26.4 The Purchaser shall, within a reasonable period prior to the Settlement Date and in any event no less than ten (10) Working Days prior to the Settlement Date provide the Vendor with a copy of the premises condition report which has been prepared during the Due Diligence Investigation. The Vendor shall annex such premises condition report to the Lease in preparation of execution copies.
- 26.5 The Vendor shall, within a reasonable period prior to the Settlement Date and in any event no less than five (5) Working Days prior to the Settlement Date, procure its solicitors to prepare execution copies of each of the Lease and the Seismic Agreement and circulate one such execution copy of each document to the Purchaser. Promptly following receipt of the execution copies, the Purchaser shall duly execute the Lease and the Seismic Agreement and provide it to the Purchaser's solicitor to hold prior to Settlement.
- 26.6 The Vendor shall separately procure the execution of a counterpart of the Lease and the Seismic Agreement by the Lessee and that those executed counterparts are held by the Vendor's solicitors at Settlement.
- 26.7 The Vendor and Purchaser shall procure that their respective solicitors shall hold their respective duly executed counterparts of the Lease and the Seismic Agreement (once received) in escrow pending Settlement. On Settlement the solicitors shall (without prejudice to clause 26.3) release and exchange the executed counterparts to the other and date the Lease and the Seismic Agreement as the date of Settlement. The Vendor and Purchaser acknowledge and agree that the release and exchange of the Lease and the Seismic Agreement as contemplated by this clause 26.7 is an essential term of this Agreement.

27. SETTLEMENT REQUIREMENTS

27.1 The Vendor shall provide to the Purchaser on Settlement an assignment of the benefit of any guarantees and warranties in respect of the Property to the extent that the Vendor is able to assign the benefit of such documents. The Vendor will use reasonable endeavours to obtain the consent of any person whose consent is required to assign the benefit of such agreement or document provided that the Vendor shall not be obliged to pay any consideration to obtain any such consent but shall meet the cost (if any) of documenting any such consent.

27.2 The parties agree that the Lease shall be registered on the Records of Title to the Property in the same Landonline Workspace as that containing the instruments required to complete Settlement of the Property under this Agreement but, for the avoidance of doubt, to occur after registration of the transfer instrument but prior to any mortgage instruments contained in that Landonline Workspace. The Purchaser shall sign and certify the lease instrument prior to Settlement. The Vendor shall procure that the Lessee signs and certifies the lease instrument (on behalf of the Lessee) and releases such instrument into the Landonline Workspace prior to Settlement.

28. OUTGOINGS

28.1 The Vendor acknowledges and agrees that it will punctually pay all Outgoings relating to the Property falling due for payment prior to the Settlement Date (or, prior to Settlement if Settlement does not take place on the Settlement Date other than by reason of a default by the Purchaser).

29. PURCHASER DEFAULT: LATE SETTLEMENT

29.1 If the Vendor provides reasonable evidence of the Vendor's ability to satisfy and/or complete all obligations which the Vendor is required to perform prior to or on Settlement and is not otherwise in default and if any portion of the purchase price (including the Deposit) or any other monies payable pursuant to this Agreement is not paid prior to the time specified for payment, the Purchaser shall pay to the Vendor on demand interest at the interest rate for late settlement on the unpaid monies for the period from and including the due date for payment until but excluding the date of payment in cleared funds. This stipulation is without prejudice to any of the Vendor's rights or remedies including any right to claim for additional expenses and damages.

30. LEASING MANAGEMENT

30.1 From but excluding the Execution Date the Vendor shall:

- (a) operate, manage and maintain the Property to substantially the same standards as the Vendor has done to date; and
- (b) other than as contemplated by this Agreement, not enter into any agreement or arrangement with any party that will be binding on the Purchaser as registered owner of the Property from Settlement; and
- (c) other than as contemplated by this Agreement, not surrender or grant any rights in relation to the Property or otherwise incur any liability that would be enforceable against the Purchaser following Settlement.

31. CONTRACTS

- 31.1 The Vendor shall terminate all service, maintenance and/or utility contracts relating to the Property to which the Vendor is a party or would otherwise bind the Purchaser in any way effective from Settlement and any costs, expenses, penalties or otherwise arising from such termination shall be borne by the Vendor.

32. VENDOR'S WARRANTIES

- 32.1 The Vendor warrants that:

- (a) save (for the avoidance of doubt) in respect of seismic matters in respect of which the Lessee has expressly waived all claims of any nature against it, the Vendor has not entered into any agreement or understanding with the Lessee which has the intent and effect of increasing the liability or obligations of the Purchaser to the Lessee under the Lease beyond those that would otherwise exist in the absence of any such agreement or understanding;
- (b) save in respect of the Lease once entered into, there are no leases, tenancies, occupancy or use rights in respect of the Property;
- (c) the Vendor is not in material breach of any statute, regulation, covenant, restriction or other obligation (including by-laws) affecting the Property;
- (d) as at the date on which the Purchaser satisfied or waives the condition contained in clause 22.1:
 - (i) all information about the Property made available to the Purchaser in the Dataroom is true and correct and complete in all material respects;
 - (ii) the Vendor does not hold any information which would reasonably be considered to be material to a purchaser of the Property and which has not been provided to the Purchaser during the Due Diligence Period via the Dataroom;
 - (iii) no information in respect of the Property (including the documents contained in the Dataroom) which has been or is provided by or on behalf of the Vendor in writing to the Purchaser is known by the Vendor to be false or misleading; and
 - (iv) the Vendor has made all due, proper and prudent enquiries of all parties engaged by it to undertake the day to day management and maintenance of the Property prior to giving any of the warranties contained in this agreement;
- (e) for the purpose of the following Warranty:

"Environmental Authorisation" means any licence, consent, permit or authorisation received by the Vendor or any officers or tenants of the Vendor under the Environmental Legislation.

"Environmental Legislation" means the Resource Management Act 1991, the Building Act and any other environmental, building and health and safety legislation relevant to the undertaking of the business associated with the Property.

So far as the Vendor is aware:

- (i) no act or omission of either the Vendor or any prior owner or occupier has resulted in any breach of any Environmental Legislation or any resource consent;
- (ii) no claim, notice or demand is either known to be pending, or has been received from any person (including a government agency) by the Vendor relating to:
 - (aa) any contamination to the environment;
 - (bb) the handling, storage, transportation or use of any substance;
 - (cc) the discharge, release or emission of any substance, smell or noise from any activity carried on at the Property;
 - (dd) any damage to the Property or any other alleged breach of any Environmental Legislation;

that has not been paid or otherwise complied with. If the Vendor fails to so pay the claim, notice or demand prior to settlement, the Vendor shall be liable for any penalty incurred;

- (iii) no further permits or resource consents are required under any Environmental Legislation for any activity being undertaken at the Property; and
- (iv) there is no Contamination present at the Property at a concentration above the concentration at which the relevant substance is normally present in land in the same locality and being a presence which presents a risk of harm to human health or any other aspect of the environment, other than the asbestos identified in the Asbestos Report.

32.2 The Warranties are given as at the Execution Date (save to the extent that the Warranty is stated to apply only at a date later than the Execution Date) and are repeated as at Settlement.

Exclusion of Representations

32.3 Except as may be specifically provided elsewhere in this Agreement:

- (a) the Vendor gives no covenant or warranty and makes no representation regarding the Property, the accuracy of any matter or fact in any information or marketing brochure or in any statement by any agent, manager, employee or other representative of the Vendor, and the Purchaser acknowledges that it must verify such matters to its own satisfaction and that the Purchaser purchases the Property in reliance solely upon its own judgement; and
- (b) the Vendor further gives no warranty and makes no representation as to the use or uses to which the Property can be put and it shall be the sole responsibility of the Purchaser to ascertain and satisfy itself as to the use or uses to which the Property may lawfully be put and to the constraints, if any, on the use or uses of the Property pursuant to any Legislation.

32.4 No claim may be made by the Purchaser against the Vendor in respect of any warranties, undertakings or other obligations of the Vendor expressed or implied in this Agreement if and to the extent that the matter giving rise to the claim was:

- (a) fairly disclosed to the Purchaser via the Dataroom or arises from a matter which could have been determined from:
 - (i) a search of the public registers maintained by Land Information New Zealand and the Lower Hutt City Council; or
 - (ii) a review of the City of Lower Hutt District Plan or the Land Information Memorandum for the Property,

where "fairly disclosed" means disclosed in writing in such a manner and in such detail as would enable a reasonable purchaser (being a reasonable purchaser experienced in acquiring properties of the same nature as the Property and which are being used for business purposes of a same or similar nature as that being carried on at the Property) to make a reasonable and informed decision on the relevant matter; or

- (b) actually known to the Purchaser on or before the Due Diligence Date.

32.5 No claim shall be made by the Purchaser in respect of this Agreement after the expiry of 12 months from Settlement unless written notice of the relevant claim, clearly stating the basis for the claim, has been served on the Vendor on or before that date.

32.6 The Purchaser shall not be entitled to make a claim pursuant to this Agreement unless the amount of the claim is equal to or exceeds \$50,000.

32.7 To the extent that any of the provisions of this clause 32 conflict with any other provision in this Agreement, the provisions of this clause 32 shall prevail.

32.8 The aggregate total liability of the Vendor to the Purchaser in respect of all claims pursuant to this Agreement or otherwise in respect of the sale of the Property to the Purchaser shall be limited to \$10 million.

33. NO CLAIM FOR SEISMIC PERFORMANCE

33.1 The Purchaser acknowledges that it has been provided with a copy of the Seismic Report prior to the Execution Date.

33.2 Except to the extent that the Vendor is in breach of either of clauses 32.1(d)(ii) and 32.1(d)(iii) as at the date on which the Purchaser satisfied or waives the condition contained in clause 22.1, the Purchaser acknowledges the obligations it is entering into pursuant to the Lease (in its capacity as lessor) and the Seismic Agreement in relation to the seismic performance of the buildings situated on the Property and acknowledges and agrees that:

- (a) the Vendor has no liability whatsoever to the Purchaser (including without limitation, liability for all general, specific, foreseeable or unforeseeable consequential damages); and
- (b) the Purchaser shall not be entitled to make any claim or bring any other action against the Vendor,

in relation to the seismic performance of such buildings.

34. PURCHASER'S WARRANTIES

34.1 Each party warrants to the other as follows:

- (a) the execution and delivery of this Agreement by it has been properly authorised by all necessary corporate action of it;
- (b) it has full corporate power and lawful authority to execute and deliver this Agreement and to consummate and perform or cause to be performed its obligations under this Agreement;
- (c) this Agreement constitutes a legal, valid and binding obligation on it, enforceable in accordance with its terms;
- (d) this Agreement does not conflict with or result in the breach of or default under any provision of its constitution or any material term or provision of any agreement or deed or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or is subject or by which it is bound; and
- (e) as far as it is aware, there are no actions, claims, proceedings or investigations pending or threatened against it or to its knowledge by, against or before any person which may have a material effect on its ability to proceed with the purchase of the Property in accordance with this Agreement.

35. LOWEST PRICE CLAUSE

35.1 For the purposes of the financial arrangements rules in the Income Tax Act 2007, the parties agree that:

- (a) the purchase price (as adjusted under this agreement excluding any default interest) is the lowest price the parties would have agreed for the sale and purchase of the Property, on the date of this agreement was entered into, if payment would have been required in full at the time the first right in the contracted property (being the Property) was transferred;
- (b) the purchase price (excluding any default interest) is the value of the Property; and
- (c) they will compute their taxable income for the relevant period on the basis that the purchase price (excluding any default interest) includes no capitalised interest and will file their tax returns accordingly.

36. ALLOCATION OF PURCHASE PRICE

36.1 The Vendor and Purchaser agree, for the purposes of filing their income tax returns, the purchase price shall be allocated as follows:

- (a) the land comprised within the Property - \$22,282,356.00;
- (b) the buildings located on the Property - \$5,593,885.00; and
- (c) the fixtures and fittings and chattels included in the Property - \$1,523,759.00.

37. ENVIRONMENTAL MATTERS

37.1 Except to the extent that the Vendor is in breach of any warranty pursuant to clauses 32.1(d) or 32.1(e), as from Settlement the Purchaser releases and discharges the Vendor and its agents from and against all claims, suits, demands and actions which the Purchaser has or

which may accrue in the future or which but for the execution of this Agreement, the Purchaser would or might have had against the Vendor for any liability (including without limitation, liability for all general, specific, foreseeable or unforeseeable consequential damages) as a result of any breach of any Environmental Obligations including but not limited to any liability arising from the presence, use, storage or discharge of any contaminant in, on or under the Property, and/or for the discharge, release, emission, seepage or migration of any contaminant from the Property and from and against all claims for costs and expenses in respect of such claims, suits, demands and actions.

38. TITLE

- 38.1 In addition to the matters otherwise provided for in this Agreement, the Purchaser shall accept the title to the Property subject to and with the benefit of:
- (a) the Lease (which the Vendor acknowledges and agrees is an essential term of this agreement);
 - (b) all those easements, covenants and encumbrances on the title to the Property as at the Execution Date (but excluding the mortgage in favour of the Vendor's financiers); and
 - (c) any other matters disclosed to the Purchaser or the Purchaser's agents, professional advisers or representatives prior to the Execution Date via the Dataroom or arises from a matter which could have been determined from:
 - (i) a search of the public registers maintained by Land Information New Zealand and the Lower Hutt City Council; or
 - (ii) a review of the City of Lower Hutt District Plan or the Land Information Memorandum for the Property.
- 38.2 The Purchaser covenants with the Vendor that with effect from Settlement the Purchaser will at all times observe and perform the covenants contained in the documents specified in clause 38.1.

39. GENERAL

Amendment

- 39.1 No amendment to this Agreement shall be effective unless it is in writing and signed by all the parties.

No Waiver

- 39.2 A waiver of any provision of this Agreement shall not be effective unless given in writing, and then it shall be effective only to the extent that it is expressly stated to be given.

- 39.3 A failure, delay or indulgence by any party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

Further Assurances

- 39.4 Each of the parties agrees to execute and deliver any documents and to do all things as may reasonably be required by the other party or parties to obtain the full benefit of this Agreement according to its true intent.

Governing Law

- 39.5 This Agreement shall be governed by and construed in accordance with New Zealand law.

Counterparts

- 39.6 This Agreement may be executed in any number of counterparts. Once the parties have executed the counterparts, and each party has received a copy of the counterpart signed by the other party, each counterpart shall be deemed to be as valid and binding on the party executing it as if it had been executed by all the parties.

Facsimile Execution

- 39.7 The parties may execute a counterpart copy of this Agreement by photocopying a facsimile of this Agreement and executing that photocopy. The electronic transmission by facsimile (including by e-mail) by each party of a signed counterpart copy of this Agreement to the other party shall be deemed proof of signature of the original and the signed facsimile so transmitted shall be deemed an original for the purposes of this Agreement.

Electronic signatures

- 39.8 The parties agree that either party may sign this Agreement by electronic means. If a party signs this Agreement by electronic means, that party represents and warrants to the other party that the form of the electronic signature complies with the requirements set out in section 228 of the Contract and Commercial Law Act 2017.

Confidentiality

- 39.9 Except as set out in clause 39.10, neither party shall make any public announcement, nor communicate the existence of this Agreement or its terms (and in particular the amount of the Purchase price), to any third party without obtaining the prior written approval of the other party to this Agreement, other than:
- (a) to its legal and financial advisors and consultants who would reasonably be expected to be provided with any such information; or
 - (b) in the case of the Vendor, to the Lessee; or
 - (c) where necessary to comply with any applicable law, best practice or the requirement of any regulatory body (including the Australian Stock Exchange and the New Zealand Stock Exchange) or its obligations in this Agreement, in which case any such disclosure shall be copied to the other party to this Agreement.

- 39.10 Notwithstanding any other provision in this Agreement, the parties acknowledge that the Purchaser intends to raise capital in respect of the transaction contemplated by this Agreement. As such the Vendor agrees that the Purchaser is expressly permitted to make disclosure and public statements in relation to this Agreement, its subject matter, any materials disclosed to it by the Vendor and the outcome of its Due Diligence Investigation to the extent reasonably necessary to obtain the investor equity required to sufficiently capitalise the Purchaser's nominee (it being acknowledged by the parties that the Purchaser, its nominee or persons associated with the Purchaser may seek such investor equity by way of subscription or equity raising arrangement in accordance with and subject to the requirements of the Financial Markets Conduct Act 2013 and the Financial Markets Conduct Regulations 2014 to the extent applicable).

Entire Agreement

- 39.11 This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes and cancels any previous agreement, understanding or arrangement, whether written or oral.

40. RIGHT OF FIRST REFUSAL

40.1 The Vendor covenants and agrees that:

- (a) if the transaction contemplated by this Agreement fails to settle for any reason and this Agreement is avoided, other than as a consequence of the condition in clause 22 having not been satisfied or being avoided as a result of a breach by the Purchaser; and
- (b) the Vendor wishes to sell the Property during the six (6) month period following the date on which this agreement is avoided, then, prior to selling the Property to any third party:

the Vendor shall offer to sell the Property to the Purchaser on substantially the same terms and conditions as this agreement (subject to all necessary modification having regard to the fact that the Lessee may no longer be the tenant of the Property) or on such better terms and conditions as may be being offered (or intended to be offered) by the Vendor to any third party but in either instance at a purchase price which is the greater of:

- (c) the Purchase Price; and
- (d) the purchase price offered by any bona fide third party seeking to acquire the Property.

40.2 The offer contemplated by clause 40.1 shall be issued as a notice in writing to the Purchaser. The Purchaser shall accept (or decline) the offer within twenty (20) Working Days of the date of the Vendor's notice of offer. If the Purchaser fails to respond within such time period then the Purchaser shall be deemed to have rejected such offer. If the Purchaser accepts the offer then the parties shall (to the extent necessary) do all things reasonably required in order to formally document the agreement reached between the parties.

40.3 In the event that the Purchaser rejects the Vendor's offer or is deemed to have rejected the Vendor's offer then the Vendor shall be free to sell the Property to any other third party for a purchase price not lower than, and on terms and conditions no more favourable to any purchaser than, those contained in the offer made to the Purchaser pursuant to this clause 40. In the event that the Vendor wishes to sell at a lower purchase price or on terms more favourable, then the Vendor shall be required to re-offer the Property to the Purchaser at such lower purchase price and/or on such more favourable terms provided that the Purchaser shall only have ten (10) Working Days as opposed to twenty (20) Working Days to consider such re-offer pursuant to clause 40.2 above.

40.4 This clause 40 shall survive any avoidance or termination of this agreement. Notwithstanding anything contained in this Agreement, this clause 40 shall not apply in the event that the Vendor is selling both the entirety of the business that it operates at the Property and the Property to either a single purchasing party via a single transaction or related parties via a series of connected transactions.

41. SILOS

Notwithstanding anything expressed or implied in this agreement the parties acknowledge and agree that the silos located within the building known as the silo building at the Property, form Tenant's fixtures and fittings (as that term is defined in the Lease), are to be transferred to the Lessee pursuant to the Business SPA and shall not form part of the Property being

transferred to the Purchaser on Settlement. The Purchaser waives all claims or rights that it might have under this agreement or otherwise against the Vendor arising as a result of the silos not forming part of the Property being transferred to the Purchaser.

42. ASBESTOS

There are two areas on the Property (as identified in the Asbestos Report) that are known to contain asbestos and in respect of which the Purchaser requires remediation (**Asbestos Remediation**). The Purchaser has agreed to undertake the Asbestos Remediation works. The Vendor agrees to contribute \$12,000 (plus GST) to the Asbestos Remediation costs and the Purchaser agrees that this contribution represents the Vendor's total liability in respect of such asbestos and waives all claims or rights that it might have under this agreement or otherwise against the Vendor arising in respect of the asbestos identified in the Asbestos Report being the subject of the Asbestos Remediation. It is acknowledged that CBRE is also contributing \$12,000 (plus GST) toward the Asbestos Remediation costs which will be met through a reduction in the commission otherwise payable by the Vendor to CBRE of an equivalent amount. The Vendor will be responsible for deducting the \$12,000 (plus GST) from CBRE's commission and will pay the aggregate amount of \$24,000 (plus GST) to the Purchaser on settlement.

SCHEDULE 1**(GST Information – see clause 14.0)**

This Schedule must be completed if the vendor has stated on the front page that the vendor is registered under the GST Act in respect of the transaction evidenced by this agreement and/or will be so registered at settlement. Otherwise there is no need to complete it.

Section 1 Vendor	
1(a)	The vendor's registration number (if already registered): 96 368 410
1(b)	(i) Part of the property is being used as a principal place of residence at the date of this agreement. Yes/No
	(ii) That part is: (e.g. "the main farmhouse" or "the apartment above the shop".) Yes/No
	(iii) The supply of that part will be a taxable supply. Yes/No
Section 2 Purchaser	
2(a)	The purchaser is registered under the GST Act and/or will be so registered at settlement. Yes/No
2(b)	The purchaser intends at settlement to use the property for making taxable supplies. Yes/No
If the answer to either or both of questions 2(a) and 2(b) is "No", go to question 2(e)	
2(c)	The purchaser's details are as follows:
	(i) Full name: Oyster Property Holdings Limited
	(ii) Address: Level 18, 55 Shortland Street, Auckland
	(iii) Registration number (if already registered): 128 595 244
2(d)	The purchaser intends at settlement to use the property as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption). Yes/No
	OR The purchaser intends at settlement to use part of the property (and no other part) as a principal place of residence by the purchaser or by a person associated with the purchaser under section 2A(1)(c) of the GST Act. Yes/No That part is: (e.g. "the main farmhouse" or "the apartment above the shop")
2(e)	The purchaser intends to direct the vendor to transfer title to the property to another party ("nominee"). Yes/No
If the answer to question 2(e) is "Yes", then please continue. Otherwise, there is no need to complete this Schedule any further.	
Section 3 Nominee	
3(a)	The nominee is registered under the GST Act and/or is expected by the purchaser to be so registered at settlement. Yes/No
3(b)	The purchaser expects the nominee at settlement to use the property for making taxable supplies. Yes/No
If the answer to either or both of questions 3(a) and 3(b) is "No", there is no need to complete this Schedule any further.	
3(c)	The nominee's details (if known to the purchaser) are as follows:
	(i) Full name: Oyster Industrial Limited
	(ii) Address: Level 18, 55 Shortland Street, Auckland
	(iii) Registration number (if already registered): 129 871 792
3(d)	The purchaser expects the nominee to intend at settlement to use the property as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act (connected by blood relationship, marriage, civil union, de facto relationship or adoption). Yes/No
	OR The purchaser expects the nominee to intend at settlement to use part of the property (and no other part) as a principal place of residence by the nominee or by a person associated with the nominee under section 2A(1)(c) of the GST Act. Yes/No That part is: (e.g. "the main farmhouse" or "the apartment above the shop".)

SCHEDULE 2 LAND SPA

LB	GRACEFIELD -BUILDING ORIGINAL
LB	CABLING EX ORIGINAL BUILDING
LB	GRACEFIELD LAND
LB	GRACEFIELD RENOVATIONS
LB	GRACEFIELD FITOUT
LB	Viewing Wall and new doors
LB	LIGHTING
LB	ELECTRICAL RETICULATION
LB	HEATERS
LB	SOUND PROOFING
LB	SPRINKLER SYSTEMS
LB	DUCTED VENTILATION
LB	AIR COMPRESSORS LOUVRES
LB	FIRE ALARM SYSTEMS
LB	BARRIERS
LB	CARPETS
LB	DOORS (ROLLER AND THE LIKE)
LB	FURNITURE-FITTED
LB	HANDRAILS
LB	HARDSTANDING
LB	KIEFEL FOOTING
LB	PACKAGING SEALING - FLOORS
LB	PARTITIONS-NON LOAD BEARING
LB	PLUMBING FIXTURES
LB	SIGNS -NON ELECTRIC
LB	COOLING TOWER FOOTING
LB	VINYL FLOORING
LB	FIRE EXTINGUISHERS
LB	BURGLAR ALARM
LB	FENCING
LB	CONCRETE DRIVEWAY
LB	SEISMIC VALVE
LB	CLEAN ROOM LIGHTS
LB	INTERNAL WALL ALTERATIONS Non loading bearing (Bandero 2 Clean Room)
LB	Metalbilt Steel Roller Shutter Door
LB	Hi-Speed Roller Door - ELITE SERVICES (10/18) & Flashing MRV ROOFING INV-1409 (1/20)
LB	Lighting System Packaging Area - ADVANCE ELECTRICAL
FF	ELECTRICAL RETICULATION THERMO UPGRADE (SWITCHBOARD)
FF	SECURITY CAMERA SYSTEM
FF	Samsung Vandal Dome
FF	Camera Thermal Imager FLUKE-TIS-10-9HZ
P	Cub Cadet Lawn Tractor SN S1E157H20252 (1/18)

SCHEDULE 3
SEISMIC REPORTS

List of Seismic Reports as follows:

- Dunning Thornton Consultants Ltd – Seismic Assessment: Existing Dough Room Building. 26/06/2009
- Dunning Thornton Consultants Ltd – Seismic Assessment: 2 Story Office Building. 31/07/2009
- Dunning Thornton Consultants Ltd – Detailed Seismic Assessment: Bulk Storage Silos. 26/07/2019
- Dunning Sketches – Silos September 2019
- Email from Engineer Silo House at 40%
- Aurecon New Zealand Ltd:
 - Seismic Assessments – Summary Report for Pact Group Ltd. 01/04/2019
 - Detailed Seismic Assessment: 1970 Factory Extension and 1981 Storage Canopy. 29/03/2019
 - Detailed Seismic Assessment: Silo Tower. 29/03/2019
- Rider Levett Bucknall Wellington Ltd – Project Suitcase: Strengthening Project, Wellington, New Zealand. 10/05/2019
- Rapid Assessment November 2016 – Dunning Thornton:
 - Flight Building – Dough Room: Rapid Assessment – 25 November 2016
 - Flight Building – Warehouse Rapid Assessment – 25 November 2016
 - Flight Office Building – Rapid Assessment – 25 November 2016

SCHEDULE 4
Business SPA Conditions

This Business SPA is conditional upon the following:

- (a) not less than 80% of the operational and 60% of the management employees (excluding Keith Smith) to whom the Purchaser offers employment under clause 15.3 accepting the Purchaser's offer of employment; and
- (b) no Material Adverse Event occurring;
- (c) a clearance being given, or authorisation being granted, by the New Zealand Commerce Commission (**NZCC**) under the Commerce Act 1986 (New Zealand) for the transaction contemplated by this agreement in either case on terms acceptable to all parties (acting reasonably);
- (d) the Land and Buildings Sale Agreement becoming unconditional and the vendor and purchaser under that agreement confirming that they are ready to proceed to settlement under that agreement (save for the condition in the Land and Buildings Sale Agreement that this agreement becomes unconditional and Flight and the Purchaser each confirm that they are ready to proceed to Completion under this agreement);
- (e) the Purchaser undertaking a due diligence investigation of the Competitively Sensitive Information and there being nothing contained in that Competitively Sensitive Information which might be expected to be material to the decision of a reasonable purchaser (being a reasonable purchaser experienced in acquiring businesses of a same or similar nature to the Business) to enter into and complete the transaction contemplated by this agreement or lead such a reasonable purchaser for value of the Assets to materially reduce its valuation for the Assets; and
- (f) the Overseas Investment Office (or Minister) issuing a direction order under Part 3 of the Overseas Investment Act 2005 (New Zealand) (**OIA**) notifying that the transaction contemplated by this agreement can proceed without any conditions imposed upon it or, if the Overseas Investment Office (or Minister) imposes conditions on the transaction, that those conditions are acceptable to all parties (acting reasonably).

Note: The content of this Schedule is for information purposes only. Defined terms in this Schedule 4 are to defined terms in the Business SPA and not this Agreement.

SCHEDULE 5

Form of Lease

As attached.

REFERENCE SCHEDULE

ITEM	CLAUSE REFERENCE	PROVISION	PARTICULARS												
1.	2.1	Premises:	All of the Land and improvements and more particularly known as, 75 Wainui Road, Lower Hutt, Wellington.												
2.	2.1	Land:	<p>The whole of the land comprised in the following Records of Title:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Record of Title</th> <th style="text-align: center;">Estate</th> <th style="text-align: center;">Legal description</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">WN458/158</td> <td style="text-align: center;">Freehold</td> <td style="text-align: center;">Lot 1 DP 11199</td> </tr> <tr> <td style="text-align: center;">WN465/182</td> <td style="text-align: center;">Freehold</td> <td style="text-align: center;">Part Lot 1 DP 7704</td> </tr> <tr> <td style="text-align: center;">871447</td> <td style="text-align: center;">Freehold</td> <td style="text-align: center;">Lot 1 DP 532424</td> </tr> </tbody> </table>	Record of Title	Estate	Legal description	WN458/158	Freehold	Lot 1 DP 11199	WN465/182	Freehold	Part Lot 1 DP 7704	871447	Freehold	Lot 1 DP 532424
Record of Title	Estate	Legal description													
WN458/158	Freehold	Lot 1 DP 11199													
WN465/182	Freehold	Part Lot 1 DP 7704													
871447	Freehold	Lot 1 DP 532424													
3.	2.1	Term:	12 years												
4.	2.1	Commencement Date:	<i>[Drafting note: Insert the settlement date under the Sale and Purchase Agreement for the Land]</i>												
5.	2.1	Rent Commencement Date:	The Commencement Date												
6.	2.1 and 14	Further Terms:	<p>(a) One Further Term of 5 years commencing on the tenth anniversary of the Commencement Date.</p> <p>(b) One Further Term of 5 years commencing on the fifteenth anniversary of the Commencement Date</p> <p>(c) One Further Term of 5 years commencing on the twentieth anniversary of the Commencement Date</p>												
7.	2.1 and 12.4	Rent and Rent Review:	<p>(a) For the first year of the Term, \$1,722,470 (plus GST) per annum</p>												

			<p>(b) For the:</p> <ul style="list-style-type: none"> (i) second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh and twelfth years of the Term; (ii) second, third, fourth and fifth years of the first Further Term (if any); (iii) second, third, fourth and fifth years of the second Further Term (if any); and (iv) second, third, fourth and fifth years of the third Further Term (if any), <p>the Rent is to be increased by the fixed percentage in accordance with clause 13.8</p> <p>(c) For the:</p> <ul style="list-style-type: none"> (i) first year of the first Further Term (if any); (ii) first year of the second Further Term (if any); and (iii) first year of the third Further Term (if any), <p>the Rent is to be reviewed to market in accordance with clause 13.1 PROVIDED THAT the Rent payable for the year immediately following each such Market Review Date must not:</p> <ul style="list-style-type: none"> (a) fall below the Rent payable for the year immediately preceding the relevant Market Review Date in accordance with clause 13.5; or (b) exceed 110% of the Rent payable for the year immediately preceding the relevant Market Review Date in accordance with clause 13.6.
8.	3.1	Method of Payment of Rent:	By equal monthly instalments in advance on the first day of each month during the Term (except that if the Rent Commencement Date is not the first day of a month the first payment, which must be made on or before the Rent Commencement Date, and the final payment will

			be payments proportionate to the months to which they relate)
9.	3.2	Outgoings:	<p>Statutory outgoings and expenses reasonably and properly incurred by the Landlord, limited to:</p> <p>(1) Rates or levies payable to any local or territorial authority.</p> <p>(2) Charges for water, gas, electricity, telecommunications and other utilities or services, including line charges (to the extent not otherwise payable directly by the Tenant in accordance with clause 3.3).</p> <p>(3) Rubbish collection and recycling charges.</p> <p>(4) New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and fire fighting equipment.</p> <p>(5) Any insurance excess and insurance premiums and related valuation fees.</p> <p>(6) 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.</p> <p>(7) Management expenses which shall be two percent (2%) of the Rent payable during that Year.</p>
10.	3.7	Interest Rate:	The rate of interest from time to time ASB Bank charge on overdrafts of \$100,000.00 or less on the date of demand.
11.	4.1	Permitted Use:	Offices, PET processing, washplant, file extrusion and the production of thermoformed rigid packaging or any other use permitted by Law.
12.	6.1	Amount of Public Risk Insurance:	\$20,000,000.00

13.	2.1	Relevant Law Society:	New Zealand Law Society.
14.	16.2	Address for Service of Notices:	<p>The address for service of the Landlord is: Attention: General Manager – Property (Steven Harris) Address: Level 18, 55 Shortland Street, Auckland 1140 Email: steven.harris@oystergroup.co.nz</p> <p>The address for service of the Tenant is: Attention: Corporate Real Estate Manager Address: Building 3, 658 Church Street, Cremorne, Victoria Email: property@pactgroup.com</p> <p>The address for service of the Guarantor is: Attention: Corporate Real Estate Manager Address: Building 3, 658 Church Street, Cremorne, Victoria Email: property@pactgroup.com</p>

THIS LEASE is made on

BETWEEN:

1. *[Drafting note: insert full legal name of landlord]* (the “**Landlord**”); and
2. **ALTO PACKAGING LIMITED** (company number: 1833598) of Level 1, Building 3, 658 Church Street, Cremorne, Victoria (the “**Tenant**”).
3. **PACT GROUP HOLDINGS LTD** (ASX: PGH; ABN 55 145 989 644) of Level 1, Building 3, 658 Church Street, Cremorne, Victoria (the “**Guarantor**”)

1. DEMISE AND TERM

The Landlord leases the Premises to the Tenant to be held by the Tenant as tenant for the Term commencing on the Commencement Date at the Rent and subject to the covenants, conditions, terms and restrictions contained in this Lease.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Lease unless the context otherwise requires:

“**appurtenances**” means and includes all toilets, grease traps, water apparatus, wash basins, gas fittings, electrical fittings and other apparatus contained in or about the Premises;

“**Authority**” means any local authority, government, semi-government, statutory or other authority or body having jurisdiction or authority over or in respect of the Premises or their use or anything done at the Premises by the Tenant;

“**Building**” means any building on the Land:

- (a) as at the Commencement Date and evidenced by the Premises Condition Report, but also includes any improvements and alterations made by the Landlord after the Commencement Date;
- (b) erected or constructed by or on behalf of the Landlord after the Commencement Date.

“**Business Day**” has the same meaning as “*working day*” in the Property Law Act 2007;

“**Chattels**” means the chattels (if any) owned by the Landlord and used in the Premises;

“**Commencement Date**” means the date specified in Item 4;

“**company**” has the meaning given to it by the Companies Act 1993;

“**Contamination**” means any change to the physical chemical or biological condition of the Premises or Land by a “contaminant” as that word is defined in the Resource Management Act 1991;

“**corporation**” has the meaning given to it by the Corporations Act;

“Corporations Act” means the Corporations Act 2001 (Cth) (in Australia) as amended from time to time;

"emergency" for the purposes of clause 10 means a situation that:

- (a) is a result of any event, whether natural or otherwise, including an explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, infestation, plague, epidemic, failure of or disruption to an emergency service; and
- (b) causes or may cause loss of life or serious injury, illness or in any way seriously endangers the safety of the public or property; and
- (c) the event is not caused by any act or omission of the Landlord or Tenant.

“Essential Services” means all essential services relating to the Premises including:

- (a) fire prevention, fire fighting and fire monitoring equipment and alarm systems;
- (b) mechanical and electrical services; and
- (c) evacuation and other emergency systems and equipment.

“Fit Out Works” means the works in relation to, but not limited to, racking, signs, partitioning and any other installation and any works conducted by or for the Tenant in or on the Premises, but excluding:

- (a) works to the structure of the Premises; and
- (b) major alterations to the Services and/or Essential Services;

“Further Terms” means the further terms (if any) of this Lease specified in Item 6;

“Land” means the land described in Item 2;

“Landlord” includes where the context so permits the person from time to time entitled to the immediate reversion of the Term and the employees and agents of the Landlord and other persons authorised by the Landlord;

“Laws” means all acts or statutes for the time being enacted in New Zealand and all rules, regulations, by-laws, notices, requisitions or orders made to or under any act or statute from time to time by any Authority;

“Lease” means this Lease together with any schedules, annexures and plans;

“Lettable Area of the Premises” means the total lettable area of the Premises measured using the recommended guide for the floor measurement of commercial and industrial buildings published (from time to time) jointly by the Property Council of New Zealand Incorporated and the New Zealand Property Institute Incorporated;

“Market Review Date” means each of those dates specified in Item 7 as dates where the Rent is reviewed in accordance with clause 13.1;

“Market Review Notice” is defined in clause 13.2(a);

“**month**” means calendar month;

“**Outgoings**” means the outgoings listed in Item 9;

“**Premises**” means the premises described in Item 1 and any improvements and additions to the Premises and includes where the context permits the appurtenances, the fixtures, fittings, furnishings, plant, machinery and equipment (if any) from time to time installed in the Premises and owned by the Landlord and the Chattels (if any);

“**Relevant Law Society**” means the body specified in Item 13;

“**Rent**” means the annual rent specified in or as determined in accordance with Item 7;

“**Rent Commencement Date**” means the date specified in Item 5;

“**Services**” means the services supplied to the Premises including electricity, gas, water, sewerage, telephone, plumbing and drainage and all associated infrastructure, plant and equipment used to provide such services but excludes the Essential Services;

“**signs**” includes signs, advertisements, names and notices;

“**Silos**” means the structures and improvements identified in the PCR as silos;

“**Tenant**” means the tenant named in this Lease and where the context so permits its successors and assigns;

“**Tenant’s Agents**” means the Tenant’s employees, agents, invitees and licensees;

“**Tenant’s fixtures and fittings**” means the fixtures and fittings owned by the Tenant and any other fixtures and fittings brought onto the Premises by the Tenant (which for the avoidance of doubt includes the Silos);

“**Term**” means the term specified in Item 3 and includes any extension or renewal of the term and any holding over; and

“**Valuer**” means a qualified valuer who is appropriately registered or licensed (as applicable, if required by law) having not less than 5 years experience in the valuation of and determination of rentals for industrial premises in Wellington and being a member of the New Zealand Institute of Valuers or its successor.

“**Year**” means any 12 month period commencing on the Commencement Date or any anniversary of the Commencement Date.

2.2 Interpretation

In this Lease unless the context otherwise requires:

- (a) clause headings are for convenience only and will be disregarded in determining the rights and obligations of the parties;
- (b) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;

- (c) a reference to an Item is the Item in the Reference Schedule to this Lease;
- (d) the singular includes the plural and vice versa and a reference to any gender, includes all genders;
- (e) a reference to an individual or person includes a corporation, partnership, joint venture, association, Authority or trust;
- (f) a reference to a recital, clause or annexure is to a recital, clause or annexure of or to this Lease;
- (g) any reference to "\$" is to the lawful currency for the time being of New Zealand;
- (h) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as varied, amended, novated, supplemented or replaced from time to time;
- (i) a reference to any party to this Lease or any other document or arrangement includes that party's successors and permitted assigns;
- (j) where two or more persons are named as a party to this Lease, the representations, warranties, covenants, obligations and rights given, entered into or conferred (as the case may be), bind them jointly and each of them severally;
- (k) where a word or phrase is defined, its other grammatical forms have corresponding meanings;
- (l) a reference to "include" or "including" means includes, without limitation, or including, without limitation, respectively;
- (m) anything includes each part of it;
- (n) a reference to a professional body, association or institute includes any succeeding body, association or institute serving the same or similar objects;
- (o) if the day on or by which a person must do something under this Lease is not a Business Day, the person must do it on or by the next Business Day;
- (p) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Lease;
- (q) the obligations of a party whether positive or negative are to be construed as if each obligation is a separate and independent covenant in favour of the other party; and
- (r) the covenants and powers implied by law (statutory or otherwise) are modified (where so permitted) as provided in this Lease including that the covenants and powers contained in sections 218 and 219 and Parts 2 and 3 of Schedule 3 of the Property Law Act 2007 will not be implied in this Lease and are expressly negated.

3. PAYMENTS BY TENANT OF RENT, OUTGOINGS AND OTHER MONEY

3.1 Rent

The Tenant during the Term will on and from the Rent Commencement Date pay the Rent (without setoff or deduction except as permitted under clause 15.6) to the Landlord at its address stated in this Lease (or as the Landlord may otherwise from time to time direct in writing) without demand from the Landlord on the days and in the manner specified in Item 8.

3.2 Outgoings

- (a) The Tenant will on and from the Rent Commencement Date pay when due or reimburse the Landlord for all Outgoings reasonably and properly incurred in respect of the Premises within the class of Outgoings specified in Item 9 of the Schedule.
- (b) The Outgoings shall be payable by the Tenant by monthly instalments on each rent payment date of a reasonable estimated amount as the Landlord shall determine calculated on an annual basis. Where any Outgoings has not been taken into account in determining the monthly instalments it shall be payable by the Tenant within 21 days of receiving a tax invoice from the Landlord.
- (c) The Landlord must, prior to 1 April in each Year, provide the Tenant with a detailed statement of estimated Outgoings for the next 12 month period.
- (d) Within three (6) months of the end of 31 March of each Year the Landlord will supply to the Tenant an audited statement signed by a qualified auditor within the meaning of the *Financial Reporting Act 2013* details of the actual Outgoings for the year or period ended. Any overpayment shall be credited or refunded to the Tenant and any deficiency shall be payable to the Landlord within 21 days of demand.

3.3 Other Charges

The Tenant will pay when due all charges for the supply of electricity, gas, water, sewerage and telephone services metered and consumed in or on the Premises made known to it. The parties agree that the accounts for electricity metered to the Premises are to be in the name of the Tenant.

3.4 Heating and Air-Conditioning

Subject to clause 5.3, the Tenant will punctually pay the expenses of operating and maintaining any heating or air-conditioning equipment exclusively serving the Premises.

3.5 Tenant's Insurance Premiums

The Tenant will pay when due all premiums for insurances to be effected by the Tenant as provided in clause 6.

3.6 Costs and Expenses

The Tenant will pay on demand all the Landlord's reasonable legal costs, charges and expenses of and incidental to:

- (a) any proven breach or default by the Tenant under this Lease; and
- (b) the lawful exercise of any remedy of the Landlord under this Lease,

and the reasonable fees of all consultants reasonably incurred by the Landlord as a result of or in connection with any proven breach or default by the Tenant under this Lease.

3.7 Interest on Default

A party (“**Defaulting Party**”) will pay to the other party (“**Other Party**”) on demand interest at the rate specified in Item 10 on any Rent or other money payable to the Other Party by the Defaulting Party which remain unpaid for 10 Business Days after the due date for payment, interest to be calculated from the relevant due date and to accrue on a daily basis until paid.

4. USE AND OCCUPANCY OF PREMISES

4.1 Use

The Tenant will not use or allow the use of the Premises by the Tenant’s Agents for any purpose other than the purpose or use specified in Item 11 and in particular will not use or allow the use of the Premises for residential purposes whether temporary or permanent.

4.2 No Noxious or Illegal Activity

The Tenant will not carry on or allow to be carried on the Premises by the Tenant’s Agents any noxious or offensive act, trade or business nor use or allow the use of the Premises by the Tenant’s Agents for any illegal purpose. The carrying on by the Tenant of the purpose or use specified in Item 11 (or any other use to which the Landlord has consented) shall be deemed not to be a breach of this clause provided that the Tenant is not in breach of clause 4.10.

4.3 Contamination

The Tenant must not cause any Contamination to the Premises or Land. The Tenant is not liable in any respect for Contamination existing in or under the Premises as at the Commencement Date, nor any Contamination emanating from or to the Premises as at the Commencement Date; however, this does not include Contamination caused by the Tenant. The Landlord releases to the full extent permitted by law the Tenant from all claims and demands in respect of or resulting from any Contamination existing as at the Commencement Date. The Tenant acknowledges that if it has caused (or at any time in the future causes) any Contamination then the Tenant shall be liable in respect of that Contamination and is not released from any claims, demands of other liability in respect of or resulting from any Contamination which it causes.

4.4 Signs

- (a) The Tenant may erect its usual corporate signs on or within the Premises at any time without having to obtain the consent of the Landlord subject to the Tenant obtaining and complying with all relevant approvals PROVIDED THAT any external sign does not materially and detrimentally affect the structural integrity of the facade of the Premises.
- (b) If requested to do so by the Tenant, the Landlord must assist the Tenant by signing all documents, applications and consents necessary to obtain the approval of any relevant Authorities to any sign on or within the Premises.
- (c) The Tenant will on vacating the Premises, at the written request of the Landlord at or before the Tenant’s vacation, remove any signs erected, painted, displayed,

affixed or exhibited on to or in the Premises by or on behalf of the Tenant and make good any damage or disfigurement caused by their erection, painting, display, affixation, exhibition or removal.

4.5 Alterations and Additions at Tenant's Cost

- (a) The Tenant:
- (i) will not without the Landlord's prior written approval (which will not be unreasonably withheld) make any improvements, alterations, additions and/or extensions to the Premises (excluding Fit Out Works) and will in the course of any improvements, alterations, additions and/or extensions made with the Landlord's approval observe and comply with all reasonable requirements of the Landlord and all requirements of Authorities and will undertake such improvements, alterations, additions and/or extensions at the Tenant's cost; and
 - (ii) may, at any time, and without having to obtain the Landlord's consent, carry out Fit Out Works provided that it shall also undertake works required as a result of the Fitout Works to ensure the Building is fully compliant with the Building Act 2004 following completion of any Fitout Works and it will observe and comply with all requirements of Authorities and will undertake the works referred to this clause and the Fitout Works at the Tenant's sole cost .
- (b) The Landlord may (upon delivery of written notice) require the Tenant to remove any improvements, alterations, additions, extensions or Fit Out Works which have been undertaken to the Premises via either of clauses 4.5(a) and/or (b), upon expiry or earlier termination of this Lease. If removal is so required then the Tenant shall, prior to expiration or promptly (and in any event within 10 Working Days) after sooner determination of the Term remove such improvements, alterations, additions, extensions of Fit Out Works and make good all damage caused by such removal. The Tenant acknowledges that in removing such it shall not be entitled to remove only part of any item if the remaining part is redundant as a result and in need of removal by the Landlord, to the end and intent that if the Tenant is removing a particular improvement, alteration, addition, extension or Fit Out Work it shall remove the whole rather than part of the same.

4.6 Installation of Fixtures

Without limiting clause 4.5, the Tenant will not without the Landlord's prior written approval (which will not be unreasonably withheld) install any gas, water or electrical fixtures, equipment or appliances or any apparatus for illuminating, air-conditioning, heating, cooling or ventilating the Premises which results in works to the structure of the Premises.

4.7 Heavy Equipment

The Tenant will not bring onto the Premises any heavy machinery or other plant or equipment not necessary or proper for the Tenant's use of, or its conduct of the business conducted from the Premises and will not bring onto the Premises any machinery, plant or equipment which the Tenant, acting reasonably, could foresee as being of a nature or size that will cause or be likely to cause any structural damage to any part of the Premises.

4.8 Use of Facilities

The Tenant will not use or allow the use of the drainage and plumbing facilities in the Premises by the Tenant's Agents for any purposes other than those for which they were constructed or provided and will not deposit or allow to be deposited in those facilities any rubbish or other material and the Tenant will promptly make good any damage caused by misuse.

4.9 No Interference with Services

Subject to clause 4.5(a)(ii), the Tenant will not interfere in any way with any Services in the Premises.

4.10 Compliance with Law

- (a) Subject to clauses 4.10(c) and 5.3, the Tenant will unless exempted or allowed not to do so by any Authority comply with all Laws relating to the use by the Tenant of the Premises and which may be given by any Authority.
- (b) If any infectious disease occurs on the Premises the Tenant will promptly notify the proper Authorities and the Landlord in writing of the disease and at its own expense thoroughly fumigate and disinfect the Premises.
- (c) The Tenant will not be liable to discharge the Landlord's obligations as owner under the Building Act 2004 unless any particular obligation is the responsibility of the Tenant as occupier of the Premises.

5. REPAIR, MAINTENANCE, CLEANING AND INSPECTION OF PREMISES

5.1 Repair

Subject to clause 5.3, the Tenant will at all times during the Term, and when and as often as need be, well and sufficiently and substantially repair, replace, maintain and keep the whole of the Premises, the Services (to the extent those Services are located within and service the Premises and which are owned by the Landlord), the Essential Services and the Tenant's fixtures and fittings in good and substantial repair having regard to the PCR, but excluding damage by fire, flood, lightning, storm, tempest, explosion, earthquake, volcanic activity, impact by vehicles or aircraft, riot, civil commotion, war damage, or act of God. For clarity, the Tenant will be responsible for ensuring that normal, regular, preventative servicing and maintenance is carried out including (by way of example and without limitation) the supply and installation of minor parts, but excluding the replacement of major component parts that would usually comprise works of a capital nature.

5.2 Cleaning of Premises

Having regard to the Permitted Use and in particular to the conduct of manufacturing activities in the Premises by the Tenant, the Tenant will keep the Premises clean and free from dirt and rubbish and will undertake building washes (as is reasonably required).

5.3 Exclusions

Nothing in this Lease will be taken to require or impose on the Tenant any obligation to undertake or pay for (whether as Outgoings or otherwise):

- (a) any repair, maintenance, replacement or work:
 - (i) of a structural nature (except that the Tenant shall be obliged to undertake repair, maintenance, replacement or work to the roof if the expenditure incurred as a result of any one work package is less than \$5,000 plus GST and the exception in this clause shall not apply in respect of any building wash);
 - (ii) of a capital nature, or to incur any capital expenditure;
 - (iii) in relation to any inherent defects or defect in the design or construction of the building;
 - (iv) in relation to the repair and maintenance of plumbing and drainage beyond keeping the pipes in a free flowing condition from their point of entry or exit (as the case may be) within the premises to their point of entry or exit (as the case may be) into the trunk pipe or drain;
 - (v) for which the Landlord has insured, or is obliged to insure; or
 - (vi) in respect of any asbestos or other harmful or unsafe material in, within or on the Premises (except to the extent disclosed to the Tenant in writing prior to the Commencement Date, to the extent it is otherwise known to the Tenant prior to the Commencement Date or to the extent it is caused by the Tenant),

except to the extent:

 - (vii) that such repair, maintenance, replacement or work relates to Fitout Works or Tenant's fixtures and fittings which shall in all instances remain the sole responsibility of the Tenant;
 - (viii) any damage is intentionally done or caused by the Tenant or any agent of the Tenant;
 - (ix) it is rendered necessary by any default or misconduct of the Tenant or any agent of the Tenant;
 - (x) it is rendered necessary by an act or omission by the Tenant or any agent of the Tenant that occurred on or about the Premises and/or the Land and which constitutes an imprisonable offence; or
 - (xi) it is rendered necessary by or as a result of the number or sex of the Tenant's employees;
 - (b) in respect of, or resulting from, fair wear and tear arising from reasonable use ; or
 - (c) which the Landlord is obliged to perform under this Lease.

5.4 Maintenance of Garden Areas

The Tenant will maintain and keep trim and in good order and condition all garden areas of the Premises including lawns, shrubberies and other landscaped areas having regard to the PCR.

5.5 Breakages

The Tenant will from time to time promptly repair and make good any damage to the Premises caused by the Tenant and will replace all broken glass in or about the Premises with glass of a similar quality and colour and all electric light globes and fluorescent tubes in the Premises which become damaged or broken.

5.6 Inspection by Landlord

Subject to clause 16.6, the Tenant will permit the Landlord at all reasonable times on giving to the Tenant reasonable notice (except in the case of emergency when no notice will be required) to enter on the Premises at its risk in all respects and view their state of repair and the Landlord may serve on the Tenant a written notice of any defect the repair of which is the Tenant's obligation and requiring the Tenant within a reasonable time to repair that defect.

5.7 Landlord's Repairs

Subject to clause 16.6, the Tenant will permit the Landlord to carry out necessary repairs or maintenance to the Premises and for this purpose to enter the Premises with workmen and others and all necessary materials.

5.8 Notices of Accidents and Breakages

The Tenant will give to the Landlord prompt written notice of any material or substantial accident to or breakage defect or lack of repair in any service to or fittings in the Premises of which it is aware and of any other circumstances of which it is aware that is likely to endanger or cause any risk or hazard to the Premises or any person in them.

5.9 Condition on Termination

The Tenant will at the expiration or sooner determination of the Term peaceably surrender and carry out all work required in order to yield up to the Landlord the Premises and the Landlord's fixtures, fittings and Chattels having regard to the state and condition evidenced by the PCR and clean and free from dirt and rubbish and will also return all keys to the Premises.

5.10 Removal of Tenant's Property

The Tenant may at or immediately prior to the expiration or promptly after the sooner determination of the Term remove all the Tenant's fixtures and fittings, goods and property from the Premises, and the Tenant will in such removal either do no damage to the Premises or make good all damage caused by the removal. Any of the Tenant's fixtures and fittings, goods or property not so removed within a reasonable time will be deemed to have been abandoned by the Tenant and will become the property of the Landlord, without compensation being payable by the Landlord to the Tenant. The Tenant acknowledges that in removing such Tenant's fixtures and fittings it shall not be entitled to remove only part of a fixture or fitting to the end that the remaining part is redundant and in need of removal by the Landlord, to the end and intent that if the Tenant is removing a particular fixture and fitting it shall remove the whole rather than part of the same.

5.11 Landlord may remedy Tenant's Default

If the Tenant does not comply with the provisions of clauses 5.1, 5.4, 5.5, 5.9 and 5.10 and the default continues for 10 Business Days after service on the Tenant of a notice requiring the Tenant to remedy the default, then the Landlord may at its option remedy the default and any reasonable costs and expenses of doing so will be payable by the Tenant to the Landlord on demand. In any such event the Tenant shall provide the Landlord with all necessary access to the Premises in order to properly and reasonably exercise its rights pursuant to this clause 5.11.

6. TENANT'S INSURANCE

6.1 Insurances to be Effected by Tenant

The Tenant will effect and maintain public risk insurance (noting the Landlord's interest) with a reputable insurance office in respect of liability for loss, injury or damage to any person or property (including to the person or property of the Landlord) caused by or arising out of any negligent act of or omission by the Tenant or its officers or employees in or about the Premises or the business carried on in or from the Premises in the sum specified in Item 12 in respect of any single accident or event.

6.2 Delivery of Policies and Renewal of Insurances

The Tenant will:

- (a) punctually pay all premiums payable for the renewal of the insurances referred to in clause 6.1 when due and payable; and
- (b) produce and deliver to the Landlord once each year on demand certificates of currency for those insurances.

6.3 Tenant's Master Policy

Despite clauses 6.1 and 6.2, if the Tenant is a "**related company**", "**related body corporate**" or any "**related entity**" of or to Pact Group Holdings Limited ACN (55 145 989 644) (within the meaning of those terms in the Companies Act 1991 and the Corporations Act respectively), or any corporation or company in the Pact Group Holdings Limited group of corporations and companies, the production to the Landlord of a certificate of currency of either the group or master insurance policy effected by the Tenant noting the interest of the Landlord will be deemed to be compliance by the Tenant with all its obligations in clauses 6.1 and 6.2.

7. ASSIGNMENT AND SUBLETTING

7.1 Restriction on Dealings with Lease

- (a) Subject to clause 7.1(b), the Tenant will not during the Term without the Landlord's prior written consent (which will not be unreasonably withheld) assign, sublet, transfer, demise or part with or share the possession of the Tenant's estate or interest in the Premises PROVIDED THAT the provisions of this clause 7.1(a) will not apply in respect of an assignment if the requirements of clause 7.2 or in respect of a sublease if the requirements of clause 7.3, are satisfied.

- (b) The Tenant may assign, transfer, demise or part with or share the possession of the Tenant's estate or interest in the Premises to a "related company", "**related body corporate**" or a "**related entity**" of Pact Group Holdings Limited ACN (55 145 989 644) within the meaning of those terms in the Corporations Act and Companies Act 1993 without having to obtain the Landlord's consent in which case clauses 7.1(a), 7.2, and 7.3 will not apply.

7.2 Conditions of Assignment

If the Tenant desires to assign, transfer or part with possession of its estate or interest in this Lease the Landlord will not withhold its consent if the Tenant has:

- (a) requested the Landlord in writing to consent to the assignment;
- (b) proved to the reasonable satisfaction of the landlord that the proposed assignee is a respectable, responsible, solvent person or corporation of good financial standing including without limitation that it retains the financial resources requires to meet the Tenant's commitments under this Lease (which, in the event of assignment, may include an obligation that such assignee provides a bank guarantee not exceeding 6 months' Rent as security for the performance of the Tenant's obligations pursuant to this Lease at the Landlord's reasonable request);
- (c) given to the Landlord the name and address of the proposed assignee together with at least two references as to the proposed assignee's financial circumstances and at least two references as to the proposed assignee's business experience;
- (d) executed and at its expense procured the execution by the assignee of an assignment of this Lease to which the Landlord is a party in a form reasonably acceptable to the Landlord and in which the proposed assignee enters into covenants with and grants powers to the Landlord in terms of the covenants, conditions, agreements and powers expressed in this Lease or such of them as may be reasonably required by the Landlord; and
- (e) paid all Rent and other money due and payable as provided in this Lease and there is not any existing unremedied breach of the Tenant's covenants, conditions and agreements contained in this Lease (which has not been waived by the Landlord).

7.3 Conditions of Subletting

If the Tenant desires to sublet or licence (being a 'subletting' or 'subtenant' for the purposes of this clause) the Premises (or any part thereof) the Landlord will not withhold its consent if the Tenant has:

- (a) requested the Landlord in writing to consent to the subletting;
- (b) proved to the reasonable satisfaction of the landlord that the proposed subtenant is respectable and responsible;
- (c) executed and at its expense procured the execution by the subtenant of a deed to which the Landlord is a consenting party in a form reasonably acceptable to the Landlord and in which the proposed subtenant grants powers to the Landlord in terms of the covenants, conditions, agreements and powers expressed in this Lease or such of them as may be reasonably required by the Landlord; and

- (d) paid all Rent and other money due and payable as provided in this Lease and there is not any existing unremedied breach of the Tenant's covenants, conditions and agreements contained in this Lease (which has not been waived by the Landlord);

Where the Landlord consents to a sublease the consent shall extend only to the subletting and notwithstanding anything contained or implied in the sublease the consent shall not permit the subtenant to deal with the sublease in any way in which the Tenant is restrained from dealing without consent. Any subletting shall be for a term which is not longer than the then current remaining term of this Lease less one day. Any subletting shall not alter, vary or relieve in any way affect the Tenant's or Guarantor's obligations or liability pursuant to this Lease.

7.4 Costs of Assignment/Subletting

The Tenant will pay to the Landlord all reasonable costs, charges and expenses incurred by the Landlord of and incidental to any enquiries which may be made by or on behalf of the Landlord as to the responsibility, respectability, solvency and suitability of the proposed assignee or subtenant and of and incidental to the giving of its consent and the obtaining of any other necessary consents to the assignment.

7.5 Effect of Assignment

- (a) The parties acknowledge and agree that the Tenant must, if assigning this Lease, assign all covenants under this Lease (in whole and not in part), whether or not such covenants touch and concern the Land.
- (b) The covenants and agreements by any permitted assignee will be deemed to be supplementary to this Lease and will not in any way relieve or be deemed to relieve the Tenant from its liability under this Lease (including without limitation for any antecedent breach for which the Tenant shall remain liable) but, for the avoidance of doubt, the Tenant will have no liability or obligations under any further lease if any permitted assignee renews or extends this Lease or during any holding over by any permitted assignee.
- (c) The acceptance by the Landlord of any Rent or other payment from any person other than the Tenant will not in itself constitute acknowledgement by the Landlord that it recognises that person as the authorised assignee.

7.6 Corporate Ownership

If the Tenant is a corporation or company (other than a corporation or company whose shares are listed on the New Zealand Stock Exchange or any recognised Australian Securities Exchange or a subsidiary of such a corporation) a change in 51% or more of the shareholding of the Tenant as existing at the Commencement Date or if this Lease has been assigned, as existing at the assignment date (whether occurring at the one time or through a series or succession of transfers or issues of shares) or the establishment by any means of any trust under which any third party becomes a beneficial owner of this Lease or any of the Tenant's rights under this Lease will require the Landlord's consent. This clause 7.6 will not apply while the Tenant is Alto Packaging Limited or a "**related company**", "**related body corporate**" or any "**related entity**" of or to Pact Group Holdings Limited ACN (55 145 989 644) (within the meaning of those terms in the Corporations Act and the Companies Act 1991).

8. LANDLORD'S COVENANTS AND WARRANTIES

8.1 Quiet Enjoyment

The Landlord covenants with the Tenant that the Landlord will ensure that subject to payment of the Rent by the Tenant the Tenant will peaceably hold and enjoy without interruption the Premises for the purposes permitted by this Lease during the Term.

8.2 Maintenance, Repairs and Replacement

The Landlord covenants with the Tenant that it will (except to the extent that it is the Tenant's obligation pursuant to this Lease (including clause 5.1)) at its own expense:

- (a) maintain the Premises in a sound structural, watertight, weatherproof and safe condition (including maintaining the structural aspects of all paved, sealed or hardstand areas of the Premises so that they are capable of being used for their intended purposes) it being acknowledged that the Landlord is not responsible for repairs and/or maintenance to elements of the Premises which are properly the responsibility of the Tenant pursuant to clause 5.1;
- (b) promptly replace all Services, Essential Services and the fixtures, fittings, plant, machinery and equipment serving the Premises and their component parts which cannot be reasonably repaired or have come to the end of their economic life (which replacements must be of at least an equivalent standard and quality to the items replaced when in reasonable working order);
- (c) promptly, after notification of any malfunction by the Tenant, effect any works over and above the obligations of the Tenant under clause 5 which are reasonably necessary to ensure that the Services, Essential Services and the fixtures, fittings, plant, machinery and equipment servicing the Premises are maintained in accordance with the manufacturer's requirements (or where there are no manufacturer's requirements or if the requirements are not appropriate, they are maintained in accordance with standard industry practice) and the requirements of any relevant Authority (including substituting major component parts in them), and reasonably required for the Tenant's use and occupation of the Premises; provided that nothing in this clause shall require the Landlord to materially enhance, improve or upgrade the Services, Essential Services and the fixtures, fittings, plant, machinery and equipment servicing the Premises from that which existed at the Commencement Date as evidenced by the PCR however, if the Landlord has enhanced, improved or upgraded the Services, Essential Services or the fixtures, fittings, plant, machinery and equipment servicing the Premises after the Commencement Date, then the Landlord is not required to materially enhance, improve or upgrade the Services, Essential Services and the fixtures, fittings, plant, machinery and equipment servicing the Premises from that which existed at the date the Landlord last enhanced, improved or upgraded them; and
- (d) promptly effect any works or repairs to the Premises which are reasonably necessary for the use and enjoyment of the Premises by the Tenant to the extent these are not the obligation of the Tenant under this Lease provided that nothing in this clause shall require the Landlord to materially enhance, improve or upgrade the Premises from that which existed at the Commencement Date as evidenced by the PCR however, if the Landlord has enhanced, improved or upgraded the Premises or

any part of them after the Commencement Date, then the Landlord is not required to materially enhance, improve or upgrade the Premises from that which existed at the date the Landlord last enhanced, improved or upgraded them.

Notwithstanding the foregoing nothing in this Lease will be taken to require or impose on the Landlord any obligation to undertake or pay for any repair, maintenance, replacement or work to the extent:

- (e) it relates to any Tenant's fixtures and fittings;
- (f) it is the Tenant's responsibility under this Lease, in which case the Tenant must perform the repair, maintenance or work;
- (g) that it is to or the result of any Fitout Works;
- (h) any damage is intentionally done or caused by the Tenant or any agent of the Tenant;
- (i) it is rendered necessary by any default by the Tenant in the performance of its obligations pursuant to this Lease (including without limitation the obligations contained in clause 5.1) or the negligence of the Tenant or any agent of the Tenant;
- (j) it is rendered necessary by or as a result of the number or sex of the Tenant's employees.

8.3 Services and Essential Services

- (a) The Landlord warrants to the Tenant that:
 - (i) the Services are and will (subject to compliance by the Tenant with its obligations pursuant to clause 5.1) remain properly functional and operational and comply and will remain compliant with prevailing industry standards; and
 - (ii) the Essential Services are and will (subject to compliance by the Tenant with its obligations pursuant to clause 5.1) remain properly functional and operational and comply and will remain compliant with all Laws.
- (b) If:
 - (i) any of the Services or Essential Services fail to function or operate properly for any reason; and
 - (ii) the failure does not arise as a result of the Tenant failing to comply with its obligations pursuant to clause 5.1; and
 - (iii) the Tenant has notified the Landlord of the failure in functioning or operation and the Landlord has not rectified the problem within 7 days of the Tenant's notice; and
 - (iv) the failure in function or operation materially detrimentally affects the Tenant's use and enjoyment of the Premises or the business conducted by the Tenant from the Premises,

(together, **Services Failure**)

then a fair proportion of Rent, Outgoings and all other money payable by the Tenant under this Lease having regard to the impact that the relevant circumstances have on the Tenant's use and enjoyment of the Premises will abate until the Services Failure is remedied.

- (c) This clause 8.3 does not apply to the extent to which the functioning or operation of the Services or Essential Services is:
 - (i) outside the Landlord's reasonable control; or
 - (ii) the Tenant's obligation under this Lease; or
 - (iii) caused by any Fitout Works undertaken by the Tenant.

8.4 Landlord's Repairs

The Landlord must procure that any repairs, replacements or works to the Premises required to be undertaken by the Landlord under this Lease are done promptly and:

- (a) in accordance with all Laws, the Building Code issued under the Building Act 2004, all New Zealand Standards and the requirements of all relevant Authorities;
- (b) in a proper and workmanlike manner; and
- (c) using good quality materials and of equivalent standard and quality to any materials replaced when those materials were new.

The Tenant shall (subject to clause 16.6) provide the Landlord with reasonable access at reasonable times in order to conduct such repairs, replacements or works to the Premises (including without limitation any works that arise as a result of compliance with clause 8.10).

8.5 Compliance with Law

The Landlord covenants with the Tenant that it will comply with all Laws affecting the Premises which are not the obligation of the Tenant under this Lease.

8.6 Notices

If the Landlord receives any notices from an Authority which relate to:

- (a) planning permits or development approvals;
- (b) rezoning of land;
- (c) compulsory acquisition of land;
- (d) revaluation (in which case clause 8.8 will also apply);
- (e) resumption of land;
- (f) road widening; or
- (g) interruption of Services or Essential Services,

which affects or is likely to affect the Premises the Landlord must give a copy of the notice to the Tenant as soon as practical after it is received by the Landlord.

8.7 Insurance

- (a) The Landlord covenants with the Tenant that it will:
 - (i) insure and keep insured with a reputable insurance company the Premises for its full replacement and reinstatement value against loss or damage by

fire, explosion, lightning, flood, earthquake, storm, tempest, riot, civil commotion, and impact from vehicles and aircraft provided that if such insurances are not reasonably available in the market the Lessor's obligation shall be to procure such insurances that are reasonably available in the market in order to protect against the aforementioned harms; and

- (ii) ensure that the premiums for the insurance specified in clause 8.7(a)(i) are at competitive market rates.
- (b) The Landlord must provide the Tenant with a certificate of currency of the insurance policy taken out by the Landlord under this clause 8.7 prior to the Commencement Date and otherwise promptly on receiving a request by the Tenant.
- (c) The Tenant acknowledges that the Landlord shall be entitled to take out:
 - (i) loss of rents insurances for a period of up to 24 months;
 - (ii) usual public and statutory liability insurances;For the avoidance of doubt, if in place, the cost of such insurances (excesses and premiums) shall be recoverable as an Outgoing. The Landlord shall ensure that the premiums for the insurance specified in clause 8.7(c) are at competitive market rates .
- (d) If, at any time during the Term, the Tenant gives the Landlord 2 written quotes from reputable insurers for the cost of premiums for the type of insurance to be effected by the Landlord under this clause 8.7 ("**Comparable Insurance**") and those quotes are both more than 5% less than the amount of the Landlord's premiums then the Landlord shall use its reasonable endeavours (with the assistance of the Tenant) to procure a reduction in the premiums payable pursuant to the insurance policies which the Landlord has in place provided that if following good faith engagement with its insurance broker or insurer it is not ultimately able to procure any such reduction then the Landlord shall be deemed to have fulfilled its obligations pursuant to this clause.

8.8 Rates and Taxes

- (a) The Landlord must pay all such rates, taxes, charges, levies, assessments, duties, impositions and fees payable in respect of the Premises as are not in this Lease required to be paid directly by the Tenant.
- (b) The Landlord must, upon receipt of the Tenant's written request, notify the Tenant in writing of all valuations of the Premises or the Land made by any Authority to enable the Tenant to object if it wishes to do so. The Landlord must at the same time notify the Tenant if the Landlord intends to object to the valuation.
- (c) The Landlord agrees that the Tenant may (with the Landlord's written consent) make reasonable objections to any valuations of the Premises made by any Authority for the purposes of assessing the rates or levies payable to that Authority on behalf of the Landlord. The Landlord shall not unreasonably withhold its consent and shall provide its consent if the Tenant evidences that the market value of the Premises is less than the value attributed to the Premises by the relevant Authority. If the Tenant makes any objections it must provide to the Landlord copies of any such objection and all relevant correspondence relating to it. The Landlord must cooperate with the Tenant in making such objections.

8.9 Health and Safety and Environment

- (a) The Landlord warrants to the Tenant that no materials containing asbestos or other dangerous, harmful or unsafe materials exist in the Premises (other than to the extent that has been disclosed to the Tenant in writing prior to the Commencement Date or is otherwise known to the Tenant prior to the Commencement Date) and if any such materials are at any time discovered in the Premises the Landlord must at its own expense promptly and in a safe manner remove those materials.
- (b) The Landlord warrants to the Tenant that there is no Contamination currently present in or under the Land (other than to the extent that has been disclosed to the Tenant in writing prior to the Commencement Date or is otherwise known to the Tenant prior to the Commencement Date) and if any Contamination is subsequently discovered in, on or under the Land, then (unless that Contamination is caused by the Tenant) the Landlord must at its own expense promptly execute and complete all works necessary to clean up the Land so that it does not contain any Contamination or such Contamination is lawfully contained or encapsulated.

8.10 Essential Services

Despite any provisions to the contrary, the Landlord covenants and agrees with the Tenant that it will comply with the requirements of any Laws relating to the provision of an annual fire safety certificate, annual essential safety measures report or such other certificate or statement required by Law in relation to the Essential Services. The Landlord further covenants and agrees with the Tenant that it will complete, at its cost, all work that may be required to the Premises to obtain such certificate, statement or report, except to the extent that the work is the Tenant's obligation to do so under this Lease. The Tenant will assist the Landlord in its compliance with this clause 8.10 by providing such information or documents in the Tenant's possession relating to the Essential Services and necessary for the Landlord to comply with its obligations under this clause 8.10.

8.11 No Application with Authority

- (a) The Landlord covenants and agrees with the Tenant that it shall not procure or lodge an application with any Authority or allow or permit an application to be made with any Authority during the Term and any Further Term for:
 - (i) the rezoning of the Land;
 - (ii) a resource consent or plan change changing the use or zoning of the Land;
 - (iii) an amendment to the local planning scheme or the local environmental plan, unitary plan or district plan which changes the zoning of the Land; and
 - (iv) anything that would change the floor space ratio from the floor space ratio existing at the Commencement Date,without the prior written consent of the Tenant, which consent shall not be unreasonably withheld by the Tenant.
- (b) The Landlord must not do anything which will materially detrimentally affect the lawful use and occupation of the Premises by the Tenant.

9. DEFAULT

9.1 Default

If any one or more of the following occurs:

- (a) the Rent or any part of the Rent is unpaid for a period of 10 Business Days after any of the days on which it ought to have been paid in accordance with the covenants for its payment contained in this Lease and of which written notice of not less than 10 Business Days has been given to the Tenant;
- (b) the Tenant commits or allows to occur any breach or default in the due and punctual observance and performance of any of the covenants, obligations and provisions of this Lease (including without limitation those contained in clause 5.1 which the Tenant acknowledges are essential terms) and:
 - (i) where the breach or default can be remedied, that breach or default continues for a period of 10 Business Days after service on the Tenant of a notice requiring the Tenant to remedy the breach or default; or
 - (ii) where the breach or default cannot be remedied, the Tenant does not pay compensation for the breach or default within 10 Business Days after service on the Tenant of a notice requiring the Tenant to pay reasonable compensation;
- (c) the Tenant, being a corporation or company:
 - (i) is wound up or dissolved or otherwise becomes insolvent;
 - (ii) goes into liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation approved in writing by the Landlord);
 - (iii) has an official manager, receiver, receiver and manager, voluntary administrator, liquidator or agent for a mortgagee appointed to it or to any or all of its assets or undertakings; or
 - (iv) enters into a scheme of arrangement with or for the benefit of any of its creditors;
- (d) the Tenant (not being a company) is declared bankrupt or insolvent or assigns his/her estate or enters into a deed of arrangement for the benefit of creditors; or
- (e) execution is levied against the Tenant (including its property goods or effects) in any judgment in any Court and is not satisfied within 20 Business Days,

then even though the Landlord may not have exercised any of its rights under this clause 9.1 in respect of some previous breach or default of a like nature by the Tenant, the Landlord may (subject to the Landlord having served, in accordance with section 353 Property Law Act 2007, a valid notice pursuant to section 245 or 246 (as the case may be) of the Property Law Act 2007) immediately or at any later time re-enter the Premises or any part of them in the name of the whole and repossess and enjoy the Premises as of its former estate and in that event the Lease and the Term will absolutely cease and determine but without prejudice to any action or other remedy which the Landlord or the Tenant has or might otherwise have had for arrears of Rent and/or breach of covenant and/or for damages as the result of any such event and without prejudice to any antecedent rights of either party prior to the date of determination of this Lease.

9.2 Acceptance of Rent

Acceptance of Rent by the Landlord after default by the Tenant under this Lease will be without prejudice to the exercise by the Landlord of the powers conferred on it by clause 9.1 or any other right power or privilege of the Landlord under this Lease and will not operate as an election by the Landlord either to exercise or not to exercise any of those rights powers or privileges.

9.3 Remedying a Default

On each and every occasion on which a party fails to pay any money or to do or effect anything which that party has in this Lease agreed to pay do or effect and the default continues for a reasonable period (being not less than 10 Business Days) after service on the defaulting party of a notice requiring the defaulting party to remedy the default, then the other party may (without prejudice to any rights and powers arising from that default) pay that money or do or effect that thing by itself and the amount of any reasonable payment and/or the reasonable expenses and costs of doing or effecting that thing will constitute a liquidated debt payable by the defaulting party to the other party on demand.

10. DESTRUCTION OR DAMAGE TO PREMISES

10.1 Total destruction

If the Premises shall be destroyed or damaged to such an extent as to be untenable or if all of the Buildings shall be totally destroyed or if any part or parts of the Building shall be so destroyed or damaged as to render the Premises wholly unfit for occupation and use by the Tenant, then:

- (a) at the option of the Landlord this Lease shall determine as from the date of such destruction or damage but without releasing the Tenant from liability for Rent and other money up to that date or for any previous breach of this Lease; provided that
- (b) if the Landlord has not within six (6) months after the date of such destruction or damage (time being of the essence):
 - (i) terminated the Lease pursuant to clause 10.1(a); or
 - (ii) notified the Tenant that it intends to reinstate the Premises in which instance clause 10.2 shall apply (with all necessary modification), then

the Tenant shall be entitled to terminate this lease on and from the date that is six (6) months after the date of such destruction or damage (time being of the essence) by providing the Landlord with one (1) months written notice but without releasing the Tenant from liability for Rent and other money up to the date of termination or for any previous breach of this Lease. This termination right shall not be available where such destruction or damage is due to the negligent act of the Tenant.

10.2 Partial destruction/damage

- (a) If the Premises shall be damaged but not to the extent that clause 10.1 applies, and/or this Lease is not terminated pursuant to clause 10.1, then subject to the rights of any mortgagees and to the granting of all necessary consents, and subject to clauses 10.2(b) and (c), the Landlord shall reinstate the Premises. Additionally, the Landlord shall be under no obligation to effect reinstatement other than

according to the original materials and form of construction and plan, subject to any law which requires otherwise or such amendment as the Landlord shall reasonably elect having regard to the availability of relevant materials, any technological advancements or redundancies.

- (b) Provided the Landlord is not in default of its obligations under clause 8.7(a):
 - (i) the Landlord shall not be bound to expend any moneys in excess of the insurance moneys actually received by the Landlord in respect of such damage; and
 - (ii) in the event of the insurance moneys being insufficient to cover the cost of reinstating the Premises and the Landlord is unwilling (which it may be in its sole and absolute discretion) to top up such proceeds, the Landlord may terminate this Lease by notice in writing to the Tenant.
- (c) In the event that the appropriate consents are not available to reinstate the Premises, the Landlord may terminate this Lease by notice in writing to the Tenant.
- (d) In respect of any damage covered by this clause 10, the Tenant may terminate the Lease on one (1) month's written notice to the Landlord in the event that the Landlord:
 - (i) has not within nine (9) months of the date of damage or destruction commenced the work required to reinstate the Premises; or
 - (ii) commences reinstatement but does not complete the reinstatement within thirty six (36) months of the date of damage or destruction,but without prejudice to any antecedent rights of either party prior to the date of termination.

10.3 Premises to be vacated

If any part of the Premises shall be so damaged as to render it impracticable for the Landlord to reinstate the same without obtaining possession of any or all of the respective Building(s) or part of the Premises the Landlord may require the Tenant by one (1) month's written notice to vacate all or part of the Premises for such period as may be necessary for the purpose of such reinstating. Upon the expiry of such notice the Landlord may take possession of the Premises or such specified part and the Tenant shall not be entitled to any compensation or damages on account of the Landlord retaking possession or on account of any inconvenience or loss but the Rent, Outgoings and other moneys payable by the Tenant under this Lease in respect of the Premises or such part as shall be (temporarily) repossessed under this provision by the Landlord shall be suspended for such period as the Tenant shall not have possession of the Premises or such part. If any question shall arise as to what proportion of Rent, Outgoings and other moneys ought to be suspended, or for how long, such dispute shall be referred to arbitration, consideration there to be given to the extent to which the Tenant is able to carry on business.

10.4 Abatement

Where the Premises or any part of the Premises is unable to be occupied by the Tenant to conduct its business from the Premises due to damage or destruction, the Rent, Outgoings and all other money payable under this Lease, or a fair proportion according to the nature and extent of the damage sustained, will abate from the date of damage or destruction which until the Premises is rendered fit for occupation and for its Permitted Use by the Tenant.

This clause 10.4 shall not apply where such destruction or damage is due to the negligent act of the Tenant.

10.5 Dispute resolution

Any dispute arising out of this clause will be referred for determination by a sole arbitrator under the Arbitration Act 1996 appointed at the request of either the Landlord or the Tenant by the President of the Relevant Law Society, who will act as an expert and not as an arbitrator and whose costs will be borne equally by the Landlord and the Tenant.

10.6 No Access in Emergency

If there is an emergency and the Tenant is unable to gain access to the Premises to fully conduct the Tenant's business from the Premises because of reasons of safety of the public or property or the need to prevent reduce or overcome any hazard, harm or loss that may be associated with the emergency including:

- (a) a prohibited or restricted access cordon applying to the Premises; or
- (b) prohibition on the use of the Premises pending the completion of structural engineering or other reports and appropriate certifications required by any Authority that the Premises are fit for use; or
- (c) restriction on occupation of the Premises by any competent Authority,

then a fair proportion of the Rent and Outgoings shall cease to be payable for the period commencing on the date when the Tenant became unable to gain access to the Premises to fully conduct the Tenant's business from the Premises until the inability ceases.

10.7 No Access in Emergency continued

This clause 10.7 applies where clause 10.6 applies and the Premises is not totally or partially destroyed or damaged. Either party may terminate this Lease by giving 10 Business Days written notice to the other if:

- (a) the Tenant is unable to gain access to the Premises for 12 months; or
- (b) the party that terminates this Lease can at any time prior to termination establish with reasonable certainty that the Tenant is unable to gain access to the Premises for that period.

Any termination shall be without prejudice to the rights of either party against the other.

11. HOLDING OVER AND ABANDONMENT OF PREMISES

11.1 Holding Over

If with the consent of the Landlord the Tenant continues in occupation of the Premises after the expiration or sooner determination of the Term the tenancy will continue as a monthly tenancy only on and under the same covenants and conditions as those contained in this Lease (with any changes necessary to make this Lease appropriate to a monthly tenancy) at a monthly rental equal to a monthly proportion of the Rent payable immediately before the expiration of the Term (together with all other payments as provided in this Lease

proportionate to the period of holding over) and determinable by 1 month's written notice by either party to the other expiring on any day.

11.2 Mere Entry by Landlord Not to Constitute Forfeiture

If the Tenant vacates the Premises during the Term (whether or not the Tenant ceases to pay the Rent or other money payable under this Lease):

- (a) acceptance of the keys and/or entry into the Premises by the Landlord or by any person on the Landlord's behalf to inspect or to show the Premises to prospective tenants and/or the advertising of the Premises for reletting will not constitute a re-entry or forfeiture or waiver of the Landlord's right to recover in full all Rent and other money from time to time payable under this Lease; and
- (b) any entry by the Landlord into the Premises in the meantime will be deemed an entry by the leave and licence of the Tenant.

12. INDEMNITIES

12.1 Release of Landlord

The Tenant agrees to occupy use and keep the Premises at the risk of the Tenant and releases to the full extent permitted by law the Landlord from all claims and demands in respect of or resulting from any accident, damage or injury occurring in the Premises, except to the extent caused or contributed to by the Landlord or its employees, agents, contractors or others for whom the Landlord is liable.

12.2 Indemnity by Tenant

The Tenant must indemnify the Landlord from and against those actions, claims, demands, proceedings, judgments, orders, decrees, damages, costs, losses (but excluding any consequential losses) and expenses which the Landlord suffers or incurs or for which the Landlord whether during or after the Term is liable to the extent resulting directly from:

- (a) loss, damage or injury from any cause whatever to property or person in or outside the Premises to the extent caused or contributed to by the negligence or default of the Tenant or the Tenant's Agents;
- (b) the negligent use, misuse, waste or abuse by the Tenant or the Tenant's Agents of any Services and/or Essential Services to the Premises; and
- (c) the overflow leakage or escape of water, gas, electricity or any other substance in or from the Premises caused or contributed to by the Tenant or the Tenant's Agents,

except to the extent:

- (d) caused or contributed to by the Landlord or its employees, agents, contractors or others for whom the Landlord is liable (including a failure to procure insurance); and/or
- (e) the Landlord is entitled to be indemnified by insurance less the excess and/or deductible of any such insurance claim.

12.3 Limitation on Tenant's Indemnity

Nothing contained in this Lease and in particular clauses 12.1 and 12.2 requires the Tenant to indemnify the Landlord against any action, liability, penalty, claim or demand to the extent to which the Landlord would otherwise be liable or subject.

12.4 Landlord to Mitigate

The Landlord must at all times do all things reasonably practicable to mitigate its losses resulting from any of those circumstances specified in clause 12.2 and the Landlord's entitlement to claim on any indemnity provided by the Tenant in this Lease will be subject to the Landlord's obligation to do so.

13. RENT REVIEW

13.1 Market Review of Rent

Where Item 7 specifies that the Rent is to be reviewed to market in accordance with this clause 13.1, then on each of the dates of commencement of those years specified in Item 7 (each of those dates being called "**Market Review Date**") the annual Rent may be reviewed in accordance with clauses 13.2 to 13.6 (inclusive).

13.2 Market Review Procedure

- (a) On or during the period commencing 2 months immediately preceding each Market Review Date and ending on that Market Review Date, the Landlord may serve a written notice ("**Market Review Notice**") on the Tenant advising the amount which the Landlord considers to be the current annual market rental value appropriate for the Premises as from the relevant Market Review Date. Time is of the essence under this clause 13.2(a).
- (b) If the Landlord has not served a Market Review Notice on the Tenant in the time required under clause 13.2(a), then:
 - (i) except where clause 13.2(b)(ii) applies, the Landlord may not subsequently serve a Market Review Notice in respect of the relevant Market Review Date; and
 - (ii) the Tenant may on or before the date which is 2 months after the Market Review Date, serve on the Landlord written notice of the Tenant's intention to have the Rent reviewed and require the Landlord to serve a Market Review Notice on the Tenant within 10 Business Days after service of the Tenant's notice. Time is of the essence under this clause 13.2(b)(ii) and if the Tenant does not serve a notice on the Landlord within the timeframe specified in this clause, the Rent from the relevant Market Review Date will not change and will be the same as that payable prior to the relevant Market Review Date.
- (c) Unless within 20 Business Days from the service of the Market Review Notice the Tenant gives to the Landlord written notice that the Tenant disagrees with the amount stated in the Market Review Notice, the amount so stated will become the Rent reserved by this Lease as from that particular Market Review Date.

13.3 Determination by Valuer

If the Tenant disagrees with the amount stated in the Market Review Notice and notifies the Landlord within the time and in the way specified in clause 13.2(c) then:

- (a) the current annual market rental value of the Premises will be determined by a Valuer to be appointed by the Landlord and the Tenant (or failing agreement within 28 days of the Landlord's receipt of the Tenant's notice under clause 13.2(c)) then appointed by the President for the time being of the Relevant Law Society or its successor (or his or her nominee);
- (b) each party may make submissions to the Valuer;
- (c) the Landlord (unless the Tenant has initiated the market review under clause 13.2(b)(ii), in which case the Tenant) must procure a reputable and suitably qualified surveyor having not less than 5 years' experience and who is approved by both parties (or failing agreement within 44 days of the service of the Market Review Notice, appointed by the President of the Relevant Law Society) to prepare a survey plan (in electronic and hard copy) of the Lettable Area of the Premises and provide a hard and electronic copy to the parties and the Valuer within 28 days of the Valuer's appointment. Where the parties agree that there is already a current survey of the Lettable Area of the Premises then the parties may agree to waive this requirement, and either party must then provide the Valuer with a copy of that survey plan; and
- (d) subject to clauses 13.5 and 13.6, the current annual market rental value so determined will become the Rent reserved by this Lease with effect as from the relevant Market Review Date.

13.4 Criteria for Valuer's Determination

In determining the current annual market rental value under clause 13.3 the Valuer must:

- (a) be deemed to be acting as an expert and not as an arbitrator;
- (b) exclude the value of any goodwill attributable to the Tenant's business and the value of the Tenant's fixtures and fittings in the Premises;
- (c) exclude any deleterious condition of the Premises if that condition results from any breach of any term of this Lease by the Tenant;
- (d) exclude any use or purpose for which the Premises may be used other than those permitted to be carried on from the Premises as at the Commencement Date under the relevant local Authority zoning applicable for the Premises except to the extent that such use is actually being undertaken at the Premises with the consent of the Landlord;
- (e) exclude the value of any improvements or fixtures erected or installed by the Tenant or any alterations or additions made to the Premises at the Tenant's expense (including the Fit Out Works);
- (f) have regard to the current annual open market rental value of comparable premises in the locality based on a lease between a willing but not anxious landlord and a willing but not anxious tenant;
- (g) have regard to the terms and conditions of this Lease;

- (h) have regard to incentives or concessions used to secure a tenant in the market place;
- (i) have regard to periods of rent abatement or reimbursement used to secure a tenant in the market place;
- (j) have regard to the Lettable Area of the Premises as shown on the survey plan provided under clause 13.3(c), and
- (k) deliver his or her determination to the Landlord and Tenant within 28 days of the later of receiving the parties' submissions under clause 13.3(b) (if any are made) or receiving the survey plan under clause 13.3(c).

13.5 Floor on Rent Increase

- (a) Despite any contrary provisions in this Lease, the Rent payable for the year immediately following each Market Review Date must not be less than the Rent payable for the year immediately preceding the relevant Market Review Date.

13.6 Ceiling on Rent Increase

- (a) Despite any contrary provisions in this Lease, the Rent payable for the year immediately following each Market Review Date must not exceed 110% of the Rent payable for the year immediately preceding the relevant Market Review Date.

13.7 Costs of Valuer's Determination

The costs of determination of the current annual market rental value under clause 13.3 will be borne equally by the Landlord and Tenant.

13.8 Fixed Review Date

Where Item 7 specifies that the Rent will be increased in accordance with this clause 13.8, then on each of the dates of commencement of those years specified in Item 7 (each of those dates being called "**Fixed Rent Review Date**") the Rent will be increased to an amount equal to 103% of the Rent payable for the year immediately preceding the relevant Fixed Rent Review Date.

13.9 Payment of Rent Pending Review

Where any review of Rent to market under this clause 13 has not been completed by the relevant Market Review Date then:

- (a) pending completion of the review the Tenant will pay as rent the amount of the Rent payable immediately before the Market Review Date; and
- (b) on completion of the review the amount (if any) by which the instalments of the Rent paid from the Market Review Date are different must be paid by the Tenant to the Landlord or by the Landlord to the Tenant (as the case may be) no later than the date on which the next instalment of Rent is payable under this Lease.

14. FURTHER TERMS

14.1 Tenant's Right to Further Terms

Subject to clause 14.2, the Landlord will renew this Lease for the next of the Further Terms if the Tenant gives the Landlord a written request for renewal ("**Option Notice**") not less than 9 months (time being of the essence) before this Lease expires.

14.2 Landlord May Refuse Renewal

The Landlord may refuse to renew this Lease if:

- (a) the Tenant has not substantially remedied any material default under this Lease about which the Landlord has given the Tenant written notice; or
- (b) the Tenant has materially defaulted persistently under this Lease throughout the Term and the Landlord has given the Tenant written notice of the defaults.

14.3 Renewed Lease

Following the giving of an Option Notice the Landlord and the Tenant will promptly execute the renewed lease which will contain the same terms and conditions as this Lease except the renewed lease will:

- (a) commence on the day after this Lease expires;
- (b) be at a Rent determined in accordance with clause 13.1;
- (c) provide that the Rent Commencement Date is the Commencement Date of the renewed lease;
- (d) not contain those terms or conditions which have become redundant or which are no longer capable of being applicable to the renewed lease;
- (e) omit from Item 6 the Further Term first specified in Item 6, renumber each of the paragraphs accordingly (starting from (a)) and omit any provision for renewal in the case of the last Further Term; and
- (f) contain any necessary changes to the Reference Schedule.

15. ESSENTIAL TERMS

15.1 Essential Covenants by Tenant

The Tenant acknowledges that each of the covenants by the Tenant specified in this clause is an essential and fundamental term of this Lease:

- (a) the covenant to pay the Rent throughout the Term PROVIDED THAT the failure to pay the Rent will be a breach of an essential term only if that failure continues for more than 10 Business Days after the due date for payment of each monthly instalment of the Rent as provided in clause 3.1;
- (b) the covenant to pay Outgoings as provided in clause 3.2;
- (c) the covenant dealing with the use of the Premises as set out in clause 4.1;

- (d) the covenant dealing with alterations to the Premises without approval as set out in clause 4.5;
- (e) the covenant dealing with compliance with law as set out in clause 4.10;
- (f) the covenant dealing with repair as set out in clause 5.1; and
- (g) the covenants restricting assignment and other dealings with this Lease as set out in clause 7.1.

15.2 No Waiver

In respect of the Tenant's obligation to pay Rent, the acceptance by the Landlord of arrears or of any late payment of Rent will not constitute a waiver of the essentiality of the Tenant's obligation to pay Rent.

15.3 Damages

The Tenant will compensate the Landlord in respect of any breach of an essential term of this Lease and the Landlord is entitled to recover damages from the Tenant in respect of those breaches. The Landlord's entitlement under this clause is in addition to any other remedy or entitlement to which the Landlord is entitled (including to terminate this Lease).

15.4 Repudiation

If the Tenant's conduct (whether acts or omissions) constitutes a repudiation of this Lease (or of the Tenant's obligations under this Lease) or constitutes a breach of any Lease covenants, the Tenant will compensate the Landlord for the loss or damage suffered because of the repudiation or breach.

15.5 Landlord to Mitigate

If the Tenant vacates the Premises, whether with or without the Landlord's consent, the Landlord must make reasonable endeavours to lease the Premises to a replacement Tenant at a reasonable rent and on reasonable conditions. The Landlord and the Tenant must co-operate with each other to enable the Landlord to do so. The Landlord's entitlement to rent or damages will be subject to the Landlord's obligation to do so.

15.6 Set Off

The Tenant is entitled to set off any amounts due by the Landlord to the Tenant under this Lease pursuant to a judgement of the Court or determined as a result of a lawfully conducted adjudication but unpaid, against the Rent payable by the Tenant to the Landlord under this Lease.

16. GENERAL

16.1 Not used

16.2 Notices

- (a) Any notice or statement to be given or demand to be made on either party under this Lease:
 - (i) will be effectively signed on behalf of a party if it is executed by that party, any of its officers, its solicitor or its duly constituted attorney; and
 - (ii) may be served by being delivered personally or being left at or posted in a prepaid envelope or wrapper to the address of the other party specified in Item 14 or the registered office or place of business or residence of the other party last known to the sender or by being sent to the other party by facsimile transmission to the facsimile number of the other party specified in Item 14 or last notified to the sender.
- (b) A demand or notice if:
 - (i) posted will be deemed served 2 Business Days after posting;
 - (ii) sent by facsimile transmission will be deemed served on conclusion of transmission PROVIDED THAT the recipient's receipt appears on the sender's copy of the notice or on the activity record print-out of the sender's machine or the activity record print-out of the sender's machine shows a successful transmission of an appropriate size document to the recipient's facsimile machine on the date indicated on the print-out; and
 - (iii) sent via email, will be taken to have been served, if sent between the hours of 9am and 5pm NZT on a Business Day, at the time of transmission and (if receipt is disputed) the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice.
- (c) If a notice is served or received on a day that is not a Business Day or after 5.00 pm NZT on a Business Day it will be deemed to be given or served on the next Business Day.

16.3 Waiver

- (a) A right may only be waived in writing, signed by or on behalf of the party giving the waiver.
- (b) A failure by one party to take action in the event of a breach of this Lease by another party (whether express or implied) will not operate as a waiver of another or continuing breach of any other condition of this Lease (whether express or implied) nor prevent that party from later taking action as a result of that breach.

16.4 Reading Down and Severance of Invalid Provisions

The provisions of this Lease are to be interpreted so as not to infringe the provisions of any Laws. If any provision of this Lease does infringe any Laws it will be read down to the extent necessary to give it, if possible, a valid operation of a partial nature but if it cannot be

so read down it will be deemed to be void and severable. If any provision is held invalid by a court that provision will be disregarded and the rest of this Lease will continue in force.

16.5 Consents

Except where this Lease expressly provides otherwise, where under any of the provisions of this Lease the doing of any act or thing or the carrying out or the refraining from any activity or procedure is prohibited without or dependent on obtaining the Landlord's or the Tenant's consent or approval the Landlord or the Tenant (as the case may be) must give or refuse its consent or approval within 14 days of the written request for it failing which it will be deemed to have given its consent or approval and the Landlord or the Tenant (as the case may be) must not unreasonably withhold or refuse its consent or approval and must where it is possible for it to do so provide its consent or approval subject to such conditions as it may reasonably impose.

16.6 Access

Despite any provision to the contrary, whenever the Landlord enters the Premises in accordance with its rights under this Lease, the Landlord must:

- (a) access the Premises at reasonable times;
- (b) provide the Tenant with reasonable notice (except in the case of emergency when no notice will be required); and
- (c) not cause any undue inconvenience to the Tenant nor materially detrimentally affect the Tenant's use and enjoyment of the Premises or the business conducted by the Tenant from the Premises.

16.7 Mortgagee's Consent

- (a) The Landlord warrants to the Tenant that any mortgagee of the land upon which the Premises is erected has consented to the Landlord entering into, and granting to the Tenant, this Lease on terms and conditions acceptable to the Tenant (acting reasonably). The Landlord will if requested to do so provide to the Tenant a true and complete certified copy of such consent granted by the mortgagee.
- (b) The warranty and obligation in clause 16.7(a) is an essential term of this Lease. In the event that the warranty in clause 16.7(a) is not accurate, or the obligation in clause 16.7(a) is breached by the Landlord, the Tenant may, without prejudice to any other rights it may have, by notice in writing elect to terminate this Lease as a result of such inaccuracy or breach (in which event this Lease will terminate on the service of the notice).

16.8 Exercise of Rights

- (a) A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy.
- (b) The rights, powers and remedies provided in this Lease are cumulative with and not exclusive of the rights, powers or remedies provided by law.
- (c) A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or an exercise of any other right, power or remedy.

16.9 Guarantee

The Guarantor agrees to guarantee the obligations of the Tenant pursuant to this Lease on the terms and conditions set out in Schedule Two.

16.10 Governing Law

This Lease is governed by, and will be construed in accordance with, the Laws from time to time in force in New Zealand and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand and courts of appeal from them.

16.11 Counterparts

This Lease may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same Lease. A party may enter into this Lease by signing a counterpart copy and sending it to the other party, including by facsimile or email.

16.12 Electronic signatures

The parties agree that either party may sign this Lease by electronic means. If a party signs this Lease by electronic means, that party represents and warrants to the other party that the form of the electronic signature complies with the requirements set out in section 228 of the Contract and Commercial Law Act 2017.

16.13 GST

(a) For the purposes of this clause:

"**the Act**" means the Goods and Services Tax Act 1985;

"**the basic consideration**" means the consideration (whether in money or otherwise) to be paid or provided by the Tenant for any supply of goods and services by or on behalf of the Landlord under this Lease (other than tax payable pursuant to this clause);

"**GST**" means goods and services tax charged in accordance with the Act; and

"**goods**", "**services**" and "**taxable supply**" have the meanings respectively assigned to them by the Act.

(b) The basic consideration is not inclusive of GST.

(c) In addition to the basic consideration, the Tenant will pay to the Landlord the amount of all GST chargeable on any taxable supply by the Landlord under this Lease.

(d) Any amount payable by the Landlord pursuant to clause 16.13(c) shall:

(i) be payable on the date on which the relevant supply is deemed to take place by virtue of the Act; and

(ii) be recoverable and bear interest as though it were Rent.

EXECUTED as a deed

[INSERT LANDLORD ENTITY] by:

Signature of director

Signature of director

Name of director

Name of director

ALTO PACKAGING LIMITED by:

Signature of director

Signature of director

Name of director

Name of director

PACT GROUP HOLDINGS LTD by:

Signature of director

Signature of director

Name of director

Name of director

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SCHEDULE ONE
Premises Condition Report

SCHEDULE TWO

GUARANTEE

In consideration of the Landlord entering into this Lease with the Tenant the Guarantor covenants and agrees with the Landlord that:

- 1) the Guarantor is bound by all of the covenants on the part of the Tenant herein expressed and implied and hereby guarantees to the Landlord the due and punctual payment of the Rent and the due and regular performance of all and each of the said covenants and although as between the Tenant and the Guarantor the Guarantor may be merely a surety yet as between the Guarantor and the Landlord the Guarantor is a principal debtor (jointly and severally with the Tenant);
- 2) the Guarantor's liability and obligations to the Landlord shall not be affected or diminished by any indulgence postponement or allowance of time granted by the Landlord to the Tenant or by any assignment of the interest of the Tenant or by any consent by the Landlord to any assignment or by the execution of any covenant to observe perform and keep the covenants herein expressed or implied or by the fact that the Guarantor is not a party to any agreement or arbitration fixing rental or by any other circumstance which would affect the liability of one liable as a surety only;
- 3) as between the Guarantor and the Landlord, the Guarantor hereby waives all rights (whether of subrogation or otherwise) as surety, legal, equitable, statutory or otherwise and agrees to accept responsibility for the payments and observances and performances guaranteed as if the Guarantor were primarily liable therefore;
- 4) this guarantee shall continue to be binding upon the Guarantor and the Guarantor's executors, administrators and successors and assigns and shall at all times be enforceable until all Rent and other moneys payable by the Tenant shall have been paid and until all other obligations and indemnities shall have been performed observed and satisfied despite the winding up, liquidation, dissolution, death or bankruptcy of the Tenant or of the Guarantor;
- 5) as a separate and independent stipulation, the Guarantor hereby further agrees that all moneys not recoverable from the Guarantor on the footing of a guarantee whether by reason of any legal limitation, disability or incapacity on or of the Tenant or by reason of any other act or circumstance whatsoever whether known to the Landlord or not shall nevertheless be recoverable from the Guarantor as sole or principal debtor;
- 6) the Guarantor agrees that the Landlord shall not be obliged to give the Guarantor copies of any notice served by the Landlord on the Tenant pursuant to this Lease or of any breach by the Tenant of the Tenant's obligations under this Lease and that nevertheless the Guarantor shall be and shall remain liable in respect of any such breach by the Tenant;
- 7) the covenants made or given by the Guarantor shall not be conditional or contingent in any way or dependent upon the validity or enforceability of the covenants of any other person and shall be and remain binding despite that any other person shall not have executed or duly executed this Lease or this guarantee and indemnity;

- 8) the Guarantor hereby indemnifies the Landlord against any losses and expenses incurred by the Landlord as a result of any breach of this Lease by the Tenant; and
- 9) this guarantee shall extend to any holding over period by the Tenant.

SCHEDULE 6
Form of Seismic Agreement

As attached.

[OYSTER ENTITY]

(Landlord)

ALTO PACKAGING LIMITED

(Tenant)

**AGREEMENT IN RESPECT OF SEISMIC WORKS AND
DEMOLITION OF BUILDINGS**

**THOMPSON
BLACKIE
BIDDLES
LAWYERS**

PAL-110800-4-368-1

PARTIES

1. **[OYSTER ENTITY]** (company number [*to be inserted*]) (**Landlord**)
2. **ALTO PACKAGING LIMITED** (company number 1833598 (**Tenant**))

INTRODUCTION

- A** The Landlord will acquire the Premises pursuant to the Land SPA. The Lease will commence on the Settlement Date pursuant to the Land SPA.
- B** The parties have identified that certain buildings at the Premises have an Earthquake Rating that is less than 67%.
- C** The parties have agreed that the Landlord shall undertake works to the Seismic Buildings to increase the Earthquake Rating to at least 67%. The Tenant has agreed to pay for the initial cost of such works, such funds to be held by the Stakeholder for payment in accordance with the provisions set out in this agreement.
- D** The Landlord wishes to demolish the Redundant Buildings. The parties have agreed that the Landlord may demolish the Redundant Buildings in accordance with the provisions set out in this agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions: In this agreement unless the context otherwise requires:

Ancillary Works means additional or ancillary works that are required in order to procure the Consents from the relevant Authority to undertake the Strengthening Works and/or a code compliance certificate in respect of the Strengthening Works;

AS/NZS 1170.5 means the NZS 1170 Part 5 'Earthquake actions - New Zealand' (as amended by Amendment No.1);

Authority means the local body, government or other authority having jurisdiction over or authority for the Premises, its use or occupation as at [14 August 2020];

Business Day has the same meaning as "working day" in the Property Law Act 2007;

Commencement Date has the meaning in the Lease;

Consents has the meaning set out in clause 2.3(a);

Construction Contract means the construction contract entered into with the Contractor pursuant to clause 2.4(c);

Contractor means the relevant contractor to the respective Construction Contract pursuant to clause 2.4(c);

COVID-19 means the novel coronavirus disease 2019 or similar pandemic;

Delay Event means any of the following events:

- (a) any delay arising as a result of any Expert determination required under clause 6;
- (b) compliance by the Landlord with any notice issued by an Authority in respect of the Seismic Works which is not provided for under any Consent and which could not have been reasonably foreseen by the Landlord;
- (c) any delay in the Landlord obtaining the Consents provided the Landlord has used its reasonable endeavours to procure such Consents;
- (d) a failure by the Tenant to provide any consent or approval within the timeframe contemplated within this agreement; or
- (e) a delay caused by any act or omission of the Tenant which is in breach of this agreement and/or the Lease;

provided that the Landlord has used all reasonable endeavours to mitigate the extent of such delays.

Detailed Design shall mean a detailed design as prescribed in the design documentation guidelines issued by the New Zealand Construction Industry Council 2016 in respect of the Seismic Works.

Dough Room Roof means the roof adjacent to the dough room located at the Property, as identified on the Plan.

Earthquake Rating means the percentage of a building's strength relative to the "New Building Standard" assessed in accordance with AS/NZS 1170.5 (assuming a building importance level 2), the EPB Methodology and the Guidelines.

EPB Methodology means the methodology for identifying earthquake-prone buildings set by the Ministry of Business, Innovation and Employment as at [14 August 2020];.

ETC shall have the meaning set out in clause 2.4(b)(iii);

Force Majeure Event means any event or circumstance which is beyond the reasonable control of the Landlord which could not reasonably have been foreseen or provided for, and which, or any consequences of which, render the affected party unable to perform or otherwise delays performance of its obligations under this agreement which includes (without limitation):

- (a) the unavailability of the Contractor or materials required in order to complete the Seismic Works (except to the extent that such materials are capable of substitution and such substitution comprises a variation that is permitted or has otherwise been approved by the Tenant pursuant to clause 2.5);

- (b) adverse unanticipated site conditions which result in the Seismic Works being delayed beyond the period originally contemplated by the programme, approved pursuant to clause 2.2(b);
- (c) unavailability or slow supply of materials where such unavailability or slow supply is caused, contributed to, by and/or arising as a result of COVID-19; or
- (d) any delay caused, contributed to, by and/or arising as a result of COVID-19 which may include (without limitation):
 - (i) any restriction on access to the Building or any part thereof (which for the avoidance of doubt includes access by any contractor, consultant or other person reasonably required to access the Building for any purpose related to the Seismic Works) by virtue of an Authority's directive or recommendation; and
 - (ii) a delay in the availability of any persons required in order to properly and fully undertake the Seismic Works in a timely manner or otherwise comply with the Landlord's obligations under this agreement;

Guidelines means Part A and Part C of 'The Seismic Assessment of Existing Buildings' Technical Guidelines for Engineering Assessments dated July 2017 produced by the New Zealand Society for Earthquake Engineering, the Structural Engineering Society and NZ Geotechnical Society, in conjunction with the Ministry of Business, Innovation and Employment and the Earthquake Commission.

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

Land SPA means the agreement for sale and purchase of the property at 75 Wainui Road, Wellington (currently contained in records of title WN458/158, WN465/182, 871447) between Flight Limited (as vendor) and the Landlord (as purchaser) dated [*insert*];

Lease means the lease of the Premises to be entered into by the Landlord (as landlord), the Tenant (as tenant) and PACT Group Holdings Ltd (ASX: PGH; ABN 55 145 989 644) (as guarantor) pursuant to the Land SPA;

Plan means the plan annexed to this agreement as Annexure 1 which identifies the Redundant Buildings and the Dough Room Roof;

Practical Completion means when the ETC certifies to both the Tenant and the Landlord that the Seismic Works of a Seismic Building (or to the extent necessary, to any interconnected or related group of Seismic Buildings) have been completed in accordance with the relevant Construction Contract and the relevant Seismic Building (or to the extent necessary, to any interconnected or related group of Seismic Buildings) can be occupied by the Tenant or other lawful occupier without material inconvenience and otherwise subject only to minor work that does not prevent lawful occupation and use having regard to all relevant statutory requirements including those under the Health and Safety at Work Act 2015 and the Building Act 2004;

Redundant Buildings means the buildings which may be demolished by the Landlord in accordance with this agreement and which are shown outlined in red on the Plan;

Seismic Buildings means (unless otherwise agreed between the parties) those buildings at the Premises which are identified in the Seismic Report as having an Earthquake Rating of less than 67% (together with, at the Landlord's sole and absolute discretion, any additional buildings on the premises identified, in the seismic reports (if any) obtained by the Landlord as part of its due diligence investigations undertaken pursuant to the Land SPA, as having an Earthquake Rating of less than 67%) excluding the Redundant Buildings and excluding the Silos;

Seismic Report means the detailed seismic assessment prepared by Aurecon dated April 2019 and which identifies those buildings on the Land that have an Earthquake Rating of less than 67%;

Seismic Works means together, all of the:

- (a) Strengthening Works; and
- (b) Ancillary Works;

Silos means the silos located within the building on the Premises known as the silo building;

Step in Right means a right in favour of the Tenant to step into the role of principal under the Construction Contract(s) for the Seismic Works in accordance with clause 2.12.

Strengthening Work means the work required to increase the Earthquake Rating of the respective Seismic Building to at least 67%;

Sunset Date means, subject to clause 2.10, the date that is 3 years following the Commencement Date; and

Tenant's Seismic Contribution means the amount of NZD\$2.36 million (plus GST, if any) to be paid by the Tenant for the purposes of funding the Seismic Works in accordance with clause 2.11.

1.2 **Words, references and derivatives**

In this agreement, unless the context otherwise requires:

- (a) all words and phrases throughout this agreement will have the meanings ascribed to them as set out in clause 1.1 or the meaning ascribed to them in the Lease;
- (b) expressions defined in the main body of this agreement have the defined meaning in the whole of this agreement including the introduction and the schedules;
- (c) the schedules and their contents have the same effect as if set out in the body of this agreement;
- (d) the singular includes the plural and vice versa;

- (e) a reference to a person includes references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
- (f) references to parties are references to parties to this agreement and include each party's executors, administrators and successors; and
- (g) any provision of this agreement to be performed or observed by two or more persons binds those persons jointly and each of them severally.

1.3 **Statutes and regulations**

References to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise.

2. **SEISMIC WORKS**

2.1 **Seismic Works**

- (a) The parties acknowledge that the Seismic Report was prepared prior to the Commencement Date and that the Seismic Works will be undertaken by the Landlord to the Seismic Buildings to ensure such buildings have an Earthquake Rating of at least 67% NBS following completion of the Seismic Works in accordance with this clause 2.
- (b) The Landlord shall (subject to clause 2.10) use all commercially reasonable endeavours to achieve Practical Completion of the Seismic Works to all of the Seismic Buildings by not later than 36 months following the Commencement Date.
- (c) The Tenant shall provide such cooperation and assistance as may be reasonably necessary to assist the Landlord to comply with its obligations pursuant to this clause 2.

2.2 **Detailed Design for Seismic Works**

- (a) Promptly following the Commencement Date, the Landlord shall subject to clause 2.4 and otherwise in accordance with the relevant provisions of this clause 2:
 - (i) engage a seismic consultant and any other professionals required to:
 - A. determine the Strengthening Works that will be required in respect of each Seismic Building; and
 - B. determine the Ancillary Works required in respect of each Seismic Building;
 - (ii) procure the Detailed Design of the Seismic Works and instruct preparation of a programme and methodology for the undertaking of the Seismic Works

(on a building by building basis) which are consistent with the requirements of the construction contract(s) as set out in clause 2.4(b).

- (b) The Landlord will provide the Tenant with a copy of the Detailed Design and a copy of the programme and methodology to the Tenant for approval (such approval not to be unreasonably withheld or delayed and to be provided in respect of the programme and methodology if the programme and methodology comply with all relevant requirements of clause 2.4(b)) provided that if the Tenant has not notified the Landlord that it either approves or withholds its approval to the Detailed Design and/or the programme and methodology within 10 Business Days of being provided with a copy of the Detailed Design and/or programme and methodology, the Tenant shall be deemed to have approved the Detailed Design and/or programme and methodology. If such approval is withheld, the Tenant must advise the Landlord in writing the reasons for such disapproval and specify the required modifications. In the event that the parties cannot agree upon the Detailed Design and/or programme and methodology, then either party may request that the Detailed Design and/or programme and methodology be determined by a suitably qualified person in accordance with the provisions of clause 6. The Landlord acknowledges and agrees that it shall (and it shall instruct its consultants and contractor(s) to) engage in good faith and on an open book basis, with the Tenant, when developing the programme and methodology (and where any changes are proposed to such programme and methodology) with a view to incorporating reasonable suggestions to assist in minimising, as far as reasonably practicable, the inconvenience and disruption caused to the Tenant.

2.3 Consents for Seismic Works

- (a) Following the Detailed Design, programme and methodology being approved by the Tenant (or an Expert as the case may be), the Landlord shall promptly apply for and obtain all necessary building consents, resource consents and any other consents required from any relevant Authority required for construction of the Seismic Works (**Consents**). The Landlord shall provide a copy of the consents obtained to the Tenant within 5 Business Days after they have been issued by the relevant Authority.
- (b) If the Consents are issued subject to any conditions that the Landlord does not accept (acting reasonably) the Landlord may seek a variation to those conditions and/or the Detailed Design to accommodate the conditions, provided that the Landlord must first provide a copy of the proposed variation to the Tenant for approval in accordance with the process set out in clause 2.2(b).

2.4 Consultants, Contractors and Suppliers

- (a) The Landlord will appoint consultants, contractors and suppliers to undertake the Seismic Works such parties to be reputable and experienced in the undertaking of works in the nature, scale and type of the Seismic Works. Following the respective appointment(s), the Landlord shall provide the Tenant with written notice of the appointed consultants, contractors and suppliers.
- (b) The terms of the construction contract(s) required to complete the Seismic Works shall be based upon NZS:3910:2013 and shall include or provide for (as applicable):

- (i) a due date for Practical Completion of the works which is consistent with the obligation of the Landlord as set out in clause 2.1(b);
 - (ii) the contractor to complete the Seismic Works using a methodology and programme which minimises, as far as reasonably practicable, the inconvenience and disruption to and interference with use of the Premises by the Tenant and the Tenant's Agents and to engage with the Tenant in a good faith and on an open book basis when developing (and making any changes to) the programme and methodology with a view to incorporating the Tenant's reasonable suggestions to achieve that outcome;
 - (iii) a suitably qualified person to act as engineer to the contract (the "**ETC**");
 - (iv) such other special conditions as may be appropriate;
 - (v) all usual warranties (including a weathertightness warranty of no less than 10 years (if relevant having regard to the nature of the Seismic Works));
 - (vi) a requirement for the contractor to retain reasonable insurance cover;
 - (vii) a reasonable retention regime as would be required by a prudent principal undertaking works in the nature of the Seismic Works;
 - (viii) a reasonable regime which requires the ETC to certify (which certificate shall be addressed to both the Landlord and the Tenant) the payments due to the Contractor in accordance with the construction contract and when all of the Seismic Works have achieved Practical Completion;
 - (ix) a defects liability period of not less than 12 months;
 - (x) a reasonable liquidated damages regime; and
 - (xi) a Step in Right on such terms as the Tenant may reasonably require.
- (c) The Tenant shall have a right to approve the Construction Contract(s) (such approval not to be unreasonably withheld if the Construction Contract(s) comply with the requirements contained in clause 2.4(b)). If the Tenant has not notified the Landlord that it either approves or withholds its approval within 5 Business Days of being provided with the Construction Contract, the Tenant shall be deemed to have approved the relevant construction contract. If such approval is withheld, the Tenant must advise the Landlord in writing the reasons for such disapproval and specify the modifications required by the Tenant. Following approval, deemed approval or determination by a suitably qualified person in accordance with clause 6 (who shall determine the matter in the event of any dispute) the Landlord shall award the Construction Contract(s) to the relevant contractor(s).
- (d) The Landlord shall, when appointing any consultant, contractor or supplier to undertake the Seismic Works, procure from those parties a deed of covenant in favour of the Tenant. Such deed of covenant shall confirm that those parties owe a duty of care to the Tenant equivalent to that owed to the Landlord and in doing so confirm that the Tenant may rely upon the advice (or other work output) of the

relevant party. Such deed shall also acknowledge that the Landlord is, subject to clause 2.11(a), solely responsible for payment of the relevant consultant, contractor or supplier or other third party.

2.5 Variations

Once approved, the Landlord shall not vary the Detailed Design or the terms of the Construction Contract without first obtaining the written approval of the Tenant. Such approval shall:

- (a) not be unreasonably withheld; and
- (b) in the case of a variation to the Detailed Design, be given where the variation is to substitute any materials required to give effect to the Detailed Design which are not reasonably procurable and such substituted material are of the same, higher or better quality and nature as is reasonably practicable or otherwise required in order to comply with any law or regulation or condition of the Consents;

provided that if the Tenant has not notified the Landlord that it either approves or withholds its approval to any such variation within 5 Business Days of the Landlord providing notice of the proposed variation, the Tenant shall be deemed to have approved the variation. If such approval is withheld, the Tenant must advise the Landlord in writing the reasons for such disapproval and specify the modifications required by the Tenant. Following approval, deemed approval or determination by a suitably qualified person in accordance with clause 6 (who shall determine the matter in the event of any dispute) the Landlord shall instruct the variation.

2.6 Seismic Works

- (a) Once the Landlord has:
 - (i) finalised the Detailed Design, programme and methodology pursuant to clause 2.2(b);
 - (ii) obtained the Consents (and such Consents, or variations of such Consents, having been approved by the Landlord); and
 - (iii) entered into the Construction Contract;

the Landlord shall cause the Seismic Works to be completed:

- (iv) in all material respects in accordance with the Detailed Design (subject to clause 2.5);
- (v) in a good and workmanlike manner with due care and skill to accepted architectural and engineering standards;
- (vi) in all material respects in accordance with the programme (save for extensions of time as determined by the ETC in accordance with the Construction Contract) and the methodology approved (or deemed approved) by the Tenant; and

- (vii) in accordance with all proper requirements of all relevant Authorities, including the obtaining of a code compliance certificate and a compliance schedule from the relevant Authority on completion of the Seismic Works.
- (b) The Landlord shall keep the Tenant regularly informed of the progress of the Seismic Works.

2.7 **Project Control Group (PCG)**

- (a) The Landlord, the Tenant, the ETC and the contractor will constitute a project control group ("**PCG**") whose primary responsibility will be to facilitate and co-ordinate the Seismic Works in accordance with this clause 2.
- (b) The Landlord and the Tenant shall each appoint not less than one individual from time to time to attend the PCG.
- (c) The PCG will meet at such times as and when reasonably requested by any member of the PCG but in any event no less than once a month following the Commencement Date. The Landlord's representative at the PCG shall chair the meetings and shall ensure that due notice of all meetings is given to all other members of the PCG, that the meetings are held with appropriate formality and that detailed minutes of the meetings are kept and circulated to all members of the PCG following each meeting and prior to the holding of the next meeting. Any member of the PCG may on providing not less than 3 Business Days prior written notice to the others, require the convening of a special meeting of the PCG. Any member of the PCG may require the attendance at whole or at part of the PCG meeting of any other relevant person.
- (d) Decisions on the part of the PCG will be by unanimous resolution. However no decision of the PCG shall have the effect of varying the terms of this agreement nor, without the authority of the party affected, give rise to any additional liability on the part of such party.

2.8 **Practical completion**

- (a) Without prejudice to clause 2.4(b)(viii), the Landlord shall procure the ETC (or other suitably qualified person), in consultation with the Tenant, to issue a certificate of practical completion on the date the Seismic Works in respect of each Seismic Building (or to the extent necessary any interconnected or related group of Seismic Buildings) reach a state of Practical Completion. The certificate shall be issued in the joint names of the Landlord and the Tenant. The Tenant and the Landlord shall arrange a pre-certification inspection at least 5 Business Days prior to the date the Landlord anticipates Practical Completion will be achieved.
- (b) Within 20 Business Days of Practical Completion of the Seismic Works for the relevant Seismic Building (or to the extent necessary any interconnected or related group of Seismic Buildings), the Landlord will provide the Tenant with a producer statement procured from the ETC, which confirms that the Seismic Works for the relevant Seismic Building (or to the extent necessary any interconnected or related group of Seismic Buildings) have been completed in accordance with the Detailed Design (including any variations pursuant to clause 2.5), and in accordance with the Construction Contract, and a written certification (in a form acceptable to the Tenant,

acting reasonably) from the seismic engineer engaged by the Landlord, for each Seismic Building (or to the extent necessary any interconnected or related group of Seismic Buildings) addressed to the Landlord confirming unconditionally that the relevant Seismic Building (in a form acceptable to the Tenant, acting reasonably) has an Earthquake Rating of not less than 67%.

- (c) The Landlord shall obtain all necessary code compliance certificates for the Seismic Works (in a form acceptable to the Tenant, acting reasonably) promptly following the Seismic Works achieving Practical Completion. The Landlord shall procure that a set of as built plans shall be delivered to the Tenant promptly following the Seismic Works achieving Practical Completion.

2.9 Defects

The Landlord will, until the expiry of the defects notification period for the Seismic Works under the Construction Contract(s), procure the relevant Contractor to remedy any defect in the Seismic Works in accordance with the provisions of the Construction Contract.

2.10 Events of Delay

The Landlord shall be entitled to a reasonable extension to the Sunset Date as agreed between the parties or failing such agreement as determined by the Expert in accordance with clause 6 if progress towards completing the Seismic Works has been delayed due to:

- (a) a Force Majeure Event; or
- (b) a Delay Event.

2.11 Cost of Seismic Works

- (a) Subject to the Tenant complying with its obligation pursuant to clause 2.11(b) the Landlord shall be responsible for the payment and administration of all costs properly incurred in undertaking the design, consenting and construction of the Seismic Works, including but not limited to the payment of all consultants, contractors, suppliers, relevant Authorities or other third parties.

- (b) The parties acknowledge and agree that the Tenant shall, within the later of:

- (i) 30 Business Days following the Commencement Date; and
- (ii) 5 Business Days after the receipt of a valid GST invoice (if applicable),

pay to the Landlord's solicitor the Tenant's Seismic Contribution in accordance with this clause 2.11. The Landlord acknowledges and agrees that in no circumstances will the Tenant be liable to pay to the Landlord any amount in excess of the Tenant's Seismic Contribution.

- (c) To facilitate the payment process in connection with the undertaking of the Seismic Works, the Tenant's Seismic Contribution shall be held by the Landlord's solicitor as stakeholder (**Stakeholder**) on interest bearing trust account (**Seismic Works**

Fund) on and from the date of payment until the date on which the milestone(s) contemplated by clause 2.11(d) has been achieved.

- (d) The Landlord shall be entitled to a payment from the Seismic Works Fund as follows:
- (i) For any invoice for fees, costs, expense or other sum properly and reasonably incurred by the Landlord in respect of or directly related to the Seismic Works including any invoices issued by consultants, contractors, engineers, or any other party appointed or otherwise engaged in respect of or in relation to the Seismic Works;
 - (ii) For payment of a payment claim to the Contractor(s) following the ETC certifying the payment claim is due for payment pursuant to the relevant Construction Contract(s); and
 - (iii) For any other fee, cost, expense or sum properly and reasonably incurred in relation to the Seismic Works which is due and payable and evidenced by a valid tax invoice for the purposes of the Goods and Services Tax Act 1985;

and the Stakeholder shall be irrevocably and unconditionally authorised and instructed by both the Landlord and Tenant to release, to the Landlord (or if requested by the Landlord to the relevant party direct) upon receipt of a copy of the relevant invoice or payment claim (a copy of which shall be provided to the Tenant at the same time), the sum identified by any of the invoices or payment claims contemplated by clause 2.11(d)(i), (ii) and/or (iii). Following receipt of such monies from the Stakeholder the Landlord shall immediately on-pay such monies to the relevant party.

- (e) The Landlord acknowledges and agrees that it shall bear full responsibility for any costs in connection with the Seismic Works which exceed the Tenant's Seismic Contribution (paid in accordance with clause 2.11(d)) except to the extent that such costs arise as a result of any act or omission of the Tenant in breach of this agreement or the Lease.
- (f) Any amounts remaining in the Seismic Works Fund following payment by the Landlord of all relevant invoices and payment claims in respect of the Seismic Works shall promptly be refunded to the Tenant's nominated bank account (together with any net interest accrued on the same).

2.12 Step In Right

- (a) Subject to clause 2.12 (c), where Practical Completion of the Seismic Works has not been achieved by the Sunset Date then the Tenant may:
 - (i) in the event that any Construction Contract has been entered into elect to exercise its Step in Right in accordance the relevant clauses in such Construction Contract(s); and/or.
 - (ii) engage such consultants and contractors as it may reasonably determine to be necessary to complete the design and construction of the Seismic Works,

and shall notify the Landlord promptly of any such election.

- (b) Where the Tenant elects to exercise its Step in Right, the Landlord shall provide all reasonable assistance to the Tenant to facilitate a smooth transition of the Tenant into the role of principal under the relevant Construction Contract(s) and the Tenant shall (with all necessary amendment) promptly complete the Seismic Works and otherwise comply with all requirements contained in clauses 2.1 – 2.9 as if it were the Landlord (it being acknowledged that the Sunset Date will have passed).
- (c) The Landlord may, a reasonable period prior to the Sunset Date, provide a written request to the Tenant that the Sunset Date be extended by such period as the Landlord considers reasonably necessary in order to allow it to complete the Seismic Works in accordance with this agreement. The Tenant's approval to such request shall not be unreasonably withheld where the Landlord can demonstrate that it has used, and will continue to use, all commercially reasonable endeavours to complete the Seismic Works as soon as reasonably practicable.

2.13 **Cost recovery if Step In Rights utilised**

In the event that the Tenant elects to implement its Step In Right, any costs incurred by the Tenant in undertaking the Seismic Works shall (to the extent that such costs are properly and reasonably incurred by virtue of the Tenant undertaking the Seismic Works in compliance with clause 2.12(b)):

- (a) be paid out of the Seismic Works Fund (and the Landlord's solicitor is instructed by the parties to pay out any such costs upon receipt of a request for the same from the Tenant accompanied by a copy of the invoice or payment claiming evidencing the incurring of such costs); and
- (b) to the extent not paid out of the Seismic Works Fund shall be paid by the Landlord within 10 Business Days of demand by the Tenant, and if not so paid shall be set off against the Rent and Outgoings otherwise payable by the Tenant pursuant to this Lease.

The parties agree that the Tenant's right to set off under clause 2.13(b) shall apply notwithstanding any provision to the contrary contained in the Lease.

2.14 **Other remedies**

For the avoidance of doubt, the exercise by the Tenant of its Step In Rights shall not in any way limit or otherwise undermine any other action or right of action that the Tenant has or may have against the Landlord for its failure to complete the Seismic Works in accordance with this clause 2.

- 2.15 **Liquidated damages:** The Landlord shall pay to the Tenant an amount equal to 50% of any liquidated damages which become payable to the Landlord pursuant to the Construction Contract(s).

3. ASBESTOS WORKS

- 3.1 The parties acknowledge the presence of asbestos at the Dough Room Roof. The Landlord shall (subject to receipt of funds in accordance with clause 3.5), following the Commencement Date (and having regard to the Seismic Works which works shall take priority where required) engage a suitable contractor (in accordance with this clause 3) to undertake all works ("**Asbestos Works**") necessary to remediate, remove or dispose of the asbestos present in the Dough Room Roof and replace the Dough Room Roof with a suitable and fit for purpose corrugated iron or other substitute roofing product. The Tenant shall (subject to being provided with reasonable written notice by the Landlord) provide the Landlord (and its chosen contractor) with reasonable access to the Premises to undertake the Asbestos Works in accordance with the design, specification, programme and methodology that has been approved by the Tenant in accordance with clause 3.3. Other than in respect of allowing the Landlord such access, complying with all reasonable directions of the appointed contractor and the Landlord in order to comply with their respective health and safety policies for compliance with the Health and Safety at Work Act 2015 and in respect of its payment contribution to the Asbestos Works set out in clause 3.5, the Tenant shall have no responsibility for remediating, removing or disposing of the asbestos present in the Dough Room Roof.
- 3.2 In undertaking any works pursuant to this clause 3, the Landlord shall use reasonable endeavours to procure that the chosen contractor minimises, as far as reasonably practicable, the inconvenience and disruption to and interference with use of the Premises by the Tenant and the Tenant's Agents.
- 3.3 The Landlord shall provide the Tenant with the design, specification, programme and methodology of the Asbestos Works for its approval prior to the commencement of the Asbestos Works (such approval not to be unreasonably withheld or delayed provided that the Landlord has engaged in good faith and on an open book basis, with the Tenant, when developing the programme and methodology with a view to incorporating reasonable suggestions to assist in minimising, as far as reasonably practicable, the inconvenience and disruption caused to the Tenant by the Asbestos Works.).
- 3.4 The Landlord shall instruct a contractor that has suitable experience in undertaking works equivalent to the Asbestos Works to undertake the Asbestos Works. The Landlord shall engage such contractor on a form of contract which is reasonable having regard to the nature of the Asbestos Works and which contract shall require the Asbestos Works to be completed by the contractor:
- (a) in a safe, good and workmanlike manner with due care and skill to best practice industry standards;
 - (b) in accordance with all laws and regulations, including without limitation the Health and Safety at Work (Asbestos) Regulations 2016 and the Health and Safety at Work Act 2015; and
 - (c) in accordance with all proper requirements of all relevant Authorities.

The Landlord shall take all steps reasonably required in order to enforce such construction contract against the contractor. Provided that the Landlord complies with its obligations pursuant to this clause 3.4 then:

- (a) the Landlord will not be liable to the Tenant for any loss of enjoyment, disturbance or interference caused to the Tenant (or to any of the Tenant's contractors, employees or agents) by the access to the Premises and undertaking of the Asbestos Works (including any defect remediation);
- (b) the Tenant will not have any right to claim damages or compensation (including the reduction, suspension or abatement of any of the Tenant's monetary obligations arising under this agreement or the Lease) due to the Landlord carrying out the Asbestos Works; and
- (c) the Landlord shall not be responsible for (or liable to the Tenant in respect of) any act, omission or breach, by the contractor engaged to undertake the Asbestos Works.

- 3.5 The Tenant shall, within 30 Business Days of the Commencement Day, pay to the Landlord's nominated account the amount of NZ\$12,000 (plus GST, if any, subject to the Tenant having first received a GST invoice for that amount). The Landlord acknowledges that this amount comprises the contribution of the Tenant, and further acknowledges that the Landlord will receive contributions of \$24,000 (plus GST, if any) from the vendor and the vendor's agent to the Asbestos Works pursuant to the Land SPA, and all such contributions shall only be expended by the Landlord in the delivery of the Asbestos Works.

4. DEMOLITION OF BUILDINGS

- 4.1 The Tenant acknowledges and agrees that the Landlord intends to demolish the Redundant Buildings during the term of the Lease.
- 4.2 The Landlord shall provide the Tenant with at least ten (10) Business Days written notice of the expected date of demolition (Demolition Date) of the Redundant Buildings. The Tenant shall remove any of its fixtures, fittings, chattels, equipment and any other items (Tenant's Items) from the Redundant Buildings prior to the Demolition Date.
- 4.3 If the Tenant does not remove all of the Tenant's Items from the Redundant Buildings prior to the Demolition Date the Landlord may:
- (a) remove and store such items required to be removed; or
 - (b) remove any such items required to be removed and dispose of them as the Landlord shall think fit,

and the Tenant shall pay to the Landlord on demand all costs incurred by the Landlord pursuant to this clause 4.3 including (without limitation) the cost of removal, storage and/or disposal of any items. Notwithstanding the foregoing, the Landlord may alternatively elect in its sole discretion to take possession of any items owned by the Tenant remaining in the Redundant Buildings following the Demolition Date following which such items shall

automatically vest in the Landlord without any need for further documentation, or payment of any consideration or compensation to the Tenant.

- 4.4 The Landlord, its employees, contractors, consultants and invitees shall be entitled to enter onto the Premises and to carry out all works required in demolition of the Redundant Buildings with all equipment and machinery as may be required by the Landlord acting reasonably and otherwise in accordance with clause 5.

5. ACCESS

- 5.1 The Tenant shall permit the Landlord, its employees, contractors, consultants and invitees to have access to those parts of the Premises reasonably required for access by the Landlord to:

- (a) undertake the Detailed Design, preparation of the Consents, methodology and/or programming, and to undertake Seismic Works (including any defect remediation) or to inspect the areas affected by the Seismic Works;
- (b) inspect the Redundant Buildings and undertake the demolition of the Redundant Buildings pursuant to clause 3;

provided that the Landlord uses commercially reasonable endeavours to procure that the relevant works are undertaken in accordance with the relevant approved programme and/or methodology or otherwise uses its reasonable endeavours to minimise disturbance having regard to the nature of the works which are being undertaken, then:

- (c) the Landlord will not be liable to the Tenant for any loss of enjoyment, disturbance or interference caused to the Tenant (or to any of the Tenant's contractors, employees or agents) by the access to the Premises and undertaking of the Seismic Works (including any defect remediation) and demolition of any of the Redundant Buildings pursuant to this agreement; and
 - (d) subject to the Landlord complying with the obligations contained in this clause 5, the Tenant will not have any right to claim damages or compensation (including the reduction, suspension or abatement of any of the Tenant's monetary obligations arising under this agreement or the Lease) due to the Landlord carrying out any works pursuant to this agreement.
- 5.2 The Tenant acknowledges and agrees that it shall comply with all reasonable directions of the Contractor and the Landlord in order to comply with their respective health and safety policies for compliance with the Health and Safety at Work Act 2015. The Landlord shall, and shall procure the contractors and consultants to, comply with the Tenant's reasonable health and safety, security and operational requirements during any period that the Landlord or the contractors or consultants are on the Premises.
- 5.3 The Tenant acknowledges the Earthquake Rating of the Seismic Buildings as at the Commencement Date are as specified in the Seismic Report or any seismic report procured by the Landlord and disclosed to the Tenant during the Landlord's due diligence investigation under the Land SPA, and the Tenant agrees (notwithstanding any term of the Lease) that it shall have no right to claim damages or compensation (including the reduction, suspension or abatement of any of the Tenant's monetary obligations arising under this agreement or

the Lease) due to the Earthquake Rating of the Seismic Buildings provided that the Landlord is complying with its obligations pursuant to this agreement.

6. EXPERT DETERMINATION

- 6.1 This clause 6 shall apply to any matter of dispute which this agreement requires to be resolved pursuant to this clause 6 or otherwise referred to a suitably qualified person (being referred to as the "**Expert**").
- 6.2 The Expert shall be jointly appointed by the parties within 5 Business Days of a party notifying the other party that the process contemplated by this clause 7 has been invoked. Any Expert shall be instructed to provide its determination within not less than 10 Business Days of the date of instruction, and to otherwise act independently, without bias, in accordance with this clause 6 and any other terms of this agreement which the Expert deems relevant to his/her decision. The guidelines for determining the matter shall be set by the Expert (unless agreed by the parties).
- 6.3 If the parties are unable to agree on an Expert within the time period stated in clause 6.2 then either party shall be entitled, upon delivery of written notice to the other party, to require that the president of the New Zealand Law Society appoints such Expert.
- 6.4 The decision of the Expert shall be final and binding; shall be provided in writing to the parties, and shall specify brief reasons for the decision.
- 6.5 The Expert shall act as an expert and not as arbitrator; the referral of the matter to the Expert shall not be an arbitration agreement for the purposes of the Arbitration Act 1996 and the provisions of that Act shall not apply to or govern the referral.
- 6.6 Except where otherwise specified in this agreement, the parties will bear their own costs (including legal costs) and an equal share of the costs and expenses of the Expert, unless the Expert determines a different allocation would be fair and equitable.

7. PCR

The Tenant agrees to pay 50% of the external costs reasonably incurred by the Landlord in preparing the premises condition report (or PCR, as defined in the Lease) which is to be prepared during the Landlord's due diligence investigations and annexed to the Lease. The Tenant shall make such payment to the Landlord on the date that is 10 Working Days

following the later of the Commencement Date and delivery to the Tenant of a valid GST invoice for such sum.

8. GENERAL

8.1 Costs

Each party shall be responsible for their own legal costs and disbursements of and incidental to the negotiation, preparation and completion of this agreement.

8.2 Entire Agreement

This agreement constitutes the entire agreement between the parties relating to the subject matter of this agreement and supersedes and cancels any previous agreement, understanding or arrangement, whether written or oral. To the extent of any conflict between this agreement and the Lease this agreement shall prevail.

8.3 Amendment

No amendment to this agreement shall be effective unless it is in writing and signed by all the parties.

8.4 No Waiver

- (a) A waiver of any provision of this agreement shall not be effective unless given in writing, and then it shall be effective only to the extent that it is expressly stated to be given.
- (b) A failure, delay or indulgence by any party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

8.5 Further Assurances

Each of the parties agrees to execute and deliver any documents and to do all things as may reasonably be required by the other party or parties to obtain the full benefit of this Agreement according to its true intent.

8.6 Governing Law

This Agreement shall be governed by and construed in accordance with New Zealand law.

8.7 No assignment

Neither party shall be able to assign its rights and obligations pursuant to this agreement to any other party except that:

- (a) the Landlord may assign its rights and obligations pursuant to this agreement to any purchaser of its interest in the Premises provided that it has obtained the prior written approval of the Tenant (such approval not to be unreasonably withheld). In the event that the Tenant approves any such dealing, the Landlord shall procure that

the transferee enters into a covenant in favour of the Tenant (in a form approved by the Tenant (acting reasonably)) pursuant to which it covenants to comply with any remaining obligations of the Landlord in this agreement; and

- (b) the Tenant shall assign its rights and obligations pursuant to this agreement to any permitted assignee of the Tenant's interest under the Lease.

8.8 Counterparts

This agreement may be executed in any number of counterparts (including without limitation, counterparts signed as an original, a copy, a facsimile copy or pdf). Once the parties have executed the counterparts, and each party has received a copy of the counterpart (in either form described above) signed by the other party, each counterpart shall be deemed to be as valid and binding on the other party as if it had been executed by all the parties.

8.9 Notices

Any notice or other document required to be given or served under this Lease must be served by:

- (a) 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
 - (b) in all other cases in the manner required by sections 352 to 361 of the Property Law Act 2007.
- 8.10 Any notice or document required to be given or served by the Landlord to the Tenant may be signed on behalf of the Landlord by any attorney, officer, employee, agent or solicitor of or for the Landlord.
- 8.11 Any notice or document required to be given or served by the Tenant to the Landlord may be signed on behalf of the Tenant by any attorney, officer, employee, agent or solicitor of or for the Tenant.
- 8.12 Notices served after 5pm on a working day, or on a day which is not a working day, shall be deemed to have been served on the next succeeding working day.

SIGNED AS A DEED

SIGNED for and on behalf of)
[**OYSTER ENTITY**] as Landlord)
by two of its Directors/authorised)
signatories:)

Director

Director

SIGNED by the said)
ALTO PACKAGING LIMITED)
as Tenant by two of its Directors/)
in the presence of:)

Director

Signature

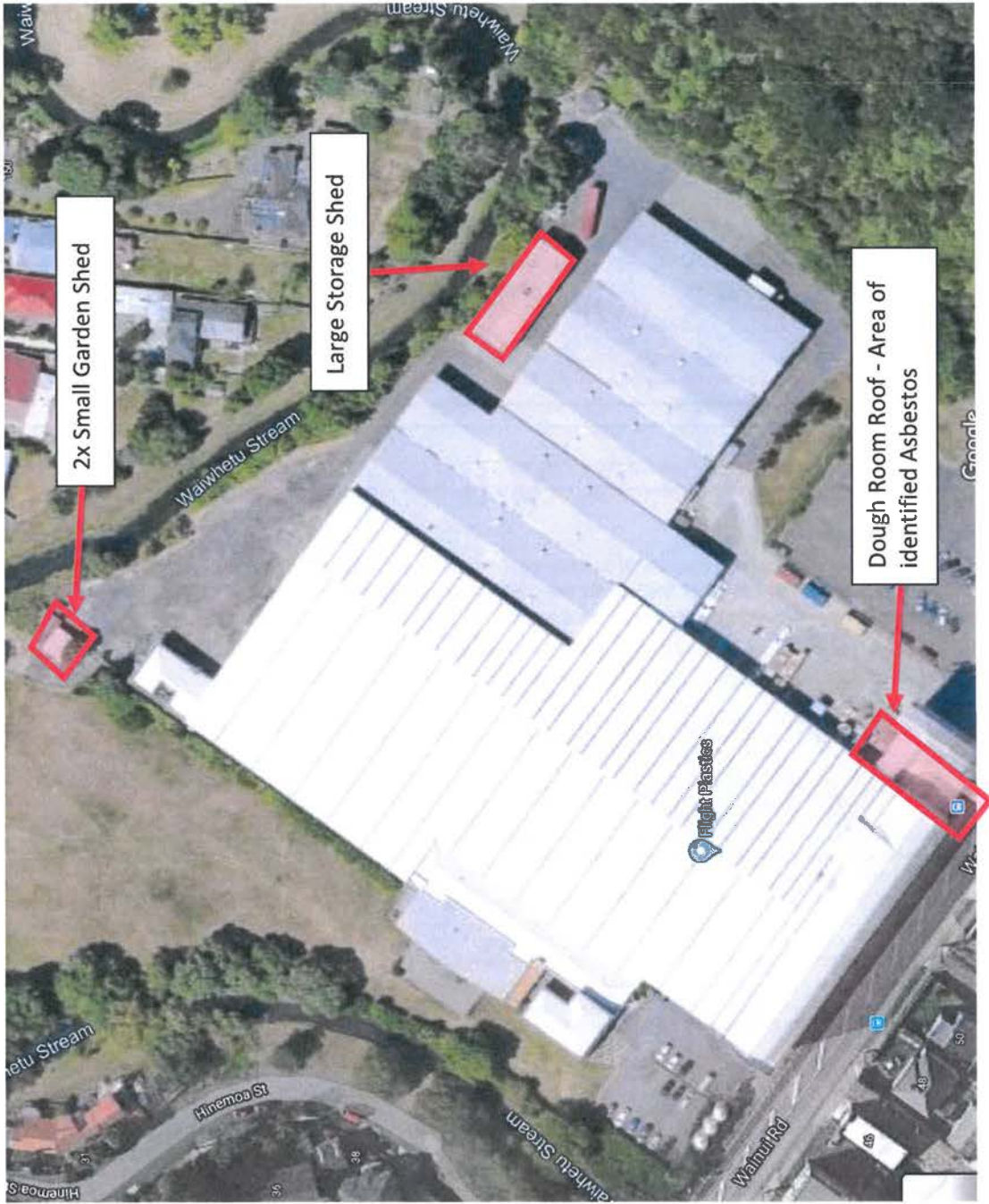
Director

Print Name

Occupation

Town/City of Residence

**ANNEXURE 1
PLAN**



2x Small Garden Shed

Large Storage Shed

Dough Room Roof - Area of identified Asbestos

SCHEDULE 2
List all chattels included in the sale
(strike out or add as applicable)

Stove	Rangehood	Wall oven	Cooktop
Dishwasher	Kitchen waste disposal	Light fittings	Smoke detector(s)
Burglar alarm	Heated towel rail(s)	Heat pump(s)	Garage door remote control(s)
Blinds	Curtains	Fixed floor coverings	

See Further Terms of Sale attached

SCHEDULE 3
Residential Tenancies

Name of Tenant(s):

Rent: Term: Bond:

Commercial/Industrial Tenancies
(If necessary complete on a separate schedule)

1. Name of Tenant(s):

Rent: Term: Right of Renewal: Other:

2. Name of Tenant(s):

Rent: Term: Right of Renewal: Other:

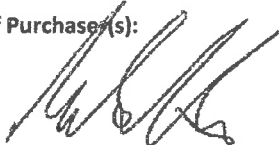
WARNING (This warning does not form part of this agreement)
This is a binding contract. Read the information set out on the back page before signing.

Acknowledgements

Where this agreement relates to the sale of a residential property and this agreement was provided to the parties by a real estate agent, or by a licensee on behalf of the agent, the parties acknowledge that they have been given the guide about the sale of residential property approved by the Real Estate Authority.

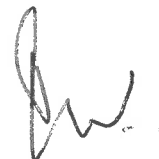
Where this agreement relates to the sale of a unit title property, the purchaser acknowledges that the purchaser has been provided with a pre-contract disclosure statement under section 146 of the Unit Titles Act.

Signature of Purchaser(s):



Director / ~~Trustee~~ / ~~Authorised Signatory~~ / ~~Agent~~ / ~~Attorney*~~
Delete the options that do not apply
If no option is deleted, the signatory is signing in their personal capacity

Signature of Vendor(s):



Director / ~~Trustee~~ / ~~Authorised Signatory~~ / ~~Agent~~ / ~~Attorney*~~
Delete the options that do not apply
If no option is deleted, the signatory is signing in their personal capacity

Director / ~~Trustee~~ / ~~Authorised Signatory~~ / ~~Agent~~ / ~~Attorney*~~
Delete the options that do not apply
If no option is deleted, the signatory is signing in their personal capacity

Director / ~~Trustee~~ / ~~Authorised Signatory~~ / ~~Agent~~ / ~~Attorney*~~
Delete the options that do not apply
If no option is deleted, the signatory is signing in their personal capacity

- *If this agreement is signed under:
- (i) a Power of Attorney – please attach a **Certificate of non-revocation** (available from ADLS: 4098WFP or REINZ); or
 - (ii) an Enduring Power of Attorney – please attach a **Certificate of non-revocation and non-suspension of the enduring power of attorney** (available from ADLS: 4997WFP or REINZ); or
 - (iii) where the attorney signs for a trustee, a Certificate in the relevant form in Schedule 4 to the Trustee Act 1956.

Also insert the following wording for the Attorney's Signature above:
Signed for [full name of the donor] by his or her Attorney [attorney's signature].

BEFORE SIGNING THE AGREEMENT

- Note: the purchaser is entitled to a copy of any signed offer at the time it is made.
- It is recommended both parties seek professional advice before signing. This is especially so if:
 - there are any doubts. Once signed, this will be a binding contract with only restricted rights of termination.
 - the purchaser is not a New Zealand citizen. There are strict controls on the purchase of a property in New Zealand by persons who are not New Zealand citizens.
 - property such as a hotel or a farm is being sold. The agreement is designed primarily for the sale of residential and commercial property.
 - the property is vacant land in the process of being subdivided or there is a new unit title or cross-lease to be issued. In these cases additional clauses may need to be inserted.
 - there is any doubt as to the position of the boundaries.
 - the purchaser wishes to check the weathertightness and soundness of construction of any dwellings or other buildings on the land.
- Both parties may need to have customer due diligence performed on them by their lawyer or conveyancer in accordance with the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 which is best done prior to the signing of this agreement.
- The purchaser should investigate the status of the property under the Council's District Plan. The property and those around it are affected by zoning and other planning provisions regulating their use and future development.
- The purchaser should investigate whether necessary permits, consents and code compliance certificates have been obtained from the Council where building works have been carried out. This investigation can be assisted by obtaining a LIM from the Council.
- The purchaser should compare the title plans against the physical location of existing structures where the property is a unit title or cross-lease. Structures or alterations to structures not shown on the plans may result in the title being defective.
- In the case of a unit title, before the purchaser enters into the agreement:
 - the vendor **must** provide to the purchaser a pre-contract disclosure statement under section 146 of the Unit Titles Act;
 - the purchaser should check the minutes of the past meetings of the body corporate, enquire whether there are any issues affecting the units and/or the common property, check the body corporate's long-term maintenance plan and enquire whether the body corporate has imposed or proposed levies for a long-term maintenance fund or any other fund for the maintenance of, or remedial or other work to, the common property.
- The vendor should ensure the warranties and undertakings in clauses 7.0 and 8.0:
 - are able to be complied with; and if not
 - the applicable warranty is deleted from the agreement and any appropriate disclosure is made to the purchaser.
- Both parties should ensure the chattels' list in Schedule 2 is accurate.
- Both parties should seek professional advice regarding the GST treatment of the transaction. This depends upon the GST information supplied by the parties and could change before settlement if that information changes.

THE ABOVE NOTES ARE NOT PART OF THIS AGREEMENT AND ARE NOT A COMPLETE LIST OF MATTERS WHICH ARE IMPORTANT IN CONSIDERING THE LEGAL CONSEQUENCES OF THIS AGREEMENT.

PROFESSIONAL ADVICE SHOULD BE SOUGHT REGARDING THE EFFECT AND CONSEQUENCES OF ANY AGREEMENT ENTERED INTO BETWEEN THE PARTIES.

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AGREEMENT FOR SALE AND PURCHASE OF REAL ESTATE

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DATE:

VENDOR:

Flight Limited

Contact Details:

VENDOR'S LAWYERS:

Firm: Morrison Mallett

Individual Acting: Matt Mallett / Luke Walker

Email: matthew.mallett@morrisonmallett.co.nz /

Contact Details: luke.walker@morrisonmallett.co.nz

P: 04 498 3646 / 027 588 8739

Email Address for Service of Notices:

(subclause 1.4)

matthew.mallett@morrisonmallett.co.nz

PURCHASER:

Oyster Property Holdings Limited

Contact Details:

E: james.molloy@oystergroup.co.nz

P: 021 977 292

PURCHASER'S LAWYERS:

Firm: Thompson Blackie Biddles

Individual Acting: Sam Greenwood/Paige Lane

Email: sam.greenwood@tbblegal.com /paige.lane@tbblegal.com

Contact Details: com

PO Box 1996, Shortland Street

Auckland 1140

P: 09 361 7055/ 09 361 7063

Email Address for Service of Notices:

(subclause 1.4)

service@tbblegal.com

LICENSED REAL ESTATE AGENT:

Agent's Name:

Manager:

Salesperson:

Contact Details:

