

Deed of Novation and Amendment of Agreement for Sale and Purchase of Real Estate

Flight Limited

Oyster Property Holdings Limited

Oyster Industrial Properties Limited

DEED dated 1 December 2020

PARTIES

1. Flight Limited (**Vendor**)
2. Oyster Property Holdings Limited (**Outgoing Party**)
3. Oyster Industrial Properties Limited (**Purchaser**)

BACKGROUND

- A. The Vendor (as vendor) and Outgoing Party (as purchaser) entered into an Agreement for Sale and Purchase of Real Estate dated 18 August 2020 (**Land Sale Agreement**), which records the arrangements between the parties relating to the sale by the Vendor to the Purchaser of the Property.
- B. The Outgoing Party and the Purchaser have agreed to novate the Outgoing Party's interest in the Land Sale Agreement to the Purchaser.
- C. Following the Purchaser conducting its Due Diligence Investigation, the parties have agreed to certain amendments to the Land Sale Agreement.
- D. The Vendor intends, with the Purchaser's consent, to enter into an Asset Transfer Agreement in the form set out in Annexure 5 (**Asset Transfer Agreement**) with Flight Plastics Limited to transfer certain assets as specified in the Asset Transfer Agreement prior to Completion.
- E. The parties wish to enter into this Deed of Amendment to give effect to the agreed amendments to the Land Sale Agreement.

TERMS

1. Definitions and Interpretation

1.1 **Definitions:** In this Deed, the following terms shall have the meanings specified:

(a) **Effective Date** means the date of this Deed.

1.2 **Definitions in the Land Sale Agreement:** Unless specified otherwise:

(a) terms capitalised but not defined in this Deed have the meaning given to them in the Land Sale Agreement; and

(b) references to clauses and Schedules in this Deed are to those in the Land Sale Agreement.

2. Novation

2.1 The Outgoing Party hereby assigns, transfers and novates to the Purchaser, to the fullest extent permitted by law on the terms and conditions contained in this clause 2, and the Purchaser accepts the assignment, transfer and novation, of all rights and obligations of the Outgoing Party under the Land Sale Agreement.

- 2.2 The Vendor hereby consents to the novation of the Land Sale Agreement from the Outgoing Party to the Purchaser so that the Purchaser replaces the Outgoing Party under the Land Sale Agreement (and substitutes the Outgoing Party) as if it were an original party to the Land Sale Agreement and a reference in the Land Sale Agreement to the Outgoing Party is read as a reference to the Purchaser.
- 2.3 The Purchaser covenants with the Outgoing Party and the Vendor that, with effect on and from the Effective Date, the Purchaser will:
- (a) assume any and all rights, obligations and liabilities of whatever nature of the Outgoing Party under the Land Sale Agreement; and
 - (b) fully and completely perform and comply with such obligations and liabilities,
- in each case as fully and effectively in all respects as if the Purchaser had been named in the Land Sale Agreement and had executed the Land Sale Agreement in the capacity of the Outgoing Party.
- 2.4 The Purchaser accepts that it shall have the full benefit and burden of the covenants in the Land Sale Agreement as if it were a party to the Land Sale Agreement and will at all times hereafter well and sufficiently indemnify and keep indemnified the Outgoing Party against:
- (a) all proceedings, actions and claims which may now or at any time in the future be brought or made against the Outgoing Party in respect of the Land Sale Agreement; and
 - (b) all sums of money which the Outgoing Party may now or at any time in the future be liable for or pay in connection with the defence of any action referred to in sub clause (a) above whether by way of damages, costs, expenses or otherwise; and
 - (c) all other costs, charges, expenses and losses which the Outgoing Party may now or at any time in the future be liable for, pay, incur or sustain arising from or in connection with the Land Sale Agreement or any attempted enforcement of the terms of the Land Sale Agreement by any person consequent upon default being made in the observance of such terms by the Purchaser.
- 2.5 The Vendor covenants with the Purchaser that it will perform and comply with its obligations and liabilities under the Land Sale Agreement as fully and effectively in all respects as if the Purchaser had been named in the Land Sale Agreement in place of the Outgoing Party.
- 2.6 With effect on and from the Effective Date, the Vendor and the Purchaser agree that the Outgoing Party will be released from:
- (a) all of the Outgoing Party's duties and obligations arising out of or in connection with the Land Sale Agreement; and
 - (b) any and all liabilities (contingent or otherwise) in relation to any matters arising out of or in connection with the Land Sale Agreement.
- 2.7 The Vendor confirms and agrees that the novation of the Land Sale Agreement as set out in the foregoing provisions of this clause 2 does not constitute an event of default or give rise to any right of termination under the Land Sale Agreement.

3. Amendment

3.1 **Amendment:** With effect from the Effective Date, the Land Sale Agreement is amended as follows:

- (a) **Definition:** The definition of “Settlement Date” in clause 20.1 is deleted and replaced as follows:

“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 29 January 2021 (and, where the Settlement Date would otherwise be earlier than that date, the Settlement Date shall be 29 January 2021).”

- (b) **Definitions:** The following definitions are added to clause 20.1:

“Asbestos Roofing Quote” means the quote contained in Annexure 7.

“Asbestos Works Completion” means completion of the Asbestos Remediation Works, being when the Vendor delivers to the Purchaser:

(a) the Asbestos Clearance Report specified in clause 42.4(a); and

(b) the confirmation specified in clause 42.4(b); and

(c) the Asbestos Works Warranty Confirmation.

“Asbestos Works Warranty Confirmation” means written confirmation from the Roofing Contractor to the effect that the 5 year workmanship warranty and the 15 year manufacturer’s warranty referred to in the Asbestos Roofing Quote are each given to, and for the benefit of, the Purchaser (or, in the alternative, written confirmation from the Vendor that such warranties will be held by the Vendor for the benefit of the Purchaser).

“CAPEX Works Completion” means completion of the Vendor’s CAPEX Works, being when the Vendor delivers to the Purchaser confirmation in writing from the Roofing Contractor that the Vendor’s CAPEX Works have been completed.

“Relevant Escrow Sum” means:

(a) in respect of the Asbestos Remediation Works (if Asbestos Works Completion has not occurred by the Settlement Date), a sum equivalent to \$30,000 (less any amounts already paid to the Roofing Contractor by way of deposit or progress payments in connection with the Asbestos Roofing Quote provided that such deduction shall not exceed \$15,000); and

(b) in respect of the Vendor’s CAPEX Works (if CAPEX Works Completion has not occurred by the Settlement Date), a sum equivalent to \$20,000 (less any amounts already paid to the Roofing Contractor by way of deposit or progress payments in connection with the Vendor’s CAPEX Works provided that such deduction shall not exceed \$10,000).

“Roofing Contractor” means Matt Winders Roofing Limited or such other suitably qualified contractor or contractors as the Vendor may engage to undertake the Vendor’s Works.

“Vendor’s CAPEX Works” means the works to be undertaken by the Vendor prior to Settlement in accordance with clause 43 and as detailed in Schedule 7.

“Vendor’s Works” means together the Vendor’s CAPEX Works and the Asbestos Remediation Works (defined in clause 42.3).”

(c) **Premises Condition Report:** Clause 26.4 is amended to read as follows:

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, at the Purchaser’s cost:*

- (a) *prepared during the Due Diligence Investigation; and*
- (b) *updated to reflect the Vendor’s CAPEX Works and the Asbestos Remediation Works detailed in clause 42 (if and to the extent that the same have been completed prior to the time at which the report is updated).*

The Vendor shall annex such premises condition report to the Lease in preparation of execution copies.”

(d) **Ground Contamination:** A new clause 32.9 is added as follows:

“32.9 *The Purchaser acknowledges that the Property previously contained below ground fuel storage tanks (Storage Tanks). It is understood that the Storage Tanks were removed over 20 years ago. However, no records exist that formally document the removal of the Storage Tanks. Notwithstanding any provision of this Agreement, the Purchaser waives all claims and rights it might have under this Agreement or otherwise against the Vendor arising at any time in respect of any Contamination present in or under the land comprised within the Property as a result of or directly attributable to the Storage Tanks except to the extent that a claim arises under:*

- (a) *clause 32.1(d)(i), provided that such warranty is made to the best of the Vendor’s knowledge and belief (being the Vendor’s actual knowledge and not including any facts or circumstances in respect of which the Vendor has constructive knowledge only); or*
- (b) *clause 32.1(d)(ii) or clause 32.1(d)(iii).*

(c) **Purchase Price Allocation:** Clause 36.1 is amended to read as follows:

“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 - \$11,900,000.00;*
- (b) *the buildings located on the Property - \$16,085,000.00; and*
- (c) *the fixtures and fittings and chattels included in the Property - \$1,415,000.”*

(d) **Asbestos:** Clause 42 is amended to read as follows:

"42. ASBESTOS

42.1 *There are two areas on the Property (as identified in the Asbestos Report) that are or were known to contain asbestos, being:*

- (a) *the old gardeners shed; and*
- (b) *the asbestos layer on the roof between the Doughroom Building and the Silos Building,*

and in respect of which the Purchaser has required or requires remediation.

42.2 *The Purchaser acknowledges and agrees that the old gardeners shed has now been fully remediated and that it has no claims or rights under this agreement or otherwise against the Vendor in respect of asbestos located at, in or under the old gardeners shed.*

42.3 *The Vendor will at its cost engage a suitably qualified contractor to undertake and will (using such contractor) complete the following works in a good and workmanlike manner and in accordance with all relevant laws and approvals:*

- (a) *remove, remediate and dispose of the asbestos layer from the roof between the Doughroom Building and the Silos Building; and*
- (b) *replace such roof with a suitable and fit for purpose corrugated iron roof,*

(Asbestos Remediation Works). *The Vendor will use commercially reasonable endeavours to complete the Asbestos Remediation Works prior to settlement and, in any event, as soon as reasonably practicable thereafter.*

The Purchaser agrees that the undertaking and completion of the Asbestos Remediation Works strictly in accordance with this clause 42 constitutes the Vendor's total liability in respect of the asbestos the subject of the Asbestos Report and following completion and delivery of the Asbestos Clearance Report (as defined in clause 42.4) waives all claims or rights that it might have under this agreement or otherwise against the Vendor arising in respect of such asbestos.

42.4 *The Vendor shall, as soon as reasonably practicable following completion of the Asbestos Remediation Works, provide the Purchaser with:*

- (a) *a report (issued by a suitably qualified and trained asbestos removal professional) confirming that there is no visible asbestos residue from the Asbestos Remediation Works and that the removal area does not pose a risk to health and safety from exposure to asbestos (**Asbestos Clearance Report**); and*
- (b) *confirmation in writing from the Roofing Contractor that the works contemplated by the Asbestos Roofing Quote have been completed; and*

(c) *the Asbestos Works Warranty Confirmation.*”

(e) **CAPEX:** A new clause 43 is added as follows:

“43. VENDOR’S CAPEX WORKS

43.1 *The Vendor will at its cost engage a suitably qualified contractor to undertake and will (using such contractor) complete the Vendor’s CAPEX Works in the manner detailed in Schedule 7 in a good and workmanlike manner and in accordance with all relevant laws and approvals. For the avoidance of doubt, the Purchaser acknowledges and agrees that it will not require the Vendor to undertake any other capital expenditure in respect of the Property. The Vendor will use commercially reasonable endeavours to complete the Vendor’s CAPEX Works prior to settlement and, in any event, as soon as reasonably practicable thereafter.*”

(f) **Escrow:** A new clause 44 is added as follows:

“44. VENDOR’S WORKS ESCROW SUM

44.1 *In the event that:*

(a) *CAPEX Works Completion; and/or*

(b) *Asbestos Works Completion,*

*has not been achieved by the Settlement Date, the Purchaser shall not be entitled to withhold or delay settlement but, in order to secure the Vendor’s obligations pursuant to clauses 42 and 43, the Relevant Escrow Sum (as applicable) shall be retained from the funds due on settlement by the Vendor’s lawyer (**Stakeholder**) and held in accordance with the provisions of this clause 44. The Relevant Escrow Sum shall be held by the Stakeholder on interest bearing deposit until the earlier of:*

(c) *the date on which the Stakeholder has received written notice from both the Vendor and the Purchaser confirming Asbestos Works Completion and/or CAPEX Works Completion (as the case may be); and*

(d) *the date that is 6 months following Settlement (or such later date as the Purchaser may elect by serving written notice on the Vendor).*

The Purchaser agrees to give written notice to the Stakeholder for the purposes of clause 44.1(c) as soon as reasonably practicable following each of Asbestos Works Completion and CAPEX Works Completion (as the case may be).

44.2 *If clause 44.1(c) applies, the Relevant Escrow Sum (including any net interest accrued thereon) shall be paid by the Stakeholder to the Vendor (via its lawyer). The Stakeholder, by virtue of this clause, shall be irrevocably and unconditionally authorised and instructed by both the Vendor and the Purchaser to make such payment. For the avoidance of doubt, the parties acknowledge and agree that (if both do not occur prior to the Settlement Date) clause 44.1(c) applies independently to the Asbestos Works Completion and CAPEX Works Completion and that the release of the Relevant Escrow Sum in respect of each is not interdependent.*

- 44.3 *If clause 44.1(d) applies, the Relevant Escrow Sum (including any net interest accrued thereon) shall be paid by the Stakeholder to the Purchaser. The Stakeholder, by virtue of this clause, shall be irrevocably and unconditionally authorised and instructed by both the Vendor and the Purchaser to make such payment.*
- 44.4 *For the avoidance of doubt, retention and/or release of the Relevant Escrow Sum shall not in any way release the Vendor from its obligations pursuant to clause 42 and 43 (as applicable). The provisions of this clause 44 shall survive, and shall not merge on, settlement.*
- 44.5 *When undertaking any Vendor's Works post-settlement pursuant clauses 42 and 43, the Vendor and its contractors, consultants and agents shall be entitled to access the Property to complete the Vendor's Works provided always that it complies (and procures its contractor(s), employees or agents comply) with the reasonable directions of the Purchaser (including without limitation health and safety requirements and directions intended to minimise disruption to the tenant) and does not do anything that would cause the Purchaser to be in breach of the provisions of clauses 3.2, 5.1(b) and 5.2 of the Seismic Agreement. The Vendor shall promptly make good any damage caused to the Property during the undertaking of such Vendor's Works.*
- 44.6 *If the Stakeholder is required by law to make any deduction or withholding on account of tax from any Relevant Escrow Sum, then that Relevant Escrow Sum will not be increased by the Stakeholder in respect of any such deduction or withholding on account of tax (and the party receiving the payment (**Payee**) will only receive, and will only be entitled to receive, an amount net of any such deduction or withholding). Any tax withheld by the Stakeholder under this clause will be treated as having been paid by the Stakeholder to the Payee for all purposes of this agreement.*
- 44.7 *If the Stakeholder fails to make any deduction or withholding on account of tax from any Relevant Escrow Sum which it is required to make by law (and remains required to make by law), the Payee holds the Stakeholder fully and effectively indemnified in respect of such payment and will promptly pay to the Stakeholder (upon receipt of a written demand) an amount sufficient to fully discharge the Stakeholder's liability in respect of such tax.*
- 44.8 *Each party will, not later than 5 Business Days prior to settlement, provide the Stakeholder with:*
- (a) its Inland Revenue Department number;*
 - (b) the rate of withholding tax (being one of the rates permitted by law) applicable to that party; and*
 - (c) any information relating to that party that is reasonably requested by the Stakeholder and which is necessary for the Stakeholder to comply with its statutory obligations or its obligations under this agreement.*
- 44.9 *The parties agree that the rights and obligations contained in this clause 44 are also given for the benefit of, and are enforceable in terms of subpart 1 of part 2 of the Contract and Commercial Law Act 2017 by, the Stakeholder."*

(g) **Right of Way:** A new clause 45 is added as follows:

“45. RIGHT OF WAY

*The Vendor and the Purchaser will use commercially reasonable endeavours to, at the Vendor’s cost (but for the avoidance of doubt excluding any costs incurred by the Purchaser), surrender easement instrument 11359488.3 and register a replacement right of way easement over the area marked A on DP 532424 (the Property being the burdened land) in favour of Lot 2 DP 532424, the form of such easement being that which is annexed to this Agreement as Schedule 8 (**New Easement**), as soon as reasonably practicable following the Effective Date. In the event that such surrender and replacement registration has not taken place prior to Settlement, the Vendor and the Purchaser shall continue to use commercially reasonable endeavours to do all things, acts and matters (including continuing to pursue and obtain the requisite certifications from the relevant authority) in order to facilitate the completion of such surrender and replacement registration as soon as practicable following Settlement.”*

(h) **Asset Transfer:** Schedule 2 is amended and replaced with the form of Schedule 2 attached as Annexure 1 to this Deed.

(i) **Seismic Report:** The following reports and correspondence are added to Schedule 3:

- “● *Tonkin + Taylor – Desktop Geotechnical Seismic Assessment dated 23 September 2020*
- *Greenstone Due Diligence Report dated 18 September 2020; and*
- *Hutt City Council letter dated 7 October 2020”*

(j) **Form of Lease:** Schedule 5 is amended and replaced with the form of Schedule 5 attached as Annexure 2 to this Deed.

(k) **Form of Seismic Agreement:** Schedule 6 is amended and replaced with the form of Schedule 6 attached as Annexure 3 to this Deed.

(l) **Vendor’s CAPEX Works:** A new Schedule 7 is added in the form attached as Annexure 4 to this Deed.

(m) **Form of Right of Way Easement:** A new Schedule 8 is added in the form attached as Annexure 5 to this Deed.

(n) **Asbestos Roofing Quote:** A new Schedule 9 is added in the form attached as Annexure 7 to this Deed.

3.2 **Continuance:** Except as expressly amended by this Deed, the terms of the Land Sale Agreement (both express and implied) continue in full force and effect after execution of this Deed.

4. Asset Transfer Agreement

4.1 **Asset Transfer Agreement:** The Vendor and the Purchaser acknowledge and agree that certain assets held by the Purchaser as at 18 August 2020 should be held by Flight Plastics Limited and that certain assets held by Flight Plastics Limited as at 18 August 2020 should be held by the Vendor. The Purchaser further acknowledges and agrees that the Vendor and Flight Plastics

Limited will, prior to Settlement occurring, enter into an Asset Transfer Agreement in the form attached as Annexure 6.

5. Representations and Warranties

5.1 Each party warrants to the other as follows:

- (a) the execution and delivery of this Deed 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 Deed and to consummate and perform or cause to be performed its obligations under this Deed;
- (c) this Deed constitutes a legal, valid and binding obligation on it, enforceable in accordance with its terms;
- (d) this Deed 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 Deed.

6. Knowledge

6.1 Notwithstanding any provision of the Land Sale Agreement or otherwise, and for the avoidance of doubt and without limitation, the Purchaser agrees that it is deemed to have the same knowledge as the Outgoing Party (including its solicitors, consultants and advisers) as regards the Due Diligence Investigation and all matters relating to the Property.

7. General

7.1 **Applicable law and jurisdiction:** This Deed shall be governed by and construed in accordance with New Zealand law. Each party agrees to submit to the non-exclusive jurisdiction of the courts of New Zealand with respect to any claim or matter arising out of or in connection with this Deed.

7.2 **Counterparts:** This Deed may be signed in any number of counterparts, all of which together shall constitute one and the same instrument. Any party may enter into this Deed by signing any such counterpart and once 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.

7.3 **Delivery:** Without limiting any other mode of delivery this Deed will be delivered by each party on the earlier of:

- (a) physical delivery of an original of this Deed, executed by each party, into the custody of each party or its solicitors; or

(b) transmission by each party, its solicitors or any other person authorised in writing by that party of a facsimile, photocopied or scanned copy of any original of this Deed, executed by that party, to each other party or its solicitors.

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

7.5 **Amendment:** No amendment to this Deed shall be effective unless it is in writing and signed by all the parties.

EXECUTED as a Deed


SIGNED by **FLIGHT LIMITED** in the presence of:

Witness Signature

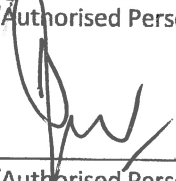
Witness Name

Witness Occupation

Witness Address



Director/Authorised Person



Director/Authorised Person

SIGNED by **OYSTER PROPERTY HOLDINGS LIMITED** in the presence of:

Witness Signature

Witness Name

Witness Occupation

Witness Address

Director/Authorised Person

Director/Authorised Person

(b) transmission by each party, its solicitors or any other person authorised in writing by that party of a facsimile, photocopied or scanned copy of any original of this Deed, executed by that party, to each other party or its solicitors.

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

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EXECUTED as a Deed

SIGNED by **FLIGHT LIMITED** in the presence of:

Witness Signature

Director/Authorised Person

Witness Name

Director/Authorised Person

Witness Occupation

Witness Address

SIGNED by **OYSTER PROPERTY HOLDINGS LIMITED** in the presence of:



Witness Signature

Director/Authorised Person

Ian Hasell

Witness Name

Director/Authorised Person

Solicitor

Witness Occupation

Auckland

Witness Address

SIGNED by **OYSTER INDUSTRIAL PROPERTIES LIMITED** in the presence of:



Witness Signature

Ian Hasell

Witness Name

Solicitor

Witness Occupation

Auckland

Witness Address



Director/Authorised Person

Director/Authorised Person

ANNEXURE 1

SCHEDULE 2

LAND SPA CHATTELS

GRACEFIELD LAND
GRACEFIELD -BUILDING ORIGINAL
GRACEFIELD RENOVATIONS
CABLING EX ORIGINAL BUILDING
GRACEFIELD FITOUT
Viewing Wall and new doors
LIGHTING
ELECTRICAL RETICULATION
HEATERS
SOUND PROOFING
SPRINKLER SYSTEMS
DUCTED VENTILATION
AIR COMPRESSORS LOUVRES
FIRE ALARM SYSTEMS
BARRIERS
CARPETS
DOORS (ROLLER AND THE LIKE)
FURNITURE-FITTED
HANDRAILS
HARDSTANDING
KIEFEL FOOTING
PARTITIONS-NON LOAD BEARING
PLUMBING FIXTURES
SIGNS -NON ELECTRIC
COOLING TOWER FOOTING
VINYL FLOORING
FIRE EXTINGUISHERS
BURGLAR ALARM
FENCING
CONCRETE DRIVEWAY
SEISMIC VALVE
CLEAN ROOM LIGHTS
INTERNAL WALL ALTERATIONS Non loading bearing (Bandera 2 Clean Room)
Metalbilt Steel Roller Shutter Door
Hi-Speed Roller Door - ELITE SERVICES
Flashing to roller door - packaging south end MWR ROOFING INV-1409 (1/20)
Washplant 18008/0 - Yard/Fencing
Washplant 18014/0a - Noise Insulation incl Walls and Doors
Washplant 18014/0a - Noise Insulation incl Walls and Doors
Lighting - Jun/July20
Lighting - Aug/Sep20

ELECTRICAL RETICULATION THERMO UPGRADE (SWITCHBOARD)
SECURITY CAMERA SYSTEM
Samsung Vandal Dome
Camera Thermal Imager FLUKE-TIS-10-9HZ

Cub Cadet Lawn Tractor SN S1E157H20252 (1/18)

ANNEXURE 2
SCHEDULE 5
FORM OF LEASE

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:	(a) For the first year of the Term, \$1,722,470 (plus GST) per annum												

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

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;

“**PCR**” means the premises condition report evidencing the condition of the Premises for the purposes of this deed, which shall be that report which is agreed between the parties prior to the Commencement Date and may be updated, replaced or varied by written agreement between the parties from time to time;

“**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 six (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:

- (c) 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, Contamination including Tanks

- (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.
- (c) For the purposes of this clause 8.9 and without limiting the generality of the exceptions provided within clauses 8.9(a) and 8.9(b) the Tenant acknowledges that prior to the Commencement Date the Landlord disclosed that below ground fuel storage tanks (**Tanks**) were located at, in or under the Land. The Landlord has further identified and disclosed to the Tenant the possibility that such Tanks may still be located in or under the Land. The Tenant acknowledges that there may be Contamination present in or under the Land as a result of or directly attributable to the Tanks. The Landlord shall not be required to undertake any works, or be responsible for any costs to remediate, remove or otherwise contain such Contamination or alter the state of the Land in respect of such Contamination unless:
 - (i) such Contamination affects the Tenant's ability to use the Premises for the Permitted Use;

- (ii) the Tenant considers (acting reasonably) that such Contamination is likely to result in the Tenant breaching its legal obligations as a PCBU (as that term is defined in the Health and Safety at Works Act 2015); or
- (iii) the Landlord is required to do so to properly comply with clause 8.5 of this Lease.

In addition to the limitations on the Tenant's liability pursuant to clause 4.3, the parties agree and acknowledge that the Tenant shall not be liable for Contamination present in or under the Land as a result of or directly attributable to the Tanks, and the Landlord shall be liable to the Tenant for all costs, claims, liability, loss or damage (but excluding any consequential losses provided however that consequential losses shall not include any costs, claims, liability, loss or damage arising as a natural consequence of any Contamination attributable to the Tanks) directly incurred or suffered by the Tenant in connection with any Contamination attributable to the Tanks. The Tenant shall use its reasonable endeavours to mitigate any costs, claims, liability, loss or damage suffered.

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 Remediating 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 Interests affecting the Land

The Tenant shall at all times observe and comply with the terms, covenants and conditions of any easements registered against the title to the Land as at the Commencement Date (**Existing Interests**) and shall be liable to the Landlord for any breach of such Existing Interests. Where, during the Term, the Landlord is required to or wishes to register any new interests (**New Interest**) against the title to the Land (and which burden any part of the Land), the Landlord shall provide the draft instrument which would give effect to the New Interest to the Tenant for approval prior to registration, such approval not to be unreasonably withheld or delayed where the terms and/or effect of the New Interest does not materially detrimentally affect the Tenant's ability to use the Land for the Permitted Use. The Tenant shall observe and comply with the terms, covenants and conditions of any approved New Interest provided that the Tenant shall not be obliged to incur any additional costs as a result of a New Interest.

16.8 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 16.8(a) is an essential term of this Lease. In the event that the warranty in clause 16.8(a) is not accurate, or the obligation in

clause 16.8(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).

16.9 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.

16.10 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.

16.11 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.

16.12 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.

16.13 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.

16.14 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 16.14(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.

ANNEXURE 3
SCHEDULE 6
FORM OF SEISMIC AGREEMENT

[OYSTER ENTITY]

(Landlord)

ALTO PACKAGING LIMITED

(Tenant)

**AGREEMENT IN RESPECT OF SEISMIC WORKS, POST-
COMMENCEMENT DATE WORKS, DEMOLITION OF BUILDINGS**

**THOMPSON
BLACKIE
BIDDLES
L A W Y E R S**

PAL-110800-4-970-2

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. 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:

Agreed Rating means for each of the Seismic Buildings (where clause 2.3(a) applies) the Target Rating or (where clause 2.3(b) applies) the Earthquake Rating agreed between the parties (or determined) pursuant to clause 2.3, being at least the Minimum Rating, in all instances subject to clause 2.6(b);

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;

Asbestos Works means all 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;

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 [*Commencement Date of Lease*];

Building Works means the building works being undertaken to certain improvements at the Premises as set out in Schedule 3;

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

Business SPA means the agreement for sale and purchase of business assets between Flight Plastics Limited, Flight Extruded Plastics Limited, Alto Packaging Limited and Pact

Group Holdings Limited dated 18 August 2020 (as varied by deed of amendment dated [insert]);

Commencement Date has the meaning in the Lease;

Consents has the meaning set out in clause 2.4(a);

Construction Contract means the construction contract entered into with the Contractor pursuant to clause 2.5(c);

Contractor means the relevant contractor to the respective Construction Contract pursuant to clause 2.5(c);

Costs means all costs properly incurred in undertaking the design (including the preparation of the Detailed Design undertaken prior to the provision of the Estimate), 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;

Council Notice means the notice from Hutt City Council dated 7 October 2020 addressed to Flight Group Limited;

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];

Estimate means the estimate of the Costs based on the Detailed Design, programme and methodology approved by the Tenant pursuant to this agreement and any other information that the Landlord and/or the determining party considers relevant and reasonable having

regard to the nature, type and extent of the Seismic Works, the Seismic Buildings and the Premises including reasonable contingencies;

ETC shall have the meaning set out in clause 2.5(b)(iii);

Existing Easement means the easement instrument contained in instrument 11359488.3;

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 2.6);
- (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 18 August 2020 (as varied by deed of amendment 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;

Minimum Rating means an Earthquake Rating of 50%;

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) to achieve the Agreed Rating and 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;

Replacement Easement means the easement to be registered in replacement of the Existing Easement, the form of which is annexed to this agreement as Annexure 3;

Seismic Buildings means (unless otherwise agreed between the parties and subject to clause 2.2(c)) those buildings at the Premises which are identified in the Seismic Report as having an Earthquake Rating of less than the Target Rating and that building identified in the Council Notice as being potentially earthquake prone (together with, at the Landlord's sole and absolute discretion, any additional buildings on the premises nominated as such by the Landlord and 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 2.13.

Strengthening Work means the work required to increase the Earthquake Rating of the relevant Seismic Building to achieve the Agreed Rating, except for the purposes of clause 2.2(a)(i)A where it means the work required to increase the Earthquake Rating of the relevant Seismic Building to achieve the Target Rating;

Sunset Date means, subject to clause 2.11, the date that is 5 years following the Commencement Date;

Target Rating means an Earthquake Rating of 67%; and

Tenant's Seismic Contribution means the amount of NZD\$3.5 million (plus GST, if any) to be paid by the Tenant for the purposes of funding the Seismic Works in accordance with clause 2.12.

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 Works will be undertaken by the Landlord to the Seismic Buildings to ensure such buildings achieve the Agreed Rating following completion of the Seismic Works in accordance with this clause 2.
- (b) The Landlord shall (subject to clause 2.11) use all commercially reasonable endeavours to achieve Practical Completion of the Seismic Works to all of the Seismic Buildings at the Agreed Rating by not later than 5 years following the Commencement Date provided that the Landlord shall be entitled to undertake and complete the Seismic Works in stages.
- (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 2.5 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 to achieve the Target Rating; and
 - B. determine the Ancillary Works required in respect of each Seismic Building;
 - (ii) procure the Detailed Design of the Seismic Works to achieve the Target Rating and instruct preparation of a programme and methodology for the undertaking of the Seismic Works to achieve the Target Rating (on a building by building basis) which are consistent with the requirements of the construction contract(s) as set out in clause 2.5(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 2.5(b)), it being acknowledged that the Tenant may procure its own detailed seismic assessment or peer review as part of the approvals process, 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 30 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.
- (c) For the avoidance of doubt, the parties acknowledge that during the Detailed Design phase it may be established that:
- (i) a Building initially identified as a Seismic Building is established as having an Earthquake Rating at or above the Target Rating) and therefore does not require works to be undertaken in order to achieve the Target Rating and in such instance shall be deemed to no longer be a "Seismic Building"; and/or
 - (ii) it may be identified that a building at the Property which was not originally identified as a Seismic Building does, or is likely to, have an Earthquake Rating that is less than the Target Rating and in such instance shall be deemed to be a "Seismic Building".

2.3 Estimate of Seismic Works

Following the Detailed Design, programme and methodology being approved (or deemed approved) by the Tenant (or an Expert as the case may be) the Landlord shall have the Estimate determined (by a suitably qualified quantity surveyor approved in writing by the Tenant, provided that if the Tenant has not notified the Landlord that it either approves or withholds its approval within 10 Business Days of being notified of the identity of the proposed quantity surveyor, the Tenant shall be deemed to have approved the same (**Landlord's Surveyor**)) based on the Seismic Works achieving the Target Rating. Once such Estimate has been determined by the Landlord's Surveyor, the Landlord shall notify the Tenant whether it has determined (acting reasonably) that the Estimate (based on the Target Rating being achieved) is:

- (a) less than a sum equivalent to the Tenant's Seismic Contribution, in which event the "Agreed Rating" for all Seismic Buildings shall be 67%; or
- (b) greater than a sum equivalent to the Tenant's Seismic Contribution. In such event the Tenant may (at its discretion) arrange for a peer review of the Estimate by another suitably qualified quantity surveyor engaged by the Tenant (such quantity surveyor being approved in writing by the Landlord (acting reasonably) prior to engagement, provided that if the Landlord has not notified the Tenant that it either approves or withholds its approval within 10 Business Days of being notified of the identity of the proposed quantity surveyor, the Landlord shall be deemed to have approved the same) ("**Tenant's Surveyor**"), and the Landlord shall procure that the Landlord's Surveyor that prepared the Estimate provides all information

reasonably requested by the Tenant to allow for the undertaking of such peer review. Where:

- (i) the Tenant's Surveyor determines that the Estimate determined by the Landlord's Surveyor contains any material inaccuracies such that the Tenant's Surveyor considers that the Estimate determined by the Landlord's Surveyor is likely to be less than a sum equivalent to the Tenant's Seismic Contribution, then the parties shall promptly meet to attempt to resolve the discrepancy. In the event that the parties cannot agree upon whether the Estimate is likely to be less than, or greater than, a sum equivalent to the Tenant's Seismic Contribution, then either party may request that the matter be determined by a suitably qualified person in accordance with the provisions of clause 6. In such event, the Estimate agreed between the parties or determined in accordance with the provisions of clause 6 shall be the Estimate for the purposes of clause 2.3(c).
 - (ii) the Tenant's Surveyor determines that the Estimate determined by the Landlord's Surveyor does not contain any material inaccuracies such that the Tenant's Surveyor considers that the Estimate is not likely to be less than a sum equivalent to the Tenant's Seismic Contribution, then the Estimate shall be the "Estimate" for the purposes of clause 2.3(c).
- (c) Where, following determination of the Estimate in accordance with this foregoing provisions of this clause 2.3, the Estimate (based on the Target Rating being achieved) is:
- (i) less than a sum equivalent to the Tenant's Seismic Contribution, clause 2.3(a) shall apply; or
 - (ii) greater than a sum equivalent to the Tenant's Seismic Contribution, the Landlord shall procure that the Detailed Design is value engineered to achieve an Estimate which does not exceed the Tenant's Seismic Contribution and Seismic Works which achieve an Earthquake Rating of no less than the Minimum Rating for each Seismic Building provided that the Seismic Works for as many of the key Seismic Buildings as reasonably practicable (as identified by the Tenant having regard to the Tenant's intended use of each building, occupational health and safety consequences to the Tenant as a PCBU (as that term is defined in the Health and Safety at Work Act 2015)) achieve an Earthquake Rating that is as close to the Target Rating as commercially viable. The parties acknowledge that such value engineering may result in:
 - A. the Seismic Works as it relates to certain Seismic Buildings having an Earthquake Rating that is less than the Target Rating but greater than the Minimum Rating; and/or
 - B. the nature and extent of the alterations which comprise the Seismic Works being revised, the result of which may be an Earthquake Rating for certain of the Seismic Buildings that is less than the Target Rating but greater than the Minimum Rating; and/or
 - C. a building no longer comprising a "Seismic Building" (and thus requiring no Seismic Works) because that building already achieves the Agreed Rating determined or agreed by the parties as part of the value engineering exercise;

and the Landlord shall engage with the Tenant in good faith in such value engineering process which process shall be done in consultation with both the quantity surveyor(s) and relevant appointed seismic consultants. Both parties shall act reasonably to agree how best to apply the Tenant's Seismic Contribution to achieve a suitable Earthquake Rating (having regard to the foregoing) and shall use their reasonable endeavours to promptly agree the Earthquake Rating that shall form the

"Agreed Rating". The Earthquake Rating that is agreed between the parties for each of the Seismic Buildings pursuant to this clause 2.3(b) shall be the "Agreed Rating". In the event that the parties cannot agree such Agreed Rating, then either party may request that the Agreed Rating, value engineering of the Detailed Design and Estimate be determined by a suitably qualified person in accordance with the provisions of clause 6 and on such determination, the Agreed Rating and Detailed Design shall be that which is determined by such person. Notwithstanding the foregoing, the Agreed Rating shall not in any instance be less than the Minimum Rating nor shall the Agreed Rating result in an Estimate which (when incorporating reasonable contingencies reflective of usual market practice) exceeds the Tenant's Seismic Contribution.

2.4 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) and the parties agreeing the Agreed Rating in accordance with clause 2.3 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 to achieve the Agreed Rating (**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).

2.5 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 to achieve the Agreed Rating. 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 to achieve the Agreed Rating 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 as soon as reasonably practicable and, in any event, 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 to the Agreed Rating 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 to achieve the Agreed Rating;
- (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,

provided that where any inclusion is not commercially or reasonably able to be obtained then the parties shall engage in good faith and agree (if appropriate) to waive such requirement.

- (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 2.5(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 (including the ETC), contractor or supplier to undertake the Seismic Works to achieve the Agreed Rating, 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 2.12(a), solely responsible for payment of the relevant consultant, contractor or supplier or other third party.

2.6 Variations

- (a) 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:
 - (i) not be unreasonably withheld; and
 - (ii) 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 materials 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.

- (b) If, following the determination of the Agreed Rating pursuant to clause 2.2, the Landlord, the Contractor and/or any other party engaged in relation to the Seismic Buildings and/or Seismic Works identifies (acting reasonably) that additional works and/or variations or additional Costs are required in order to achieve the Agreed Rating for the relevant Seismic Buildings, and those works, variation, costs would result in the Costs likely to be incurred in completing the Seismic Works to exceed a sum equivalent to the Tenant's Seismic Contribution then the Landlord shall be entitled to initiate the process contemplated by clause 2.3 with all necessary amendment) in order to ensure that the Costs do not exceed a sum equivalent to the Tenant's Seismic Contribution (provided that the Minimum Rating is achieved in all instances), provided that the Landlord has been properly, reasonably and diligently progressing the undertaking of the Seismic Works in accordance with its obligations under this Agreement.

2.7 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 required to achieve the Agreed Rating to be completed:

- (iv) in all material respects in accordance with the Detailed Design (subject to clause 2.6);
 - (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.

2.8 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.

2.9 Practical completion

- (a) Without prejudice to clause 2.5(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 to achieve the Agreed Rating 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 to achieve the Agreed Rating 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 to achieve the Agreed Rating 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 2.6), 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 the Agreed Rating.
- (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.

2.10 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.

2.11 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.

2.12 Cost of Seismic Works

- (a) Subject to the Tenant complying with its obligation pursuant to clause 2.12(b) the Landlord shall be responsible for the payment and administration of all Costs.
- (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 Tenant's solicitor the Tenant's Seismic Contribution in accordance with this clause 2.12. 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 Tenant'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 2.12(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 (including without limiting the generality of the foregoing any consenting fees and related testing costs);
- and the Stakeholder shall (by virtue of this clause) 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 2.12(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 to achieve the Agreed Rating, subject to the Landlord being able to exercise its rights pursuant to clause 2.6(b), which exceed the Tenant's Seismic Contribution (paid in accordance with clause 2.12(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) The Tenant may at any time (at its cost) procure an audit of the Seismic Works Fund and the use of funds by the Landlord, and the Landlord shall provide all reasonable assistance requested by the Tenant in connection with any such audit.
- (g) 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) on the date being the earlier of:

- (i) the date that all of the Seismic Works have achieved Practical Completion in accordance with the relevant Construction Contract; and
- (ii) the Sunset Date (as extended pursuant to clause 2.11 or clause 2.13(c) (in each case if applicable)).

2.13 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 to achieve the Agreed Rating 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 to achieve the Agreed Rating as soon as reasonably practicable.

2.14 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 to achieve the Agreed Rating 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 Tenant's solicitor is (to the extent it continues to hold the Seismic Works Fund) 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 2.14(b) shall apply notwithstanding any provision to the contrary contained in the Lease.

2.15 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.

- 2.16 **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. POST-COMMENCEMENT DATE WORKS

- 3.1 The parties acknowledge the Landlord is procuring the undertaking of the Building Works and Asbestos Works at the Premises (via the prior registered owner of the Premises, Flight Limited), the completion of which may not be achieved prior to the Commencement Date. In the event that any of the Building Works and/or Asbestos Works are not complete by the Commencement Date, the Tenant acknowledges and consents to the undertaking of any such remaining Building Works and Asbestos Works following the Commencement Date. 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 Building Works and Asbestos Works. The Tenant shall comply with all reasonable directions of the appointed contractor(s) of the Building Works and/or Asbestos Works as applicable and the Landlord in order to comply with the respective health and safety policies for compliance with the Health and Safety at Work Act 2015.

- 3.2 In undertaking any works pursuant to this clause 3, the Landlord shall use reasonable endeavours to procure that the chosen contractor(s) 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. Provided that the Landlord complies with its obligations pursuant to this clause 3.2 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 Building Works and/or 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 Building Works and/or 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.

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) in the event that clause 3 applies, undertake the Building Works and Asbestos Works (including any defect remediation) or to inspect the areas affected by the Building Works and/or Asbestos Works;
- (c) inspect the Redundant Buildings and undertake the demolition of the Redundant Buildings pursuant to clause 4;

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:

- (d) 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
 - (e) 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 reports 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 6 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

- 7.1 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.
- 7.2 Following completion of the Seismic Works, Building Works and/or Asbestos Works, the Landlord shall be entitled to prepare a new premises condition report annexure as it relates to those improvements respectively affected by the Seismic Works, Building Works and/or Asbestos Works. The Landlord shall provide a copy of any new premises condition report to the Tenant for approval, such approval not to be unreasonably withheld or delayed provided that the Tenant's approval shall be deemed to have been given where the Tenant has not disputed the contents of the new premises condition report within 5 Business Days of receipt of the same. If any such annexures are prepared, they shall (following approval or deemed approval by the Tenant in accordance with this clause 7.2) be deemed to be annexed to and form part of the Lease (and the Landlord shall be entitled to require that the Lease be formally varied to include such annexures). The Tenant agrees to pay 50% of the external costs reasonably incurred by the Landlord in preparing any new premises condition report annexures. The Tenant shall pay half of the reasonable costs incurred by the Landlord in obtaining the PCR within 10 Business Days of receipt of a valid tax invoice.

8. EXISTING EASEMENT AND REPLACEMENT EASEMENT

- 8.1 The Tenant acknowledges and agrees that if at the Commencement Date the Existing Easement has not been surrendered and the Replacement Easement has not been registered then it consents to such surrender and registration and, for the purposes of clause 16.7 of

the Lease, the Replacement Easement shall be deemed to be an "Existing Interest" as that term is defined in clause 16.7 of the Lease.

9. GENERAL

9.1 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.

9.2 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.

9.3 Amendment

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

9.4 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.

9.5 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.

9.6 Governing Law

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

9.7 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.

9.8 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.

9.9 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.

9.10 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.

9.11 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.

9.12 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

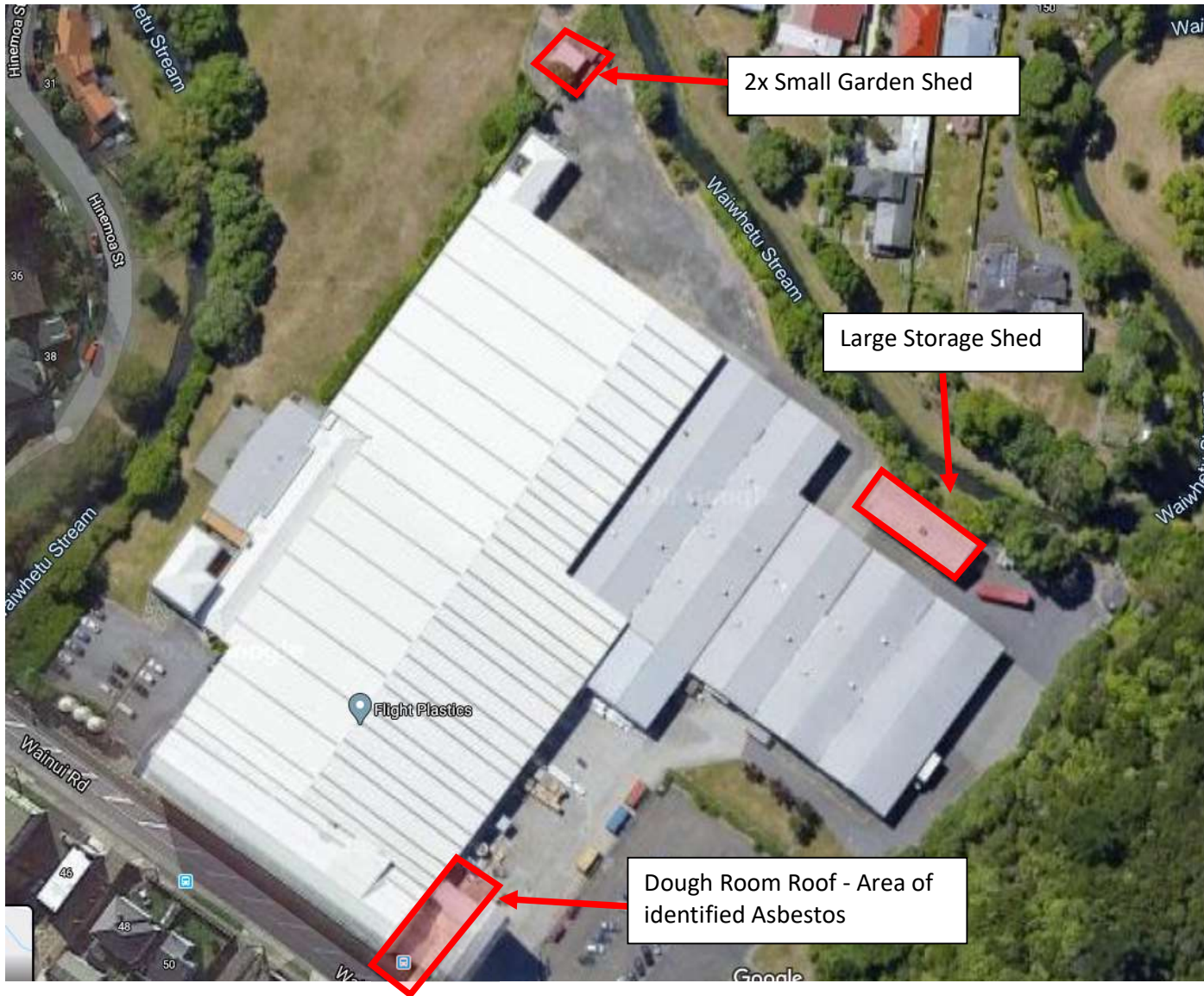
Director

Print Name

Occupation

Town/City of Residence

**ANNEXURE 1
PLAN**



2x Small Garden Shed

Large Storage Shed

Dough Room Roof - Area of identified Asbestos

Hinenoa St

Waiwhetu Stream

Waiwhetu Stream

Waiwhetu Stream

Waiwhetu Stream

Wainui Rd

Flight Plastics

Google

ANNEXURE 2
Building Works

- Repairs to the two unrepaired gutters on the warehouse building (1970's building No.5); and
- Removal, remediation and disposal of the asbestos layer from the roof between the Doughroom Building and the Silos Building, replacement of such roof with a corrugated iron roof.

ANNEXURE 3
Replacement Easement

See attached.

Easement instrument to grant easement or *profit à prendre*

(Section 109 Land Transfer Act 2017)

Grantor

Flight Limited

Grantee

Flight Limited

Grant of Easement or *Profit à prendre*

The Grantor being the registered owner of the burdened land set out in Schedule A grants to the Grantee (and, if so stated, in gross) the easement(s) or <i>profit(s) à prendre</i> set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A

Annexure Schedule, if required

Continue in additional

Purpose of Easement, or <i>profit</i>	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Right of Way	A on DP 532424	Lot 1 DP 532424 (RT: 871447)	Lot 2 DP 532424 (RT: 871448)

Easements or profits à prendre rights and powers (including terms, covenants and conditions)

1. Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2018 and/or Schedule 5 of the Property Law Act 2007.
2. The rights and powers recorded in this easement instrument shall be in addition to the rights and powers recorded in Schedule 5 of the Land Transfer Regulations 2018 and/or Schedule 5 of the Property Law Act 2007, except in the event of conflict, where the rights and powers recorded in this easement instrument shall prevail and shall substitute the rights and powers recorded in Schedule 5 of the Land Transfer Regulations 2018 and/or Schedule 5 of the Property Law Act 2007. Where there is a conflict between the provisions of Schedule 5 of the Land Transfer Regulations 2018 and Schedule 5 of the Property Law Act 2007, the provisions of Schedule 5 of the Property Law Act 2007 will prevail.
3. The implied rights and powers are hereby varied as follows:
 - 3.1 The following rights and powers are added:
 - (A) The Grantee acknowledges that part of the easement area is used by the Grantor (and/or its occupier). As a result of that use, the Grantor and Grantee respectively covenant each with the other as follows:
 - (i) The Grantor will always ensure that a sufficient area of the easement area (being the area marked as A on DP 532424 and subject to this easement) (**Easement Area**) (being not less than an area 3 metres wide and in such a configuration so as to allow for an 11m long rigid truck to navigate the area) remains free of obstructions (including but not limited to free from obstruction by parked vehicles, deposit of materials, or unreasonable impediment) to enable the Grantee to pass and re-pass over the Easement Area so as to access the benefited land at all times with or without any kind of vehicle, machinery, implement, or equipment (**Accessway**).
 - (ii) The Grantor will ensure that the boundaries and route of the Accessway (as altered from time to time in accordance the terms of this easement) are adequately identified and marked, for example by way of "no stopping" signs and by painting a hatched pattern on the easement area to identify the Accessway.
 - (iii) The Grantee will not place or allow to be placed any obstructions (whether caused by parked vehicles, deposits of materials or unreasonable impediment) on the Accessway which will restrict the Grantor's use and enjoyment of the burdened land.
 - (iv) The costs of establishing a driveway where the route of the Accessway has been changed by the Grantor in accordance with the terms of this easement will be borne solely by the Grantor.
 - (v) For the avoidance of doubt, for any period in which the Grantee does not access or use the Accessway or the easement area, then the Grantee's reasonable contribution towards the cost of establishment, maintenance, upkeep, and repair of the Accessway and the easement area shall be nil.
 - (B) The right to go over and along the Accessway, and to have the Accessway kept clear, is limited by any necessary repair or maintenance of the Accessway (and then only for the period of, and to the extent required for, such necessary repair or maintenance).

(C) The Grantor will from time to time be entitled to alter the state and/or use of that part of the burdened land which is subject to this easement provided that the provisions of paragraph 3.1(A)(i) above are always complied with such that an alternative Accessway is provided to the Grantee over the easement area.

3.2 The provisions of Schedule 5 of the Land Transfer Regulations 2018 are amended as follows:

- (A) Delete clauses 6(2), 6(3) and 6(4);
- (B) Delete clauses 10(1)(b) and 10(2); and
- (C) Delete clause 11.

ANNEXURE 4

SCHEDULE 7

VENDOR'S CAPEX WORKS

The Vendor's CAPEX Works shall consist of repairs to the two unrepaired gutters on the warehouse building (1970's building No.5) being the repairs as summarised in the attached quote.



Matt Winders Roofing Ltd

1 Leinster Avenue
Raumati SouthWellington

Ph. 027 272 9027
E-mail: mattwinders@msn.com
Licensed Building Practitioner
#BP123264

Re : Flight Plastics 75 Wainui Rd
Lower Hutt

03/11/2020

Dear Derek Lander - Flight Plastics

Thank you for the opportunity to quote on the internal gutter work required at 75 Wainui Road. This quote is based on the replacement of the internal gutter membrane to the remaining 2 gutters over the Store and covers:

- The removal of the top layer of membrane from the gutters only
- The supply and installation of new WPM717 Ardex Weldtec membrane over the existing gutter
- There is no allowance for the replacement of any roofing or flashings, all existing roofing will be reinstated to its original state.

Quotation for New Roof

Material	WPM717
Labour	\$ 8,464.00
	\$ -
WPM717 membrane	\$ 11,600.00
TAGS	\$ -
Scaffold	\$ -
Substrates	\$ -
Spouting and Downpipes	\$ -
Sub-total	\$ 20,064.00
Gst	\$ 3,009.60
Total	\$ 23,073.60

- Any variations to this quote will be charged accordingly
 - This quote is subject to The Construction Contracts Act 2002
- If you require further information or clarification, please do not hesitate to contact us.

Thank you for this opportunity to quote for these works and we trust we can be of service.

Yours sincerely,
Matt Winders Roofing Ltd

Matt Winders
Managing Director

ANNEXURE 5
SCHEDULE 8
RIGHT OF WAY EASEMENT

Easement instrument to grant easement or *profit à prendre*

(Section 109 Land Transfer Act 2017)

Grantor

Flight Limited

Grantee

Flight Limited

Grant of Easement or *Profit à prendre*

<p>The Grantor being the registered owner of the burdened land set out in Schedule A grants to the Grantee (and, if so stated, in gross) the easement(s) or <i>profit(s) à prendre</i> set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)</p>
--

Schedule A

Continue in additional

Annexure Schedule, if required

Purpose of Easement, or <i>profit</i>	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Right of Way	A on DP 532424	Lot 1 DP 532424 (RT: 871447)	Lot 2 DP 532424 (RT: 871448)

Easements or profits à prendre rights and powers (including terms, covenants and conditions)

1. Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2018 and/or Schedule 5 of the Property Law Act 2007.
2. The rights and powers recorded in this easement instrument shall be in addition to the rights and powers recorded in Schedule 5 of the Land Transfer Regulations 2018 and/or Schedule 5 of the Property Law Act 2007, except in the event of conflict, where the rights and powers recorded in this easement instrument shall prevail and shall substitute the rights and powers recorded in Schedule 5 of the Land Transfer Regulations 2018 and/or Schedule 5 of the Property Law Act 2007. Where there is a conflict between the provisions of Schedule 5 of the Land Transfer Regulations 2018 and Schedule 5 of the Property Law Act 2007, the provisions of Schedule 5 of the Property Law Act 2007 will prevail.
3. The implied rights and powers are hereby varied as follows:
 - 3.1 The following rights and powers are added:
 - (A) The Grantee acknowledges that part of the easement area is used by the Grantor (and/or its occupier). As a result of that use, the Grantor and Grantee respectively covenant each with the other as follows:
 - (i) The Grantor will always ensure that a sufficient area of the easement area (being the area marked as A on DP 532424 and subject to this easement) (**Easement Area**) (being not less than an area 3 metres wide and in such a configuration so as to allow for an 11m long rigid truck to navigate the area) remains free of obstructions (including but not limited to free from obstruction by parked vehicles, deposit of materials, or unreasonable impediment) to enable the Grantee to pass and re-pass over the Easement Area so as to access the benefited land at all times with or without any kind of vehicle, machinery, implement, or equipment (**Accessway**).
 - (ii) The Grantor will ensure that the boundaries and route of the Accessway (as altered from time to time in accordance the terms of this easement) are adequately identified and marked, for example by way of "no stopping" signs and by painting a hatched pattern on the easement area to identify the Accessway.
 - (iii) The Grantee will not place or allow to be placed any obstructions (whether caused by parked vehicles, deposits of materials or unreasonable impediment) on the Accessway which will restrict the Grantor's use and enjoyment of the burdened land.
 - (iv) The costs of establishing a driveway where the route of the Accessway has been changed by the Grantor in accordance with the terms of this easement will be borne solely by the Grantor.
 - (v) For the avoidance of doubt, for any period in which the Grantee does not access or use the Accessway or the easement area, then the Grantee's reasonable contribution towards the cost of establishment, maintenance, upkeep, and repair of the Accessway and the easement area shall be nil.
 - (B) The right to go over and along the Accessway, and to have the Accessway kept clear, is limited by any necessary repair or maintenance of the Accessway (and then only for the period of, and to the extent required for, such necessary repair or maintenance).
 - (C) The Grantor will from time to time be entitled to alter the state and/or use of that part of the burdened land which is subject to this easement provided that the

provisions of paragraph 3.1(A)(i) above are always complied with such that an alternative Accessway is provided to the Grantee over the easement area.

3.2 The provisions of Schedule 5 of the Land Transfer Regulations 2018 are amended as follows:

- (A) Delete clauses 6(2), 6(3) and 6(4);
- (B) Delete clauses 10(1)(b) and 10(2); and
- (C) Delete clause 11.

ANNEXURE 6
ASSET TRANSFER AGREEMENT

Asset Transfer Agreement (wash plant & silos)

Flight Plastics Limited

Flight Limited

PARTIES

1. **FLIGHT PLASTICS LIMITED** (NZCN 1630) (**FPL**)
2. **FLIGHT LIMITED** (NZCN 1926368) (**FL**)

BACKGROUND

- A. FPL is the owner of the Wash Plant Assets.
- B. FPL has agreed to transfer, and FL has agreed to procure, the Wash Plant Assets on the terms and conditions set out in this Agreement.
- C. FL is the owner of the Plastics Assets.
- D. FL has agreed to transfer, and FPL has agreed to procure, the Plastics Assets on the terms and conditions set out in this Agreement.

TERMS

1. Definitions and Interpretation

1.1 **Definitions:** In this Agreement, the following terms shall have the meanings specified:

- (a) **“Completion Date”** means the **[date of this Agreement]**;
- (b) **“Encumbrance”** means any mortgage, debenture, charge, lien, pledge, hypothecation, restriction against transfer, encumbrance, option, right of pre-emption, title retention or other security interest or other third party interest (whether legal or equitable);
- (c) **“Land and Buildings”** means the land and buildings situated at 75 Wainui Road, Waiwhetu, Lower Hutt, New Zealand (as evidenced in records of title WN465/182, WN458/158 and 871447);
- (d) **“Plastics Assets”** means the Hoppers and Silos and Packaging Floor Sealing located at the Land and Buildings;
- (e) **“Plastics Assets Purchase Price”** means the purchase price for the Hoppers and Silos and Packaging Floor Sealing as detailed in clause 3.2;
- (f) **“Wash Plant Assets”** means the property specific assets installed by FPL at the Lower Hutt site as part of the Wash Plant equipment installation being those listed in the Schedule; and
- (g) **“Wash Plant Assets Purchase Price”** means the purchase price for the Wash Plant Assets as detailed in clause 2.2.

2. Sale and Purchase of Wash Plant Assets

2.1 **Agreement:** FPL agrees to sell the Wash Plant Assets, and FL agrees to purchase the Wash Plant Assets, free of all Encumbrances and on the terms and conditions set out in this Agreement.

- 2.2 **Wash Plant Purchase Price:** The purchase price for the Wash Plant Assets shall be the depreciated book value of the Wash Plant Assets as recorded in FPL's most recently completed financial statements (plus GST (if any)).
- 2.3 **Method of Payment:** FL shall pay the Wash Plant Assets Purchase Price to FPL by way of an acknowledgement of debt to be recorded as an intercompany advance to FPL on the Completion Date.
- 2.4 **FPL's obligation:** On the Completion Date, title to, and possession of, the Wash Plant Assets shall be given by FPL and accepted by FL.

3. Sale and Purchase of Plastics Assets

- 3.1 **Agreement:** FL agrees to sell the Plastics Assets, and FPL agrees to purchase the Plastics Assets, free of all Encumbrances and on the terms and conditions set out in this Agreement.
- 3.2 **Plastics Assets Purchase Price:** The purchase price for the Plastics Assets shall be the depreciated book value of the Plastics Assets as recorded in FL's most recently completed financial statements (plus GST (if any)).
- 3.3 **Method of Payment:** FPL shall pay the Plastics Assets Purchase Price to FL by way of an acknowledgement of debt to be recorded as an intercompany advance to FL on the Completion Date.
- 3.4 **FL's obligation:** On the Completion Date, title to, and possession of, the Plastics Assets shall be given by FL and accepted by FPL.

4. Lowest Purchase Price

- 4.1 **Lowest Purchase Price:** Neither of the Wash Plant Assets Purchase Price nor the Plastics Assets Purchase Price includes any capitalised interest and the parties agree that each of the Wash Plant Assets Purchase Price and Plastics Assets Purchase Price is the lowest price for the purposes of valuing the Wash Plant Assets and Plastics Assets (as the case may be) in accordance with section EW32(3) of the Income Tax Act 2007 at the time this Agreement was executed. The tax position taken by both parties in their tax returns will be consistent with the position recorded by this clause.

EXECUTION

SIGNED on behalf of FLIGHT PLASTICS LIMITED
by:

Derek Ralph Lander
Director

SIGNED on behalf of FLIGHT LIMITED by:

Derek Ralph Lander
Director

SCHEDULE

WASH PLANT

<u>FA 18008/0 : Yard/Fencing</u>		
28/06/16	BLUESTONE CONSTRUCTION (NZ) LTD	Nib/kerb Removal/Reinststate pavements/concrete
13/07/16	BLUESTONE CONSTRUCTION (NZ) LTD	Pavement constructions/concrete
01/08/16	BLUESTONE CONSTRUCTION (NZ) LTD	Nib/kerb Removal plus wire fence removal/asphalt/concrete works
25/11/16	BLUESTONE CONSTRUCTION (NZ) LTD	New Plinth Exterior Building/Boiler pad/concrete
18/10/16	BLUESTONE CONSTRUCTION (NZ) LTD	Concrete works to flooring/forklift ramp
24/04/17	BLUESTONE CONSTRUCTION (NZ) LTD	Gate entry-concrete works
16/08/16	KIRK FENCING LTD	Bale Yard fencing
13/09/16	KIRK FENCING LTD	Bale Yard fencing
30/11/16	KIRK FENCING LTD	Bale Yard fencing
31/08/16	BEVERIDGE LOCKSMITH SERVICES	Lock for carpark gate
19/10/16	MAATHUIS ELECTRICAL LTD	Auto Sliding gate
06/02/17	MAATHUIS ELECTRICAL LTD	Sliding gate motor
19/01/17	CAPITAL ROAD MARKINGS	paint walkways and hatched areas
15/02/17	S & R ASPHALTS	Asphalt for yard
07/06/17	MATT WINDERS ROOFING LTD	Fence
<u>FA 18014/0 : Noise Insulation incl. Walls/Doors</u>		
28/06/2016	BLUESTONE CONSTRUCTION (NZ) LTD	internal wall
8/07/2016	GLIDEAWAY GARAGE DOORS	auto rapid rolling door deposit
1/01/2017	GLIDEAWAY GARAGE DOORS	auto rapid rolling door bal
4/08/2016	HUTT CC	Initial Fee re building consent for partial canopy closure
24/08/2016	HUTT CC	Fee re building consent for partial canopy closure
20/03/2017	HUTT CC	Refund-Fee re building consent for partial canopy closure
30/06/2017	HUTT CITY COUNCIL REFUND	Refund-Fee re building consent for partial canopy closure
22/09/2016	FIELD & HALL LTD	Canopy
4/10/2016	FIELD & HALL LTD	Canopy
8/11/2016	FIELD & HALL LTD	Canopy
2/02/2017	FIELD & HALL LTD	Canopy
7/10/2016	T & D HALL PROPERTY MAINTENANCE LTD	Construction of new Boiler room
9/12/2016	T & D HALL PROPERTY MAINTENANCE LTD	Door & frame re boiler room
28/11/2016	T & D HALL PROPERTY MAINTENANCE LTD	Construction of new Compressor room
20/12/2016	T & D HALL PROPERTY MAINTENANCE LTD	Washplant office
4/01/2017	T & D HALL PROPERTY MAINTENANCE LTD	Washplant office
24/03/2017	T & D HALL PROPERTY MAINTENANCE LTD	new section of wall for switchboards
21/04/2017	T & D HALL PROPERTY MAINTENANCE LTD	New walls & roof to create o/side cover for shredding machine
5/05/2017	T & D HALL PROPERTY MAINTENANCE LTD	New fence next to walkway path
23/06/2017	T & D HALL PROPERTY MAINTENANCE LTD	Door kickplates/brushes/closer for washplant doors incl office
19/12/2016	BEVERIDGE LOCKSMITH SERVICES	Boiler room lock&handle
16/01/2017	BEVERIDGE LOCKSMITH SERVICES	Wash plant office new lock & handle
31/01/2017	STEEL & TUBE DISTRIBUTION	Bolts etc
8/02/2017	PETONE TOOLSHED LTD	Socket&Spanner set
9/02/2017	COOKES - BRIDON NEW ZEALAND	Websling
5/01/2017	MITRE 10 MEGA PETONE	Paint
19/12/2016	RCR BUILDING PRODUCTS (NZ) LTD	Steel Roller Shutter Door
19/05/2017	RCR BUILDING PRODUCTS (NZ) LTD	Steel Roller Shutter Door
7/06/2017	MATT WINDERS ROOFING LTD	Clad roof & walls around Plant room (debaler)
<u>FA 18014/0 : Noise Insulation incl. Walls/Doors (7/18)</u>		
20/07/2018	MATT WINDERS ROOFING LTD	Clad roof & walls around debaler + ramp wall

ANNEXURE 7

SCHEDULE 9

ASBESTOS ROOFING QUOTE



Matt Winders Roofing Ltd

1 Leinster Avenue
 Raumati South Wellington
 Ph. 027 272 9027
 E-mail: mattwinders@mwr.co.nz
 Licensed Building Practitioner
 #BP123264

Re : 75 Wainui Rd

04/10/2020

Attn: Derek Lander - Flight Plastics

Thank you for the opportunity to provide an estimate for the roof replacement work over the Workshop at 75 Wainui rd

This estimate covers:

- The removal from site of the existing metal roofing
- The supply and installation of new .55 Colorcote Magnaflow Styleline roofing over new roof underlay
- The supply and installation of new .55 Colorcote Magnaflow internal gutter liners
- Including all associated roof flashings
- A 5 year workmanship warranty
- A 15 year manufacturers warranty

Quotation for New Roof

Material	.55g Colorsteel Maxx
Roofing materials and Labour	\$ 23,855.91
Internal gutters	\$ 5,400.00
TAGS	\$ -
Scaffolding (if required)	\$ 550
Substrates	\$ -
Spouting and Downpipes	\$ -
Sub-total	\$ 29,805.91
Gst	\$ 4,470.89
Total	\$ 34,276.79

Yours sincerely,
Matt Winders Roofing Ltd

Matt Winders
 Managing Director

Terms and Conditions

1. Payment is due without any retention 7 working days following the date of service of our invoices/payment claims ("the Due Date").
2. Any payment schedule must be provided to us not later than 5 working days following the date of service of our payment claim.
3. if you do not make payment on the Due Date, you shall be liable to pay:
 - a. default interest at the rate of 1.5% per month, which shall accrue on a daily basis on the total amount outstanding from the Due Date to the date of payment in full; and
 - b. any legal costs on a solicitor/client basis that we incur incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms and Conditions.
4. We shall be entitled to immediately and without notice suspend any further work on credit if any payment is not made by the Due Date. Such suspension shall have the same effect and be on the same terms as that set out in s24A(2) to (5) of the Construction Contracts Act 2002.
5. If this quotation is not signed then you will be deemed by your conduct to have accepted these Terms and Conditions if you ask us verbally or in writing to commence works at your property and/or you pay any required deposit.
6. Any variations to this quote will be charged accordingly

If you require further information or clarification, please do not hesitate to contact us.

Thank you for this opportunity to quote for these works and we trust we can be of service.