

# DEED OF LEASE

FIFTH EDITION 2008

DEED made the 1 day of JUNE 2012

LANDLORD DNZ Property Fund Limited

TENANT HealthAlliance N.Z. Limited

GUARANTOR Not applicable

THE LANDLORD leases to the Tenant and the Tenant takes on lease the premises and the car parks (if any) described in the First Schedule together with the right to use:

- a) The Landlord's fixtures and fittings contained in the premises, and specified in the Fifth Schedule.
- b) The common areas of the property.

FOR the term from the commencement date and at the annual rent (subject to review if applicable) as set out in the First Schedule.

THE LANDLORD AND THE TENANT covenant as set out in the Second Schedule, as amended by the attached Schedules.

THE GUARANTOR covenants with the Landlord as set out in the Third Schedule.

SIGNED by the Landlord \*

in the presence of:

Witness Signature

Witness

Name Eve Denny

Occupation Lease Administrator

Address Auckland

Witness Occupation

Witness Address

Signature of Landlord

Paul John Duddy  
DIRECTOR

Print Full Name

(for a company specify position:  
Director/Attorney/Authorised Signatory)

Signature of Landlord

Patrick Gerard O'Reilly  
AUTHORISED SIGNATORY

Print Full Name

(for a company specify position:  
Director/Attorney/Authorised Signatory)

\* If appropriate, add:

"by its director(s)" OR "by its duly appointed attorney"

Note: Signing by a company - please refer to the note on page 2

**SIGNED by the Tenant \***

in the presence of:

*[Handwritten Signature]*

Witness Signature

*Linda*

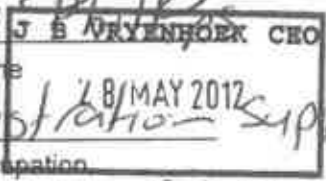
Witness Name

*Administration Support*

Witness Occupation

*2 Stanley Rd, Glenfield*

Witness Address



*[Handwritten Signature]*  
Signature of Tenant

Print Full Name

(for a company specify position:  
Director/Attorney/Authorised Signatory)



Signature of Tenant

Print Full Name

(for a company specify position:  
Director/Attorney/Authorised Signatory)

**SIGNED by the Guarantor \***

in the presence of:

Witness Signature

Witness Name

Witness Occupation

Witness Address



Signature of Guarantor

Print Full Name

(for a company specify position:  
Director/Attorney/Authorised Signatory)

Signature of Guarantor

Print Full Name

(for a company specify position:  
Director/Attorney/Authorised Signatory)

\* If appropriate, add:

"by its director(s)" OR "by its duly appointed attorney"

**Note:** Signing by a company – to ensure that this document binds the company as a deed, it must be signed in accordance with section 180 of the Companies Act 1993.

If two directors sign, no witnessing is necessary.

If only one director or a director and authorised signatory(ies) or attorney(ies) sign, signatures must be witnessed.

## FIRST SCHEDULE

**PREMISES:** Part Level 2, 650 Great South Road, Penrose, Auckland being 869.55m<sup>2</sup> as shown (for identification purposes only) outlined in red on the attached plan.

**CAR PARKS:** 80 carparks in places designated by the Landlord from time to time (refer clause 49).

**TERM:** Two (2) years

**COMMENCEMENT DATE:** 1 March 2010

**RENT COMMENCEMENT DATE:** 1 July 2010

**RIGHTS OF RENEWAL:** One (1) further term of one (1) year

**RENEWAL DATES:** 1 March 2012

**FINAL EXPIRY DATE:** 28 February 2013

<b>ANNUAL RENT:</b>	Premises	\$	_____	plus GST
(Subject to review if applicable)	Car Parks	\$	_____	plus GST <sup>^^ See attached</sup>
	<b>TOTAL</b>	\$	_____	plus GST

**MONTHLY RENT:** \$24,459.17 plus GST

**RENT PAYMENT DATES:** The 1st day of each month commencing on the 1st day of July 2010

For the avoidance of doubt the parties agree that outgoings are payable and all other terms of the Lease apply as from the commencement date

**RENT REVIEW DATES:**

(Delete where appropriate; if neither option is deleted, then option (a) applies)

**OR**

~~(b) (insert dates)~~

**PROPORTION OF OUTGOINGS:** (clause 3.1)

**DEFAULT INTEREST RATE:** (clause 5.1)

5

**IMPROVEMENTS RENT PERCENTAGE:** (clause 21.2) 12

The proportion that the rentable area of the premises bears to the total rentable area of the Landlord's building from time to time. % per annum over the Landlord's main trading bank's base lending rate at the time of default.

**BUSINESS USE:** (clause 16.1) Commercial Offices

**LANDLORD'S INSURANCE:** (clause 23.1)

(Delete or amend extent of cover as appropriate)

(1) Cover for fire, flood, explosion, lightning, storm, earthquake, and volcanic activity; and

such other

(2) Cover for the following additional risks as the Landlord may reasonably determine.

on the following basis:

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

~~OR~~

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

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

^^ \$293,510.00 per annum plus GST comprising:

Offices	869.55m <sup>2</sup> @ \$200 per m <sup>2</sup>	\$173,910.00
Carparks:	Basement 20 @ \$40.00 pcpw	41,600.00
	External 60 @ \$25.00 pcpw	78,000.00
Per annum plus GST		\$293,510.00

**OUTGOINGS**

(clause 3)

1. Rates or levies payable to any local or territorial authority.
2. Charges for water gas electricity telephones and other utilities or services, including line charges.
3. Rubbish collection charges **and rubbish recycling charges.**
4. New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and fire fighting equipment.
5. Any insurance excess ~~(but not exceeding \$500)~~ in respect of a claim and insurance premiums and related valuation fees (clause 23).
6. Service contract charges for air conditioning, lifts, <sup>roller doors</sup> other building services and security services.
7. Cleaning maintenance and repair charges including charges for repainting, decorative repairs <sup>grafitti removal</sup> and the maintenance and repair of building services to the extent that such charges do not comprise part of the cost of a service maintenance contract, but excluding charges for structural repairs to the building (minor repairs to the roof of the building shall not be a structural repair).
8. The provisioning of toilets and other shared facilities.
9. The cost of ground maintenance i.e. lawns, gardens and planted areas including plant hire and replacement, and the cost of repair of fences.
10. Yard and car parking area maintenance and repair charges but excluding charges for structural repairs to any car parking area of the building.
11. Body Corporate charges for insurance premiums and related valuation fees and management administration expenses.
12. Management expenses.
13. The costs incurred and payable by the Landlord in supplying to the territorial authority a building warrant of fitness and obtaining reports as required by sections 108 and 110 of the Building Act 2004.

## SECOND SCHEDULE

### TENANT'S PAYMENTS

#### Rent

- 1.1 THE Tenant shall pay the annual rent by equal monthly payments in advance (or as varied pursuant to any rent review) on the rent payment dates. The first monthly payment (together with rent calculated on a daily basis for any period from the commencement date of the term to the first rent payment date) shall be payable on the first rent payment date. All rent shall be paid without any deductions or set-off by direct payment to the Landlord or as the Landlord may direct.

#### Rent Review

- 2.1 THE annual rent payable as from each rent review date shall be determined as follows:
- (a) Either party may not earlier than 3 months prior to a rent review date and not later than the next rent review date give written notice to the other party specifying the annual rent proposed as the current market rent as at the relevant rent review date.
  - (b) If the party receiving the notice ("the Recipient") gives written notice to the party giving the notice ("the Initiator") within 20 working days after service of the Initiator's notice disputing the annual rent proposed and specifying the annual rent proposed by the Recipient as the current market rent, then the new rent shall be determined in accordance with clause 2.2.
  - (c) If the Recipient fails to give such notice (time being of the essence) the Recipient shall be deemed to have accepted the annual rent specified in the Initiator's notice and the extension of time for commencing arbitration proceedings contained in the Arbitration Act 1996 shall not apply.
  - (d) Notwithstanding any other provision of this clause, the annual rent payable as from the relevant rent review date shall not be less than the annual rent payable ~~as at the commencement date of the then current lease term~~ **immediately prior to the relevant review date.**
  - (e) The annual rent agreed, determined or imposed pursuant to this clause shall be the annual rent payable as from the relevant rent review date, or the date of service of the Initiator's notice if such notice is served later than 3 months after the relevant rent review date but subject to clause 2.3 and 2.4.
  - (f) The rent review ~~of the option of either party may~~ <sup>will</sup> be recorded in a Deed. **at the Landlord's option**

#### Rent Determinations

- 2.2 IMMEDIATELY following service of the Recipient's notice on the Initiator, the parties shall endeavour to agree upon the current market rent, but if agreement is not reached within 10 working days then the new rent may be determined either:
- (a) By one party giving written notice to the other requiring the new rent to be determined by arbitration; or
  - (b) If the parties so agree by registered valuers acting as experts and not as arbitrators as follows:
    - (1) Each party shall appoint a valuer and give written notice of the appointment to the other party within 10 working days of the parties agreeing to so determine the new rent;
    - (2) If the party receiving a notice fails to appoint a valuer within the 10 working day period then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties;
    - (3) The valuers appointed before commencing their determination shall appoint a third expert who need not be a registered valuer;
    - (4) The valuers appointed by the parties shall determine the current market rent of the premises but if they fail to agree then the rent shall be determined by the third expert;
    - (5) Each party shall be given the opportunity to make written or oral representations subject to such reasonable time and other limits as the valuers or the third expert may prescribe and they shall have regard to any such representations but not be bound thereby.

When the new rent has been determined the person or persons determining the same shall give written notice thereof to the parties. The notice shall provide as to how the costs of the determination shall be borne and such provision shall be binding on the parties.

#### Interim Rent

- 2.3 PENDING determination of the new rent, the Tenant shall from the relevant rent review date, or the date of service of the Initiator's notice if such notice is served later than 3 months after the relevant rent review date, until the determination of the new rent pay an interim rent as follows:
- (a) If both parties supply a registered valuer's certificate substantiating the new rents proposed, the interim rent payable shall be half way between the new rents proposed by the parties; or
  - (b) If only one party supplies a registered valuer's certificate, the interim rent payable shall be the rent substantiated by the certificate; or
  - (c) If no registered valuer's certificates are supplied, the interim rent payable shall be the rent payable immediately prior to the relevant rent review date:

but in no circumstances shall the interim rent be less than the rent payable as at the commencement date of the then current lease term.

The interim rent payable shall be determined as at the relevant rent review date, or the date of service of the Initiator's notice if such notice is served later than 3 months after the relevant rent review date and, subject to clause 2.4, shall not be subject to adjustment.

- 2.4 UPON determination of the new rent, any overpayment shall be applied in payment of the next month's rent and any amount then remaining shall immediately be refunded to the Tenant. Any shortfall in payment shall immediately be payable by the Tenant.
- 2.5 Any determination of the rent pursuant to a rent review shall disregard the value of any Tenant's fixtures, fittings improvements to or in the premises.

**Outgoings**

- 3.1 THE Tenant shall pay the outgoings properly and reasonably incurred in respect of the property which are specified in the First Schedule. Where any outgoing is not separately assessed or levied in respect of the premises then the Tenant shall pay such proportion thereof as is specified in the First Schedule or if no proportion is specified then such fair proportion as shall be agreed or failing agreement determined by arbitration. **If required by the Landlord or any authority, the Tenant will install and maintain at the Tenant's cost, any meter necessary for the proper charging of any outgoings supplied\*^**
- 3.2 THE Landlord may vary the proportion of any outgoing payable to ensure that the tenant pays a fair proportion of the outgoing, to or used by the Tenant in the Premises.
- 3.3 IF any outgoing is rendered necessary by another tenant of the property or that tenant's employees, contractors or invitees causing damage to the property or by another tenant failing to comply with that tenant's leasing obligations, then such outgoing shall not be payable by the Tenant.
- 3.4 THE outgoings shall be apportioned between the Landlord and the Tenant in respect of periods current at the commencement and termination of the term.
- ~~3.5 THE outgoings shall be payable on demand or if required by the Landlord by monthly instalments on each rent payment date of such reasonable amount as the Landlord shall determine calculated on an annual basis. Where any outgoing has not been taken into account in determining the monthly instalments it shall be payable on demand.~~
- ~~3.6 AFTER the 31st March in each year of the term or such other date in each year as the Landlord may specify, and after the end of the term, the Landlord shall supply to the Tenant reasonable details of the actual outgoings for the year or period then ended. Any over payment shall be credited or refunded to the Tenant and any deficiency shall be payable to the Landlord on demand. See Fourth Schedule~~
- 3.7 THE Tenant's liability to pay outgoings during the term shall subsist notwithstanding the end or earlier termination of the term.
- 3.8 SUBJECT to clauses 8.1, 16.2 and 21.1 the Tenant shall be liable to pay only those outgoings specified in the First Schedule.
- 3.9 ANY profit derived by the Landlord and if a company by its shareholders either directly or indirectly from the management of the property shall not comprise part of the management expenses payable as an outgoing.

**Goods and Services Tax**

- 4.1 THE Tenant shall pay to the Landlord or as the Landlord shall direct the Goods and Services Tax payable by the Landlord in respect of the rental and other payments payable by the Tenant hereunder. The tax in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment shall be payable upon demand.
- 4.2 IF the Tenant shall make default in payment of the rental or other moneys payable hereunder and the Landlord becomes liable to pay additional Goods and Services Tax then the Tenant shall on demand pay to the Landlord the additional tax.

**Interest on Unpaid Money**

- 5.1 IF the Tenant defaults in payment of the rent or other moneys payable hereunder for 10 working days then the Tenant shall pay on demand interest at the default interest rate on the moneys unpaid from the due date for payment to the date of payment.

**Costs**

- 6.1 THE Tenant shall pay the Landlord's solicitors reasonable costs of and incidental to the preparation of this lease and any variation or renewal or any Deed recording a rent review, the Landlord's reasonable costs incurred in considering any request by the Tenant for the Landlord's consent to any matter contemplated by this lease, and the Landlord's legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Landlord's rights remedies and powers under this lease.

**LANDLORD'S PAYMENTS****Outgoings**

- 7.1 SUBJECT to the Tenant's compliance with the provisions of clause 3 the Landlord shall pay all outgoings in respect of the property not payable by the Tenant direct. The Landlord shall be under no obligation to minimise any liability by paying any outgoing or tax prior to receiving payment from the Tenant.

**MAINTENANCE AND CARE OF PREMISES****Tenant's Obligations**

- 8.1 THE Tenant shall (subject to any maintenance covenant by the Landlord) be responsible to:

**(a) Maintain the premises**

In a proper and workmanlike manner and to the reasonable requirements of the Landlord keep and maintain the interior of the premises including the Landlord's fixtures and fittings in the same clean order repair and condition as they were in at the commencement of this lease and will at the end or earlier determination of the term quietly yield up the same in the like clean order repair and condition. In each case the Tenant shall not be liable for fair wear and tear arising from reasonable use. Where the premises are damaged by fire flood explosion lightning storm earthquake volcanic activity or any risk against which the Landlord is (or has covenanted with the Tenant to be) insured, then the Tenant is liable for the cost of making good that damage to the extent that:

- (1) the damage was intentionally caused by the Tenant or those for whom the Tenant is responsible;
- (2) the damage was the result of an act or omission by the Tenant or those for whom the Tenant is responsible and that act or omission:
  - (i) occurred on or about the property; and
  - (ii) constitutes an indictable offence within the meaning of the Summary Proceedings Act 1957; or
- (3) any insurance moneys otherwise payable are rendered irrecoverable because of an act or omission of the Tenant or those for whom the Tenant is responsible.

**(b) Breakages and Damage**

Pay for the repair of all glass breakages and breakage or damage to all doors windows light fittings and power points of the premises and shall keep that portion of the electrical system of the premises from the switchboard to all power outlets in good operating condition;

**(c) Painting**

Paint and decorate those parts of the interior of the premises which have previously been painted and decorated when the same reasonably require repainting and redecoration to a specification as approved by the Landlord;

**(d) Floor coverings**

Keep all floor coverings in the premises clean and replace all floor coverings worn or damaged ~~other than by fair wear and tear~~ with floor coverings of a similar quality when reasonably required by the Landlord; and

**(e) Damage or Loss**

Make good any damage to the property or loss caused by improper careless or abnormal use by the Tenant or those for whom the Tenant is responsible, to the Landlord's reasonable requirements. **and on final expiry**

**8.2 WHERE the Tenant is leasing all of the property, the Tenant shall:****(a) Maintain yards and fences**

Keep and maintain any surfaced areas and all fences in good order and repair;

**(b) Care of grounds**

Keep any grounds yards and surfaced areas in a tidy condition and maintain any garden or lawn areas in a tidy and cared for condition;

**(c) Water and drainage**

Keep and maintain the storm or waste water drainage system including downpipes and guttering clear and unobstructed; and

**(d) Other works**

Carry out such works to the property as the Landlord may require in respect of which outgoings are payable by the Tenant.

**8.3** THE Tenant shall not be liable for the maintenance or repair of any building service the subject of a service maintenance contract but this clause shall not release the Tenant from any obligation to pay for the cost of any such contract or charges in respect of any such maintenance or repair.

**8.4** NOTWITHSTANDING any other provision of this lease, the Tenant shall not be liable to repair any inherent defect in the premises or the Landlord's fixtures and fittings nor to pay any outgoings incurred by the Landlord in remedying any inherent defect.

**8.5** IF the Landlord shall give the Tenant written notice of any failure on the part of the Tenant to comply with any of the requirements of clause 8.1 or 8.2 the Tenant shall with all reasonable speed so comply.

**Toilets**

**8.1** THE toilets sinks and drains shall be used for their designed purposes only and no substance or matter shall be deposited in them which could damage or block them.

**Rubbish Removal**

**10.1** THE Tenant shall regularly cause all of the Tenant's rubbish and garbage to be removed from the premises and will keep the Tenant's rubbish bins or containers in a tidy condition. The Tenant will also at the Tenant's own expense cause to be removed all trade waste boxes and other goods or rubbish not removable in the ordinary course by the local authority. **recycling** **and from the property**

**Landlord's Maintenance**

**11.1** THE Landlord shall keep and maintain the building, all building services, the Landlord's fixtures and fittings, and the car parks in good order and repair but the Landlord shall not be liable for any:

- (a) Repair or maintenance which the Tenant is responsible to undertake; or
- (b) Want of repair or defect in respect of building services, so long as the Landlord is maintaining a service maintenance contract covering the work to be done, or where the building services have not been supplied by the Landlord; or
- (c) Repair or maintenance which is not reasonably necessary for the Tenant's use and enjoyment of the premises and the car parks; or
- (d) Loss suffered by the Tenant arising from any want of repair or defect unless the Landlord shall have received notice in writing thereof from the Tenant and shall not within a reasonable time thereafter have taken appropriate steps to remedy the same.

**11.2** THE Landlord shall keep and maintain service maintenance contracts for lifts, air-conditioning and at the Landlord's option any other building services supplied by the Landlord unless it is the obligation of the Tenant to maintain such contracts.

**11.3** THE Tenant shall be liable to reimburse the Landlord for the cost of any such repair, maintenance or service contract if it is an outgoing specified in the First Schedule.

**Notification of Defects**

**12.1** THE Tenant shall give to the Landlord prompt notice of any accident to or defect in the premises of which the Tenant may be aware and in particular in relation to any pipes or fittings used in connection with the water electrical gas or drainage services. **in writing**

**Landlord's Right of Inspection**

**13.1** THE Landlord and the Landlord's employees contractors and invitees may at all reasonable times enter upon the premises to view their condition.

**\*\* See attached**

\*\* (at page 7)

For the avoidance of doubt, the Landlord agrees that it will ensure that the building within which the premises are situated is kept watertight and that any water ingress or egress into the premises is immediately repaired upon receipt by the Landlord of a written request to do so, except where such water ingress or egress is caused by the Tenant in which case the Tenant shall be responsible for its repair.

**Landlord may Repair**

- 14.1 IF default shall be made by the Tenant in the due and punctual compliance with any repair notice given by the Landlord pursuant to this lease, or if any repairs for which the Tenant is responsible require to be undertaken as a matter of urgency then without prejudice to the Landlord's other rights and remedies expressed or implied the Landlord may by the Landlord's employees and contractors with all necessary equipment and material at all reasonable times enter upon the premises to execute such works. Any moneys expended by the Landlord in executing such works shall be payable by the Tenant to the Landlord upon demand together with interest thereon at the default interest rate from the date of expenditure to the date of payment.

**Access for Repairs**

- 15.1 THE Tenant shall permit the Landlord and the Landlord's employees and contractors at all reasonable times to enter the premises to carry out repairs to the premises or adjacent premises and to install inspect repair renew or replace any services where the same are not the responsibility of the Tenant all such repairs inspections and work to be carried out with the least possible inconvenience to the Tenant.

**USE OF PREMISES****Business Use**

- 16.1 THE Tenant shall not without the prior written consent of the Landlord use or permit the whole or any part of the premises to be used for any use other than the business use. The Landlord's consent shall not be unreasonably or arbitrarily withheld or delayed in respect of any proposed use:

- (a) not in substantial competition with the business of any other occupant of the property which might be affected by the use;
- (b) reasonably suitable for the premises; and
- (c) complying with the requirements of the Resource Management Act 1991, or any other statutory provisions relating to resource management.

If any change in use renders any increased or extra premium payable in respect of any policy or policies of insurance on the premises the Landlord as a condition of granting consent may require the Tenant to pay the increased or extra premium.

- 16.2 IF any change in use requires compliance with sections 114 and 115 of the Building Act 2004 the Landlord, as a condition of granting consent, may require the Tenant to comply with sections 114 and 115 of the Act and to pay all compliance costs.

- 16.3 IF the premises are a retail shop the Tenant shall keep the premises open for business during usual trading hours and fully stocked with appropriate merchandise for the efficient conduct of the Tenant's business.

**16.4 - 16.7 - See Fourth Schedule****Lease of Premises and Car Parks Only**

- 17.1 THE tenancy shall relate only to the premises and the car parks (if any) and the Landlord shall at all times be entitled to use occupy and deal with the remainder of the property without reference to the Tenant and the Tenant shall have no rights in relation thereto other than the rights of use herein provided.

**Neglect of Other Tenant**

- 18.1 THE Landlord shall not be responsible to the Tenant for any act or default or neglect of any other tenant of the property. / occupier or user

**Signage**

- 19.1 THE Tenant shall not affix paint or exhibit or permit to be affixed painted or exhibited any name sign name-plate signboard or advertisement of any description on or to the exterior of the building or the appurtenances thereof without the prior approval in writing of the Landlord but such approval shall not be unreasonably or arbitrarily withheld or delayed in respect of signage describing the Tenant's business. If approved the signage shall be secured in a substantial and proper manner so as not to cause any damage to the building or any person and the Tenant shall at the end or sooner determination of the term remove the signage and make good any damage occasioned thereby.

**Additions and Alterations <sup>\*\* in the case of non-structural alterations only</sup>**

- 20.1 THE Tenant shall neither make nor allow to be made any alterations or additions to any part of the premises or alter the external appearance of the building without first producing to the Landlord on every occasion plans and specifications and obtaining the written consent of the Landlord (not to be unreasonably or arbitrarily withheld or delayed) for that purpose. If the Landlord shall authorise any alterations or additions the Tenant will at the Tenant's own expense if required by the Landlord at the end or earlier termination of the term reinstate the premises. If the Tenant fails to reinstate then any costs incurred by the Landlord in reinstating the premises whether in whole or in part, ~~within 6 months of the end or earlier termination of the term~~ shall be recoverable from the Tenant. ~~The Tenant will pay all reasonable professional fees incurred by the Landlord in assessing the proposed alterations or additions and perusing the plans and specifications.~~
- 20.2 THE Tenant, when undertaking any "building work" to the premises (as that term is defined in the Building Act 2004), shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates pursuant to that Act, copies of which shall be given to the Landlord. **The Tenant will carry out and complete all works in a proper and tradesmanlike manner and in accordance with the provisions of the applicable Building Code.**

**Compliance with Statutes and Regulations**

- 21.1 THE Tenant shall comply with the provisions of all statutes, ordinances, regulations and by-laws relating to the use of the premises by the Tenant or other occupant and will also comply with the provisions of all licences, requisitions and notices issued by any competent authority in respect of the premises or their use by the Tenant or other occupant **PROVIDED THAT:**
- (a) The Tenant shall not be required to make any structural repairs alterations or additions nor to replace or install any plant or equipment except where required by reason of the particular nature of the business carried on by the Tenant or other occupant of the premises or the number or sex of persons employed on the premises; and
  - (b) The Tenant shall 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 an occupier of the premises.

**20.3 See Fourth Schedule**

- 21.2 If the Landlord is obliged by any such legislation or requirement to expend moneys on any improvement addition or alteration to the property then the Landlord shall be entitled to charge up to the next rent review date in addition to the rent an annual sum equal to the Improvements Rent Percentage of the amount so expended by the Landlord and the monthly payments of rent shall increase accordingly from the first day of the month in which such improvement addition or alteration is completed. If the Landlord would be obliged to expend an unreasonable amount then the Landlord may determine this lease and any dispute as to whether or not the amount is unreasonable shall be determined by arbitration. In the case of a multi tenancy building, the annual sum payable shall be assessed in respect of a fair proportion of the amount so expended.
- 21.3 The Landlord warrants that allowing the Premises to be open to members of the public and allowing the use of the Premises by members of the public at the Commencement Date will not be a breach of section 363 of the Building Act 2004. This clause does not apply to any "building work" (as defined in the Building Act 2004) relating to the fit-out of the Premises by the Tenant.
- 21.4 The Tenant, when undertaking any building work to the Premises, shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates and shall not allow the Premises to be open to members of the public or allow use of the Premises by members of the public if that would be in breach of section 363 of the Building Act 2004.
- 21.5 During the Term and any renewal, the Landlord shall not give consent to or carry out any building work in any part of the Landlord's property which may cause the Tenant to be in breach of section 363 of the Building Act 2004 by allowing the Premises to be open to members of the public and allowing the use of the Premises by members of the public.

### No Noxious Use

- 22.1 THE Tenant shall not:
- bring upon or store within the premises nor allow to be brought upon or stored within the premises any machinery goods or things of an offensive noxious illegal or dangerous nature, or of such weight size or shape as is likely to cause damage to the building or any surfaced area;
  - contaminate the property and shall undertake all works necessary to remove any contamination of the property other than contamination not caused by the Tenant or which took place prior to the commencement date of the lease term. Contamination means any change to the physical chemical or biological condition of the property by a "contaminant" as that word is defined in the Resource Management Act 1991;
  - use the premises or allow them to be used for any noisome noxious illegal or offensive trade or business; or
  - allow any act or thing to be done which may be or grow to be a nuisance disturbance or annoyance to the Landlord, other tenants of the property, or any other person, and generally the Tenant shall conduct the Tenant's business upon the premises in a clean quiet and orderly manner free from damage nuisance disturbance or annoyance to any such persons but the carrying on by the Tenant in a reasonable manner of the business use or any use to which the Landlord has consented shall be deemed not to be a breach of this clause.

### INSURANCE

#### Landlord shall insure

- 23.1 THE Landlord shall at all times during the term keep and maintain any buildings on the property insured under a policy of the type shown in the First Schedule and such cover may extend to:
- a 12 month indemnity in respect of consequential loss of rent and outgoings;
  - loss damage or destruction of any of the Landlord's fixtures fittings and chattels; or
  - adequate public liability; and
  - earthquake cover for full replacement.

#### Tenant not to Void Insurances

- 24.1 THE Tenant shall not carry on or allow upon the premises any trade or occupation or allow to be done any act or thing which:
- shall make void or voidable any policy of insurance on the property; or
  - may render any increased or extra premium payable for any policy of insurance except where in circumstances in which any increased premium is payable the Tenant shall have first obtained the consent of the insurer of the premises and the Landlord and made payment to the insurer of the amount of any such increased or extra premium as may be payable but the carrying on by the Tenant in a reasonable manner of the business use or of any use to which the Landlord has consented shall be deemed not to be a breach of this clause:

In any case where in breach of this clause the Tenant has rendered any insurance less effective or void and the Landlord has suffered loss or damage thereby the Tenant shall forthwith compensate the Landlord in full for such loss or damage.

#### When Tenant to have benefit of Landlord's insurance

- 25.1 The Landlord will indemnify the Tenant for the cost of making good damage to the property or loss to the Landlord where the Tenant is obligated to pay for making good such damage or loss, to the extent that:
- the damage was not intentionally caused by the Tenant or those for whom the Tenant is responsible;
  - the damage was not the result of an act or omission by the Tenant or those for whom the Tenant is responsible and that act or omission:
    - occurred on or about the property; and
    - constitutes an indictable offence within the meaning of the Summary Proceedings Act 1957; or
  - the Landlord is (or covenanted with the Tenant to be) insured and the insurance moneys are not rendered irrecoverable in consequence of any act or default of the Tenant or those for whom the Tenant is responsible.

- 25.2 - 25.3 See Fourth Schedule

**DAMAGE TO OR DESTRUCTION OF PREMISES****Total Destruction**

- 26.1 IF the premises or any portion of the building of which the premises may form part shall be destroyed or so damaged
- as to render the premises untenable then the term shall at once terminate; or
  - in the reasonable opinion of the Landlord as to require demolition or reconstruction, then the Landlord may within 3 months of the date of damage give the Tenant 20 working days notice to terminate and a fair proportion of the rent and outgoings shall cease to be payable as from the date of damage, **according to the nature and extent of the damage.**
- Any termination pursuant to this clause shall be without prejudice to the rights of either party against the other.

**Partial Destruction**

- 27.1 IF the premises or any portion of the building of which the premises may form part shall be damaged but not so as to render the premises untenable and:
- the Landlord's policy or policies of insurance shall not have been invalidated or payment of the policy moneys refused in consequence of some act or default of the Tenant; and
  - all the necessary permits and consents shall be obtainable;
- THEN the Landlord shall with all reasonable speed expend all the insurance moneys received by the Landlord in respect of such damage towards repairing such damage or reinstating the premises and/or the building but the Landlord shall not be liable to expend any sum of money greater than the amount of the insurance money received.
- 27.2 Any repair or reinstatement may be carried out by the Landlord using such materials and form of construction and according to such plan as the Landlord thinks fit and shall be sufficient so long as it is reasonably adequate for the Tenant's occupation and use of the premises.
- 27.3 Until the completion of the repairs or reinstatement a fair proportion of the rent and outgoings shall cease to be payable as from the date of damage, **according to the nature and extent of the damage.**
- 27.4 If any necessary permit or consent shall not be obtainable or the insurance moneys received by the Landlord shall be inadequate for the repair or reinstatement then the term shall at once terminate but without prejudice to the rights of either party against the other.

**DEFAULT****Cancellation**

- 28.1 THE Landlord may (in addition to the Landlord's right to apply to the Court for an order for possession) cancel this lease by re-entering the premises at the time or at any time thereafter:
- if the rent shall be in arrear 10 working days after any of the rent payment dates and the Tenant has failed to remedy that breach within 10 working days after service on the Tenant of a notice in accordance with section 245 of the Property Law Act 2007;
  - in case of breach by the Tenant of any covenant or agreement on the Tenant's part herein expressed or implied (other than the covenant to pay rent) after the Tenant has failed to remedy that breach within the period specified in a notice served on the Tenant in accordance with section 246 of the Property Law Act 2007;
  - if the Tenant shall make or enter into or endeavour to make or enter into any composition assignment or other arrangement with or for the benefit of the Tenant's creditors;
  - in the event of the insolvency bankruptcy or liquidation of the Tenant; or
  - if the Tenant shall suffer distress or execution to issue against the Tenant's property goods or effects under any judgment against the Tenant in any Court for a sum in excess of five thousand dollars (\$5,000);
- and the term shall terminate on such cancellation but without prejudice to the rights of either party against the other.

**Essentiality of Payments**

- 29.1 FAILURE to pay rent or other moneys payable hereunder on the due date shall be a breach going to the essence of the Tenant's obligations under the Lease. The Tenant shall compensate the Landlord and the Landlord shall be entitled to recover damages from the Tenant for such breach. Such entitlement shall subsist notwithstanding any determination of the lease and shall be in addition to any other right or remedy which the Landlord may have.
- 29.2 THE acceptance by the Landlord of arrears of rent or other moneys shall not constitute a waiver of the essentiality of the Tenant's continuing obligation to pay rent and other moneys.

**Repudiation**

- 30.1 THE Tenant shall compensate the Landlord and the Landlord shall be entitled to recover damages for any loss or damage suffered by reason of any acts or omissions of the Tenant constituting a repudiation of the lease or the Tenant's obligations under the lease. Such entitlement shall subsist notwithstanding any determination of the lease and shall be in addition to any other right or remedy which the Landlord may have.

**\*\* and shall also carry out and complete, at its own cost and in a proper and tradesmanlike manner, the works specified in the Seventh Schedule.**

**REMOVAL OF TENANT'S FIXTURES, FITTINGS AND CHATTELS**

- 31.1 THE Tenant may at any time before and will if required by the Landlord at the end or earlier termination of the term remove all the Tenant's fixtures fittings and chattels and make good at the Tenant's own expense all resulting damage and if not removed within 5 working days after the date of termination ownership of the fixtures fittings and chattels may at the Landlord's election pass to the Landlord or the Landlord may in a proper and workmanlike manner remove the same from the premises and forward them to a refuse collection centre.
- 31.2 The cost of making good resulting damage and the cost of removal shall be recoverable from the Tenant and the Landlord shall not be liable to pay any compensation nor be liable for any loss suffered by the Tenant. **In addition, pending such removal, the Tenant will continue to pay to the Landlord as an occupation licence fee, the rent and outgoings payable immediately prior to the end of the term calculated on a daily basis.**

**QUIET ENJOYMENT**

- 32.1 THE Tenant paying the rent and performing and observing all the covenants and agreements herein expressed and implied shall quietly hold and enjoy the premises throughout the term without any interruption by the Landlord or any person claiming under the Landlord.

**RENEWAL OF LEASE**

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- 33.1 IF the Tenant has given to the Landlord written notice to renew the lease at least ~~X~~ calendar months before the end of the term and is not at the date of the giving of such notice in breach of this lease (including any maintenance obligations) then the Landlord will grant a new lease for a further term from the renewal date as follows:
- (a) If the renewal date is a rent review date the annual rent shall be agreed upon or failing agreement shall be determined in accordance with clauses 2.1 and 2.2 but such annual rent shall not be less than the rent payable as at the commencement date of the immediately preceding lease term;
  - (b) Subject to the provisions of paragraph (a) the new lease shall be upon and subject to the covenants and agreements herein expressed and implied except that the term of this lease plus all further terms shall expire on or before the final expiry date;
  - (c) The annual rent shall be subject to review during the term of the new lease on the rent review dates or if no dates are specified then after the lapse of the equivalent periods of time as are provided herein for rent reviews;
  - (d) The Landlord as a condition of granting a new lease shall be entitled to have the new lease guaranteed by any guarantor who has guaranteed this lease on behalf of the Tenant who has given notice;
  - (e) Pending the determination of the rent, the Tenant shall pay an interim rent in accordance with clauses 2.3 and 2.4; and
  - (f) Notwithstanding anything contained in clause 33.1(e) the interim rent referred to in that clause shall not be less than the annual rent payable as at the commencement date of the immediately preceding lease term.

**ASSIGNMENT OR SUBLETTING**

- 34.1 THE Tenant shall not assign sublet or otherwise part with the possession of the premises or any part thereof without first obtaining the written consent of the Landlord which the Landlord shall give if the following conditions are fulfilled:
- (a) The Tenant proves to the satisfaction of the Landlord that the proposed assignee or subtenant is (and in the case of a company that the shareholders of the proposed assignee or subtenant are) respectable responsible and has the financial resources to meet the Tenant's commitments under this lease;
  - (b) All rent and other moneys payable have been paid and there is not any subsisting breach of any of the Tenant's covenants;
  - (c) In the case of an assignment a deed of covenant in customary form approved or prepared by the Landlord is duly executed and delivered to the Landlord;
  - (d) In the case of an assignment to a company (other than a company listed on the main board of a public stock exchange) a deed of guarantee in customary form approved or prepared by the Landlord is duly executed by the principal shareholders of that company and delivered to the Landlord; and
  - (e) The Tenant pays the Landlord's reasonable costs and disbursements in respect of the approval and the preparation of any deed of covenant or guarantee and (if appropriate) all fees and charges payable in respect of any reasonable inquiries made by or on behalf of the Landlord concerning any proposed assignee subtenant or guarantor. All such costs shall be payable whether or not the assignment or subletting proceeds.
- 34.2 WHERE the Landlord consents to a subletting the consent shall extend only to the subletting and notwithstanding anything contained or implied in the sublease the consent shall not permit any subtenant to deal with the sublease in any way in which the Tenant is restrained from dealing without consent.
- 34.3 WHERE any Tenant is a company which is not listed on the main board of a public stock exchange then any change in the legal or beneficial ownership of its shares or issue of new capital whereby in either case there is a change in the effective management or control of the company is deemed to be an assignment of this lease.

**UNIT TITLE COVENANTS****Body Corporate**

- 35.1 THE expression "Body Corporate" means the Body Corporate incorporated under the Unit Titles Act 1972 ("the Act") in respect of the property.

**Act and Rules Paramount**

- 35.2 THIS lease shall be subject to the provisions of the rules of the Body Corporate and the provisions of the Act.

**Insurance**

- 35.3 THE Landlord's obligation to insure the building shall be satisfied by the Body Corporate maintaining the same insurance covers in accordance with the Act.

**Indemnity**

- 35.4 THE Tenant's obligation to indemnify the Landlord as herein expressed is extended to include the Body Corporate but only to the extent that the Body Corporate is not fully indemnified under any policy of insurance.

**Landlord's Obligations**

- 35.5 THE Landlord shall observe and perform all of the Landlord's obligations as a member of the Body Corporate and shall use the Landlord's best endeavours to ensure that the Body Corporate complies with its rules and the provisions of the Act.

**Consents**

- 35.6 WHERE in this lease the consent of the Landlord is required in respect of any matter then the like consent of the Body Corporate shall also be required if the consent of the Body Corporate to any such matter would be necessary under its rules or the Act.

**Car Parks**

- 36.1 THE Tenant shall have the right to exclusive possession of the leased car parks, but when any car park is not being used by the Tenant other persons shall be entitled to pass over the same.
- 36.2 THE Landlord may carry out repairs to the car parks and no abatement of rent or other compensation shall be claimed by the Tenant except pursuant to clauses 26.1 or 27.
- 36.3 THE Tenant shall comply with the Landlord's reasonable requirements relating to the use of the car parks and access thereto and in particular shall only use the car parks for the parking of one car per parking space.
- 36.4 THE provisions of the Second Schedule shall apply to the car parks as appropriate.

**GENERAL****Holding Over**

- 37.1 IF the Landlord permits the Tenant to remain in occupation of the premises after the expiration or sooner determination of the term, such occupation shall be a periodic tenancy only terminable by <sup>1 month's written</sup> ~~20 working days~~ notice at the rent then payable and otherwise on the same covenants and agreements (so far as applicable to a periodic tenancy) as herein expressed or implied.

**Access for Re-Letting or Sale**

- 38.1 THE Tenant will during the term permit the Landlord, the Landlord's representatives and prospective tenants or purchasers to have access to inspect the premises provided that:
- any such inspection is at a time which is reasonably convenient to the Tenant;
  - is conducted in a manner which does not cause disruption to the Tenant; and
  - if the Landlord or the Landlord's representatives are not present the persons inspecting have written authority from the Landlord to do so.

**Suitability**

- 39.1 NO warranty or representation expressed or implied has been or is made by the Landlord that the premises are now suitable or will remain suitable or adequate for use by the Tenant or that any use of the premises by the Tenant will comply with the by-laws or ordinances or other requirements of any authority having jurisdiction.

**Affirmation**

- 40.1 A party to this lease shall not be entitled to cancel this lease if, with full knowledge of any repudiation or misrepresentation or breach of covenant, that party affirmed this lease.

**Waiver**

- 41.1 NO waiver or failure to act by either party in respect of any breach by the other shall operate as a waiver of another breach.

**Land Transfer Title or Mortgagee's consent**

- 42.1 THE Landlord shall not be required to do any act or thing to enable this lease to be registered or be required to obtain the consent of any mortgagee of the property and the Tenant will not register a caveat in respect of the Tenant's interest hereunder.

**Notices**

- 43.1 ALL notices must be in writing and must be served by one of the following means:
- 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
  - In all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:
    - in the manner authorised by sections 354 to 361 of the Property Law Act 2007, or
    - by personal delivery, or by posting by registered or ordinary mail, or by facsimile, ~~or by email.~~
- 43.2 IN respect of the means of service specified in clause 43.1(b)(ii), a notice is deemed to have been served:
- in the case of personal delivery, when received by the addressee;
  - in the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand;
  - in the case of facsimile transmission, when sent to the addressee's facsimile number; or
  - ~~in the case of email, when acknowledged by the addressee by return email or otherwise in writing.~~
- 43.3 IN the case of a notice to be served on the Tenant, if the Landlord is unaware of the Tenant's last known address in New Zealand or the Tenant's facsimile number, any notice placed conspicuously on any part of the premises shall be deemed to have been served on the Tenant on the day on which it is affixed.
- 43.4 A notice shall be valid if given by any director, general manager, solicitor or other authorised representative of the party giving the notice.

**Arbitration**

- 44.1 UNLESS any dispute or difference is resolved by mediation or other agreement, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996 and any amendment thereof or any other statutory provision then relating to arbitration.
- 44.2 IF the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon request of any party, by the President or Vice President for the time being of the District Law Society of the district within which the premises are situated. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject hereto and varied accordingly.
- 44.3 THE procedures prescribed in this clause shall not prevent the Landlord from taking proceedings for the recovery of any rent or other monies payable hereunder which remain unpaid or from exercising the rights and remedies in the event of such default prescribed in clause 28.1 hereof.

**Interpretation****45.1** IN this lease:

- (a) "the Landlord" and "the Tenant" means where appropriate the executors, administrators, successors and permitted assigns of the Landlord and the Tenant;
  - (b) "the property" and "the building" mean the land and building(s) of the Landlord which comprise or contain the premises. Where the premises are part of a unit title development the words "the property" mean the land and building(s) comprised in the development;
  - (c) "the common areas" means those parts of the property the use of which is necessary for the enjoyment of the premises and which is shared with other tenants and occupiers;
  - (d) "GST" means the Goods and Services Tax;
  - (e) "structural repair, alteration or addition" means a repair, alteration or addition to the structure or fabric of the building but excluding building services;
  - (f) "renewal" means the granting of a new lease as provided for in clause 33.1;
  - (g) Whenever words appear in this lease that also appear in the First Schedule then those words shall mean and include the details supplied after them in the First Schedule;
  - (h) Where the context requires or admits, words importing the singular shall import the plural and vice versa;
  - (i) "those for whom the Tenant is responsible" includes the Tenant's agents employees contractors or invitees;
  - (j) "working day" has the meaning given to it in the Property Law Act 2007. 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;
  - (k) Where the Landlord's consent to any matter is required under this lease then, unless expressly stated to the contrary in this lease, in each case the Landlord:
    - (1) must not unreasonably withhold consent, and
    - (2) must, within a reasonable time of the Landlord's consent being requested:
      - (i) grant that consent; or
      - (ii) notify the Tenant in writing that the consent is withheld.
- (l) Lease Year means 1 April to 31 March.**

## THIRD SCHEDULE

# GUARANTEE

**IN CONSIDERATION** of the Landlord entering into the lease at the Guarantor's request the Guarantor:

- (a) guarantees payment of the rent and the performance by the Tenant of the covenants in the lease, and
- (b) indemnifies the Landlord against any loss the Landlord might suffer should the lease be lawfully disclaimed or abandoned by any liquidator, receiver or other person.

**THE GUARANTOR** covenants with the Landlord that:

1. **NO** release delay or other indulgence given by the Landlord to the Tenant or to the Tenant's successors or assigns or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety shall release prejudice or affect the liability of the Guarantor as a guarantor or as indemnifier.
2. **AS** between the Guarantor and the Landlord the Guarantor may for all purposes be treated as the Tenant and the Landlord shall be under no obligation to take proceedings against the Tenant before taking proceedings against the Guarantor.
3. **THE** guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive the rent.
4. **AN** assignment of the lease and any rent review in accordance with the lease shall not release the Guarantor from liability.
5. **SHOULD** there be more than one Guarantor their liability under this guarantee shall be joint and several.
6. **THE** Guarantee shall extend to any holding over by the Tenant.

## FOURTH SCHEDULE

### Amendments to the First and Second Schedule

If there is any conflict between the amendments contained in this Fourth Schedule and the clauses in the First and Second Schedules, this Fourth Schedule shall apply.

#### 3.5 Manner of payment of outgoings

- (a) The Tenant's contribution to the outgoings of the building shall be payable in the following manner:
- (i) Prior to or as soon as is reasonably practicable after the commencement date the Landlord will notify the Tenant, in writing, of the Landlord's estimate of the outgoings for the broken period to the last day of the lease year immediately following the commencement date; and
  - (ii) Prior to or as soon as practicable after the last day of each lease year during the term the Landlord will advise the Tenant, in writing, of the Landlord's estimate of the outgoings for the following lease year,  
  
**provided that** the Landlord will be entitled to notify the Tenant of a revised estimate of the outgoings where some unforeseen matter outside the control of the Landlord arises which is likely to have a significant effect on the outgoings and which was not taken into account by the Landlord in the earlier estimate and such revised estimate will apply in lieu of the earlier estimate.
  - (iii) From the date of commencement of each lease year the Tenant will pay in advance on the first day of every month  $1/12^{\text{th}}$  of the tenant's proportion of outgoings of the Landlord's estimate of the outgoings for that lease year.
  - (iv) As soon as practicable after the last day of each lease year (or initial broken period) the Landlord will provide a statement of actual outgoings for such period and whatever adjustment as is necessary between the Landlord and the Tenant will be made after taking into account the total of the payments previously made by the Tenant in respect of that period.
  - (v) Upon the expiry, determination or assignment of this Lease the Landlord will forthwith advise the Tenant of:
    - (A) the total of monthly payments made by the Tenant during the then current lease year or broken period; and
    - (B) the liability of the Tenant for outgoings in terms of the Landlord's estimate; and
    - (C) the Landlord's assessment of any shortfall in the Tenant's contribution to the date of expiry, determination or assignment.
  - (vi) Following such assessment the Landlord may retain or collect from the Tenant any shortfall (including at the Landlord's discretion a reasonable contingency amount against any unbudgeted expenses).
  - (vii) Following the availability of a statement any shortfall not held by the Landlord will be paid by the Tenant to the Landlord within 14 days. Any excess monies held by the Landlord will be paid to the Tenant subject always to the right of the Landlord

to apply the same in satisfaction or on account of any moneys owing and unpaid by the Tenant as at the date of expiry, determination or assignment.

- (viii) Nothing shall prevent the Landlord from recovering outgoings merely because the Landlord has failed to notify the Tenant promptly of an estimate or of an actual amount.

## **16. Use of Premises**

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### **16.4 Loads on floors and services**

The Tenant is not to overload the floors of the premises or building or any services and, in particular but not in limitation, is not to bring into move about or remove from the premises or the building any safe or heavy article of greater weight or pressure than the Landlord permits in writing. Any damage caused to the premises or building arising from breach of this clause is to be made good at the cost of the Tenant.

### **16.5 Use of common areas**

Except pursuant to any licence in respect of common area that may be given under this Lease, the Tenant is not to use the common areas for any business purpose or for display, advertising or storage. Any licence given by the Landlord may be revoked or modified by the Landlord at any time in its absolute discretion and following any failure of the Tenant so to do the Landlord is to be entitled to remove and store the Tenant's fittings or merchandise which remains in the common areas and recover from the Tenant the costs of so doing. In no event is the Landlord to be liable to compensate the Tenant.

### **16.6 Tenant to comply with rules**

The Tenant and persons under control of the Tenant are at all times to observe the Rules contained in the Sixth Schedule and the Tenant acknowledges the rights of the Landlord contained in them.

### **16.7 Right for Landlord to vary rules**

The Landlord has the right to make reasonable variations and additions to the Rules provided that no such variation or addition is to derogate from the rights of the Tenant under this lease and in the event of any inconsistency between the terms of this Lease and the Rules, the terms of this Lease are to prevail.

## **20. Additions and Alterations**

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### **20.3 Landlord's Fitout Guide**

The Tenant shall carry out all alterations and additions (being both its initial fitout and any subsequent additions or alterations) in accordance with the Landlord's fitout guide for the premises, a copy of which will be supplied to the Tenant on request.

## **25. Insurance**

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### **25.2 Insurance Excess**

The Tenant acknowledges and agrees that:

- (a) The Landlord has not insured or has not fully insured the premises against destruction or damage arising from any of the risks against which the Landlord has insured or has covenanted to insure to the extent of any excess payable in respect of any claim arising under the Landlord's insurance policy or policies; and
- (b) Without prejudice to the Tenant's obligations under this lease, where the Landlord makes a claim on its insurance policy or policies in circumstances where the Tenant or those for whom the Tenant is responsible has been negligent or breached this lease then the Tenant will reimburse the Landlord for any excess payable in respect of that claim.

### **25.3 Tenant's Insurance**

The Tenant shall keep current at all times a policy or policies in the joint names of the Landlord and the Tenant:

- (a) for the replacement of all glass (including plate) in or enclosing the Premises;
- (b) for the replacement of all additions to the Premises owned by the Tenant and all the Tenant's fixtures, fittings and stock; and
- (c) public liability insurance for such sum as the Landlord may reasonably require (but not to be less than \$5,000,000 for any one event).

Such policies shall be effected with an insurance company and on terms acceptable to the Landlord (acting reasonably) and the Tenant will if requested provide the Landlord from time to time with copies of policies and certificates of currency.

## **34. Assignment or subletting**

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- 34.4 Where the Tenant or sub-tenant is a partnership, the retirement or other departure of a partner and/or the admission of a new partner is deemed to be an assignment or, where appropriate, a subletting of this lease.

## **46. Health and Safety in Employment Act 1992**

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- 46.1 The Tenant will comply with the Health and Safety in Employment Act 1992 (the HSEA) in respect of the premises and its fit-out, fixtures and fittings, equipment and any alterations made by the Tenant in or to the premises and their use in the premises as part of a place of work including without limitation:
- (a) Ensuring that all significant hazards in respect of the same are identified and eliminated where practical, or isolated where elimination is impractical, or minimised where elimination or isolation is impractical.
  - (b) Having in place written rules and procedures relating to health and safety which the Tenant shall follow and keep under review to ensure the safety of its employees and persons attending the premises.

- (c) Identifying possible hazards for its employees or other persons attending or in the vicinity of the premises.
- (d) Taking all practicable steps to eliminate, isolate or minimise hazards and ensure that people working in the vicinity of the premises are not harmed.
- (e) Maintaining a register of accidents and conforming with any code of practice and regulations promulgated in respect of the particular work being done.

## **47. Bank Guarantee**

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### **47.1 Bank guarantee**

If the Landlord requests, the Tenant shall arrange for the issue to the Landlord of a Bank Guarantee for the Bank Guarantee Sum to secure the Landlord against loss or damage resulting from any of the events specified in clause 28.1.

### **47.2 Rent reviews**

Subject to the Landlord having requested a Bank Guarantee under **clause 47.1**, at each rent review date or (if later) at the determination of each review or adjustment of the annual rent, the Tenant shall provide to the Landlord a replacement or additional Bank Guarantee (as appropriate) so that the total amount guaranteed bears to the annual rent payable from each rent review date the same proportion as the Bank Guarantee Sum bears to the annual rent as at the commencement date.

### **47.3 Default by Tenant**

- (a) If any of the events specified in **clause 28.1** occur, the Landlord may without prior notice to the Tenant demand payment under the Bank Guarantee in or towards making good any loss or damage sustained by the Landlord as a result of that event;
- (b) If the Landlord demands payment under the Bank Guarantee:
  - (i) in respect of unpaid annual rent, outgoings or other moneys payable under this lease, the Landlord shall give the Tenant a written statement of the amounts unpaid; or
  - (ii) in order to reimburse the Landlord for expenditure incurred in remedying any other default by the Tenant, the Landlord shall give the Tenant relevant details of that expenditure (including, where appropriate, copies of the invoices and receipts for the amounts expended);

the Tenant shall promptly provide either:

- (iii) a replacement Bank Guarantee for the then current amount under **clauses 47.1 or 47.2**, as appropriate; or
  - (iv) an additional Bank Guarantee equal to the amount demanded or applied by the Landlord under **clause 47.3(b)**.
- (c) No action by the Landlord under **clause 47.3(a)** will operate as a waiver of the relevant event specified in **clause 28.1**.

#### 47.4 Tenant to keep current

The Tenant shall at all times ensure that any Bank Guarantee is kept current and enforceable.

#### 47.5 Transfer by Landlord

If at any time during the term the Landlord transfers the Landlord's interest in the premises the Tenant shall at the request and cost of the Landlord provide to the Landlord a replacement Bank Guarantee in favour of the transferee.

#### 47.6 Return of Bank Guarantee

Subject to **clause 47.3**, the Landlord shall return every Bank Guarantee to the Tenant promptly after the latest to occur of the following:

- (a) The final expiry or earlier date of determination of this lease;
- (b) The expiry of any period of holding over under **clause 37.1**;
- (c) the making good of all defects and yielding up of the premises as required by this lease;
- (d) the compliance by the Tenant of all of its obligations under this lease; and
- (e) receipt by the Landlord of a replacement Bank Guarantee in accordance with **clause 47.2 or 47.3(b)(iii)**.

#### 47.7 Security Deposit

Where the Bank shall insist on the right (and where the Landlord shall accept such demand by the Bank) to pay the Bank Guarantee Sum (**Bank Guarantee Sum**) at its own option, and not only following a request from the Landlord, the Tenant agrees as follows:

- (a) the Bank Guarantee Sum, if paid to the Landlord by or on behalf of the Bank without a request for same having been made by the Landlord, shall become a security deposit (**Security Deposit**) in favour of the Landlord to be held by the Landlord until the final expiration or earlier determination of this lease; and
- (b) rent and all other payments due to be made by the Tenant under this lease shall continue to be payable by the Tenant, without any adjustment or account being taken of the setting up of the Security Deposit; and
- (c) in the event of any default by the Tenant as defined in Clause 28.1 of this lease the Landlord shall be entitled to recover from the Security Deposit the amount of any loss arising as a result of that breach. By this clause the Tenant expressly authorises the Landlord to recover the amount of any such loss, but this special provision shall not derogate from the Landlord's other rights at law and under this lease; and
- (d) at the final expiration or earlier determination of this lease the Tenant shall be entitled to return of the Security Deposit less the amount of any loss which has been or is to be recovered by the Landlord from the Security Deposit.

#### 47.8 Definitions

For the purpose of this lease:

**Bank** means a bank or other financial institution approved by the Landlord.

**Bank Guarantee** means an irrevocable and unconditional undertaking (which does not contain an expiry date prior to three (3) months after the final expiry date of this lease) on the form provided to the Tenant by the Landlord from a Bank to pay an amount or amounts to the Landlord on demand.

**Bank Guarantee Sum** means an amount equal to twelve months' annual rent and outgoings from time to time.

#### 47.9 **Bank Guarantee not to apply**

While HealthAlliance N.Z. Limited is the tenant and occupying the premises, clause 47 will not apply.

### 48. **Relocation of Carparks**

---

48.1 The Tenant acknowledges and agrees that 20 of the carparks may be relocated to Central Park if they are required by the Landlord for a tenant occupying space on the first floor of the Landlord's building.

48.2 Notwithstanding clause 49.1, the Landlord may from time to time give notice in writing to the Tenant substitute the carparks allocated to the Tenant for others on the property provided that:

- (a) Any substitute carpark is not a "double-up" carpark unless the carpark it is being substituted for is also a double-up carpark;
- (b) Any carpark substituted for a covered carpark must also be covered;
- (c) Any costs of swapping the Tenant's signage from one carpark to another will be paid by the Landlord; and
- (d) Any substitute carpark must be on the same level as the carpark it is substituted for; and
- (e) Any substitute carpark must not be in a significantly less favourable position than the carpark it is substituted for.

## FIFTH SCHEDULE

### Landlord's fixtures and fittings

Item	Condition at Commencement Date
Ceiling grid and standard lighting	Fair
Kitchen – no appliances other than hot/cold water filter	Fair
Carpet	Fair
Air conditioning	Fair
Fitout as shown on the attached plan including two operable walls	Fair

## SIXTH SCHEDULE

### Rules of the Building

#### Preamble

The Rules set out in this Schedule are made for the safety, care, operation, security and cleanliness of the building and for the preservation of good order, safety and comfort of tenants and occupiers in and visitors to the building.

#### 1. Building directory

---

The Landlord must maintain a directory of tenants in the main entrance lobby of the building. Name plates on the directory will be fixed for the Tenant by the Landlord at the cost of the Tenant and the form of each will be solely determined by the Landlord.

#### 2. Ejection of rubbish or other articles

---

The Tenant must not drop or throw or permit to be dropped or to be thrown or to fall any article from or out of the premises, the common areas or the roof of the building or into the lift wells or any public areas and must not place any article upon any sill ledge or other like part.

#### 3. Eviction

---

The Landlord reserves the right to exclude or evict from the building any person who in the opinion of the Landlord is under the influence of intoxicating liquor or drugs or who in any manner wilfully does any act in violation of these Rules.

#### 4. Name of building

---

If the name of the building is used by the Tenant on letterheads or other business forms or advertising material then the name so used must be the full and proper name of the building. It is acknowledged by the parties that the Landlord is the owner of all naming and advertising rights of the building.

#### 5. Goods delivery

---

The Tenant will use for all movement of goods or articles of bulk or quantity only parts of the premises and common areas at the times that the Landlord directs and must comply with all directions of any duly authorised officer of the Landlord concerning the operation of any loading or unloading area in or about the building.

#### 6. Interference with machinery

---

The Tenant will not interfere with or attempt to control any part of any of the Landlord's machinery installed or to be installed in any part of the building or in the premises.

#### 7. Forbidden activities

---

The Tenant will not allow members of any charitable or other organisation to hold functions or solicit donations within the premises without the prior written consent of the Landlord.

## 8. Statements

---

The Tenant will not issue statements, verbal or written to the media in respect of the building. Requests for statements or interviews shall be referred to the Landlord or its representatives.

## 9. Emergency contact

---

The Tenant will advise the Landlord of the private address and telephone number of the Tenant or if the Tenant is a corporation of some responsible person employed by the Tenant and shall keep the Landlord promptly informed of any change of such address or telephone number.

## 10. External window cleaning

---

If the Tenant requires cleaning of external window surfaces more frequently than the Landlord considers appropriate, the costs of such additional cleaning will be paid for by the Tenant requesting such additional cleaning, or if more than one Tenant is involved then proportionately by each Tenant calculated on the area of floor space occupied.

## 11. Dangerous goods

---

The Tenant will not except for customary office applications use or allow to be used any chemicals or inflammable gases fluids or substances in or on the premises and will not use or allow to be used any method of heating or lighting the premises other than by electric current or gas supplied through the meters.

## 12. Not to erect window coverings without consent

---

- (a) The Tenant will not erect internal or external window coverings, blinds, drapes, curtains, screens or awnings without the consent in writing of the Landlord and in any event any such items installed in the premises shall be of non-flammable material and will comply with all relevant standards approved by the Landlord and in compliance with the provisions and requirements of all relevant authorities.
- (b) The Tenant will maintain in a neat, clean and proper state of repair all window curtains or coverings whether supplied by the Landlord or otherwise and will as often as the need (in the opinion of the Landlord) arises replace at the Tenant's own cost any curtain or coverings of a material or type nominated by the Landlord. Where such window curtains or coverings are supplied by the Landlord then despite anything contained in this clause, the Landlord may at its discretion if in its opinion such window curtains or coverings require replacement, replace at its cost.
- (c) Other than as provided in **sub-clause (a)** of this **Rule 12**, the Tenant will not in any way without the express written authority of the Landlord cover or obstruct the windows.

## 13. Tenant to participate in fire drill

---

The Landlord will have the right to require the Tenant to perform fire drills from time to time and observe all necessary and proper emergency evacuation procedures including the appointment and participation of appropriate fire wardens and the Tenant and the Tenant's visitors will co-operate with the Landlord in performing such drills and procedures. In no case will there be any compensation payable by the Landlord on account of any loss or damage caused to or sustained by the Tenant and the Tenant's visitors.

## 14. After hours opening and access to the premises

---

- (a) The Tenant will be entitled to use the premises throughout the 24 hours of each day in the year. Access to the premises for the Tenant's nominated staff outside normal business hours (being 8am to 6pm on any working day) or otherwise stipulated by the Landlord on weekdays and on Saturdays, Sundays and gazetted public holidays will be regulated by the security procedures provided by the Landlord or otherwise as previously agreed in writing by the Landlord but the Landlord will not be liable for any reason should the Tenant be unable to gain entry to the building.
- (b) The Landlord reserves the right to close the building or any part of the building as may be required to be closed by operation of law or in the case of an emergency or if the Landlord deems such action reasonably necessary for the safety of any person or property within or on the building. The Landlord may close lock off or otherwise control the common areas or any part of it from time to time to protect the Landlord's or any tenant's interest or any public interest as the Landlord may deem necessary or desirable and any such action or actions on the part of the Landlord will not entitle the Tenant to determine the lease or claim an abatement of rental or claim damages or compensation from the Landlord.
- (c) In the event that the Landlord shall at the request of the Tenant open or operate or both plant for any part of the building or premises during any hours of restricted access or at times otherwise than as specified by the Landlord in relation to the operation of the air-conditioning plant or lifts then all costs and expenses of so doing including without affecting to the generality of the foregoing labour, energy, security and air-conditioning (all such costs and expenses to be as assessed by the Landlord from time to time) will be borne by the Tenant and paid to the Landlord immediately upon demand and in the event of default in such payment by the Tenant such costs and expenses shall be deemed to be rent in arrears and recoverable accordingly.

## 15. Keys, access and security

---

- (a) The Tenant acknowledges that all keys or access cards relating to the building or to the premises held by the Tenant during its occupancy (whether they have been provided by the Landlord or made or procured by the Tenant for the Tenant's own use) shall be surrendered to the Landlord at the end of this lease and the Tenant shall not cause or suffer to be made any duplicates nor make any changes to it without the prior consent of the Landlord.
- (b) The Tenant will provide keys or access cards only to employees of the Tenant and shall keep a list of the recipients of keys and access cards and their status and shall immediately upon request from the Landlord provide the Landlord with an updated copy of the list. In the interests of effective security the Landlord has the right (at its sole discretion) to restrict the number of keys and cards issued.
- (c) If any key or access card is lost stolen destroyed or mutilated the Tenant will pay all costs and expenses (including the cost of replacement of changing locks as considered necessary by the Landlord) arising therefrom immediately upon demand by the Landlord when demanded by the Landlord regardless of how the cost arises.
- (d) All keys and/or access cards will be provided in the first instance by the Landlord on such conditions as it shall impose including the liability of the Tenant to immediately notify the Landlord of and return obsolete cards and keys if the holder is no longer a Tenant or employee of the Tenant and the Tenant will be responsible for the care and retention of all cards and access keys.

## 16. **Obstruction**

---

The Tenant or the Tenant's visitors will not obstruct or use footpath entrances, lobbies, passages, halls, lifts and staircases (except as may be entirely within the premises) for any purposes other than for entry or exit from the premises and in this respect the Tenant will observe all rules and regulations from time to time imposed by any authority relating to fire and other matters of public safety.

## 17. **Sound reproduction apparatus**

---

The Tenant is not to erect or affix any radio or television mast or antenna to the building. In the event that the Landlord considers that the rights or interests of other Tenants are being adversely affected any consent previously given may be modified or withdrawn on the giving of 14 days notice except with the express prior written consent of the Landlord (and then only in compliance with the terms of such consent).

## 18. **Animals birds or pets**

---

The Tenant will not keep any animals birds or pets in or about the building or the premises.

## 19. **Foodstuffs**

---

The Tenant may prepare or cook food only with the consent of the Landlord (at its sole discretion) and in those areas which are provided and approved by the Landlord for that purpose. The customary serving of morning and afternoon teas at any place within the premises is not affected by this clause.

## 20. **Protection of services**

---

The Tenant will not use or permit to be used in the toilets and other water supply apparatus for any purpose other than that for which they were constructed and will not place or permit to be placed any tea leaves, sweepings, rubbish, rags, ashes or other foreign or corrosive substances in the apparatus. The cost of repairing any damage resulting to the apparatus arising as a result of such misuse by Tenants or by the employees of Tenants shall be borne by all Tenants in proportion to the area occupied by each of them on the floor level at which the damage has occurred. If the person or Tenant responsible for such damage can be ascertained then the Tenant who employs or whose client it is or that Tenant shall bear the whole of the cost involved.

## 21. **Air-conditioning, lifts and other services**

---

- (a) Where any plant machinery or equipment for heating cooling or circulating air (all of which are herein included in the expression **air-conditioning plant**) is provided or installed in the building or the premises by the Landlord:
- (i) The air-conditioning plant will not be operated on Saturdays, Sundays or gazetted public holidays or on such other days as the building is not open to the public except where the Tenant has independent control of the system affecting the premises.
  - (ii) The Tenant will at all times comply with and observe the reasonable requirements of the Landlord in relation to the air-conditioning plant and will not do or permit or suffer to be done anything to the use or ventilation of the premises which might interfere with or impair the efficient operation of the air-conditioning plant in the premises or the building.

- (iii) The Tenant will be required to keep the sun protection devices (if any) installed for the purpose of reflecting solar heat, in the proper operational position (as determined by the Landlord) to ensure the efficient performance of the air-conditioning equipment. While the air-conditioning equipment is operating the windows in the premises will not be opened or permitted to remain open by the Tenant and the Tenant's visitors.
- (b) Where a passenger lift or lifts are provided or installed in the building by the Landlord the Tenant will use those lifts only for passengers and will not except with the express consent of the Landlord or its building supervisor use them for the carriage of goods. When goods are being carried in those lifts it will be the responsibility of the Tenant to ensure that the protective equipment supplied by the Landlord is used as designed and the cost of repairing the damage occasioned through use of the lifts for purposes other than passenger carriage may be charged to the Tenant concerned and where consent is given for the carriage of goods the Tenant shall comply with all reasonable requirements of the Landlord relating to the use time protection making good and any other reasonable costs of and incidental to the consent and to the use.

## **22. Cleaning of premises by Tenant**

---

- (a) The Landlord will use its best endeavours to provide a cleaning service from one contractor who will in a proper and workmanlike manner clean all parts of the building including the exterior and interior of all windows, grease traps and all carparking areas and the premises and the Tenant will use exclusively the cleaning services to the same or better standard and permit access to the premises during or outside normal office hours for the purpose of other cleaning but the Landlord shall not be responsible for any damage suffered by the Tenant and the Tenant's visitors arising out of such cleaning.
- (b) The Landlord will cause the cleaning contractor providing the cleaning service to render separate accounts direct to the Tenant for the cost of cleaning the premises including the cleaning of the internal surfaces of all outside windows the cleaning of all other windows and glass within the premises and the cleaning of the portion of any service area within the premises and the Tenant will pay such accounts within 14 days of receipt of same. All other cleaning costs will form part of the outgoings of the building.

## **23. Notice to Landlord of damage, accident etc.**

---

The Tenant will give notice to the Landlord immediately when it becomes aware of:

- (a) any damage or defects in the premises or the building or in any of the services or facilities provided by the Landlord in the premises or the building; or
- (b) any circumstances likely to cause any damage or injury within the premises or the building or any accident or injury to any person; or
- (c) any damage or defects in the building's security or surveillance system; or
- (d) any infectious illness occurring in the premises or the building and the Tenant shall also give notice of the same to the proper authorities and at the expense of the Tenant shall thoroughly fumigate and disinfect the premises to the satisfaction of such authorities and otherwise comply with their lawful requirements.

## **24. Recycling**

---

The Tenant shall participate in any recycling programme put in place by the Landlord in relation to the building. The Tenant shall ensure that all recyclable waste is separated from other waste and placed in the receptacles provided for separate collection.

## **25. Smoking**

---

- (a) The Tenant shall comply at all times with the provisions of the Smoke-free Environments Act 1990.
- (b) The Tenant shall not and shall not permit any of its employees to smoke in front of the building, in any dockways or in any public areas other than the designated smoking area of the building (if any).

## SEVENTH SCHEDULE

### (Clause 31)

#### Specific "Making Good" Requirements

1. Make good all ceiling penetrations and (where applicable) restore the ceiling grid.
2. Remove all non-standard light fittings and wiring associated with such light fittings and make good all damage and imperfections associated with that removal.
3. Remove all the Tenant's communications and data cables and all associated wiring.
4. Clean all ceilings.
5. Remove all the Tenant's partitions and make good all damage and imperfections associated with that removal, including by way of example (but not in limitation) replacing carpet, if the floor coverage is incomplete or inconsistent as a result of that removal.
6. Clean the Landlord's partitions, carpets, curtains and blinds.
7. Remove all the Tenant's fixtures and fittings and make good all damage and imperfections associated with that removal of those fixtures and fittings.
8. Restore all lights to a single circuit (with the switch located in the relevant floor lift lobby) and remove all wiring made redundant by that restoration of lights to a single current.
9. Restore all lighting, sprinkler and air-conditioning systems to an open-plan configuration (being the original base building design).
10. Remove all non-standard floor coverings and make good all damage and imperfections associated with that removal, including by way of example (but not in limitation) replacing carpet, if the floor coverage is incomplete or inconsistent as a result of that removal.
11. Remove all lettering, signs, notices, name-plates, advertising devices or any other distinctive marks put by or for the benefit of the Tenant on any part of the building or the premises, including doors and partitions, and make good any consequential damage or disfigurement.



**Dated** \_\_\_\_\_

**Between**  
DNZ Property Fund Limited

**Landlord**

**and**  
HealthAlliance N.Z. Limited

**Tenant**

\_\_\_\_\_  
**DEED OF LEASE**  
\_\_\_\_\_

## Deed of variation, extension and renewal of Lease

relating to

Front Space, Level 2, 650 Great South Road, Greenlane, Auckland

**DNZ Property Fund Limited**

Landlord

and

**healthAlliance N.Z. Limited**

Tenant

Date 1 JUNE 2012

**Contents**

---

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This Deed of variation, extension and renewal of Lease is made on JUNE 2012

between (1) DNZ Property Fund Limited (Landlord)

and (2) healthAlliance N.Z. Limited (Tenant)

## Introduction

- A. The Landlord and the Tenant are the current parties to the Lease.
- B. The Landlord and the Tenant have agreed to vary and extend the terms of the Lease.
- C. The Tenant also wishes to exercise the right of renewal for six (6) years created by this deed.

## It is declared

### 1. Interpretation

---

#### 1.1 Definitions

In this deed, unless inconsistent with the context:

**Extension Date** means 1 March 2012;

**GST** means goods and services tax charged under the Goods & Services Tax Act 1985 and any tax imposed in substitution for that tax;

**Landlord** includes the Landlord's successors, executors, administrators and assigns;

**Lease** means the lease for the Premises dated on or about the date of this deed between the Landlord and the Tenant;

**Premises** means the front space of Level 2, 650 Great South Road, Greenlane, Auckland as further described in the Lease;

**Renewal Date** means 1 April 2012; and

**Tenant** includes the Tenant's successors, executors, administrators and permitted assigns.

#### 1.2 Construction of certain references

In this deed, unless inconsistent with the context:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes each other gender;

- (c) a covenant given by more than one person binds each person jointly and severally; and
- (d) paragraph headings and the table of contents cannot be used to interpret this deed.

## 2. Extension and Renewal

---

- 2.1 The Landlord and Tenant agree to vary the Lease so that the Tenant will have the right to request the Lease to be extended for a further term from the Extension Date to 31 March 2012 (**Right of Extension**).
- 2.2 Pursuant to the Right of Extension and the right of renewal contained within the Lease (as varied by this deed), the Landlord grants and the Tenant accepts:
  - (a) an extension of the term of the Lease for a further term from the Extension Date and expiring on 31 March 2012; and
  - (b) a renewal of the term of the Lease for a further term from the Renewal Date and expiring on 31 March 2018.

## 3. Variation of Lease

---

The Lease is varied as from the Extension Date as follows:

- 3.1 "RENT REVIEW DATES" in the First Schedule is deleted and replaced with the following:  
"RENT REVIEW DATES: 1 April 2012, 1 April 2015"
- 3.2 "RIGHTS OF RENEWAL" in the First Schedule is deleted and replaced with the following:  
"RIGHTS OF RENEWAL: One (1) further term of six (6) years"
- 3.3 "RENEWAL DATES" in the First Schedule is deleted and replaced with the following:  
"RENEWAL DATES: 1 April 2012"
- 3.4 "FINAL EXPIRY DATE" in the First Schedule is deleted and replaced with the following:  
"FINAL EXPIRY DATE: 31 March 2018"

- 3.5 A new clause 50 is inserted as follows:

<sup>49</sup>50 **Early Termination**

- 50.1 The Tenant shall have a once only right to terminate this lease on 31 March 2015 provided that the Tenant has given no less than twelve (12) months prior written notice to the Landlord and without requirement for any reason.
- 50.2 The termination of this lease in accordance with clause 50.1 shall be without prejudice to the rights of either the Landlord or the Tenant in respect of any breach of any of the terms of this lease by the other party up to and including the date this lease is terminated."

## 4. Rent Review

---

- 4.1 The Annual Rent payable by the Tenant to the Landlord from 1 April 2012 shall be \$329,953.25 per annum plus GST payable in advance by equal monthly payments of \$27,496.10 plus GST.

The annual rent comprises:

Level Two:	869.55m <sup>2</sup> @ \$215/m <sup>2</sup>	= \$186,953.25 plus GST
Car Parks covered	12 @ \$45 pcpw	= \$ 28,080.00 plus GST
Car Parks uncovered	34 @ \$35 pcpw	= \$ 61,880.00 plus GST
Carparks stacked	34 @ \$30 pcpw	= \$ 53,040.00 plus GST
<b>Total</b>		<b>= \$329,953.25 plus GST</b>

## 5. Rent Abatement

---

- 5.1 For so long as healthAlliance NZ Limited is the tenant and occupying the Premises:
- For the five (5) month period from 1 November 2011 until 31 March 2012, the Tenant may occupy the Premises without being liable to pay Annual Rent and the Landlord will credit to the Tenant \$10,851.35 plus GST (representing a rent abatement for five months at \$27,496.10 plus GST per month) to the monthly instalment of Annual Rent due on 1 April 2012; and
  - provided that the Tenant has not exercised its rights under clause 50 of the Lease (as varied by this deed), the Annual Rent payable to the Tenant by the Landlord from 1 April 2015 until 30 September 2016 (being eighteen months) shall reduce by \$10,692.92 plus GST per month (being the equivalent to a rent abatement for seven months at \$27,496.10 plus GST per month).
- 5.2 For clarity:
- the rent abatement will not be taken into account for the purposes of rent review at any time during the term of the Lease; and
  - the rent abatement does not affect the Tenant's obligation to pay outgoings and all other moneys due to be paid by the Tenant and to comply with all other obligations imposed on the Tenant under the Lease.

## 6. Confidentiality

---

- 6.1 The Tenant will not disclose the subject matter or any terms and conditions of this deed to any other party. The following disclosures shall not be deemed to be a breach of this clause:
- disclosures made to professional advisors and / or consultants of either party; and
  - disclosures required by law or any regulatory body.

## 7. Confirmation of other terms

---

Except as expressly varied by this deed, all the terms of the Lease are confirmed and remain in full force and effect for the renewed term created by this deed but excluding any right of

renewal to the end and intent that the term of the Lease together with all renewals of the term shall finally expire on 31 March 2018.

8. **Costs**

Each party shall pay their own legal costs and disbursements for the negotiation, preparation and execution of this deed.

**Execution**

Executed as a deed of variation of lease.

DNZ Property Fund Limited by

Director


  
Paul John Duffy  
DIRECTOR

Print Name

  
Director/Authorised Signatory  
Patrick Gerard O'Reilly  
AUTHORISED SIGNATORY  
Print Name

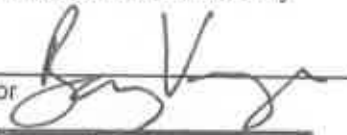
Witness to both signatures  
(if not signed by two directors)

Print Name

  
Witness Name Eve Denny  
Occupation Lease Administrator  
Address Auckland

Address

healthAlliance N.Z. Limited by

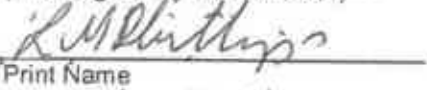
Director 

\_\_\_\_\_  
Director/Authorised Signatory

Print Name J B VRYENHOEK CRO  
28 MAY 2012

\_\_\_\_\_  
Print Name

Witness to both signatures  
(if not signed by two directors)

  
Print Name

Linda Phillips  
Occupation

Administration Support  
Address  
2 Stanley Rd, Glenfield

# DEED OF LEASE

SIXTH EDITION 2012 (4)

**GENERAL** address of the premises:

650 Great South Road, Ellerslie, Auckland

**DATE:** 2 October 2015

**LANDLORD:**

DNZ Property Fund Limited

**TENANT:**

The Fletcher Construction Company Limited

**GUARANTOR:**

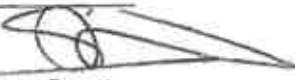
THE LANDLORD leases to the Tenant and the Tenant takes on lease the premises and the car parks (if any) described in the First Schedule together with the right to use the common areas of the property for the term from the commencement date and at the annual rent (subject to review if applicable) as set out in the First Schedule.

THE LANDLORD AND TENANT covenant as set out in the First, Second and Third Schedules, as amended by the Seventh Schedule.

~~THE GUARANTOR covenants with the Landlord as set out in the Fourth Schedule.~~


**SIGNED by the Landlord \***


in the presence of:

\_\_\_\_\_  
 Witness Signature   
 Witness Name Eve Denny  
 Occupation Lease Administrator  
 Address Auckland

\_\_\_\_\_  
 Witness Occupation

\_\_\_\_\_  
 Witness Address

  
 \_\_\_\_\_  
 Signature of Landlord  
**Peter John Alexander**  
**CEO / AUTHORISED SIGNATORY**  
 \_\_\_\_\_  
 Print Full Name  
 (for a company specify position:  
 Director/Attorney/Authorised Signatory)

  
 \_\_\_\_\_  
 Signature of Landlord  
**Andrew Thomas Hay**  
**AUTHORISED SIGNATORY**  
 \_\_\_\_\_  
 Print Full Name  
 (for a company specify position:  
 Director/Attorney/Authorised Signatory)

**SIGNED by the Tenant \***


in the presence of:


\_\_\_\_\_  
 Witness Signature

\_\_\_\_\_  
 Witness Name

\_\_\_\_\_  
 Witness Occupation

\_\_\_\_\_  
 Witness Address

  
 \_\_\_\_\_  
 Signature of Tenant  
**Charles Bolt**  
 \_\_\_\_\_  
 Print Full Name  
 (for a company specify position:  
 Director/Attorney/Authorised Signatory)

  
 \_\_\_\_\_  
 Signature of Tenant  
**Robert Gerard Bollman**  
 \_\_\_\_\_  
 Print Full Name  
 (for a company specify position:  
 Director/Attorney/Authorised Signatory)

\* If appropriate, add:

"by its director(s)" OR "by its duly appointed attorney"

**Note:** Signing by a company - please refer to the note on page

~~SIGNED by the Guarantor~~ \*

in the presence of:

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Name

\_\_\_\_\_  
Witness Occupation

\_\_\_\_\_  
Witness Address

\_\_\_\_\_  
Signature of Guarantor

\_\_\_\_\_  
Print Full Name  
(for a company specify position:  
Director/Attorney/Authorised Signatory)

\_\_\_\_\_  
Signature of Guarantor

\_\_\_\_\_  
Print Full Name  
(for a company specify position:  
Director/Attorney/Authorised Signatory)

\* If appropriate, add:

"by its director(s)" OR "by its duly appointed attorney"

**Note:** Signing by a company – to ensure that this document binds the company as a deed, it must be signed in accordance with section 180 of the Companies Act 1993.  
If two directors sign, no witnessing is necessary.  
If only one director or a director and authorised signatory(ies) or attorney(ies) sign, signatures must be witnessed.

**FIRST SCHEDULE**

1. **PREMISES:** Part Ground Floor and part Third Floor of the landlord's land and buildings situated at 650 Great South Road, Ellerslie, Auckland as shown for indicative purposes only on the Plan attached as the Tenth Schedule
2. **CAR PARKS:** 50 carparks in accordance with clause 1.34 of the Seventh Schedule
3. **TERM:** Two (2) years and eleven (11) months
4. **COMMENCEMENT DATE:** 21 August 2015
5. **RIGHTS OF RENEWAL:** Nil
6. **RENEWAL DATES:** Not applicable
7. **FINAL EXPIRY DATE:** 31 July 2018 (subject to clause 1.30 of the Seventh Schedule)
8. **ANNUAL RENT:** Premises \$ 320,950.00 plus GST  
 (Subject to review if applicable) Car Parks \$ 114,140.00 plus GST subject to clause 1.34 of the Seventh Schedule  
 TOTAL \$ 435,090.00 plus GST calculated as set out in the rental schedule attached to the Ninth Schedule
9. **MONTHLY RENT:** \$ 36,257.50 plus GST
10. **RENT PAYMENT DATES:** The 1st day of each month commencing on the 1st day of September 2015
11. **RENT REVIEW DATES:** (Specify review type and insert dates for initial term, renewal dates and renewal terms. Unless dates are specified there will be no reviews. Where there is a conflict in dates, the market rent review date will apply.)
1. Market rent review dates:  
Not applicable
  2. CPI rent review dates:  
Not applicable
12. **DEFAULT INTEREST RATE:** (subclause 5.1) 2 % per annum above the Landlord's bank's base rate for commercial lending from time to time
13. **BUSINESS USE:** Offices (subclause 16.1)

**14. LANDLORD'S INSURANCE:**

(subclause 23.1)

(Delete or amend extent of cover as appropriate)

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

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

**15. NO ACCESS PERIOD:**

(subclause 27.6)

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

**16. PROPORTION OF OUTGOINGS:**

(subclause 3.1)

**17. LIMITED LIABILITY TRUSTEE:** Not applicable

(subclause 45.2)

**18. OUTGOINGS:**

(clause 3)

- (1) Rates or levies payable to any local or territorial authority (subject to clause 1.5(c) of the Seventh Schedule).
- (2) Charges for water, gas, electricity, telecommunications and other utilities or services, including line charges.
- (3) Rubbish collection and recycling charges.
- (4) New Zealand Fire Service charges and the maintenance charges in respect of all fire detection and fire fighting equipment.
- (5) Any insurance excess (but not exceeding \$2,000) in respect of a claim and insurance premiums and related valuation fees (subject to subclause 23.2).
- (6) Service contract charges for air conditioning, lifts, other building services and security services.
- (7) Cleaning, maintenance and repair charges including charges for repainting, decorative repairs and the maintenance and repair of building services to the extent that such charges do not comprise part of the cost of a service maintenance contract, but excluding charges for structural repairs to the building (minor repairs to the roof of the building shall not be a structural repair), repairs due to defects in design or construction, inherent defects in the building and renewal or replacement of building services.
- (8) The provisioning of toilets and other shared facilities.
- (9) The cost of maintenance of lawns, gardens and planted areas including plant hire and replacement, and the cost of repair of fences.
- (10) Yard and car parking area maintenance and repair charges but excluding charges for repaving or resealing.
- (11) Body Corporate charges for any insurance premiums under any insurance policy effected by the Body Corporate and related valuation fees and reasonable management administration expenses.
- (12) Management expenses (subject to subclause 3.7).
- (13) The costs incurred and payable by the Landlord in supplying to the territorial authority a building warrant of fitness and obtaining reports as required by sections 108 and 110 of the Building Act 2004 but excluding the costs of upgrading or other work to make the building comply with the Building Act 2004.

- (1) Cover for the building against damage and destruction by fire, flood, explosion, lightning, storm, earthquake, and volcanic activity; on the following basis:
  - (a) Full replacement and reinstatement (including loss damage or destruction of windows and other glass); (subject to clause 23.1A)

**OR**

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

- (2) Cover for the following additional risks:
  - (a) ~~(i) 12 months~~

**OR**

- (ii) 24 months indemnity in respect of consequential loss of rent and outgoings.

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

- (c) Public liability

- (d) Other risks as would be from time to time covered under a ~~9-month~~ comprehensive building insurance policy, including such risks as reasonably required by the Tenant.

**OR**

- (2) 3 months

\* That proportion that the area of the premises bears to the total area of the property + % which at commencement date is estimated

to be \$85,150.00

Plus GST per annum

# SECOND SCHEDULE

## TENANT'S PAYMENTS

### Rent

- 1.1 The Tenant shall pay the annual rent by equal monthly payments in advance (or as varied pursuant to any rent review) on the rent payment dates. The first monthly payment (together with rent calculated on a daily basis for any period from the commencement date of the term to the first rent payment date) shall be payable on the first rent payment date. ~~All rent shall be paid without any deductions or set-off by direct payment to the Landlord or as the Landlord may direct.~~

### Market Rent Review

- 2.1 ~~The annual rent payable as from each market rent review date (except for a market rent review date that is a renewal date) shall be determined as follows:~~
- ~~(a) Either party may not earlier than 3 months prior to a market rent review date and not later than the next rent review date (regardless of whether the next rent review date is a market or GPI rent review date) give written notice to the other party specifying the annual rent proposed as the current market rent as at the relevant market rent review date;~~
  - ~~(b) If the party receiving the notice ("the Recipient") gives written notice to the party giving the notice ("the Initiator") within 20 working days after service of the Initiator's notice disputing the annual rent proposed and specifying the annual rent proposed by the Recipient as the current market rent, then the new rent shall be determined in accordance with subclause 2.2;~~
  - ~~(c) If the Recipient fails to give such notice (time being of the essence) the Recipient shall be deemed to have accepted the annual rent specified in the Initiator's notice and the extension of time for commencing arbitration proceedings contained in the Arbitration Act 1996 shall not apply;~~
  - ~~(d) Notwithstanding any other provision of this clause, the annual rent payable as from the relevant market rent review date shall not be less than the annual rent payable as at the commencement date of the then current lease term;~~
  - ~~(e) The annual rent agreed, determined or imposed pursuant to subclause 2.1 shall be the annual rent payable as from the relevant market rent review date, or the date of service of the Initiator's notice if such notice is served later than 3 months after the relevant market rent review date but subject to subclause 2.3 and 2.4;~~
  - ~~(f) The market rent review at the option of either party may be recorded in a deed;~~

### Rent Determinations

- 2.2 ~~Immediately following service of the Recipient's notice on the Initiator, the parties shall endeavour to agree upon the current market rent, but if agreement is not reached within 10 working days then the new rent may be determined either:~~
- ~~(a) By one party giving written notice to the other requiring the new rent to be determined by arbitration; or~~
  - ~~(b) If the parties so agree by registered valuers acting as experts and not as arbitrators as follows:~~
    - ~~(1) Each party shall appoint a valuer and give written notice of the appointment to the other party within 20 working days of the parties agreeing to so determine the new rent;~~
    - ~~(2) If the party receiving a notice fails to appoint a valuer within the 20 working day period then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties;~~
    - ~~(3) The valuers appointed before commencing their determination shall appoint a third expert who need not be a registered valuer. If the parties cannot agree on the third expert, the appointment shall be made on the application of either party by the president or vice president for the time being of The New Zealand Institute of Valuers;~~
    - ~~(4) The valuers appointed by the parties shall determine the current market rent of the premises but if they fail to agree then the rent shall be determined by the third expert;~~
    - ~~(5) Each party shall be given the opportunity to make written or oral representations subject to such reasonable time and other limits as the valuers or the third expert may prescribe and they shall have regard to any of the representations but not be bound by them;~~
    - ~~(6) The parties shall jointly and severally indemnify the third expert for their costs. As between the parties, they will share the costs equally. A party may pay the other party's share of the costs and recover the payment on demand from the other party;~~
    - ~~(7) If the parties agree, they may release the third expert from liability for negligence in acting as third expert in accordance with this subclause 2.2;~~

~~When the new rent has been determined the person or persons determining it shall give written notice of it to the parties. The notice shall provide as to how the costs of the determination shall be borne and it shall be binding on the parties.~~

### Interim Market Rent

- 2.3 ~~Pending determination of the new rent, the Tenant shall from the relevant market rent review date, or the date of service of the Initiator's notice if the notice is served later than 3 months after the relevant market rent review date, until the determination of the new rent pay an interim rent as follows:~~
- ~~(a) If both parties supply a registered valuer's certificate substantiating the new rents proposed, the interim rent payable shall be half-way between the new rents proposed by the parties; or~~
  - ~~(b) If only one party supplies a registered valuer's certificate, the interim rent payable shall be the rent substantiated by the certificate; or~~
  - ~~(c) If no registered valuer's certificates are supplied, the interim rent payable shall be the rent payable immediately prior to the relevant market rent review date,~~
- ~~but in no circumstances shall the interim rent be less than the rent payable as at the commencement date of the then current lease term.~~
- ~~The interim rent shall be payable with effect from the relevant market rent review date, or the date of service of the Initiator's notice if the notice is served later than 3 months after the relevant market rent review date and, subject to subclause 2.4, shall not be subject to adjustment.~~
- 2.4 ~~Upon determination of the new rent, any overpayment shall be applied in payment of the next month's rent and any amount then remaining shall immediately be refunded to the Tenant. Any shortfall in payment shall immediately be payable by the Tenant.~~

**CPI Rent Review**

~~2.5 The annual rent payable from each CPI rent review date shall be determined as follows:~~

~~(a) The Landlord shall adjust the annual rent on the basis of increases (and not decreases) in the CPI by giving notice to the Tenant of the increase (if any) using the formula:~~

$$A = B \times (C \div D)$$

~~Where:~~

~~A the CPI reviewed rent from the relevant CPI rent review date~~

~~B the annual rent payable immediately before the relevant CPI rent review date~~

~~C CPI for the quarter year ending immediately before the relevant CPI rent review date~~

~~D CPI for the quarter year ending immediately before the last rent review date or if there is no previous rent review date, the commencement date of the then current term of the lease (and in the case where A is the CPI reviewed rent for a renewal date then the last rent review date of the immediate preceding lease term or if there is no rent review date the commencement date of the preceding term)~~

~~where (C ÷ D) shall not be less than 1.~~

~~(b) If the CPI is discontinued and not replaced, or if there is a material change to the basis of calculation of the CPI, or a resetting of the CPI, an appropriate index which reflects the change in the cost of living in New Zealand as agreed by the parties and failing agreement to be determined by an expert appointed by the president or vice president of the New Zealand Law Society will be used.~~

~~(c) If the relevant CPI is not published at the relevant CPI rent review date, as soon as the CPI is published an appropriate adjustment will be made to the rent (if necessary) with effect from the relevant CPI rent review date.~~

~~(d) Notwithstanding any other provision of subclause 2.5, the annual rent payable as from the relevant CPI rent review date shall not be less than the annual rent payable immediately preceding the CPI rent review date (and in the case where the relevant CPI rent review date is a renewal date, the annual rent payable at the expiry of the preceding term).~~

~~2.6 The new rent determined pursuant to subclause 2.5 shall be payable from the relevant CPI rent review date once it is determined by the Landlord giving notice under that subclause. Pending determination of the new rent, the Tenant will pay the rent that applies prior to the CPI rent review date. On determination of the new rent, the Tenant will immediately pay any shortfall to the Landlord.~~

**Outgoings**

3.1 The Tenant shall pay the outgoings properly and reasonably incurred in respect of the property which are specified in the First Schedule. Where any outgoing is not separately assessed or levied in respect of the premises then the Tenant shall pay such proportion of it as is specified in the First Schedule or if no proportion is specified then such fair proportion as shall be agreed or failing agreement determined by arbitration.

3.2 The Landlord shall vary the proportion of any outgoing payable to ensure that the Tenant pays a fair proportion of the outgoing.

3.3 If any outgoing is rendered necessary by another tenant of the property or that tenant's employees, contractors or invitees causing damage to the property or by another tenant failing to comply with that tenant's leasing obligations, then that outgoing shall not be payable by the Tenant.

3.4 The outgoings shall be apportioned between the Landlord and the Tenant in respect of periods current at the commencement and termination of the term.

3.5 The outgoings shall be payable on demand or if required by the Landlord by monthly instalments on each rent payment date of a reasonable amount as the Landlord shall determine calculated on an annual basis. Where any outgoing has not been taken into account in determining the monthly instalments it shall be payable on demand. See clause 1.5(a) of the Seventh Schedule.

3.6 ~~After the 31st March in each year of the term or other date in each year as the Landlord may specify, and after the end of the term, the Landlord shall supply to the Tenant reasonable details of the actual outgoings for the year or period then ended. Any over payment shall be credited or refunded to the Tenant and any deficiency shall be payable to the Landlord on demand. See clause 1.5(b) of the Seventh Schedule.~~

3.7 Any profit derived by the Landlord and if a company by its shareholders either directly or indirectly from the management of the property shall not comprise part of the management expenses payable as an outgoing.

3.8 - 3.10 See clause 1.5(c) of the Seventh Schedule.

**Goods and Services Tax**

4.1 The Tenant shall pay to the Landlord or as the Landlord shall direct the GST payable by the Landlord in respect of the rental and other payments payable by the Tenant under this lease. The GST in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment shall be payable upon demand.

4.2 If the Tenant shall make default in payment of the rental or other moneys payable under this lease and the Landlord becomes liable to pay Default GST then the Tenant shall on demand pay to the Landlord the Default GST in addition to interest payable on the unpaid GST under subclause 5.1.

**Interest on Unpaid Money**

5.1 If the Tenant defaults in payment of the rent or other moneys payable under this lease for 10 working days then the Tenant shall pay on demand interest at the default interest rate on the moneys unpaid from the due date for payment to the date of payment.

5.2 Unless a contrary intention appears on the front page or elsewhere in this lease the default interest rate is equivalent to the interest rate charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which the default interest is payable, plus 5 per cent per annum.

**Costs**

6.1 Each party will pay their own costs of the negotiation and preparation of this lease and any deed recording a rent review or renewal. The Tenant shall pay the Landlord's reasonable costs incurred in considering any request by the Tenant for the Landlord's consent to any matter contemplated by this lease, and the Landlord's legal costs (as between lawyer and client) of and incidental to the enforcement of the Landlord's rights remedies and powers under this lease.

**LANDLORD'S PAYMENTS****Outgoings**

7.1 Subject to the Tenant's compliance with the provisions of clause 3 the Landlord shall pay all outgoings in respect of the property not payable by the Tenant direct. The Landlord shall be under no obligation to minimise any liability by paying any outgoing or tax prior to receiving payment from the Tenant.

**MAINTENANCE AND CARE OF PREMISES****Tenant's Obligations**

- 8.1 The Tenant shall be responsible to:
- (a) **Maintain the premises**  
In a proper and workmanlike manner and to the reasonable requirements of the Landlord keep and maintain the interior of the premises in the same clean order repair and condition as they were in at the commencement date of this lease (or where the lease is renewed, the commencement date of the initial term of this lease) and will at the end or earlier determination of the term quietly yield up the same in the like clean order repair and condition. The premises condition report (if completed) shall be evidence of the condition of the premises at the commencement date of this lease. In each case the Tenant shall not be liable for fair wear and tear arising from reasonable use.
  - (b) **Breakages and minor replacements**  
Repair or replace glass breakages with glass of the same or better weight and quality, repair breakage or damage to all doors windows light fittings and power points of the premises and replace light bulbs, tubes and power points that wear out with items of the same or better quality and specification.
  - (c) **Painting**  
~~Paint and decorate those parts of the interior of the premises which have previously been painted and decorated as at the commencement date of this lease (or where the lease is renewed the commencement date of the initial term of this lease) when they reasonably require repainting and redecoration to a specification as approved by the Landlord such approval not to be unreasonably withheld.~~
  - (d) **Floor coverings**  
Keep all floor coverings in the premises clean and replace all floor coverings worn or damaged other than by fair wear and tear with floor coverings of the same or better quality, specification and appearance when reasonably required by the Landlord.
  - (e) **Damage or Loss**  
Make good any damage to the property or loss caused by improper careless or abnormal use by the Tenant or those for whom the Tenant is responsible, to the Landlord's reasonable requirements.
- 8.2 ~~Where the Tenant is leasing all of the property,~~ <sup>In relation to the premises,</sup> the Tenant shall:
- (a) **Care of grounds**  
Keep any grounds yards and surfaced areas in a clean and tidy condition and maintain any garden or lawn areas in a tidy and cared for condition. See clause 1.7 of the Seventh Schedule.
  - (b) **Water and drainage**  
Keep and maintain the storm or waste water drainage system including downpipes and guttering clear and unobstructed.
  - (c) **Other works**  
~~Carry out those works maintenance and repairs to the property as the Landlord may require in respect of which outgoings are payable by the Tenant.~~
- 8.3 Notwithstanding subclause 8.1(a) the Tenant shall not be liable for the maintenance or repair of any building services but this subclause shall not release the Tenant from any obligation to pay for the cost of any service maintenance contract or charges in respect of the maintenance or repair of the building services if it is an outgoing specified in the First Schedule but only to the extent specified in the First Schedule.
- 8.4 Notwithstanding any other provision of this lease, the Tenant shall not be liable to repair any inherent defect in the premises nor to pay any outgoings incurred by the Landlord in remedying any inherent defect.
- 8.5 If the Landlord shall give the Tenant written notice of any failure on the part of the Tenant to comply with any of the requirements of subclauses 8.1 or 8.2 the Tenant shall with all reasonable speed so comply.

**Toilets**

- 9.1 The toilets sinks and drains shall be used for their designed purposes only and no substance or matter shall be deposited in them which could damage or block them.

**Rubbish Removal**

- 10.1 The Tenant shall regularly cause all of the Tenant's rubbish and recycling to be removed from the premises and will keep the Tenant's rubbish bins or containers in a tidy condition. The Tenant will also at the Tenant's own expense cause to be removed all trade waste boxes and other goods or rubbish not removable in the ordinary course by the local authority.

**Landlord's Maintenance***(including without limitation all common areas)*

- 11.1 The Landlord shall keep and maintain the building; all building services and the car parks in good order and repair and weatherproof but the Landlord shall not be liable for any:
- (a) Repair or maintenance which the Tenant is responsible to undertake.
  - ~~(b) Want of repair or defect in respect of building services, so long as the Landlord is maintaining a service maintenance contract covering the work to be done, or where the building services have not been supplied by the Landlord.~~
  - ~~(c) Repair or maintenance which is not reasonably necessary for the Tenant's use and enjoyment of the premises and the car parks.~~
  - (d) Loss suffered by the Tenant arising from any want of repair or defect unless the Landlord shall have received notice in writing of that from the Tenant and has not within a reasonable time after that taken appropriate steps to remedy the same.
- 11.2 The Landlord shall keep and maintain service maintenance contracts for lifts, air-conditioning and at the Landlord's option any other building services supplied by the Landlord. ~~Whenever building services cannot be maintained in good order and repair through regular maintenance, the Landlord will if reasonably required replace the services with services of a similar type and quality.~~
- 11.3 The Tenant shall be liable to reimburse the Landlord for the cost of any such repair, maintenance or service contract pursuant to subclauses 11.1 and 11.2 if it is an outgoing specified in the First Schedule but only to the extent specified in the First Schedule.
- 11.4-11.5 See clause 1.8 of the Seventh Schedule.

**Notification of Defects**

\* See clause 1.9 of the Seventh Schedule.

- 12.1 The Tenant shall give to the Landlord ~~prompt written notice~~ of any accident to or defect in the premises of which the Tenant may be aware and in particular in relation to any pipes or fittings used in connection with the water electrical gas or drainage services.

**Landlord's Right of Inspection**

- 13.1 The Landlord and the Landlord's employees contractors and invitees may at all reasonable times and after having given prior written notice to the Tenant (except in the case of emergencies) enter upon the premises to view their condition.

**Landlord may Repair**

- 14.1 If default shall be made by the Tenant in the due and punctual compliance with any repair notice given by the Landlord pursuant to this lease, or if any repairs for which the Tenant is responsible require to be undertaken as a matter of urgency then without prejudice to the Landlord's other rights and remedies expressed or implied the Landlord may by the Landlord's employees and contractors with all necessary equipment and material at all reasonable times and on reasonable notice (except in the case of emergencies) enter the premises to execute the works. Any moneys expended by the Landlord in executing the works shall be payable by the Tenant to the Landlord upon demand together with interest on the moneys expended at the default interest rate from the date of expenditure to the date of payment.

**Access for Works**

- 15.1 The Tenant shall permit the Landlord and the Landlord's employees and contractors at all reasonable times and on reasonable written notice (except in the case of emergencies) to enter the premises for a reasonable period to inspect and carry out works to the premises or adjacent premises and to install inspect repair renew or replace any services where they are not the responsibility of the Tenant or are required to comply with the requirements of any statutes, regulations, by-law or requirement of any competent authority. All repairs inspections and works shall be carried out ~~with the least possible inconvenience to the Tenant subject to subclauses 15.3 and 15.4~~ without material disruption to the Tenant's use of the premises.
- ~~15.2 If the Tenant's business use of the premises is materially disrupted because of the Landlord's works provided for in subclause 15.1, then during the period the works are being carried out a fair proportion of the rent and outgoings shall cease to be payable but without prejudice to the Tenant's rights if the disruption is due to a breach by the Landlord of the Landlord's obligation, under subclause 15.1, to cause the least possible inconvenience to the Tenant.~~
- ~~15.3 If in the Landlord's reasonable opinion, the Landlord requires the Tenant to vacate the whole or part of the premises to enable the works referred to in subclause 15.1 to be carried out, the Landlord may give the Tenant reasonable written notice requiring the Tenant to vacate the whole or part of the premises and specifying a reasonable period for which the Landlord requires possession. On the expiry of the notice the Landlord may take possession of the premises or the part specified in the notice. A fair proportion of the rent and outgoings shall cease to be payable during the period the Tenant vacates the premises as required by the Landlord.~~
- 15.4 The Landlord shall act in good faith and have regard to the nature, extent and urgency of the works when exercising the Landlord's right of access or possession in accordance with subclauses 15.1 ~~and 15.3~~.

**USE OF PREMISES****Business Use**

- 16.1 The Tenant shall not without the prior written consent of the Landlord use or permit the whole or any part of the premises to be used for any use other than the business use. The Landlord's consent shall not be unreasonably or arbitrarily withheld or delayed in respect of any proposed use which is:
- not in substantial competition with the business of any other occupant of the property which might be affected by the use; and
  - reasonably suitable for the premises; and
  - compliant with the requirements of the Resource Management Act 1991 or any other statutory provisions relating to resource management.
- If any change in use renders any increased or extra premium payable in respect of any policy or policies of insurance on the premises the Landlord as a condition of granting consent may require the Tenant to pay the increased or extra premium.
- 16.2 If any change in use requires compliance with sections 114 and 115 of the Building Act 2004 the Landlord, as a condition of granting consent, may require the Tenant to comply with sections 114 and 115 of the Act and to pay all compliance costs.
- ~~16.3 If the premises are a retail shop the Tenant shall keep the premises open for business during usual trading hours and fully stocked with appropriate merchandise for the efficient conduct of the Tenant's business.~~

**Lease of Premises and Car Parks Only**

- 17.1 The tenancy shall relate only to the premises and the car parks (if any) and the Landlord shall at all times be entitled to use occupy and deal with the remainder of the property without reference to the Tenant and the Tenant shall have no rights in relation to it other than the rights of use under this lease.

**Neglect of Other Tenant**

- 18.1 The Landlord shall not be responsible to the Tenant for any act or default or neglect of any other tenant of the property.

**Signage**

- 19.1 The Tenant shall not affix paint or exhibit or permit to be affixed painted or exhibited any name sign name-plate signboard or advertisement of any description on or to the exterior of the building without the prior approval in writing of the Landlord but approval shall not be unreasonably or arbitrarily withheld or delayed in respect of signage describing the Tenant's business. If approved the signage shall be secured in a substantial and proper manner so as not to cause any damage to the building or any person and the Tenant shall at the end or sooner determination of the term remove the signage and make good any damage occasioned in connection with the signage.

**Additions, Alterations, Reinstatement and Chattels Removal**

- 20.1 The Tenant shall neither make nor allow to be made any alterations or additions to any part of the premises or alter the external appearance of the building without first producing to the Landlord on every occasion plans and specifications and obtaining the written consent of the Landlord (not to be unreasonably or arbitrarily withheld or delayed) for that purpose. If the Landlord authorises any alterations or additions which are made before the commencement date or during the term of this lease the Tenant will at the Tenant's own expense if required by the Landlord no later than the end or earlier termination of the term reinstate the premises. Ownership of the alterations or additions that are not removed by the end or earlier termination of the lease may at the Landlord's election pass to the Landlord without compensation payable to the Tenant. If the Tenant fails to reinstate then any costs incurred by the Landlord in reinstating the premises whether in whole or in part, within 6 months of the end or earlier termination of the term shall be recoverable from the Tenant.
- 20.2 The Tenant, when undertaking any "building work" to the premises (as that term is defined in the Building Act 2004), shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates pursuant to that Act and shall provide copies of the building consents and code compliance certificates to the Landlord.

- 20.3 The Tenant may at any time before and will if required by the Landlord no later than the end or earlier termination of the term remove all the Tenant's chattels. In addition to the Tenant's obligations to reinstate the premises pursuant to subclause 20.1 the Tenant will make good at the Tenant's own expense all resulting damage and if the chattels are not removed by the end or earlier termination of the term ownership of the chattels may at the Landlord's election pass to the Landlord or the Landlord may remove them from the premises and forward them to a refuse collection centre. Where subclause 27.5 applies, the time by which the Tenant must remove the chattels and to make good all resulting damage will be extended to 5 working days after access to the premises is available.
- 20.4 The cost of making good resulting damage and the cost of removal of the Tenant's chattels shall be recoverable from the Tenant and the Landlord shall not be liable to pay any compensation nor be liable for any loss suffered by the Tenant.
- 20.5 See clause 1.11 of the Seventh Schedule.

#### Compliance with Statutes and Regulations

- 21.1 The Tenant shall comply with the provisions of all statutes, ordinances, regulations and by-laws relating to the use of the premises by the Tenant or other occupant and will also comply with the provisions of all licences, requisitions and notices issued by any competent authority in respect of the premises or their use by the Tenant or other occupant provided that:
- The Tenant shall not be required to make any structural repairs alterations or additions nor to replace or install any plant or equipment except where required by reason of the particular nature of the business carried on by the Tenant or other occupant of the premises or the number or sex of persons employed on the premises.
  - The Tenant shall 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 an occupier of the premises.
  - The Tenant will promptly provide the Landlord with a copy of all requisitions and notices received from a competent authority under this subclause.
- ~~21.2 If the Landlord is obliged by any legislation or requirement of any competent authority to expend moneys during the term of this lease or any renewed term on any improvement addition or alteration to the property which is not the Tenant's responsibility under subclause 21.1 and the expenditure would be an unreasonable amount then the Landlord may determine this lease. Any dispute as to whether or not the amount to be expended by the Landlord is unreasonable shall be determined by arbitration.~~
- 21.3 The Landlord warrants that allowing the premises to be open to members of the public and allowing the use of the premises by members of the public at the commencement date will not be a breach of section 363 of the Building Act 2004. This clause does not apply to any "building work" (as defined in the Building Act 2004) relating to the fit-out of the premises by the Tenant.
- 21.4 The Tenant, when undertaking any building work to the premises, shall comply with all statutory requirements including the obtaining of building consents and code compliance certificates and shall not allow the premises to be open to members of the public or allow use of the premises by members of the public if that would be in breach of section 363 of the Building Act 2004.
- 21.5 During the term and any renewal, the Landlord shall not give consent to or carry out any building work in any part of the Landlord's property which may cause the Tenant to be in breach of section 363 of the Building Act 2004 by allowing the premises to be open to members of the public and allowing the use of the premises by members of the public.
- 21.6-21.7 See clause 1.12 of the Seventh Schedule.

#### No Noxious Use

- 22.1 The Tenant shall not:
- Bring upon or store within the premises nor allow to be brought upon or stored within the premises any machinery goods or things of an offensive noxious illegal or dangerous nature, or of a weight size or shape as is likely to cause damage to the building or any surfaced area. See clause 1.13(a) of the Seventh Schedule.
  - Contaminate the property and shall undertake all works necessary to remove any contamination of the property other than contamination not caused by the Tenant or which took place prior to the commencement date of the lease term. Contamination means any change to the physical chemical or biological condition of the property by a "contaminant" as that word is defined in the Resource Management Act 1991. See clause 1.13(b) of the Seventh Schedule.
  - Use the premises or allow them to be used for any ~~no~~ noxious illegal or offensive trade or business.
  - Allow any act or thing to be done which may be or grow to be a nuisance disturbance or annoyance to the Landlord, other tenants of the property, or any other person, and generally the Tenant shall conduct the Tenant's business upon the premises in a clean quiet and orderly manner free from damage nuisance disturbance or annoyance to any such persons but the carrying on by the Tenant in a reasonable manner of the business use or any use to which the Landlord has consented shall be deemed not to be a breach of this clause.

## INSURANCE

### Landlord shall insure

- 23.1 The Landlord shall at all times during the term keep and maintain insurance of the type shown and for the risks specified in the First Schedule. ~~if insurance cover required under this subclause becomes unavailable during the term of this lease or any renewal other than because of the Landlord's act or omission, the Landlord will not be in breach while cover is unavailable, provided the Landlord uses all reasonable endeavours on an ongoing basis to obtain cover. The Landlord will advise the Tenant in writing whenever cover becomes unavailable and provide reasons as to the unavailability. The Landlord will also provide the Tenant with reasonable information relating to the cover when requested by the Tenant.~~
- 23.2 The parties acknowledge and agree pursuant to section 271 of the Property Law Act 2007 that to the extent of any excess payable regarding any insurance policy held by the Landlord, the excess will represent an amount for which the Landlord has not insured, or has not fully insured the premises or the property against destruction or damage arising from the events that the section applies to. If the Landlord makes any claim against its insurance for any destruction or damage because of any act or omission of the Tenant, the Tenant will pay the Landlord the amount of the excess not exceeding the sum specified in the list of outgoings in the First Schedule ~~is insuring pursuant to clause 23.1 and~~

### Tenant not to void insurance

- 24.1 The Tenant shall not carry on or allow upon the premises any trade or occupation or allow to be done any act or thing which:
- Shall make void or voidable any policy of insurance on the property.
  - May render any increased or extra premium payable for any policy of insurance except where in circumstances in which any increased premium is payable the Tenant shall have first obtained the consent of the insurer of the premises and the Landlord and made payment to the insurer of the amount of any such increased or extra premium as may be payable but the carrying on by the Tenant in a reasonable manner of the business use or of any use to which the Landlord has consented shall be deemed not to be a breach of this clause.
- 24.2 In any case where in breach of subclause 24.1 the Tenant has rendered any insurance void or voidable and the Landlord has suffered loss or damage by that the Tenant shall at once compensate the Landlord in full for such loss or damage.

**When Tenant to have benefit of Landlord's insurance**

- 25.1 Where the property is destroyed or damaged by fire, flood, explosion, lightning, storm, earthquake, volcanic activity or any risk against which the Landlord is (or has covenanted with the Tenant to be) insured the Landlord will not require the Tenant to meet the cost of making good the destruction or damage to the property and will indemnify the Tenant against such cost where the Tenant is obligated to pay for making good such damage or destruction. The Landlord does not have to indemnify the Tenant and the Tenant will not be excused from liability under this subclause if and to the extent that:
- The destruction or damage was intentionally caused by the Tenant or those for whom the Tenant is responsible; or
  - The destruction or damage was the result of an act or omission by the Tenant or those for whom the Tenant is responsible and that act or omission:
    - occurred on or about the property; and
    - constitutes an imprisonable offence; or
  - Any insurance moneys that would otherwise have been payable to the Landlord for the damage or destruction are rendered irrecoverable in consequence of any act or omission of the Tenant or those for whom the Tenant is responsible.

**DAMAGE TO OR DESTRUCTION OF PREMISES****Total Destruction**

- ~~26.1 If the premises or any portion of the building of which the premises may form part shall be destroyed or so damaged:~~
- ~~as to render the premises untenable then the term shall at once terminate from the date of destruction or damage; or~~
  - ~~in the reasonable opinion of the Landlord as to require demolition or reconstruction, then the Landlord may within 3 months of the date of damage give the Tenant 20 working days notice to terminate and a fair proportion of the rent and outgoings shall cease to be payable as from the date of damage.~~
- ~~Any termination pursuant to this subclause shall be without prejudice to the rights of either party against the other.~~
- 26.1-26.4 See clause 1.15 of the Seventh Schedule.

**Partial Destruction**

- 27.1 If the premises or any portion of the building of which the premises may form part shall be damaged but not so as to render the premises untenable and:
- the Landlord's policy or policies of insurance shall not have been invalidated or payment of the policy moneys refused in consequence of some act or default of the Tenant; and
  - all the necessary permits and consents are obtainable,
- the Landlord shall with all reasonable speed expend all the insurance moneys received by the Landlord in respect of such damage towards repairing such damage or reinstating the premises or the building ~~but the Landlord shall not be liable to expend any sum of money greater than the amount of the insurance money received.~~ See clause 1.16(a) of the Seventh Schedule.
- 27.2 ~~Any repair or reinstatement may be carried out by the Landlord using such materials and form of construction and according to such plan as the Landlord thinks fit and shall be sufficient so long as it is reasonably adequate for the Tenant's occupation and use of the premises. See clause 1.16(b) of the Seventh Schedule.~~
- 27.3 Until the completion of the repairs or reinstatement a fair proportion of the rent and outgoings shall cease to be payable as from the date of damage.
- 27.4 If any necessary permit or consent shall not be obtainable ~~or the insurance moneys received by the Landlord shall be inadequate for the repair or reinstatement then the term shall at once terminate but without prejudice to the rights of either party against the other. See clause 1.16(c) of the Seventh Schedule.~~
- 27.4A See clause 1.16(d) of the Seventh Schedule.

**No Access in Emergency**

- 27.5 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 prohibited or restricted access cordon applying to the premises; or
  - prohibition on the use of the premises pending the completion of structural engineering or other reports and appropriate certifications required by any competent authority that the premises are fit for use; or
  - 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.
- 27.6 This subclause 27.6 applies where subclause 27.5 applies and the premises or building of which the premises form part are not totally or partially destroyed or damaged resulting in the lease being cancelled as provided for in subclauses 26.1 or 27.4. ~~Either party may terminate this lease by giving 10 working days written notice to the other if:~~ **Landlord**
- ~~the Tenant is unable to gain access to the premises for the period specified in the First Schedule; or~~
  - ~~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.~~ **will be inaccessible** **The Tenant**
- Any termination shall be without prejudice to the rights of either party against the other.

**DEFAULT****Cancellation**

- 28.1 The Landlord may (in addition to the Landlord's right to apply to the Court for an order for possession) and subject to section 245(2) of the Property Law Act 2007 cancel this lease by re-entering the premises at the time or at any time after that:
- if the rent shall be in arrears 10 working days after any rent payment date and the Tenant has failed to remedy that breach within 10 working days after service on the Tenant of a notice in accordance with section 245 of the Property Law Act 2007.
  - In case of breach by the Tenant of any covenant or agreement on the Tenant's part expressed or implied in this lease (other than the covenant to pay rent) after the Tenant has failed to remedy that breach within the period specified in a notice served on the Tenant in accordance with section 246 of the Property Law Act 2007.
  - If the Tenant shall make or enter into or endeavour to make or enter into any composition assignment or other arrangement with or for the benefit of the Tenant's creditors.
  - In the event of the insolvency, bankruptcy, statutory management, voluntary administration, receivership or liquidation of the Tenant.

~~(e) if the Tenant shall suffer execution to issue against the Tenant's property goods or effects under any judgment against the Tenant in any Court for a sum in excess of five thousand dollars (\$5,000).~~

The term shall terminate on the cancellation but without prejudice to the rights of either party against the other.

### Essentiality of Payments

\*See clause 1.17 of the Seventh Schedule.

- 29.1 Failure to pay rent or other moneys payable under this lease ~~on the due date~~ shall be a breach going to the essence of the Tenant's obligations under the lease. The Tenant shall compensate the Landlord and the Landlord shall be entitled to recover damages from the Tenant for such breach. This entitlement shall subsist notwithstanding any determination of the lease and shall be in addition to any other right or remedy which the Landlord may have.
- 29.2 The acceptance by the Landlord of arrears of rent or other moneys shall not constitute a waiver of the essentiality of the Tenant's continuing obligation to pay rent and other moneys.

### Repudiation

- 30.1 The Tenant shall compensate the Landlord and the Landlord shall be entitled to recover damages for any loss or damage suffered by reason of any acts or omissions of the Tenant constituting a repudiation of the lease or the Tenant's obligations under the lease. Such entitlement shall subsist notwithstanding any determination of the lease and shall be in addition to any other right or remedy which the Landlord may have.

### QUIET ENJOYMENT

- 31.1 The Tenant paying the rent and performing and observing all the covenants and agreements expressed and implied in this lease shall quietly hold and enjoy the premises throughout the term without any interruption by the Landlord or any person claiming under the Landlord.

### RENEWAL OF LEASE

- ~~32.1 If the Tenant has given to the Landlord written notice to renew the lease at least 3 calendar months before the end of the term and is not at the date of the giving of the notice in breach of this lease then the Landlord will grant a new lease for a further term from the renewal date as follows:~~
- ~~(a) if the renewal date is a market rent review date the annual rent shall be the current market rent which if not agreed on shall be determined in accordance with subclause 2.2 but the annual rent shall not be less than the rent payable as at the commencement date of the immediately preceding lease term - initial term of this lease.~~
- ~~(b) if the renewal date is a CPI rent review date, the annual rent shall be determined in accordance with subclause 2.5.~~
- ~~(c) Subject to the provisions of paragraphs (a) and (b) the new lease shall be upon and subject to the covenants and agreements expressed and implied in this lease except that the term of this lease plus all further terms shall expire on or before the final expiry date.~~
- ~~(d) The annual rent shall be subject to review during the term of the new lease on the rent review dates specified in the First Schedule.~~
- ~~(e) The Landlord as a condition of granting a new lease shall be entitled to have the new lease guaranteed by any guarantor who has guaranteed this lease on behalf of the Tenant who has given notice or the security of a bank guarantee that has been given.~~
- ~~(f) if the renewal date is a market rent review date, pending the determination of the rent, the Tenant shall pay an interim rent in accordance with subclauses 2.3 and 2.4. See clause 1.18(a) of the Seventh Schedule~~
- ~~(g) Notwithstanding anything contained in subclause 32.1(f) the interim rent referred to in that subclause shall not be less than the annual rent payable as at the commencement date of the immediately preceding lease term.~~
- ~~(h) The parties will not be released by the renewal of the lease from any liability for any breach under this lease.~~

### ASSIGNMENT OR SUBLETTING

- 33.1 The Tenant shall not assign sublet or otherwise part with the possession of the premises, the carparks (if any) or any part of them without first obtaining the written consent of the Landlord which the Landlord shall not unreasonably withhold or delay if the following conditions are fulfilled:
- (a) The Tenant proves to the reasonable satisfaction of the Landlord that the proposed assignee or subtenant is (and in the case of a company that the shareholders of the proposed assignee or subtenant are) respectable responsible and has the financial resources to meet the Tenant's commitments under this lease and in the case of the subtenant the subtenant's commitments under the sublease. The Tenant shall give the Landlord any additional information reasonably required by the Landlord.
- (b) All rent and other moneys payable have been paid and there is not any subsisting breach of any of the Tenant's covenants.
- (c) In the case of an assignment a deed of covenant in customary form approved or prepared by the Landlord is duly executed and delivered to the Landlord.
- (d) In the case of an assignment to a company (other than a company listed on the main board of a public stock exchange in New Zealand or Australia) either a deed of guarantee in customary form approved or prepared by the Landlord is duly executed by the principal shareholders of that company and delivered to the Landlord or a bank guarantee from a registered trading bank in New Zealand on reasonable terms approved by the Landlord as security for the performance by the company of its obligations under this lease is provided to the Landlord.
- (e) The Tenant pays the Landlord's reasonable costs and disbursements in respect of the approval and the preparation of any deed of covenant or guarantee and (if appropriate) all fees and charges payable in respect of any reasonable inquiries made by or on behalf of the Landlord concerning any proposed assignee subtenant or guarantor. All such costs shall be payable whether or not the assignment or subletting proceeds.
- 33.2 Where the Landlord consents to a subletting the consent shall extend only to the subletting and notwithstanding anything contained or implied in the sublease the consent shall not permit any subtenant to deal with the sublease in any way in which the Tenant is restrained from dealing without consent.
- 33.3 Where any Tenant is a company which is not listed on the main board of a public stock exchange in New Zealand or Australia, then any change in the legal or beneficial ownership of its shares or the shares of its shareholder or issue of new capital in the company or its shareholder where in any case there is a change in the effective management or control of the company will require the written consent of the Landlord which will not be unreasonably withheld or delayed. See clause 1.19(a) of the Seventh Schedule.
- 33.4-33.5 See clause 1.19(b) of the Seventh Schedule.

**UNIT TITLE PROVISIONS**

34.1 Clause 34 applies where the property is part of a unit title development.

**Body Corporate**

34.2 The expression "Body Corporate" means the Body Corporate under the Unit Titles Act 2010 (in subclauses 34.2 to 34.7 "the Act") in respect of the property.

**Act and Rules Paramount**

34.3 This lease shall be subject to the provisions of the rules of the Body Corporate and the provisions of the Act.

**Insurance**

34.4 Unless the Body Corporate has resolved that the Landlord is to insure the building the Landlord's obligation to insure the building shall be satisfied by the Body Corporate maintaining the same insurance cover in accordance with the Act.

**Landlord's Obligations**

34.5 The Landlord shall observe and perform all of the Landlord's obligations as a member of the Body Corporate and shall use the Landlord's best endeavours to ensure that the Body Corporate complies with its rules and the provisions of the Act.

**Tenant's Obligations**

34.6 The Tenant shall comply with the rules of the Body Corporate and the provisions of the Act to the extent that they apply to the Tenant's use of the property.

**Consents**

34.7 Where in this lease the consent of the Landlord is required in respect of any matter then the like consent of the Body Corporate shall also be required if the consent of the Body Corporate to the matter would be necessary under its rules or the Act.

**CARPARKS**

35.1 The Tenant shall have the right to exclusive possession of the leased car parks, but when any car park is not being used by the Tenant other persons shall be entitled to pass over the same.

35.2 The Landlord may carry out repairs to the car parks and no abatement of rent or other compensation shall be claimed by the Tenant except pursuant to subclauses 26.1 or 27.3.

35.3 The Tenant shall comply with the Landlord's reasonable requirements relating to the use of the car parks and access to them and in particular shall only use the car parks for the parking of one motor vehicle per parking space.

35.4 The provisions of the Second Schedule shall apply to the car parks as appropriate.

**GENERAL****Holding Over**

36.1 ~~if the Landlord permits the Tenant to remain in occupation of the premises after the expiration or sooner determination of the term, the occupation shall be a periodic tenancy only terminable by at least 20 working days notice given at any time with the tenancy terminating on the expiry of the notice of the rent then payable and otherwise on the same covenants and agreements (so far as applicable to a periodic tenancy) as expressed or implied under this lease.~~  
See clause 1.20 of the Seventh Schedule.

**Access for Re-Letting or Sale**

37.1 The Tenant will during the term permit the Landlord, the Landlord's representatives and prospective tenants or purchasers to have access to inspect the premises provided that:

- (a) Any such inspection is at a time which is reasonably convenient to the Tenant and after reasonable written notice.
- (b) The inspection is conducted in a manner which does not cause disruption to the Tenant.
- (c) If the Landlord or the Landlord's representatives are not present the persons inspecting have written authority from the Landlord to do so.

**Suitability**

38.1 No warranty or representation expressed or implied has been or is made by the Landlord that the premises are now suitable or will remain suitable or adequate for use by the Tenant or that any use of the premises by the Tenant will comply with the by-laws or ordinances or other requirements of any authority having jurisdiction.

**Affirmation**

39.1 A party to this lease shall not be entitled to cancel this lease if, with full knowledge of any repudiation or misrepresentation or breach of covenant, that party affirmed this lease.

**Waiver**

40.1 No waiver or failure to act by either party in respect of any breach by the other shall operate as a waiver of another breach.

**Land Transfer Title or Mortgagee's consent**

41.1 ~~The Landlord shall not be required to do any act or thing to enable this lease to be registered or be required to obtain the consent of any mortgagee of the property and the Tenant will not register a caveat in respect of the Tenant's interest under this lease.~~  
See clause 1.21 of the Seventh Schedule.

**Notices**

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

- (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, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:
  - (1) in the manner authorised by sections 354 to 361 of the Property Law Act 2007, or
  - (2) by personal delivery, or by posting by registered or ordinary mail, ~~or by facsimile~~, or by email.

Despite the foregoing, notices cannot be served by facsimile.

- 42.2 In respect of the means of service specified in subclause 42.1(b)(2), a notice is deemed to have been served:
- In the case of personal delivery, when received by the addressee.
  - In the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand.
  - ~~In the case of facsimile transmission, when sent to the addressee's facsimile number.~~
  - In the case of email, when acknowledged by the addressee orally or by return email or otherwise in writing except that return emails generated automatically shall not constitute an acknowledgement.
- ~~42.3 In the case of a notice to be served on the Tenant, if the Landlord is unaware of the Tenant's last known address in New Zealand or the Tenant's facsimile number, any notice placed conspicuously on any part of the premises shall be deemed to have been served on the Tenant on the day on which it is affixed.~~
- 42.4 A notice shall be valid if given by any director, general manager, lawyer or other authorised representative of the party giving the notice.
- 42.5 Where two or more notices are deemed to have been served at the same time, they shall take effect in the order in which they would have been served but for subclause 47.1(p).
- 42.6 Any period of notice required to be given under this agreement shall be computed by excluding the date of service.

#### Arbitration

- 43.1 The parties shall first endeavour to resolve any dispute or difference by agreement and if they agree by mediation.
- 43.2 Unless any dispute or difference is resolved by mediation or other agreement within 30 days of the dispute or difference arising, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996 or any other statutory provision then relating to arbitration.
- 43.3 If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon request of any party, by the president or vice president of the New Zealand Law Society. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject to this and varied accordingly.
- 43.4 The procedures prescribed in this clause shall not prevent the Landlord from taking proceedings for the recovery of any rent or other monies payable under this lease which remain unpaid or from exercising the rights and remedies in the event of the default prescribed in subclause 28.1.

#### No Implied Terms

- 44.1 The covenants, conditions and powers implied in leases pursuant to the Property Law Act 2007 and sections 224 and 266(1)(b) of that Act shall not apply to and are excluded from this lease where allowed.

#### Limitation of Liability

- 45.1 If any person enters into this lease as trustee of a trust, then:
- That person warrants that:
    - that person has power to enter into this lease under the terms of the trust; and
    - that person has properly signed this lease in accordance with the terms of the trust; and
    - that person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this lease; and
    - all of the persons who are trustees of the trust have approved entry into this lease.
  - ~~If that person has no right to or interest in any assets of the trust except in that person's capacity as a trustee of the trust, that person's liability under this lease will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time ("the limited amount"). If the right of that person to be indemnified from the trust assets has been lost or impaired as a result of fraud or gross negligence that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.~~
- ~~45.2 Notwithstanding subclause 45.1, a party to this lease that is named in item 17 of the First Schedule as a limited liability trustee, that person's liability will not be personal and unlimited but limited in accordance with subclause 45.1(b).~~
- 45.2 See clause 1.22 of the Seventh Schedule.

#### Counterparts

- 46.1 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.

#### DEFINITIONS AND INTERPRETATION

- 47.1 In this lease:
- "building services" means all services provided by the Landlord as an integral part of the building for the general use and enjoyment of the building by its tenants or occupants including water, gas, electricity, lighting, air conditioning, heating and ventilation, telecommunications, lifts and escalators whether or not they are located within the premises.
  - "CPI" means the Consumer Price Index (All Groups) published by Statistics New Zealand or other government agency and any revised, replacement or substituted index.
  - "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the Landlord (or where the Landlord is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this lease but does not include any sum levied against the Landlord (or where the Landlord is or was a member of a GST group its representative member) by reason of a default or delay by the Landlord after payment of the GST to the Landlord by the Tenant.
  - "emergency" for the purposes of subclause 27.5 means a situation that:
    - 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
    - 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
    - the event is not caused by any act or omission of the Landlord or Tenant.

- (e) "GST" means the Goods and Services Tax arising pursuant to the Goods and Services Tax Act 1985 and "GST Act" means the Goods and Services Tax Act 1985.
- (f) "premises" includes all the Landlord's fixtures and fittings provided by the Landlord and those set out in the Fifth Schedule.
- (g) "premises condition report" means the report as set out in the Sixth Schedule.
- (h) "renewal" means the granting of a new lease as provided for in subclause 32.1.
- (i) "rules" in clause 34 means the Body Corporate operational rules under the Unit Titles Act 2010 and any amendments to those rules or replacement rules.
- (j) "structural repair" means a repair, alteration or addition to the structure or fabric of the building but excluding building services.
- (k) "term" includes, where the context requires, a further term if the lease is renewed.
- (l) "the common areas" means those parts of the property the use of which is necessary for the enjoyment of the premises and which is shared with other tenants and occupiers.
- (m) "the Landlord" and "the Tenant" means where appropriate the executors, administrators, successors and permitted assigns of the Landlord and the Tenant.
- (n) "the property" and "the building" mean the land, building(s) or improvements of the Landlord which comprise or contain the premises. Where the premises are part of a unit title development the words "the property" mean the land and building(s) comprised in the development.
- (o) "those for whom the Tenant is responsible" includes the Tenant's agents employees contractors or invitees.
- ~~(p) "working day" has the meaning given to it in the Property Law Act 2007. 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.~~
- (q) A reference in this lease to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (r) A reference to the words "include" or "including" are to be interpreted without limitation.
- (s) If any inserted term (including any Further Term in the Third Schedule) conflicts with the covenants in the First, Second and Fourth Schedules, the inserted term will prevail.
- (t) Whenever words appear in this lease that also appear in the First Schedule then those words shall mean and include the details supplied after them in the First Schedule.
- (u) Where the context requires or admits, words importing the singular shall import the plural and vice versa.
- (v) Where the Landlord's consent or approval to any matter is required under this lease then, unless expressly stated to the contrary in this lease, in each case the Landlord:
- (1) must not unreasonably withhold consent or approval, and
  - (2) must, within a reasonable time of the Landlord's consent or approval being requested:
    - (i) grant that consent or approval; or
    - (ii) notify the Tenant in writing that the consent or approval is withheld.

See clause 1.23 of the Seventh Schedule.

Refer Seventh Schedule for additional clauses 48-55.

# THIRD SCHEDULE

## FURTHER TERMS (if any)

Refer Seventh Schedule



# FOURTH SCHEDULE

## GUARANTEE

**IN CONSIDERATION** of the Landlord entering into the lease at the Guarantor's request the Guarantor:

- (a) Guarantees payment of the rent and the performance by the Tenant of the covenants in the lease.
- (b) Indemnifies the Landlord against any loss the Landlord might suffer should the lease be lawfully disclaimed or abandoned by any liquidator, receiver or other person.

**THE GUARANTOR** covenants with the Landlord that:

1. No release delay or other indulgence given by the Landlord to the Tenant or to the Tenant's successors or assigns or any other thing by which the Guarantor would have been released had the Guarantor been merely a surety shall release prejudice or affect the liability of the Guarantor as a guarantor or as indemnifier.
2. As between the Guarantor and the Landlord the Guarantor may for all purposes be treated as the Tenant and the Landlord shall be under no obligation to take proceedings against the Tenant before taking proceedings against the Guarantor.
3. The guarantee and indemnity is for the benefit of and may be enforced by any person entitled for the time being to receive the rent.
4. An assignment of the lease and any rent review in accordance with the lease shall not release the Guarantor from liability.
5. Should there be more than one Guarantor their liability under this guarantee and indemnity shall be joint and several.
6. The Guarantee and indemnity shall extend to any holding over by the Tenant.

# FIFTH SCHEDULE

## LANDLORD'S FIXTURES AND FITTINGS

(Subclause 47.1(f))



# SIXTH SCHEDULE

## PREMISES CONDITION REPORT

(Subclause 8.1)



**SEVENTH SCHEDULE  
TENANT AMENDMENTS TO THE SECOND SCHEDULE  
ADLS LEASE SIXTH EDITION 2012(4)**

If there is any conflict between the amendments in the Sixth Schedule and the clauses of the Second Schedule, the amendments in the Seventh Schedule will prevail.

1.1 Not Used

1.2 Not Used

1.3 Not Used

1.4 Not Used

1.5 Outgoings

(a) Clause 3.5 is amended by inserting the following words at the end:

*"Prior to or as soon as practicable after 31 March in each year of the term of the lease, the Landlord shall provide to the Tenant (in writing) details of the Landlord's budgeted outgoings for the year to 31 March next following."*

(b) Clause 3.6 is deleted and replaced with the following:

*"3.6 After 31 March in each year of the term, and after the end of term, the Landlord shall supply to the Tenant copies of the assessments, levies and accounts relating to the relevant outgoings such as to enable the Tenant to verify the quantum and purpose of the relevant outgoings, and a comparison with the budget previously notified by the Landlord to the Tenant under clause 3.5. Any over payment shall be credited or refunded to the Tenant and any deficiency shall be payable to the Landlord on demand provided that where any reconciliation of the outgoings has not occurred within three months of the end of the relevant outgoings year then any over payment shall be credited or refunded to the Tenant but the Landlord shall not be entitled to claim any deficiency from the Tenant."*

(c) New clauses 3.8, 3.9 and 3.10 are inserted as follows:

*"3.8 Notwithstanding anything to the contrary in this lease, no outgoings will be recoverable by the Landlord where an estimate or actual amount is notified more than 12 months after the end of the then current accounting period set out in clause 3.6.*

*3.9 Where the relevant local or territorial authority issues any assessment or notice in relation to the premises or the property that has the effect of increasing the rates payable for the property then the Landlord must provide a copy of such assessment or notice to the Tenant as soon as practicable after receiving the same and, where reasonably required by the Tenant, the Landlord will, at its cost, use its best endeavours to contest such notice and make such representations as reasonably necessary to the relevant authority to dispute the assessment or notice and minimise any rates increase. For clarity, any costs incurred by the Landlord pursuant to this clause shall not be chargeable to the Tenant through the outgoings.*

*3.10 The Landlord shall use its best endeavours at all times to manage the lease outgoings payable by the Tenant effectively and prudently. Notwithstanding any other provisions of this clause 3, the outgoings payable by the Tenant in any outgoings period shall not be more than 105% of the budgeted outgoings for that*

*outgoings period unless the Tenant has consented in writing to any greater increase."*

**1.6 Not used**

**1.7 Tenant's Maintenance**

Insert at the end of clause 8.2(a) the following words:

*"(fair wear and tear excepted) and provided that the Tenant shall not be responsible for resealing or resurfacing areas other than repair of a minor nature."*

**1.8 Landlord's Maintenance**

New clauses 11.4 and 11.5 are inserted as follows:

*"11.4 If the Landlord fails within a reasonable time to carry out any repair, replacement and/or maintenance obligations required by the provisions of this clause 11 then the Tenant may undertake the repair, replacement and/or maintenance work at the Landlord's sole cost and expense, and the Landlord will, upon demand, pay to the Tenant all costs and expenses incurred by the Tenant in carrying out the work or, at the Tenant's election, the Tenant may deduct such costs and expenses from the annual rent payable by the Tenant under this lease.*

*11.5 In the event that any of the Tenant's maintenance obligations are covered by a warranty or guarantee held by the Landlord, the Landlord shall assign to the Tenant the benefit of the warranty or guarantee and where the benefit of such warranty or guarantee is unable to be assigned to the Tenant (or the warranty or guarantee relates to the Landlord's maintenance obligations) the Landlord shall, without undue delay, use best endeavour to enforce its rights against the guarantor or warranting party under the relevant warranty or guarantee at the Landlord's sole cost."*

**1.9 Notification of Defects**

Clause 12.1 is amended by replacing the words "*prompt written notice*" in the first line with "*notice within a reasonable time*".

**1.10 Not used**

**1.11 Additions, Alterations, Reinstatement and Chattels Removal**

New clause 20.5 is inserted as follows:

*"20.5 While the Tenant is a Fletcher Building Group Company, notwithstanding anything to the contrary in this lease, at the expiration or earlier termination of this lease the Tenant shall not be obliged to reinstate any alterations, additions or chattels which:*

- (a) do not devalue the premises and are likely to be required by a subsequent tenant;*
- (b) the Landlord has agreed in writing are not required to be reinstated; or*
- (c) form part of the Tenant's initial fitout as set out in the fitout plan attached to the Eleventh Schedule.*

## 1.12 Compliance with Statutes and Regulations

New clauses 21.6 and 21.7 are inserted as follows:

- \*21.6 *The Landlord shall comply with the provisions of all statutes, ordinances, regulations and by-laws relating to the building and/or the property (including, without limitation, the Health and Safety in Employment Act 1992).*
- 21.7 *The Landlord covenants with the Tenant that it will not at any time during the term, do or allow to be done, whether by act or omission, directly or indirectly, anything which is contrary to that which is permissible under the resource consent obtained for the construction and use of the premises."*

## 1.13 No Noxious Use

- (a) Clause 22.1(a) is amended by adding the following words to the end of this clause:

*"provided that the carrying on by the Tenant in a reasonable manner of the business use or any use to which the Landlord has consented shall be deemed not to be a breach of this clause."*

- (b) Clause 22.1(b) is amended by adding the following words to the end of this clause:

*"If any contaminants or toxic substances are found in the building or on the property (which are not the responsibility of the Tenant under this subclause) and*

- (i) *are required to be remediated by a local or territorial authority or any other organisation or body having jurisdiction in relation to the matter; or*
- (ii) *such contaminants or substances are in the reasonable opinion of the Tenant, likely to affect the health and safety of the Tenant or the Tenant's use of the premises,*

*then the Landlord shall, at the Landlord's cost, remediate such contaminants or substances promptly and in such a manner as prescribed by the relevant authority, or such other organisation or body having jurisdiction in relation to the matter. It is acknowledged by the Landlord that no costs associated with the remediation of such contaminants or toxic substances will be payable by the Tenant."*

## 1.14 Not used

## 1.15 Total Destruction

Clause 26.1 is deleted and replaced with the following clauses:

- \*26.1 *If the premises or any part of the building of which the premises form part shall be destroyed or so damaged as to render the premises untenable then either party may terminate this lease by giving to the other notice in writing within 20 working days from and exclusive of the date upon which the damage occurs (time being of the essence). If this lease is not terminated then the Landlord is to reinstate the premises with all reasonable speed, subject to:*
- (a) *the policies of insurance for the damage not having been invalidated by, or payment of the policy moneys refused because of, some act or default of the Tenant; and*

(b) all the necessary permits and consents being obtainable.

*Termination pursuant to this clause shall be without prejudice to the rights of either party against the other.*

- 26.2 *Until such termination or completion of reinstatement (as the case may be) the rent and outgoings payable by the Tenant under this lease will cease to be payable as from the date of damage.*
- 26.3 *Repair or reinstatement under clause 26.1 must be carried out by the Landlord using materials and form of construction and according to a plan which will reinstate, as nearly as possible, the premises to the state they were in prior to the destruction or damage.*
- 26.4 *The provisions of clause 27.4A shall apply in the event that the Landlord is reinstating the premises pursuant to clause 26.1.\**

#### 1.16 Partial Destruction

- (a) Clause 27.1 is amended by adding at the end the words:

*\*and the Landlord must make up any difference between the cost of such repair or reinstatement and the insurance money received from the Landlord's own funds\*.*

- (b) Clause 27.2 is deleted and replaced with the following:

*\*27.2 Repair or reinstatement under clause 27.1 must be carried out by the Landlord using materials and form of construction and according to a plan which will reinstate, as nearly as possible, the premises to the state they were in prior to the destruction or damage.\**

- (c) Insert the following words after the word "reinstatement" in clause 27.4:

*\*or the policy or policies of insurance shall have been invalidated or payment of the policy moneys refused in consequence of some act or default of the Tenant,\*.*

- (d) A new clause 27.4A is inserted as follows:

*\*If the Landlord fails to:*

- (a) *demonstrate to the Tenant's reasonable satisfaction that it has sufficient funds to comply with its obligations under clauses 26.1 or 27.1 within three months;*
- (b) *obtain all necessary permits and consents within six months (or such longer period as may be agreed between the parties) of the date of the damage; or*
- (c) *repair or reinstate the premises within nine months (or such longer period as may be agreed between the parties) from the date of the damage,*

*then the Tenant may terminate this lease by giving notice in writing to the Landlord. The term of this lease will then be deemed to have ended as from the date the damage occurred but will not affect the rights of either party against the other in respect of any prior breach of any of the covenants, conditions, or agreements contained or implied in this lease.\**

#### 1.17 Essentiality of Payments

Clause 29.1 is amended by replacing the words "on the due date" in the first line with the following:

*"within 10 working days after the due date and written notice is given by the Landlord".*

#### 1.18 Not used

#### 1.19 Assignment or Subletting

(a) Clause 33.3 is amended by adding the following words at the end:

*"except that this clause shall not apply whilst a Fletcher Building Group Company is the Tenant".*

(b) New clauses 33.4 and 33.5 are inserted as follows:

*\*33.4 Despite the foregoing provisions in this clause 33, Landlord consent shall not be required to any assignment, subletting, parting of possession to, or sharing of possession to a Fletcher Building Group Company. In the event that such an assignment takes place, the Tenant shall procure a deed of covenant from the assignee on the terms set out in clause 33.1(c).*

*33.5 Despite the other provisions of this clause 33 (and without prejudice to clause 33.4), the Tenant shall be entitled to sublet or licence any part of the premises, up to a maximum of twenty (20)% of the then total area of the premises, without obtaining the Landlord's prior written consent or approval to such subletting or parting with possession.\**

#### 1.20 Holding Over

Clause 36.1 is deleted and replaced with the following clause:

*\*36.1 If the Landlord permits the Tenant to remain in occupation of the premises after the expiration or sooner determination of the term, such occupation shall be a three monthly tenancy only terminable by three months written notice at the rent then payable and otherwise on the same covenants and agreements (so far as applicable to a three monthly tenancy) as herein expressed or implied.\**

#### 1.21 Land Transfer Title or Mortgagee's Consent

Clause 41.1 is deleted and replaced with the following:

*\*41.1 The Landlord shall:*

- (a) *do all things reasonably required to enable this lease to be registered, if required by the Tenant; and*
- (b) *obtain from any existing mortgagee and, on each occasion before giving a mortgage over the property, from the party taking the mortgage (each the Mortgagee), a written acknowledgement in favour of the Tenant (and provide a copy to the Tenant) that:*

- (i) *the Mortgagee takes its security subject to this lease; and*
- (ii) *the Mortgagee is not acquiring any security over or right, title or interest in the Tenant's Fixtures and Fittings."*

## 1.22 Limitation of Liability

Clause 45.2 is deleted and replaced with the following:

*"45.2 If a party to this lease is named in Item 17 of the First Schedule as a limited liability trustee, that person's liability under this lease will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time (the **limited amount**). If the right of that person to be indemnified from the trust assets has been lost or impaired as a result of fraud or gross negligence that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person."*

## 1.23 Interpretation

Clause 47.1 is amended by inserting the following additional definitions:

- (v) *"Competitor" means a person, partnership, company or other entity who, or which, is in competition with any business carried on by a Fletcher Building Group Company, and includes any person who is indirectly or directly, related to, interested in, engaged in, concerned in, or assisting, such a person or company.*
- (w) *"Control of the Landlord" by a person means that person, directly or indirectly, whether by legal or beneficial ownership of share capital, other securities, or equity of any sort, the possession of voting power, or by contract, trust or otherwise, and whether alone or jointly with others:*
  - (i) *has or may have the power to appoint or remove 40% or more of the members of the governing body of the Landlord; or*
  - (ii) *controls or has the power, or may have the power, to control the affairs or policies of the Landlord, whether generally or in respect of matters relating to the premises; or*
  - (iii) *is in a position to derive more than 40% of the benefit of the existence or activities of the Landlord.*
- (x) *Not used*
- (y) *"Fletcher Building Group Company" means The Fletcher Construction Company Limited or a Related Company.*
- (z) *"Insolvent" means insolvent, bankrupt, in statutory management or voluntary administration, in receivership or liquidation.*
- (aa) *"Landlord's Fixtures and Fittings" means all fixtures and fittings provided in the premises by the Landlord including (but not limited to):*
  - (i) *those items described in the Fifth Schedule;*
  - (ii) *all items owned by the Landlord and contained in or connected to the premises as replaced and added to by the Landlord from time to time.*

- (bb) *"Market Value" for the purposes of clauses 51 and 52 means the value of the Land (as that term is defined in clauses 51.3 and 52.3) with the benefit of this Lease to the Tenant, which values shall be determined by the valuer appointed pursuant to clause 51.*
- (cc) *"Reasonable Price" means a price which (taking into account the pricing from time to time available for commercial buildings insurance in the New Zealand market) is a price which is economically reasonable in relation to the premises.*
- (dd) *"Related Company" has the same meaning as in the Companies Act 1993.*
- (ee) *"Tenant's Fixtures and Fittings" means the fixtures, fittings, plant, equipment, structures and other improvements owned by the Tenant or a Fletcher Building Group Company and located at the premises from time to time and includes, without limitation, the items listed in the Eighth Schedule and any items brought onto and/or constructed at the premises and owned or paid for by the Tenant."*
- (ff) *"Valuer" means a valuer who is registered under the Valuers Act 1948 and who:*
  - (i) *is a member of the New Zealand Institute of Valuers;*
  - (ii) *has at least five (5) years valuation experience in the relevant market in the area in which the Land is located; and*
  - (iii) *has adequate professional indemnity insurance, providing cover (in respect of each claim) of at least [one million dollars (\$1,000,000)].*
- (gg) *"working day" means any day of the week other than:*
  - (i) *Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Waitangi Day, and the Provincial Anniversary Day as observed at the place where the property is situated; and*
  - (ii) *a day in the period commencing on (and including) the 24<sup>th</sup> day of December in any year and ending on (and including) the 5<sup>th</sup> of January in the following year."*

#### 1.24 Tenant's Fixtures and Fittings

A new clause 48 is inserted as follows:

##### ***"Tenant's Fixtures and Fittings***

*The parties agree that the Tenant's Fixtures and Fittings shall remain the property of the Tenant during the term of this lease and cannot be charged by the Landlord."*

#### 1.25 Not used

#### 1.26 Landlord Seismic Strength Warranty

A new clause 50 is inserted as follows:

##### ***"Landlord Seismic Strength Warranty***

**50.1** *The Landlord warrants that from the initial commencement date until the date of termination or expiry of this lease (including renewals) that the building has a Seismic Strength Rating*

of at least 67% of NBS and is graded B under the Building Grading System and is free from any secondary seismic vulnerabilities that pose a threat to life and/or safety.

- 50.2 The Landlord shall, during the term of this lease and at its cost, undertake any works required to keep and maintain the building at the Seismic Strength Rating set out in clause 50.1 above.
- 50.3 The Landlord shall undertake any earthquake strengthening works pursuant to clause 50.2 so as to cause the minimum disruption to the Tenant. If such works cannot be completed so as to cause minimal disruption to the Tenant's use and enjoyment of the premises, or otherwise require the building or the premises to be vacated for more than 3 months, then the Tenant shall be entitled to terminate this lease on written notice to the Landlord.
- 50.4 For the avoidance of doubt, the Tenant shall not be obliged to pay for or contribute to the cost of any works pursuant to this clause 50 whether as an outgoing or otherwise.
- 50.5 Despite the foregoing provisions of this clause 50, the Tenant shall be entitled to cancel if the Landlord is in breach of clause 50.1 and the breach is not remedied within 4 months' written notice to the Landlord.
- 50.6 For the purposes of this clause 50:

**AS/NZS 1170** means the NZS 1170 Part 5 "Earthquake Actions – New Zealand" (or any standard published in substitution or addition) as at the initial commencement date of this lease.

**Building Grading System** means the building grading system for earthquake risk set out in the New Zealand Society of Earthquake Engineers 'Recommendations for the Assessment and Improvement of the Structural Performance of Buildings in an Earthquake' (or any building grading system published in substitution or addition).

**NBS** means "New Building Standard" assessed in accordance with AS/NZS 1170.

**Seismic Strength Rating** means the percentage of a building strength relative to NBS."

1.27 Not used

1.28 Option to Purchase: Landlord Insolvent

A new clause 52 is inserted as follows:

**"Option to Purchase: Landlord Insolvent**

- 52.1 For so long as the Tenant is a Fletcher Building Group Company, if the Landlord is Insolvent, as the case may be the Landlord must promptly notify the Tenant by notice in writing and then the Tenant shall have the option to purchase the premises or (where the premises do not comprise the entirety of the property) the property, at the Market Value of the property.
- 52.2 The Tenant may exercise the option granted in clause 52.1 by delivering to the Landlord a notice of exercise of option provided that the Tenant may not do so later than 60 working days after receiving the notice referred to in clause 52.1.

- 52.3 Upon receipt of the notice referred to in clause 52.2 (**Notice**) there will be constituted an agreement for the sale and purchase of the property by the Landlord to the Tenant for the Market Value of the property and the terms and conditions of the agreement shall be those specified in the Notice together with the general conditions of sale contained in the then most recent form of agreement for sale and purchase published by the Auckland District Law Society and the Real Estate Institute of New Zealand. If there is a conflict between the Notice and the general conditions of sale, then the terms of the Notice shall prevail. The agreement shall specify a settlement date of 120 working days from the date of exercise of the option.
- 52.4 Within 15 working days (or such longer period as may be agreed) of the expiry of the period in clause 52.3, the Landlord and the Tenant shall agree upon a Valuer to determine the Market Value. Failing such agreement, either the Landlord or the Tenant shall be entitled to request the President for the time being of the New Zealand Institute of Valuers (**President**) to appoint a Valuer to determine Market Value. The Valuer shall be instructed to make its determination of the Market Value within 60 working days of that person's appointment. If for any reason the determination required is not made by the Valuer within 60 working days of that person's appointment, the Landlord or the parties to the Notice shall be entitled to request the President to nominate an alternative Valuer. Upon the appointment of the alternative Valuer, the appointment of the first Valuer shall lapse and any subsequent determination by that person shall have no force or effect.
- 52.5 The Valuer shall determine the Market Value and such determination shall be final and binding on the Landlord and the parties to the Notice, and will be deemed inserted in the appropriate places as the purchase price in the agreement for sale and purchase constituted under clause 52.3."

1.29 Not used

1.30 Right of Early Termination by Tenant

A new clause 54 is inserted as follows:

***Right of Early Termination by Tenant***

- 54.1 The Tenant may terminate this lease by giving the Landlord not less than one months' written notice within the following dates:
- (a) between 19 June and 14 August 2016 (inclusive); and
  - (b) between 20 March 2017 and 5 April 2017 (inclusive).

The Tenant's notice of termination must specify the date on which this lease is to terminate (the **Termination Date**). The Tenant is to vacate the premises on or before the Termination Date, and upon the Termination Date this lease is to terminate.

- 54.2 This clause 54 will apply for so long as the Tenant is a Fletcher Building Group Company.
- 54.3 Any termination of this lease under this clause 54 is without prejudice to the liability of the Tenant for the payment of the annual rent and any other money payable under this lease up to the Termination Date and for any other breach, non-observance or non-performance of either party's obligations contained in this lease.

- 54.4 *If the Tenant has paid any annual rent or other money under this lease to the Landlord for the period following the Termination Date, then the Landlord will refund that money to the Tenant on the Termination Date.*
- 54.5 *If the Tenant exercises its rights to terminate this lease pursuant to this clause 54 the Tenant shall be required, on or before the Termination Date, to comply with its obligations under this lease as if it were the expiry of the term of this lease.*
- 54.6 *Prior to the Termination Date, the Tenant shall execute a deed of surrender of the premises in a form prepared by the Landlord's solicitors and reasonably acceptable to the Tenant. Each party shall pay its own costs in relation to such deed of surrender."*

### 1.31 Landlord Warranties

A new clause 55 is inserted as follows:

#### *\*Landlord Warranties*

55. *The Landlord warrants as at the initial commencement date of this lease that:*
- (a) *there are no Contaminants present on the premises or property which pose or might pose a threat to the safety or health of the Tenant or those for whom the Tenant is responsible or which may expose the Tenant to an abatement notice, enforcement order, requisition or other notice of enforcement process; and*
  - (b) *any yards and other surfaced areas of the premises are fit for the business use and not subject to any unreasonable maintenance and repair costs and are sufficiently well constructed to withstand the passage of heavy vehicles (including trucks, fork hoist, side loaders and front end loaders) and the storage of products for the business use on those areas."*

### 1.32 Not used

### 1.33 Liability for Outgoings

Notwithstanding the commencement date or anything else to the contrary in this lease, the Tenant shall commence paying the outgoings under this lease on and from 13 August 2015, being the date the Tenant was granted access to the premises.

### 1.34 Carparks

A new clause 35.5 is inserted as follows:

- 35.5 *Notwithstanding anything to the contrary, in respect of car parks leased by the Tenant under this lease:*
- (a) *the lease of 30 car parks (being the 30 car parks as first described in the Ninth Schedule) will commence on and from the commencement date;*
  - (b) *the lease of the remaining 20 car parks will commence on and from 18 September 2015; and*
  - (c) *the Tenant shall commence paying rent in respect of the relevant car parks on the dates specified in clauses 35.5(a) and (b) above.*

**EIGHTH SCHEDULE**  
**LIST OF TENANT'S FIXTURES AND FITTINGS**

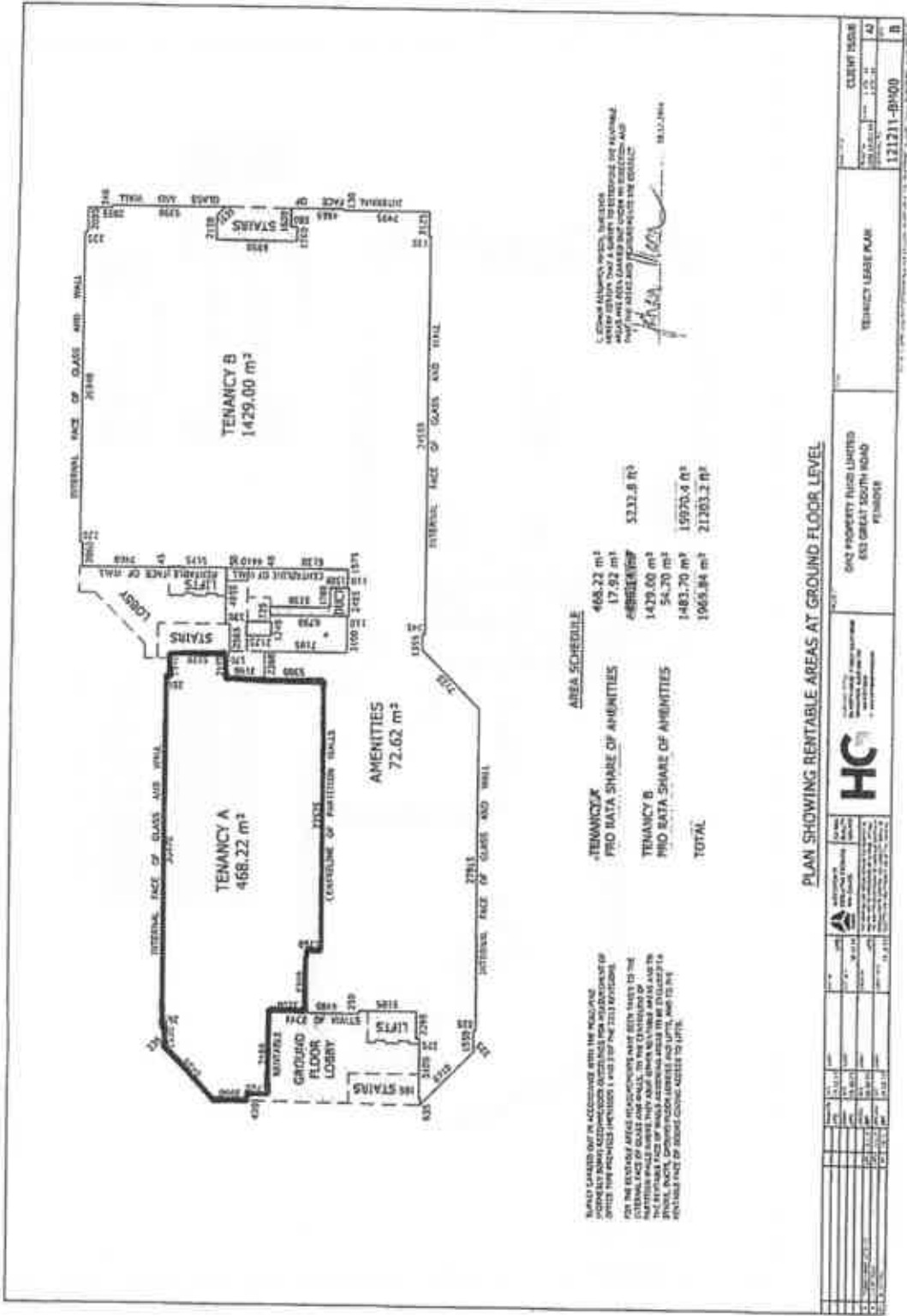
NINTH SCHEDULE

RENTAL SCHEDULE

<b>Premises</b>		<b>Subtotal</b>	
Part Ground Floor (486.14 m <sup>2</sup> @ \$244.92 per square metre)		\$119,070.00 plus GST	
Part Third Floor (824.49 m <sup>2</sup> @ \$244.85 per square metre)		\$201,880.00 plus GST	\$320,950.00 plus GST
<b>30 Car Parks available from the Commencement Date (21 August 2015)</b>		<b>Subtotal</b>	
Basement	25 car parks @ \$46 plus GST per car park per week	\$59,800.00 plus GST	
Podium	Nil	Nil	
External	5 car parks @ \$36 plus GST per car park per week	\$9,360.00 plus GST	\$69,160.00 plus GST
<b>20 Car Parks available from 18 September 2015</b>		<b>Subtotal</b>	
Basement	12 car parks @ \$46 plus GST per car park per week	\$28,704.00 plus GST	
Podium	5 car parks @ \$41 plus GST per car park per week	\$10,660.00 plus GST	
External	3 car parks @ \$36 plus GST per car park per week	\$5,616.00 plus GST	\$44,980.00 plus GST
<b>TOTAL Annual Rent</b>		<b>\$435,090.00 plus GST</b>	

TENTH SCHEDULE

PLAN





**ELEVENTH SCHEDULE**

**FITOUT PLAN**

ISSUED FOR INFORMATION

- 1. OFFICE ACCREDITATION
- 2. PLANNING PERMISSIONS
- 3. PLANNING APPLICATIONS

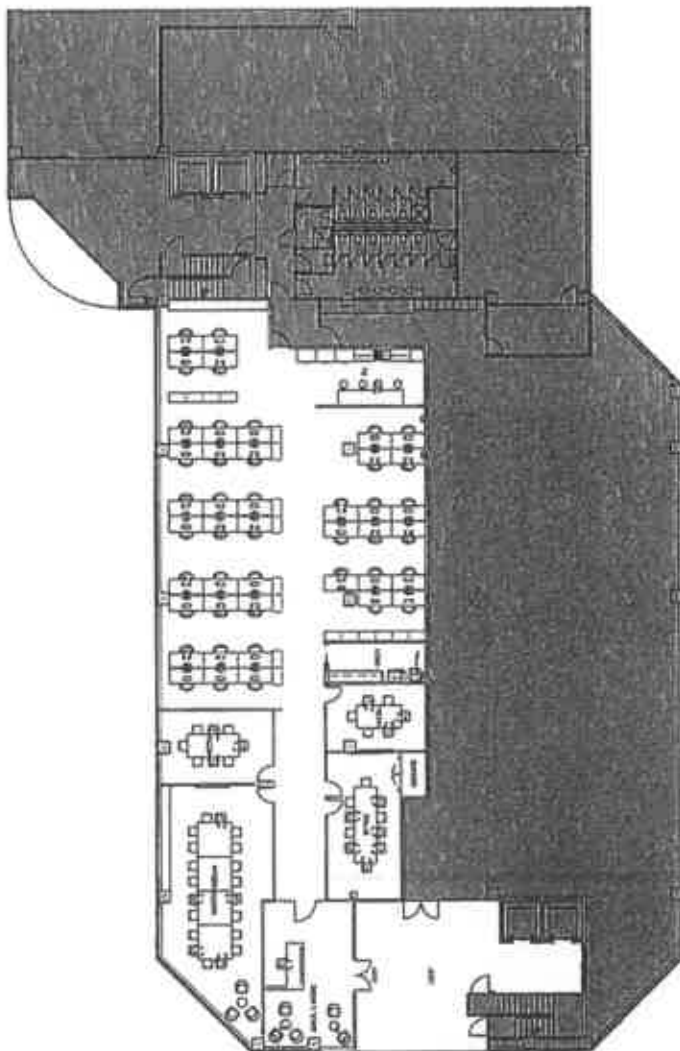
**STACK**  
 PROJECT MANAGEMENT  
 100, THE QUAYS, LONDON, E14 3GF  
 TEL: 020 7463 4000  
 WWW.STACKPM.CO.UK

**Fletcher Building**  
 100, THE QUAYS, LONDON, E14 3GF  
 TEL: 020 7463 4000  
 WWW.FLETCHERBUILDING.CO.UK



FLETCHER BUILDING  
 - PRODUCT SPACE  
 850 GREAT SOUTH ROAD  
 LONDON, SE13 7QJ

FULLY DETAILED LAYOUT PLAN  
 - GROUND FLOOR  
 SCALE: 1:500  
 DATE: 12/03/2023  
 DRAWN BY: A1  
 CHECKED BY: A1  
 PROJECT NO: 18429265\_1





**Dated** \_\_\_\_\_

**Between**  
DNZ Property Fund Limited

**Landlord**

**and**  
The Fletcher Construction Company Limited

**Tenant**

**and**

**Guarantor**

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# DEED OF LEASE

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**General address of the premises:**  
650 Great South Road, Ellerslie, Auckland