

# MEMORANDUM OF LEASE

## CERTIFICATES OF TITLE BEING LEASED

Piece **[INSERT]** on the attached plan being portion of the land in Certificate of Title Volume 5938 Folio 181

### ESTATE AND INTEREST

Estate in fee simple

### ENCUMBRANCES

Memorandum of Mortgage No. 9201767

### LESSOR (Full Name and Address)

**ADELAIDE PRODUCE MARKETS LIMITED** ABN 49 608 129 566 of Burma Road Pooraka South Australia 5095

### LESSEE (Full Name, Address and Mode of Holding)

**[INSERT]**

### TERM OF LEASE

- (a) Original Term: 10 years commencing on **[INSERT]** and expiring at midnight on **[INSERT]** subject to clause 4.9
- (b) Renewal(s): Nil

RENT AND MANNER OF PAYMENT (OR OTHER CONSIDERATION)

**Rent:** \$**[INSERT]** per annum subject to clause 5 and subject to review under clause 4.10 of this Lease. The annual rent must be paid by equal, consecutive, calendar monthly instalments equivalent to one twelfth of the annual rent, always in advance, the first such instalment to be paid on the Commencement Date (being a proportionate instalment if appropriate) and thereafter on the first day of each and every succeeding month

OPERATIVE CLAUSE <sup>(a)</sup> delete the inapplicable

The Lessor LEASES TO THE LESSEE the land <sup>(a)</sup> ABOVE / ~~HEREINAFTER~~ described and the LESSEE ACCEPTS THIS LEASE of the land for the term and at the rent stipulated, subject to the covenants and conditions expressed <sup>(a)</sup> herein / ~~in Memorandum No. \_\_\_\_\_~~ and to the powers and covenants implied by the Real Property Act 1886 (except to the extent that the same are modified or negated below).

DEFINE THE LAND BEING LEASED INCORPORATING THE REQUIRED EASEMENT(S) ETC

Not applicable

IT IS COVENANTED BY AND BETWEEN THE LESSOR AND THE LESSEE as follows:  
(Covenants, where not deposited, to be set forth on insert sheet(s) and securely attached)

**REFERENCE SCHEDULE**

- ITEM 1  
Premises** Piece **[INSERT]** on the attached plan being portion of the land in Certificate of Title Volume 5938 Folio 181
- ITEM 2  
Estate** Estate in fee simple
- ITEM 3  
Encumbrances** Memorandum of Mortgage No. 9201767
- ITEM 4  
Lessor** **ADELAIDE PRODUCE MARKETS LIMITED** ABN 49 608 129 566 of Burma Road Pooraka South Australia 5095
- ITEM 5  
Lessee** **[INSERT]**
- ITEM 6  
Term and renewals**
- (a) Original Term: 10 years commencing on **[INSERT]** and expiring at midnight on **[INSERT]** subject to clause 4.9
  - (b) Renewal(s): Nil
  - (c) Early Termination Date: midnight on **[INSERT]**
- ITEM 7  
Rent and manner of payment** **Rent:** \$**[INSERT]** per annum subject to clause 5 and subject to review pursuant to clause 4.10 of this Lease. The annual rent must be paid by equal, consecutive, calendar monthly instalments equivalent to one twelfth of the annual rent, always in advance, the first such instalment to be paid on the Commencement Date (being a proportionate instalment if appropriate) and thereafter on the first day of each and every succeeding month
- ITEM 8  
Consents** Refer to the consent panel of this Lease
- ITEM 9  
Land** The whole of the land in Certificate of Title Volume 5938 Folio 181
- ITEM 10  
Permitted Use** The conduct of the business of a merchant selling fruit, vegetables, nuts and dried foods, flowers, eggs and associated products including sauces, jams and other condiments and all other value added food lines associated with fresh fruit and vegetables (**the goods**) by wholesale and not to use or cause or permit the Premises to be used as premises at which the goods or any other goods are sold to the public by retail or wholesale or at which services are provided to the public or to which the public is invited to negotiate for the supply of services and to such intent the *Retail and Commercial Leases Act 1995* (SA) will **not** apply to this Lease

**ITEM 11**  
**Rent Review dates**

(a) CPI Review Date: **[INSERT]**  
Year(s): **[INSERT]**

(b) Market Review Date: **[INSERT]**  
Year(s): **[INSERT]**

**ITEM 12**  
**Public liability amount**

\$20,000,000.00

**ITEM 13**  
**Bank Guarantee sum**

**[INSERT]** monthly instalments

**ITEM 14**  
**Lessee's trading name(s) or business name(s)**

**[INSERT]**

**ITEM 15**  
**Lessee's mailing address**

**[INSERT]**

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## 1. DEFINITIONS AND INTERPRETATION

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In this Lease unless the contrary intention appears:

### 1.1 Definitions

**Accounting Period** means each period of one year commencing on 1 July and expiring at midnight on the next 30 June where the whole or any portion of that year falls within the Term;

**APML Operating Articles** means the Adelaide Produce Markets Limited Operating Articles contained in the Operating Articles and Rules of the Adelaide Produce Markets in force at the date of this Lease and any addition, variation or amendment to that constitution made by the Lessor from time to time;

**Board** means the board of directors of the Lessor;

**Building** means the interior and exterior of the building erected on the portion of the Land in which the Premises are located and all present and future improvements erected on or made to the Land and includes:

- (a) all of the Lessor's fixtures, fittings, airconditioning, fire protection and other plant, machinery and equipment;
- (b) all conveniences, Services, amenities and appurtenances; and
- (c) any alterations and additions made to the Building,

of, in or to the Building and includes any part of the Building;

**Business Day** means any day that is not Saturday, Sunday or a public holiday in South Australia;

**CEO** means the chief executive officer of the Lessor or a person to whom the CEO has delegated in writing, the powers exercisable by the CEO;

**Commencement Date** means the date of commencement of the Original Term set out in item 6(a) of the schedule;

**Common Area** means those portions of the Market designated by the Lessor from time to time for common use by the Lessor and occupants of the Market and their invitees and includes any part of the Common Area;

**CPI** means the Consumer Price Index (All Groups) for Adelaide published from time to time by the Australian Bureau of Statistics or by the Commonwealth of Australia or by any other body authorised by the Commonwealth of Australia to do so;

**Current Market Rent** means the annual rent that can reasonably be obtained for the Premises in the open market, by a willing but not anxious lessor, which rent is adjusted to reflect the following conditions:

- (a) on the basis of a lease of the Premises on the same terms as this Lease; and
- (b) on the basis that the Premises is unoccupied,

and not taking into account:

- (c) any breach of this Lease by the Lessee or the Lessor (but without prejudice to any right or remedy for any such breach);
- (d) any damage to or destruction of the Premises or the Market nor any consequential cessation or suspension of rent;
- (e) any disturbance or nuisance to the Lessee's use of the Premises caused or contributed to by the Lessor or any other party;
- (f) any fine, premium, cash payment, allowance, rent free period, suspension or abatement of rent or other incentive or assistance effected or given in respect of this Lease or in respect of comparable premises to induce tenants to take a lease of or remain in such comparable premises;
- (g) any goodwill attaching to the Premises by reason of the Lessee's business conducted at the Premises;
- (h) any decrease in value of the Premises caused or contributed to by work carried out by or on behalf of the Lessee; and

- (i) any value attaching to any fixtures, fittings, improvements or Lessee's property erected or installed by or on behalf of the Lessee which the Lessee may remove from the Premises,

and taking into account:

- (j) all costs and expenses of any nature payable by the Lessor in respect of the Premises or the Market which are not payable by or recoverable from the Lessee under this Lease;
- (k) the fact that the annual rent set out in item 7 of the schedule is GST exclusive and that under this Lease an additional amount on account of GST is payable; and
- (l) any increase in value of the Premises, including any increase in value arising from any permanent improvements erected or installed at the expense of the Lessor;

**Default Rate** means:

- (a) the rate of interest 2% above the Loan Index Rate for commercial loans charged by the Commonwealth Bank of Australia Limited ABN 48 123 123 124 on the date default occurs; or
- (b) if there be more than one rate then the highest of such rates; or
- (c) if there is no such rate then the rate of interest 2% above the National Australia Bank Limited ABN 12 004 044 937 Indicator Base Rate on the date on which default occurs;

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**Land** means the Land described in item 9 of the schedule and includes any part of the Land and where the context allows the Building;

**Lessee** means the person described in item 5 of the schedule;

**Lessee's Agents** means each of the Lessee's agents, contractors, officers, employees, subtenants, invitees, trespassers on the Premises and other persons claiming through or under the Lessee;

**Lessee's Proportion** means the proportion, from time to time, that the annual rent payable under this Lease bears to the total annual rent (excluding parking fees) payable to the Lessor pursuant to leases and licences granted in respect of the Market, provided that the Lessor may at any time, to the extent permitted by law:

- (a) allocate to particular occupiers or sections of the Market occupied pursuant to leases or licences (excluding those for which parking fees are paid) any outgoings, costs and expenses identifiable in the Lessor's opinion as incurred in respect of such occupiers or sections; and
- (b) vary the Lessee's Proportion to exclude any particular occupiers or sections of the Market occupied pursuant to leases or licences (excluding those for which parking fees are paid) from any outgoings, costs and expenses liability for which other occupiers are liable;

**Lessor** means the person described in item 4 of the schedule;

**Market** means the Land and such other land contiguous or near to the Land, in which the Lessor has or acquires an interest, if and to the extent, that the Lessor designates such other land as comprising the Market and includes all buildings and other improvements, present and future erected on the Land and such other land;

**Market Rules** means the Adelaide Produce Markets Limited Market Rules contained in the Operating Articles and Rules of the Adelaide Produce Markets and made under the APML Operating Articles and in force at the date of this Lease and any addition, variation or amendment to those rules which is made by the Lessor in the exercise of the power to do so as set out in the Market Rules;

**Network Charges** means the costs payable from time to time to the operator of the external electricity distribution network to which the Land is connected on account of the use of that network to deliver electricity to the Land;

**notice** means notice in writing or transmitted by facsimile;

**Operating Expenses** means to the extent to which the same are not specifically payable from time to time by any occupant of the Market under the terms of their occupancy, the total of all present and future costs and expenses assessed, charged or chargeable paid or payable or otherwise reasonably incurred in respect of the Market or by the Lessor in relation to the Land or the use, conduct, management and maintenance of the Land and includes:

- (a) all present and future taxes or imposts including any land tax (assessed on a single holding basis);
- (b) all rates, charges, levies, assessments, duties, impositions and fees of any relevant authority including water and sewerage rates, charges and levies, emergency services levies and council rates;
- (c) all receipts and other duties and taxes paid or payable pursuant to this Lease or any other lease or tenancy in respect of the Market or in consequence of the Lessor having any estate or interest in the Land (excluding income tax and capital gains tax);
- (d) all reasonable insurance premiums in respect of insurance which the Lessor from time to time reasonably considers appropriate (including loss of rent) and related expenditure paid or payable by the Lessor;
- (e) all reasonable charges and all registration, licence and inspection fees for water, gas, oil, electricity, light, power, fuel, telephone, facsimile, communication systems and other Services supplied to the Market (including any costs, fees or charges payable for or under any maintenance and service contracts for plant and machinery) for the general benefit of the occupiers of the Market;
- (f) all costs of painting, cleaning, repairing, maintaining, servicing and replacement of the Lessor's property in or on the Market including all signs and directory boards, external walls and internal and external surfaces of the glass;
- (g) all reasonable costs (inclusive of wages and other employee emoluments and benefits) of management, operation, control and administration of the Market including fees and expenses paid to the Lessor's managing agent (if any) and audit, legal and valuation fees;
- (h) all costs associated with the operation of all parking areas;
- (i) all costs associated with the ventilating, airconditioning, heating and cooling of the Market including:
  - (i) all costs of monitoring, preventative maintenance, routine servicing, operation, repair and replacements of all airconditioning, ventilation, heating or cooling plant and equipment in or servicing the Market;
  - (ii) the fees and premiums payable under any maintenance and service contracts or to staff and contractors employed by the Lessor; and
  - (iii) the costs of materials used by the Lessor in or about the maintenance and servicing of that plant and equipment;
- (j) all reasonable costs of running and maintenance of plumbing services and electrical services and other facilities provided in the Market including recurring charges for compliance with laws required for the proper operation of the Market and the costs of leasing any equipment such as illuminated signs;
- (k) all reasonable costs in respect of the leasing, maintenance, upkeep and replacement of plants and landscaping;
- (l) all costs in respect of the control and eradication of pests and vermin;
- (m) all reasonable costs associated with emergency evacuation procedures;
- (n) all reasonable costs of maintaining, repairing, testing, modification, operation, servicing and replacement of all fire fighting and protection equipment serving the Market including:
  - (i) all sprinkler installations, hydrants, fire extinguishers, smoke detectors and fire fighting equipment installed by the Lessor and serving the Market;
  - (ii) all charges imposed by any relevant authority in the supply, maintenance, servicing, testing, monitoring, upgrading and monitoring of fire alarms and emergency services; and
  - (iii) all charges and fees imposed by any relevant authority; and
- (o) all reasonable costs in respect of access control systems, security, telecommunication connections, caretaking, superintendence and information technology,

but excluding:

- (p) expenditure of a capital or structural nature;
- (q) depreciation and amortisation charges; and
- (r) any interest, penalties and damages of any kind incurred or payable by the Lessor to the extent caused or contributed to by the wilful or negligent act or omission of the Lessor or the agents of the Lessor (if any);

**Permitted Use** means the use described in item 10 of the schedule;

**Premises** means that portion of the Building described in item 1 of the schedule and includes:

- (a) all the Lessor's buildings, improvements, fixtures, fittings, plant, equipment and chattels installed in or on the Premises;
- (b) all the conveniences, Services, amenities and appurtenances of, in or to the Premises; and
- (c) any alterations, additions, improvements or modifications made to the Premises from time to time, and includes any part of the Premises;

**relevant authority** means any public, governmental, semi-governmental, statutory or regulatory authority, department or other body having competent jurisdiction in respect of the relevant act, matter or thing;

**rent** means the rent reserved by this Lease;

**Review Date** means the relevant date set out in item 11 of the schedule;

**Rules** means the Rules annexed to this Lease and includes any deletions, additions or amendments made to them from time to time;

**Services** means:

- (a) all electrical, airconditioning, gas, power supply, fire, security, plumbing and telecommunication systems;
- (b) all emergency warning information systems;
- (c) all building management systems; and
- (d) other like installations,

including all pipes, drains, cables, wires, data points and other conduits situated in, under, on or serving the Market;

**Supply** has the same meaning it does in section 9-10 of the GST Act and excludes any "GST-free supplies" and "input taxed supplies" as those terms are defined in section 195-1 of the GST Act;

**Term** means the Original Term and any extension or renewal of that term and any period during which the Lessee holds over or remains in occupation of the Premises;

**terms of this Lease** means the terms, covenants, agreements, duties, obligations, rights, powers, privileges, provisions, acknowledgements and conditions set out in this Lease and includes where the context allows the Rules; and

**Valuer** means a qualified valuer (being an individual with the professional designation corresponding to valuer as designated by the Australian Property Institute as at the relevant appointment date) who is appointed to make a determination under this Lease and:

- (a) who is appointed by the Lessor and the Lessee or (if they fail to agree on the appointee within 7 days of either notifying the other of the requirement for such appointment) at the request of either by the person for the time being holding or acting in the office of President of the Australian Property Institute (South Australian Division);
- (b) who has been an accredited member of that Institute for at least 5 consecutive years immediately prior to the date of such appointment;
- (c) who has practised as a land valuer as defined in the *Land Valuers Act 1994* (SA) in the valuation for rental purposes of property similar to the Premises for a period of not less than 5 consecutive years immediately prior to such appointment;

- (d) who is deemed to act as an expert and not as an arbitrator;
- (e) whose determination will be final and binding as between the Lessor and the Lessee except in the case of manifest error;
- (f) who may seek the assistance of any appropriately qualified experts; and
- (g) all costs and expenses of and incidental to such determination will be paid by the Lessee and the Lessor in equal shares unless otherwise provided in this Lease; and

## 1.2 Interpretation

- (a) a reference to any Act includes all statutes, regulations, codes, by-laws or ordinances and any notice, demand, order, direction, requirement or obligation under that Act (and vice versa) and unless otherwise provided in that Act includes all consolidations, amendments, re-enactments or replacements from time to time of that Act and a reference to "law" includes a reference to any Act and the common law;
- (b) words importing the singular embrace the plural and words importing one gender embrace the other genders and vice versa respectively;
- (c) any reference to a person will be deemed to include a body corporate and vice versa;
- (d) anything which the Lessee is required to do must be done at the cost of the Lessee and to the reasonable satisfaction of the Lessor;
- (e) an obligation on the Lessee under this Lease (other than an obligation to pay rent and other moneys to the Lessor) requires the Lessee to ensure compliance by the Lessee's Agents with that obligation;
- (f) headings are for convenience of reference only and will not affect the interpretation of this Lease;
- (g) any reference to an "item of the schedule" means the relevant item of the Reference Schedule contained in this Lease and any reference to a clause means the relevant clause of this Lease;
- (h) where the words "Not Applicable" appear opposite any part of any item of the schedule then each and every clause in this Lease in which specific reference is made to such part of the relevant item of the schedule will be of no effect;
- (i) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (j) a reference to dollar or A\$ is to Australian currency;
- (k) a reference to time is to time in South Australia, Australia;
- (l) a reference to a party to this Lease and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes and if more than one then jointly and severally;
- (m) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (n) if a body, institute, association or relevant authority referred to in this Lease ceases to exist then this Lease must be read as referring to such body, institute, association or relevant authority as then serves substantially the same objects as that body, institute, association or relevant authority;
- (o) all money (including rent) payable by the Lessee to the Lessor and costs recoverable from the Lessee by the Lessor must be paid to the Lessor (or such other person as the Lessor notifies the Lessee) and at the place or in the manner specified pursuant to clause 2.1 and will be recoverable as a debt and if no date or time for payment is specified, must be payable within 7 days of demand; and
- (p) the words "include", "includes" or "including" will be deemed in all cases to be followed by the words "without limitation".

## 2. LESSEE'S COVENANTS

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The Lessee covenants and agrees with the Lessor throughout the Term:

### 2.1 Rent

to pay the rent free from exchange, deduction, set off or counterclaim and abatement to the Lessor as the Lessor requires:

- (a) at the Lessor's address set out in item 4 of the schedule; or
  - (b) by direct bank transfer to the credit of a bank account nominated by the Lessor; or
  - (c) to such other person or at such other place as the Lessor may notify the Lessee,
- and at the times and in the manner set out in item 7 of the schedule;

### 2.2 Statutory Charges and utilities

- (a) to pay all present and future rates, charges, levies, assessments, duties, impositions and fees of any relevant authority including:

- (i) council rates;
- (ii) water and sewerage rates, charges and levies;
- (iii) land tax on a single holding basis; and
- (iv) emergency services levies,

which are referable only to the Premises (**Statutory Charges**):

- (v) as and when such Statutory Charges are due and payable to the relevant authority; or
  - (vi) if required by the Lessor, then to the Lessor within 7 days of demand being made by the Lessor;
- (b) to pay as and when due for payment or if required by the Lessor then within 7 days of demand being made by the Lessor, all costs, fees and charges for the provision of:
    - (i) water, gas, oil and other energy or fuels (other than for electricity which costs, fees and charges are payable under clause 4.12) supplied to or separately metered or consumed in the Premises;
    - (ii) telephone, facsimile and other communication services, waste disposal and garbage collection in respect of the Premises; and
    - (iii) all other utility services supplied to or separately metered or consumed in or in respect of the Premises,

irrespective of the identity of the supplier;
  - (c) that all such Statutory Charges, costs and charges will be adjusted (if necessary) as between the Lessor and the Lessee and the Lessor's share will be that proportion which relates to the period outside the Term; and
  - (d) to the extent permitted by law, that if there is no separate meter for recording or measuring in respect of the Premises any of the services or substances referred to in this clause the Lessee must, if so required by the Lessor, arrange for the installation of a separate meter at the Lessee's cost;

### 2.3 Operating Expenses

- (a) to pay to the Lessor the Lessee's Proportion of the Operating Expenses for each Accounting Period in equal monthly instalments in respect of which:
  - (i) those monthly instalments are to be calculated by dividing the Lessor's estimate of the Lessee's Proportion of Operating Expenses for the relevant Accounting Period (**Lessor's Estimate**) by the number of months to which such estimate relates; and

- (ii) the first instalment is to be paid on the Commencement Date (being a proportionate instalment if appropriate) and then on the first day of each and every succeeding month of the Term;
- (b) that before this Lease is entered into and thereafter prior to the commencement of each Accounting Period the Lessor will furnish to the Lessee a written statement giving details for the next Accounting Period of:
  - (i) the nature of the Operating Expenses; and
  - (ii) the Lessor's Estimate of the Lessee's liability in each separate category of the Operating Expenses;
- (c) that the Lessor's Estimate will be computed for every Accounting Period and after each Accounting Period the Lessor will furnish to the Lessee a written statement setting out:
  - (i) the amount actually incurred by the Lessor on account of Operating Expenses in that Accounting Period;
  - (ii) the amount payable by the Lessee on account of the Lessee's Proportion of the Operating Expenses for that Accounting Period; and
  - (iii) the adjustment between the Lessor and the Lessee taking into account any underpayment or overpayment by the Lessee,and if there is:
  - (iv) an overpayment by the Lessee, then the Lessor will:
    - (A) refund such excess to the Lessee; or
    - (B) credit such excess towards discharging the Lessee's liabilities under this Lease; or
  - (v) an underpayment by the Lessee, then the Lessee will within 7 days of receipt of such written statement, pay the amount due to the Lessor;
- (d) that if this Lease is assigned or transferred by the Lessee, any payment to or repayment in accordance with such adjustment will be made to or by the Lessor by or to the person who is actually in occupation of the Premises at the time when such payment or repayment becomes payable; and
- (e) that for any part of the Term which is not comprised within a full Accounting Period the Lessee must pay a pro rata share of the Lessee's Proportion of the Operating Expenses;

#### 2.4 Assignment and subletting

- (a) not to transfer or assign this Lease without the consent of the Lessor, which consent will not be unreasonably or capriciously withheld;
- (b) where the Lessee or a guarantor of the Lessee's obligations under this Lease (**Guarantor**) is a company (other than a company the voting shares of which are listed on a recognised Stock Exchange in Australia) there will be deemed a transfer or assignment of this Lease requiring the consent of the Lessor if:
  - (i) by one or a series of issues or transfers, the issue of any share or the transfer (except by inheritance) of the legal or beneficial ownership of any issued share of:
    - (A) the Lessee or the Guarantor; or
    - (B) the ultimate holding company of the Lessee or the Guarantor,alters the effective control of the Lessee or the Guarantor (as the case may be); or
  - (ii) any change to the constitution of the Lessee or the Guarantor varies the rights attaching to any of the issued shares of the Lessee or the Guarantor (as the case may be),from that which existed at the Commencement Date or last date of assignment (as the case may be);
- (c) not to sublease, licence, grant a concession, part with possession or mortgage this Lease or the Premises, without the consent of the Lessor, which consent may be withheld or given in the absolute discretion of the Lessor;

- (d) in respect of all cases of transfer, assignment, subletting or parting with possession by the Lessee, the Lessee:
- (i) will not be released from its liabilities and obligations under this Lease for the balance of the Term; and
  - (ii) acknowledges that such transfer, assignment, subletting or parting with possession will not operate in any way to restrict, mitigate or release the responsibility and obligations of any guarantor from its guarantee of the Lessee's obligations;
- (e) if the Lessee requests that the Lessor consent to any transfer, assignment, sublease, licence, concession, mortgage or parting with possession the Lessee must promptly on receipt of a request to do so from the Lessor:
- (i) pay all arrears of rent and other money outstanding under this Lease and remedy all outstanding breaches and defaults of which the Lessee has received prior notice;
  - (ii) pay such money as is reasonably estimated by the Lessor's consultants to be required for the Lessee to comply with any breach of the terms of this Lease including those relating to the state of repair and cleanliness and painting of the Premises including the reasonable costs of such consultants in inspecting the Premises;
  - (iii) submit a true copy of all agreements to be entered into in respect of any proposed dealing with this Lease or the Premises and evidence satisfactory to the Lessor that the proposed transferee or assignee (**assignee**) or sublessee is respectable, responsible, solvent and suitable and information reasonably required by the Lessor about the financial standing and business experience of the proposed assignee or sublessee;
  - (iv) if the proposed assignee or subtenant is a trustee of a Trust submit a copy of the instrument under which such Trust was constituted and the full names, addresses and occupations of the beneficiaries of such Trust; and
  - (v) pay to the Lessor, its agents (if any) and its solicitors, the reasonable costs of and incidental to enquiries concerning the proposed dealing or the persons concerned in such dealing and of the perusal, preparation and stamping of the documents reasonably deemed necessary by the Lessor,
- and if such consent is given the Lessee will ensure that prior to the date of any transfer or assignment the proposed assignee:
- (vi) enters into a direct covenant with the Lessor to observe the terms of this Lease; and
  - (vii) furnishes such guarantees of the performance of such person's obligations under this Lease as the Lessor may reasonably require;
- (f) the Lessee acknowledges and agrees that it will be a condition of any consent granted by the Lessor to the Lessee to mortgage its estate, interest or rights under this Lease that the Lessee and the mortgagee must enter into a deed with the Lessor acknowledging and agreeing that:
- (i) any rights created in accordance with such mortgage are subject to the rights of the Lessor under this Lease;
  - (ii) the rights of the Lessor will not be limited by section 139 of the *Real Property Act 1886* (SA);
  - (iii) from the date the mortgagee:
    - (A) goes into possession of the Premises; or
    - (B) commences to receive the income or profits of the Premises; or
    - (C) otherwise exercises its powers under the mortgage,
 the mortgagee will be bound by all the terms of this Lease and will perform all of the Lessee's covenants in this Lease (including the Lessee's obligations to pay rent, outgoings and utilities) and will first remedy any default of the Lessee under this Lease existing at that time; and
  - (iv) contemporaneously with service on the Lessee, the mortgagee will serve on the Lessor copies of all notices which the mortgagee serves upon the Lessee pursuant to the terms of the mortgage; and

- (g) in this clause 2.4 **mortgage** includes a charge or any other encumbrance and **mortgagee** includes a chargee or encumbrancee (as the case may be);

## 2.5 Trade or business name

- (a) to ensure that only one business (being the business of the Lessee) is conducted or operated at the Premises at all times and not to trade, nor permit any person to trade, from the Premises under any trade or business name other than that specified in item 14 of the schedule, without the prior written consent of the Lessor, which consent may be given or withheld in its absolute discretion;
- (b) to ensure that, unless otherwise agreed by the Lessor in writing:
- (i) all invoices, accounts, receipts, letters and other business documents relating to transactions conducted at or in respect of the Premises contain or set out the Lessee's trade or business name specified in item 14 of the schedule and no other trade or business name; and
  - (ii) all cheques and other debits or money from an account and relating to transactions conducted at or in respect of the Premises are drawn on or debited from an account established under the name of the Lessee or the Lessee's trade or business name and (in the absence of written approval from the Lessor) no other trade or business name; and
- (c) the Lessee further acknowledges and agrees that:
- (i) the Lessor will have and retain a discretion in determining, for the purposes of this clause, whether more than one business is being conducted at the Premises;
  - (ii) such discretion is granted to and reserved by the Lessor for the purposes of the better management and conduct of operations at the Market generally and in making the determination, the Lessor will consider whether the Lessee has parted with possession of the Premises and breached clause 2.4(c); and
  - (iii) for the purpose of this clause, more than one business will be deemed to be conducted at the Premises, where that business is being conducted by or on behalf of an officer, director, shareholder or employee of the Lessee (as opposed to the Lessee itself);

## 2.6 Permitted Use

- (a) not to use or permit the use of the Premises other than for the Permitted Use and not to:
- (i) do or permit to be done anything which may be or become dangerous, unlawful, immoral or cause unreasonable annoyance, constitute nuisance at law or cause damage to the Lessor or any other person in or in the vicinity of the Land; or
  - (ii) sleep or allow anyone to sleep on the Premises; or
  - (iii) conduct on the Premises any auction, fire, bankruptcy, bankrupt stock, closing down or liquidation sale or any sales purporting to be in connection with or arising from the closure cessation or termination of any business;
- (b) to promptly obtain keep current and comply with all consents, approvals and licences from all relevant authorities or other persons necessary or incidental to the use of the Premises for the Permitted Use and the provisions of this Lease;
- (c) to provide the Lessor with copies of all approvals, consents and licences promptly after being obtained by the Lessee;
- (d) to conduct the Lessee's business at all times at a high standard and in a reputable manner;
- (e) that the Lessee and the Lessee's Agents are not permitted to be within the Market for the purposes of purchasing produce prior to the time designated from time to time by the Lessor as the opening time of the Market;
- (f) notwithstanding that the Lessor may permit the Lessee and its officers and employees to occupy the Premises prior to the opening time of the Market, not to be present nor to permit the Lessee's officers and employees to be present, prior to the opening time of the Market, on or in any part of the Market, except the Premises other than for the purposes of access, ingress and egress to and from the Premises by the most direct route possible; and

- (g) to the extent permitted by law (and if and to the extent required by the Lessor by written notice to the Lessee) to keep the Premises open for business during the days and hours set out in the Market Rules;

## 2.7 Maintenance and repair

- (a) to maintain, repair, replace and keep the Premises including the interior and exterior of all its buildings and improvements and all the Lessor's fixtures, fittings, plant and equipment in good and substantial repair, order and condition and where appropriate in good working order (including entering into and keeping current any servicing or maintenance contracts reasonably required by the Lessor) and without adversely impacting on the performance of the improvements and plant and equipment, provided that the Lessee will be under no obligation to make good damage:
  - (i) by fair wear and tear (except to light globes, fluorescent tubes and similar items); or
  - (ii) by fire, flood, lightning, storm, tempest, inevitable accident, act of God or war damage (except where insurance moneys are irrecoverable in consequence of any act, omission or default of the Lessee or any of the Lessee's Agents, in which event the Lessee must rectify the damage promptly at its expense); or
  - (iii) of a capital or structural nature except where rendered necessary:
    - (A) as a consequence of any act or omission or default of the Lessee or any of the Lessee's Agents; or
    - (B) by the Lessee's particular use or business conducted at the Premises;
- (b) to promptly repair or replace (or pay to the Lessor its cost of doing so) all damaged, scratched, vandalised or broken glass in or about the Premises including external windows with glass of the same or similar quality and all damaged or broken light globes and fluorescent tubes and similar items;
- (c) not without the Lessor's consent to:
  - (i) cut, injure, damage, deface or obstruct any convenience, appliance, plant or equipment in the Premises; or
  - (ii) mark, drill or deface the walls, ceilings, columns, floor or other parts of the Premises; or
  - (iii) use the lavatories, sinks, drains and other plumbing facilities in the Market for any purpose other than that for which they were constructed or provided and not to deposit or permit to be deposited any rubbish or other material in such facilities,  
or permit such activity;
- (d) to make good any breakage, defect or damage to the Building to the extent contributed to or caused by the Lessee or any of the Lessee's Agents; and
- (e) if the Lessee by notice requires the Lessor to carry out any works which are the responsibility of the Lessee under this clause 2.7 then:
  - (i) the Lessor may (without any obligation to do so and without any liability to the Lessee in respect of such works) on reasonable notice and at reasonable times execute such works as if it were the Lessee; and
  - (ii) the Lessee must pay to the Lessor all the Lessor's reasonable costs and expenses in executing such works;

## 2.8 Cleaning

- (a) to cause the Premises to be routinely and properly cleaned and if required by the Lessor, using materials having a low environmental impact;
- (b) to keep clean and free from obstructions all drains and pipes in or leading to or from the Premises;
- (c) pending disposal, to store all garbage, rubbish waste and refuse in tightly secured containers within the Premises and to expeditiously dispose of it in the manner designated by the Lessor;
- (d) to dispose of all cleaning water and used cleaning agents and detergents through the drains and waste outlets located within the Premises or through such other drains as may be directed by the Lessor;

- (e) not to permit any rubbish bin or other receptacle of any type for rubbish or waste to be placed in any portion of the Common Area but to place the same for storage within the Premises in a position to be nominated by the Lessor;
- (f) to keep the Premises free from vermin and insects and to comply with the Lessor's reasonable requests relating to pest control; and
- (g) to provide hygiene items, toilet requisites and other supplies required to hygienically operate the toilets used by the Lessee and the Lessee's Agents;

#### 2.9 **Painting**

- (a) if requested by the Lessor, immediately prior to the expiration of the Term or surrender of this Lease or within 7 days of any sooner determination of this Lease, in a proper and workmanlike manner, using low environmental impact materials and in colours and with at least 2 coats and in accordance with the Lessor's then specification, to paint or cause to be painted in a professional manner all such parts of the interior (and if required by the Lessor, the exterior) of the Premises as are usually painted; and
- (b) if the Lessee fails to comply with such obligation then on giving 3 days' notice to the Lessee, the Lessor may elect to undertake or cause to be undertaken such painting and any money incurred by the Lessor in respect of such painting must be paid by the Lessee to the Lessor;

#### 2.10 **Environmental program**

to actively participate in any recycling, energy saving, water and environmental management program established by the Lessor from time to time in respect of the Market;

#### 2.11 **Statutory requirements**

- (a) to promptly and efficiently satisfy, comply with and observe all present and future laws and the requirements, directions and orders of any relevant authority relating to or affecting the use or condition of the Premises or the Lessee's occupancy of the Premises, whether such compliance or obligations are imposed on the owner or occupier of the Premises; and
- (b) not to do or refrain from doing anything which would cause or materially contribute to the Lessor contravening breaching or failing to satisfy any present or future law in respect of the Market;

#### 2.12 **Fire precautions**

- (a) to:
  - (i) take such precautions against fire on and in respect of the Premises as are or may from time to time be required under any present and future laws or by any relevant authority in relation to the Premises; and
  - (ii) do and execute or abstain from doing or executing, all things in relation to fire safety or fire prevention as are or may be directed or required (whether of the owner or occupier of the Premises) by any relevant authority in relation to the Premises;
- (b) to comply with sprinkler and fire alarm laws in respect of the sprinkler and fire alarm systems installed in or about the Premises and to pay to the Lessor, the cost of any alterations or additions to the sprinkler or fire alarm systems which the Lessor may be required to make by reason of the non compliance by the Lessee with such laws; and
- (c) to perform and observe and to ensure that the Lessee's Agents perform and observe all necessary and proper fire drills and emergency evacuation procedures;

#### 2.13 **Notice of defects or hazards**

to give to the Lessor prompt notice of any circumstance, including any accident or defect or want of repair in any Services to or fittings in the Premises which the Lessee should reasonably be aware might cause any danger, risk or hazard to the Premises or any person in the Premises;

#### 2.14 **No signs blinds aeralis and other devices**

- (a) not without the consent of the Lessor and the approval of all relevant authorities to paint, erect, display, affix, exhibit or place on or to the Premises any advertisement, notice or sign or other advertising media, the Lessee acknowledging that there will not be permitted:

- (i) roof signs or any other sign the highest point of which is higher than the parapet or fascia board of the building to which it is affixed; and
  - (ii) signs which consist of steady or intermittent light of any source which is or may be visible at any time from any portion of the Common Area;
- (b) not without the consent of the Lessor to use or permit to be used any radio, gramophone, television or other like media or equipment likely to be heard or seen from outside the Premises;
- (c) to erect on the exterior of the Premises signs indicating:
- (i) the Lessee's name or business name or trade name;
  - (ii) the premises identifier;
  - (iii) the Lessee's logo; and
  - (iv) such other identification information as the Lessor requires,
- which signs must be in a position (or signage zone) and be of a size and general type which complies with the requirements and directions of the Lessor; and
- (d) to maintain such notices, signage, embellishments or similar device or equipment in good and substantial repair and where appropriate in good working order and on vacating the Premises or at any other time during the Term, at the request of the Lessor, having regard to the interests of the Market and its occupants, to promptly remove any such signs, notices, embellishments or other device or equipment erected by the Lessee in or about the Premises and to make good any damage or disfigurement caused by reason of such removal;

#### 2.15 **Reservation of use of conduits**

to allow the Lessor and other occupiers of the Land the free and uninterrupted passage of gas, water, electricity telecommunication services and similar services through and along the Services situated under, in or on the Premises;

#### 2.16 **Heavy and electrical equipment**

- (a) not without the consent of the Lessor to bring on to or install in the Premises any machinery, plant or equipment of such nature, weight or size as, in the Lessor's opinion to cause or potentially cause any structural or other damage to the Market or which may in the opinion of the Lessor cause unreasonable noise or vibrations;
- (b) before bringing any such machinery, plant and equipment on to the Premises, to inform the Lessor of the Lessee's intention to do so and the Lessor may direct the routing, installations and location of all such machinery, plant and equipment and the Lessee must observe and comply with all such directions; and
- (c) not without the Lessor's consent to erect or install any electrical equipment on the Premises which may overload, or potentially overload, the cables switchboards or sub-boards through which electricity is conveyed to or within the Premises;

#### 2.17 **Dangerous substances**

not without the consent of the Lessor to bring or allow to be brought onto the Premises any dangerous, noxious, odorous, toxic, volatile, explosive or inflammable substance, compound or pollutant whether in solid, liquid, gaseous or other form other than such substances normally used in the conduct of the Permitted Use, provided that such substances or compounds are handled and stored and appropriate registers are kept and maintained in compliance with all applicable laws;

#### 2.18 **Lessor's access and alterations**

- (a) to permit the Lessor and any person authorised by the Lessor at all reasonable times on giving to the Lessee reasonable prior notice to enter the Premises and view the state of its repair and if the Lessor considers that repairs are required:
  - (i) the Lessor may then serve on the Lessee a notice of any defect, the repair of which is within the Lessee's obligations under this Lease, requiring the Lessee within a reasonable time to repair the defect;
  - (ii) in default of the Lessee repairing such defect, the Lessor may execute the required repairs as if it were the Lessee and for that purpose the Lessor and any person authorised by the

Lessor may enter onto the Premises and remain there for the purpose of doing, erecting or effecting any such required repairs; and

- (iii) all direct and actual costs of and incidental to carrying out such repairs must be paid by the Lessee to the Lessor;
- (b) to permit the Lessor and any person authorised by the Lessor:
  - (i) to carry out:
    - (A) inspections of; or
    - (B) alterations or additions to; or
    - (C) other works (including removal) on or about,  
the Market (including the Premises, where the Lessee's prior consent has been given, which consent will not be unreasonably withheld or delayed); and
  - (ii) where the Lessor has given reasonable prior notice to the Lessee, to enter the Premises for the purpose of carrying out such works,  
causing as little disturbance as is practicable to the Lessee in undertaking such works;
- (c) in an emergency the Lessor may without notice enter the Premises to carry out any works deemed necessary by the Lessor; and
- (d) to the extent permitted by law, the Lessee will not make any claim or commence or maintain any suit or action against the Lessor for breach of the quiet enjoyment covenant contained in clause 3 in consequence of such entry or in execution of any of the works contemplated by this clause;

#### 2.19 **Lessee's alterations and additions and cool rooms**

not without the consent of the Lessor (which consent will not be unreasonably withheld or delayed) and all relevant authorities to:

- (a) make any alteration or addition in or to the Premises; nor
- (b) install or alter any fixed equipment or fixed installation in or about the Premises,  
provided that where such consent is given:
  - (c) the materials and design must first be reasonably approved by the Lessor or its consultants and insurers and without limitation where cool rooms are to be constructed, polyurethane material and other materials prohibited by the Lessor or its insurers from time to time, must not be used in the construction;
  - (d) such work, equipment or installation must be installed or altered in accordance with the consent so given (if any);
  - (e) all reasonable fees payable to the Lessor's consultants in connection with such consent and inspection must be paid by the Lessee to the Lessor;
  - (f) the Lessee must obtain and keep current and ensure that its contractors obtain and keep current such insurance of the Premises and the works and of the Lessee and its contractors and workers as the Lessor reasonably requires;
  - (g) such equipment and installations (except where they are Lessor's fixtures or fittings) will remain the property of the Lessee and the Lessee must maintain and repair such equipment and installations in good order and where appropriate in working condition and pay all associated running costs; and
  - (h) in carrying out such alterations, additions and installations the Lessee must use all reasonable endeavours to minimise disturbance and inconvenience to any other occupants of the Market;

#### 2.20 **Security and keys**

- (a) to use the Lessee's reasonable endeavours to protect and keep safe the Premises and any property contained in it from theft or vandalism and to keep all doors, windows and other openings closed and locked when the Premises are not in use;
- (b) to comply with the Lessor's reasonable systems and requirements in respect of the security of the Premises;

- (c) to pay to the Lessor the cost of all security cards, keys or other security devices which the Lessee requests that the Lessor issue to the Lessee or its employees after the Commencement Date and during the Term to immediately notify the Lessor if any keys or security cards for the Building are lost or stolen;
- (d) not without the consent of the Lessor (which consent will not be unreasonably withheld) to install any security equipment or system in or to the Premises nor to alter or modify any existing security equipment or system; and
- (e) all such equipment, systems and installations (except where they are Lessor's fixtures or fittings) will remain the property of the Lessee who must pay all costs associated with the purchase, installation, alteration or modification of any new (and if applicable existing) equipment, systems or installations and all maintenance and monitoring of it;

#### 2.21 **Glass insurance**

- (a) to promptly insure and keep insured against breakage and damage (including malicious damage) under a policy which notes the Lessor as an additional named insured for the respective rights and interests of the Lessor and the Lessee, all the plate and other glass in the Premises for its replacement value;
- (b) promptly on execution of this Lease by the Lessee and on demand at any other time to deliver the policy and a certificate of currency of such insurance to the Lessor; and
- (c) to expend all money received under such insurance in reinstating the broken or damaged glass and where such insurance money received is insufficient, to make good the deficiency out of the Lessee's own money;

#### 2.22 **Public liability insurance**

- (a) to promptly effect and keep current in respect of the Premises, a public liability insurance policy for an amount of not less than the amount specified in item 12 of the schedule per occurrence (or such other amount as the Lessor may reasonably require and notify the Lessee in writing) which policy extends to the Lessor by virtue of section 48 of the *Insurance Contracts Act 1984* (Cth); and
- (b) promptly on execution of this Lease by the Lessee and on demand at any other time to deliver the policy and a certificate of currency of such insurance to the Lessor;

#### 2.23 **Additional premium and excess**

- (a) to pay any additional premium levied on account of the Lessee's use or occupation of the Premises in respect of any policy of insurance effected in respect of the Building or its contents or any policy of public liability insurance effected by the Lessor; and
- (b) to pay all excess amounts paid or payable by the Lessor under or in respect of any of such policies of insurance relating to any accident, incident or claim contributed to or caused by the Lessee or any of the Lessee's Agents;

#### 2.24 **Not to affect Lessor's insurance**

not at any time to cause or permit anything in or on the Building which may result in:

- (a) any insurance in respect of the Building being vitiated or rendered void or voidable; or
- (b) the rate of premium on any insurance increasing;

#### 2.25 **Indemnities**

to indemnify the Lessor and its officers, employees, agents, contractors and other occupiers of the Land against and in respect of all and any actions, claims, demands, losses, damages, costs and expenses which the Lessor or any of its officers, employees, agents, contractors and other occupiers of the Land may incur in respect of or arising from:

- (a) the death of or injury to any person; or
- (b) loss of or damage to the property of any person; or
- (c) any occurrence in or on any part of the Land,

to the extent contributed to or caused by:

- (d) the Lessee or the Lessee's Agents; or
- (e) the use of the Premises or the Market by the Lessee or any of the Lessee's Agents (notwithstanding that such use may be within the scope of the Permitted Use); or
- (f) any alterations and additions made by the Lessee to the Premises,

except to the extent that the action, claim, demand, loss, damage, cost and expense arises or results from the wilful or negligent act or omission of the person seeking such indemnity;

#### 2.26 **Release of Lessor**

to occupy, use and keep the Premises at the risk of the Lessee and the Lessee agrees that the Lessor and its officers, employees, agents and contractors will have no responsibility or liability and are fully released from all responsibility or liability and the Lessee must not make any claim or commence or maintain any suit or action against the Lessor or any of its officers, employees, agents or contractors for breach of the quiet enjoyment covenant set out in clause 3 in respect of:

- (a) loss of or damage to the Lessee's chattels, fixtures or fittings or other property;
- (b) claims, demands and damages resulting from or contributed to by any accident, damage or injury occurring in, on or about the Land, unless deriving from any structural defect in the Market (not contributed to or caused by the Lessee or any of the Lessee's Agents); and
- (c) loss or damage suffered as a result of or to the extent contributed to by:
  - (i) flooding of the Premises or flooding of any portion of the Building affecting the ability of the Lessee to use the Premises; or
  - (ii) blockage of any sewers, traps, drains, gutters or down pipes; or
  - (iii) any malfunction, failure to function or interruption of or to the water, gas, electricity, telephone, facsimile, airconditioning, fire prevention, fire safety and other systems and other Services situated in or serving the Premises or any other part of the Market,

except to the extent caused or contributed to by the wilful or negligent act or omission of the Lessor or any of its officers, employees, agents or contractors;

#### 2.27 **Reletting**

to permit the Lessor:

- (a) at any time to place "For Lease" notices and "For Sale" notices in conspicuous places outside the Premises;
- (b) to enter the Premises on reasonable notice at all reasonable times for the purpose of showing prospective purchasers over the Premises; and
- (c) to enter the Premises on reasonable notice at all reasonable times during the last 6 months of the Term (if the Lessee has not exercised any rights to renew the Term) for the purpose of showing prospective tenants over the Premises;

#### 2.28 **Lessee's consent**

that where pursuant to any statutory requirement, the consent of the Lessee is required to any process, step or dealing by the Lessor with its interest in the Land, then the Lessee must give its written consent to such proposed process, step or dealing within 7 days of receipt of a written request from the Lessor to do so, provided that such proposed process, step or dealing does not materially detrimentally affect the Lessee's use of or access to the Premises;

#### 2.29 **Superior or concurrent interest**

- (a) to permit any person having any interest in the Land superior or concurrent with the Lessor to exercise the Lessor's powers under this Lease and their lawful rights in relation to the Premises; and
- (b) if any person, other than the Lessor, becomes entitled to receive money payable under this Lease either by operation of law or otherwise, to enter into an agreement with that person at the Lessor's expense in the form and containing provisions reasonably required by the Lessor;

**2.30 No caveat or registration**

not to lodge or cause or permit to be lodged any caveat or this Lease on the Certificate of Title for the Land and to indemnify the Lessor against and in respect of all and any actions, claims, demands, losses, damages, costs and expenses which the Lessor may incur in respect of the lodgement for registration of any removal, surrender, deregistration or withdrawal of any such caveat or this Lease;

**2.31 Misuse of Common Area and no displays**

not without the Lessor's consent and if such consent is given, only in accordance with the requirements of the Lessor, to obstruct the Common Area or solicit business in the Common Area by means of distribution of hand bills or other advertising matter;

**2.32 Use of loading facilities**

not to permit trade vehicles while being used for delivery and pick up of goods, produce and merchandise to be driven, parked or stopped at any place or time within the Market, except at such places and at such times as the Lessor may allow and to prohibit the Lessee's Agents from parking delivery vehicles during loading or unloading in any places other than those which the Lessor may allow for such purposes;

**2.33 Roller doors**

if at any time the Lessee or the Lessor, at the request of the Lessee, install a motorised roller door on the Premises then:

- (a) at all times during the Term to maintain such motorised roller door in good working order and condition; and
- (b) on the expiration or sooner determination of this Lease, if requested by the Lessor, to remove the motorised roller door and reinstate the opening and if appropriate, the manually operated roller door to its condition at the Commencement Date and to make good any resulting damage;

**2.34 Address and telephone numbers**

to the extent permitted by law, to advise the Lessor of the private address and telephone number of the Lessee or if the Lessee is a corporation of the private address and telephone number of the Manager of the Lessee's business conducted at the Premises and to properly inform the Lessor of any change in such address or telephone number;

**2.35 Employees or contractors or invitees of the Lessee**

- (a) to the extent permitted by law, within 7 days of the demand to do so, to provide to the Lessor a notice setting out:
  - (i) the names and addresses of all employees or contractors or invitees of the Lessee:
    - (A) who have been employed in and about the business of the Lessee at the Market; or
    - (B) who have otherwise entered onto the Market as an employee or contractor or invitee of the Lessee within the immediately preceding 3 month period; and
  - (ii) the make and registration numbers of vehicles of the Lessee and its employees where such vehicles are likely to be used to access the Market at any time;
- (b) promptly provide to the Lessor any information reasonably required by the Lessor to satisfy the Lessor that any persons claiming to be the employee, agent, contractor or invitee of the Lessee are in fact an employee, agent, contractor or invitee (as the case may be) of the Lessee; and
- (c) that the Lessee acknowledges and agrees that the Lessor may in its absolute discretion restrict access to the Premises or the Market to any person:
  - (i) until such information has not been provided to the Lessor following demand by the Lessor; or
  - (ii) if such information is not satisfactory to the Lessor;

**2.36 Bank Guarantee**

- (a) when required by the Lessor, to deliver to the Lessor, a bank guarantee which:
  - (i) is enforceable, irrevocable and continuing;

- (ii) has no expiry date; and
- (iii) is issued in favour of the Lessor by an Australian domiciled bank carrying on business in South Australia (**bank**),

whereby the bank:

- (iv) undertakes unconditionally; and
- (v) on terms satisfactory to the Lessor,

to pay to the Lessor on demand any sum demanded by the Lessor, but not exceeding an amount equal to the number of monthly instalments specified in item 13 of the schedule of the annual rent payable by the Lessee under this Lease at the date of such demand (but disregarding any rent incentives or rebates) subject to clause 5 (**Bank Guarantee**);

- (b) that the Lessor may make demand on the Bank Guarantee or any part of it if the Lessee fails to remedy any breach or default of the Lessee's obligations under this Lease;
- (c) that if:
  - (i) the Lessor makes such demand; or
  - (ii) the amount of the Bank Guarantee is less than an amount equal to the number of monthly instalments specified in item 13 of the schedule of the annual rent then payable by the Lessee under this Lease (but disregarding any rent incentives or rebates) subject to clause 5,

the Lessee must within 7 days of the Lessor giving the Lessee notice to such effect provide the Lessor with a further or replacement bank guarantee for an amount necessary to ensure that the Bank Guarantee is maintained on the terms set out in clause 2.36(a);

- (d) that the Lessee will not be entitled to re-delivery nor to request re-delivery of the Bank Guarantee until one month after the expiration of the Term, provided that after such time the Lessor may refuse to deliver up the Bank Guarantee if the Lessor reasonably considers that there may be contingent obligations under this Lease yet to mature and to be performed by the Lessee at the time of the request to the Lessor;
- (e) that the Lessee irrevocably agrees that the bank must act promptly on the Lessor's demand without reference to the Lessee and despite notice from the Lessee not to pay any amount to the Lessor;
- (f) that acceptance by the Lessor of the Bank Guarantee will not operate to waive any Lessee's breach or default; and
- (g) that the provisions of this clause 2.36 will not in any way limit, restrict or prejudice the rights and remedies of the Lessor in respect of the Lessee's breach or default;

### 2.37 **Guarantee**

when required by the Lessor to procure the execution of a Deed of Guarantee of the performance by the Lessee of the terms of this Lease for the benefit of the Lessor from such persons and in the form attached to this Lease;

### 2.38 **Costs**

- (a) to pay the Lessor's reasonable costs of and incidental to the negotiation, preparation and engrossment of this Lease and any extension or renewal of this Lease and any guarantee, assignment, transfer or surrender of this Lease and any other incidental documents; and
- (b) to pay:
  - (i) all lease plan costs; and
  - (ii) all fees charged by all mortgagees of the Land for consenting to this Lease or any extension, renewal, surrender, transfer or assignment of this Lease;

### 2.39 **Rules**

without limiting clause 10 and except to the extent of any inconsistency with the other terms of this Lease, to observe and perform and ensure that the Lessee's Agents observe and perform the Rules and the

Lessee acknowledges and agrees that failure by the Lessee or any of the Lessee's Agents to observe and perform the Rules will constitute a breach of the terms of this Lease; and

2.40 **Vending machines**

not to place or operate or permit to be placed or operated in the Premises any coin operated or similar type of entertainment or vending machine or ATM (automated teller machine).

**3. LESSOR'S COVENANTS**

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The Lessor covenants and agrees with the Lessee throughout the Term that:

3.1 **Quiet possession**

if the Lessee pays the rent and duly and punctually observes and performs the terms of this Lease, the Lessee may peaceably possess and enjoy the Premises for the Term, without any interruption or disturbance from the Lessor;

3.2 **Statutory Charges, Operating Expenses and other outgoings**

the Lessor must pay all Statutory Charges, Operating Expenses and other outgoings imposed on or payable in respect of the Market (excluding amounts to be paid by the Lessee under any other clause); and

3.3 **Ancillary rights**

the Lessee and the Lessee's Agents in common with the Lessor and other occupants of the Land and all other persons authorised from time to time by the Lessor (subject to the reasonable directions of the Lessor, the Market Rules and the Rules) may exercise and enjoy the rights:

- (a) of reasonable access, ingress and egress to and from the Premises on foot only over, across and along those portions of the Common Area designated by the Lessor for use by pedestrians; and
- (b) with or without vehicles but only for the purpose of the business of the Lessee and at such times that the Lessor may from time to time designate to pass and repass over, along and across those portions of the Common Area designated by the Lessor for that purpose and to remain on such portions of the Common Area for the purpose of loading and unloading to and from the Premises.

**4. MUTUAL COVENANTS**

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The Lessor and the Lessee hereby covenant and agree throughout the Term that:

4.1 **Default**

(a) **Essential terms**

- (i) clauses 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.10, 2.11, 2.12, 2.19, 2.22, 2.25, 2.35, 2.36, 2.37, 2.39, 4.12 and 5 are fundamental and essential terms of this Lease and the Lessor may at its option treat as a repudiation by the Lessee of this Lease, any breach or default by the Lessee in the observance or performance by the Lessee of its duties and obligations under such clauses; and
- (ii) the Lessor's acceptance, acquiescence, silence or other conduct in connection with non or late performance of any obligation by the Lessee on any account will not have any effect on the Lessee's obligations;

(b) **Termination and re-entry**

in addition to the rights and powers exercisable by the CEO, the Board or any of the respective delegates under the APML Operating Articles or the Market Rules, if:

- (i) the rent or any part of it is unpaid for a period of 7 days after any of the days on which it ought to have been paid; or
- (ii) the Lessee commits or permits to occur any breach or default in the due and punctual observance and performance of any of the terms of this Lease, subject to clause 4.2; or
- (iii) where the Lessee is a body corporate, company or an incorporated association:

- (A) an order is made or resolution is effectively passed for the winding up of the Lessee (except for the purpose of reconstruction or amalgamation with the consent of the Lessor); or
  - (B) a Receiver or Receiver and Manager or Administrator or Controller or any of them is appointed to the Lessee or any property of the Lessee is affected by or action is taken towards such appointment; or
  - (C) the Lessee goes into liquidation or provisional liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is insolvent within the meaning of the *Corporations Act 2001* (Cth); or
  - (D) the Lessee being or becoming deemed for the purpose of any law, to be insolvent; or
- (iv) where the Lessee is a natural person, the Lessee is convicted of an indictable offence (other than a traffic offence); or
  - (v) execution is levied against the Lessee and not discharged within 14 days; or
  - (vi) the Premises is left unoccupied for one month or more without the Lessor's consent; or
  - (vii) the Lessee uses the Premises for any purpose other than the Permitted Use; or
  - (viii) the Lessee fails to provide satisfactory evidence of its employees required under clause 2.35; or
  - (ix) the Lessee fails to submit to random drug and alcohol testing procedures prior to or after entry into the Market or fails to ensure that the Lessee's Agents submit to such testing; or
  - (x) the Lessee, when tested, returns a positive result to the presence of any drugs or alcohol and the Lessor acting reasonably considers that such drug or alcohol may be adversely affecting the behaviour of the Lessee; or
  - (xi) the Lessee fails to eject any of the Lessee's Agents who return a positive result to such testing where the Lessor acting reasonably considers that such drug or alcohol may be adversely affecting the behaviour of the relevant Lessee's Agent; or
  - (xii) any property in or on the Premises is seized or taken in execution under any judgment or other proceedings; or
  - (xiii) any event described in paragraphs (iii) to (v) of this clause (all inclusive) occurs in respect of any guarantor of the Lessee's obligations under this Lease,

then the Lessor will (subject to any requirement to give prior notice under clause 4.2 and in addition to its other powers) have the right to terminate this Lease and re-enter and repossess the Premises, without prejudice to any other right or remedy of either party for any antecedent breach or default of any term of this Lease;

(c) **Damages**

if this Lease is terminated by the Lessor for any reason, whether pursuant to a right to do so under this Lease or as a result of a repudiation at common law, then the Lessor may recover all costs, expenses, losses and damages in respect of the loss of benefits which observance or performance of this Lease would have conferred on the Lessor had this Lease and the Lessee's obligations under it been operative and performed for the unexpired balance of the Term following such termination;

(d) **Repudiation**

if the Lessee's conduct (whether by act or omission) constitutes:

- (i) a repudiation of this Lease (or of the Lessee's obligations under this Lease); or
- (ii) a breach of any of the terms of this Lease,

the Lessee must compensate the Lessor for the loss or damage suffered as a result of such repudiation or breach and the Lessor's entitlement to recover damages will not be prejudiced or limited by:

- (iii) the Lessee abandoning or vacating the Premises; or
- (iv) the Lessor electing to re-enter the Premises or to terminate this Lease; or
- (v) the Lessor accepting the Lessee's repudiation; or
- (vi) the conduct of the Lessor and the Lessee constituting a surrender by operation of law; and

(e) **Mitigation**

in the event of the Lessor terminating this Lease, then without limiting the Lessor's right to take any other action:

- (i) the Lessor will be deemed for all purposes to have taken reasonable steps to mitigate losses, if the Lessor has appointed, for reward, an arms length party who conducts the business of property management, to re-let the Premises and that party appears to the Lessor to be acting with reasonable proficiency; and
- (ii) the Lessee:
  - (A) acknowledges that the Lessor requires any proposal in connection with the Premises to be in writing; and
  - (B) agrees that it is not reasonable for the Lessor to rely or act on any proposal that is not reasonable;

**4.2 Landlord and Tenant Act**

if notice to the Lessee is required to be given pursuant to sections 10 and 12 of the *Landlord and Tenant Act 1936* (SA) before exercising any right of re-entry or forfeiture, then such notice must provide that 14 days is the reasonable period within which the Lessee is to:

- (a) remedy any such breach if it is capable of remedy; and
- (b) make reasonable compensation in money to the satisfaction of the Lessor for the breach,

and the Lessee acknowledges that under section 12(5) of the *Landlord and Tenant Act*, no notice will be required in respect of non payment of rent;

**4.3 Real Property Act**

the covenants and powers implied in leases by virtue of sections 124 and 125 of the *Real Property Act 1886* (SA) will apply and be implied in this Lease, unless they are expressly or by necessary implication excluded or modified;

**4.4 Default interest**

without prejudice to any other right or remedy of the Lessor, the Lessee must pay to the Lessor interest at the Default Rate on any money payable but unpaid on the day that money becomes payable by the Lessee to the Lessor under this Lease, such interest to be computed from the date on which the money becomes payable until payment is made in full;

**4.5 Costs and remedies on default**

- (a) if the Lessee breaches or fails to perform any term of this Lease and such breach or failure to perform continues for 14 days after the Lessor has given the Lessee notice requiring the Lessee to remedy the breach or perform the term (except in an emergency when no notice is required) then:
  - (i) the Lessor may remedy the breach or perform the term without prejudice to any other right or remedy; and
  - (ii) the Lessee must pay to the Lessor all resulting costs reasonably and properly incurred by the Lessor;
- (b) all reasonable costs incurred by the Lessor in respect of:
  - (i) the recovery of rent and other money payable by the Lessee to the Lessor under this Lease; and
  - (ii) the Lessor remedying or attempting to remedy any Lessee's breach of or failure to perform any term of this Lease,

will be deemed to be additional rent falling due and payable on the date on which the Lessor incurs such costs; and

- (c) the Lessor may in its absolute discretion apply (or re-apply) any or all amounts received from the Lessee pursuant to this Lease towards the discharge of the following outstanding amounts (if any) and in the following order of priority or as otherwise decided by the Lessor:
- (i) legal fees on a solicitor/client indemnity basis;
  - (ii) interest charges;
  - (iii) the Lessee's contribution to outgoings and utilities;
  - (iv) any other amount due and payable by the Lessee to the Lessor under this Lease or otherwise; and
  - (v) rent,

despite any contrary intention or direction of the Lessee or any other party in making payment of such amount;

#### 4.6 **No compensation**

the Lessee is not entitled to compensation for disturbance in respect of a particular occurrence if the likelihood of the occurrence was specifically drawn to the attention of the Lessee in writing before the Lessee entered into this Lease;

#### 4.7 **Destruction or damage**

- (a) if:
- (i) the Premises or the Building or the Market is wholly or substantially damaged or destroyed then the Lessor may terminate this Lease by giving the Lessee 7 days' prior notice to that effect; or
  - (ii) the Premises or the Building or the Market is damaged or destroyed so as to render the Premises wholly or partially inaccessible or unfit for use for the Permitted Use and the Lessor gives the Lessee notice that the Lessor (acting reasonably) considers that the damage is such as to make its repair impracticable or undesirable, then either the Lessor or the Lessee may terminate this Lease by giving the other not less than 7 days' prior notice to that effect; or
  - (iii) this Lease is not terminated pursuant to clauses 4.7(a)(i) or (ii) but the Lessor fails to repair the damage within a reasonable time after the Lessee has given the Lessor notice to do so (provided that the Lessor will not be obliged to repair the damage), then the Lessee may terminate this Lease by giving the Lessor 7 days' prior notice to that effect,

and this Lease will terminate 7 days after the giving of any such notice of termination (or such longer period as the parties may agree) and neither party will have any claim for or right to recover any compensation by reason of such termination, but without prejudice to the rights of either party for any antecedent breach or default or any claim by the Lessor against the Lessee for compensation in respect of the damage or destruction;

- (b) if the Premises is rendered wholly or partially inaccessible or unfit for use for the Permitted Use as a result of damage or destruction, then a just proportion (if any) of the rent, Statutory Charges, Operating Expenses and other outgoings payable by the Lessee under this Lease, having regard to the nature and extent that the Premises has been rendered inaccessible or unfit for use, will cease and be suspended until the Premises are useable and accessible, provided that if such proportion cannot be agreed between the Lessor and the Lessee such proportion will be determined by an Expert pursuant to clause 12; and
- (c) notwithstanding clauses 4.7(a) and 4.7(b), if the damage or destruction to the Premises results from the wrongful act, omission or negligence of the Lessee or any of the Lessee's Agents then the Lessee will not be entitled to terminate this Lease and no proportion of the rent, Statutory Charges, Operating Expenses and other outgoings payable by the Lessee under this Lease will cease and suspend, unless the Lessor is entitled to fully recover all such loss of rent under an insurance policy in respect of which the Lessee contributes to the premium;

#### 4.8 Holding over

- (a) if the Lessee holds over after the expiration or sooner determination of the Original Term or any extension or renewal of this Lease, as the case may be, (**Holding Over Commencement Date**) with the consent (express or implied) of the Lessor, the Lessee then becomes a monthly tenant of the Lessor, which tenancy may be terminated by either party giving to the other one month's prior notice, expiring at any time, at a monthly rent equivalent to one twelfth of the annual rent, being the amount **A** calculated in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

where:

**B** is the annual rent payable by the Lessee in respect of the Premises immediately prior to the Holding Over Commencement Date;

**C** is the quarterly CPI applicable immediately before the Holding Over Commencement Date; and

**D** is the quarterly CPI applicable immediately before a date that is 12 months before the Holding Over Commencement Date,

and the rent so adjusted as at the Holding Over Commencement Date will be further adjusted in the same manner as is set out in this clause 4.8(a) (with the necessary changes) on each anniversary of the Holding Over Commencement Date and otherwise on the same terms and conditions (with the necessary changes) as those contained in this Lease so far as applicable; and

- (b) if the Lessee vacates the Premises on the expiration of the Term or sooner determination of this Lease and has not complied with its obligations under clause 4.11, then notwithstanding that the Lessee is not in physical occupation of the Premises and without limiting clause 4.11(c), the Lessee will be deemed to be holding over on a daily basis at a rent to be determined in the manner specified in clause 4.8(a) (with the necessary changes) and otherwise on the same terms and conditions (with the necessary changes) as those contained in this Lease, until the Lessee has complied with the provisions of this Lease relating to rectification of the Premises, painting of the Premises and removal of the Lessee's signs, notices, fixtures, fittings, plant and equipment to the reasonable satisfaction of the Lessor;

#### 4.9 Early termination

- (a) this Lease may be terminated with effect at midnight on the date specified in item 6(c) of the schedule (**Early Termination Date**) by the Lessee giving to the Lessor not less than 3 months' prior notice (**Termination Notice**) of its intention to terminate with effect from midnight on the Early Termination Date;
- (b) if the Termination Notice is given, this Lease will terminate at midnight on the Early Termination Date for no monetary consideration and neither party may claim for or right to recover any damages by reason of such termination but without prejudice to:
- (i) the rights of either party for any antecedent breach or default; and
  - (ii) the Lessee's obligations pursuant to clauses 2.9, 2.33 and 4.11 of this Lease;
- (c) if this Lease is terminated pursuant to this clause:
- (i) the parties must promptly on receipt execute a Memorandum of Surrender of this Lease in registrable form which Surrender will be prepared and (if this Lease is registered) registered by the Lessor's solicitors at the cost and expense of the Lessee; and
  - (ii) the Lessee must promptly on receipt of a request produce to the Lessor's solicitors the Lessee's registered copy of this Lease to enable registration of the Surrender; and
- (d) time is of the essence of this clause 4.9;

#### 4.10 Rent review

- (a) the rent will be reviewed as at and from each Review Date specified in item 11(a) of the schedule to an amount equivalent to **A** calculated in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

where:

**B** is the amount of the annual rent payable in respect of the Premises during the 12 months immediately before the relevant Review Date, except in the case of the first review in respect of the Original Term, where **B** will be the initial annual rent specified in item 7 of the schedule, but disregarding any rent incentives or rebates;

**C** is the CPI for the quarter ending immediately before the relevant Review Date; and

**D** is the CPI for the corresponding quarter ending immediately before the date that is 12 months before the Review Date,

provided that if:

- (i) the CPI (**Original Index**) ceases to be published; or
- (ii) the basis on which the Original Index is calculated is substantially changed,

then the Lessor (acting reasonably) will nominate a similar index or indicator of changes in consumer costs in lieu of CPI;

- (b) the rent will be reviewed as at and from each Review Date specified in item 11(b) of the schedule, to the Current Market Rent as at the relevant Review Date, as agreed between the Lessor and the Lessee in writing and failing agreement 30 days before the relevant Review Date, the Current Market Rent as at the relevant Review Date will be as determined by a Valuer and the Valuer's appointment will include a requirement that the Valuer accept instructions to undertake the determination on the following basis:
  - (i) promptly on appointment the Valuer must notify the Lessor and the Lessee in writing of the fact of such appointment and the Valuer's acceptance of it;
  - (ii) the Valuer must seek written submissions from the Lessor and the Lessee or their duly authorised representatives as to the matters to which the Valuer should have regard in making the determination and will provide a copy of any submission to the other party to allow a right of reply to the submission;
  - (iii) the Valuer must give consideration to those submissions before making the determination provided that the submissions are made within the time nominated by the Valuer;
  - (iv) promptly on making the determination, the Valuer must dispatch to the Lessor and the Lessee a copy of the determination which must be a "speaking" valuation setting out the matters which the Valuer has considered and the full reasons for the determination;
  - (v) the determination must be made within 30 days following the Valuer's acceptance of the appointment; and
  - (vi) if the Valuer fails to make the determination within 30 days after accepting the appointment or becomes incapacitated or dies or resigns from the appointment then another Valuer may be appointed to act in accordance with this clause 4.10;
- (c) the failure of the Lessor to require a determination of the new rent as at any Review Date will not impede or prevent the Lessor at any subsequent time from requiring the new rent to be determined pursuant to this clause 4.10 as at and from the Review Date;
- (d) if the new rent applicable as at and from any Review Date is not reviewed by that date then:
  - (i) pending such review the Lessee must pay the instalments of the rent at the rate applicable immediately prior to the Review Date; and
  - (ii) the new rent will be varied retrospectively as at and from the Review Date and any necessary adjustment in respect of:
    - (A) any underpayment of any instalment paid after the Review Date must be paid by the Lessee to the Lessor within 14 days after the new rent is determined; and
    - (B) any overpayment will be credited to the next rent instalments due by the Lessee after the new rent is determined;
- (e) this clause 4.10 is subject in all respects to clause 5; and

- (f) notwithstanding any other provision of this clause 4.10, the rent on review must not be less than the annual rent payable in respect of the Premises immediately prior to the relevant Review Date (disregarding all rent incentives or rebates);

**4.11 Removal of fixtures and fittings and yielding up Premises**

- (a) at or immediately before the expiration of the Term or surrender of this Lease or within 7 days of any sooner determination of this Lease the Lessee must:
- (i) peaceably surrender and yield up the Premises including the Lessor's fixtures, fittings, plant and equipment:
    - (A) clean and free of rubbish;
    - (B) in good and substantial repair, order and condition and where appropriate in good working order (fair wear and tear excepted),

provided that all mechanical and other equipment left by the Lessee or which is the property of the Lessor, must be certified by an appropriately qualified contractor authority to be in good working order;
  - (ii) surrender all keys and access cards and other security mechanisms for the Premises to the Lessor and:
    - (A) inform the Lessor of all combinations on locks and safes (if any) in the Premises;
    - (B) provide a detailed list of any security devices which may have been stolen or lost; and
    - (C) pay to the Lessor all replacement costs; and
  - (iii) to the extent required by the Lessor and to the reasonable satisfaction of the Lessor:
    - (A) remove the alterations and additions in and to the Premises or the Market effected by, or on behalf of, or at the request of the Lessee or the previous lessee of the Premises; and
    - (B) reinstate the Premises and the Market and the Services if any, (including reconfiguration of the Services and replacement of the motorised roller door, pursuant to clause 2.33, if relevant) to the condition at the Commencement Date,

and in carrying out such removal and reinstatement the Lessee must:

    - (C) minimise damage to the Premises and the Land;
    - (D) make good any resulting damage; and
    - (E) comply with clause 4.11(a)(i);
- (b) the Lessee may at any time during the Term and must by the expiration of the Term or surrender of this Lease or within 7 days of any sooner determination of this Lease, if required by the Lessor, remove from the Land all plant, equipment, signage, trade or tenant fixtures, fittings and articles brought onto the Premises or the Land by the Lessee (which items must be removed in their entirety including all ancillary parts and components) but in such removal the Lessee must minimise damage to the Premises and the Land and must make good any resulting damage; and
- (c) the Lessee must comply with the Lessor's reasonable requirements in respect of such removal and reinstatement, provided that if the Lessee fails to do so:
- (i) the provisions of clause 4.8(b) will apply; and
  - (ii) the Lessor may carry out such removal and reinstatement works, at the reasonable cost of the Lessee, and:
    - (A) any alterations, additions, fixtures and fittings not removed by the Lessee will be deemed abandoned by the Lessee and will be and become the property of the Lessor absolutely; and
    - (B) any other property left on the Premises by the Lessee may be dealt with by the Lessor, at its discretion and at the cost of the Lessee and the Lessor will not be

liable to the Lessee or to any person claiming through the Lessee for any loss or damage occasioned by such dealing;

#### 4.12 Electricity laws

- (a) the Lessee acknowledges that:
- (i) nothing in this Lease obliges the Lessor to sell electricity to the Lessee;
  - (ii) if at any time the Lessor does sell electricity to the Lessee, but at any subsequent time the Lessor elects not to sell electricity to the Lessee, then the Lessor will give the Lessee not less than 2 months' notice of its intention to cease to sell electricity to the Lessee; and
  - (iii) if at any time the Lessor does not sell electricity to the Lessee, the Lessee must purchase electricity from a licensed retailer of electricity (under the *Electricity Act 1996 (SA)*) (**Licensed Retailer of Electricity**) selected by the Lessee;
- (b) if the Lessor has elected to sell electricity to the Lessee in respect of a period and the Lessee does not in respect of that period purchase electricity from a Licensed Retailer of Electricity then:
- (i) the Lessee must pay for all such electricity sold by the Lessor to the Lessee at the rate nominated by the Lessor from time to time; and
  - (ii) the Lessee must pay to the Lessor the Network Charges that the Lessee would be required to pay to the operator of the external electricity distribution network if the Premises were directly connected to that external electricity distribution network, unless such Network Charges are already included in the rate nominated by the Lessor under clause 4.12(b)(i);
- (c) the Lessor acknowledges that where the Lessee is to purchase electricity from a Licensed Retailer of Electricity, the Lessor will for that purpose allow the Lessee without charge payable to the Lessor (except under clause 4.12(d)), but otherwise at the cost of the Lessee, to:
- (i) access and use the Lessor's inset network as defined in the *Electricity (General) Regulations 1997 (SA)*; and
  - (ii) install, maintain and use meters and other necessary equipment in the Premises to record, deal with or segregate the supply of electricity to the Premises,

provided that the Lessee must notify the Lessor of any information relating to the supply and consumption of electricity by the Lessee in or in relation to the Premises as may be reasonably required by the Lessor to administer the Lessor's inset network;

- (d) if the Lessee purchases electricity directly from a Licensed Retailer of Electricity and has access to the Lessor's inset network, then the Lessee must pay to the Lessor the Network Charges that the Lessee would be required to pay to the operator of the external electricity distribution network as if the Premises were directly connected to that external electricity distribution network, unless the Premises are directly connected by a supply point to that external electricity distribution network;
- (e) to the extent permitted by law, the Lessor gives no warranty or undertaking and makes no representations concerning the condition, suitability, quality or quantity of the electricity sold by the Lessor to the Lessee or electricity supplied to the Premises;
- (f) if the Lessee proposes to increase the electricity requirements of the Premises during the Term which necessitates:
- (i) the installation of additional electricity equipment in the Premises; or
  - (ii) alteration to the Lessor's inset network,

then to the extent consistent with the conditions of the Lessor's exemption under Regulation 6(3) of the *Electricity (General) Regulations 1997 (SA)*, the Lessee will be liable for the costs of and incidental to installing:

- (iii) that additional electricity equipment; and
- (iv) making those alterations to the Lessor's inset network,

but no such installation or alteration must be carried out within the Premises or to the Lessor's inset network without the prior approval of the Lessor in accordance with the terms of this Lease and in any event the Lessor may in its absolute discretion carry out such installation or alteration and the reasonable cost of such works will be promptly paid by the Lessee; and

- (g) the Lessee acknowledges and agrees that, if at the request of the Lessee, the Lessor makes arrangements with the Lessee for the provision of power from the Lessor's emergency power or back up power generation system (if any is installed at the absolute discretion of the Lessor) then, to the extent permitted by law:
- (i) such arrangements are made outside the *Electricity (General) Regulations 1997 (SA)*; and
  - (ii) the Lessee must pay the Lessor's separate charges for the connection to and supply of power to the Premises from the Lessor's emergency power or back up power generation system;

#### 4.13 Community titles

if the Lessor notifies the Lessee in writing that the Lessor requires to obtain community titles for the Land or to make an amendment to a deposited community plan in respect of the Land under the *Community Titles Act 1996* then:

- (a) the Lessee must, within 7 days of receipt of such notice, execute and deliver to the Lessor a consent to such Application to Deposit a Plan of Community Division or amendment to a deposited plan and, if and as required by the Lessor, either:
  - (i) a variation to this Lease to include the covenants set out in clause 4.13(b); or
  - (ii) a surrender of this Lease by mutual consent,
 and without the payment of any monetary or other consideration which surrender will be in registrable form;
- (b) contemporaneously with the execution of such surrender, the Lessor and the Lessee must execute a new lease for the unexpired balance of the Term, on substantially the same terms and conditions as are contained in this Lease, with the necessary modifications including this clause, except that the new lease will include the following additional terms:
  - (i) the Lessee must duly observe and perform the applicable covenants and obligations contained in the by-laws of the relevant community title scheme and any variations to those by-laws from time to time of which the Lessee will be given written notification; and
  - (ii) the Lessee must promptly:
    - (A) pay and discharge all moneys, costs, fees, charges and expenses properly and lawfully payable to the community corporation constituted pursuant to the deposit of the relevant plan of community division under the provisions of the *Community Titles Act 1996* in respect of or arising from or related to the ownership, use or occupation of the lot comprising the Premises, but only to the extent that such moneys, costs, fees, charges and expenses would be payable by the Lessee under this Lease to the Lessor or a rating taxing or charging authority, if the plan of community division had not been deposited or amended; and
    - (B) if the Premises comprise portion of a lot, pay a proportion of such moneys, costs, fees, charges and expenses attributable to the lot such portion being the proportion that the area of the Premises bears to the area of the lot;
- (c) the Lessee must not lodge any caveat on the Certificate of Title to the lot of which the Premises comprises part, to protect its interest in the Premises and must not register the Lease;
- (d) if the due observance or performance by the Lessee of the terms of this Lease is guaranteed the Lessee must contemporaneously with the execution of the new lease procure from the guarantor for the benefit of the Lessor a guarantee of the performance by the Lessee of the terms of the new lease in such form as the Lessor requires;
- (e) all documents to be prepared in order to give effect to this clause 4.12 will be prepared by the Lessor's solicitors and prepared at the cost of the Lessor; and
- (f) if the Lessor does not elect to require the Lessee to surrender this Lease and execute a new lease or to execute a document to record the variations to this Lease set out in clause 4.13(b) then on deposit of the plan of community division the covenants set out in clause 4.13(b) will be deemed incorporated in this Lease;

#### 4.14 Relocation

if at any time during the Term the Lessor desires on reasonable grounds to relocate the Lessee to alternate premises the Lessor may relocate the Lessee on the following terms:

- (a) the Lessor will give to the Lessee not less than 6 months' prior notice (**Relocation Notice**) of its intention to relocate the Lessee to alternate premises of a comparable size to the Premises and in a location nominated by the Lessor in the Relocation Notice (**New Premises**) and on a date specified in the Relocation Notice (**date for relocation**);
- (b) within 60 days after service of the Relocation Notice the Lessee must give the Lessor notice that the Lessee either:
  - (i) agrees to relocate to the New Premises on the terms of the Relocation Notice and to execute a surrender of this Lease with effect from the date specified in clause 4.14(i) and to execute a new lease on the terms specified in this clause 4.14 for a term commencing on the date for relocation or such other date as the Lessor and the Lessee agree (**date of relocation**); or
  - (ii) elects to surrender this Lease, for no monetary consideration and to vacate the Premises with effect from the date for relocation and not to enter into a lease of the New Premises, and failure by the Lessee to give a notice under this clause 4.14(b) will be deemed to constitute an election under clause 4.14(b)(ii);
- (c) not less than 30 days prior to the date for relocation stipulated in the Lessor's notice, the Lessee must execute and deliver to the Lessor a surrender of this Lease in registrable form;
- (d) if the Lessee elects to lease the New Premises, then contemporaneously with the execution of the surrender of this Lease pursuant to clause 4.14(c) the Lessee and the Lessor must execute a new lease of the New Premises, unless otherwise agreed on the terms of this Lease:
  - (i) including this clause;
  - (ii) at a rent equivalent to the rent payable under this Lease immediately prior to the date of relocation, except that if the area of the New Premises is not identical to the area of the Premises, then the rent will be calculated at the rate equivalent to the rate of rent per square metre payable by the Lessee immediately prior to the date of relocation, subject to review pursuant to clause 4.10 of this Lease; and
  - (iii) for a term commencing on the date of relocation, being not less than a term equivalent to the unexpired balance of the Term;
- (e) if the due observance or performance of the Lessee's obligations under this Lease is guaranteed by any person the Lessee must contemporaneously procure from the guarantor, for the Lessor's benefit, a guarantee of the performance by the Lessee of its obligations under the new lease in such form as the Lessor requires;
- (f) the Lessor will compensate the Lessee only for the direct costs, if any, incurred by the Lessee in moving its stock, fixtures and fittings from the Premises to the New Premises and any direct overhead costs incurred by the Lessee for the period during which, solely as a consequence of the removal, the Lessee is unable to carry on business from the Premises or the New Premises and no other compensation will be paid to the Lessee for goodwill, loss of trade or loss of profits and in the event of a dispute arising under this clause 4.14(f) within a reasonable time (as determined by the Lessor acting reasonably), then the matter in dispute may be referred by either the Lessor or the Lessee to an Expert for determination pursuant to clause 12;
- (g) if the Lessee makes the election under clause 4.14(b)(ii), then no compensation or other consideration will be paid to the Lessee and the Lessee will make no claim for, nor have any right to recover, compensation by reason of such early termination of this Lease pursuant to this clause 4.14;
- (h) all documents to be prepared in order to give effect to any surrender of the Lease required under this clause 4.14 and the new lease (if any) will be prepared by the Lessor's solicitors and will be prepared at the Lessor's cost, provided that if the parties agree to extend the term of the new lease beyond the unexpired balance of the Term then the Lessor's legal costs in respect of the preparation of the new lease must be paid by the Lessee;

- (i) the Lessee must vacate the Premises by the date for relocation or such other date as the Lessor may reasonably nominate, in writing, but not being a date earlier than the date of relocation; and
- (j) if the Lessee takes possession of the New Premises on the date specified in clause 4.14(i) then the Lessor will grant to the Lessee a 3 months' rent free period under the Lease of the New Premises as from the date of commencement of the new lease;

#### 4.15 Demolition

notwithstanding anything expressed or implied to the contrary in this Lease, if at any time during the Term the Lessor in its absolute discretion desires to demolish the Building or carry out a substantial repair, renovation or reconstruction of the Building that cannot be carried out practicably without vacant possession of the Premises, then the Lessor may terminate this Lease on the following terms:

- (a) the Lessor must provide the Lessee with details of the proposed demolition sufficient to indicate a genuine proposal to carry out that demolition within a reasonably practical time after this Lease is to be terminated;
- (b) the Lessor may at any time after providing the Lessee with the information specified in clause 4.15(a) give the Lessee a notice of termination of this Lease (**Termination Notice**) specifying the date on which this Lease is to terminate being at midnight on the last to occur of:
  - (i) a date not less than 6 months after the Termination Notice is given; and
  - (ii) such other date as the Lessor and the Lessee may otherwise agree, both acting reasonably;
- (c) if this Lease is terminated by the Lessor pursuant to this clause, then the Lessee must, promptly on receipt, execute and deliver to the Lessor a surrender of this Lease in registrable form which surrender will take effect as from the relevant date of termination;
- (d) the surrender of lease to be executed pursuant to clause 4.15(c) will be for a consideration equal to the Lessee's net profit, after tax, for the financial year expiring immediately before the date of the Relocation Notice and the Lessor will compensate the Lessee in respect of an amount equivalent to the adjustable value of the Lessee's fixtures and fittings which are not reasonably removable or reusable to the Lessee and in the event of a dispute arising under this clause 4.15(d) within a reasonable time (as determined by the Lessor acting reasonably), then the matter in dispute may be referred by either the Lessor or the Lessee to an Expert for determination pursuant to clause 12;
- (e) all documents to be prepared in order to give effect to any surrender required under this clause 4.15 will be prepared and registered by the Lessor's solicitors at the cost and expense of the Lessor; and
- (f) if this Lease is registered the Lessee must produce to the Lessor the Lessee's stamped and registered copy of this Lease for the purpose of registering the surrender of this Lease;

#### 4.16 Notice

- (a) without prejudice to any other means of serving notice any notice required to be served under this Lease will be sufficiently served:
  - (i) if to the Lessee then:
    - (A) by personal service on the Lessee (or if it is a body corporate on a director, secretary or other officer of the Lessee); or
    - (B) by personal service at the Premises; or
    - (C) by personal service at the Lessee's Mailing Address specified in item 14 of the schedule;
    - (D) by post or facsimile transmission to the Premises or the Lessee's registered office (if a body corporate); or
    - (E) by personal service at or post or facsimile transmission to the Lessee's last place of business, post box address or residence known to the Lessor; and
  - (ii) if to the Lessor then:
    - (A) by personal service on the Lessor (or if it is a body corporate on a director, secretary or other officer of the Lessor); or

- (B) by post or facsimile transmission to the Lessor's registered office (if a body corporate) or to the Lessor's last known place of business or residence;
- (b) any notice may be signed on a party's behalf by its attorney, director, secretary or other officer or solicitor;
- (c) a notice by post is deemed served at the time when it ought to be delivered in the due course of post;
- (d) a notice by facsimile is deemed served on production of a transmission report by the machine from which it is sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
- (e) where there is more than one person comprising the Lessee a notice served on or by any one or more of the persons comprising the Lessee is deemed served on or by all of the persons comprising the Lessee;

#### 4.17 **Agreement to lease and other matters**

- (a) if this Lease is entered into pursuant to an agreement to lease, then the Lessee and the Lessor must each observe and perform all the terms and conditions to be observed or performed by them under such agreement to lease which remain outstanding as at the Commencement Date and continue to apply during the Term;
- (b) subject to clause 4.17(a), the terms of this Lease comprise the whole of the agreement between the parties and no other agreements or terms will be implied in this Lease or arise between the parties by way of collateral agreement;
- (c) no promise, representation or warranty (including as to the suitability of the Premises to conduct the Lessee's business or to the fittings, fixtures and facilities of the Premises) has been given or made by or on behalf of the Lessor to the Lessee;
- (d) no waiver by the Lessor of one breach of any term of this Lease will operate as a waiver of another breach of that or any other term of this Lease;
- (e) any term of this Lease which is not applicable to the Premises or which is repugnant to the general interpretation of this Lease or which is invalid, unlawful, void or unenforceable will be capable of severance without affecting any of the other terms of this Lease; and
- (f) nothing contained in this Lease will create the relationship of:
  - (i) partnership; or
  - (ii) principal and agent; or
  - (iii) joint venture,between the Lessor and the Lessee and no term of this Lease will create any relationship between the Lessor and the Lessee other than the relationship of lessor and lessee;

#### 4.18 **Managing agent**

the Lessor may appoint a managing agent to manage the Market and any managing agent so appointed will represent the Lessor in all matters relating to this Lease (except where the Lessor otherwise notifies the Lessee) provided that any communication from the Lessor to the Lessee will to the extent of any inconsistency, supersede any communication from the managing agent; and

#### 4.19 **No application of Retail and Commercial Leases Act**

the *Retail and Commercial Leases Act 1995* (SA) does not apply to this Lease having regard to the Permitted Use.

## 5. **GST**

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### 5.1 **Liability for GST**

- (a) Unless otherwise stated, the consideration payable by the Recipient to the Supplier for, or in connection with a Supply under this Lease which is subject to GST, does not include any GST.

- (b) The Recipient must pay to the Supplier an additional amount on account of GST (**GST Amount**) equal to the consideration payable by the Recipient to the Supplier for the Supply multiplied by the prevailing GST rate.

**5.2 Time of GST payment**

The GST Amount is payable no later than the time the consideration to which the GST Amount relates is payable by the Recipient under this Lease, provided the Supplier has issued a tax invoice to the Recipient.

**5.3 Liabilities reduced by input tax credits**

To the extent that the consideration for a Supply consists of the reimbursement or indemnity for any liability (including costs and expenses) incurred by the Supplier, in this Lease:

- (a) the amount of that liability will be reduced by the amount of any input tax credit to which the Supplier is entitled as a result of incurring the liability; and
- (b) the Recipient must also pay the GST Amount relating to the reimbursement or indemnity for that liability.

**5.4 Adjustment event**

If an adjustment event results in the GST on a taxable Supply being different from the GST recovered by the Supplier, the Supplier must refund to the Recipient the excess and may recover from the Recipient the shortfall, provided the Supplier has issued an adjustment note to the Recipient.

**5.5 Definitions**

Terms used in this clause 5 have the same meaning as in the GST Act.

**6. NO WARRANTY OF FITNESS**

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The Lessee acknowledges that the Lessor does not warrant that the Premises will for the duration of this Lease be structurally or otherwise suitable for the business to be conducted in the Premises by the Lessee.

**7. NO EXCLUSIVITY**

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The Lessee acknowledges that the Lessor does not agree and will not be deemed to grant any exclusivity to the Lessee and the Lessor may at any time during the Term permit occupation of any part of the Market to or by any person carrying on business similar to the Permitted Use or who competes or may engage in direct or indirect business or other competition with the Lessee and its business conducted in or about the Premises.

**8. CONDITIONS**

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This Lease is subject in all respects to the consent or approval of any person having any mortgage or encumbrance over the Land and any development or planning approval or consent, being first obtained if required.

**9. CONSENT**

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Unless otherwise provided in this Lease where the consent or approval of the Lessor is required, such consent or approval:

- 9.1 means prior written consent and prior written approval;
- 9.2 may be given or withheld in the absolute discretion of the Lessor; and
- 9.3 if given may be made conditional or unconditional,

and the Lessee must pay and reimburse the Lessor any reasonable costs or fees paid or payable by the Lessor to any agents, architects, consultants, contractors, solicitors or any other person to examine or advise on any application for such consent or approval and all incidental documents and any other money reasonably expended in respect of such consent or approval.

## **10. MARKET RULES AND APML OPERATING ARTICLES**

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- 10.1 The Lessee acknowledges and agrees that the Board may from time to time make Market Rules relating to all activities which take place on the Land provided that:
- (a) in the case of a burden which is imposed on a person by a Market Rule, that burden is reasonable; and
  - (b) the Lessor has a legitimate interest in making the Market Rule.
- 10.2 The Lessee acknowledges and agrees that the APML Operating Articles and the Market Rules remain in force unless and until they are repealed, varied or amended by the Board.
- 10.3 The Lessee and the Lessor acknowledge and agree that:
- (a) this Lease is subject to the APML Operating Articles and to the Market Rules and the Lessee agrees to comply with the APML Operating Articles and the Market Rules, to the extent permitted by law and to cause its officers, employees, agents, contractors and sublicensees to observe and comply with the APML Operating Articles and the Market Rules, to the extent permitted by law; and
  - (b) the failure of the Lessee or any of its officers, employees, agents, contractors, or sublicensees to observe or comply with the APML Operating Articles and the Market Rules will constitute a breach of this Lease by the Lessee.
- 10.4 The Lessee and the Lessor acknowledge and agree that in interpreting the relationship between the provisions of the APML Operating Articles, the Market Rules (as terms of this Lease) and other terms of this Lease, to the extent permitted by law, the order of paramountcy will be, first, the APML Operating Articles, secondly the provisions of the Market Rules and thirdly the other terms of this Lease.
- 10.5 A notice given by the Lessor at any time specifying the APML Operating Articles or the Market Rules (or both of them) for the time being in force or any amendment to them will be prima facie evidence of the APML Operating Articles and the Market Rules for the time being in force and of the amendment to them.
- 10.6 The Lessor will not be liable to the Lessee or any of its officers, employees, agents, contractors or sublicensees for loss or damage arising from or contributed to by any non enforcement by the Lessor of the Market Rules.

## **11. RULES**

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### **11.1 Change to Rules**

The Lessor may at any time delete, amend or add to the Rules whenever the Lessor determines such deletion, amendment or addition to be necessary or desirable in its absolute discretion, provided that the Lessee will not be bound by any Rules which are inconsistent with the other terms of this Lease (being to avoid doubt, the terms of this Lease other than the Rules).

### **11.2 Notice of change**

The Lessor will give notice to the Lessee of the details of any deletion, amendment or addition to the Rules made from time to time but such deletion, amendment or addition will not be operative in respect of the Lessee and the Lessee's Agents until the Lessee has been so notified.

### **11.3 Conclusive evidence**

A notice given to the Lessee at any time specifying the Rules in force as at the date of such notice or any deletion, amendment or addition to them will be conclusive evidence of the Rules or any deletion, amendment or addition to them as at the date of such notice.

### **11.4 Non enforcement**

The Lessor will not be liable for any loss or damage occasioned by the Lessor's non enforcement of the Rules.

## **12. DISPUTE RESOLUTION**

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### **12.1 All Disputes to be dealt with under this clause**

Unless otherwise provided in this Lease all disputes or differences between the parties in connection with:

- (a) this Lease; or
- (b) any other matter in any way relating to this Lease,

**(Dispute)** will be dealt with in accordance with this clause 12 whether the Dispute is first raised before during or after the Term.

#### 12.2 **Notice of Dispute**

Either party (**Disputing Party**) must within 7 days after the Dispute arises, give a notice to the other party (**Non-Disputing Party**):

- (a) setting out details of the Dispute, the reason the Dispute should be resolved in favour of the Disputing Party and any other matter that may, in the reasonable opinion of the Disputing Party, be relevant to the resolution of the Dispute; and
- (b) requiring the Non-Disputing Party to, in good faith, resolve the Dispute within 7 days of the date of the notice.

#### 12.3 **Referral of Dispute to an Expert**

If the Dispute is not resolved in accordance with the provisions of clause 12.2, the determination of the Dispute (**Determination**) will be referred to any person (**Expert**) nominated by the President (or if there is not a President, then Chief Executive Officer or other person of like status) for the time being of The Law Society of South Australia (or if that body has ceased to exist then a body fulfilling substantially the same functions as the first mentioned body).

#### 12.4 **Expert**

The Expert is an expert and not an arbitrator.

#### 12.5 **Final**

The Determination is final and binding on the parties.

#### 12.6 **Conduct of Determination**

Unless otherwise agreed by the parties in writing:

- (a) the place of the proceedings for the purposes of the Determination will be Adelaide, South Australia;
- (b) each party is entitled to legal representation at all stages of the Determination;
- (c) the proceedings for purposes of the Determination will be conducted in accordance with laws of evidence;
- (d) each party will bear its own costs and expenses in relation to the Determination;
- (e) the parties will pay in equal shares the Expert's fees and expenses and the cost of the Determination including room hire (if any) unless otherwise determined by the Expert;
- (f) the parties must comply with all reasonable requests and produce all necessary documentation to the Expert to enable the Expert to make the Determination;
- (g) the parties may make submissions which the Expert must take into account when making the Determination;
- (h) the Expert must provide its Determination to the parties in writing, with reasons for the Determination and within 14 days of the conclusion of the hearing of the Dispute; and
- (i) the provisions of the *Commercial Arbitration Act 1986 (SA)* do not apply to the resolution of any Dispute under the provisions of this clause 12.

## **RULES**

1. The Lessee must perform and observe and ensure that the Lessee's Agents perform and observe all necessary and proper fire drills and emergency evacuation procedures.
2. The Lessee will not cover or obstruct any lights, windows or skylights of the Building.
3. The Lessee must permit the Lessor and all persons authorised by the Lessor to enter the Premises and securely fasten any doors and windows of the Premises which are unfastened when the Premises are not in use.
4. The Lessee will use for the receipt delivery or other movement of any goods, merchandise or articles only such parts of the Market and at such times and in such manner as the Lessor may from time to time direct.
5. The Lessee will not and will ensure that the Lessee's Agents do not throw any article or thing from or out of the Premises.
6. The Lessee will not and will ensure that the Lessee's Agents do not place any article or thing on any sill, ledge or other like part of the Premises.
7. No towels, clothes or other articles will be hung out of windows or on balconies or upon the roof of the Premises.
8. The Lessee will not permit the keys for the Premises to come into the possession custody or control of any person other than the Lessee and the Lessee's officers and employees.
9. No rubbish or waste will at any time be burned on or inside the Premises or the Common Area.
10. The Lessee must not without the Lessor's consent permit any cooking in the Premises other than in areas and with equipment approved by the Lessor.
11. The Lessee must not without the Lessor's consent obstruct or permit the obstruction of the Common Area, or use the Common Area for business or display purposes, or solicit business in the Common Area by means of distribution of handbills or other advertising matter.
12. The Lessee must not use any method of heating, cooling or ventilating air other than that approved by the Lessor.
13. The Lessee must not nor permit any of the Lessee's Agents to interfere with the airconditioning plant so as to impair its efficient operation.
14. To the extent that the Lessee is reasonably able to do so the Lessee must use and regulate the airconditioning plant to ensure that it is operated at its optimum level.
15. The Lessee must promptly provide to the Lessor any information reasonably required by the Lessor to satisfy the Lessor that any persons claiming to be the employee, agent, contractor or invitee of the Lessee are in fact an employee, agent, contractor or invitee (as the case may be) of the Lessee. The Lessor may in its absolute discretion restrict access to the Premises, the Market or the Land to any person if such information has not been provided to the Lessor within 7 days of demand by the Lessor, or if such information is not satisfactory to the Lessor.

**Schedule 1**

**Deed of Guarantee and Indemnity**

# DEED OF GUARANTEE AND INDEMNITY

BETWEEN

**ADELAIDE PRODUCE MARKETS LIMITED**  
ABN 49 008 129 566  
(Lessor)

AND

**[INSERT]**  
(Guarantor)

## **IMPORTANT NOTICE**

By signing this document, you become liable to pay to the Lessor certain amounts that are, or may become, owing by the Lessee.

**THIS DEED** is made on

20

**BETWEEN** **ADELAIDE PRODUCE MARKETS LIMITED** ABN 49 008 129 566 of Burma Road Pooraka South Australia 5095 (**Lessor**)

**AND** **[INSERT]** of **[INSERT]** (**Guarantor**)

## RECITALS

- A. The Lessor is owner of the land comprised in Certificate of Title Volume 5938 Folio 181 (**Land**).
- B. At the request of the Guarantor the Lessor has leased and **[INSERT]** (**Lessee**) has taken a lease of the premises known as **[INSERT]** Adelaide Produce Markets Burma Road Pooraka South Australia 5095 comprising portion of the Land (**Premises**) pursuant to a certain Memorandum of Lease of or intended to be of even date with this deed and made between the Lessor as lessor and the Lessee as lessee (**Lease**).
- C. The Lessor has agreed to grant the Lease to the Lessee, at the request of the Guarantor and on the express condition that the Guarantor guarantee to the Lessor the due observance and performance of all the covenants, terms, conditions and agreements to be observed or performed by a lessee under the Lease and to indemnify the Lessor in respect of any breach, default or non-performance of the Lessee's obligations under the Lease.

**NOW IT IS COVENANTED AND AGREED** as follows:

### 1. ACKNOWLEDGEMENTS

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The Lessor and the Guarantor acknowledge and agree that the recitals to this deed are true and accurate in every particular.

### 2. DEFINITIONS AND INTERPRETATION

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In the interpretation of this deed unless the contrary intention appears or the context otherwise requires or admits, the following expressions shall have the following meanings:

#### 2.1 Definitions

**agreement** means any deed, agreement, instrument or document of any kind including, but not limited to, any contract, mortgage, debenture, charge, bill of sale, bill of exchange, security, lease, licence or assignment;

**administration of the affairs** in relation to a party includes that party becoming:

- (a) bankrupt; or
- (b) going into liquidation; or



- (c) being wound up or entering into or agreeing to or making, any deed or scheme of arrangement or assignment or composition, in respect of its affairs or its assets and liabilities,

and includes:

- (d) the administration of the estate of that party, if that party dies, leaving an insolvent estate; and
- (e) any other administration or assignment whether voluntary or involuntary of the affairs or the assets and liabilities of that party under or pursuant to any law whether in respect of mental health, capacity, nationality, citizenship or otherwise;

**Bankruptcy** means, in relation to:

- (a) a corporation:
  - (i) being under administration (as defined in the *Corporations Act 2001* (Cth)); or
  - (ii) being under a deed of company arrangement within the meaning of that term in the *Corporations Act*; or
  - (iii) being under official management or in provisional liquidation or liquidation on the grounds of its insolvency; or
  - (iv) having a receiver or receiver and manager appointed over it or any of its assets; or
  - (v) being the subject of anything analogous to or having a similar effect under the law of any relevant place; and
- (b) an individual, being insolvent or under administration;

**Covenants** means all the covenants, terms, conditions and agreements to be observed or performed by the Lessee pursuant to the Lease including the discharge and payment of the Debt;

**Debt** means all rent, costs, fees, charges and expenses and other moneys due by the Lessee to the Lessor pursuant to or arising out of any breach or default by the Lessee under the Lease;

**Guarantor** means the person described as the Guarantor in this deed;

**Lease** means the relationship between the Lessor and the Lessee and the rights and obligations arising between them or any of them on any account with respect to:

- (a) the Memorandum of Lease referred to in Recital B whether or not the Memorandum of Lease is or is required to be registered under the *Real Property Act 1886* (SA); or
- (b) any other legally recognisable circumstances in respect of the occupation of the Premises by the Lessee whether it be:
  - (i) an agreement to lease; or
  - (ii) a common law tenancy at will; or



- (iii) an equitable lease; or
- (iv) otherwise; or
- (c) any such Lease as extended, renewed, varied, substituted or assigned including any new Lease granted pursuant to any rights to extend, renew, assign or substitute given in such Lease;

**Lessee** means the person described as the Lessee in this deed; and

**Lessor** means the person described as the Lessor in this deed;

## 2.1 Interpretation

- (a) a reference to any Act includes all statutes, regulations, codes, by-laws or ordinances and any notice, demand, order, direction, requirement or obligation under that Act (and vice versa) and unless otherwise provided in that Act, includes all consolidations, amendments, re-enactments or replacements from time to time of that Act and a reference to law includes a reference to any Act and the common law;
- (b) words importing the singular embrace the plural and words importing one gender embrace the other gender and vice versa respectively;
- (c) any reference to a person shall be deemed to include a body corporate and vice versa;
- (d) the words include, includes or including shall be deemed in all cases to be followed by the words without limitation;
- (e) headings are for convenience of reference only and shall not effect the construction or interpretation of the provisions of this deed;
- (f) where the consent or approval of any party is required under this deed to any act, matter or thing, such requirement shall, in the absence of any express stipulation to the contrary, mean the prior consent or approval (as the case may be) of that party in writing and at that party's absolute discretion;
- (g) each and every provision of this deed and each and every part of it shall, unless the context requires, be read and construed as a separate and severable provision and as separate and severable parts, so that if any provision or part of it shall be void or otherwise unenforceable for any reason, then such provision or part of it (as the case may be) shall be severed and the remainder shall be read and construed as if the severed portion or part had not been included;
- (h) this deed shall be construed as a guarantee and separately as an indemnity to the intent that:
  - (i) when construed as a guarantee each of the provisions of this deed, which are applicable to or capable of application to a guarantee, shall apply to the guarantee given under this deed; and
  - (ii) when construed as an indemnity each of the provisions of this deed, which are applicable to or capable of application to an indemnity, shall also apply to the indemnity given under this deed; and



- (i) neither the guarantee nor the indemnity given under this deed shall be terminated, prejudiced or otherwise limited or affected by the transfer, assignment, extension, renewal or termination of the Lease or the transfer of the Lessor's interest in the Land.

### **3. GUARANTEE**

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The Guarantor guarantees to the Lessor:

- 3.1 the due and punctual payment by the Lessee to the Lessor of the rent reserved to the Lessor pursuant to the Lease at the times and in the manner provided in the Lease for payment;
- 3.2 the due and punctual payment by the Lessee to the Lessor of all other moneys due and payable by the Lessee to the Lessor on any and all accounts pursuant to, or arising in consequence of any breach or default by the Lessee under the Lease at the times and in the manner provided in the Lease for payment;
- 3.3 the due observance and performance of all of the Covenants to be observed or performed by the Lessee pursuant to the Lease, whether expressed or implied in the Lease; and
- 3.4 the due and punctual payment to the Lessor, of all amounts for which the Lessor is entitled to claim on the Bankruptcy of the Lessee, including all amounts for which the Lessor is entitled to prove on any disclaimer of the Lease by an administrator, liquidator or receiver of the Lessee.

### **4. INDEMNITY**

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The Guarantor by this deed, indemnifies the Lessor and agrees to indemnify the Lessor and to keep the Lessor indemnified at all times in respect of:

- 4.1 any and all actions, claims, proceedings, demands, costs, expenses, losses or damages which the Lessor may suffer, sustain or incur by reason or on account or arising out of the failure, neglect or default of the Lessee to:
  - (a) duly and punctually pay the Debt as and when due; or
  - (b) duly observe and perform the Covenants;
- 4.2 any and all amounts which the Lessee agreed to pay the Lessor but becomes no longer legally required to pay the Lessor;
- 4.3 all and any losses that the Lessor may suffer as a consequence of any lawful disclaimer of the Lease; and
- 4.4 any liability or demand for refund or disgorgement of money received by the Lessor that would be or have been, but for the receipt, covered by this deed including liability or demands in the nature of money had and received or the statutory claims of a liquidator or trustee in Bankruptcy.



## **5. CONTINUING NATURE**

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The guarantee given in this deed is a continuing guarantee and the indemnity given by this deed is a continuing indemnity and none of this deed or the guarantee or the indemnity shall be discharged in any way or be considered or deemed to be discharged in any way by any payment to the Lessor other than:

- 5.1 the payment to and acceptance by the Lessor of one hundred cents in the dollar of the whole of the Debt, free of any claim for refund or disgorgement; and
- 5.2 the payment, performance and observance by the Lessee of all of the Covenants.

## **6. STATUS OF GUARANTOR**

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Notwithstanding that as between the Guarantor and the Lessee the position of the Guarantor is that of surety only, the Guarantor covenants and agrees with the Lessor that as between the Guarantor and the Lessor, the Guarantor shall be and is liable under this deed as a principal and primary debtor for the discharge and payment of the Debt and the payment, performance and observance of the Covenants.

## **7. LESSOR'S RIGHTS**

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Without releasing, discharging or affecting the liability of the Guarantor under this deed and without notice to or the consent of the Guarantor, the Lessor may:

- 7.1 grant to the Lessee any consent, approval, concession, time forbearance or indulgence; or
- 7.2 compound, deal, compromise with or release the Lessee or any other person in relation to all or any part of the Covenants; or
- 7.3 release, discharge, transfer, convey, assign or otherwise deal with the whole or any part of the Lease or any other agreement now or after the date of this deed held by the Lessor relating to any of the Covenants; or
- 7.4 agree to any new terms for or any extension, renewal, rent review or other variation of the Lease or any other agreement relating to any of the Covenants; or
- 7.5 postpone the exercise of any powers of entry, distraint, sale or any other power, right or remedy conferred on the Lessor by the Lease or any other agreement; or
- 7.6 enforce or forbear to enforce any of the Covenants and warranties contained in or implied by the Lease or any other agreement, whether for payment of the Debt or otherwise; or
- 7.7 enforce or forbear to enforce any other rights, remedies or securities of or available to the Lessor under or in respect of the Lease or any other agreement or the Covenants or otherwise.

## **8. RELEASE AND COMPROMISE**

---

The Lessor may (whether in respect of this deed or the Lease or the Covenants or otherwise) exercise any of its rights and powers against or release or compromise or



compound with any one or more of the persons comprising the Guarantor and the Lessee without:

- 8.1 giving notice to or obtaining the consent of or exercising any rights and powers against any other person; and
- 8.2 releasing, discharging or affecting the liability of any other such person or prejudicing or affecting any right, power, claim or remedy that the Lessor may have against any other such person.

## **9. ENFORCEABILITY AGAINST GUARANTOR**

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This deed shall at all times be valid and enforceable against the Guarantor and the liability of the Guarantor under this deed shall continue and may be enforced by the Lessor notwithstanding:

- 9.1 any sale, transfer, lease, assignment, mortgage, charge, encumbrance or parting with possession by the Lessee of:
  - (a) the whole or any part of the subject matter of the Lease; or
  - (b) the Lessee's rights under the Lease;
- 9.2 any transfer, conveyance or assignment by the Lessor of the whole or any part of the Lease or the Covenants or the subject matter of the Lease or the Lessor's rights under the Lease;
- 9.3 any extension, renewal, variation or disclaimer of or to the Lease;
- 9.4 that no notice, claim or demand for payment, performance or observance of all or any of the Covenants has been given to or made upon the Lessee;
- 9.5 that no steps or proceedings have been taken against the Lessee;
- 9.6 that no recourse has been had or exercised against the Lessee or any other person or under the Lease or any other agreement relating to any of the Covenants;
- 9.7 that no notice, claim or demand has been given or made to or that no steps or proceedings have been taken against any other person in any way liable to the Lessor for any of the Covenants;
- 9.8 the waiver of any default of the Lessee by the Lessor;
- 9.9 the granting of any time or indulgence by the Lessor;
- 9.10 any administration of the affairs of the Lessee or the death of the Lessee;
- 9.11 any laches or mistakes on the part of the Lessor;
- 9.12 any agreement now or hereafter held or taken by or granted to the Lessor;
- 9.13 any loss, release or discharge by the Lessor of the Lease or any other agreement;
- 9.14 the Lessor failing or neglecting to recover any of the Debt, whether by any realisation under the Lease or any other agreement or otherwise;



- 9.15 that the Lease or any obligation under it accepted by or imposed on the Lessee is void, defective, informal or cannot be legally enforced against the Lessee;
- 9.16 that the Lease or any obligation under it accepted by or imposed on the Lessee cannot be legally enforced against the Lessee because of any legal disability on the part of the Lessee;
- 9.17 that the Lessee, whether in equity or law or by statute or otherwise, was prohibited from or was without capacity, power or authority to:
- (a) enter into the Lease; or
  - (b) accept any obligation contained in the Lease,
- even if the Lessor had or ought to have had knowledge or notice (whether actual or constructive) that the Lessee was so prohibited or was without any such capacity, power or authority;
- 9.18 that this deed has not been executed by any other person who has agreed undertaken or offered to do so or whose name appears in this deed as Guarantor;
- 9.19 the death of any person being a Guarantor;
- 9.20 any other person firm or company joining in this Guarantee and Indemnity; and
- 9.21 the fact that the Lessee may be discharged from liability to pay any money pursuant to the Lease for any reason other than that payment of such money has been made to the Lessor and is not required to be refunded or disgorged.

## **10. WAIVER**

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The Guarantor waives all of the rights of the Guarantor whether:

- 10.1 as surety or otherwise; and
- 10.2 legal, equitable, statutory or otherwise,
- that may at any time be contrary to or inconsistent with this deed.

## **11. RELEASE OF LESSEE**

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Except:

- 11.1 to the extent required by law; or
- 11.2 by an express agreement in writing to which the Lessor is a party; or
- 11.3 by the payment, performance and observance of all of the Covenants, where for any reason:
- 11.4 the Lessee ceases to be bound by all or any of the terms of the Lease; or
- 11.5 the obligations of the Lessee under the Lease are abrogated, reduced, diminished or modified in any way, whether by operation of law or otherwise, including disclaimer of the Lease by any person who is or purports to be entitled by law to disclaim the same,



then and in any such event:

- 11.6 the Guarantor shall pay to the Lessor an amount equal to the amount of the total loss and damage (whether direct or consequential) caused to or suffered by the Lessor by reason of the Lessee having so ceased to be bound or of the obligations of the Lessee having been so abrogated, reduced, diminished or modified; and
- 11.7 the Guarantor shall do all such other acts and things as the Lessor may require and are within the Guarantor's capacity and power, to place the Lessor in as good a position as nearly as may be to the position in which the Lessor would have been had the Lessee not so ceased to be bound or had the obligations of the Lessee not been so abrogated, reduced, diminished or modified,

and the obligations of the Guarantor under this covenant shall be original and independent and not by way of surety provided that this covenant shall be supplementary to the other provisions of this deed and shall take effect only if or to the extent to which such provisions are inapplicable to the circumstances or do not confer upon the Lessor rights as valuable or extensive as those provided in this clause.

## **12. EXTENSIONS**

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The Guarantor shall, without prejudice to its liability under this deed, if requested by the Lessor, execute a further deed in the same terms as this deed except for such modifications as the Lessor's solicitors consider appropriate in respect of and endorsed on every lease that is under or by virtue of the Lease agreed to be granted and taken and every renewal, extension and variation of the Lease and of every lease that is by the Lease agreed to be assigned or to be granted and taken.

## **13. SUBROGATION**

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Until the Lessor has received all the Debt and the Lessee has complied with all the Covenants, the Guarantor shall not be entitled on any ground to:

- 13.1 assert any right of subrogation in respect of any moneys paid to the Lessor; or
- 13.2 claim the benefit of any security for the time being held by the Lessor,  
  
and in the event of the death or the administration of the affairs of the Lessee, the Guarantor shall not, without the written consent of the Lessor, be entitled either directly or indirectly to:
- 13.3 receive the benefit of any resulting dividend or payment; or
- 13.4 lodge any proof; or
- 13.5 make any claim in respect of such event,

in competition with the Lessor so as to diminish the amount that, but for such dividend, payment, proof or claim, the Lessor would be entitled to receive and the receipt of any dividend or other payment that the Lessor may receive in any such circumstances shall not prejudice the right of the Lessor to recover from the Guarantor so much of the Debt as have not been paid to the Lessor.



## **14. DISCHARGE**

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If any payment that has been made to the Lessor:

- 14.1 by or on behalf of any one or more of the persons comprising the Lessee; or
- 14.2 by or on behalf of the Guarantor,  
is subsequently avoided or made the subject of Court orders to similar effect by reason of or pursuant to any statute or otherwise then:
- 14.3 that payment shall be deemed not to have discharged or affected the liability of the Guarantor under this deed;
- 14.4 the Lessor and the Guarantor shall be restored to the position in which each would have otherwise been; and
- 14.5 the Lessor and the Guarantor shall be entitled to exercise all of the powers, rights and remedies that each would have otherwise had if the payment had not been made.

## **15. OTHER MONEYS**

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The Guarantor shall pay to the Lessor all sums of money received by the Guarantor for the credit of any account of the Lessee and for which the Guarantor may be obliged to account or may in its discretion account in any administration of the affairs of the Lessee.

## **16. DEATH OR ADMINISTRATION OF AFFAIRS**

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In the event of:

- 16.1 the death of the Lessee; or
- 16.2 the administration of the affairs of the Lessee,  
the Guarantor:
- 16.3 shall possess:
  - (a) every debt and liability of the Lessee to the Guarantor;
  - (b) every other right and security of the Guarantor against the Lessee; and
  - (c) all property of the Lessee in trust for the Lessor;
- 16.4 undertakes, without expense to the Lessor, to do all such things and to execute and deliver to the Lessor all such documents and assignments of such debts, liabilities, rights and securities; and
- 16.5 by this deed, irrevocably appoints the Lessor and any attorney or manager of the Lessor and the secretary of the Lessor, for the time being, (each severally) the attorney of the Guarantor to:
  - (a) demand, sue for, recover, enforce and receive any such debt, liability, right or security;



- (b) lodge on behalf of the Guarantor any proof that the Guarantor is entitled to lodge in respect of any such debt, liability, right or security;
- (c) demand, sue for, recover and receive all compositions, dividends and other amounts payable in respect of such proof; and
- (d) agree upon any valuation of any asset of the Lessee,

and all amounts received by the Lessor pursuant to this clause or in the exercise of the powers conferred by this clause, may be appropriated and applied by the Lessor on account of the Debt or in satisfaction of the Covenants.

## **17. NO DUTY TO DISCLOSE**

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The Guarantor acknowledges and agrees that the Lessor has not been and shall not be under any obligation to disclose to the Guarantor anything relating to:

- 17.1 the Lessee or its affairs; or
- 17.2 the Lessor or its affairs; or
- 17.3 any transaction or agreement contemplated or entered into between the Lessor and the Lessee or by either of them.

## **18. NO INDUCEMENT**

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Except for the consideration of the Lessor and the Lessee entering into the Lease, the Guarantor acknowledges and agrees with the Lessor that the Guarantor was not induced to execute this deed by any consideration, promise, representation, statement or information of any kind or nature (whether express or implied and whether solicited or unsolicited) given or offered to the Guarantor by or on behalf of the Lessor.

## **19. WARRANTY**

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The Guarantor represents and warrants to the Lessor that each statement, representation and warranty made by the Lessee in the Lease is true and correct.

## **20. WARRANTY OF AUTHORITY**

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Each Guarantor who is a director of any corporation that is a Guarantor or is a party to the Lease or is both, warrants to the Lessor that the execution by that corporation of this deed or the Lease or both, as the case may be, was within the power of that corporation and was effected in conformity with its Constitution.

## **21. TRUSTEE LESSEE**

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If any Lessee (**Trustee Lessee**) has undertaken to observe and perform all or any of the Covenants acting as trustee of a trust, whether or not specified in the Lease or disclosed to or otherwise known to the Lessor then, the Guarantor warrants to the Lessor that:



- 21.1 the execution of the Lease by the Trustee Lessee was within the powers granted by the relevant trust instrument; and
- 21.2 the assets of the trust will be available to meet the obligations of the Trustee Lessee under the Lease and under any judgment that may be obtained by the Lessor against the Trustee Lessee.

## **22. TRUSTEE GUARANTOR**

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Where any Guarantor (**Trustee Guarantor**) is acting as trustee of a trust every other Guarantor warrants to the Lessor that:

- 22.1 the execution of this deed by the Trustee Guarantor was within the powers granted by the relevant trust instrument; and
- 22.2 the assets of the trust will be available to meet any judgment that may be obtained by the Lessor against the Trustee Guarantor,

and the Trustee Guarantor and each of them, if there is more than one, covenants and agrees that without prejudice to its liability under this deed, it shall in the payment, performance and observance of its obligations under this deed exercise all of its rights and powers as trustee whether of indemnity or otherwise against the property comprising the trust fund of the trust of which it is the trustee.

## **23. COSTS**

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The Guarantor shall pay to the Lessor:

- 23.1 all the Lessor's legal costs of and incidental to the negotiation, preparation, execution, stamping and enforcement of this deed; and
- 23.2 all expenses and other amounts the Lessor may pay or be liable to pay under or in connection with any legislation relating to stamp duty or arising out of this deed or any transaction between the Lessor and either or both of the Lessee and the Guarantor which gives rise to or relates to any of the Covenants.

## **24. GUARANTOR'S LIABILITY**

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Any certificate signed by the Lessor or by its solicitor or by any authorised representative for the time being of the Lessor certifying:

- 24.1 the amount of any liability under this deed of the Guarantor or any of them, if there is more than one as at the date stated in the certificate; or
  - 24.2 as to any act, matter or thing relating to this deed as at the date so stated,
- shall at all times be prima facie evidence of what is so certified.

## **25. NOTICES**

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Any notice or demand by the Lessor to the Guarantor shall be deemed to have been fully and sufficiently given or made for the purpose of this deed, if:



- 25.1 it is in writing;
- 25.2 it is signed by:
- (a) the Lessor; or
  - (b) on behalf of the Lessor by any solicitor or any other person; or
  - (c) if the Lessor is a corporation, by its manager or secretary or one of its directors or its local agent in Adelaide; and
- 25.3 the notice or demand is served on the Guarantor:
- (a) personally; or
  - (b) by leaving it for the Guarantor at the Guarantor's address; or
  - (c) posting it to the Guarantor by prepaid post addressed to the Guarantor (in which case it will be deemed to have been given or made 48 hours after the time of posting),
- and the Guarantor's address shall be:
- 25.4 any of the addresses of the Guarantor as shown in this deed; or
- 25.5 as last known to the Lessor; or
- 25.6 if the Guarantor is a corporation, the address of its registered office,
- provided that except as otherwise in this deed expressly agreed, the liability of the Guarantor under this deed shall not in any way be conditional on or subject to the giving of any notice to or the making of any demand on the Guarantor.

## **26. GOVERNING LAW**

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This deed shall be governed and construed in all respects in accordance with the law of the State of South Australia and the Commonwealth of Australia and the parties to this deed submit to the jurisdiction of the Courts of South Australia and the Commonwealth of Australia in respect of all matters arising under or relating to this deed, provided that any proceedings issued in the Courts of the Commonwealth of Australia shall be issued in the Adelaide Registry of any such Court.



**EXECUTED** as a deed

**EXECUTED** by **ADELAIDE PRODUCE  
MARKETS LIMITED** ABN 49 008 129 566  
in accordance with section 127 of the  
*Corporations Act 2001* (Cth):

\_\_\_\_\_  
\*Director/\*Company Secretary

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of \*Director/\*Company Secretary  
(BLOCK LETTERS)  
\*please delete as appropriate

\_\_\_\_\_  
Name of Director  
(BLOCK LETTERS)

Lessor

**[INSERT]**

Guarantor



## **Plan of Premises**

FORM B1  
Attach to inside  
left hand corner

<p>To be completed by lodging party</p> <p>ANNEXURE to Memorandum of Lease dated over Certificate of Title Volume: 5938 Folio: 181</p> <p>Parties: Adelaide Produce Markets Limited - <b>[INSERT]</b></p>	<p><b>NUMBER</b> Office use only</p>
---	--

Lessee

**[INSERT]**

CONSENTS OF MORTGAGEES AND SECTION 32 DEVELOPMENT ACT 1993 CERTIFICATION

This Lease does not contravene section 32 of the *Development Act* 1993 (SA)

**COMMONWEALTH BANK OF AUSTRALIA** ABN 48 123 123 124 as mortgagee of the Land under Memorandum of Mortgage No. 9201767 consents to this Lease

**SIGNED AND SEALED** in South Australia on behalf of **COMMONWEALTH BANK OF AUSTRALIA** by its duly constituted Attorney

\_\_\_\_\_ of 63 Pirie Street Adelaide 5000 who certifies that he/she is the **CONVEYANCING OFFICER** in South Australia of **COMMONWEALTH BANK OF AUSTRALIA**

\_\_\_\_\_  
Power of Attorney No. 9819164  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Full Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone No.

DATED .....

EXECUTION

EXECUTED AS A DEED

Lessor

**EXECUTED** by **ADELAIDE PRODUCE MARKETS LIMITED** ABN 49 608 129 566 in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
\*Director/\*Company Secretary

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of \*Director/\*Company Secretary  
(BLOCK LETTERS)  
\*please delete as appropriate

\_\_\_\_\_  
Name of Director  
(BLOCK LETTERS)

Lessee

See Annexure