

Standard Form Lease 2021 –
Building Lease
Retail/Commercial

YARRIAMBIACK SHIRE COUNCIL

and

Nutrien Ag Solutions Limited

LEASE WHOLE OF PROPERTY

Premises 18 Cromie st, Rupanyup 3388, Victoria

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THIS LEASE is made on

2022

PARTIES

- 1 **YARRIAMBIACK SHIRE COUNCIL**
of 34 Lyle Street, Warracknabeal VIC 3393
("Landlord")
- 2 The person or persons set out in item 1 of Schedule 1 Nutrien Ag Solutions Limited of Level 10, 737 Bourke Street, Docklands, VIC, 3008
("Tenant")

RECITALS

- A The Landlord is the registered proprietor of the Premises.
- B The Landlord aims to:
 - maximise the use of community assets and maximise community benefit arising from the use of community assets, including the Premises; and
 - ensure that community assets, including the Premises, are appropriately and responsibly managed, in consideration of the environment, community impact and involvement, and the overall wellbeing of the community.
- C The Landlord has agreed to lease the Premises to the Tenant on the terms and conditions set out in this lease.

THE PARTIES AGREE THAT:

1 DEFINITIONS

In this lease, unless the contrary intention appears:

- 1.1 "**Act**" means the *Retail Leases Act 2003* (Vic);
- 1.2 "**Authorised Officer**" in the case of either party means a person appointed by that party to act on its behalf under this lease.
- 1.3 "**Building**" means any building in which the Premises is located, including the Landlord's Property.
- 1.4 "**Business Day**" means any day (other than a Saturday or a Sunday) on which banks are open for general banking business in Victoria.
- 1.5 "**Commencement Date**" means the date set out in item 3 of Schedule 1.
- 1.6 "**Common Areas**" means those parts of the Building or Land which are made available by the Landlord for the common use of or access by all occupiers of the Building or Land, including the Landlord, as marked on the plan in Schedule 2 (if any).
- 1.7 "**CPI**" means:
 - 1.7.1 the Consumer Price Index (All Groups) Melbourne; or
 - 1.7.2 if that index is suspended or discontinued and another index is substituted by the Australian Statistician, that index; or

- 1.7.3 if there is no index under the preceding paragraph, the general inflation rate in Victoria as used by the Victorian treasury for the relevant period.
- 1.8 **"Default Event"** has the meaning given to it in clause 21.1.
- 1.9 **"Disclosure Statement"** means a statement prepared by the Landlord in accordance with the Act.
- 1.10 **"Essential Safety Measures"** means essential safety measures as defined in the Regulations and that are within the Premises or Land.
- 1.11 **"Expiry Date"** means the last day of the Term and is the date set out in item 4 of Schedule 1.
- 1.12 **"GST"** means the goods and services tax levied under the GST Act or any other goods and services tax, value added tax, consumption tax or tax of similar effect levied from time to time.
- 1.13 **"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.14 **"Information Brochure"** means the Information Brochure published by the Small Business Commission.
- 1.15 **"Input Tax Credit"**, in relation to a Taxable Supply, means a credit under the GST Act for the GST payable by the recipient in respect of the Taxable Supply.
- 1.16 **"Land"** means the land described in item 8 of Schedule 1.
- 1.17 **"Landlord's Property"** means anything in the Premises at any time during the Term which is not the Tenant's Property, including the items listed in Schedule 4 (if any).
- 1.18 **"Lettable Area"** means the area calculated in accordance with the appropriate method of measurement published as at the Commencement Date by the Property Council of Australia for that type of premises.
- 1.19 **"Outgoings"** means any of the following expenses incurred in respect of the Land, the Building, or the Premises:
- 1.19.1 all rates, assessments, levies and other charges imposed by any relevant authorities;
 - 1.19.2 all taxes (including land tax on the basis that the Land is the only land owned by the Landlord) but excluding the Landlord's income tax and capital gains tax;
 - 1.19.3 the costs of maintenance and repairs, and of carrying out works required by relevant authorities (but excluding any amount recovered in respect of maintenance or repair by the Landlord from its insurer);
 - 1.19.4 the costs associated with the inspection, installation, supply, maintenance, repair and servicing of Essential Safety Measures at the Premises, in the Landlord's Property and in the Tenant's Property; and
 - 1.19.5 any other expenditure reasonably and properly incurred by the Landlord for the benefit of the Tenant or the Premises,

excluding expenses whose recovery from the Tenant would be contrary to the Act or other applicable legislation.

- 1.20 **"Permitted Use"** means the use described in item 6 of Schedule 1.
- 1.21 **"PPSA"** means the *Personal Property Securities Act 2009* (Cth.).
- 1.22 **"Premises"** means the premises described in item 7 of Schedule 1 and includes the Landlord's Property within the Premises.
- 1.23 **"Regulations"** means the *Building Regulations 2018* (Vic.) and any amendment to or replacement of those regulations.
- 1.24 **"Rent"** means the amount specified in item 9 of Schedule 1, and as revised in accordance with this lease.
- 1.25 **"Rent Review Date"** means each of the dates specified in item 11 of Schedule 1.
- 1.26 **"Review Period"** means the review period following each Rent Review Date until the next Rent Review Date or until the end of this lease.
- 1.27 **"Security Deposit"** means the deposit to be paid by the Tenant to the Landlord pursuant to clause 9 being the amount set out in item 12 of Schedule 1.
- 1.28 **"Small Business Commission"** means the Small Business Commission established under section 4 of the *Small Business Commission Act 2017* (Vic).
- 1.29 **"Start Of The Lease"** means the first day of the Term but, if this lease is a renewal under an option in an earlier lease (whether or not this lease is on terms that are materially different to those contemplated by the earlier lease), the starting date of the first lease to contain an option for renewal.
- 1.30 **"Tax Invoice"**, in relation to a Taxable Supply, means an invoice for the Taxable Supply required by the GST Act to support a claim by the recipient for an Input Tax Credit for the GST on the Taxable Supply.
- 1.31 **"Taxable Supply"** means a taxable supply within the meaning of the GST Act.
- 1.32 **"Tenant"** means the person or persons set out in item 1 of Schedule 1 and includes the Tenant's personal representatives, successors and permitted assignees.
- 1.33 **"Tenant's Agents"** means the members, employees, agents, contractors, customers, invitees and tenants of the Tenant.
- 1.34 **"Tenant's Property"** means everything on the Premises at any time during the Term belonging to the Tenant, including the items listed in Schedule 3 (if any).
- 1.35 **"Tenant's Proportion"** means the Tenant's share of the Outgoings which is calculated in accordance with item 13 of Schedule 1.
- 1.36 **"Term"** means the duration of this lease as set out in item 5 of Schedule 1.

2 LEASE

2.1 Lease of Premises

The Landlord leases the Premises to the Tenant. This lease is subject to:

- 2.1.1 the terms contained in this lease;

- 2.1.2 the Landlord giving notice of its intention to grant this lease pursuant to section 190 of the *Local Government Act 1989* and resolving to enter into the lease pursuant to section 223 of that Act (if applicable), or giving notice under section 115 of the *Local Government Act 2020* (Vic) and subsequently resolving to enter into this lease, as the case may be;
- 2.1.3 any special conditions in item 19 of Schedule 1;
- 2.1.4 all encumbrances affecting the Premises; and
- 2.1.5 the right of the Landlord to:
 - (a) run water, air, electricity, sewage, gas and other substances through the Premises;
 - (b) install, maintain, use, repair, alter and replace the pipes, wires, ducts and cables leading through or around the Premises; and
 - (c) determine all areas of access to and from the Premises.

2.2 Term of lease

The Term of this lease begins on the Commencement Date and ends on the Expiry Date.

3 USE OF COMMON AREAS

The Landlord grants the Tenant a licence to use the Common Areas together with the Landlord, other occupants of the Building or Land and any other persons permitted by the Landlord to use the Building or Land throughout the Term.

4 PAYMENTS BY TENANT

4.1 Rent

The Tenant must pay the Rent without any deduction, counterclaim or set-off:

- 4.1.1 to the Landlord at the Landlord's address specified in this lease, or as the Landlord directs; and
- 4.1.2 in the manner set out in item 10 of Schedule 1.

4.2 Outgoings and Insurance

The Tenant must:

- 4.2.1 pay direct to the relevant authority (as and when they fall due for payment) or reimburse the Landlord (within 7 days of demand) the Tenant's Proportion of all Outgoings; and
- 4.2.2 if required by the Landlord, pay or reimburse the Landlord upon demand for all insurance premiums and other charges and excesses in connection with public risk insurance policies taken out by the Landlord for the amounts which the Landlord reasonably thinks are appropriate in connection with the Premises and this lease; and
- 4.2.3 if required by the Landlord, pay or reimburse the Landlord upon demand for all insurance premiums and other charges and excesses in connection

with building insurance policies (if any) taken out by the Landlord for the amounts which the Landlord reasonably thinks are appropriate in connection with the Premises.

4.3 Services

4.3.1 The Tenant must pay, as and when they fall due, all assessments, levies, charges and consumption costs, and any other costs for:

- (a) electricity, gas, water and telecommunications services; and
- (b) air conditioning and ventilation systems, cleaning, pest control, waste collection, lighting, landscaping and garden maintenance and security services

that are supplied to or for the Premises, or which are for the benefit of the Premises or Common Areas, and that are not otherwise payable by the Tenant under this Lease.

4.3.2 If required by the Landlord, the Tenant must install and pay for a separate meter for recording or measuring any of the services referred to in clause 4.3.1(a).

4.3.3 If any of the services referred to in clause 4.3.1 are not capable of separate assessment in relation to the Premises (and a separate meter is not installed pursuant to clause 4.3.2), the Tenant must pay the proportion that the Lettable Area of the Premises bears to the Lettable Area of the Building or Land upon which the services are assessed or to which the services are supplied.

5 RENT REVIEW

5.1 Market Review

If item 11 of Schedule 1 provides for a market review of Rent on any Rent Review Date, the following provisions will apply:

5.1.1 The Landlord may initiate a review of Rent by giving the Tenant a written notice stating the rent which it considers to be the current open market rent for the Premises ("**Landlord's notice**").

5.1.2 If the Tenant disagrees with the proposed rent, the Tenant must give the Landlord a written notice ("**Tenant's notice**") objecting to the proposed rent within 21 days of the date of the Landlord's notice. Time will be of the essence for the delivery of the Tenant's notice.

5.1.3 If the Tenant does not serve the Tenant's notice on the Landlord, the proposed rent as set out in the Landlord's notice will be the Rent for the next Review Period.

5.1.4 If the Tenant serves the Tenant's notice within the prescribed time and the parties cannot agree on the rent for the next Review Period, it shall be determined by a valuer who:

- (a) is a full member of not less than 5 years' standing of the Australian Property Institute - Victorian Division ("**API**");
- (b) is qualified as a valuer of premises similar to the Premises; and

- (c) if the Act applies to this lease, has any other qualifications as required under the Act.

5.1.5 If the parties cannot agree upon a valuer within 21 days after the date of the Tenant's notice:

- (a) If the Act applies to this lease, either party may request the Small Business Commission to appoint a valuer who meets the criteria in clause 5.1.4 to determine the current open market rent of the Premises; or
- (b) if the Act does not apply to this lease, either party may request the President of the Australian Property Institute, Victorian Division, to appoint a valuer who meets the criteria in clause 5.1.4 to determine the current open market rent of the Premises.

5.1.6 Until the rent is determined by the valuer, the Tenant must continue to pay the Rent payable just before the relevant Rent Review Date.

5.1.7 In determining the current open market rent of the Premises, the valuer must:

- (a) act as an expert and not as an arbitrator;
- (b) assume the parties have acted knowledgeably, prudently and without compulsion;
- (c) assume there is a willing landlord and a willing tenant in an arm's length transaction;
- (d) consider all submissions made by the parties provided the submissions are made within 21 days of the valuer being appointed;
- (e) assume that the parties have complied with their respective obligations under this lease;
- (f) assume that the Premises are fit for immediate occupation and use;
- (g) assume that the Premises are vacant and available to be leased on the same conditions as this lease;
- (h) ignore any poor condition of the Premises which has resulted from a breach of this lease by the Tenant;
- (i) determine the current open market rent of the Premises and give reasons for it in writing as soon as possible after the end of the 21 days allowed for submissions by the parties; and
- (j) take into account, all other relevant factors, matters or variables used in proper land valuation practices.

5.1.8 If for any reason no determination has been made by the valuer within 45 days of the valuer being appointed, then either party may immediately request:

- (a) if the Act applies to this lease, the Small Business Commission to appoint a replacement valuer who meets the criteria in clause 5.1.4; or

- (b) if the Act does not apply to this lease, the President of the Australian Property Institute, Victorian Division, to appoint a replacement valuer who meets the criteria in clause 5.1.4.

The provisions of this clause will then apply to the determination by the replacement valuer.

- 5.1.9 The valuer's decision is final and binds the parties.
- 5.1.10 Within 7 days of being informed of the valuer's determination, the parties must make any necessary adjustments to the Rent.
- 5.1.11 The valuer's costs and disbursements must be borne by the parties equally.
- 5.1.12 If the Act does not apply to this lease, then despite any other provision in this lease, the Rent payable as varied under this clause 5.1 must not be less than the Rent payable immediately before the relevant Rent Review Date.

5.2 Percentage Increase

If item 11 of Schedule 1 provides for a percentage increase of Rent on any Rent Review Date, then the Rent (being the amount of Rent payable by the Tenant immediately before the Rent Review Date) shall be increased on the relevant Rent Review Date by the percentage specified in item 11.

5.3 CPI Review

If item 11 of Schedule 1 provides for a CPI review the Rent for the next Review Period will be calculated in accordance with the following formula:

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

where: A is the Rent for the next Review Period;

B is the annual Rent paid by the Tenant just prior to the relevant Rent Review Date;

C is the CPI last published before the relevant Rent Review Date; and

D is the CPI last published at least 12 months before the relevant Rent Review Date.

5.4 Time of Review

Any delay in making a rent review does not prevent the review from taking place and being effective from the relevant Rent Review Date.

6 GST

6.1 Interpretation

The consideration payable by any party under this lease is the GST exclusive amount of the Taxable Supply for which payment is to be made.

6.2 GST exclusive amounts

Subject to clause 6.4, if a party makes a Taxable Supply in connection with this lease for a consideration, then the party liable to pay for the Taxable Supply must also pay, at the same time and in the same manner as the consideration is otherwise payable, the amount of any GST payable in respect of the Taxable Supply.

6.3 Maximum amount to be paid

Where this lease requires a party (the "**first party**") to pay, reimburse or contribute to an amount paid or payable by the other party (the "**other party**") in respect of an acquisition from, or a transaction with a third party for which the other party is entitled to claim an Input Tax Credit, the amount for payment, reimbursement or contribution will be the GST exclusive value of the acquisition by the other party plus any GST payable in respect of the other party's recovery from the first party.

6.4 Tax invoice to be given

A party's right to payment under clause 6.2 is subject to a Tax Invoice being delivered to the party liable to pay for the Taxable Supply.

7 LEGAL AND OTHER COSTS

7.1 Costs incurred by Landlord

The Tenant must pay or reimburse the Landlord on request all reasonable costs (including legal costs and disbursements) incurred by the Landlord in connection with:

- 7.1.1 any assignment (or proposed assignment) of this lease, or any subletting or licence (or any proposed subletting or licence) of the Premises;
- 7.1.2 any approval, variation, mortgage, charge or surrender concerning this lease including costs payable to a person appointed to evaluate or supervise any matter;
- 7.1.3 any breach of this lease by the Tenant; and
- 7.1.4 the exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, by the Landlord of any rights or remedies under this lease.

7.2 Other costs

Anything the Tenant is required to do under this lease must be done at the Tenant's cost.

8 INTEREST ON OVERDUE MONEY

If the Tenant is late in paying the Landlord any money payable by it under this lease, the Tenant must pay interest on that money from the due date for payment until the money is paid in full. The rate of interest is the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983*.

9 SECURITY DEPOSIT

9.1 Tenant to provide

The Tenant must pay the Security Deposit to the Landlord and must maintain the deposit at that amount, such deposit to be held by the Landlord in an interest-bearing account.

9.2 Use of security deposit

The Landlord may use the Security Deposit (including any accrued interest) to make good the cost of remedying breaches of the Tenant's obligations under this lease.

9.3 Refund at end of lease

After this lease has ended and the Tenant has vacated the Premises, if there is no unremedied breach of this lease by the Tenant in respect of which the Landlord may draw upon all or part of the Security Deposit, the Landlord must refund the unused part of the Security Deposit within 30 days of the Tenant having complied with all obligations under this lease.

10 USE OF PREMISES

The Tenant must:

- 10.1 use the Premises for the Permitted Use (and for no other use);
- 10.2 not use the Premises for any illegal purpose or activity;
- 10.3 not use the Premises as a residence or allow anyone to sleep in the Premises;
- 10.4 not conduct any auction sale or public meeting in or around the Premises;
- 10.5 not prepare or cook food in the Premises other than in the areas which have been provided or approved by the Landlord for that purpose;
- 10.6 not apply for a liquor licence without first obtaining the Landlord's consent, and must not permit the sale of any alcohol at the Premises unless the Tenant holds a liquor licence;
- 10.7 not burn rubbish at the Premises or in the Building;
- 10.8 not use any lavatories, grease traps, drains or other sanitary facilities for any purpose other than that for which they were designed;
- 10.9 not bring, allow or permit any animal or pet on the Premises other than guide dogs, except if the Landlord gives prior consent;
- 10.10 not do anything which is or may be a nuisance or annoyance to the Landlord, any occupants of the Building, any owners or occupants of premises adjacent to the Premises or the Building, or members of the public;
- 10.11 not obstruct or interfere with the Landlord's or any other occupier's use of the Common Areas;
- 10.12 at its own expense, apply for and keep in force all licences and permits necessary for the Tenant to use the Premises for the Permitted Use;

- 10.13 take all precautions required by law against fire and comply with all regulations and directions of any authority in relation to fire prevention;
- 10.14 not without the Landlord's prior written consent, store or use any dangerous, toxic, explosive or inflammable substances at the Premises or in the Building;
- 10.15 at its own expense, comply on time with all laws, notices, orders, legal requirements and requirements of any authority concerning the Premises and this lease, or the use and occupation of the Premises (except where applicable legislation makes such compliance the Landlord's responsibility). Without limiting this clause, an authority includes any person, body or corporation (whether government, statutory or non-statutory) that has authority over the Premises or the Tenant's use of the Premises;
- 10.16 not install or use any form of heating, cooling, ventilation or air-conditioning in the Premises which is not approved beforehand by the Landlord in writing;
- 10.17 not, without the Landlord's prior written approval, bring onto or remove from the Premises any object or equipment which is likely, in the opinion of the Landlord, to cause damage to the Premises, the Landlord's Property or any services or Essential Safety Measures. The Tenant must comply with any instructions given by the Landlord with respect to the installation, use or removal of any object or equipment for which the Landlord has given the Tenant approval to bring onto or remove from the Premises under this clause;
- 10.18 comply with the following requirements in relation to any outdoor area (including any outdoor playing area) which forms part of the Premises:
 - 10.18.1 not bring any soil, sand, or tan bark or similar product onto the Premises unless approved in advance by the Landlord;
 - 10.18.2 not plant any vegetable gardens at the Premises other than in separate planter boxes or pots;
 - 10.18.3 not allow any digging at the Premises without the Landlord's written approval;
- 10.19 not cause the Common Areas to be left in an untidy or unclean condition;
- 10.20 comply with any Building rules in force from time to time that are notified in writing by the Landlord to the Tenant; and
- 10.21 comply with all reasonable requests or directions given by any Authorised Officer of the Landlord that the Authorised Officer considers necessary or desirable for the safety, care or cleanliness of the Premises or areas near the Premises.

11 SECURITY

11.1 Tenant to protect Premises

- 11.1.1 The Tenant must use its best efforts to protect and keep safe the Premises and the Landlord's Property from theft and vandalism. This includes keeping all fences, gates, doors, windows and openings closed and securely fastened when the Premises are not in use.
- 11.1.2 The Tenant must, at its own cost, install and maintain a security alarm for the Premises if required by the Landlord. The Tenant must provide the Landlord with all relevant codes for the security alarm upon installation, and whenever the codes are updated.

11.2 Keys and Security Cards

- 11.2.1 The Landlord will provide the Tenant with keys for the Premises and passes giving access to the Premises (where applicable). The Tenant must maintain a current list of those persons retaining keys or passes for the Premises and provide the Landlord with this list at the commencement of the lease and whenever the list is amended.
- 11.2.2 The Tenant must not change the locks at the Premises without the Landlord's approval

12 LICENCES

- 12.1 The Tenant must obtain the prior written consent of the Landlord before applying for any licence, permit or consent for the Premises or the Tenant's use of the Premises.
- 12.2 If the Tenant obtains any licence, permit or consent pursuant to clause 12.1, the Tenant must immediately provide a copy of such licence, permit or consent to the Landlord.

13 TENANT'S OBLIGATIONS CONCERNING INSURANCE

13.1 Tenant to maintain insurance

The Tenant must take out and maintain insurance for:

- 13.1.1 public liability in the name of the Tenant, and noting the interest of the Landlord, for an amount of not less than the amount set out in item 14 of Schedule 1 in respect of any single occurrence. This policy must indemnify the Landlord against all claims of any kind arising from any act, omission or neglect by the Tenant or any of the Tenant's agents;
- 13.1.2 the Tenant's Property, contents and any fitout of the Premises against loss, damage or destruction by any cause;
- 13.1.3 employers' liability, workers' compensation and/or Workcover which covers any damage, loss or liability suffered or incurred by any person engaged by the Tenant arising by virtue of any statute relating to workers' or accident compensation or employers' liability or at common law; and
- 13.1.4 any other insurances in connection with the Premises which the Landlord may reasonably require

AND the Tenant must produce to the Landlord copies of all these insurance policies and evidence that they are in force within 7 days of the Commencement Date, on each anniversary of the Commencement Date and at any other time upon request by the Landlord.

13.2 Policy requirements

The insurance policies under clause 13.1 must contain terms and conditions approved by the Landlord and be taken out with an insurer approved by the Landlord (which approval may not be unreasonably withheld)

13.3 Tenant not to prejudice insurance

The Tenant must not do anything on the Premises or otherwise which:

13.3.1 may cause any insurance policy (taken out under this lease or otherwise) to become void or voidable; or

13.3.2 may cause any claim on any insurance policy (taken out under this lease or otherwise) being rejected or a premium to be increased.

13.4 Compliance with insurer's requirements

The Tenant must comply with the requirements of any insurer under any insurance policy for the Premises or Building or property in the Premises (whether taken out under this lease or otherwise).

13.5 Where premium increased

If the Tenant causes an increase in any premium payable by the Landlord for any insurance effected by the Landlord for the Premises or Building or property in the Premises (whether taken out under this lease or otherwise), the Tenant must pay the Landlord, on request, the increase in the premium.

13.6 Tenant's Master Policy

Despite clauses 13.1 and 13.2, if the Tenant is Nutrien Ag Solutions Limited ACN 008 743 217 or any **Related Body Corporate** or any **Related Entity** of or to it (within the meaning of those terms in the Corporations Act), or any Corporation in the Nutrien group of Corporations, the production to the Landlord of a certificate of currency of the group or master insurance policy effected by the Tenant noting the interest of the Landlord will be deemed to be compliance by the Tenant with all its obligations in clauses 13.1 and 13.2.

14 MAINTENANCE OF PREMISES AND ALTERATIONS

14.1 Tenant to maintain

14.1.1 Except for fair wear and tear and subject to clause 14.4, the Tenant must at its own cost keep the Premises and the Landlord's Property (including all trees, gardens and vegetation at the Premises):

- (a) in the same condition as at the Start Of The Lease (and, where Works are completed under clause 14.6, the Tenant must maintain those Works in good and well-maintained condition), excluding all capital and structural repairs, unless such capital and structural repairs are due to the negligent act of omission of the Tenant;
- (b) properly repaired and maintained, using good quality materials, and in compliance with all laws and all requirements of authorities; and
- (c) properly cleaned (including the interior and exterior surfaces of any windows and doors) and the Tenant must:
 - (1) arrange for all refuse to be regularly removed from the Premises;
 - (2) take all proper precautions to keep the Premises free of refuse, rodents and vermin. If required by the Landlord, the Tenant must engage pest exterminators for that purpose;
 - (3) store refuse before removal so that it cannot be seen from outside the Premises; and

- (4) comply with the Landlord's reasonable directions concerning cleaning and disposal of refuse.

14.1.2 If required by Item 18 of Schedule 1, and in accordance with the requirements in Item 18 of Schedule 1, the Landlord will prepare and the parties will promptly sign a condition report which details and confirms the condition of the Premises and Landlord's Property as at the Commencement Date.

14.2 Landlord may carry out maintenance

The Tenant must carry out repairs or maintenance within 14 days of being served with a written notice of any defect or lack of repair or maintenance which the Tenant is obliged to fix under this Lease. If the Tenant does not comply with the notice within 14 days, the Landlord may carry out the repairs and the Tenant must pay the cost to the Landlord on demand.

14.3 Tenant to report damage

The Tenant must:

- 14.3.1 promptly report to the Landlord any damage to or defect in the Premises, Landlord's Property, or Building or any defective windows, lights, doors, locks and fastenings; and
- 14.3.2 promptly give written notice to the Landlord of any hazards within the Premises or the Building or the service by any authority of a notice or order affecting the Premises or Building.

14.4 Limitations on obligations

Despite any term of this Lease, the Tenant is not obliged to:

- 14.4.1 carry out repairs to the Premises that are the responsibility of the Landlord under the Act, if the Act applies; or
- 14.4.2 repair damage for which the Tenant is not responsible under this Lease, unless the Landlord loses the benefit of any insurance for that damage because of any act, omission or default by the Tenant or any of the Tenant's Agents.

14.5 Essential Safety Measures - Tenant's obligations

The Tenant must:

- 14.5.1 not interfere with, alter or limit the operation or effectiveness of any Essential Safety Measure;
- 14.5.2 immediately advise the Landlord and confirm in writing any alteration, breakdown or theft of or damage to any Essential Safety Measure;
- 14.5.3 allow the Landlord or its appointed agent to enter the Premises at any reasonable time on the provision of reasonable notice (except in the case of an emergency when the requirement for notice shall be waived) to inspect and maintain any Essential Safety Measure;
- 14.5.4 ensure that display of the annual essential safety measures report prepared in accordance with the Regulations, and any determination and

record of maintenance checks, service and repair work which are kept on the Premises pursuant to the Regulations, are retained on display at the Premises;

- 14.5.5 provide to the Landlord all documentation required in order to establish and maintain records of maintenance checks, services and repair work for any Essential Safety Measure; and
- 14.5.6 advise the Landlord immediately if the Tenant receives notice (whether written or oral) of any proposed inspection of the Premises by a municipal building inspector or chief officer pursuant to the Regulations.

14.6 Alterations to Premises

- 14.6.1 The Tenant must not, without first obtaining the written approval of the Landlord (which may be given or withheld at the Landlord's discretion and given or withheld with conditions):
 - (a) make any alterations, additions or improvements (whether structural or otherwise);
 - (b) install any equipment or exterior fixtures or fittings (including blinds or awnings) to or on the Premises;
 - (c) carry out any demolition, landscaping or earthworks on the Premises;
 - (d) fix or place signs, notices or advertisements which are visible from outside the Premises in any place in or near the Premises; or
 - (e) interfere with or alter any Essential Safety Measure, ("Works").
- 14.6.2 In considering whether or not to approve any Works under clause 14.6.1:
 - (a) The Landlord may employ external consultants for the purpose of considering any proposed Works and supervising the Works, and the Tenant must cooperate with and allow the Landlord's consultants access to the Premises for these purpose;
 - (b) The Landlord may require the Tenant to:
 - (1) deliver three copies of all drawings and specifications and a program of Works to the Landlord in such format, including electronic format, as the Landlord may require;
 - (2) make all variations to the drawings, specifications and program of Works reasonably required by the Landlord and deliver further copies to the Landlord in such format, including electronic format, as the Landlord may require;
 - (3) deliver a detailed quote for the cost of completing the Works (including the cost of all materials to be used) certified by a qualified consultant to be a bona fide estimate of the cost of completing the Works;
 - (4) obtain all approvals and permits necessary for the Works;

- (5) deliver one copy of those approvals and permits to the Landlord;
- (6) give the Landlord the name of:
 - (A) each contractor and tradesman the Tenant intends to employ to carry out the Works; and
 - (B) the person who will supervise the Works; and
- (7) reimburse the Landlord the cost of effecting and maintaining the appropriate insurances in respect of the Works unless the Landlord agrees for the Tenant to effect and maintain that insurance.

14.6.3 The Tenant must:

- (a) carry out and complete all Works within the Premises promptly and in a proper and workmanlike manner at the Tenant's cost and:
 - (1) in accordance with the drawings, specifications and program of Works approved by the Landlord;
 - (2) in compliance with any conditions imposed by the Landlord;
 - (3) using qualified tradespersons; and
 - (4) in compliance with all laws and all requirements of authorities;
- (b) obey and cause its contractors and tradesmen to obey the Landlord's reasonable directions concerning the Works;
- (c) if the Works affect the electrical, water or gas supplies, or the switchboard capacity, ensure that these supplies are adequately maintained, and restore them to proper working order;
- (d) immediately give the Landlord a copy of any notice received from any party in relation to the Works; and
- (e) not interfere and ensure that the Tenant's contractors and tradesmen do not interfere with other occupiers or users of the Building.

14.6.4 On completion of the Works, the Tenant must promptly:

- (a) remove from the Premises all unused building materials, equipment and debris as directed by the Landlord;
- (b) if required, obtain an occupancy permit or compliance from the relevant authority for the Works and deliver a copy to the Landlord; and
- (c) in the case of alterations or additions, deliver to the Landlord a complete set of drawings and specifications showing the alterations or additions as built, in such format, including electronic format, as the Landlord may require.

- 14.6.5 The Tenant must promptly pay when requested all reasonable costs incurred by:
- (a) the Landlord in employing external consultants pursuant to clause 14.6.2(a); and
 - (b) the Landlord in remedying any breach by the Tenant of its obligations under this clause 14.6.

15 ASSIGNMENT AND SUBLETTING

15.1 Consent of Landlord

The Tenant must not:

- 15.1.1 if the Act applies to this lease, assign its rights or powers as tenant under this lease without the Landlord's prior written consent which consent shall not be unreasonably withheld provided the provisions of clause 15.2 are complied with;
- 15.1.2 if the Act does not apply to this lease, assign its rights or powers as tenant under this lease without the Landlord's prior written consent which consent may be given, given subject to conditions, or withheld at the Landlord's absolute discretion;
- 15.1.3 sub-let, licence or part with possession or share the Premises without the Landlord's prior written consent which consent may be given, given subject to conditions, or withheld at the Landlord's absolute discretion; or
- 15.1.4 create or allow any mortgage, interest, easement or other encumbrance which would affect the Tenant's interest in the Premises or its rights as tenant under this lease.

15.2 Where consent not to be unreasonably withheld

If the Act applies to this lease, the Landlord will not unreasonably withhold its consent to an assignment if the Tenant has:

- 15.2.1 requested an assignment by notice in writing to the Landlord;
- 15.2.2 given the name and address of the proposed assignee ("**New Tenant**") to the Landlord;
- 15.2.3 remedied any Default Event which exists at the time of the proposed assignment;
- 15.2.4 provided the Landlord with a copy of the proposed document of assignment, in a form approved by the Landlord acting reasonably, and procured the New Tenant to execute that document;
- 15.2.5 proved to the satisfaction of the Landlord that the New Tenant is respectable and responsible and has the financial resources, experience and ability to comply with all of the Tenant's obligations under this lease;
- 15.2.6 ensured that the New Tenant does not propose using the Premises in a way which is not permitted under this lease;

- 15.2.7 provided the New Tenant with a copy of any Disclosure Statement given by the Landlord to the Tenant and details of any changes to the information in that Disclosure Statement of which the Tenant is aware or could reasonably be expected to be aware;
- 15.2.8 agreed to pay the Landlord all reasonable costs (including legal costs and disbursements) incurred by the Landlord in connection with the proposed assignment including all enquiries made by the Landlord relating to the New Tenant; and
- 15.2.9 if the New Tenant is a corporation, its directors and principal shareholders have, if required by the Landlord, guaranteed to the Landlord the compliance by the New Tenant of its obligations under this lease.

15.3 Deemed assignment

- 15.3.1 Where the Tenant is a corporation, any circumstances which result in any person or group of persons who:
 - (a) control the composition of the board of directors; or
 - (b) beneficially hold more than one half of the issued share capital,
 being different from the person or persons who were in that position at the Commencement Date, will be deemed to be an assignment of this lease which will require the prior written consent of the Landlord.
- 15.3.2 Clause 15.3.1 will not apply where the Tenant is a company, the voting shares of which are listed on Australian Stock Exchange Limited or a wholly owned subsidiary of such a company, and where a change of control is caused only by a transfer of shares in the listed company.

16 DISCRIMINATION

The Tenant must comply with any responsibilities and obligations under the *Disability Discrimination Act 1992* (Cth) and the *Equal Opportunity Act 2010* (Vic) and any other relevant legislation pertaining to people with a disability with respect to the use of the Premises, and ensure that it uses the Premises so as not to be inconsistent with the Landlord's disability action plan, as notified to the Tenant from time to time.

17 OCCUPATIONAL HEALTH AND SAFETY

The Tenant must:

- 17.1 conduct the Tenant's operations from the Premises in a safe and healthy manner so as to ensure that there is minimal exposure to hazards at the Premises;
- 17.2 comply with the *Occupational Health and Safety Act 2004* and all regulations and codes of practice made under that Act as well as any other relevant Australian standards in relation to the Tenant's operations at the Premises;
- 17.3 remedy any hazards or risks identified as a result of the risk assessment conducted by the Tenant or as otherwise required by the Landlord in writing; and
- 17.4 allow the Landlord access to the Premises at any time upon reasonable notice to conduct safety audits of the Premises.

18 TENANT'S OBLIGATIONS AT END OF LEASE

18.1 Vacating the Premises

At the end of this lease, the Tenant must:

- 18.1.1 vacate the Premises and leave the Premises clean and in the condition required by this lease;
- 18.1.2 if required by the Landlord and to the extent required by the Landlord (at its sole discretion):
 - (a) remove any buildings, fixtures or improvements to the Premises that form part of the Tenant's Property or Works carried out under clause 14.6.1;
 - (b) remove any signs, notices or advertisements placed in or near the Premises and any below ground and above ground electricity equipment or other installations; and
 - (c) restore the Land (both at a surface level and below ground) to its state as at the Start Of The Lease to the reasonable satisfaction of the Landlord, including the remediation of any contamination of the Land to the reasonable satisfaction of the Landlord;
- 18.1.3 remove all of the Tenant's Property from the Premises (except any buildings, fixtures, improvements or other items, the removal of which is to be dealt with under clause 18.1.2);
- 18.1.4 repair any damage caused by the Tenant complying with its obligations under this clause (including any necessary repainting of walls); and
- 18.1.5 deliver to the Landlord all keys and passes giving access to the Premises which are held by the Tenant or any of the Tenant's Agents, whether or not they were supplied by the Landlord.

18.2 Tenant's Property left on Premises

- 18.2.1 If the Landlord does not require the Tenant to remove any buildings, fixtures or improvements under clause 18.1.2, such buildings, fixtures and improvements will become the property of the Landlord at the end of this lease.
- 18.2.2 Where the Landlord requires any items of Tenant's Property that are buildings, fixtures or improvements to remain in or on the Premises pursuant to clause 18.1.2, the parties agree that those items of Tenant's Property are deemed to be a Fixture for the purpose of the PPSA.
- 18.2.3 Any of the Tenant's Property which is required to be removed under clause 18.1 that is left on the Premises 14 days after the early determination or expiry of this lease may be dealt with or disposed of by the Landlord as the Landlord deems appropriate. Any costs the Landlord incurs in removing any of the Tenant's Property must be reimbursed by the Tenant to the Landlord on demand. The parties intend that this clause operates in relation to the Tenant's Property in place of any legislation that might otherwise apply to goods remaining on the Premises.

- 18.2.4 While and for so long as it is necessary for the Landlord to take action under clause 18.2.3, the Tenant must continue to pay the Rent, the Outgoings and insurance (under clause 4.2) and Services (under clause 4.3).

19 LANDLORD'S OBLIGATIONS

Provided the Tenant complies with the terms of this lease, and subject to the terms of this lease, the Tenant may peacefully enjoy the Premises during the Term without interruption by the Landlord.

20 LANDLORD'S RIGHTS

20.1 Right to enter

The Landlord or any person authorised by the Landlord may enter the Premises at reasonable times:

- 20.1.1 to inspect, maintain, repair or alter the Premises, subject to reasonable notice; and
- 20.1.2 to carry out any building works required by the Landlord or any relevant authority, subject to 1 months' prior written notice being given to the Tenant.

If there is an emergency, the Landlord and any person authorised by the Landlord may enter the Premises at any time without notice.

21 DEFAULT BY TENANT

21.1 Default Event

A Default Event occurs if:

- 21.1.1 the Tenant does not pay any money as required under this lease whether or not demand has been made;
- 21.1.2 the Tenant does not comply with any other obligation under this lease;
- 21.1.3 a judgement or order for \$10,000.00 or more is enforced or becomes enforceable against the Tenant's interest in this lease or the Tenant's Property;
- 21.1.4 the Tenant is a corporate body other than a public company listed on Australian Stock Exchange Limited and:
 - (a) an order is made or resolution is passed to wind up the Tenant except for reconstruction or amalgamation;
 - (b) the Tenant goes into liquidation;
 - (c) the Tenant has a receiver (including a provisional receiver) or a receiver and manager of any of its assets, or an administrator appointed; or
 - (d) the Tenant proposes a re-organisation, moratorium or other administration involving all or any class of its creditors except for reconstruction or amalgamation;

- 21.1.5 the Tenant being an individual:
 - (a) becomes bankrupt; or
 - (b) takes, or tries to take advantage of, Part X of the *Bankruptcy Act 1966* (Cth); or
- 21.1.6 the Tenant enters into a scheme of arrangement or composition with, or assignment for the benefit of, any of the Tenant's creditors;
- 21.1.7 any Guarantor is a corporate body and any of the events referred to in clause 21.1.4 occurs in relation to that Guarantor; or
- 21.1.8 any Guarantor is an individual and any of the events referred to in clause 21.1.5 occurs in relation to that Guarantor.

21.2 Landlord's right to end lease

If a Default Event occurs, the Landlord may:

- 21.2.1 end this lease by re-entering the Premises without notice or, if required by law, with notice; or
- 21.2.2 end this lease by notice to the Tenant.

21.3 Notice under Property Law Act

For any breach of this lease to which section 146(1) of the *Property Law Act 1958* applies, 14 days after service of a notice under the section is fixed as the time within which:

- 21.3.1 the Tenant must remedy the breach if it is capable of remedy; and
- 21.3.2 make reasonable compensation in money to the Landlord's satisfaction for the breach.

21.4 Rights retained

If this lease is ended by the Landlord, the Landlord retains the right to sue the Tenant for all unpaid moneys or for damages for breaches of the Tenant's obligations under this lease. For the purpose of assessing damages to the Landlord, the benefit of the Tenant's performance of this lease to the Landlord must be calculated on the basis that this lease continues in force until the Expiry Date.

22 ESSENTIAL TERMS

22.1 Essential terms

The following Tenant's obligations are essential terms of this lease:

- 22.1.1 the obligation to pay money; and
- 22.1.2 without limitation, the obligations under clause 4 (Payments), 6 (Goods and Services Tax), 9 (Use of Premises), 11 (Security), 12 (Licences), 13 (Tenant's obligations concerning insurance), 14 (Maintenance of Premises and Alterations), 15 (Assignment and subletting), 17 (Occupational Health and Safety), and the special conditions in Item 19 of the Schedule.

However, this clause does not prevent any other obligation under this lease being an essential term.

22.2 Breach is repudiation

A breach by the Tenant of an essential term is taken to be a repudiation by the Tenant of all its obligations under this lease.

23 MITIGATION OF DAMAGES

23.1 Landlord must mitigate damages

If the Tenant vacates the Premises whether with or without the Landlord's consent, the Landlord must take reasonable steps to mitigate its loss and to endeavour to re-lease the Premises at a reasonable rent and on reasonable terms.

23.2 Assessment of damages

The Landlord's entitlement to damages will be assessed on the basis that the Landlord has observed the obligation to mitigate damages. The Landlord's conduct taken in exercising this duty to mitigate damages will not of itself constitute acceptance of the Tenant's breach or repudiation or a surrender by operation of law.

24 DAMAGE TO PREMISES

24.1 Rights of Landlord

If the Premises are damaged so that they cannot be used for the Permitted Use, the Landlord may, on written notice to the Tenant to be served within 30 days from the date of the destruction or damage, choose to either end this lease or reinstate the Premises.

24.2 Where Landlord's notice not given

If the Landlord does not serve any notice under clause 24.1 within the required time:

24.2.1 if the Premises are partly, but not substantially destroyed, then subject to clause 24.5 the Landlord must reinstate the Premises as soon as reasonably practicable; and

24.2.2 if the Premises are wholly or substantially destroyed, the Landlord is not obliged to reinstate the Premises, but (subject to clause 24.5) the Tenant may end this lease by written notice to the Landlord. However, if before the Tenant serves any such notice the Landlord gives the Tenant notice of its decision to reinstate the Premises, the Tenant will no longer have this right.

24.3 Delay in reinstatement

If the Landlord is obliged to or chooses to reinstate the Premises, and the reinstatement does not start within 3 months or is not completed within 18 months of the date of the destruction or damage, then either the Landlord or the Tenant (subject

to clause 24.5) may end this lease by giving the other written notice at any time before the reinstatement is completed.

24.4 Abatement of Rent

Subject to clause 24.5, from the date of the destruction or damage until the Premises are again completely fit for the Permitted Use, a fair portion of the Rent as determined by the Landlord having regard to the nature and extent of the damage, will abate.

24.5 Refusal of insurance claim due to Tenant's conduct

If payment of an insurance claim in respect of any damage or destruction is refused because of an act or omission by the Tenant or any of the Tenant's Agents:

24.5.1 the Tenant is not entitled to any suspension of Rent under clause 24.4 or to end this lease under clause 24.2.2 or clause 24.3; and

24.5.2 the Landlord is not obliged to reinstate the Premises under clause 24.2.1.

24.6 No compensation to Tenant

The Landlord is not liable to pay the Tenant any compensation if any part of the Premises is destroyed or damaged or if this lease is ended under this clause.

25 PERSONAL PROPERTY SECURITIES ACT

25.1 Expressions used in this clause that are defined in the PPSA have the meanings given to them in the PPSA.

25.2 The Landlord may, at any time, register a financing statement for any security interest arising out of or evidenced by this lease over any or all of:

25.2.1 the Landlord's Property (including property deemed to be Landlord's Property at the end of this Lease);

25.2.2 any cash security deposit provided under this lease; and

25.2.3 any Tenant's Property left on the Premises after the end of this lease,

that are personal property, and must identify the property affected by the financing statement in the free text field of the statement. The Tenant waives the right to receive notice under section 157(1) of the PPSA.

25.3 When this lease:

25.3.1 ends and the Tenant has vacated the Premises and performed all of its obligations under it; or

25.3.2 is transferred,

the Landlord must register a financing change statement with respect to any security interest for which the Landlord has registered a financing statement other than those to which clause 25.2.2 relates.

25.4 The Tenant must sign any documents and do anything necessary to enable the Landlord to register the statements referred to in clause 25.3 and to enforce its rights and perform its obligations under this clause and the PPSA. In particular, if the Tenant is a natural person, the Tenant must provide the Landlord with the Tenant's date of

birth and a certified copy of a Victorian driver's licence (or other evidence acceptable to the Landlord) to confirm the Tenant's date of birth. The Landlord must keep the Tenant's date of birth and any evidence provided to confirm it secure and confidential.

- 25.5 The Tenant must not register, or permit to be registered, a financing statement in favour of any person other than the Landlord, for any security deposit (if provided by the Tenant) or any of the Landlord's Property.
- 25.6 The Tenant must pay the Landlord's reasonable costs in respect of anything done or attempted by the Landlord in the exercise of its rights or performance of its obligations under this clause 25 or the PPSA.
- 25.7 In accordance with section 275(6)(a) of the PPSA, the parties agree that neither of them will disclose information of the kind mentioned in subsection 275(1).
- 25.8 Subject to any requirement to the contrary in the PPSA, notices under this clause or the PPSA may be served in accordance with clause 43 of this lease.

26 RESUMPTION OF PREMISES

If any part of the Premises is resumed by any authority and the Premises becomes unfit for the Permitted Use, then either the Landlord or the Tenant may end this lease by written notice to the other. The Landlord is not liable to pay the Tenant any compensation if any part of the Premises is resumed by any authority.

27 HOLDING OVER

If the Tenant remains in possession of the Premises without objection by the Landlord after the end of the Term:

- 27.1 the Tenant, without any need for written notice of any kind, is a monthly tenant on the conditions in this lease, modified so as to apply to a monthly tenancy;
- 27.2 either party may end the tenancy by giving one month's written notice to the other at any time;
- 27.3 the monthly rent starts at an amount equal to the annual Rent which the Tenant was paying immediately before the Term ended divided by 12 unless a different rent has been agreed upon; and
- 27.4 the Landlord may increase the monthly rent at any time by giving the Tenant one month's written notice.

28 OPTION FOR FURTHER TERM

28.1 Conditions for exercise of option

The Landlord must renew this lease, for the further term or terms stated in item 15 of Schedule 1 if:

- 28.1.1 there is no unremedied breach of this lease by the Tenant of which the Landlord has given the Tenant written notice;
- 28.1.2 the Tenant has not persistently committed breaches of this lease of which the Landlord has given notice during the Term; and

- 28.1.3 the Tenant has requested the renewal in writing not more than 6 months nor less than 3 months before the end of the Term. The latest date for exercising the option is stated in item 16 of Schedule 1.

28.2 Conditions for renewed lease

The renewed lease:

- 28.2.1 starts on the day after this lease ends;
- 28.2.2 has a starting rent as set out in item 11 of Schedule 1; and
- 28.2.3 must contain the same terms as this lease but with no option for renewal after the last option for a further term stated in item 15 of Schedule 1 has been exercised.

29 RELEASE AND INDEMNITY

29.1 Tenant's risk

The Tenant occupies and uses the Premises, Building and Land at the Tenant's own risk.

29.2 Release and indemnity

The Tenant releases and indemnifies the Landlord and its employees, agents and contractors from all legal liability arising from the use or occupation of the Premises, Landlord's Property, Building and Land by the Tenant or any of the Tenant's Agents, including:

- 29.2.1 any claim made by any person for injury, loss or damage arising in any manner;
- 29.2.2 any loss or damage to any property belonging to the Tenant or other persons located on or outside the Premises caused by the Tenant or the Tenant's Agents; and
- 29.2.3 any loss, damage, injury or illness sustained or incurred by the Tenant or any of the Tenant's Agents.

29.3 Restrictions on release and indemnity

The releases and indemnities in clause 29.2 do not apply to:

- 29.3.1 any legal liability of the Landlord that arises from any unlawful act or omission of or any misconduct by the Landlord or its employees, officers, agents or contractors; or
- 29.3.2 any breach of this lease by the Landlord.

29.4 No claim for compensation

The Tenant and any other person claiming rights under this lease releases the Landlord from any claim for compensation for:

- 29.4.1 the failure of any equipment or machinery in the Premises; and

- 29.4.2 any damage or loss caused or arising out of the interruption of any services supplied to the Premises including but not limited to the supply of gas, electricity or water.

30 GUARANTEE AND INDEMNITY

30.1 Guarantor's obligations

In consideration of the Landlord entering into this lease with the Tenant at the Guarantor's request, the Guarantor:

- 30.1.1 guarantees that the Tenant will perform all its obligations under this lease, any renewed lease, and during any period of holding over;
- 30.1.2 must pay the Landlord on demand any money owing to the Landlord by the Tenant; and
- 30.1.3 indemnifies the Landlord against all loss resulting from the Landlord having entered into this lease, whether from the Tenant's breach of any provision of this lease, or from this lease being or becoming unenforceable against the Tenant.

30.2 Liability not affected

The Guarantor's liability is not affected by:

- 30.2.1 the Landlord granting the Tenant or any Guarantor any time or other indulgence;
- 30.2.2 the Landlord agreeing not to sue the Tenant or any Guarantor;
- 30.2.3 any assignment (whether by the Landlord or the Tenant), sub-lease or variation of this lease;
- 30.2.4 any provision of this lease being or being found to be unenforceable;
- 30.2.5 the renewal of this lease; or
- 30.2.6 this lease not being signed, or not being signed correctly, by any one Guarantor.

30.3 Covenants

The Guarantor agrees:

- 30.3.1 not to seek to recover any money from the Tenant by way of reimbursement for payments made by the Guarantor to the Landlord until the Landlord has been paid in full;
- 30.3.2 not to prove, claim or exercise voting rights if a liquidator, provisional liquidator, administrator or trustee in bankruptcy is appointed in respect of the Tenant for any amount which the Landlord has demanded from the Guarantor until the Landlord has been paid in full; and
- 30.3.3 to pay the Landlord any money which the Landlord is required to refund to the Tenant's liquidator or trustee in bankruptcy as preferential payments received from the Tenant.

30.4 Reinstatement of guarantee

If any payment or other transaction in connection with this lease or this clause 30 is void, voidable, unenforceable or defective or claimed to be so and that claim is upheld, then:

- 30.4.1 the liability of the Guarantor is to be what it would have been if the payment or other transaction had not been made; and
- 30.4.2 immediately the Landlord requests it, the Guarantor must do everything necessary to put the Landlord back into the position it would have been in if the payment or other transaction had not been made.

31 LANDLORD'S EXERCISE OF RIGHTS**31.1 Landlord has discretion**

The Landlord may exercise a right, power or remedy at its discretion and separately or concurrently with another right, power or remedy.

31.2 Partial exercise

A single or partial exercise of a right, power or remedy by the Landlord does not prevent a further exercise of that right or an exercise of any other right, power or remedy.

31.3 Right not prejudiced by delay etc

Failure by the Landlord to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

32 DISPUTES**32.1 Application**

32.1.1 Unless the Act applies to this lease, this clause 32 applies to all disputes under this lease except disputes:

- (a) about unpaid rent and interest charged on it;
- (b) about review of rent; or
- (c) to be resolved in another way prescribed by any other provision of this lease.

32.1.2 If the Act applies to this lease, all disputes under this lease are to be determined according to the requirements of the Act.

32.2 Dispute

If a dispute arises out of or relates to this lease (including any dispute as to breach or termination of this lease), a party may not commence any court proceedings relating to the dispute unless it has complied with this clause, except where the party seeks urgent interlocutory relief.

32.3 Mediation procedure

If a dispute or disagreement arises in relation to any matter under this lease, the parties must endeavour to resolve the matter in accordance with the following mediation procedure:

- 32.3.1 a party may start mediation by serving notice on the other party;
- 32.3.2 the notice must state that a dispute has arisen and identify what the dispute is;
- 32.3.3 the parties must jointly request appointment of a mediator. If the parties fail to agree on the appointment within 5 Business Days of service of the mediation notice, either party may apply to the President of the Law Institute of Victoria or the nominee of the President to appoint a mediator;
- 32.3.4 once the mediator has accepted the appointment, the parties must comply with the mediator's instructions; and
- 32.3.5 if the dispute is not resolved within 28 days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases.

A party is not bound to follow the procedures set out in this clause 32 where to do so means that a limitation period for a cause of action relevant to the issues in dispute will expire.

32.4 Charges

The mediator may fix the charges for the mediation which must be paid equally by the parties.

32.5 Settlement of dispute

If the dispute is settled, all parties must sign the terms of agreement and those terms are binding on the parties.

32.6 Confidential

The mediation is confidential and:

- 32.6.1 statements made by the mediator or the parties; and
- 32.6.2 discussions between the participants to the mediation, before, after or during the mediation, cannot be used in any legal proceedings.

32.7 Mediator to be released

It must be a term of the engagement of the mediator that the parties release the mediator from any claim of any nature relating to this lease.

32.8 Rules of natural justice do not apply

The mediator is not bound by the rules of natural justice and may discuss the dispute with a party in the absence of any other party.

32.9 Legal representation

Each party may be represented at the mediation by a legal practitioner or legal practitioners of its choice.

33 APPROVALS AND CONSENTS

33.1 Unless this lease provides otherwise, any consent or approval to be given by the Landlord may be given by the Landlord conditionally or unconditionally or withheld at the Landlord's absolute discretion. If conditions are imposed by the Landlord, the Tenant must comply with each condition imposed by the Landlord as if it were a provision of this lease.

33.2 Where under this lease the consent of the Landlord is required to be given, the consent can only be given by the Landlord acting in its capacity as a council under the *Local Government Act 1989* or *Local Government Act 2020* and the Tenant acknowledges that the consent is not given or deemed to be given by the Landlord acting as the responsible planning authority under the *Planning and Environment Act 1987* or by the issue of any building permit by the municipal building surveyor.

34 WAIVER AND VARIATION

A provision of or a right created under this lease may not be waived or varied except in writing signed by the party to be bound.

35 REMEDIES CUMULATIVE

The rights, powers and remedies provided in this lease are in addition to the rights, powers or remedies provided by law independently of this lease.

36 INDEMNITIES

Each indemnity in this lease is a continuing obligation, independent from the other obligations of the Tenant and survives the end of this lease.

37 EXCLUSION OF STATUTORY PROVISIONS

The covenants, powers and provisions implied in leases by section 67 of the *Transfer of Land Act 1958*, and section 144 of the *Property Law Act 1958*, do not apply to this lease.

38 PAYMENTS**38.1 No set-off**

The Tenant must make payments under this lease punctually without set-off, counterclaim or deduction.

38.2 No demand required

Unless this lease provides otherwise, the Landlord need not demand any amount payable by the Tenant under this lease.

39 FURTHER ASSURANCES

If the Landlord requests, the Tenant must:

39.1 execute, and cause its successors to execute, documents and do everything else necessary or appropriate to bind the Tenant and its successors under this lease; and

- 39.2 use its best endeavours to cause relevant third parties to do likewise to bind every person intended to be bound under this lease.

40 PRIOR BREACHES AND OBLIGATIONS

The ending of this lease does not affect:

- 40.1 the Landlord's rights in respect of a breach of this lease by the Tenant before the end of this lease; or
- 40.2 the Tenant's obligation to make any payment under this lease before the expiry or termination.

41 GOVERNING LAW

This lease is governed by the laws of Victoria.

42 WAIVER AND VARIATION

42.1 Writing required

A provision of or a right created under this lease may not be waived or varied except in writing signed by the party to be bound.

42.2 Limit of waiver

If the Landlord waives a provision of or a right created under or implied in this lease, that waiver does not extend to:

- 42.2.1 a breach by the Tenant of the same or any other provision; or
- 42.2.2 the future exercise by the Landlord of that right.

42.3 No deemed waiver

The acceptance of a payment under this lease will not be taken to constitute a waiver of any provision of or a right created under or implied in this lease, except the right to demand the payment of that amount of money.

43 NOTICES

43.1 Giving notice

Subject to clause 43.4, any notice (which includes, without limitation, a demand, request, consent, approval and any other communication made, required or authorised under this lease) given under this lease must be:

- 43.1.1 in writing and signed by or on behalf of the party giving it;
- 43.1.2 directed to the recipient's address or email address specified in item 17 of Schedule 1, as varied by any notice; and
- 43.1.3 hand delivered or sent by prepaid post to that address, or sent by email to that email address.

43.2 Receipt of notice

A notice given in accordance with clause 43.1 is taken to be received by the recipient:

- 43.2.1 if hand delivered, on delivery;
- 43.2.2 if sent by prepaid post, 2 Business Days after the date of posting; or
- 43.2.3 if sent by email, at the time of receipt as specified in section 13A of the *Electronic Transactions (Victoria) Act 2000*.

In all cases, a notice received after 5.00pm in the place of receipt or on a day that is not a Business Day is taken to be received by the recipient at 9.00am on the next Business Day.

43.3 Signing of notice

A notice given under this lease is sufficiently signed if:

- 43.3.1 in the case of a body corporate, it is signed by an Authorised Officer, director, secretary or other officer of, or a legal practitioner acting for, the body corporate; or
- 43.3.2 in the case of an individual, it is signed by the individual.

43.4 Other modes of service permitted

The provisions of this clause are in addition to any other mode of service permitted by law.

44 SEVERANCE

44.1 Preferred construction

The parties agree that a construction of this lease that results in all provisions being enforceable is to be preferred to any other construction.

44.2 Severance

If, despite the application of clause 44.1, a provision of this lease is illegal or unenforceable:

- 44.2.1 if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are omitted; and
- 44.2.2 in any other case, the whole provision is omitted,

and the remainder of this lease continues in force.

45 ACTS OF TENANT'S AGENTS

If this lease:

- 45.1 prohibits the Tenant from doing a thing, the Tenant must ensure that the Tenant's Agents do not do that thing, and not allow or cause any person to do that thing; or
- 45.2 requires the Tenant to do a thing, the Tenant must ensure that the Tenant's Agents do that thing.

46 ENTIRE AGREEMENT

The Tenant acknowledges that:

- 46.1 no information, representation or warranty by or on behalf of the Landlord was supplied or made concerning this lease with the intention or knowledge that it would be relied upon by the Tenant;
- 46.2 no information, representation or warranty has been relied upon; and
- 46.3 this lease constitutes the entire agreement between the parties concerning the Premises and supersedes all previous negotiations and agreements.

47 INTERPRETATION

In this lease, unless the contrary intention appears:

- 47.1 if there is an inconsistency between a special condition in item 19 of Schedule 1 and another provision of this lease, the special condition prevails;
- 47.2 the singular includes the plural and vice versa;
- 47.3 a reference to a document or instrument, including this lease, includes a reference to that document or instrument as novated, altered or replaced from time to time;
- 47.4 a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;
- 47.5 a reference to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
- 47.6 words importing one gender include other genders;
- 47.7 other grammatical forms of defined words or expressions have corresponding meanings;
- 47.8 a covenant, undertaking, representation, warranty, indemnity or agreement made or given by:
 - 47.8.1 two or more parties; or
 - 47.8.2 a party comprised of two or more persons,
 is made or given and binds those parties or persons jointly and severally;
- 47.9 a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- 47.10 a recital, schedule, annexure or description of the parties forms part of this lease;
- 47.11 if an act must be done on a specified day that is not a Business Day, the act must be done instead on the next Business Day;
- 47.12 if an act required to be done under this lease on a specified day is done after 5.00pm on that day in the time zone in which the act is performed, it is taken to be done on the following day;
- 47.13 all monetary amounts are in Australian dollars;
- 47.14 a party that is a trustee is bound both personally and in its capacity as trustee;

- 47.15 a reference to an authority, institution, association or body ("**original entity**") that has ceased to exist, been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity; and
- 47.16 headings and the provision of a table of contents are for convenience only and do not affect the interpretation of this lease.

SCHEDULE 1**Item**

- | | | |
|-----------|--|--|
| 1 | Tenant:
(Clause 1.32) | <i>Nutrien Ag Solutions Limited</i>

Level 10, 737 Bourke Street, Docklands Vic 3008 |
| 2 | Guarantor
(Clause 30) | Not Applicable |
| 3 | Commencement Date:
(Clause 1.3) | <i>1st November 2022</i> |
| 4 | Expiry Date:
(Clause 1.11) | <i>31st October 2025.....</i> |
| 5 | Term:
(Clause 1.36) | <i>3 years</i> |
| 6 | Permitted Use:
(Clause 1.19) | <i>Storage of supplies and goods</i> |
| 7 | Premises:
(Clause 1.21) | <i>18 Cromie Street Rupanyup land not including section in corner public toilets and Historic shed Powerhouse.</i> |
| 8 | Land:

(Clause 1.16) | <i>18 Cromie st Rupanyup 3388</i>

<i>PFI 53054581 plan number TP939114</i> |
| 9 | Rent:
(Clause 1.24) | <i>\$5,000 PER ANNUM (gross)</i> |
| 10 | Frequency of Payment of Rent:
(Clause 4.1.2) | <i>The Rent is payable annually in advance on or before the Commencement Date and thereafter on each anniversary of the Commencement Date.</i> |

Item

11	Rent Review: (Clauses 1.25 and 5 and clause 28.2.2)	Rent Review Date	Method of Review
		On each anniversary of the Commencement Date	Fixed
		On the commencement date of each further term (if any), being the starting rent referred to in clause 28.2.2	Market review
		On each anniversary of the commencement date of each further term (if any)	Fixed
12	Security Deposit (Clause 9)	Not applicable	
13	Tenant's Proportion of Outgoings: (Clause 1.35)	13.1	In relation to Outgoings relating to the Premises only and capable of separate assessment: 100%.
		13.2	In relation to all other Outgoings not referred to in 13.1 the proportion that the Lettable Area of the Premises bears to the Lettable Area of the Land or the building upon which the Outgoings are assessed.
14	Amount of public liability insurance: (Clause 13.1.1)	\$20 million or such other greater amount reasonably required by the Landlord from time to time.	
15	Options: (Clause 28.1)	2 options for a further term of 2 years	
16	Last date for exercise of Option: (Clause 28.1.3)	3 months prior to the Expiry Date, being 31 st July 2025.....	
17	Addresses of parties: (Clause 43.1)	Landlord's address:	
		34 Lyle Street, Warracknabeal VIC 3393	
		Email address for Landlord:	
		info@yarriambiack.vic.gov.au	

Item**Tenant's address:**

Level 10,737 Bourke st Docklands Vic 3008.

Email address for Tenant:

lan.Jansen@nutrien.com.au

18 Condition Report (Clause 14.1.2)

The Landlord will prepare, and the parties will sign, a condition report which details and confirms the condition of the Premises as at the Commencement Date.

**19 Special conditions:
(Clauses 2.1.3 and 47.1)**

1 Retail Leases Act 2003

The Landlord and Tenant acknowledge and agree that:

- (a) the Act applies to this lease as at the Commencement Date.
- (b) the Landlord has delivered to the Tenant a copy of this lease, the Disclosure Statement, and Information Brochure as and in the form required by the Act; and
- (c) the Tenant warrants that it has made enquiries and is satisfied by the matters disclosed in the Disclosure Statement.

2 Repairs and Maintenance

- (a) Despite clause 14.6.1, the Tenant is not required to obtain the Landlord's consent to make any cosmetic or non-structural alterations to the Premises.
- (b) The Landlord has rectified the uneven surface and draining on the site. The Tenant agreed to pay for the gravel and the

Item

Landlord agreed to provide the labour and plant to undertake the works.

- (c) The Tenant is to install fencing to the leased area, as required.

3 Hours of Use

Business hours of Nutrien Ag Rupanyup only

4

- (a) The Premises must only be used during the following hours, unless prior consent is obtained from the Landlord:

- (i) 8am to 5:30pm

- (ii) or otherwise such other times as agreed to by the Landlord in writing;

subject to the requirements of all applicable laws, permits and licences.

5 Gross Rent

- (a) The Rent in Item 9 of Schedule 1 is inclusive of all Outgoings and insurance payable under clause 4.2.
- (b) The Rent in Item 9 of Schedule 1 is inclusive of all costs payable for services under clause 4.3.

SCHEDULE 2

PLAN



SCHEDULE 3
TENANT'S PROPERTY

11 Any Works carried out under clause 14.6

Tenant will fix security fencing in place along Walter st Boundary at own costs and to replace with original if landlord requires at end of lease period.

SCHEDULE 4

LANDLORD'S PROPERTY

Landlord maintains historic shed Powerhouse and Public toilet at its own costs. Marked with red cross
All other sheds on site map have been removed for safety reasons at councils' costs.

EXECUTED AS A DEED**Landlord:**

THE COMMON SEAL of
YARRIAMBICK SHIRE COUNCIL was
 hereunto affixed on the23rd. day of
 . December 2022
 in the presence of:



..... Chief Executive Officer

Kylie Zanker (Jan 16, 2023 08:44 GMT+11)

..... Councillor

..... Councillor

Tenant:

SIGNED SEALED AND DELIVERED by)
)
 for **NUTRIEN AG SOLUTIONS LIMITED**)
)
 under power of attorney dated 17)
 November 2020 in the presence of:)

Signature of attorney

Signature of witness

Name of witness (please print)

Ian Jansen
 National Manager - Property
 Nutrien Ag Solutions

SIGNED SEALED AND DELIVERED by)
)
 for **NUTRIEN AG SOLUTIONS LIMITED**)
)
 under power of attorney dated 17)
 November 2020 in the presence of:)

Signature of attorney

Signature of witness

Name of witness (please print)

Marc Nethercot
 Company Secretary

13012023090732-0001

Final Audit Report

2023-01-17

Created:	2023-01-12
By:	Belinda Penny (BPenny@Yarriambiack.vic.gov.au)
Status:	Signed
Transaction ID:	CBJCHBCAABAAc2Q8Y4g1c81yho96C1JcZdXWby90xkXS

"13012023090732-0001" History

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-  Document emailed to kzanker@yarriambiack.vic.gov.au for signature
2023-01-12 - 10:34:16 PM GMT
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-  Signer kzanker@yarriambiack.vic.gov.au entered name at signing as Kylie Zanker
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Signature Date: 2023-01-15 - 9:44:16 PM GMT - Time Source: server- IP address: 49.176.155.49
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Signature Date: 2023-01-17 - 9:44:51 PM GMT - Time Source: server- IP address: 103.50.34.166
-  Agreement completed.
2023-01-17 - 9:44:51 PM GMT