

Lease

Premises: **[insert address]**

Between the

**Secretary to the Department of Human Services
("Landlord")**

and

***[insert name of Community Service Organisation]*
("Tenant")**

Table of Contents

Schedule	3
Execution by the Parties	5
1. Definitions and Interpretation	7
2. Lease of Premises	9
3. Duration of the Lease.....	10
4. Rent and Other Payments to be made by the Tenant.....	10
5. Assignment and Sub-letting.....	10
6. Use of Premises.....	10
7. Insurance.....	10
8. Release and Indemnity by Tenant	12
9. Tenant's Repairs, Cleaning and Maintenance Obligations	12
10. Notices to be Given to Landlord.....	13
11. Not to Make Alterations	13
12. Other Obligations of the Tenant.....	14
13. Obligations of the Landlord	15
14. Tenant's Obligations on Expiry or End of Lease	16
15. Entry by Landlord	16
16. Termination of Lease	17
17. Damage to Premises.....	19
18. Dispute Resolution.....	20
19. GST	21
20. General	22
Annexure A	25

Schedule

- Item 1: Landlord:** The Secretary to the Department of Human Services, being a body corporate constituted under the *Health Act 1958* of 555 Collins Street, Melbourne Victoria 3000
- Item 2: Tenant:** *[Insert name of Community Service Organisation, including ACN] of [insert address of Tenant]*
- Item 4: Premises:
(Clause 2)** The *[whole or part]* of the property located at *[insert address]* being the land described in certificate of title volume *[insert volume]* folio *[insert folio]* and described in the plan attached to this Lease as Annexure A.
- Item 5: Term:
(Clause 3)** 5 years –.
- Item 6: Commencement Date:
(Clause 2)** 1 July 2006
- Item 7: Rent:
(Clause 4)** \$12.00 per annum exclusive of GST
- Time for payment:** Payable yearly in advance on demand
- Item 8: Permitted Use:
(Clause 6)** The Tenant shall use and occupy the Premises for the sole purpose of providing the accommodation and support services described the Service Agreement
- Item 9: Authorised Officers and
address for service:**
- Landlord
Authorised Officer: *[insert name]*
Regional Officer
Department of
Human Services
Address: *[insert address]*
Facsimile: *[insert number]*
- Tenant
Authorised Officer: *[insert name]*
Address: *[insert address]*
Facsimile: *[insert number]*
- Item 10: Service Agreement:** An agreement between the Landlord and the Tenant whereby the Tenant has agreed to provide accommodation and support services from the

Premises:

Item 11

**Public Liability
Insurance:**

Item 12

Special Condition

1.1 The Landlord acknowledges that while the Tenant is a tenant under this Lease, the Landlord will, at its cost, maintain public liability insurance in the name of the Tenant on terms acceptable to the Landlord at its absolute discretion.

1.2 The Tenant acknowledges that the insurance to be affected by the Landlord in accordance with this Special Condition does not relieve the Tenant of its obligation to affect other forms of insurance under clause 7.2 of this Lease.

Execution by the Parties

Executed by the Landlord

SIGNED by **LEANNE PRICE** as Director of)
Capital Management Branch as authorised)
representative for **SECRETARY TO THE**)
DEPARTMENT OF HUMAN SERVICES)
on the day of2006 in)
the presence of:)

.....
Signature of witness

.....
Name of witness (block letters)

.....
Occupation of witness (block letters)

.....
Address of witness (block letters)

.....
By executing this Agreement the signatory
warrants that the signatory is duly authorised to
execute this Agreement on behalf of
**SECRETARY TO THE DEPARTMENT OF
HUMAN SERVICES**

Executed by the Tenant

[insert Community Service Organisation's execution clause]

A

RECITALS

- (i) The Landlord is the Secretary to the Department of Human Services being a body corporate constituted under the *Health Act* 1958 and owner of the premises described in **Annexure A** to this lease (**the Premises**).
- (ii) The Tenant is a person or organisation that has agreed with the Landlord to provide shared accommodation and support services from the Premises to persons with disabilities.
- (iii) The Landlord has granted a lease of the Premises to the Tenant for the sole purpose of the Tenant providing accommodation and support services pursuant to a Service Agreement.
- (iv) The services provided by the Tenant come within the definition of a “health or residential service” pursuant to section 3 of the Residential Tenancies Act 1997 as amended by Section 248 of the Disability Act 2006. Accordingly the Residential Tenancies Act 1997 does not apply to this Lease
- (v) The Landlord and the Tenant are parties to a Service Agreement (referred to in item 10 of the Schedule to this Lease) under which the Landlord as the relevant government body and the Tenant as the provider of various services, are, pursuant to Victorian government policies and plans, for the time being engaged in and are mindful of implementing collaborative principles, goals, values and outcomes in relation to the delivery of residential shared residential accommodation and support services to persons with disabilities in Victoria (the Service Agreement).
- (vi) The Service Agreement articulates the respective obligations of the Landlord and the Tenant with respect to the delivery of support services and the provision of accommodation to persons with disabilities in Victoria and deals with matters relating to but not confined to:
 - i. specified ethics, principles, protocols, standards and legal obligations of the parties in relation to the provision of shared supported accommodation services to persons with disabilities; the nature of services to be provided to persons with disabilities,
 - ii. funding arrangements between the parties;
 - iii. the financial accountability of the service provider;
 - iv. the nature, extent and division of obligations in respect of house maintenance, repair and structural works to shared supported accommodation facilities including required standards;
 - v. protocols, review processes and procedures relating to the management of shared supported accommodation service properties; and
 - vi. all such other matters relevant to achieving the foregoing.

- (vii) The duration of this Lease is for a 5 year term which accords with the requirements of the Retail Leases Act 2003. The 3 year term of the Service Agreement complies with the current Victorian government funding policy.

1. Definitions and Interpretation

- 1.1 The following words have these meanings in this Lease unless the contrary intention appears:

Adjustment has the same meaning given to that term in the GST Act.

Adjustment Note has the same meaning given to that term in the GST Act.

Alterations means any alteration to the Premises, including cosmetic and structural alterations, but excludes the hanging of artwork, window furnishing and light fittings.

Annexure means an annexure to this Lease.

Authorised Officer means in the case of either Party, the person referred to in Item 9 of the Schedule (who may be substituted from time to time by giving notice to the other Party).

Commencement Date means the date in Item 6 of the Schedule .

Consideration means consideration payable under this Lease in return for a Taxable Supply, but does not include any amount on account of GST

Default Event has the meaning given in clause 16.2.

Expiry Date means the last day of the Term.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (as amended).

GST has the same meaning given to that term in the GST Act

House Maintenance Guide 2006 means the document referred to in Schedule 4 of the Service Agreement and is obtained at www.disability.vic.gov.au

Industrial Special Risk means an insurance policy covering loss or damage to the Premises caused by fire, explosion, lightning, earthquake, burglary, theft, falling aircraft, riot, strike, malicious damage, storm, machinery and electrical breakdown, the removal of debris and any other risks which any such policy may cover from time to time.

Input Tax Credit has the same meaning given to that term in the GST Act, but also includes a reduced input tax credit under Division 70 and an adjusted input tax credit under Division 132 of the GST Act.

Item means an item of the Schedule.

Landlord means the Landlord specified in Item 1 and includes the Landlord's successors and assigns and where it is consistent with the context includes the Landlord's employees and agents. .

Landlord's Property means a fixture or anything in the Premises which is not the Tenant's Property or the Resident's Property.

Maintenance , Repairs and Building Works : The words "maintenance", "repairs" and "building works" wherever appearing in this Lease shall mean "maintenance", "repairs" and "building works" as each such term is defined and used in Schedule 4 of the Service Agreement and the House Maintenance Guide 2006.

Maintenance Program means the program as set out in the House Maintenance Guide 2006.

Outgoings means amounts for rates, assessments and other charges assessed in respect of the Premises including, without limitation, all electricity, gas and telephone service charges, municipal rates and charges, water rates and charges, sewerage and drainage rates and charges.

Party means a party to this Lease.

Permitted Use means the use described in Item 8 of the Schedule.

Premises means the premises described in Item 4 of the Schedule and any alterations or additions to the Premises and includes all buildings fixtures and fittings installed in the Premises by the Landlord or by the Tenant.

Property Services means:

- (a) any services or plant and equipment within the Premises including, without limitation, electricity, gas, water, sewerage, telecommunications, air conditioning, fire detection and prevention equipment, essential services as defined in the *Building Regulations* 1994 (as they may be amended from time to time) and security; and
- (b) everything needed to supply them including, without limitation, any plant and equipment.

Recipient has the same meaning given to that term in the GST Act.

Rent means the rent specified in Item 7 of the Schedule as it may be reviewed in accordance with this Lease from time to time

Resident means a person who resides at the Premises

Resident's Property means the personal property belonging to a Resident

Service Agreement means the Funding and Service Agreement and all attached Schedules identified in Item 10 of the Schedule to this Lease.

Schedule means the schedule to this Lease.

Small Business Commissioner means the Small Business Commissioner appointed under the *Small Business Commissioner Act 2003*

Special Conditions means the special conditions (if any) contained in item 12 of the Schedule.

Structural Works includes those works identified as structural works by a structural engineer engaged by the Department for this purpose.

Supply has the same meaning given to that term in the GST Act.

Supplier means the entity making a Supply to the Recipient.

Tax Invoice has the same meaning given to that term in the GST Act.

Taxable Supply has the same meaning given to that term in the GST Act.

Tenant's Employees and Agents means persons on the Premises with the consent of the Tenant (express or implied) or at the invitation of the Tenant including, without limitation, contractors engaged by the Tenant.

Tenant's Property means anything installed or placed on the Premises by or for the Tenant that is not a fixture.

Term means the period specified in Item 5 of the Schedule beginning on the Commencement Date and includes any over holding.

1.2 In this Lease, unless the contrary intention appears:

- (a) a reference to another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code, Australian Standard or other law includes regulations and other instruments under it and consolidations, amendments re-enactments or replacements of any of them occurring at any time before or after the date of this Lease;
- (c) the singular includes the plural and vice versa;
- (d) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the persons, executors, administrators, successors, substitutes (including without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (h) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
- (j) "including" when introducing an example, does not limit the meaning to which the example relates to that example or examples of that kind.

1.3 If this Lease prohibits the Tenant from doing a thing:

- (a) the Tenant must ensure that the Tenant's Employees and Agents do not do that thing; and
- (b) the Tenant may not allow or cause any person to do that thing.

1.4 Headings are inserted for convenience and do not affect the interpretation of this Lease.

1.5 If there is an inconsistency between a Special Condition and another provision of this Lease, the Special Condition prevails.

2. Lease of Premises

2.1 In consideration of the rent paid by the Tenant to the Landlord (who acknowledges receipt) the Landlord leases and the Tenant accepts the lease giving the Tenant exclusive possession to the premises for the Term and for the Permitted Use.

- 2.2 If the *Retail Leases Act 2003* applies to this Lease the parties agree to be bound by the terms of this Lease subject only to any requirements of that Act.

3. Duration of the Lease

3.1 Term

- (i) This Lease is for the Term starting on the Commencement Date.

1.3 Overholding

- (i) If, with the Landlord's consent, the Tenant remains in possession of the Premises after the Expiry Date or the date of this lease ends, it does so as a monthly tenant.
- (ii) The Landlord may vary the Rent at any time after the Expiry Date or the date this Lease ends by giving the Tenant 30 days' notice expiring on any day.

4. Rent and Other Payments to be made by the Tenant

- 4.1 **Rent** The Tenant must pay the Rent in the manner provided for in Item 7 of the Schedule.

4.2 **Outgoings**

- (i) The Tenant must pay all the Outgoings to the relevant authority, service provider or supplier when they are due.

5. Assignment and Sub-letting

5.1 **Landlord's consent is required for certain dealings with the leasehold**

The Tenant must not without the Landlord's prior written consent mortgage, transfer, sub-lease, licence or part with possession or share with any other person the possession, use or occupation of the Premises. Section 144 of the *Property Law Act 1958* does not apply to this Lease.

5.2 **No Deemed Consent**

- (i) The Landlord's acceptance of rent or other money from any person other than the Tenant will not be taken as consent to that person as assignee, sub-tenant or occupier of the Premises.

5.3 **Change in Shareholding**

If the Tenant is a corporation, a change in the control of the corporation as it existed at the Commencement Date (whether occurring at the one time or through a series of issues or transfers) or a change in the holding of more than one-half of the issued share capital, either beneficially or otherwise, will be deemed to be an assignment of this Lease and that Tenant must seek the Landlord's prior written consent.

6. Use of Premises

- 6 The Tenant must not use the Premises for any purpose other than the Permitted Use.

7. Insurance

7.1 **Insurance to be maintained by the Landlord**

The Landlord must keep in force during the Term insurance coverage in the Landlord's name in respect of the Premises for:

- (i) Industrial Special Risk for its full replacement value which includes the Tenant as an Insured Party; and
- (ii) Public Liability for an amount not less than the amount set out in Item 11 of the Schedule.

7.2 Insurance to be Maintained by the Tenant

The Tenant must keep in force during the Term insurance coverage for:

- (i) the Tenant's Property for loss and damage for its full replacement value;
- (ii) Public Liability for occupier risks for an amount not less than the amount set out in Item 11 of the Schedule; and
- (iii) all other risks which a prudent tenant leasing the Premises for the Permitted Use would maintain.

7.3 Tenant Must Not Invalidate Policies

The Tenant must:

- (i) not do or permit anything or not omit to do something, which prejudices any insurance affected under the lease in connection with the Premises or property in them or for liabilities, which may arise as the occupier of the Premises;
- (ii) promptly rectify anything, which may prejudice any insurance;
- (iii) promptly notify the Landlord when an event occurs which does or might give rise to a claim under or which does or might prejudice an insurance policy; and
- (iv) comply with the requirements of any insurer under the insurance effected for the Premises or the Property in them or for liabilities that may arise as the occupier of the Premises.

7.4 Proceeds of Insurance

All money paid or payable under an insurance policy maintained under this Lease belongs to the Landlord and must, if received by the Tenant, be held in trust for the Landlord, except for money received under:

- (i) a public liability insurance policy to the extent the policy insures the Tenant; and
- (ii) any policy affected by the Tenant in accordance with clause 7.2.

8. Release and Indemnity by Tenant

8.1 Release

The Tenant uses and occupies the Premises at its own risk and releases the Landlord and its agents, contractors and employees, from all claims and demands of every kind in respect of or resulting from any death, damage, loss or injury occurring in connection with the Premises, except to the extent that such claims result from the Landlord's negligence.

8.2 Indemnity

The Tenant must indemnify and hold harmless the Landlord and its agents, contractors and employees against all claims, losses and expenses of any nature in respect of or resulting from any death, damage, loss or injury occurring in connection with the use or occupation of the Premises by the Tenant except to the extent that such claims result from the Landlord's negligence.

9. Tenant's Repairs, Cleaning and Maintenance Obligations

9.1 Cleaning

The Tenant must, at its cost:

- (i) clean the interior and exterior of the Premises regularly and keep the Premises clean and free from dirt, rubbish and vermin; and
- (ii) keep all waste in proper receptacles and arrange for its regular removal from the Premises.

9.2 Maintenance of garden areas

The Tenant must, at its cost cultivate, maintain, keep trim well-watered and in good order and condition all garden areas of the Premises including lawns, shrubberies and other landscaped areas and must not, except in course of proper management, remove any trees or shrubs.

9.3 Other Maintenance and Repairs

- (i) The Tenant must maintain and repair the Premises in accordance with the obligations of the Tenant to maintain and repair the Premises Upon becoming aware of any repair or maintenance that is required to be performed to the Premises or the Property Services the Tenant must promptly notify the property agent in accordance with the procedures prescribed in the House Maintenance Guide 2006.
- (ii) The Tenant must use all reasonable endeavours to minimise any damage to the Premises arising from an item of maintenance to which this clause 9 applies.

9.4 Standard of Works

The Tenant must ensure that any work on the Premises is:

- (i) carried out by appropriately qualified tradespersons in a proper manner and to the reasonable satisfaction of the Landlord; and
- (ii) materials are used that are of the same or similar quality as those in the Premises on the Commencement Date.

9.5 Damage Generally

The Tenant must:

- (i) not damage the Premises in any way;
- (ii) use its reasonable endeavors to ensure that the Tenant's employees, agents, residents and visitors do not damage the Premises in any way; and

10. Notices to be Given to Landlord

Where the Tenant:

- (i) is served with any notice or order by any agency or authority, relating to any health or safety requirements or obligations; or
- (ii) becomes aware of any concerns or queries raised by any agency or authority, or any non government organisation with an interest in the welfare of any persons who may occupy or frequent the Premises,

it must notify the Landlord immediately and upon request by the Landlord must immediately provide to the Landlord copies of any notices, orders or queries served and follow any direction of the Landlord in relation to any such order notice or query.

11 Not to Make Alterations

- 11.1 The Tenant must not make any Alterations to the Premises or remove any of the Landlord's Property from the Premises without the prior written consent of the Landlord.
- 11.2 Before planning any Alteration to the Premises, the Tenant or its nominated agent must:
 - (i) discuss with the Landlord the nature of the proposed works and the likelihood of the Landlord approving the works;
 - (ii) obtain consent from the Landlord to progress design and documentation of the proposed work.
 - (iii) obtain all permits, licenses and other approvals required for the work and deliver copies to the Landlord;
 - (iv) ensure delivery of one copy of detailed drawings and specifications and the program of work to the Landlord;
 - (v) ensure that the work is carried out by appropriately qualified tradespersons in a proper manner and to the reasonable satisfaction of the Landlord;
 - (vi) ensure that the materials are used that are of the same or similar quality as those in the Premises on the Commencement Date;
 - (vii) obtain appropriate insurance;
 - (viii) ensure the work is carried out and completed promptly, in a proper, workmanlike manner and in compliance with all applicable laws; and
 - (ix) comply with and ensure that its contractors and workers comply with the reasonable directions of the Landlord in connection with the work.

- 11.3 On completion of any Alteration, the Tenant must promptly:
- (i) ensure removal of all unused building materials, equipment and debris from the Premises;
 - (ii) obtain a certificate of occupancy or certificate of compliance (if applicable) from the relevant authority and deliver a copy to the Landlord; and
 - (iii) deliver to the Landlord a complete set of drawings and specifications showing the Alterations as built.

12. Other Obligations of the Tenant

12.1 Compliance with Laws

- (i) The Tenant must comply with all laws and any requirements of any authority in connection with the Premises and the Tenant's use and occupation of the Premises.
- (ii) The Tenant covenants with the Landlord to observe and perform all the Tenant's covenants and obligations under the Lease as are applicable to the Premises except to the extent that such may be inconsistent or contrary to the Tenant's obligations under the Service Agreement.

12.2 Fire Protection and Safety

- (i) The Tenant must undertake fire protection and safety measures in accordance with the requirements of the Department of Human Services Capital Development Guidelines, Series 7 Fire Risk Management September 2001, as amended.
- (ii) The Tenant must have for the Premises an emergency control organisation and procedure that meet AS3745-2002, Emergency control organisation and procedures for buildings, Standards Australia and the Department of Human Services Fire and Emergency Response Procedures and Training Framework as amended

12.3 Licenses and Permits

The Tenant must maintain all licenses and permits for the Permitted Use of the Premises.

12.4 Security

The Tenant must:

- (i) securely lock all exterior doors and windows in the Premises when the Premises are not occupied; and
- (ii) promptly indemnify and pay to the Landlord on request the any cost incurred by the Landlord as a result of the Tenant or the Tenant's Employees or Agents damaging or losing any key or security device provided by the Landlord to the Tenant or any of the Tenant's Employees and Agents.

12.5 Nuisance

The Tenant must not, without the Landlord's consent do anything in or near the Premises that in the Landlord's reasonable opinion is noxious, dangerous, offensive or a nuisance.

12.6 Storage of Dangerous Goods

The Tenant must not store chemicals, inflammable liquids or dangerous substances upon or about the Premises except for such chemicals, liquids or dangerous substances that would reasonably be required to be stored on the Premises for cleaning.

12.7 Endanger Premises

The Tenant must not do or permit anything to be done in connection with the Premises that, in the opinion of the Landlord, may endanger the Premises or be a risk to any person or property.

12.8 Tenant's Employee's

The Tenant must use all reasonable endeavours to ensure that the Tenant's employees, agents, contractors and invitees observe and comply with the Tenant's obligations under this Lease, where appropriate.

12.9 Withdrawal of caveat

Where the Tenant has lodged a caveat over the land on which the Premises is situated, the Tenant must, immediately on request by the Landlord, consent to any dealing relating to the Premises or the land on which the Premises is situated and provide any documents that are necessary to permit the registration of that dealing.

12.10 Signs and Advertising

The Tenant must not, without the prior written consent of the Landlord, erect any display, sign or advertisement to the exterior of the Premises.

13. Obligations of the Landlord

13.1 The Landlord covenants with the Tenant to perform and observe all the Landlord's covenants and obligations under the Lease as are applicable to the Premises except to the extent that such covenants and obligations may be inconsistent or contrary to the Landlord's covenants and obligations under the Service Agreement.

13.2 Notification of Lease

If the *Retail Leases Act 2003* applies the Landlord must notify the Small Business Commissioner of the Lease in accordance with the requirements of the Regulations under the *Retail Leases Act 2003*.

13.3 Quiet Enjoyment

Subject to the Landlord's rights and the rights and obligations of the parties under the Service Agreement, the Landlord covenants that the Tenant shall peacefully hold, use and enjoy the premises during the Term without interruption by the Landlord.

13.4 Maintenance

Nothing in this Lease is to be interpreted as placing any obligation on the Landlord to undertake any maintenance or repairs or make any alterations or undertake any building works to the Premises during the Term unless the Service Agreement provides otherwise.

13.5 The Landlord is responsible for the maintenance of Property Services and undertaking Structural Repairs to the Premises.

13.6 The Landlord must install and maintain fire safety systems and equipment in accordance with the requirements of the Department of Human Services Capital Development Guidelines, Series 7 Fire Risk Management September 2001, as amended.

13.7 Insurance

The Landlord must maintain insurance coverage during the Term in accordance with clause 7.1.

14. Tenant's Obligations on Expiry or End of Lease

14.1 Condition of Premises on Expiry

The Tenant must:

- (i) give up possession of the Premises on the earlier of the Expiry Date and the date this Lease ends; and
- (ii) leave the Premises in a condition, which is consistent with the Tenant complying with its obligations under this Lease, and which is clean and free from dirt and rubbish.

14.2 Removal of Property

- (i) The Tenant must not remove the Landlord's property from the Premises.
- (ii) if required by the Landlord, the Tenant must remove the Tenant's Property from the Premises on the earlier of the Expiry Date and the date this Lease ends.
- (iii) if the Tenant does not remove the Tenant's Property from the Premises in accordance with clause 14.2(i), the Landlord may treat the Tenant's Property as abandoned and deal with it as the Landlord sees fit at the cost of the Tenant.
- (iv) The Tenant's Property is at the Tenant's risk at all times before and after the date this Lease ends.

14.3 Return of Keys

The Tenant must give the Landlord all keys, access cards and similar devices for the Premises on the earlier of the Expiry Date and the date this Lease ends.

15. Entry by Landlord

15.1 After giving reasonable notice to the Tenant, the Landlord or persons authorised by the Landlord may enter the Premises at reasonable times to:

- (i) inspect, maintain, repair or alter the Premises; or

- (ii) carry out necessary works safely and in compliance with laws and legal requirements including, without limitation, structural alterations.
- 15.2 If there is an emergency, the Landlord and persons authorised by the Landlord may enter the Premises at any time without notice.
- 15.3 In exercising its rights under the previous clause, the Landlord must use reasonable endeavors to minimise interference with the Tenant's possession and its Permitted Use of the Premises.
- 15.4 On request by the Landlord, the Tenant must relocate to an alternative Premises reasonably selected by the Landlord and at the Landlord's cost or cease to carry on its operations from the Premises for such reasonable period as is necessary to enable the Landlord to exercise its rights under clause 15.1(ii).
- 15.4 The Landlord is not liable for any loss, cost, damage or liability arising from the exercise by the Landlord of its rights under this clause 15 except where such loss, cost, damage or liability is caused by the Landlord's negligence.

16. Termination of Lease

16.1 Landlord's Right to End the Lease

16.1.1 If a Default Event as set out in clause 16.2 herein occurs, the Landlord may:

- (i) end this Lease by re-entering the Premises without notice; or
- (ii) end this Lease by notice to the Tenant; or
- (iii) convert this Lease by notice to the Tenant into a tenancy which may be ended at will by the Landlord but not by the Tenant; or
- (iv) require the Tenant to surrender this Lease to the Landlord; or
- (v) require the Tenant to assign or sub-lease (and in the case of a sub-lease on terms substantially similar to this Lease or as otherwise directed by the Landlord) its interest under this Lease to a person nominated by the Landlord.

16.1.2 The Tenant may not take any action against the Landlord as a result of the Landlord exercising its rights under this clause 16.1.1.

16.2 Default Events

A Default Event occurs if:

- (i) subject to clause 16.3, the Service Agreement comes to an end for any reason including, without limitation, termination due to breach, termination by agreement or expiry of the term of the Service Agreement;
- (ii) the Tenant does not pay any money as required under this Lease for a period of 21 days after any day on which such money ought to have been paid (even if a demand has not been made);

- (iii) the Tenant breaches any other obligation under this Lease and does not remedy the breach within 14 days of receipt of a written notice from the Landlord;
- (iv) any term of this Lease is claimed to be wholly or partly void, voidable or unenforceable by the Tenant or by anyone on behalf of the Tenant; or
- (v) the Tenant is a body corporate and:
 - a. becomes insolvent; or
 - b. a receiver or receiver and manager is appointed for any property of the Tenant; or
 - c. a resolution is passed in respect of the Tenant under section 188(2) of the Corporations Act 2001;
- (vi) the Tenant is an incorporated association and
 - a. it resolves by special resolution the Tenant be wound up or an application is made to wind up the Tenant;
 - b. the incorporation of the Tenant is cancelled; or
 - c. execution is levied against the Tenant and is not satisfied within 30 days;
- (vii) the Tenant breaches any obligation under any other agreement made between the Tenant and the Landlord including, without limitation, any Service Agreement); or,
- (viii) any creditor appoints an agent to take possession of the Tenant's interest in this Lease or the Tenant's Property.

16.3 Expiry of Service Agreement

The Landlord acknowledges that if the Service Agreement comes to an end due to the expiry of the term of the Service Agreement, the Landlord may not exercise its rights under clause 16.1.1 of this Lease until the expiration of 3 months from the date on which the Service Agreement expired (**the Relevant Date**) if, on the Relevant Date, the Tenant and the Landlord had agreed that the Service Agreement would be renewed for a further term.

16.4 Damages following a Default Event

16.4.1 If the Landlord exercises any of the Landlord's rights under clause 16.1, the Tenant indemnifies the Landlord against all cost, liability, loss and damage the Landlord incurs or suffers in connection with the exercise of the Landlord's rights under clause 16.1 including, without limitation, those incurred in connection with;

- (i) re-entering the Premises; and
- (ii) losing the benefit of the Tenant performing its obligations under this Lease from the date the Lease ends until the Expiry Date.

16.4.2 The Landlord's rights under this clause are in addition to its other rights under this Lease.

16.4.3 If the Landlord exercises a right under clause 16.1, any cost, liability, loss or damage suffered or incurred by the Landlord is taken to be caused by the Default Event, not by the Landlord's action.

16.5 Rectification by Landlord

The Landlord may at its option remedy any default on the part of the Tenant in complying with any provision of this Lease and any costs and expenses so incurred by the Landlord will constitute a liquidated debt payable by the Tenant to the Landlord on demand.

16.6 Essential Terms and Repudiation

The essential terms of this Lease are clauses 4, 5, 6, 7.2, 7.3, 7.4, 9, 11, 12, 14) and any Special Conditions applicable to this Lease. The breach of an essential term is a repudiation of this Lease.

17 Damage to Premises

17.1 Reinstatement or Termination by Landlord

17.1.1 If the Premises are damaged or destroyed so that, in the reasonable opinion of the Landlord, they cannot be used for the Permitted Use, the Landlord may, within 6 months of the date of the damage or destruction, give notice to the Tenant:

- (i) terminating this Lease, if the Landlord, in its absolute discretion, considers that it is impracticable or undesirable to repair the damage or destruction; or
- (ii) that the Landlord will commence reinstatement of the Premises to a condition where the Tenant can use or have access to the Premises.

17.1.2 Nothing in this clause is to be interpreted as obliging the Landlord to repair or reinstate the Premises.

17.2 Relocation of Premises

- (i) During any period during which the Premises is damaged or destroyed, the Landlord may, in its absolute discretion, give notice to the Tenant requiring the Tenant to relocate to an alternative Premises reasonably selected by the Landlord.
- (ii) The Landlord will be responsible for the cost of any relocation under clause 17.2(i), except where the Tenant has caused or failed to prevent the damage giving rise to the relocation.
- (iii) If requested to do so by the Landlord, the Tenant will promptly execute any agreement prepared by the Landlord giving effect to any relocation under clause 17.2(i).

17.3 Reduction in Rent and Outgoings

During any period during which the Premises are damaged or destroyed so that, in the reasonable opinion of the Landlord, they cannot be used for the Permitted Use (except if the Tenant causes or contributes to the destruction or damage) the Landlord will reduce the Rent and the Outgoings by a reasonable amount depending on the nature and extent of the destruction or damage until, in the reasonable opinion of the Landlord, the Premises can be used for the Permitted Use.

17.4 Termination

The Tenant may terminate the Lease by giving 30 days notice to the Landlord, except where the Tenant has caused or contributed to the damage or destruction, if the Landlord:

- (i) has not relocated the Tenant in accordance with clause 17.2; and
- (ii) gives notice to the Tenant that it intends to reinstate the Premises under clause 17.2(i) and fails to do so within a reasonable time (having regard to the nature of the damage); or
- (iii) fails to give notice to the Tenant under either clause 17.1.1 or 17.2(i).

17.5 No compensation

If the Lease is terminated in accordance with clause 17.1.1(i), the Tenant will not be entitled to any compensation from the Landlord and each Party will release the other from all rights and obligations under this Lease, except in relation to any antecedent breach.

18. Dispute Resolution

- 18.1 If any dispute arises between the Parties out of or relating to this lease (“**Dispute**”), any party seeking to resolve the Dispute must do so strictly in accordance with the provisions of this clause. Compliance with the provisions of this clause is a condition precedent to seeking relief in any court or tribunal in respect of the Dispute.
- 18.2 Each of the parties shall use its best endeavours to co-operatively resolve a Dispute.
- 18.3 If a Dispute arises, notice in writing must be given by the party claiming dispute and the Dispute shall be referred to the Organisation’s Principal Officer and the Supervising Officer for resolution.
- 18.4 If the Dispute is not resolved within 3 Business Days of such referral, the dispute shall be referred to a Panel for resolution. Each party shall nominate a senior representative for the Panel within 3 Business Days of the referral to the Panel in accordance with this clause.
- 18.5 If a Dispute is referred to the Panel in accordance with clause 18.4, the Panel shall meet to resolve the dispute unless the Panel agrees to resolve the dispute without the need for a meeting.

- 18.6 The Panel shall determine its own procedures for meetings. Decisions of the Panel may only be made by unanimous agreement of the members of the Panel. Any decision of the Panel shall be final and binding on the parties and shall be provided in writing to the parties.
- 18.7 If the Dispute is not resolved by the Panel within 10 Business Days of such referral the parties agree that the dispute shall be referred to mediation.
- 18.8 The mediator shall be appointed either by agreement between the parties or failing such agreement, by the president for the time being of the Law Institute of Victoria within 5 Business Days of expiry of the period set out in clause 18.7.
- 18.9 The parties agree that:
- (a) each shall bear their respective costs of the mediation save that the mediator's fee, fees for mediation rooms and costs of shared equipment facilities and services of the mediation shall be shared equally;
 - (b) the venue for the mediation shall be agreed between the parties or, failing such agreement, shall be nominated by the mediator;
 - (c) each party may be legally represented if they so wish; and
 - (d) complete confidentiality will be preserved in respect of the mediation and any documents and information used at or in relation to the mediation.
- 18.10 subject to clause 18.11, it shall be a condition precedent to the commencement to any litigation of any dispute or difference that the issues arising in that dispute or difference shall have been the subject of a reference under the procedures referred to in clauses 18.4 to 18.9.
- 18.11 If the Dispute or difference has not been resolved or mediated within 40 Business Days (or some other time agreed by the parties) of receipt of the notice specified in clause 18.3, the condition precedent established by clause 18.10 shall be deemed to have been satisfied.
- 18.12 Prior to the resolution of a Dispute, the Organisation shall continue to perform its obligations under this Agreement.

19 GST

19.1 GST Exclusive

Except as otherwise provided by this clause, all Consideration payable under this Lease in relation to any Supply is exclusive of GST.

19.2 Increase in Consideration

To the extent that any Supply under this Lease constitutes a Taxable Supply, the Consideration payable by the Recipient to the Supplier will be increased by the applicable amount of GST (**GST Amount**), which must be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST.

19.3 Payment of GST

Any GST Amount must be paid by the Recipient to the Supplier at the same time and in the same manner as the relevant Consideration is paid or given under this Lease, without any right of set-off or deduction (unless otherwise provided in this Lease).

19.4 Reimbursements

If this Lease requires the Recipient to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the Supplier (**Relevant Expense**), the amount which the Recipient must pay, reimburse or contribute will be the amount net of any Input Tax Credits to which the Supplier is entitled in respect of the Relevant Expense, together with any GST Amount if the payment, reimbursement or contribution constitutes a Taxable Supply by the Supplier to the Recipient.

19.5 Tax Invoice

The Supplier must provide to the Recipient a valid Tax Invoice at or prior to the time of payment of any GST Amount.

19.6 Adjustment and Adjustment Notes

To the extent that any Adjustment occurs in relation to a Taxable Supply, the Supplier must issue an Adjustment Note to the Recipient within 7 days of becoming aware of the Adjustment, and any payment necessary to give effect to such Adjustment must be made within 7 days after the date of receipt of the Adjustment Note.

20. General

20.1 Notices

A notice, approval, consent or other communication concerning this Lease may be given by a Party or its Authorised Officer;

- (i) must be in writing; and
- (ii) must be served by:
 - a. leaving it at the address of the Party as set out in this Lease; or
 - b. sent by prepaid ordinary post to the address of the Party as set out in this Lease; or
 - c. sent by facsimile to the facsimile number of the Party as set out in this Lease.

20.2 Time of Receipt of Notices

20.2.1 A notice, approval, consent or other communication takes effect from the time it is received, unless a later time is specified in it.

20.2.2 A letter or facsimile is taken to be received:

- (i) if served personally or left at the person's address, at the time of service;
- (ii) in the case of a posted letter, on the third day after posting;
- (iii) in the case of a facsimile, subject to the next sub-clause, on the time indicated on the transmission report produced by the machine from which the facsimile was sent which indicating that the facsimile was sent in its entirety to the facsimile number of the recipient; and
- (iv) if received after 5.30 pm in the place of receipt or if on a day which is not a business day, at 9.00 am on the next business day.

20.3 Approvals and Consent

- (i) The Landlord may give conditionally or unconditionally or withhold its approval or consent and such approval or consent will not be unreasonably withheld.
- (ii) The Tenant must comply with each condition imposed by the Landlord as if it was a provision of this Lease.

20.4 Exclusion of Statutory Provisions

- (i) The covenants, powers and provisions implied in leases by section 67 of the Transfer of Land Act 1958 do not apply to this Lease.
- (ii) The Residential Tenancies Act 1997 does not apply to this Lease.

20.5 Payments

- (i) The Tenant must make payments under this Lease punctually without set-off or counterclaim and free and clear of any withholding or deduction.
- (ii) All payments due by the Tenant under this Lease must be paid to the Landlord or to a person notified by the Landlord to the Tenant.

20.6 Parties' Relationship

This Lease does not constitute a partnership or a joint venture between the Parties nor does it create any the agency relationship between the Parties.

20.7 Validity

If any provision of this Lease is void, voidable by a Party, unenforceable or illegal, it shall be read down so as to be valid and enforceable. If any provision cannot be so read down, the provisions (or, where possible, the offending words) will be severed from this Lease without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this Lease, which shall continue to have full force and effect.

20.8 Governing Law and Jurisdiction

- (i) This Lease is governed by the law of Victoria.
- (ii) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

20.9 Waiver

If the Landlord does not exercise or delays in exercising any of the Landlord's rights under this Lease, it will not be a waiver of the breach of this Lease by the Tenant or of the Landlord's rights under this Lease.

Annexure A

Plan of Premises

(##where the Premises comprises the whole of the building, insert:

“No plan included – the Premises occupies the whole of the land described in Item 4 of the Schedule”