

**TARANAKI WHĀNUI KI TE UPOKO O TE IKA
and
THE PORT NICHOLSON BLOCK SETTLEMENT TRUST
and
THE SOVEREIGN
in right of New Zealand**

**DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

BP

NATIONAL LIBRARY LAND - SCHEDULE OF LAND

5,566 square metres more or less being Section 2 Survey Office Plan 36509 and being all the land comprised and described in computer freehold register WN34D/86 (Wellington Registry):

- 1.1 with appurtenant rights of way and rights to convey water, sewage and water drainage, gas, electricity and telephone created by Transfers B226261.7 and 8226261.8;
- 1.2 subject to rights to convey water, sewage and water drainage, gas, electricity and telephone created by Transfer B226261.6; and
- 1.3 subject to Part IVA of the Conservation Act 1987 and Section 11 of the Crown Minerals Act 1991.

DRAFTING NOTE: At the time of drafting of the lease the land is not yet subject to Part IVA of the Conservation Act 1987 and Section 11 of the Crown Minerals Act 1991, but it will be subject to those provisions upon disposition from Crown ownership.

ARCHIVES NEW ZEALAND - SCHEDULE OF LAND

5,466 square metres more or less being Section 1257 Town of Wellington and being all the land comprised and described in Gazette Notice 8049221.1 (formerly comprised in computer freehold register WN34D/86 (Wellington Registry)):

- 1.1 subject to Part IVA of the Conservation Act 1987 and Section 11 of the Crown Minerals Act 1991.

DRAFTING NOTE: At the time of drafting of the lease the land is not yet subject to Part IVA of the Conservation Act 1987 and Section 11 of the Crown Minerals Act 1991, but it will be subject to those provisions upon disposition from Crown ownership.

PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF
SETTLEMENT: LEASEBACK SCHEDULE

CONTINUATION OF ATTESTATION:

SIGNED by HER MAJESTY THE QUEEN acting by and through
[]:

(Witness signature

Full name

Occupation

City/Town

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Lease, unless the context indicates otherwise:

Annual Rent means the annual rent for the Land specified in Schedule One, subject to changes resulting from the Lessor's or Lessee's exercise of any right to review the Annual Rent or on the Lessee's exercise of any right to renew this Lease;

Authority means and includes every governmental, local, territorial and statutory authority having jurisdiction or authority over or in respect of the Land or its use or the Lessee's Improvements or their use;

Commencement Date means the date of commencement of the initial Term specified in Schedule One;

Core Uses means:

- (a) [purposes of the National Library as established by the National Library of New Zealand (Te Puna Matauranga o Aotearoa) Act 2003 / purposes of Archives New Zealand (Te Rua Mahara o te Kawanatanga) as established by the Public Records Act 2005]; and
- (b) Secondary use for government works or public purposes if all or part of the Land is not required for the purposes described in (a) above; and
- (c) reasonable commercial use compatible with the Land and permitted by the operative District Plan from time to time.

District Plan means a district plan within the meaning of the Resource Management Act 1991;

Government Agency includes any department or instrument of the Executive Government of New Zealand; and, includes:

- (a) a body corporate or corporation sole (whether called a corporation sole (whether called a corporation, commission, council, board, authority, or by any name) that has been established or constituted by a public Act of Parliament and that is named in that Act;
- (b) a body corporate or organisation that is controlled or wholly by the Crown or by any such Department, instrument, orate, corporation sole, or organisation;
- (c) a Crown Entity within the meaning of the Crown Entities Act 2004 or as otherwise established or constituted by an Act of Parliament;
- (d) a State enterprise within the meaning of the State-Owned Enterprises Act 1985;

GST means tax levied under the Goods and Services Tax Act 1985 and includes any tax levied in substitution of that tax;

Land means the [unimproved] land described in Schedule One and for the avoidance of doubt excludes all of the Lessee's Improvements which remain the property of the Lessee at all times irrespective of their degree of annexation to the Land;

PORT NICHOLSON BLOCK (TARANAKI WHĀNUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE

Lessee means Her Majesty the Queen, in any capacity, and includes all the respective executors, administrators, successors, assigns and successors in title of the lessee and if more than one jointly and severally and where the context permits the Lessee includes the Lessee's sublessees and other lawful occupiers of the land and the Lessee's contractors, agents and invitees (which persons shall be those deemed to be persons under control of the Lessee);

Lessee's Improvements means all improvements on or to the Land of any kind whatsoever including (but not limited to):

- (a) buildings, or other fixed structures including any fencing;
- (b) concrete, asphalt, paved or tiled roadway, sealed yards, paths, lawns, gardens;
- (c) mechanical, electrical, or reticulation plant (whether for the conduct of electricity, water, oil, compressed air or any other supply delivered through any reticulation system which is the property of the Lessee), equipment or systems of any kind of the Lessee;
- (d) sewage system;
- (e) [all subsoil works constructed or installed by the Lessee on the Land;
- (f) all site works, drainage and excavation work;] and
- (g) other like property of any kind whatsoever,

whether those improvements are made, constructed or placed on the Land by the Lessee before or after the Commencement Date;

[Lessee's Outgoings mean:

- (a) rates or levies payable to any local or territorial authority;
- (b) charges for water, gas, electricity, telephones and other utilities or services;
- (c) rubbish collection charges;
- (d) all charges relating to the repair and maintenance of any Lessee Improvements (whether of a structural nature or not);
- (e) the cost of landscaping and ground maintenance;
- (f) car parking area maintenance and repair;
- (g) all costs associated with the repair, maintenance or replacement of any fencing on the Land,

and includes any other outgoings related to the Permitted Uses or for any use consented to under clause 9];

Lessor means Taranaki Whānui ki Te Upoko o Te Ika and includes all the respective executors, administrators, successors, assigns and successors in title of each Lessor and if more than one jointly and severally;

Plan means the plan of the Land attached as Schedule Two;

Rent Commencement Date means the Lease Commencement Date specified in Schedule One from which the Lessee is to commence paying the Annual Rent;

Term means the term of this Lease and includes the Initial Term and any further Subsequent Terms; and

Working Day means a day of the week other than:

- (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday and Labour Day;
- (b) a day in the period commencing on 25 December and ending on 2 January in the following year;
- (c) if 1 January falls on a Friday, the following Monday;
- (d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday;
- (e) the anniversary day celebrated in the locality of the Land; and
- (f) any other day made a public holiday during the Term of this Lease by inclusion in section 44(1) of the Holidays Act 2003 or otherwise.

1.2 Interpretation

In this Lease, unless the context indicates otherwise:

- (a) Expressions defined in the main body of this Lease have the defined meaning throughout this Lease, including the background;
- (b) Section, clause and other headings are for ease of reference only and will not affect this Lease's interpretation;
- (c) References to any party include that party's executors, administrators, successors and permitted assigns;
- (d) References to a person include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (e) References to the singular include the plural and vice versa;
- (f) References to clauses, schedules and attachments are to clauses in, and the schedules and attachments to, this Lease. Each such schedule and attachment forms part of this Lease;
- (g) Payments shall be made in the lawful currency of New Zealand;
- (h) References to any statutory provision are to New Zealand and include any statutory provisions in force in New Zealand and include any statutory provision which amends, consolidates or replaces it, and any by-law, regulation, order or subordinate legislation made under it;
- (i) Any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (j) The terms Initial Term, Permitted Use, Renewal Term(s), Rent Review Dates and Termination Date, together with the other terms set out in Schedule One, will be interpreted by reference to Schedule One;
- (k) The term *includes* or *including* (or any similar expression) is deemed to be followed by the words *without limitation*; and

- (l) References to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form.
- (m) If this Lease states that the Lessor's consent is required for anything done or proposed to be done, then unless otherwise stated, in each case, the Lessor:
 - (i) must not unreasonably withhold consent, and
 - (ii) must, within a reasonable time of the Lessor's consent being requested, grant that consent or notify the Lessee in writing that the consent is withheld.

2 LEASE AND TERM

The Lessor leases the Land to the Lessee and the Lessee takes the Land on Lease for the Term beginning on the Commencement Date and ending on the Termination Date at the Annual Rent, as specified in Schedule One but subject to the enduring right of renewal in clause 3.

3 RIGHT OF RENEWAL OF LEASE

If the Lessee is not at the time in wilful or deliberate material default of its covenants under this Lease and has given written notice to renew the Lease at least Eighteen (18) calendar months prior to the end of the relevant term (time [not] being of the essence of such notice) then the Lessor will at the cost of the Lessee renew this Lease for the next further term from the renewal date as follows:

- (a) the Annual Rent will be agreed upon or failing agreement will be determined in accordance with clause 5;
- (b) otherwise the renewed lease will be on and subject to the covenants and agreements expressed or implied in this Lease including this covenant for renewal.

4 RENT

The Lessee shall pay the Annual Rent to the Lessor by equal monthly payments in advance, with the first payment to be made on the Rent Commencement Date.

5 RENT REVIEW

- 5.1 The Annual Rent payable from any review date shall be determined as follows:
- 5.2 The Lessor or the Lessee will commence a review by not earlier than three (3) months prior to a review date giving written notice to the other specifying the annual rent proposed as the current market rental as at that review date. The notice must state on its face that the recipient has 30 Working Days after service of the notice to dispute the annual rental proposed.
- 5.3 If the party receiving the notice ("the Recipient") fails to give written notice to the party giving the notice ("the Initiator") within 30 working days after service of the Initiator's notice, accepting the annual rent proposed, or within the said 30 Working Day period gives notice disputing the annual rent proposed (and in the later case specifying the annual rent proposed by the Recipient as the current market rent), then the new rent shall be determined in accordance with clause [].

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

- 5.4 If the Recipient gives notice accepting the annual rent proposed then the annual rent shall be that specified in the Initiator's notice.
- 5.5 Notwithstanding any other provision of this clause, the annual rent payable as from the relevant rent review date shall not be less than the rental payable as at the Commencement Date of the then current term of the lease.
- 5.6 Pending the determination of the new Annual Rent, the Lessee when it is a Government Agency will pay an interim rental [equivalent to that prior to the review date, however when the Lessee is not a Government Agency it will pay an interim annual rent as follows:
- (a) If both parties supply a registered valuer's certificate substantiating the current market rental proposed by each party, the interim rent shall be based on the average of the two certified market rentals proposed by the parties; or
 - (b) If only one party supplies a registered valuer's certificate substantiating the market rental proposed, the interim rent shall be based on the market rental substantiated in the certificate; or
 - (c) If no registered valuer's certificates are supplied, the interim rent payable shall be the rent payable immediately prior to the relevant review date,]
- provided that upon determination of the new Annual Rent, an appropriate adjustment will be made.
- 5.7 [The new Annual Rent at the option of either party shall be recorded in a variation of this Lease, the cost of which will be payable by the parties equally.]
- 5.8 Immediately following receipt by the Lessor of the Lessee's notice, under clause 5.3 the parties will endeavour to agree upon the market rental but if agreement is not reached within twenty (20) Working Days, then the market rental for the Land will be determined by registered valuers acting as experts and not as arbitrators as follows:
- (a) Each party will appoint a valuer and give written notice of the appointment to the other party within twenty (20) Working Days of the parties agreeing to so determine the market rental;
 - (b) The valuers appointed before commencing their determination will appoint an umpire who will be a Solicitor of the High Court of New Zealand appointed by the President (or his or her nominee) of the New Zealand Law Society (or if it does not exist, a society, institute or association with substantially similar objects);
 - (c) The valuers will determine the market rental for the Land excluding improvements [and taking into account its then current use] and if they fail to agree then the current market rental will be determined by the umpire;
 - (d) Each party will be given the opportunity to make written or verbal representations to the valuers or the umpire subject to such reasonable time or other limits as the valuers or the umpire may prescribe and they will have regard to any such representations but not be bound by them.
- 5.9 When the current market rental for the review period has been determined, the umpire or valuers will give written notice of it to the parties. Any umpire notice will provide how the costs of the determination will be apportioned and will be binding on the parties. Where the Annual Rent is determined by the parties' valuers and not the umpire, the parties will pay their own costs.

6 PAYMENT OF OUTGOINGS

The Lessee will pay the Lessee Outgoings in respect of the Land direct to the relevant Authority or supplier concerned and, if permitted by law the Lessee will be entered as the agency for payment on the rating information database and the district valuation roll of the Land.

7 GST

The Lessee will pay to the Lessor, or as the Lessor directs, the GST payable by the Lessor in respect of the Annual Rent and any other payments payable by the Lessee under this Lease. The GST in respect will be payable on each occasion when any rental payment falls due for payment and in respect of any other payment will be payable on demand.

8 INTEREST ON UNPAID MONEY

If the Lessee fails:

- (a) to pay any instalment of rent or other sum of money payable by the Lessee to the Lessor under this Lease within fifteen (15) Working Days after the day on which it fell due and upon demand by the Lessor fails to make such payment within a further five (5) Working Days after the date the demand is received by the Lessee; or
- (b) to pay the Lessor upon demand any amount paid by the Lessor to remedy default by the Lessee of the Lessee's obligations under this Lease within fifteen (15) Working Days after the date the demand is received by the Lessee

then any amount outstanding will bear interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for overdraft accommodation plus a margin of 4% accruing on a daily basis from the due date [from payment or the due date of payment by the Lessor (as the case may be) to the date the outstanding amount is paid by the Lessee.] The Lessor will be entitled to recover such interest in the same manner as if it were rent in arrears.

9 USE OF LAND

- 9.1 The Lessee will not, without the prior written consent of the Lessor, use the Land for any purpose other than the Permitted Uses. The Lessor must not unreasonably or arbitrarily withhold its consent to any change of, or addition to, the Permitted Uses. For the avoidance of doubt, the parties agree that any cessation or suspension of the use the Land or part of the Land for the Permitted Uses for any period of time is not a breach of this clause.
- 9.2 Should any use of the Land and any Lessee's Improvements be permissible only with the consent or licence of any Authority under or in pursuance of any statute or any Regional Plans and District Plans or regulation or other enactment or order of Court the Lessee shall obtain such consent or order at the sole cost and expense of the Lessee including but not limited to any costs or financial contributions involved in complying with any conditions of such consent or order obtained.
- 9.3 [The Lessor agrees that it will not:
 - (a) submit against, complain or object to, or cause others to complain or object to, or publicly comment on, any statutory or regulatory consent

application, variation, change or modification to existing or future lawful uses of the Land and any designations or consents either in place at the Commencement Date or lawfully granted to the Lessee at a later date, provided the variations, changes or modifications are related to, or ancillary to, the Permitted Uses or any use consented to under clause 9.1; or

- (b) directly or indirectly lobby any Authority or other interested party, or directly or indirectly fund any objections, in relation to any statutory or regulatory consent application, variation, change or modification to existing or lawful future uses, designations or consents either in place at the Commencement Date or lawfully granted to the Lessee at a later date.

9.4 The Lessor agrees that it will not complain or object to, or directly or indirectly fund any objection relating to, or otherwise publicly comment about, any activities on the Land in accordance with the Permitted Uses. The Lessor agrees that it will if called upon to do so provide a reasonable submission in support of any statutory, regulatory consent application relevant to the exercise of the Permitted Uses.]

10 COMPLIANCE WITH THE LAW

The Lessee will comply with the provisions of all statutes, ordinances, regulations, bylaws and codes in any way touching upon, relating to, or affecting the Land or the conduct of the Permitted Uses on the Land and will also at the Lessee's own cost comply with the provisions of all statutes, ordinances, regulations, bylaws, codes, requisitions or notices issued, made or given by any Authority in respect of the Land or the Lessee's conduct of the Permitted Uses on the Land or the Lessee's Improvements on the Land.

11 LESSEE'S ACKNOWLEDGEMENT OF RISK

The Lessee agrees to occupy and use the Land at the Lessee's risk and releases to the fullest extent permitted by law the Lessor, its employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any personal property in or about the Land, except when this is caused by the wilful or reckless act of the Lessor or persons acting under the control of the Lessor.

12 AVOIDANCE OF DANGER

The Lessee will:

- (a) take all reasonable precautions to minimise any danger or hazard arising from any Lessee's use of the Land and must not permit any goods of a dangerous nature to be stored or used on the Land unless stored and used in a manner which complies with all statutes, ordinances, regulations, bylaws and codes or standards in that regard; and
- (b) promptly remedy any danger or hazard that may arise on the Land.

13 [LESSEE'S IMPROVEMENTS

13.1 The Lessor acknowledges in relation to the Lessee's Improvements that:

- (a) notwithstanding any rule of law or equity to the contrary, property in all Lessee's Improvements will remain with the Lessee throughout the Term of this Lease and irrespective of how such property is annexed to the

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

- Land and may be dealt with by the Lessee without reference to the Lessor;
- (b) the Lessor does not have any rights of ownership or proprietary interest in any of the Lessee's Improvements, either during the Term of the Lease, or at the expiry or earlier termination of the Lease; and
 - (c) when any Lessee's Improvements are destroyed or damaged, the decision whether to reinstate or not is solely with the Lessee and property in any insurance proceeds (if any) is also solely with the Lessee.
- 13.2 The Lessee may construct Lessee's Improvements and make any alterations or additions to Lessee's Improvements without the prior written approval of the Lessor.
- 13.3 The Lessee may demolish or remove any Lessee's Improvements from the Land at any time during the continuance of this Lease without the prior written consent or any other consent of the Lessor upon the condition that the Lessee reinstates the Land to a neat, tidy and safe condition after any such demolition or removal.
- 13.4 The parties acknowledge that:
- (a) The Lessee may, either prior to or on the expiry or earlier termination of this Lease, demolish or remove all Lessee's Improvements from the Land and if the Lessee is not a Government Agency the Lessee will, if required by the Lessor on the expiry of the Term of this Lease, demolish or remove all Lessee's Improvements (or such lesser portion as may be acceptable to the Lessor) from the Land without being obliged to pay the Lessor any compensation for their demolition or removal, it being acknowledged by the Lessor that property in all Lessee's Improvements remains with the Lessee and that no prior written consent or any other consent of the Lessor is required in respect of any such demolition or removal elected by the Lessee. In the event that the Lessee is a Government Agency the Lessee may elect by written notice to the Lessor to vest to the Lessor the Lessee's Improvements on the Land and upon the giving of that notice, the ownership of the Lessee's Improvements then on the Land shall revert to the ownership of the Lessor without obligation to pay to the Lessee compensation for them.
 - (b) The Lessor will be deemed by the provisions of clause 13.4 to have granted to the Lessee a licence to enter the Land and demolish or remove the Lessee's Improvements and further that the provision will enure for the benefit of the Lessee notwithstanding the prior expiration of this Lease and will also bind any successor in title to the Lessor subsequent to the expiry of the Lease.
 - (c) In the event that the Lessee demolishes or removes the Lessee's Improvements from the Land under clause 13.4, it will restore the Land and safe condition subsequent to any such demolition or removal.
 - (d) The Lessor will do nothing to obstruct or otherwise impede the demolition or removal of any Lessee's Improvements from the Land at any time prior to the expiration or earlier termination of the Lease or within three (3) months after this time and notwithstanding any rule of law or equity to the contrary.
 - (e) The Lessee must continue to pay rent and outgoings under this Lease and comply with all other obligations under this Lease if the Lessee

remains on the Land after the expiration or earlier termination of the Lease for the purposes of demolishing or removing the Lessee's Improvements under this clause.]

14 INSURANCE

- 14.1 The Lessee will be responsible for insuring any Lessee's Improvements on the Land.
- 14.2 If any of the Lessee's Improvements are damaged or destroyed, then it will be the sole responsibility of the Lessee to decide whether to effect reinstatement or not.

15 SIGNAGE

The Lessee may affix names, nameplates, and signboards relating to the Permitted Uses without the consent of the Lessor.

16 LESSOR'S PROPERTY

The Lessor must not during the Term of this Lease place any Lessor's property on the Land.

17 RIGHT OF LESSOR TO ENTER AND INSPECT LAND

- 17.1 [Pursuant to section 217 of the Property Law Act 2007, and notwithstanding section 218 and clause 11 of Schedule 3 of that Act, the parties agree that the Lessee will permit the Lessor to enter the Land to inspect its condition, on no more than two (2) occasions in each calendar year, and subject to compliance with the conditions of entry set out in this clause 17.]
- 17.2 [Entry under clause 17.1 is subject to:
- (a) the Lessor providing the Lessee with at least ten (10) Working Days prior notice, in writing; and
 - (b) compliance with the Lessee's standard security and safe access protocols from time to time including if reasonable in the circumstances direct supervision at all times by a representative of the Lessee;
 - (c) entry being limited to two (2) persons named in the notice under clause 17.2(a), authorised by the Lessee, and approved in writing by the Lessee, in advance of entry.]
- 17.3 The Lessor acknowledges that the Lessee will have the discretion to impose such reasonable conditions on the Lessor's ability to enter the Land for inspection purposes under this clause 17 as the Lessee thinks necessary or appropriate to the Lessee's operational requirements.
- 17.4 [The Lessor may make representations to the Lessee regarding the times entry to the Land is requested for inspection purposes but the Lessor acknowledges that the Lessee may at its discretion upon the giving of either oral or written notice, vary any consent to entry given under this Lease if the Lessee deems this to be necessary or appropriate to the Lessee's operational requirements.]

18 QUIET ENJOYMENT

- 18.1 The Lessor will permit the Lessee to occupy and enjoy the Land during the Term without any interruption or disturbance by the Lessor or any person claiming under the Lessor except as authorised by this Lease.

19 DESIGNATION

The Lessor consents to the Lessee maintaining a designation under the Resource Management Act 1991 for the construction, operation and maintenance of the Permitted Uses and for any use consented to under clause 9 for the Term of this Lease, should this be desired by the Lessee, and the Lessor further consents to the inclusion of any new or further designation for such purposes in any operative or proposed District Plan.9 [Any designation must be lifted upon the expiration or earlier termination of this lease.]

20 [SUBLETTING AND ASSIGNMENT]

- 20.1 Subject to clauses 20.3 and 20.4, the Lessee must not assign or otherwise part with the possession of the Land or any part of the Land without first obtaining the written consent of the Lessor which the Lessor will give if the following conditions are fulfilled:
- (a) The Lessee proves to the satisfaction of the Lessor that the proposed assignee is (or in the case of a company the shareholders of the company of the proposed assignee are) respectable, responsible and has the financial resources to meet the commitments under any lease.
 - (b) All rent and other moneys payable under this Lease have been paid and there is no subsisting (in the case of a Government Agency a material, willful and deliberate) breach of any of the Lessee's covenants.
 - (c) The Lessee pays the proper costs and disbursements in respect of the approval or preparation of any deed of covenant or guarantee and (if appropriate) all fees and charges payable in respect of any reasonable enquiries made by or on behalf of the Lessor concerning any proposed assignee.
 - (d) The Lessee will, at the Lessee's own expense, procure the execution by an assignee of a deed of covenant with the Lessor that the assignee will, at all times pay the rent at the times and in the manner provided in this Lease and will observe and perform all the covenants and conditions contained in this Lease.
 - (e) Where the assignee is a company, the Lessor may require the deed of covenant referred to in paragraph (d) above to be executed by that company and also by such other directors and/or shareholders of that company as the Lessor reasonably requires, as joint and several guarantors, upon the terms set out in the then current edition of the Auckland District Law Society form of Standard Lease for Commercial Premises or if such lease is no longer published, then upon such terms as are commonly used in leases of commercial premises.
- 20.2 For the purposes of clause 20.1 any change in the shareholding of the Lessee (where the Lessee not being a Government Agency is a company which is not listed on the main board of a public stock exchange) or any amalgamation under section 219 of the Companies Act 1993 altering the effective control of

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

the Lessee shall be a deemed assignment of this Lease and will require the consent of the Lessor unless such deemed assignment involves a change of effective control to any of the entities mentioned in clauses 20.3 and 20.4(x).

20.3 If, by any statutory provision or regulation enacted during the Term of this Lease, the Lessee is obliged to transfer or assign management of the Land or any aspect of such management to a third party, the provisions of clause 20.1 will not apply to such a transfer or assignment and the Lessee will be entitled to transfer or assign its interest as Lessee under this Lease, or any aspect of management of the Land, to such a third party without further reference to the Lessor, who will be deemed to have approved such a transfer or assignment and will immediately sign any document necessary to give effect to such a transfer or assignment, if so requested by the Lessee.

20.4 Despite clause 20.1, the Lessee may at any time and from time to time:

- (a) transfer or assign its interest as Lessee under this Lease, or grant a sublease or licence of the whole or any part(s) of the Land, to any Government Agency; and/or
- (b) grant a sublease or licence of the whole or any part(s) of the Land to any other person,

in either case without further reference to the Lessor, who will be deemed to have approved such a transfer, assignment or sublease and will immediately sign any document necessary to give effect to such a transfer, assignment or sublease, if so requested by the Lessee.

20.5 Where the Lessee grants a sublease or licence of the whole or any part(s) of the Land to any other person, the Lessee will not permit any sublessee to deal with the sublease in any way in which the Lessee is restrained from dealing without consent under this Lease.

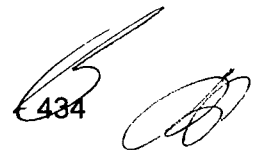
20.6 Notwithstanding any rule of law or anything expressed or implied in this Lease to the contrary, where a Government Agency is Lessee, and in circumstances where clause 20.7 has applied and the Lessor has not elected to purchase that interest, assigns its interest in this Lease under the provisions of this clause 20, all the liabilities of the Government Agency as Lessee expressed or implied under this Lease, whether contingent or otherwise for the payment of future rents or other money or the future observance or performance of any of the covenants, conditions or agreements on the part of the Lessee shall cease and determine absolutely as from the date of assignment, but without releasing the Lessee from liability for any antecedent breach of this Lease.]

20.7 [RIGHT OF FIRST REFUSAL FOR LESSOR IF LESSEE TO ASSIGN

20.7.1 If at any time before the expiry or earlier termination of the Term, the Lessee:

decides to assign the Lessee's interest in the Lease and the Lessee's Improvements (if any) the Lessee must immediately give written notice (Lessee's Notice) to the Lessor setting out the terms on which the Lessee wishes to assign its interest in the Lease and the Lessee's Improvements (if any) ("the Offered Interests").

20.7.2 The Lessor will have ninety (90) Working Days after and excluding the date of receipt of the Lessee's Notice (time being of the essence) in which to exercise the Lessor's right to purchase the Offered Interests, by serving written notice on the Lessee (Lessor's Notice) accepting the offer contained in the Lessee's Notice.

434 

20.7.3 If the Lessor does not serve the Lessor's Notice on the Lessee in accordance with clause 20.7, then the Lessee may assign the Offered Interests to any other person on no more favourable terms than those previously offered to the Lessor.

20.7.4 If the Lessee wishes to offer more favourable terms for assignment of the Offered Interests than the terms contained in the Lessee's Notice, the Lessee must first re-offer its interest therein to the Lessor on those terms, by written notice to the Lessor and clauses 20.7.1-20.7.4 (inclusive) shall apply and if the re-offer is made within 6 months of the initial Lessee's Notice the Ninety (90) Working Day period shall be reduced to Thirty Two (32) Working Days.]

21 [GRANT OF ADDITIONAL RIGHTS

The Lessor must not cancel, surrender, or modify any easement, mortgage or any other registered or unregistered interest affecting the Land or change the status of the Land in any way that would prejudice the ability of the Crown to exercise its option to reacquire the Land under clause 25 without the Lessee's prior written consent, which may be withheld at the Lessee's sole discretion or may be granted subject to conditions.]

22 RE-ENTRY

22.1 Subject to clauses 22.2 – 22.4 (inclusive) the Lessor may re-enter the Land where:

- (a) rental is in arrears for a period exceeding thirty (30) days after any rent payment date;
- (b) the Lessee is in breach of any covenant on the Lessee's part herein expressed or implied;
- (c) the Lessee makes or enters into or attempts to make or enter into any composition, assignment or other arrangement with or for the benefit of the Lessee's creditors;
- (d) the Lessee becomes insolvent, bankrupt or goes into liquidation,

and the terms of this Lease shall terminate on such re-entry [and all Lessee's Improvements on the Land shall vest in and become the property of the Lessor and no compensation or other consideration shall be payable by the Lessor to the Lessee in respect of any Lessee's improvements vesting in the Lessor]. Termination shall otherwise be without prejudice to the rights of either party against the other.

22.2 Notwithstanding clause 22.1, whilst a Crown Agency is the Lessee under this Lease and should the Crown Agency default in the payment of any rental for a period exceeding thirty (30) days or more or otherwise breach any covenant on the Lessee's part herein expressed or implied, then before exercising any rights of re-entry the Lessor shall serve a notice ("Default Notice") on the Lessee specifying the breach complained of with sufficient particularity to enable the Lessee to clearly identify the default alleged and the period within which remediation must be made and the consequences of failure to do so.

22.3 The Default Notice, notwithstanding anything to the contrary contained in clause 22.1 above, shall specify that:

- (a) the Lessee must, within thirty (30) days of receipt of such notice, remedy the default specified; and

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

- (b) that should the Lessee not remedy the default specified within this time, the Lessor shall thereafter be at liberty to re-enter the Land and to determine the Lease pursuant to this clause 22.

22.4 The Lessor acknowledges that it shall not re-enter the Land unless and until the provisions of clause 22.2 have been satisfied in full and further that any re-entry contrary to the provisions of clause 22.2 shall be null and void ab initio.

23 [LESSEE'S RIGHT OF EARLY TERMINATION

23.1 The Lessee may, in its sole discretion and without giving any reasons, terminate this Lease by providing no less than twelve (12) months' notice in writing at any time to the Lessor.

23.2 This Lease and the parties' respective rights and obligations under this Lease will cease from the effective date of termination, but without prejudice to any rights which have accrued up to the date of termination.]

24 [RIGHT OF FIRST REFUSAL FOR LESSOR'S INTEREST

24.1 If at any time before the expiry or earlier termination of the Term, the Lessor:

- (a) decides to sell or transfer the Lessor's interest in the Land; or
(b) receives an offer to purchase the Lessor's interest in the Land and wishes to accept that offer;

the Lessor must immediately give written notice (Lessor's Notice) to the Lessee setting out the terms on which the Lessor wishes to sell the Land, or the terms of the offer received (as the case may be). In the case of the Lessor's desire to sell, the offer must comprise the agreement for sale and purchase in the then most recent form approved by the Real Estate Institute of New Zealand and by the Auckland District Law Society, modified as set out in clause 24.8.

24.2 The Lessee will have ninety (90) Working Days after and excluding the date of receipt of the Lessor's Notice (time being of the essence) in which to exercise the Lessee's right to purchase the Land, by serving written notice on the Lessor (Lessee's Notice) accepting the offer contained in the Lessor's Notice.

24.3 If the Lessee does not serve the Lessee's Notice on the Lessor in accordance with clause 24.2, then the Lessor may sell or transfer the Lessor's interest in the Land to any other person on no more favourable terms than those previously offered to the Lessee.

24.4 If the Lessor wishes, or agrees, to offer more favourable terms for selling or transfer of the Lessor's interest in the Land than the terms contained in the Lessor's Notice, the Lessor must first re-offer its interest in the Land to the Lessee on those terms, by written notice to the Lessee and clauses 24.1 – 24.4 (inclusive) shall apply and if the re-offer is made within 6 months of the Lessor's Notice the Ninety (90) Working Day period shall be reduced to Thirty Two (32) Working Days]

25 ENTIRE AGREEMENT

This Lease constitutes the entire and complete agreement between the parties in relation to the lease of the Land and no variation will be effective or binding unless it is recorded in writing and executed in the same manner as this Lease.

26 DIFFERENCES AND DISPUTES

436 

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

- 26.1 Unless any dispute or difference is resolved by mediation or other agreement, the same will be submitted to the arbitration of one arbitrator who will conduct the arbitral proceedings in accordance with the Arbitration Act 1996 and any amendment to or Act passed in substitution for that Act.
- 26.2 If the parties are unable to agree on the arbitrator, an arbitrator will be appointed, upon the request of any party, by the President of the New Zealand Law Society. That appointment will be binding on all parties to the arbitration with no right of appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject to this clause and varied accordingly.
- 26.3 The procedures described in this clause will not prevent the Lessor from taking proceedings for the recovery of any rent or other moneys payable under this Lease which remain unpaid.
- 26.4 This clause does not apply to any rent review under clause 5 [or determination of the Modified Land Value under clause 26.]

27 NOTICES

- 27.1 Any notice or document required or authorised to be given or served under this Lease must be in writing and may be given or served unless otherwise required by sections 352 to 361 of the Property Law Act 2007:
- (a) in the manner authorised by sections 354 to 361 of the Property Law Act 2007; or
 - (b) by personal delivery, or by posting by registered mail or mail, or by facsimile, or by email to the address of the be notified, as set out in Schedule One, or to such other address as either party may notify to the other in writing.
- 27.2 Any notice or other document will be treated as given or served and received by the other party:
- (a) In the case of personal delivery, when received by the addressee;
 - (b) In the case of posting by mail, three (3) Working Days after being posted to the addressee's last known address in New Zealand;
 - (c) In the case of facsimile transmission, on completion of an error free transmission, when sent by facsimile; or
 - (d) In the case of email, when acknowledged by the addressee by return email or otherwise in writing.
- 27.3 Any notice or document to be given or served under this Lease must be in writing and may be signed by:
- (a) Any attorney, officer, employee or solicitor for the party serving or giving the notice; or
 - (b) The party serving the notice or any other person authorized by that party.

28 PROPERTY LAW ACT 2007

The covenants and powers contained in clauses 4, 5, 6, 10, 11 and 12 of Part 2 and clause 13 of Part 3 of Schedule 3 of the Property Law Act 2007 will not be implied in this Lease and are expressly negated.

29 REGISTRATION OF LEASE

The parties agree that this Lease will be registered against the computer freehold registers for the Land under the provisions of the Land Transfer Act 1952 at the expense of the Lessee. The Lessor consents to the Lessee caveating the computer freehold registers for the Land to protect the Crown's interest prior to registration.

30 COSTS

30.1 The parties shall each pay their own costs of and incidental to the negotiation, preparation and execution of this Lease.

30.2 The Lessee will pay the Lessor's costs of and incidental to the negotiation, preparation and execution of any variation (where a variation is requested by the Lessee), renewal or surrender of this Lease or the obtaining of any consents or approvals associated with this Lease.

31 [CONTAMINATION

As a component of make good all contamination shall be remedied at the cost of the Lessee]

SCHEDULE ONE

Commencement Date	<i>[To be completed]</i>
Initial Term	[Twenty One (21) years]
Termination Date	<i>[To be completed – twenty one (21) years from Commencement Date]</i>
Subsequent Terms	Enduring rights of renewal of [twenty one (21) years] each from <i>[insert date which is the day after the expiry date of the Initial Term]</i> and each [twenty first yearly] anniversary after that date
Annual Rent	\$; <i>[To be completed]</i> plus GST for the next three (3) years of the Initial Term from the Rent Commencement Date to (and inclusive of) the date immediately preceding the third (3 rd) anniversary of the Rent Commencement Date, then to be determined in accordance with the procedure set out in section 5 of the Lease.
Rent Commencement	Commencement Date
Rent Review Dates	Three yearly from the Rent Commencement Date (with the first such review date being on the <i>[to be completed]</i> th anniversary of the Rent Commencement Date)
Permitted Uses	Any use that is a lawful existing use or permitted activity in the then current or proposed District Plan for the Land or which is authorised by a resource consent obtained in respect of the Land, by a designation (including a secondary designation) or otherwise by law, and for the avoidance of doubt including the Core Uses.
Lessor's Contact Details	[Name] [Physical Address] [Postal Address] [Fax Number] [Email Address]
Lessee's Contact Details	[Name] [Physical Address] [Postal Address] [Fax Number] [Email Address]

[Taranaki Whanui entity]

HER MAJESTY THE QUEEN
acting by and through the
MINISTER OF POLICE

MEMORANDUM OF LEASE

THE REFERENCE SCHEDULE

ITEM 1: LESSOR PARTICULARS:

Name: [Taranaki Whanui entity] Address:

Fax:

Telephone:

Contact person:

ITEM 2: LESSEE PARTICULARS:

Name: Her Majesty the Queen acting by and through the Minister of Police

Address: New Zealand Police, National Property Office, P O Box 3017,
Wellington

Fax: (04) 498 7415 Telephone: (04) 474 9473

Contact person: National Property Manager

ITEM 3: LAND:

All that parcel of land containing 0.1672 ha more or less being Lots 9-11,13-16, 18 and Pt Lots 8, 12, 17 DP 1776 and Sec 1 SO 24543 situated at 72 Adelaide Road, Newtown, Wellington, being the New Zealand Police Electronics workshop.

ITEM 4: TERM:

21 Years

ITEM 5: DATE OF COMMENCEMENT:

ITEM 6: FURTHER TERMS:

[Perpetual rights of renewal of five (5) years each.]

ITEM 7: RENEWAL DATES:

ITEM 8: ANNUAL RENT:

\$ plus GST

442 

ITEM 9: RENT COMMENCEMENT DATE:

ITEM 10: REVIEW DATES:

[Five (5) yearly from the Commencement Date of this Lease.]

ITEM 11: PERMITTED USE:

(For Police purposes and any permitted activity under the relevant **R**egional and **D**istrict
Plans or use permitted under any resource consent held in respect of the **L**and.
Subject to Lessor's consent, not to be unreasonably or arbitrarily withheld.

THE SCHEDULE OF TERMS

INTERPRETATION

- 1.1 For the purpose of the interpretation or construction of this Lease unless the context provides otherwise:
- (a) Words importing any gender shall include all other genders.
 - (b) Words importing the singular shall include the plural and vice versa.
 - (c) Payments shall be made in the lawful currency of New Zealand.
 - (d) Headings are for ease of reference only and do not in any way limit or govern the construction of the terms of this Lease.
 - (e) References to schedules are references to schedules in this Lease and clauses are references to clauses in this Schedule of Terms and references to parties are references to the parties to this Lease and their respective successors and assigns (if permitted in the case of the Lessee under Clause 13) unless expressly stated otherwise.
 - (f) Any reference in this Lease to any statute is deemed to include all amendments, revisions, substitutions or consolidations made from time to time to that statute.
 - (g) A "person" shall include any individual person, a corporation, a company or other body corporate, an unincorporated body of persons, a public body, firm, partnership, joint venture, association, organisation, trust or a Crown entity as defined in Section 7(1) of the Crown Entities Act 2004 or a State Owned Enterprise in each case whether or not having separate legal personality.
 - (h) "writing" shall include words visibly represented or reproduced.
 - (i) No consent or waiver, express or implied, by the Lessor to or of any breach of any covenant, condition, or duty of the Lessee will be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty. No waiver of any breach of the Lessee will be implied from the Lessor's failure to exercise the Lessor's rights or any of them in respect of that breach.

PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE

- (j) Nothing contained in this Lease shall be deemed or construed or constitute any party, a partner, agent or representative of the other party or be deemed to create any trust, commercial partnership or joint venture.
- (k) The invalidity of any part or provision of this Lease shall not affect the enforceability of any other part or provision thereof.
- (l) The parties acknowledge and agree that certain covenants set out in this Lease (in particular provisions relating to the treatment of Improvements on termination or sooner determination of this Lease) shall continue beyond determination of this Lease for the benefit of the parties notwithstanding such determination.
- (m) This Lease shall be construed and take effect in accordance with the laws of New Zealand.
- (n) Any provision in this Lease to be performed by two or more persons shall bind those persons jointly and severally.
- (o) Any reference in this Lease to "month" or "monthly" shall mean respectively calendar month and calendar monthly.
- (p) "Authority" means any Government authority whether national or territorial or any other Government or statutory authority appointed or established by statute in New Zealand having jurisdiction over or in respect of the Land and any Improvements.
- (q) "Business days" means any day other than a Saturday or Sunday or statutory or anniversary holiday.
- (r) "Date of Commencement" means the date specified in Item 5 of the Reference Schedule.
- (s) ["Government Agency" means Government Agency includes any department or instrument of the Executive Government of New Zealand; and, includes:
- (a) a body corporate or corporation sole (whether called a corporation sole (whether called a corporation, commission, council, board, authority, or by any name) that has been established or constituted by a public Act of Parliament and that is named in that Act;
 - (b) a body corporate or organisation that is controlled or wholly by the Crown or by any such Department, instrument, orate, corporation sole, or organisation;
 - (c) a Crown Entity within the meaning of the Crown Entities Act 2004 or as otherwise established or constituted by an Act of Parliament;
 - (d) a State enterprise within the meaning of the State-Owned Enterprises Act 1985;]

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

- (t) "Improvements" means all Improvements excluding Lessor's Improvements whether constructed or installed on the Land before or at any time during the term of this Lease (including any renewal or variation extending the term of this Lease), including any building, structure or other improvements on or fixed to the Land and any concrete paving, tiles, carpark sealing, mechanical services, plant, machinery, equipment, signage, fixtures and fittings.
- (u) "The Land" means that land described in the Schedule of Land excluding the Improvements.
- (v) The expression "Lessor" and "Lessee" includes their respective successors and assigns (if permitted in the case of the Lessee under Clause 13) and where the context permits the Lessee includes the Lessee's Sublessees and other lawful occupiers of the Land and the Lessee's contractors, agents and invitees (which persons shall be those deemed to be persons under the control of the Lessee).
- (w) "Lessor's Improvements" means work done or material used on or for the benefit of the Land (whether before or during the term of this Lease including any renewal or variation extending the term of this Lease) in:
- (i) the draining, excavation, filling, or reclamation of the Land, or the making of retaining walls or other works appurtenant to that draining, excavation, filling or reclamation; or
 - (ii) the grading or levelling of the Land or the removal of rocks, stone, sand, or soil therefrom; or
 - (iii) the removal or destruction of vegetation, or the effecting of any change in the nature or character of the vegetation; or
 - (iv) the alteration of soil fertility or of the structure of the soil; or
 - (v) the arresting or elimination of erosion or flooding.
- (x) "Reference Schedule" means the schedule preceding this Schedule of Terms described as such and forming part of this Lease.
- (y) "Regional Plan" and "District Plan" shall have ascribed to them the definitions set out in section 2 of the Resource Management Act 1991 and "Regional and District Plans" shall be construed accordingly and shall extend to include any successor or replacement planning regime imposed by the relevant Authority having jurisdiction in respect thereof.
- (z) "Rent Commencement Date" means the date specified in Item 9 of the Reference Schedule.

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

- (aa) "Schedule of Land" means the schedule described as such and forming part of this Lease.
- (bb) "Schedule of Terms" means this schedule described as such and forming part of this Lease.

TERM

- 2.1 The term of this Lease shall commence on the Date of Commencement and shall be for the period specified in Item 4 of the Reference Schedule.

RIGHT OF RENEWAL OF LEASE

- 3.1 [The Lessee not being at that time in breach of any material provision of this Lease shall on or prior to the end of the initial term or any subsequent term of this Lease, be entitled to a renewal of this Lease for the further term specified in the Reference Schedule from the date of expiry of the initial term or any subsequent term as follows:
 - (a) the Annual Rent will be agreed upon or failing agreement will be determined in accordance with clause 5 as though the commencement date of the renewed term were a Rent Review Date; and
 - (b) the renewed lease will otherwise be on and subject to the covenants and agreements expressed or implied in this Lease including this covenant for renewal.
- 3.2 The Lessee shall use all reasonable endeavours to give to the Lessor notice of the Lessee's intention to renew this Lease no later than 6 months prior to the expiry of the initial term or any subsequent term. If the Lessee fails to give the Lessor notice of the Lessee's intention to renew by the date which is 3 months prior to the expiry of the initial term or any subsequent term, the Lessor shall be entitled to give the Lessee notice requiring the Lessee to notify the Lessor of the Lessee's intentions within 1 months of the date of the Lessor's notice to the Lessee.]

RENT

- 4.1 The Lessee shall pay the annual rent specified in Item 8 of the Reference Schedule from the Rent Commencement Date until the rent is varied under Clause 5 at which time the Lessee will pay rent at the varied rate.
- 4.2 Rent shall be paid on the first day of each month by equal monthly payments in advance with broken period payments due on a proportionate basis for any broken period at the Rent Commencement Date and on expiry of the Lease term.
- 4.3 All rent shall be paid without any deduction or set-off whatsoever by direct automatic bank payment to the Lessor or as the Lessor may otherwise direct.

RENT REVIEW PROVISIONS

- 5.1 In this clause "Initiating Party" means the party that gives the Notice defined in Clause 5.2 and "Recipient" means the party that receives that Notice.
- 5.2 The annual rent may be reviewed by the Lessor or by the Lessee on the dates specified in Item 10 of the Reference Schedule. At any time not earlier than three (3) months prior to the relevant date specified in Item 10 of the Reference Schedule (each of such dates being called the "review date") and not later than one year after a review date, either party may give notice in writing to the other ("the Notice") of that party's assessment of the annual rent of the Land to apply from that particular review date.
- 5.3 The annual rent of the Land shall be assessed on the basis of current market rental of the Land as determined as at the review date. In determining the annual rent of the Land the valuers and any umpire shall, in addition to other relevant factors:
- (a) Disregard:
 - (i) any deleterious condition of the Land if such condition results from any breach of this lease by the Lessee;
 - (ii) the value of any goodwill attributable to the Lessee's business; and
 - (iii) all Improvements made to the Land.
 - (b) Have regard to:
 - (i) the Lessor's Improvements; and
 - (ii) the permitted use under this Lease; and
 - (iii) Regional and District Plans.
- 5.4 In the event that the Recipient does not agree with the Initiating Party's assessment of the annual rent of the Land to apply from the particular review date, the Recipient shall notify the Initiating Party in writing ("the Counter Notice") within twenty-one (21) days (in which respect time shall be of the essence) that the Recipient requires such rent to be determined in accordance with Clause 5.7 and the Recipient shall set out in the Counter Notice the amount which the Recipient considers to be the annual rent as at the particular review date.
- 5.5 Unless such notice is given by the Recipient within twenty-one (21) days, then the amount stated in the Notice shall become the annual rent of the Land reserved by this Lease as and from the particular review date in substitution of the previous amount payable.
- 5.6 Neither party shall by reason of its failure to give the Notice prior to any review date forfeit its right to have the annual rent reviewed as from that particular review date and the reviewed annual rent which should have been paid from that particular review date shall date back to and be

payable from that particular review date and any payment of or receipt for the payment of ground rent due on or after a particular review date shall not prejudice either party's right to demand repayment or payment thereafter of any additional annual rent overpaid or payable pursuant to the provisions of Clause 5.11.2.

- 5.7 Where the Counter Notice is given, the Lessor and Lessee shall enter into negotiations to resolve the dispute. Should agreement not be reached within fourteen (14) days (or such longer period as the Lessor and Lessee shall agree upon in writing) after the date on which the Recipient gives the Counter Notice then:
- (a) the Lessor and Lessee shall, within twenty-one (21) days after the date on which the Recipient gives the Counter Notice, each appoint a valuer to jointly determine the ground rent of the Land. A valuer nominated by either party pursuant to this Clause shall be a full registered member of the New Zealand Institute of Valuers and shall be competent to practice as a valuer of ground leases and shall have at least five (5) years experience in valuing ground leases within the district in which the Land is situated and be active in the market at the time of his or her appointment.
 - (b) if either the Lessor or the Lessee fails to appoint a valuer within twenty-one (21) days as aforesaid, then the determination of the annual rent shall be made by the sole valuer as nominated by either the Lessor or Lessee as the case may be, within one (1) month of the expiry of the twenty-one (21) days as aforesaid and his or her determination shall be final and binding on both parties as if his or her appointment had been by consent.
 - (c) before proceeding with their determination, the said valuers shall agree upon and appoint an umpire (also qualified in the manner referred to in Clause 5.7.1) and obtain the umpire's acceptance in writing of his or her appointment and who, as a condition of his or her acceptance, undertakes to hand down his or her determination of the annual rent within one month of being instructed to proceed or such other time period as the Lessor and Lessee may agree, whichever is the latest.
 - (d) if the said valuers within fourteen (14) days of the date of their appointment either fail to appoint an umpire or are unable to agree upon an umpire, then either the Lessor or the Lessee may request the President, for the time being, of the New Zealand Institute of Valuers or any successor to such Institute to appoint an umpire (also qualified in the manner aforesaid) and obtain the umpire's acceptance in writing of his or her appointment and who as a condition of his or her acceptance undertakes to hand down his or her determination of the annual rent in the same manner as if he or she had been appointed pursuant to Clause 5.7.1.
 - (e) subject to Clauses 5.7.2, 5.7.3 and 5.7.4 the valuers so nominated shall within one (1) month of the date of appointment jointly determine the annual rent as at that particular review date.
 - (f) in the event that either valuer fails to provide to the other valuer his or her written assessment of the annual rent within one month of the date of appointment, then the annual rent shall be

PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE

determined by the other valuer and his or her determination shall be final and binding on both parties.

- (g) if the said valuers are unable to agree upon a determination within one month of their appointment or within such extended time as the Lessor and Lessee may agree, then the annual rent shall be determined by the umpire whose determination shall be final and binding on the parties. The umpire shall without limiting his or her enquiries and conduct of any hearing:
- (i) arrange for a hearing to be conducted without delay;
 - (ii) call for evidence in chief to be presented on behalf of each party to be circulated prior to a hearing;
 - (iii) allow representation of each party and cross-examination of evidence and any re-examination of evidence at the hearing;
 - (iv) have due regard to any evidence submitted by the valuers as to their assessment of the annual rent;
 - (v) take into account any expert witness evidence considered relevant to the hearing;
 - (vi) have regard to the legal rules of evidence and the interests of natural justice in the conduct of any hearing as between the parties;
 - (vii) give in his or her determination the reasons therefor in writing.
- (h) the costs incurred in the determination pursuant to Clause 5.7 of the annual rent shall be borne by the parties in the following manner:
- (i) subject to Clause 5.7.8(b) each party shall be responsible for the cost of its own appointed valuer;
 - (ii) where the determination is made by a single valuer pursuant to Clause 5.7.2 the cost of his or her determination shall be apportioned equally as between the Lessor and Lessee;
 - (iii) the parties shall share equally the costs of the umpire unless any party has acted capriciously or unreasonably in any of the proceedings pursuant to the provisions of this Clause 5.7 in which case the umpire may determine the manner in which such costs shall be apportioned between the parties PROVIDED THAT in all cases if the annual rent to apply from the review date is:
 - (A) equal to or exceeding the annual rent nominated in the notice given by the Lessor (whether the Notice or the Counter Notice) then all costs of the valuers and the umpire (where applicable) shall be borne by the Lessee alone, or

PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE

- (B) equal to or less than the annual rent nominated in the notice given by the Lessee (whether the Notice or the Counter Notice) then all costs of valuers and the umpire (where applicable) will be borne by the Lessor alone;
 - (C) other than the foregoing then all costs of valuers and the umpire (where applicable) will be borne equally by the Lessor and the Lessee.
- 5.8 The valuers or umpire shall be deemed to be acting as experts and not as arbitrators.
- 5.9 Any variation in the annual rent resulting from such determination shall take effect on and from that particular review date.
- 5.10 The annual rent so determined or accepted:
 - (i) shall not, in the case of a rent review during the initial term of this Lease, be less than the Annual Rental payable as at the Commencement Date, or in the case of a rent review during any subsequent term, be less than the Annual Rental payable at the commencement of such subsequent term; and
 - (ii) shall be the Annual Rental from the Rent Review Date or the date of the initiated notice, if such notice is given later than 12 months after the Rent Review Date.
- 5.11 [Pending the determination of the Annual Rent, the Lessee if it is a Government Agency shall from the relevant review date on the date of service of the Initiator's notice if such notice is served later than 3 months after the relevant review date, until the determination of the current market rent of the Land, pay an interim annual rent ("Interim Rent") equivalent to that immediately prior to the review date, however if the Lessee is not a Government Agency it will pay the Interim Rent as follows:
 - (a) if both parties supply a registered valuer's certificate substantiating the current market rent of the Land proposed by each party, the Interim Rent shall be based on the average of the two rents proposed by the parties; or
 - (b) if only one party supplies a registered valuer's certificate substantiating the current market rent of the Land proposed, the Interim Rent shall be based on the current market rent of the Land substantiated in that certificate; or
 - (c) if no registered valuer's certificates are supplied, the Interim Rent payable shall be the rent payable immediately prior to the relevant Rent Review Date; and]
 - (d) on completion of the review, any increased annual rent payable as from the review date shall be paid by the Lessee to the Lessor no later than the date on which the next instalment of annual rent is payable hereunder;
 - (e) on completion of the review, any overpayment of annual rent paid as from the review date shall be held by the Lessor to the Lessee's credit on account of annual rent next falling due for payment unless the Lessee requests the Lessor in writing to

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

refund such payment in which case the Lessor will comply with that request.

- 5.12 If any moratorium or other law Act or regulation that applies to this Lease has the effect of postponing any periodic review of annual rent as at the review date then if and whenever such moratorium is lifted or the law, Act or regulation is repealed or amended so as to permit the annual rent to be reviewed then the review that has been postponed shall take place as at the date that such moratorium is lifted or such law, Act or regulation is repealed or amended to the intent that the rent review shall establish the annual rent as at such date and not as at the postponed review date but any subsequent rent review shall take place on the next following review date fixed in accordance with Clause 5.
- 5.13 Immediately upon the parties agreeing to pay a revised annual rent or on determination under Clause 5.7 the Lessee shall enter into an appropriate registrable Memorandum of Variation of Lease recording such revised annual rent prepared by the Lessor.

CHARGES

- 6.1 [The Lessee will pay all charges incurred by the Lessee for electricity, gas, water or power or other services in respect of the Land and Improvements including all connection, disconnection, or other fees payable by the Lessee or the Lessor to other authorities in respect of such services.]

PAYMENT OF RATES AND IMPOSITIONS

- 7.1 The Lessee will pay all rates, taxes (including without limitation land or improvements tax but excluding any income tax or capital gains tax or such similar tax which is personal to the Lessor which is imposed as a result of any sale or other disposal of the Land or because of income gained by the Lessor from the Land), charges, assessments, impositions and outgoings whatsoever which now are or which during the term or any renewed lease shall be taxed, rated, charged, assessed or imposed on the Land, any Improvements or on the Lessor or Lessee in respect thereof by any Authority.

GOODS AND SERVICES TAX

- 8.1 The Lessee shall pay to the Lessor upon demand any taxes paid or payable by the Lessor or accountable by the Lessor pursuant to the provisions of the Goods and Services Tax Act 1985 or any similar tax levied in substitution therefor including all amendments and any enactments in substitution therefor or in addition thereto or otherwise in respect of any payments made by the Lessee under this Lease (including the payment of annual rent) or paid by the Lessor on behalf of the Lessee's obligation to make such payment under this Lease.

INTEREST ON OVERDUE RENT OR OTHER MONEYS

- 9.1 Without prejudice to other rights powers and remedies of the Lessor, if any annual rent, goods and services tax or other payment or amount

452 

owing by the Lessee to the Lessor whatsoever pursuant to this Lease shall be in arrears and unpaid for fifteen (15) business days after the due day for payment thereof (whether any formal or legal demand therefor shall have been made or not) such unpaid moneys shall bear interest on a daily basis compounded on monthly rests computed from such due date until the date of payment in full of such moneys at a rate being 1 % above the average 90 day bank bill buy rate (described as the BID rate) at 10.45am on the date the payment was due as shown on page BKBM (or its successor page) on the Reuters screen or at a rate based on any successor screen or if there is none at a rate equal to the bank overdraft rate of the Lessor's bank at the time of any default and the said interest shall be recoverable in the same manner as rent in arrears.

USE OF THE LAND AND IMPROVEMENTS

- 10.1 The Lessee shall be permitted the right to carry on the business specified in Item 11 of the Reference Schedule.
- 10.2 Should any of the uses of the Land and any Improvements be permissible only with the consent or licence of any Authority under or in pursuance of statute or any Regional and District Plans or regulation or other enactment or order of Court the Lessee shall obtain such consent or licence at the sole cost and expense of the Lessee including but not limited to any costs of financial contributions required and the Lessee shall at all times comply with any conditions of such consent, order or authority obtained.
- 10.3 [Where the Lessee is lawfully obliged to obtain any licence, resource consent (including any land use consent or discharge permit) or other consents from any Authority such as required under section 348 of the Local Government Act 1974, the Lessor agrees that it and any officer, or employee or agent of the Lessor shall not raise any objection or requisition relating thereto as landowner of the Land where the Lessee is using the Land for any permitted use under this Lease and is not in any material breach or likely to be in any material breach at any time in the future of any terms and conditions of this Lease.]

NO FENCING

- 11.1 The Lessor shall be under no liability whatsoever whether under the Fencing Act 1978 or otherwise to contribute towards the cost of erection or repair of any boundary fences between the Land and any land owned or occupied by the Lessor but nothing herein contained shall be deemed to limit any liability imposed by statute upon any present or future lessee of the Lessor of any adjoining land.

STATUTORY REQUIREMENTS

- 12.1 The Lessee must comply with all statutes, Regional and District Plans, bylaws and regulations which relate to the Land and Improvements or which relate to the Lessee's use of the Land and Improvements and with all conditions or requirements which may be given or required by any

person having any lawful authority and will in particular but without limitation:

- (a) ensure that a warrant of fitness is obtained each year in respect of any Improvements if required under the Building Act 2004;
- (b) comply with and observe at all times the terms and conditions of all resource consents held in respect of the use of the Land and the requirements imposed and otherwise arising under the Resource Management Act 1991; and
- (c) ensure that proper and adequate health and safety procedures are adopted in accordance with the Health and Safety in Employment Act 1992.

12.2 The Lessee shall not, during the term of this Lease:

- (a) make or enter into or endeavour to make or enter into any composition, assignment or other arrangement with or for the benefit of the Lessee's creditors;
- (b) suffer insolvency, bankruptcy or liquidation;
- (c) suffer distress or allow execution to issue against the Lessee's property, goods or effects under any judgment against the Lessee in any Court in a sum in excess of twenty five thousand dollars (\$25,000.00) provided however that this subclause 12.2.3 shall have no application or effect whilst Her Majesty the Queen Acting By and Through the Minister of Police is the Lessee hereunder.

ASSIGNMENT OR SUBLETTING

13.1 [Subject to clauses 13.3 and 13.4, the Lessee must not assign, sublet or otherwise part with the possession of the Land or any part of the Land without first obtaining the written consent of the Lessor which the Lessor will give if the following conditions are fulfilled:

- (a) The Lessee proves to the satisfaction of the Lessor that the proposed assignee is (or in the case of a company the shareholders of the company of the proposed assignee are) respectable, responsible and has the financial resources to meet the commitments under any lease.
- (b) All rent and other moneys payable under this Lease have been paid and there is no subsisting (in the case of a Government Agency a material, willful and deliberate) breach of any of the Lessee's covenants.
- (c) The Lessee pays the proper costs and disbursements in respect of the approval or preparation of any deed of covenant or guarantee and (if appropriate) all fees and charges payable in respect of any reasonable enquiries made by or on behalf of the Lessor concerning any proposed assignee.
- (d) The Lessee will, at the Lessee's own expense, procure the execution by an assignee of a deed of covenant with the Lessor

that the assignee will, at all times pay the rent at the times and in the manner provided in this Lease and will observe and perform all the covenants and conditions contained in this Lease.

- (e) Where the assignee is a company, the Lessor may require the deed of covenant referred to in paragraph (d) above to be executed by that company and also by such other directors and/or shareholders of that company as the Lessor reasonably requires, as joint and several guarantors, upon the terms set out in the then current edition of the Auckland District Law Society form of Standard Lease for Commercial Premises or if such lease is no longer published, then upon such terms as are commonly used in leases of commercial premises.

13.2 For the purposes of clause 13.1 any change in the shareholding of the Lessee (where the Lessee not being a Government Agency is a company which is not listed on the main board of a public stock exchange) or any amalgamation under section 219 of the Companies Act 1993 altering the effective control of the Lessee shall be a deemed assignment of this Lease and will require the consent of the Lessor unless such deemed assignment involves a change of effective control to any of the entities mentioned in clauses 13.3 and 13.4.

13.3 If, by any statutory provision or regulation enacted during the Term of this Lease, the Lessee is obliged to transfer or assign management of the Land or any aspect of such management to a third party, the provisions of clause 13.1 will not apply to such a transfer or assignment and the Lessee will be entitled to transfer or assign its interest as Lessee under this Lease, or any aspect of management of the Land, to such a third party without further reference to the Lessor, who will be deemed to have approved such a transfer or assignment and will immediately sign any document necessary to give effect to such a transfer or assignment, if so requested by the Lessee.

13.4 PROVIDED ALWAYS, notwithstanding clause 13.1, the Lessee may at any time and from time to time:

- (a) transfer or assign its interest as Lessee under this Lease, or grant a sublease or licence of the whole or any part(s) of the Land, to any Government Agency; and/or
- (b) grant a sublease or licence of the whole or any part(s) of the Land to any other person,

in either case without further reference to the Lessor, who will be deemed to have approved such a transfer, assignment or sublease and will immediately sign any document necessary to give effect to such a transfer, assignment or sublease, if so requested by the Lessee.

13.5 Where the Lessee grants a sublease or licence of the whole or any part(s) of the Land to any other person, the Lessee will not permit any sublessee to deal with the sublease in any way in which the Lessee is restrained from dealing without consent under this Lease.

13.6 Notwithstanding any rule of law or anything expressed or implied in this Lease to the contrary, where a Government Agency is Lessee, assigns its interest in this Lease under the provisions of this clause 13, all the

PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE

liabilities of the Government Agency as Lessee expressed or implied under this Lease, whether contingent or otherwise for the payment of future rents or other money or the future observance or performance of any of the covenants, conditions or agreements on the part of the Lessee shall cease and determine absolutely as from the date of assignment, but without releasing the Lessee from liability for any antecedent breach of this Lease.]

LESSEE'S ACKNOWLEDGEMENT OF RISK

- 14.1 The Lessee agrees to occupy and use the Land and any Improvements at the Lessee's risk and release to the full extent permitted by law the Lessor its employees and agents from all claims and demands of any kind and from all liability which in the absence of any negligence on its or their part may arise in respect of any accident damage or injury occurring to any person or property in or about the Land and any Improvements thereon except where the Lessor or any person under the control of the Lessor is at fault or negligent through their own acts or omissions.

QUIET ENJOYMENT/REPUDIATION

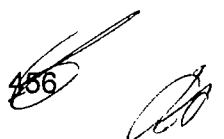
- 15.1 Provided the Lessee performs and observes the covenants, provisions, conditions and agreements contained in this Lease the Lessee shall peaceably hold and enjoy the Land and Improvements thereon without hindrance or interruption by the Lessor or by any person or persons claiming under the Lessor until the expiration or sooner determination of this Lease. For the avoidance of doubt, the phrase "person or persons claiming under the Lessor" does not include beneficiaries of any trust of which the Lessor is trustee.
- 15.2 [The Lessor is to compensate the Lessee and the Lessee shall be entitled to recover any damages for any loss or damage suffered by reason of any acts or omissions of the Lessor constituting a repudiation of the Lease or the Lessor's obligations under the Lease. Such entitlement shall subsist notwithstanding any cancellation or early termination of the Lease and shall be in addition to any other right or remedy which the Lessee may have.]

REGISTRATION

- 16.1 The Lessor shall register this Lease under the provisions of the Land Transfer Act 1952.
- 16.2 The Lessee will be responsible for survey and other costs incurred in obtaining registration of this Lease.

IMPROVEMENTS DURING LEASE

- 17.1 Throughout the term of this Lease and on any renewal any Improvements installed or erected on the Land shall be deemed to remain in the ownership of the Lessee unless the Lessor and the Lessee otherwise agree in writing.

456 

- 17.2 Throughout the term of this Lease and on any renewal the Lessee shall have the right to alter, construct and demolish any Improvements on the Land without the need to obtain the Lessor's consent providing all obligations required of the Lessee under this Lease relevant to Improvements on the Land are satisfied.

[IMPROVEMENTS ON TERMINATION OF LEASE]

- 18.1 [Not concluded]

DESTRUCTION AND REDEVELOPMENT

- 19.1 [The Lessee shall be entitled to carry out repairs, demolition, relocation, additions, reinstatement or redevelopment to any Improvements on the Land in the event of total or partial destruction or in the event of the Lessee wishing to demolish, relocate, redevelop, replace or add to any Improvements on the Land provided the following conditions are or will be satisfied

- (a) any repair, demolition, relocation, addition, reinstatement or redevelopment shall fully comply with Regional and District Plans and all statutory and regulatory requirements in force at the time; and
- (b) the Lessee is able to obtain all resource and building consents necessary to carry out any works programme;

and upon satisfaction of such conditions the Lessee shall repair, demolish, relocate, reinstate, rebuild or add to (as the case may be) any Improvements or such part of Improvements requiring such work in accordance with the conditions set out above.]

NOTICES

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

- (a) in the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and
- (b) in all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:
- (i) in the manner authorised by sections 354 to 361 of the Property Law Act 2007; or
- (ii) by personal delivery, or by posting by registered or ordinary mail, or by facsimile transmission.

- 20.2 All notices to be given to the Lessor or to the Lessee hereunder shall be deemed sufficiently served:

- (a) in the case of personal delivery, when received by the addressee at the address detailed in clause 20.3; and

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

- (b) in the case of posting by registered mail, on the third working day following the date of posting to the addressee at the address detailed in clause 20.3; and
- (c) in the case of facsimile transmission, on the working day following the date of sending to the addressee's facsimile number designated in clause 20.3 provided that the sender produces a confirmation notice that the facsimile has been sent on that day.

20.3 Details for Notices:

[Taranaki Whanui entity]

The District Commander
Wellington Region
New Zealand Police
P O Box 693
Wellington

Fax: 04 472 3943

- 20.4** A notice shall be valid if given by the duly authorised representative of the party giving the notice. If a notice is not given by the Lessor, it is to be supported by satisfactorily written delegation from the Lessor confirming the appointment of the party giving the notice.

DEFAULT BY LESSEE

- 21.1** The Lessor may (in addition to the Lessor's right to apply to the Court for an order for possession) cancel this Lease by re-entering the land at the time or any time thereafter:
- a. If the rent shall be in arrear ten (10) working days after any of the rent payment dates and the Lessee has failed to remedy that breach within ten (10) working days after service on the Lessee of a notice in accordance with section 245 of the Property Law Act 2007;
 - b. In case of breach by the Lessee of any covenant or agreement on the Lessee's part herein expressed or implied (other than the covenant to pay rent) after the Lessee has failed to remedy that breach within the period specified in a notice served on the Lessee in accordance with Section 246 of the Property Law Act 2007;

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

DISPUTE RESOLUTION

- 22.1** Any dispute or difference which may arise between the parties concerning the interpretation of this Lease or relating to any other matter

458 

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

arising under this Lease will be actively and in good faith negotiated by the parties with a view to a speedy resolution of such differences.

- 22.2 If the parties cannot resolve a dispute or difference within fifteen (15) business days of any dispute or difference arising then, unless otherwise expressly provided in this Lease, they will without prejudice to any other right, explore whether such dispute or difference can be resolved by agreement between them using informal dispute resolution techniques such as mediation. The rules governing any such technique if adopted will be agreed between the parties or as selected by the organisation known as "LEADR" (Lawyers Engaged in Alternative Dispute Resolution).
- 22.3 If the parties cannot agree on any dispute resolution technique within a further fifteen (15) business days of any dispute or difference being considered for referral by both parties to any informal dispute resolution technique under Clause 22.2 then the dispute or difference shall be settled by reference to arbitration. Except as otherwise expressly provided in this Lease the reference shall be to a single arbitrator if one can be agreed upon, or to two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to their arbitration), such arbitration to be carried out in accordance with the Arbitration Act 1996 or any successor Act.
- 22.4 The parties will co-operate to ensure the expeditious conduct of any arbitration. In particular, each party will comply with any reasonable time limits sought by the other for settling terms of reference, interlocutory matters and generally all steps preliminary and incidental to the hearing and determination of the proceedings.

COSTS

- 23.1 The parties shall pay their own costs of and incidental to the negotiation, preparation and execution of this Lease. The Lessee shall pay the Lessor's costs of and incidental to the preparation and execution of any variation (where this is requested by the Lessee), renewal or surrender of this Lease or the obtaining of any consents or approvals associated with this Lease.
- 23.2 The Lessee shall pay the Lessor's reasonable costs (including reasonable legal costs) of and incidental to the proper enforcement or proper attempted enforcement of the Lessor's powers, rights or remedies under or pursuant to this Lease.

LESSOR'S RIGHTS TO INSPECT AND DISPLAY SIGNS

- 24.1 The Lessor will have the right to inspect the Land when reasonably required during the term or any renewal of this Lease with valuers or other experts and consultants provided such inspections are carried out at times reasonably acceptable to the Lessee on reasonable notice to the Lessee and only when accompanied by a servant or agent of the Lessee. Any such inspections should be carried out in accordance with the Lessee's security and health and safety requirements and the Lessee shall have the right to change any suggested time to a mutually convenient time.

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

- 24.2 Notwithstanding anything else herein, the parties agree that the Lessee may require any person wishing to enter the Land for inspection purposes to first provide their details to the Lessee for a security check. If the results of such check are not acceptable to the Lessee for any reason then such person may be refused entry to the Land.
- 24.3 If the Lessor desires to, or is required to, undertake any works on the Land, including any repair or maintenance works, that involves the use of contractors or other third parties, the Lessor must procure any contractor or other third party who will have access to the Land to undertake such works to:
- (a) complete a security check on terms reasonably acceptable to the Lessee;
 - (b) provide the Lessee with a copy of the contractor's Health and Safety Plan which shall be subject to the Lessee's reasonable approval prior to any work commencing; and
 - (c) familiarise themselves with and commit to complying with the Lessee's own Health and Safety Plan in all material respects.
- 24.4 The Lessor will not provide or allow the provision of any information relating to the structure, or access to, the buildings on the Land in any way to any person without first obtaining the written permission of the Lessee.
- 24.5 The Lessee will during the period of [three (3) months] prior to the termination date of this Lease permit the Lessor to exhibit the Land to prospective lessees or purchasers and allow the Lessor to affix to the Land appropriate sale or reletting notices.

DISPOSAL OF LESSOR'S INTEREST

- 25.1 [Subject to the provisions of this clause the Lessor may at any time dispose of the Lessor's interest in the Land provided:
- (a) any such disposal shall preserve to the Lessee all the Lessee's rights and remedies under this Lease; and
 - (b) That for so long as the Lessee is a Government Agency the following further provisions shall apply:
 - (i) The Lessor shall advise the Lessee in writing of the person or corporation to whom the Lessor intends to dispose of its interest in the Land (proposed Assignee).
 - (ii) If the Lessee has any objection to the proposed Assignee because the Lessee reasonably apprehends in good faith that either:
 - (A) The proposed Assignee presents an actual or potential threat to the discharge by the Lessee of the Lessee's statutory obligations; or



**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

- (B) The role or function of the Lessee will be prejudiced by the proposed Assignee becoming the Lessor;

then the Lessee shall within five (5) working days of receiving the Lessor's advice pursuant to clause 25.1(b)(i) above, notify the Lessor in writing of its objection to the proposed Assignee and shall substantiate its reasonable apprehension to the reasonable satisfaction of the Lessor;

- (c) If the Lessor does not receive written notice from the Lessee pursuant to clause 25.1(b)(i) or 25.1(b)(ii) above together with grounds to substantiate its reasonable apprehension within five (5) working days from the date of its advice to the Lessee, the Lessee shall be deemed to have accepted the proposed Assignee.
- (d) If the Lessee objects to the proposed Assignee in accordance with clause 25.1(b)(ii)(A) or 25.1(b)(ii)(B) above, then the Lessor shall not dispose of its interest to the proposed Assignee.
- (e) If the Lessor fails to advise the Lessee in writing of the disposal of its interest in the Land and the Lessee has objections to the proposed Assignee based on those reasons set out in clauses 25.1(b)(ii)(A) or 25.1(b)(ii)(B) above, then the Lessee shall be entitled at any time thereafter to terminate this Lease on seven (7) days written notice and the Lessee's obligations under this Lease shall cease from the expiration of such notice.]

LESSEE'S RIGHT OF EARLY TERMINATION

- 26.1 [The Lessee may, in its sole discretion and without giving any reasons, terminate this Lease by providing no less than ten (10) years notice in writing at any time to the Lessor.
- 26.2 This Lease and the parties' respective rights and obligations under this Lease will cease from the effective date of termination, but without prejudice to any rights which have accrued up to the date of termination.]

HOLDING OVER

- 27.1 If the Lessor permits the Lessee to remain in occupation of the Land after the expiration or sooner determination of this Lease, such occupation shall be a tenancy at will only terminable by twenty (20) working days written notice at the rent then payable per month for the Land and otherwise on the same covenants and agreements (so far as applicable to a tenancy at will) as herein expressed or implied.

EXCLUSION OF IMPLIED PROVISIONS

- 28.1 The following covenants, conditions and powers implied in leases of land pursuant to Schedule 3 of the Property Law Act 2007 are expressly excluded from application to this Lease:
- 28.2 Clause 10 - Premises unable to be used for particular purpose;
- 28.3 Clause 11 - Power to inspect premises.

CONTAMINATION

29.1 [Not concluded]

(

(

SCHEDULE OF LAND

All that parcel of land containing 0.1672 ha more or less being Lots 9-11, 13-16, 18 and Pt Lots 8, 12, 17 DP 1776 and Sec 1 SO 24543 situated at 72 Adelaide Road, Newtown, Wellington.

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF
SETTLEMENT: LEASEBACK SCHEDULE**

LEASE OF FREEHOLD

Correct for the purposes of the
Land Transfer Act 1952

Situate in Wellington

[Taranaki Whanui entity]
Lessor

HER MAJESTY THE QUEEN
acting by and through the
MINISTER OF POLICE
Lessee

Particulars entered in the Register
on the date and at the time recorded

District Land Registrar Assistant of
the Wellington Land Registry

PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT: LEASEBACK SCHEDULE

MINISTRY OF EDUCATION
TREATY SETTLEMENT LEASE

MEMORANDUM OF LEASE dated

2009

LESSOR ("the Lessor")

LESSEE HER MAJESTY THE QUEEN acting by and through the Secretary for Education ("the Lessee")

WHEREAS the Lessor owns the Land hereafter described in Item 1 of Schedule A ("the Land")

AND WHEREAS the Lessor has agreed to lease the Land to the Lessee on the terms and conditions hereinafter appearing

The Lessor HEREBY LEASES to the Lessee the Land from the Commencement Date, at the annual rental, for the term with the right(s) of renewal and for the Permitted Use all as described in Schedule A

The Lessor and the Lessee covenant as set out in Schedule B

The Lessee hereby accepts this Lease of the Land to be held by the Lessee as tenant and subject to the conditions, restrictions and covenants in Schedules A and B

SIGNED by)
)
as Lessor by [two] of its trustees:)

Trustee's Signature

Trustee's Full Name (please print)

Trustee's Signature

Trustee's Full Name (please print)

SIGNED for and on behalf)
of HER MAJESTY THE QUEEN as Lessee by)
<NAME>)
(acting pursuant to a delegation)
given to him/her by the Secretary for)
Education in the presence of:)

SCHEDULE A

ITEM 1 THE LAND

ITEM 2 THE COMMENCEMENT DATE

[Date].

ITEM 3 ANNUAL RENT

\$() plus GST per annum payable monthly in advance on the first day of each month with a first payment due on the [Date] day of [Month & Year].

ITEM 4 TERM OF LEASE

21 years.

ITEM 5 LESSEE OUTGOINGS

5.1 [Rates or levies payable to any local or territorial authority, excluding only taxes levied against the Lessor in respect of its interest in the Land.

5.2 All charges relating to the repair and maintenance of any Lessee Improvements as hereafter described (whether of a structural nature or not).

5.3 The cost of ground maintenance, including the maintenance of playing fields, gardens and planted and paved areas.

5.4 Carparking area maintenance and repair.

5.5 All costs associated with the repair, maintenance or replacement of any fencing on the Land.]

ITEM 6 PERMITTED USE

The Permitted Uses referred to in clause 2.8.

ITEM 7 RIGHT OF RENEWAL

Rights of renewal of 21 years each forever from the [Date], and each 21st yearly anniversary after that date.

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF
SETTLEMENT: LEASEBACK SCHEDULE**

ITEM 8 RENT REVIEW DATES

[Seven (7) yearly from the Commencement Date].

ITEM 9 LESSEE'S IMPROVEMENTS

[List all existing buildings and improvements on the Land together with all playing fields and sub soil works constructed or installed by the Lessee or any agent or sublessee or licensee of the Lessee on the Land].

ITEM 10 CLAUSE 2.16b. NOTICE

To: [The Lessor]
(hereafter called "the Lessor")

And to: [The Lessee]
(hereafter called "the Lessee")

From: [Mortgagee / Chargeholder]
(hereafter called "the Lender")

[In consideration of the Lessee accepting a lease from the Lessor of all the Land described in the Schedule below ("the Land") which the Lender acknowledges will be for its benefit, the Lender acknowledges that:

- (i) It has notice of the provisions of clause 2.16(b) and (c) of the said Lease; and
- (ii) It agrees that any Lessee's Improvements placed on the Land by the Lessee at any time prior to or during the continuance of the Lease, shall remain the property of the Lessee at all times during the continuance of the Lease and for a period of six months after the expiration or sooner determination of the Lease (hereafter collectively called "the relevant period");
- (iii) It will not claim any interest in any Lessee's Improvements under the security for its loan during the relevant period irrespective of how any Lessee's Improvement may be annexed to the Land and irrespective of any rule of law or equity to the contrary or any provisions of its security to the contrary;
- (iv) It agrees that this acknowledgement is irrevocable.]

SCHEDULE ***

[That parcel of land containing]

.....
(LENDER EXECUTION)

/ / 200

ITEM 11 CLAUSE 2.16c. NOTICE

To: [The Lessor]
(hereafter called "the Lessor")

And to: [The Lessee]
(hereafter called "the Lessee")

From: [Mortgagee/Chargeholder]
(hereafter called "the Lender")

[The Lender acknowledges that prior to the date it advanced monies to the Lessor under a security ("the Security") given by the Lessor over the land described in the Schedule below ("the Land") it had notice of and agreed to be bound by the provisions of clause 2.16(c) of the Lease of the Land and that in particular it agrees that notwithstanding any provision of the Security to the contrary and irrespective of how any Lessee's Improvement is annexed to the Land it:

- (i) Will not claim any security interest in any Lessee's Improvement placed on the Land prior to or after the commencement date of the Security;
- (ii) Will at all times acknowledge that any Lessee's Improvements shall remain the property of the Lessee at all times during the continuance of the Lease and for a period of six months after the expiration or sooner determination of the Lease.]

SCHEDULE B

PART I - PRELIMINARY

1. DEFINITIONS

1.1

- a. The expression "the Lessor" shall include and bind:
 - i. the persons executing this Lease as Lessor; and
 - ii. any Lessor for the time being under it; and
 - iii. all the respective executors, administrators, successors, assigns and successors in title of each Lessor and if more than one jointly and severally.
- b. The expression "the Lessee" shall include and bind:
 - i. the person executing this Lease as Lessee;
 - ii. all the Lessees for the time being under it; and
 - iii. all the respective executors, administrators, successors, assigns and successors in title of each Lessee and if more than one jointly and severally.
- c. Words importing the singular or plural number shall include the plural or singular number respectively.

1.2 "Board" means a Board of Trustees constituted under Part 9 of the Education Act 1989.

1.3 "Crown" has the meaning given to it in section 2(1) of the Public Finance Act 1989 and includes:

- a. Her Majesty the Queen in right of New Zealand; and
- b. all Ministers of the Crown and all Departments.

1.4 "Crown Body" means:

- a. the Crown (whether acting through a Minister of otherwise);
- b. a Crown entity (as defined in section 7(1) of the Crown Entities Act 2004
- c. a State enterprise (as defined in section 2 of the State-Owned Enterprises Act 1986); or
- d. any company or body which is wholly-owned or controlled by any one or more of the following:
 - i. the Crown,

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF
SETTLEMENT: LEASEBACK SCHEDULE**

- ii. a Crown entity; or
- iii. a State enterprise; or

and includes

- iv. a subsidiary of, or related company to, a company or body referred to in d: and
- v. the New Zealand Railways Corporation.

- 1.5 "Department" has the meaning given to it in s2 of the Public Finance Act 1989.
- 1.6 "Education Act 1989" means the Education Act 1989.
- 1.7 "Government Work" means a work or any intended work that is to be constructed, undertaken, established, managed, operated or maintained by or under the control of the Crown or any Minister of the Crown for any public purpose.
- 1.8 "The Land", "The Commencement Date", "Annual Rental", "Term of the Lease", "Lessee's Outgoings" and "Permitted Use" have the meanings ascribed to them in Schedule A.
- 1.9 "Lessee's Improvements" means all improvements on the Land of any kind whatsoever including buildings, sealed yards, paths, lawns, gardens, fences, playing fields, subsoil works and other like property of any kind whatsoever constructed or placed on the Land by the Lessee or any agent or sublessee or licensee of the Lessee prior to or after the commencement of this Lease including those listed in Item 10 of Schedule A.
- 1.10 "Lessee's Outgoings" means all outgoings the Lessee is obliged to pay under the provisions of this Lease.
- 1.11 A "property occupancy document" means a notice specifying the terms and conditions subject to which a Board occupies land and buildings, issued by the Secretary for Education pursuant to s 70 of the Education Act 1989 and includes a licence to occupy or other agreement granted under those provisions.
- 1.12 "State School" has the meaning given to it in the Education Act 1989.
- 1.13 References to a statute include references to regulations, orders, rules or notices made under that statute, and references to a statute or regulation include references to all amendments to or replacements of that statute or regulation, whether by subsequent statute or regulation, consolidation, reenactment, substitution or otherwise.
- 1.14 The term "to sublet" shall include the granting of a licence to occupy the Land or part thereof, and "subletting" and "sublease" shall be construed accordingly.

2. LESSEE'S COVENANTS

2.1 Payment of Annual Rent

The Lessee shall pay the annual rent in the manner and at the times provided in Item 3 of Schedule A.

2.2 Rent Review

2.2.1 [The Annual Rent payable from each Rent Review Date shall be determined as follows:

- a. Either party (the "Initiator") may commence a review by not earlier than three (3) months prior to a Rent Review Date and not later than one year after any review date, giving written notice to the other party ("Recipient") specifying the sum considered by the Initiator to be the current market rent for the Land as at the Rent Review Date ("Initiator's Notice").
- b. If, by written notice to the Initiator within twenty (20) Working Days after receipt of the Initiator's Notice, the Recipient disputes the current market rent for the Land proposed by the Initiator is the current market rent for the Land ("Recipient's Notice"), then the current market rent for the Land will be determined in accordance with the provisions of clause 2.2.1.

2.2.1 Immediately following receipt by the Initiator of the Recipient's Notice, the parties shall endeavour to agree upon the Annual Rent, but if agreement is not reached within twenty (20) Working Days then the current market rent for the Land (new rent) may be determined either:

- a. by one party giving written notice to the other requiring the new rent to be determined by arbitration; or
- b. if the parties so agree by registered valuers acting as experts and not as arbitrators as follows:
 - i. each party shall appoint a valuer and give written notice of the appointment to the other party within twenty (20) Working Days of the parties agreeing to so determine the new rent;
 - ii. the valuers appointed, before commencing their determination shall appoint an umpire who shall be a registered valuer or solicitor of the High Court. In the event the valuers fail to agree upon an umpire, the appointment of an umpire shall be made by the President of the Arbitrators Institute of New Zealand Incorporated on the joint application of the valuers.
- c. the valuers shall determine the Annual Rent of the Land and if they fail to agree then the Annual Rent shall be determined by the umpire;

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF
SETTLEMENT: LEASEBACK SCHEDULE**

- d. in undertaking their determination the valuers and the umpire shall disregard the value of any Lessee's Improvements on the Land;
- e. each party shall be given the opportunity to make written or verbal representations to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe and the valuers or the umpire as the case may be shall have regard to any such representations but not be bound thereby;
- f. when the Annual Rent has been determined, the umpire or the valuers shall give written notice thereof to the parties. Any umpire notice shall provide how the costs of the determination shall be borne and such provisions shall be binding on the parties. Where the Annual Rent is determined by the parties' valuers and not the umpire, the parties shall pay their own costs.

2.2.2 The Annual Rent so determined or accepted:

- a. shall, not, in the case of a rent review during the initial term of this Lease, be less than the Annual Rent payable as at the Commencement Date, or in the case of a rent review during any subsequent term, be less than the Annual Rent payable at the commencement of such subsequent term; and
- (a) shall be the Annual Rent from the Rent Review Date or the date of the Initiator's Notice if such notice is given later than 3 months' after the Rent Review Date.

2.2.3 Pending the determination of the Annual Rent, the Lessee if it is a Crown Body shall from the relevant review date, or from the date of service of the Initiator's notice if such notice is served later than 3 months after the relevant review date, until the determination of the current market rent of the Land will pay an interim annual rent ("Interim Rent") equivalent to that prior to the review date, however if the Lessee is not a Crown Body it will pay the interim rent as follows:

- a. if both parties supply a registered valuer's certificate substantiating the current market rent of the Land proposed by each party, the Interim Rent shall be based on the average of the two rents proposed by the parties; or
- b. if only one party supplies a registered valuer's certificate substantiating the current market rent of the Land proposed, the Interim Rent shall be based on the current market rent of the Land substantiated in that certificate; or
- c. if no registered valuer's certificates are supplied, the Interim Rent payable shall be the rent payable immediately prior to the relevant Rent Review Date; and

- d. upon determination of the new Annual Rent, any appropriate adjustment will be made; and
- e. the rent review, at the option of either party, may be recorded in a variation of this Lease.

2.2.4 If any moratorium or other law, act or regulation that applies to this Lease has the effect of postponing any periodic review of annual rent as at a Rent Review Date, then if and whenever such moratorium is lifted or the law, act or regulation is repealed or amended so as to permit the annual rent to be reviewed, then the review that has been postponed shall take place as at the date that such moratorium is lifted or such law, act or regulation is repealed or amended to the intent that the rent review shall establish the annual rent as at such date and not as at the postponed Rent Review Date, but any subsequent rent review shall take place on the next following Rent Review Date.]

2.3 Payment of Lessee Outgoings

- a. The Lessee shall pay the Lessee Outgoings in respect of the Land which are specified in Item 5 of Schedule A direct to the creditors concerned.
- b. The Lessee's liability to pay Lessee Outgoings during the term of this Lease shall subsist until the end or earlier termination of this Lease.

2.4 Valuation Roll

Where this lease is registered under section 115 of the Land Transfer Act 1952 and is for a term of not less than 10 years (including renewals):

- a. the Lessee will be entered in the rating information database and the district valuation roll as the ratepayer in respect of the Land; and
- b. the Lessee will be responsible for payment of rates accordingly.

2.5 Utility Charges

The Lessee shall promptly pay to the relevant authority or supplier all charges for water, sewage, drainage, electricity, gas, telephone, rubbish collection and all utility and other services connected or supplied to the Land if separately metered or charged in respect of the Land.

- a. **Apportionment:** If any utility or service is not separately charged in respect of the Land then the Lessee shall pay a fair and reasonable proportion.
- b. **Adjustments:** The Lessor may vary the proportion of any utility charge payable to ensure that the Lessee pays a fair and reasonable proportion.

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF
SETTLEMENT: LEASEBACK SCHEDULE**

- c. **Meters:** If required to do so by the Lessor or any Authority the Lessee shall at the lessee's own expense install any meter or other measuring device necessary for the proper measurement of the charges for any utility or other services supplied to the Land.

2.6 Goods and Services Tax

The Lessee shall pay to the Lessor or as the Lessor shall direct the goods and services tax (GST) payable by the Lessor in respect of the rental and other payments payable by the Lessee hereunder. The GST in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payments shall be payable on demand.

2.7 Interest

If the Lessee shall fail to pay any instalment of rent or other sum of the money payable to the Lessor under this Lease within 14 days of the day on which it fell due or, if the Lessee shall fail to pay to the Lessor upon demand any amount paid by the Lessor to remedy any default by the Lessee of the Lessee's obligations under this Lease within 14 days from the date such demand is received by the Lessee, then any amount not so paid shall bear interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for overdraft accommodation plus a margin of 4% accruing on a daily basis from the due date for payment or the due date of payment by the Lessor (as the case may be) down to the date that such amount is paid by the Lessee. The Lessor shall be entitled to recover such interest in the same manner as if it were rent in arrears.

2.8 Permitted Uses of Land

a. Primary Use

The Land may be used for education purposes.

b. Subsidiary Use

If any part of the Land is not required for education purposes, then that part of the land may be used for any of the following purposes:

- (i) any other Government Work;
- (ii) any use undertaken, established, managed, operated or maintained by a Crown Body for any public purpose;
- (iii) any use of the whole or any part of the Land consented to by the Lessee as sublessor under clause 4.2 of this Lease.

2.9 Designation

The Lessor covenants that it will consent to the Lessee seeking and obtaining a designation of the Land for the purposes of the Permitted Use under the provisions of the Resource Management Act 1991, and that the Lessor shall further consent to the Lessee maintaining that designation for the duration of this Lease. Any designation must be lifted upon the expiration or earlier termination of this Lease.

2.10 Lessee's Acknowledgement

The Lessee agrees to occupy and use the Land at the Lessee's risk and releases to the fullest extent permitted by law the Lessor, its servants and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any personal property in or about the Land, except where that is caused by the wilful or reckless act of the Lessor or persons acting under the control of the Lessor.

2.11 Compliance with Law

The Lessee shall comply with the provisions of all statutes, ordinances, regulations, bylaws and codes in any way affecting the Land or the conduct of the Permitted Use on the Land and will also at the Lessee's own cost comply with the provisions of all statutes, ordinances, regulations, bylaws, codes, requisitions or notices issued, made or given by any lawful authority in respect of the Land or the Lessee's conduct of the Permitted Use on the Land.

2.12 Avoidance of Danger

The Lessee shall:

- a. take all reasonable precautions to minimise any danger or hazard arising from the Lessee's use of the Land and shall not permit any goods of a dangerous nature to be stored or used on the Land unless stored and used in a manner which complies with all statutes, ordinances, regulations, bylaws and codes or standards in that regard;
- b. promptly remedy any danger or hazard that may arise on the Land.

2.13 Maintenance of Lessee's Improvements

The Lessee shall at the Lessee's expense keep any Lessee's Improvements on the Land in good order, condition and repair during the continuance of this Lease.

2.14 Construction of or Alterations To Lessee's Improvements

- a. The Lessee may construct Lessee's Improvements and make any alterations or additions to Lessee's Improvements without the prior approval of the Lessor where it is necessary for or incidental to the Permitted Use. In all other cases, the Lessee shall be obliged to seek the prior written consent of the Lessor to the construction of any Lessee's Improvements which are not necessary for or incidental to the Permitted Use, and consent shall not be withheld or delayed unreasonably or arbitrarily.
- b. The Lessee may negotiate and conclude such easements and all other like rights and interests over or for the benefit of the Land as are necessary for or incidental to either:
 - i. the Permitted Use; or
 - ii. any permitted alterations or additions to the Lessee's Improvements;

without the prior approval of the Lessor and the Lessor agrees that it will execute such documentation as is reasonably required to give legal effect to the rights so created.

2.15 No Lessor Maintenance

The Lessee acknowledges that the Lessor shall have no repair or maintenance obligations for any of the Lessee's Improvements on the Land.

2.16 Lessor's Acknowledgments as to Lessee's Improvements

- a. The Lessor acknowledges in relation to Lessee's Improvements that:
- i. notwithstanding any rule of law or equity to the contrary, property in all Lessee's Improvements shall remain with the Lessee throughout the continuance of this Lease and irrespective of how those improvements are annexed to the Land;
 - ii. Lessee's Improvements are to be insured by the Lessee in its own name; and
 - iii. when any Lessee's Improvements are destroyed or damaged, the decision whether to reinstate or not is solely with the Lessee and property in any insurance proceeds is also solely with the Lessee;
- b. [Should the Land be subject to any Mortgage or other charge at the Commencement Date of this Lease, then the Lessor will when presenting this Lease to the Lessee for its acceptance also present to the Lessee the written acknowledgement of any and all existing mortgagees or chargeholders of the Land prescribed in Schedule A Item 10 duly executed by any such mortgagees or chargeholders, it being further acknowledged by the Lessor that the Lessee shall not be required to execute the within Lease until the provisions of this sub clause have been fully satisfied;
- c. Should the Lessor, subsequent to the Commencement Date of this Lease, propose to grant any mortgage or charge then, prior to doing so, it shall have executed by any proposed Mortgagee or Chargeholder the written acknowledgement prescribed in Schedule A Item 11, it being further acknowledged by the Lessor that it will not grant any mortgage or charge until the provisions of this clause have been satisfied and further that it will deliver executed originals of such acknowledgements to the Lessee within three (3) working days from the date of their receipt by the Lessor;
- d. The Lessee may demolish or remove any Lessee's Improvements from the Land at any time during this Lease without the consent of the Lessor upon the condition that the Lessee reinstates the Land to a neat, tidy and safe condition after any such removal.]

2.17 Removal of Lessee's Improvements

[Not concluded]

2.18 Rubbish Removal

The Lessee shall regularly cause all rubbish and garbage to be removed from the Land and will keep any rubbish bins or containers in a tidy condition. The Lessee will also at the Lessee's expense cause to be

removed all trade waste boxes and other goods or rubbish not removable in the ordinary course by the territorial authority.

2.19 Signage

The Lessee shall have the right to affix names, signs, nameplates, signboards and advertisements relating to the purposes of the Permitted Use without the consent of the Lessor. The Lessee shall not otherwise affix, paint or exhibit or permit to be affixed, painted or exhibited any name, sign, name plate, sign board or advertisement of any description on or to the exterior of the Lessee's Improvements or the Land or any Lessors' Property thereon without the prior approval in writing of the Lessor. Any signage shall be secured in a substantial and proper manner so as not to cause any damage and the Lessee shall at the end or sooner determination of this Lease remove the signage and make good any damage.

2.20 Insurance

- a. The Lessor shall be responsible for insuring any Lessor's property on the Land;
- b. The Lessee shall be responsible for insuring or self insuring any Lessee's Improvements on the Land;
- c. Should any property referred to in subclauses a. and b. above be damaged or destroyed, then it shall be the sole responsibility of the party effecting insurance to decide (subject to the rights of any mortgagee of theirs) whether to effect reinstatement or not and the other party shall abide by that decision whatever it may be.

2.21 Public Liability Insurance

The Lessee shall (except where the Lessee is Her Majesty the Queen) insure at its own cost against all public liability in the sum of at least \$2,000,000 in respect of any single event in the name of the Lessee at all times during the continuance of this Lease.

2.22 Sundry Lessee Acknowledgments

The Lessee acknowledges that:

- a. the Lessor shall not be liable to erect or maintain or contribute towards the cost of the erection or replacement of any dividing or boundary fence or portion thereof between the Land and any adjoining land which is the property of the Lessor;
- b. the Lessee shall at its own cost and expense in all things fence the boundaries of the Land insofar as the Lessee deems it reasonably necessary for the purposes of the Permitted Use;
- c. it has entered into this Lease in reliance on its own judgment and not in reliance on any representation or warranty by the Lessor.

3. LESSOR'S COVENANTS

3.1 Quiet Enjoyment

If the Lessee pays the rent and observes and performs all the covenants and agreements expressed or implied in this Lease, the Lessee shall quietly hold and enjoy the Land throughout the term of this Lease without any interruption by the Lessor or any person claiming by, through or under the Lessor.

3.2 Benefits to Land Not to be Restricted or Cancelled

The Lessor shall not cancel, surrender or modify any easements or other like rights or interests whether registered or not which are for the benefit of or appurtenant to the Land without the prior written consent of the Lessee.

4. MUTUAL COVENANTS

4.1 Assignment

- a. The Lessee shall be permitted as of right to assign its interest under this Lease to any Crown Body, but shall not otherwise be able to assign its interest under this Lease [without the prior written consent of the Lessor];
- b. Without limiting clause 4.1a, it is acknowledged between the parties that a transfer of the interest of one Department to another Department shall be permitted as of right by the Lessor and shall not be deemed to be an assignment for the purposes of this clause 4.1 or a subletting for the purposes of clause 4.2;
- c. [The disposal of the Lessee's interest in the Land pursuant to section 40, 41, 42, 50 or 52 of the Public Works Act 1981 shall be permitted as of right and shall not be deemed to be an assignment for the purposes of clause 4.1a or subletting for the purposes of clause 4.2.]

4.2 Subletting

The Lessee shall be permitted as of right to sublet or grant a licence to:

- a. any Crown Body; or
- b. any person or body where the Land is used for the purposes of a school and the Land or a part of the Land is not needed or used for the purposes of the school occupying it during the term of the sublease or licence; and
 - i. the sublease or licence is in the public interest; and
 - ii. the sublease or licence:



PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT: LEASEBACK SCHEDULE

- (1) is for a purpose associated with educational outcomes and will bring educational benefit to the school or its community, or to any other school; or
- (2) is for a community purpose, and will bring no educational disadvantage to the school; or
- iii. the sublease or licence is essential or conducive to the carrying out of the then existing Permitted Use.

4.3 Occupancy by School Board of Trustees

- a. Where the Lessee Her Majesty the Queen acting by and through the Secretary for Education has issued either a licence to occupy or a property occupancy document to any Board then the occupancy so conferred shall not be an underletting or an assignment to which clause 4.1 or clause 4.2 relate and shall be permitted as of right. The Lessor agrees that the covenant for quiet enjoyment contained in clause 3.1 extends to and includes the occupancy of the Land by any such Board whether pursuant to a licence to occupy or a property occupancy document.
- b. The Board shall be permitted as of right, after obtaining the prior written consent of the Secretary for Education, to:
 - i. sublet or grant a licence to any person or body on the same basis that the Lessee is permitted to sublet or licence under clause 4.2b, in accordance with s70B of the Education Act 1989; and
 - ii. enter into an agreement with any person or body, pursuant to s70C of the Education Act 1989.

4.4 Lessee Early Termination

- a. [The Lessee may, in its sole discretion and without giving any reasons, terminate this Lease by providing no less than ten (10) years notice in writing at any time to the Lessor.
- b. This Lease and the parties' respective rights and obligations under this Lease will cease from the effective date of termination, but without prejudice to any rights which have accrued up to the date of termination.]

4.5 Default

Notwithstanding anything else in this Lease, the Lessor acknowledges and agrees that, should the Lessee breach any terms or conditions of this Lease, the Lessor shall not in any circumstances whatsoever terminate or forfeit this Lease or re-enter into possession, but shall limit itself to the remedies of:

- a. specific performance; and/or
- b. damages; and/or

- c. any other remedies which may be appropriate or available and do not involve the forfeiture or termination of this Lease or re-entry into possession.

4.6 Notice of Default

Notwithstanding anything expressed or implied in this lease, the Lessor will not exercise its rights under clause 4.5 unless the Lessor has first given to the Lessee written notice of the breach or default on which the Lessor relies. In the case of a breach or default:

- a. remediable by payment of money, if the Lessee pays to the Lessor within one month of the service of such notice all moneys necessary to remedy such breach or default;
- b. remediable other than by payment of money, if the Lessee within one month of the service of such notice undertakes in writing to the Lessor to remedy the breach or default and remedies the same within a reasonable time having regard to the nature and extent of it;
- c. which cannot be remedied, if the Lessee within three months of the service of such notice pays to the Lessor compensation to the reasonable satisfaction of the Lessor in respect of such breach or default having regard to the nature and extent of it,

then the Lessor will not be entitled to rely on the breach or default set out in the notice to the Lessee and the same will be absolutely waived by the Lessor and this lease will continue in full force and effect as if no such breach or default had occurred.

4.7 Lessor May Remedy Lessee Default

- a. If the Lessee defaults in the observance or performance of any of the Lessee's obligations and if the Lessor has first served not less than 21 clear days written notice of its intention to enter upon the Land and to do such things required to make good any Lessee default, then it shall be lawful for the Lessor (in addition to any of its remedies) to enter the Land and do all such things required to make good the default and to recover the costs of such action from the Lessee;
- b. Any notice served under the provisions of clause 4.5 a. shall specify sufficient particulars to adequately advise the Lessee of the breach of Lease in respect of which notice is issued and the fact that such notice is issued under the provisions of this clause. Non compliance with these requirements shall render any notice void.

4.8 Renewal

[The Lessee not being at that time in breach of any material provision of this Lease shall on or prior to the end of the initial term or any subsequent term of this Lease, be entitled to a renewal of this Lease for the further

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF
SETTLEMENT: LEASEBACK SCHEDULE**

term specified in Schedule One from the date of expiry of the initial term or any subsequent term as follows:

- a. the Annual Rent will be agreed upon or failing agreement will be determined in accordance with clause 2,2 as though the commencement date of the renewed term were a Rent Review Date; and
- b. the renewed lease will otherwise be on and subject to the covenants and agreements expressed or implied in this Lease including this covenant for renewal.
- c. the Lessee shall use all reasonable endeavours to give to the Lessor notice of the Lessee's intention to renew this Lease no later than 18 months prior to the expiry of the initial term or any subsequent term. If the Lessee fails to give the Lessor notice of the Lessee's intention to renew by the date which is 12 months prior to the expiry of the initial term or any subsequent term, the Lessor shall be entitled to give the Lessee notice requiring the Lessee to notify the Lessor of the Lessee's intentions within 9 months of the date of the Lessor's notice to the Lessee.]

4.9 Entire Agreement

This Lease constitutes the entire and complete agreement between the parties in relation to the lease of the Land and no variation shall be effective or binding unless it is recorded in writing and executed in the same manner as this Lease.

4.10 Differences and Disputes

All differences or disputes that may arise between the parties concerning this Lease shall be the subject of negotiations in good faith with a view to achieving resolution and, if those negotiations are not successful, shall be referred to the arbitration of two arbitrators (one to be appointed by each party) and an umpire (to be appointed by the arbitrators before their entering upon the reference) in accordance with the Arbitration Act 1996.

4.11 Service of Notices

- a. Notices given under this Lease by the Lessor shall be served on the Lessee by hand delivery in accordance with Sections [352 to 361] of the Property Law Act 2007 or by registered mail addressed to:

The Property Manager
National Office
Ministry of Education
Private Bag 1666
WELLINGTON.

- b. Notices given under this Lease by the Lessee shall be served on the Lessor by hand delivery in accordance with Sections [352 to 361] of the Property Law Act 2007 or by registered mail addressed to:

[INSERT PARTICULARS WHEN KNOWN]

- c. Notices shall be deemed to be served at the time of delivery, or in the case of notices which are posted by registered mail, two days after the date of posting.

4.12 Registration of Lease

The parties acknowledge their agreement that this Lease be registered under the provisions of the Land Transfer Act 1952 at the expense of the Lessee. The Lessor agrees to make title available for that purpose and consents to the Lessee caveating title to protect its interest in the Lease prior to registration.

4.13 Costs

The parties shall pay their own costs of and incidental to the negotiation, preparation and execution of this Lease. The Lessee shall pay the Lessor's costs of and incidental to the negotiation, preparation and execution of any variation (where this is requested by the Lessee), renewal or surrender of this Lease or the obtaining of any consents or approvals associated with this Lease.

4.14 Contamination

[Not concluded]

PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT: LEASEBACK SCHEDULE

LESSOR:

Correct for the purposes of the
Land Transfer Act 1952

.....
SOLICITOR FOR THE LESSEE

LESSEE:

HER MAJESTY THE QUEEN
acting by and through the Secretary
for Education

Particulars entered in the
Register as shown herein
on the date and at the time
endorsed below

MEMORANDUM OF LEASE

**THE SECRETARY
MINISTRY OF EDUCATION
NATIONAL OFFICE
WELLINGTON**



PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT: LEASEBACK SCHEDULE

(MINISTRY OF JUSTICE)

LESSOR:
[TARANAKI WHĀNUI...]

Correct for the purposes of the Land Transfer Act 1952

.....
SOLICITOR FOR THE LESSEE

LESSEE:
HER MAJESTY THE QUEEN
acting by and through the
Secretary of the Ministry of Justice

Particulars entered in
the Register as shown
herein on the date and
at the time endorsed
below

MEMORANDUM OF LEASE

THE SECRETARY
MINISTRY OF JUSTICE
WELLINGTON



MINISTRY OF JUSTICE
LONG TERM LEASE OF BARE GROUND
FOR COURTHOUSE PURPOSES

[TARANAKI WHĀNUI KI TE UPOKO O TE IKA] (hereafter called "**the Lessor**") being registered as proprietor of an estate in fee simple subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten or endorsed on Computer Freehold Register [XXXX (XXX Registry)], in that piece of land situated in [XXXX Land] District containing [XXXX] square metres more or less, being Section [XXXX] and being comprised and described therein.



does hereby lease to **HER MAJESTY THE QUEEN** acting through the Chief Executive of the Ministry of Justice (hereafter called "**the Lessee**") all the said land (hereafter called "**the Land**") to be held by the Lessee as tenant for a term of twenty (20) years at the yearly rental of \$[] plus GST payable annually in advance on the [] day of [] in each year during the continuance of this Lease subject to the covenants, conditions and restrictions set forth in Schedules A and B following.

The Lessee doth hereby accept the lease of the above described land to be held by the Lessee as tenant and subject to the conditions, restrictions and covenants set forth in Schedules A and B following.

Dated this [] day of [] 200[]
SIGNED by **[TARANAKI WHĀNUI KI TE UPOKO O TE IKA]**
GOVERNANCE ENTITY as Lessor)

SIGNED for and on behalf of HER)
MAJESTY THE QUEEN as Lessee)
)
(acting by and through the)
Secretary of the Ministry of Justice))

(

 487 

SCHEDULE A

ITEM 1 THE LAND

1.1 All that parcel of land being the Land previously specified.

ITEM 2 THE COMMENCEMENT DATE

2.1 The commencement date of this Lease shall be the [] day of [] 20 []

ITEM 3 ANNUAL RENTAL

3.1 [Value in word] [(\$XXX.00)] per annum plus GST payable annually in advance on the first day of each year during the continuance of this lease with a first payment due on [] day of [] 20 []

ITEM 4 TERM OF LEASE

4.1 Initial term

20 years from the Commencement Date, to determination on the [] day of [] 20 []

4.2 Subsequent terms

Rights of renewal for terms of 20 years each forever from the [] day of [] 20 [] and each 20th anniversary after that date.

ITEM 5 LESSEE OUTGOINGS

5.1 Rates, levies, charges, assessments, duties or fees payable to any local, territorial, governmental and any other statutory authority excluding only taxes levied against the Lessor in respect of its interest in the Land.

5.2 Charges for water, gas, electricity, telephones and other utilities or services.

5.3 Rubbish collection charges.

5.4 All costs associated with the repair, maintenance or replacement of any fencing on the land.

ITEM 6 [PERMITTED USE

6.0

- (a) For the purposes of the administration of Justice by the Crown, including use as a Courthouse and related facilities which can include cells for overnight prisoner accommodation; and/or
- (b) any other commercial use compatible with the land and permitted by the Operative District Plan from time to time.]

ITEM 7 RIGHTS OF RENEWAL

7.1 Renewable as provided in Item 4.2 above.

ITEM 8 RENT REVIEW DATES

8.1 5 yearly from the Commencement Date of this Lease.

ITEM 9 LESSOR'S PROPERTY

9.1 Nil.

ITEM 10 LESSEE'S IMPROVEMENTS

10.1 Refer to definitions

ITEM 11 [CLAUSE 3.04(b) CHARGEHOLDER'S NOTICE

To: [The Lessor]
(hereafter called "**the Lessor**")

And to: [The Lessee]
(hereafter called "**the Lessee**")

From: [Mortgagee / Chargeholder]
(hereafter called "**the Lender**")

In consideration of the Lessee accepting a lease from the Lessor of all the Land described in the Schedule below ("**the Land**") which the Lender acknowledges will be for its benefit, the Lender acknowledges that:

- (v) It has notice of the provisions of clause 3.04(b) and (c) of the said Lease; and

- (vi) It agrees that any Lessee's Improvements placed on the Land by the Lessee at any time prior to or during the continuance of the Lease, shall remain the property of the Lessee at all times during the continuance of the Lease and for a period of six months after the expiration or sooner determination of the Lease (hereafter collectively called "**the relevant period**");
- (vii) It will not claim any interest in any Lessee's Improvements under the security for its loan during the relevant period irrespective of how any Lessee's Improvement may be annexed to the Land and irrespective of any rule of law or equity to the contrary or any provisions of its security to the contrary;
- (viii) It agrees that this acknowledgement is irrevocable.]

[SCHEDULE ***

[That parcel of land containing]

.....

(LENDER EXECUTION)

/ / 200]

ITEM 12 [CLAUSE 3.04(c) CHARGEHOLDER'S NOTICE

To: [The Lessor]
(hereafter called "**the Lessor**")

And to: [The Lessee]
(hereafter called "**the Lessee**")

From: [Mortgagee/Chargeholder]
(hereafter called "**the Lender**")

The Lender acknowledges that prior to the date it advanced monies to the Lessor under a security ("**the Security**") given by the Lessor over the land described in the Schedule below ("**the Land**") it had notice of and agreed to be bound by the provisions of clause 3.04(c) of the Lease of the Land and that in particular it agrees that notwithstanding any provision of the **Security** to the contrary and irrespective of how any Lessee's Improvement is annexed to the Land it:

- (iii) Will not claim any security interest in any Lessee's Improvement placed on the Land prior to or after the commencement date of the Security;
- (iv) Will at all times acknowledge that any Lessee's Improvements shall remain the property of the Lessee at all times during the continuance of the Lease and for a period of six months after the expiration or sooner determination of the Lease.]

ITEM 13 ADDRESS FOR SERVICE

Lessor: [Taranaki Whānui ki Te Upoko o Te Ika]
WELLINGTON
Attn: General Manager
Facsimile:

Lessee: Chief Executive
Ministry of Justice
Level 3
Vogel Building
Aitken Street
WELLINGTON (PO Box 180, WELLINGTON)
Facsimile: (04) 918 8820]

SCHEDULE B

PART I - PRELIMINARY

1.00 DEFINITIONS AND INTERPRETATION

1.01 In this Lease:

- (a) The expression "**the Lessor**" shall include and bind:
- (i) the persons executing this lease as Lessor; and
 - (ii) any Lessor for the time being under it; and
 - (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessor and if more than one jointly and severally.
- (b) The expression "**the Lessee**" shall include and bind:
- (i) the person executing this lease as Lessee;
 - (ii) all the Lessees for the time being under it; and
 - (iii) all the respective executors, administrators, successors, assigns and successors in title of each Lessee and if more than one jointly and severally;

and the expression "**the Lessee**" shall include the Lessee's agents, employees, contractors and invitees and any person on the Land under the control or direction of the Lessee.

- (c) Words importing the singular or plural number shall include the plural or singular number respectively.

1.02 "Goods and Services Tax" or "GST" means tax levied in accordance with the Goods and Services Tax Act 1985 or any tax in the nature of a Goods and Services Tax.

1.03 ["Government Agency" includes any department or instrument of the Executive Government of New Zealand; and, includes:

- (a) a body corporate or corporation sole (whether called a corporation sole (whether called a corporation, commission, council, board, authority, or by any name) that has been established or constituted by a public Act of Parliament and that is named in that Act;
- (b) a body corporate or organisation that is controlled or wholly by the Crown or by any such Department, instrument, orate, corporation sole, or organisation;

- (c) a Crown Entity within the meaning of the Crown Entities Act 2004 or as otherwise established or constituted by an Act of Parliament;
- (d) a State enterprise within the meaning of the State-Owned Enterprises Act 1985;]
- 1.04** "Government Work" means a work or any intended work that is to be constructed, undertaken, established, managed, operated or maintained by or under the control of the Crown or any Minister of the Crown for any public purpose.
- 1.05** "Lease" means, unless the context otherwise requires, this lease and any further or renewal term thereof.
- 1.06** "Lessee's Improvements" shall mean all improvements on the Land of any kind whatsoever including buildings, sealed yards, paths, lawns, gardens, fences and other like property of any kind whatsoever constructed or placed on the Land by the Lessee or any agent of the Lessee prior to or after the commencement of this Lease but shall exclude "Lessor's Property".
- 1.07** "Lessee's Outgoings" means all outgoings the Lessee is obliged to pay under the provisions of this Lease.
- 1.08** "Lessor's Property" means all improvements on the Land of any kind whatsoever including buildings, sealed yards, paths, lawns, gardens, fences and other like property which are placed on the Land by the Lessor after the commencement of this Lease.
- 1.09** "The Land", "The Commencement Date", "Annual Rental", "Term of the Lease" and "Permitted Use" shall have the meanings ascribed to them in Schedule A.
- 1.10** The term "to sublet" shall include the granting of a licence to occupy the Land or part thereof and "subletting" and "sublease" shall be construed accordingly.
- 1.11** References to a statute include references to regulations, orders, rules or notices made under that statute and references to a statute or regulation include references to all amendments to or replacements of that statute or regulation, whether by subsequent statute, consolidation, re-enactment, substitution or otherwise.
- 1.12** A covenant not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done.
- 1.13** Clause headings are inserted for reference only and shall not affect the interpretation of this Lease.

PART II - LESSEE'S COVENANTS

2.00 LESSEE'S COVENANTS

2.01 PAYMENT OF ANNUAL RENT

The Lessee shall pay the annual rent without deduction or set off in the manner and at the times provided in Item 3 of Schedule A. All payments of rent shall be paid by direct bank payment or as the Lessor may direct.

2.02 PAYMENT OF LESSEE OUTGOINGS

- (a) The Lessee shall pay the Lessee Outgoings in respect of the land which are specified in Item 5 of Schedule A direct to the creditors concerned and shall cause a separate rating assessment to issue in the name of the Lessee in respect of the Land.
- (b) The Lessee's liability to pay Lessee's Outgoings during the term of this Lease shall subsist until the end or earlier termination of this Lease.
- (c) The Lessee shall pay all other outgoings it is required to pay under this Lease.

2.03 [USE OF LAND

The Lessee shall not use the Land for any purpose other than the Permitted Use described in Item 6 of Schedule A. The Lessee acknowledges that it has entered into this Lease in reliance on its own judgement and not in reliance on any representation or warranty by the Lessor]

2.04 COMPLIANCE WITH LAW

The Lessee shall comply with the provisions of all statutes, ordinances, regulations, bylaws and codes in any way touching upon, relating to or affecting the Land or the conduct of the Permitted Use on the Land and will also at the Lessee's own cost in all things comply with the provisions of all statutes, ordinances, regulations, bylaws, codes, requisitions or notices issued, made or given by any lawful authority in respect of the Land or the Lessee's conduct of the Permitted Use on the Land or the Lessee's Improvements on the Land.

2.05 AVOIDANCE OF DANGER

The Lessee shall:

- (a) Take all reasonable precautions to minimise any danger or hazard arising from the Lessee's use of the Land and shall not permit any goods of a dangerous nature to be stored or used on the Land unless stored and used in a manner which complies with all statutes, ordinances, regulations, bylaws and codes or standards in that regard;
- (b) Promptly remedy any danger or hazard that may arise on the Land;

- (c) At all material times keep in place written rules and procedures in order to comply with health and safety in employment requirements which the Lessee is obliged by law to comply with.

2.06 MAINTENANCE OF LESSEE'S IMPROVEMENTS

The Lessee shall at the Lessee's own expense in all things keep any Lessee's Improvements on the Land in good order, condition and repair during the continuance of this Lease.

2.07 NO LESSOR MAINTENANCE

The Lessee acknowledges that the Lessor shall have no repair or maintenance obligations for any of the Lessee's Improvements on the Land.

2.08 LESSEE'S FURTHER MAINTENANCE AND REPAIR OBLIGATIONS

The Lessee shall punctually and at the Lessee's expense keep the Land clean and tidy, free and clear from all rubbish, noxious weeds and plants to the satisfaction of the Lessor and take any steps necessary to control any pest infestation occurring on or emanating from the Land.

2.09 SIGNAGE

The Lessee shall have the right to affix names, signs, nameplates, signboards and advertisements relating to the purposes of the Permitted Use without the consent of the Lessor. The Lessee shall not otherwise affix, paint or exhibit or permit to be affixed, painted or exhibited any name, sign, name-plate, signboard or advertisement of any description on or to the exterior of the Lessee's Improvements or the Land or any Lessors' Property thereon without the prior approval in writing of the Lessor, such approval not to be unreasonably or arbitrarily withheld. Any signage shall be secured in a substantial and proper manner so as not to cause any damage and the Lessee shall at the end or sooner determination of this Lease remove the signage and make good any damage occasioned thereby.

2.10 INSURANCE

- (a) The Lessee shall insure at its own cost against all public liability in the sum of at least \$2,000,000 in respect of any single event in the name of the Lessee at all times during the continuance of this Lease. The amount of this insurance shall be adjusted at any rent review or renewal of this Lease by any increase in the consumer price index (all groups) in the preceding five years measured against that index at the Commencement Date of the original term of this Lease. If there is no consumer price index (all groups) then the adjustment will be made by reference to the next most appropriate index or any index published in place of the CPI (all groups).
- (b) The provisions of this clause shall be of no application whilst the Lessee is **HER MAJESTY THE QUEEN**.

2.11 SUNDRY LESSEE ACKNOWLEDGEMENTS

The Lessee acknowledges:

- (a) That the Lessor shall not be liable to erect or maintain or contribute towards the cost of the erection or replacement of any dividing or boundary fence or portion thereof between the Land and any adjoining land which is the property of the Lessor;
- (b) That the Lessee shall at its own cost and expense in all things fence the boundaries of the Land insofar as the Lessee deems this reasonably necessary for the purposes of the Permitted Use.

2.12 GST

The Lessee shall pay to the Lessor or as the Lessor shall direct the GST payable by the Lessor in respect of the rental and other payments payable by the Lessee hereunder. The GST in respect of the rental shall be payable on each occasion when any rental payment falls due for payment and in respect of any other payment shall be payable on demand.

2.13 LESSEE'S ACKNOWLEDGEMENT

The Lessee agrees to occupy and use the Land at the Lessee's risk and releases to the fullest extent permitted by law the Lessor, its servants and agents from all claims and demands of any kind and from all liability which may arise in respect of any inherent defect in the Land or any accident, damage or injury occurring to any person or property in or about the Land, except where this is caused by the wilful or reckless act of the Lessor or persons acting under the control of the Lessor.

PART III

3.00 LESSOR'S COVENANTS

3.01 QUIET ENJOYMENT

Should the Lessee pay the rent and observe and perform all the covenants and agreements expressed or implied in this Lease, the Lessee shall quietly hold and enjoy the Land throughout the term of this Lease without any interruption by the Lessor or any person claiming by, through or under the Lessor.

3.02 CONSTRUCTION OF OR ALTERATIONS TO LESSEE'S IMPROVEMENTS

The Lessee shall be allowed to construct Lessee's Improvements and to make any alterations or additions to Lessee's Improvements without the prior written approval of the Lessor where this is necessary or incidental to the Permitted Use of the Land. In all other cases, the Lessee shall be obliged to seek the prior written consent of the Lessor to the construction of any Lessee's Improvements which are not necessary or incidental to the Permitted Use of the Land, and such consent shall not be unreasonably or arbitrarily withheld.

3.03 LESSOR'S PROPERTY

The Lessor acknowledges that the Lessor's Property on the Land at the Commencement Date of this Lease (if any) is as listed in Schedule A Item 9 and that the Lessor shall not during the continuance of this Lease place any further Lessor's Property on the Land unless this is expressly permitted in writing by the Lessee prior to its construction or placement. The Lessor further acknowledges that the Lessee may at its absolute discretion in all things decline consent to the construction or placement of any Lessor's Property on the Land and that all improvements on the Land at the Commencement Date of this Lease which are not listed as Lessor's Property are Lessee's Improvements.

3.04 LESSOR'S ACKNOWLEDGEMENTS AS TO LESSEE'S IMPROVEMENTS

- (a) The Lessor acknowledges in relation to Lessee's Improvements that:
- (i) notwithstanding any rule of law or equity to the contrary, property in all Lessee's Improvements shall remain with the Lessee throughout the continuance of this Lease and irrespective of how such property is annexed to the Land;
 - (ii) Lessee's Improvements are to be fully insured by the Lessee in its own name; and
 - (iii) when any Lessee's Improvements are destroyed or damaged, the decision whether to reinstate or not is solely with the Lessee and property in any insurance proceeds is also solely with the Lessee.
- (b) [Should the Land be subject to any Mortgage or other charge at the Commencement Date of this Lease, then the Lessor will when presenting this Lease to the Lessee for its acceptance also present to the Lessee the written acknowledgement of any and all existing mortgagees or chargeholders of the Land in the form prescribed in Schedule A Item 11 duly executed by any such mortgagees or chargeholders, it being further acknowledged by the Lessor that the Lessee shall not be required to execute the within Lease until the provisions of this sub clause have been fully satisfied;
- (c) Should the Lessor, subsequent to the Commencement Date of this Lease, propose to grant any mortgage or charge then, prior to doing so, it shall have executed by any proposed Mortgagee or Chargeholder the written acknowledgement in the form prescribed in Schedule A Item 12, it being further acknowledged by the Lessor that it will not grant any mortgage or charge until the provisions of this clause have been satisfied and further that it will deliver executed originals of such acknowledgements to the Lessee within three (3) working days from the date of their receipt by the Lessor;]

- (d) That the Lessee may demolish or remove any Lessee's Improvements from the Land at any time during the continuance of this Lease without the prior written consent or any other consent of the Lessor upon condition that the Lessee reinstates the Land to a neat, tidy and safe condition after any such removal.

3.05 [LESSOR CONSENT TO GROUND WORKS]

- (a) Notwithstanding anything to the contrary in clauses 3.02 or 3.04(d), the Lessee shall not:

- (i) Make any excavation of the Land; or
- (ii) Conduct any works on the Land likely to cause any subsidence, sinkage or damage to the Land or the land or property of any other person;
- (iii) Remove any boundary-fence or retaining works except where this is necessary or conducive to the conduct of the Permitted Use and the Lessor has first been given twenty (20) working days' notice in writing of the proposed alteration or interference;
- (iv) Make any sub-soil installation, alteration or interfere with any underground reticulated services, except where this is necessary or conducive to the conduct of the Permitted Use and the Lessor has first been given twenty (20) working days' notice in writing of the proposed installation, alteration or interference;

without, in each case, the Lessor's prior written approval, such approval not to be unreasonably or arbitrarily withheld and not to be withheld where the works are necessary or conducive to the conduct of the Permitted Use. Where the circumstances reasonably require, the Lessor's approval may be given subject to any reasonable conditions;

- (b) [Should the Lessor either fail to give an approval within 14 days of being requested to do so or give an approval which is subject to conditions the Lessee considers unreasonable, then the matter shall be referred to a registered civil engineer agreed upon by the parties for his or her expert determination. Should the parties be unable to agree upon the appointment of an engineer, then either party shall be at liberty to make written application to the President for the time being of the Institute of Professional Engineers of New Zealand to appoint an engineer and any appointment so made shall be final and binding on the parties. The engineer shall act as an expert in determining the issue(s) and not as an arbitrator and the engineer's decision

shall be final and binding on the parties. The engineer's costs shall be met in full by the Lessee, unless the engineer otherwise so determines.]

3.06 [DESIGNATION

The Lessor covenants that it consents to the Lessee maintaining a designation for courthouse purposes or any other Government Work over the Land for the duration of this Lease, should this be desired by the Lessee. Upon the expiration of this Lease or its sooner determination, the Lessee shall promptly uplift any designation.]

3.07 PROVISION OF CERTAIN NOTICES TO THE LESSEES

Whenever the Lessor receives any notice from any local or governmental authority concerning the payment of local authority rates or the government valuation of the Land or the Lessee's Improvements, the Lessor will promptly provide a copy of such notice to the Lessee and, in any event, within sufficient time to enable the Lessee to make any submission as seen fit by the Lessee to the local authority or the relevant government department, as the case may be.

PART IV – MUTUAL COVENANTS

4.00 MUTUAL COVENANTS

4.01 [ASSIGNMENT AND SUBLETTING

- (a) Subject to clauses 4.01(c) and (d), the Lessee must not assign, sublet or otherwise part with the possession of the Land or any part of the Land without first obtaining the written consent of the Lessor which the Lessor will give if the following conditions are fulfilled:
- (i) The Lessee proves to the satisfaction of the Lessor that the proposed assignee is (or in the case of a company the shareholders of the company of the proposed assignee are) respectable, responsible and has the financial resources to meet the commitments under any lease.
 - (ii) All rent and other moneys payable under this Lease have been paid and there is no subsisting (in the case of a Government Agency a material, willful and deliberate) breach of any of the Lessee's covenants.
 - (iii) The Lessee pays the proper costs and disbursements in respect of the approval or preparation of any deed of covenant or guarantee and (if appropriate) all fees and charges payable in respect of any reasonable enquiries made by or on behalf of the Lessor concerning any proposed assignee.
 - (iv) The Lessee will, at the Lessee's own expense, procure the execution by an assignee of a deed of covenant with the Lessor that the assignee will, at all times pay the rent at the times and in the manner provided in this Lease and will observe and perform all the covenants and conditions contained in this Lease.

- (v) Where the assignee is a company, the Lessor may require the deed of covenant referred to in paragraph (iv) above to be executed by that company and also by such other directors and/or shareholders of that company as the Lessor reasonably requires, as joint and several guarantors, upon the terms set out in the then current edition of the Auckland District Law Society form of Standard Lease for Commercial Premises or if such lease is no longer published, then upon such terms as are commonly used in leases of commercial premises.
- (b) For the purposes of clause 4.01(a) any change in the shareholding of the Lessee (where the Lessee not being a Government Agency is a company which is not listed on the main board of a public stock exchange) or any amalgamation under section 219 of the Companies Act 1993 altering the effective control of the Lessee shall be a deemed assignment of this Lease and will require the consent of the Lessor unless such deemed assignment involves a change of effective control to any of the entities mentioned in clauses 4.01(c) and 4.01(d).
- (c) If, by any statutory provision or regulation enacted during the Term of this Lease, the Lessee is obliged to transfer or assign management of the Land or any aspect of such management to a third party, the provisions of clause 4.01(a) will not apply to such a transfer or assignment and the Lessee will be entitled to transfer or assign its interest as Lessee under this Lease, or any aspect of management of the Land, to such a third party without further reference to the Lessor, who will be deemed to have approved such a transfer or assignment and will immediately sign any document necessary to give effect to such a transfer or assignment, if so requested by the Lessee.
- (d) **PROVIDED ALWAYS**, notwithstanding clause 4.01(a), the Lessee may at any time and from time to time:
- (i) transfer or assign its interest as Lessee under this Lease, or grant a sublease or licence of the whole or any part(s) of the Land, to any Government Agency; and/or
 - (ii) grant a sublease or licence of the whole or any part(s) of the Land to any other person,
- in either case without further reference to the Lessor, who will be deemed to have approved such a transfer, assignment or sublease and will immediately sign any document necessary to give effect to such a transfer, assignment or sublease, if so requested by the Lessee.
- (e) Where the Lessee grants a sublease or licence of the whole or any part(s) of the Land to any other person, the Lessee will not permit any sublessee to deal with the sublease in any way in which the Lessee is restrained from dealing without consent under this Lease.
- (f) Notwithstanding any rule of law or anything expressed or implied in this Lease to the contrary, where a Government Agency is Lessee, assigns its interest in this Lease under the provisions of this clause 4.01, all the liabilities of the Government Agency as Lessee expressed or implied under this Lease, whether contingent or otherwise for the payment of future rents or other money or the future observance or performance of any of the covenants, conditions or agreements on the part of the Lessee shall cease and determine absolutely as from the date of assignment, but without releasing the Lessee from liability for any antecedent breach of this Lease.]

4.02 LESSOR MAY REMEDY LESSEE DEFAULT

- (a) Should the Lessee default in the observance or performance of any of the Lessee's obligations hereunder and should the Lessor have first served not less than twenty-one (21) clear days' written notice of its intention to enter upon the Land and to do, execute and perform or procure to be performed all such acts, deeds, matters and things required to make good any Lessee default except in the case of an emergency where no notice shall be required, then it shall be lawful for the Lessor in addition to any of its remedies to enter the Land and do all such acts, deeds, matters and things required to make good such default and to recover the costs of such action from the Lessee.
- (b) [Any notice served under the provisions of clause 4.02(a) shall specify sufficient particulars to adequately advise the Lessee of the breach (or breaches) of Lease in respect of which notice is issued and the fact that such notice is issued under the provisions of this clause. Non compliance with these requirements shall render any such notice void.]

4.03 [LESSEE'S IMPROVEMENTS]

[Not concluded]

4.04 [RENEWAL]

The Lessee not being at that time in breach of any material provision of this Lease shall on or prior to the end of the initial term or any subsequent term of this Lease, be entitled to a renewal of this Lease for the further term specified in Schedule One from the date of expiry of the initial term or any subsequent term as follows:

- (a) the Annual Rent will be agreed upon or failing agreement will be determined in accordance with clause 4.05 as though the commencement date of the renewed term were a Rent Review Date; and
- (b) the renewed lease will otherwise be on and subject to the covenants and agreements expressed or implied in this Lease including this covenant for renewal.

The Lessee shall use all reasonable endeavours to give to the Lessor notice of the Lessee's intention to renew this Lease no later than 18 months prior to the expiry of the initial term or any subsequent term. If the Lessee fails to give the Lessor notice of the Lessee's intention to renew by the date which is 12 months prior to the expiry of the initial term or any subsequent term, the Lessor shall be entitled to give the Lessee notice requiring the Lessee to notify the Lessor of the Lessee's intentions within 9 months of the date of the Lessor's notice to the Lessee.]

4.05 RENT REVIEW

- (a) The Annual Rental payable as from each review date shall be determined as follows:
- (i) Either party may not earlier than 3 months prior to a review date and not later than one year after any review date (time being of the essence) give written notice to the other party specifying the annual rent proposed as the current market rent as at the relevant review date.
 - (ii) If the party receiving the notice ("the Recipient") gives written notice to the party giving the notice ("the Initiator") within 20 working days after service of the Initiator's notice disputing the annual rent proposed and specifying the annual rent proposed by the Recipient as the current market rent, then the new rent shall be determined in accordance with clause 4.05(b).
 - (iii) If the Recipient fails to give such notice (time being of the essence) the Recipient shall be deemed to have accepted the annual rent specified in the Initiator's notice and the extension of time for commencing arbitration proceedings contained in the Arbitration Act 1996 shall not apply.
 - (iv) The Annual Rental agreed, determined or imposed pursuant to this clause shall be the annual rental payable as from the relevant rent review date, or the date of service of the Initiator's notice if such notice is served later than 3 months after the relevant rent review date but subject to clause (c) and (d).
 - (v) The rent review at the option of either party may be recorded in a Deed.
- (b) Immediately following service of the Recipient's notice on the Initiator, the parties shall endeavour to agree upon the current market rent of the Land, but if agreement is not reached within 20 working days then the same may be determined either:
- (i) By one party giving written notice to the other requiring the current market rent of the Land to be determined by arbitration; or

- (ii) If the parties so agree by registered valuers acting as experts and not as arbitrators as follows:
- (aa) Each party shall appoint a valuer and give written notice of the appointment to the other party within 20 working days of the parties agreeing to so determine the new rent;
 - (ab) If the party receiving a notice fails to appoint a valuer within the 20 working day period then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties;
 - (ac) The valuers appointed before commencing their determination shall appoint a third expert who need not be a registered valuer;
 - (ad) The valuers appointed by the parties shall determine the current market rent of the Land but if they fail to agree then the rent shall be determined by the third expert;
 - (ae) Each party shall be given the opportunity to make written or oral representations subject to such reasonable time and other limits as the valuers or the third expert may prescribe and they shall have regard to any such representations but not be bound thereby.

In ascertaining the new annual rental to apply from a review date, the value of any building or improvements then existing upon the Land shall not be taken into consideration.

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

- (c) The annual rent so determined or accepted:
- (i) shall not, in the case of a rent review during the initial term of this Lease, be less than the Annual Rental payable as at the Commencement Date, or in the case of a rent review during any subsequent term, be less than the Annual Rental payable at the commencement of such subsequent term; and
 - (ii) shall be the Annual Rental from the Rent Review Date or the date of the initiated notice, if such notice is given later than [3] months after the Rent Review Date.

- (d) Pending determination of the current market rent of the Land, the Lessee [if it is a Government Agency] shall from the relevant review date, or the date of service of the Initiator's notice if such notice is served later than 3 months after the relevant review date, until the determination of the current market rent of the Land, pay [an interim rent equivalent to that prior to the review date, however if the Lessee is not a Government Agency it will pay] an interim rent as follows:
- (i) If both parties supply a registered valuer's certificate substantiating the new rents proposed, the interim rent payable shall be half way between the new rents proposed by the parties, or
 - (ii) If only one party supplies a registered valuer's certificate, the interim rent payable shall be the rent substantiated by the certificate; or
 - (iii) If no registered valuer's certificates are supplied, the interim rent payable shall be the rent payable immediately prior to the relevant review date.
- (d) Upon determination of the new rent, any overpayment shall be applied in payment of the next month's rent and any amount then remaining shall immediately be refunded to the Lessee. Any shortfall in payment shall immediately be payable by the Lessee.

4.06 RE-ENTRY

- (a) The Lessor may re-enter the Land where:
- (i) rental is in arrears for a period exceeding twenty (20) days after any rent payment date;
 - (ii) the Lessee is in breach of any covenant on the Lessee's part herein expressed or implied;
 - (iii) the Lessee makes or enters into or attempts to make or enter into any composition, assignment or other arrangement with or for the benefit of the Lessee's Creditors;
 - (iv) the Lessee becomes insolvent, bankrupt or goes into liquidation;

and the term of this Lease shall terminate on such re-entry and all Lessee's Improvements on the Land shall vest in and become the property of the Lessor, and no compensation or other consideration shall be payable by the Lessor to the Lessee in respect of any Lessee's Improvements vesting in the Lessor. Termination shall otherwise be without prejudice to the rights of either party against the other.

- (b) Whilst **HER MAJESTY THE QUEEN** is the Lessee under this Lease and should **HER MAJESTY THE QUEEN** either default in the payment of any rental for a period exceeding twenty days or more or otherwise breach any covenant on the Lessee's part herein expressed or implied, then before exercising any rights of re-entry the Lessor shall serve a notice (hereafter called "**the Default Notice**") on the Lessee specifying the breach complained of with sufficient particularity to enable the Lessee to clearly identify the default alleged.
- (c) The **Default Notice** notwithstanding anything to the contrary contained in clause 4.06(a) above shall specify that:
 - (i) the Lessee must within 30 days of receipt of such notice remedy the default specified; and
 - (ii) that should the Lessee not remedy the default specified within this time, the Lessor shall thereafter be at liberty to re-enter the Land and to determine this Lease pursuant to this clause 4.06.
- (d) The Lessor acknowledges that it shall not re-enter the Land unless and until the provisions of clause 4.06(b) have been satisfied in full and further that any re-entry contrary to the provisions of clause 4.06(b) shall be null and void ab initio.

4.07 [LESSEE'S RIGHT OF EARLY TERMINATION]

The Lessee may, in its sole discretion and without giving any reasons, terminate this Lease by providing no less than ten (10) years notice in writing at any time to the Lessor. This Lease and the parties' respective rights and obligations under this Lease will cease from the effective date of termination, but without prejudice to any rights which have accrued up to the date of termination.]

4.08 [INSURANCE]

- (a) The Lessor shall be responsible for insuring any Lessor's Property on the Land.
- (b) The Lessee shall be responsible for insuring or self insuring any Lessee's Improvements on the Land.
- (c) Should any property referred to in sub clauses (a) and (b) above be damaged or destroyed, then it shall be the sole responsibility of the party effecting insurance to decide (subject to the rights of any mortgagee of theirs) whether

to effect reinstatement or not and the other party shall abide by this decision whatever it may be.

- (d) [In the event that the Lessee elects not to effect reinstatement of the Lessee's Improvements following damage or destruction thereof, then the Lessee shall be entitled to determine this lease by giving 3 months notice in writing to that effect to the Lessor. At the expiration of such period this lease will come to an end and neither party will have any claim upon the other except in respect of any antecedent breach by either party.]

4.09 RATING ASSESSMENTS

The parties agree that the Lessee may at any time make application to the Valuation Department for a separate rating assessment of the Land in its name and thereafter account direct to the Territorial Authority for all rates payable on the Land.

4.10 ENTIRE AGREEMENT

This Lease constitutes the entire and complete agreement between the parties in relation to the lease of the Land and no variation shall be effective or binding unless it is recorded in writing and executed in the same manner as this Lease.

4.11 DIFFERENCES AND DISPUTES

- (a) Unless any dispute or difference is resolved by mediation or other agreement, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with Arbitration Act 1996 and any amendment thereof or any other statutory provision then relating to arbitration.
- (b) If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon the request of any party, by the president or vice president for the time being of the New Zealand Law Society. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject hereto and varied accordingly.
- (c) The procedures described in this clause shall not prevent the Lessor from taking proceedings for the recovery of any rental or other moneys payable hereunder which remain unpaid or from exercising the rights and remedies [under this Lease prescribed in clauses 4.06 and 4.07 hereof]
- (d) The provisions of this clause shall be of no application to any review of rental under the provisions of clause 4.05(b)(ii).

4.12 SERVICE OF NOTICES

Any notice or other document required to be given, delivered or served under this Lease may be given, delivered, posted by ordinary post, served or transmitted by facsimile transmission (in which case it shall be subsequently posted) to the respective addresses for service of the Lessor and the Lessee set out in Item 13 of Schedule A. Any alteration to or change in any detail of a party's address for service shall be promptly advised to the other party.

If either party does not have a current address for service, then service in terms of this clause may be effected on that party by registered post addressed to the registered office or principal place of business of the party intended to be served; and any notice or other document given or served shall be deemed to have been given or served and received by the other party two days after the date of posting.

4.13 REGISTRATION OF LEASE

The parties acknowledge their agreement that this Lease be registered under the provisions of the Land Transfer Act 1952 at the expense of the Lessee in all things. The Lessor agrees to make title available for this purpose and consents to the Lessee caveating the title to protect its interest in the within Lease prior to the registration of this Lease. The parties shall take all practical steps to register the Lease as soon as possible and the Lessee shall withdraw any caveat it has lodged on the registration of the Lease.

4.14 COSTS

- (a) The parties shall pay their own costs of and incidental to the negotiation, preparation and execution of this Lease. The Lessee shall pay the Lessor's costs of and incidental to the preparation and execution of any variation (where this is requested by the Lessee), renewal or surrender of this Lease or the obtaining of any consents or approvals associated with this Lease.
- (b) The Lessee shall pay the Lessor's reasonable costs (including reasonable legal costs) of and incidental to the proper enforcement or proper attempted enforcement of the Lessor's powers, rights or remedies under or pursuant to this Lease.

4.15 INTEREST

If the Lessee shall fail to pay any instalment of rental or other sum of money payable to the Lessor under this Lease within 14 days of the day on which it fell due or, if the Lessee shall fail to pay to the Lessor upon demand any amount paid by the Lessor to remedy any default by the Lessee of the Lessee's obligations under this Lease within 14 days from the date such demand is received by the Lessee, then any amount not so paid shall bear interest at the maximum rate of interest from time to time payable by the Lessor to its principal banker for overdraft accommodation plus a margin of 4% per annum accruing on a daily basis from the due date for payment or the due date of payment by the Lessor (as the case may be) down to the date that such amount is paid by the Lessee. The Lessor shall be entitled to recover such interest in the same manner as if it were rent in arrears.

4.16 ESSENTIAL TERMS

Any breach by the Lessee of the following provisions shall be deemed to be a breach of an essential term of this Lease:

(a) ***Payment of Rental:***

The covenant to pay rental or other money payable by the Lessee under this Lease;

(b) ***Assignment and Sub Leasing:***

The provisions dealing with assignment and sub leasing; or

(c) ***Use of Land:***

The provisions restricting the use of the Land.

4.17 WAIVER

The acceptance by the Lessor of any arrears of rental or other money payable under this Lease shall not constitute a waiver of the essential obligation to pay any other rental or money payable under this Lease, nor shall it constitute a waiver of any other essential term of this Lease.

4.18 RENT MORATORIUM

If any moratorium or other law, act or regulation that (notwithstanding clause 4.06 hereof) applies to this Lease has the effect of postponing any periodic review of rental as at a review date, then if and whenever such moratorium is lifted or the law, act or regulation is repealed or amended so as to permit the rent to be reviewed, the review that has been postponed shall take place as at the date that the moratorium is lifted or such law, act or regulation is repealed or amended to the intent that the rent review shall establish the rental as at such date and not as at the postponed review date. Any subsequent rent review shall take place on the next following review date as specified in Item 8 of Schedule A.

4.19 ARTEFACTS OR FOSSILS

Artefacts, fossils, articles of value or antiquity and structures and other remains or things of geological, historical, archaeological or cultural interest relating to the indigenous people of New Zealand discovered on or under the surface of the Land shall, as between the Lessor and Lessee, be deemed to be the property of the Lessor. The Lessee shall use its best endeavours to prevent such articles or things being removed or damaged and shall, as soon as practicable, notify the Lessor of such discovery and carry out, at the expense of the Lessor, the Lessor's reasonable instructions as to delivery or disposal of such articles or things.

4.20 CONTAMINATION

[Not concluded]

TARANAKI WHANUI KI TE UPOKO O TE IKA

Lessor

NEW ZEALAND RAILWAYS CORPORATION

Lessee

DEED OF LEASE

Aotea Quay

Contents

1.	DEFINITIONS AND INTERPRETATION.....
2.	TERM.....
3.	RIGHT OF RENEWAL OF LEASE.....
4.	RENT.....
5.	RENT REVIEW.....
6.	PAYMENT OF LESSEE'S OUTGOINGS.....
7.	GST.....
8.	INTEREST ON UNPAID MONEY.....
9.	USE OF LAND.....
10.	COMPLIANCE WITH THE LAW.....
11.	LESSEE'S ACKNOWLEDGEMENT OF RISK.....
12.	AVOIDANCE OF DANGER.....
13.	[LESSEE'S IMPROVEMENTS].....
14.	INSURANCE.....
15.	RIGHT OF LESSOR TO ENTER AND INSPECT LAND
16.	QUIET ENJOYMENT.....
17.	DESIGNATION.....
18.	FURTHER DEVELOPMENT.....
19.	RE-ENTRY.....
20.	DEALINGS WITH THE LESSOR'S AND LESSEE'S INTERESTS.....
21.	ENTIRE AGREEMENT.....
22.	DIFFERENCES AND DISPUTES.....
23.	NOTICES.....
24.	PROPERTY LAW ACT 2007.....
25.	REGISTRATION OF LEASE.....
26.	COSTS.....
	SCHEDULE THREE (Plan of the Land).....

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

DEED dated 2008

PARTIES

[TARANAKI WHANUI KI TE UPOKO O TE IKA GOVERNANCE ENTITY]
("Lessor")

NEW ZEALAND RAILWAYS CORPORATION (ONTRACK) ("Lessee")

OPERATIVE PROVISIONS

The Lessor leases to the Lessee and the Lessee takes on lease from the Lessor the Land described in the Schedule One for the Term from the Commencement Date at the Annual Rent (subject to review if applicable) and upon the other terms all as set out in the Schedules incorporated in this Lease and the Lessor and the Lessee covenant and agree with each other as set out in the Schedules incorporated in this Lease.

SIGNED AS A DEED

**[TARANAKI WHANUI KI TE UPOKO O
TE IKA GOVERNANCE ENTITY] by:**

Signature of director

Signature of director

Name of director

Name of director


**NEW ZEALAND RAILWAYS
CORPORATION TRADING AS
ONTRACK by:**

Signature of director

Signature of director

Name of director

Name of director

511 

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

**SCHEDULE ONE
(Reference schedule)**

<p>LAND: [Drafting Note: Lease may be 1 or 3 leases]</p>	<p>(1) 0.0465 hectares more or less being Lot 3 DP 11169 and being all the land in CFR WN40A/558. (2) 0.1178 hectares more or less being Lot 33 DP80544 and being all the land in CFR WW47A/801. (3) 0.0775 hectares more or less being Lot 39 DP 79376 and being all the land in CFR WN 45D/804.</p> <p>Subject to all existing encumbrances as may be and such further encumbrances disclosed pursuant to clause 4.6 of the Deed of Settlement to be entered into between the Crown and Taranaki Whanui Ki Te Upoko o Te Ika</p>
<p>TERM:</p>	<p>20 years</p>
<p>COMMENCEMENT DATE:</p>	<p>[]</p>
<p>RIGHTS OF RENEWAL:</p>	<p>20 year terms forever</p>
<p>RENEWAL DATES:</p>	<p>Every 20th anniversary of the Commencement Date.</p>
<p>ANNUAL RENT:</p>	<p>[\$[] (plus GST)</p>
<p>INITIAL MONTHLY PAYMENTS OF RENT:</p>	<p>[\$[] (plus GST)</p>
<p>MONTHLY RENT PAYMENT DATES:</p>	<p>[The rent shall be payable in advance on the first day of each month.]</p>
<p>RENT REVIEW DATES:</p>	<p>5 yearly on the anniversary of the Commencement Date.</p>
<p>PERMITTED USE:</p>	<p>Any use that is a lawful existing use or permitted activity in the current or proposed District Plan for the Land, or any use which is authorised by resource consent, by designation or otherwise by law.</p>
<p>DEFAULT INTEREST RATE:</p>	<p>2% per annum above the Lessor's banker's indicator lending rate at the date of default occurring.</p>
<p>PUBLIC LIABILITY/RISK INSURANCE:</p>	<p>Cover of a minimum of one million dollars (\$1,000,000.00) (subject to CPI Adjustment) to be maintained by the Lessee.</p>

SCHEDULE TWO

(Schedule of Terms)

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

In this Lease, unless the context indicates otherwise:

"**Annual Rent**" means the annual rent for the Land specified in Schedule One, subject to changes resulting from the Lessor's exercise of any right to review the Annual Rent;

"**Authority**" means and includes every governmental, local, territorial and statutory authority having jurisdiction or authority over or in respect of the Land or its use or the Lessee's Improvements or their use;

"**Commencement Date**" means the date of commencement of the initial Term specified in Schedule One;

"**CPI**" means the All Groups Section of the Consumer Price Index for New Zealand published by Statistics New Zealand (or, if it ceases to exist, such index as most closely approximates the same).

"**CPI Adjustment**" where a figure recorded in this Lease is described as (subject to CPI Adjustment) such figure specified shall be adjusted on each anniversary of the Commencement Date in accordance with the following formula:

$$W = \frac{[Y - X \times Z]}{X} + Z$$

Where:

X is the figure at which the CPI stood immediately prior to the Commencement Date or the preceding anniversary of the Commencement Date;

Y is the figure at which the CPI stood immediately prior to the current anniversary of the Commencement Date;

Z is the figure which is subject to CPI Adjustment as that figure stood immediately prior to the current anniversary of the Commencement Date; and

W is the adjusted figure.

"**District Plan**" means a district plan within the meaning of the Resource Management Act 1991;

"**Government Agency**" includes any department or instrument of the Executive Government of New Zealand; and, includes:

- a. a body corporate or corporation sole (whether called a corporation sole, corporation, commission, council, board, authority, or by any name) that has

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

been established or constituted by a public Act of Parliament and that is named in that Act;

- b. a body corporate or organisation that is controlled partly or wholly by the Crown or by any such Department, instrument, orate, corporation sole, or organisation;
- c. a Crown Entity within the meaning of the Crown Entities Act 2004 or as otherwise established or constituted by an Act of Parliament;
- d. a State enterprise within the meaning of the State-Owned Enterprises Act 1985;

"**GST**" means tax levied under the Goods and Services Tax Act 1985 and includes any tax levied in substitution of that tax;

"**Land**" means the land described in Schedule One and for the avoidance of doubt excludes all of the Lessee's Improvements which remain the property of the Lessee at all times irrespective of their degree of annexation to the Land;

"**Lessee**" means the New Zealand Railways Corporation, in any capacity, and includes all the respective executors, administrators, successors, assigns and successors in title of the lessee and if more than one jointly and severally and where the context permits the Lessee includes the Lessee's sublessees and other lawful occupiers of the Land and the Lessee's contractors, agents and invitees (which persons shall be those deemed to be persons under control of the Lessee);

"**Lessee's Improvements**" means all improvements on or to the Land of any kind whatsoever including (but not limited to):

- a. buildings, or other fixed structures including any fencing;
- b. concrete, asphalt, paved or tiled roadway, sealed yards, paths, lawns, gardens;
- c. mechanical, electrical, or reticulation plant (whether for the conduct of electricity, water, oil, compressed air or any other supply delivered through any reticulation system which is the property of the Lessee), equipment or systems of any kind of the Lessee;
- d. sewage system;
- e. all subsoil works constructed or installed by the Lessee on the Land;
- f. all site works, drainage and excavation work; and
- g. other like property of any kind whatsoever,

whether those improvements are made, constructed or placed on the Land by the Lessee before or after the Commencement Date;

"**Lessee's Outgoings**" mean:

- a. rates, taxes or levies payable to any Authority in respect of the Land;
- b. charges for water, gas, electricity, telephones and other utilities or services;

**PORT NICHOLSON BLOCK (TARANAKI WHĀNUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

- c. rubbish collection charges;
- d. all charges relating to the repair and maintenance of any Lessee's Improvements (whether of a structural nature or not);
- e. the cost of landscaping and ground maintenance;
- f. car parking area maintenance and repair;
- g. all costs associated with the repair, maintenance or replacement of any fencing on the Land, and includes any other outgoings related to the Permitted Uses or for any use consented to under section 9;
- h. any other tax or levy payable on or in relation to the land.

"**Lessor**" means Taranaki Whānui ki Te Upoko o Te Ika and includes all the respective executors, administrators, successors, assigns and successors in title of each Lessor and if more than one jointly and severally;

"**Monthly Rent Payment Date(s)**" means the monthly rent payment dates specified in Schedule One;

"**Permitted Use**" means the permitted use specified in Schedule One;

"**Plan**" means the plan of the Land attached as Schedule Three;

"**Renewal Date(s)**" means the renewal dates specified in Schedule One;

"**Review Date(s)**" means the rent review dates specified in Schedule One;

"**Term**" means the term of this Lease and includes the Initial Term and any subsequent terms; and

"**Working Day**" means a day of the week other than:

- a. Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday and Labour Day;
- b. a day in the period commencing on 25 December and ending on 2 January in the following year;
 - a. if 1 January falls on a Friday, the following Monday;
 - c. if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday;
- a. the anniversary day celebrated in Wellington; and
- b. any other day made a public holiday during the Term of this Lease by inclusion in section 44(1) of the Holidays Act 2003 or otherwise.

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

1.2 INTERPRETATION

In this Lease, unless the context indicates otherwise:

- a. words denoting the singular shall include the plural and vice versa;
- b. one gender shall include the other genders;
- c. words denoting persons shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of state, municipal authority, government or any statutory body in each case whether or not having separate legal identity;
- d. any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally;
- e. reference to anything of a particular nature following upon a general statement shall not in any way derogate from, or limit the application of the general statement, unless the particular context requires such derogation or limitation;
- f. references to sections, clauses and schedules are references to sections, clauses and schedules in this Lease;
- g. the table of contents, the section headings and clause headings have inserted for convenience and a quick guide to the provisions of this Lease, and shall not form part of this Lease, or affect its interpretation in any way;
- h. reference to any statute, regulation, ordinance or bylaw shall be deemed to extend to all statutes, regulations, ordinances or bylaws amending, consolidating or replacing the same; and
- i. where the Lessor's consent or approval is required pursuant to any provision of this Lease, the Lessor must:
 - i. not unreasonably or arbitrarily withhold the required consent, and
 - ii. within a reasonable time of the Lessor's consent being requested (by the Lessee), grant the required consent.

2. TERM

2.1 The Term shall commence on the Commencement Date.

3. [RIGHT OF RENEWAL OF LEASE]

3.1 The Lessee not being at that time in breach of any material provision of this Lease shall on or prior to the end of the initial term or any subsequent term of this Lease, be entitled to a renewal of this Lease for the further term specified in Schedule One from the date of expiry of the initial term or any subsequent term as follows:

- (a) the Annual Rent will be agreed upon or failing agreement will be determined in accordance with clause 5 as though the commencement date of the renewed term were a Rent Review Date; and
- (b) the renewed lease will otherwise be on and subject to the covenants and agreements expressed or implied in this Lease including this covenant for renewal.

3.2 [The Lessee shall use all reasonable endeavours to give to the Lessor notice of the Lessee's intention to renew this Lease no later than 18 months prior to the expiry of the initial term or any subsequent term. If the Lessee fails to give the Lessor notice of the Lessee's intention to renew by the date which is 12 months prior to the expiry of the initial term or any subsequent term, the Lessor shall be entitled to give the Lessee notice requiring the Lessee to notify the Lessor of the Lessee's intentions within 9 months of the date of the Lessor's notice to the Lessee.]

4. RENT

4.1 The Lessee shall in each year during the Term pay the Annual Rent (plus GST) to the Lessor by equal monthly payments in advance, with the first payment to be made on the Commencement Date.

5. RENT REVIEW

5.1 The Annual Rent payable from each Rent Review Date shall be determined as follows:

- (a) Either party (the "Initiator") may commence a review by not earlier than three (3) months prior to a Rent Review Date [and not later than one year after any review date], giving written notice to the other party ("Recipient") specifying the sum considered by the Initiator to be the current market rent for the Land as at the Rent Review Date ("Initiator's Notice").
- (b) If, by written notice to the Initiator within twenty (20) Working Days after receipt of the Initiator's Notice, the Recipient disputes the current market rent for the Land proposed by the Initiator is the current market rent for the Land ("Recipient's Notice"), then the current market rent for the Land will be determined in accordance with the provisions of clause 0.

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

5.2 Immediately following receipt by the Initiator of the Recipient's Notice, the parties shall endeavour to agree upon the Annual Rent, but if agreement is not reached within twenty (20) Working Days then the current market rent for the Land (new rent) may be determined either:

- (a) by one party giving written notice to the other requiring the new rent to be determined by arbitration; or
- (b) if the parties so agree by registered valuers acting as experts and not as arbitrators as follows:
 - (i) each party shall appoint a valuer and give written notice of the appointment to the other party within twenty (20) Working Days of the parties agreeing to so determine the new rent;
 - (ii) the valuers appointed, before commencing their determination shall appoint an umpire who shall be a registered valuer or solicitor of the High Court. In the event the valuers fail to agree upon an umpire, the appointment of an umpire shall be made by the President of the Arbitrators Institute of New Zealand Incorporated on the joint application of the valuers.
- (c) the valuers shall determine the Annual Rent of the Land and if they fail to agree then the Annual Rent shall be determined by the umpire;
- (d) in undertaking their determination the valuers and the umpire shall disregard the value of any Lessee's Improvements on the Land;
- (e) each party shall be given the opportunity to make written or verbal representations to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe and the valuers or the umpire as the case may be shall have regard to any such representations but not be bound thereby;
- (f) when the Annual Rent has been determined, the umpire or the valuers shall give written notice thereof to the parties. Any umpire notice shall provide how the costs of the determination shall be borne and such provisions shall be binding on the parties. Where the Annual Rent is determined by the parties' valuers and not the umpire, the parties shall pay their own costs.

5.3 The Annual Rent so determined or accepted:

- (a) shall, not, in the case of a rent review during the initial term of this Lease, be less than the Annual Rent payable as at the Commencement Date, or in the case of a rent review during any subsequent term, be less than the Annual Rent payable at the commencement of such subsequent term; and
- (b) shall be the Annual Rent from the Rent Review Date or the date of the Initiator's Notice if such notice is given later than 3 months' after the Rent Review Date.

5.4 Pending the determination of the Annual Rent, the Lessee [if it is a Government Agency shall from the relevant review date, or the date of service of the

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

Initiator's notice if such notice is served later than 3 months after the relevant review date, until the determination of the current market rent of the Land] will pay an interim annual rent ("Interim Rent") [equivalent to that prior to the review date, however if the Lessee is not a Government Agency it will pay the interim rent] as follows:

- (a) if both parties supply a registered valuer's certificate substantiating the current market rent of the Land proposed by each party, the Interim Rent shall be based on the average of the two rents proposed by the parties; or
- (b) if only one party supplies a registered valuer's certificate substantiating the current market rent of the Land proposed, the Interim Rent shall be based on the current market rent of the Land substantiated in that certificate; or
- (c) if no registered valuer's certificates are supplied, the Interim Rent payable shall be the rent payable immediately prior to the relevant Rent Review Date; and
- (d) upon determination of the new Annual Rent, any appropriate adjustment will be made; and
- (e) the rent review, at the option of either party, may be recorded in a variation of this Lease.
- (f) [Neither party shall, through its failure to issue a notice of rent review, forfeit the right to have the rent reviewed.]
- (g) If any moratorium or other law, act or regulation that applies to this Lease has the effect of postponing any periodic review of annual rent as at a Rent Review Date, then if and whenever such moratorium is lifted or the law, act or regulation is repealed or amended so as to permit the annual rent to be reviewed, then the review that has been postponed shall take place as at the date that such moratorium is lifted or such law, act or regulation is repealed or amended to the intent that the rent review shall establish the annual rent as at such date and not as at the postponed Rent Review Date, but any subsequent rent review shall take place on the next following Rent Review Date.

6. PAYMENT OF LESSEE'S OUTGOINGS

- 6.1 The Lessee will pay the Lessee Outgoings in respect of the Land and where appropriate will make such payment direct to the relevant Authority or supplier concerned and, if permitted by law, the Lessee will be entered as the agency for payment on the rating information database and the district valuation roll in respect of the Land.

7. GST

- 7.1 The Lessee will pay to the Lessor, or as the Lessor directs, the GST payable by the Lessor in respect of the Annual Rent and any other payments payable by the Lessee (to the Lessor) under this Lease. The GST payable pursuant to this clause 7 will be payable on each occasion when any rental payment falls due for payment or otherwise on demand.

8. INTEREST ON UNPAID MONEY

8.1 If the Lessee fails:

- (a) to pay any instalment of rent or other sum of money payable by the Lessee to the Lessor under this Lease within twenty (20) Working Days of the day on which such payment was due, and upon demand by the Lessor fails to make such payment within a further five (5) Working Days after the date that such demand is received by the Lessee; or
- (b) to pay the Lessor upon demand any amount paid by the Lessor to remedy any default by the Lessee under this Lease within twenty (20) Working Days after the date that the Lessor's demand is received by the Lessee,

then any amount outstanding will bear interest at the Default Interest Rate (specified in Schedule One) accruing on a daily basis from the due date for the relevant payment or the date that the Lessor's demand is received (as the case may be) and the Lessor will be entitled to recover such interest in the same manner as if it were rent in arrears.

9. [USE OF LAND]

9.1 The Lessee will use the Land for the Permitted Use.

9.2 Should any use of the Land or any Lessee's Improvements be permissible only with the consent or licence of any Authority under or in pursuance of any statute or any Regional Plans and District Plans or regulation or other enactment or order of Court the Lessee shall obtain such consent or order at the sole cost and expense of the Lessee including, but not limited to, any costs or financial contributions involved in complying with any conditions of such consent or order obtained.

9.3 The Lessor agrees that it will not:

- (a) complain or object to, or cause others to complain or object to, or publicly comment on, any variation, change or modification to existing or future lawful uses of the Land or on any adjoining land and any designations or consents either in place at the Commencement Date or required by the Lessee or any party associated with the Lessee in connection with any development on the Land or any adjoining land lawfully granted to the Lessee at a later date; or
- (b) directly or indirectly lobby any Authority or other interested party, or directly or indirectly fund any objections, in relation to any variation, change or modification to existing or lawful future uses, designations or consents either in place at the Commencement Date or lawfully granted to the Lessee at a later date and required by the Lessee or

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

any party associated with the Lessee, in connection with any development on the Land or any adjoining land.

- 9.4 The Lessor agrees that it will not complain or object to, or directly or indirectly fund any objection relating to, or otherwise publicly comment about, any activities on the Land in accordance with the Permitted Use.
- 9.5 The Lessor acknowledges and agrees that the Land was formerly part of the Wellington Rail Station yards and surrounds and the Land may be serviced by drains, pipes, cables or other conduits relating to services and utilities which pass through the Land to service adjoining Land or pass through adjoining land to service the Land.
- 9.6 The Lessor covenants and agrees with the Lessee that the Lessor will not do anything which would prevent the Lessee or any owner or occupier of any adjoining land from being able to utilise, maintain, extend or upgrade or relocate any such conduits or any services or utilities associated therewith and that the Lessor will provide all such consents, authorisations, deeds or easements as the Lessee or the owner or occupier of any adjoining land may reasonably require in connection with any such conduits, services or utilities.]

10. COMPLIANCE WITH THE LAW

- 10.1 The Lessee will comply with the provisions of all statutes, ordinances, regulations, bylaws and codes in any way touching upon, relating to, or affecting the Land or the conduct of the Permitted Use on the Land and will also at the Lessee's own cost comply with the provisions of all statutes, ordinances, regulations, bylaws, codes, requisitions or notices issued, made or given by any Authority in respect of the Land or the Lessee's conduct of the Permitted Use on the Land or the Lessee's Improvements on the Land.

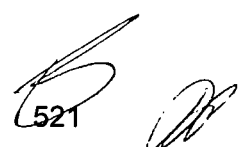
11. LESSEE'S ACKNOWLEDGEMENT OF RISK

- 11.1 The Lessee agrees to occupy and use the Land at the Lessee's risk and releases to the fullest extent permitted by law the Lessor, its employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any personal property in or about the Land, except when such is caused by the wilful or reckless act of the Lessor or persons acting under the control of the Lessor.

12. AVOIDANCE OF DANGER

12.1 The Lessee will:

- (a) take all reasonable precautions to minimise any danger or hazard arising from any use of the Land (by the Lessee) and must not permit any goods of a dangerous nature to be stored or used on the Land unless stored and used in a manner which complies with all statutes, ordinances, regulations, bylaws and codes or standards in that regard; and
- (b) promptly remedy any danger or hazard that may arise on the Land.


521

13. LESSEE'S IMPROVEMENTS

13.1 The Lessor acknowledges in relation to the Lessee's Improvements that:

- (a) notwithstanding any rule of law or equity to the contrary, property in all Lessee's Improvements will remain with the Lessee throughout the Term of this Lease irrespective of how such property is annexed to the Land and may be dealt with by the Lessee without reference to the Lessor;
- (b) the Lessor does not have any rights of ownership or proprietary interest in any of the Lessee's Improvements, either during the Term of the Lease, or at the expiry or earlier termination of the Lease; and
- (c) when any Lessee's Improvements are destroyed or damaged then:
 - (i) the decision of whether to reinstate or not is solely within the Lessee's discretion and property in any insurance proceeds (if any) is also solely with the Lessee; and
 - (ii) if the Lessee elects not to reinstate, the Lessee shall undertake such further work as may be necessary to render the Premises neat, tidy and safe.

13.2 The Lessee may construct Lessee's Improvements and make any alterations or additions to Lessee's Improvements without the prior written approval of the Lessor.

13.3 The Lessee may demolish or remove any Lessee's Improvements from the Land at any time during the continuance of this Lease without the prior written consent or any other consent of the Lessor upon the condition that the Lessee reinstates the Land to a neat, tidy and safe condition after any such demolition or removal.

13.4 [The parties acknowledge that:

- (a) The Lessee may, either prior to or on the expiry or earlier termination of this Lease, demolish or remove all Lessee's Improvements from the Land.
- (b) The Lessor will be deemed by the provisions of clause 13.4(a) to have granted to the Lessee a licence to enter the Land and demolish or remove the Lessee's Improvements and further that the provision will enure for the benefit of the Lessee notwithstanding the prior expiration of this Lease for a period of 12 months following such expiration (provided that the Lessee has used all reasonable endeavours to undertake such demolition and removal within 6 months from the date of expiration of this Lease) and will also bind any successor in title to the Lessor subsequent to the expiry of the Lease.
- (c) In the event that the Lessee demolishes or removes the Lessee's Improvements from the Land under clause 13.4(a), it will restore the Land to a neat, tidy and safe condition subsequent to any such demolition or removal.

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

- (d) The Lessor will not do anything to obstruct or otherwise impede the demolition or removal of any Lessee's Improvements from the Land at any time prior to the expiration or earlier termination of the Lease or within the term of the licence referred to in clause 13.4(b), notwithstanding any rule of law or equity to the contrary.
- (e) The Lessee must continue to pay rent and outgoings under this Lease and comply with all other obligations under this Lease if the Lessee remains on the Land after the expiration or earlier termination of the Lease for the purposes of demolishing or removing the Lessee's Improvements under this clause 13.4.]

14. INSURANCE

- 14.1 The Lessee will be responsible for insuring any Lessee's Improvements on the Land.
- 14.2 If any of the Lessee's Improvements are damaged or destroyed, then it will be the sole responsibility of the Lessee to decide whether to effect reinstatement or not, if the Lessee elects not to reinstate, the Lessee shall undertake such further work as may be necessary to render the Premises neat, tidy and safe.
- 14.3 The Lessee shall at all times during the Term maintain public liability insurance for the sum specified in Schedule One. If at any time either the Lessee or the Lessor considers that such sum is no longer appropriate, the Lessor and the Lessee shall endeavour to agree on a substituted amount. If the Lessor and the Lessee are unable to agree the dispute shall be determined in accordance with clause 22.

15. [RIGHT OF LESSOR TO ENTER AND INSPECT LAND]

- 15.1 Pursuant to section 217 of the Property Law Act 2007, and notwithstanding section 218 and clause 11 of Schedule 3 of that Act, the parties agree that the Lessee will permit the Lessor to enter the Land to inspect its condition, and subject to compliance with the conditions of entry set out in this section 15.
- 15.2 Entry on to the Land by the Lessor under clause 15.1 is subject to:
 - (a) [the Lessor providing the Lessee with at least ten (10) Working Days' prior written notice;]
 - (b) compliance with the Lessee's safe access protocols including direct supervision at all times by a representative of the Lessee; and
 - (c) entry being limited to persons named in the notice (contemplated by clause 15.2(a) above), and approved in writing by the Lessee prior to entry upon the Land by the Lessor.
- 15.3 The Lessor acknowledges that the Lessee will have the discretion to impose such reasonable conditions on the Lessor's ability to enter the Land for inspection purposes pursuant to this section 15 as the Lessee thinks necessary or appropriate with regard to the Lessee's operational requirements.

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

15.4 The Lessor acknowledges that the Lessee may at its discretion, upon giving either oral or written notice to the Lessor, vary any consent to entry given under this Lease if the Lessee deems this to be necessary or appropriate with regard to the Lessee's operational requirements.

16. QUIET ENJOYMENT

16.1 The Lessor will permit the Lessee to occupy and enjoy the Land during the Term without any interruption or disturbance by the Lessor or any person claiming under the Lessor except as authorised by this Lease.

17. DESIGNATION

17.1 The Lessor consents to the Lessee maintaining a designation under the Resource Management Act 1991 (and the Lessor further consents to the inclusion of any new or further designation for such purposes in any operative or proposed District Land) over the Land for railway purposes and agrees to support (and not to do anything that might impede) the Lessee's right to so obtain, maintain and fully enjoy the benefit of, any such designation. The Lessee agrees to take all reasonable steps to lift such designation on the expiry or earlier termination of this Lease.

18. [FURTHER DEVELOPMENT

18.1 The Lessor acknowledges that the Lessee shall be entitled to develop the Land and/or any adjoining land owned or leased by the Lessee, which development may include, but shall not be limited to the construction of buildings and/or other improvements which may or may not be confined to the Land, subdivision of the Land by way of sublease or creation of a unit title subdivision in accordance with the Unit Titles Act 1972 or otherwise, and the Lessor covenants to do all such acts, matters and things as may be necessary to facilitate such development including, but not limited to, the following:

- (a) consenting to the development or subdivision of the Land and the vesting of any land required for road widening or other purposes in a local authority subject to receipt of compensation
- (b) the granting or obtaining of easements in relation to access or services in favour of the Land or over the Land in favour of any adjoining land or any relevant authority;
- (c) consenting to and/or entering into any encumbrance or other arrangement required by a local authority in respect of any development which extends beyond the boundaries of the Land;
- (d) do all such things and execute all such documents as the Lessee may reasonably require to give effect to any of the foregoing provisions of this clause,

and the Lessee shall pay to the Lessor all reasonable costs incurred by the Lessor in complying with its obligations under this clause.

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

18.2 The Lessor must not cancel, surrender or modify any easement, or any other registered or unregistered interest benefiting the Land and which is of a similar nature. The Lessor will not mortgage or charge its interest nor create any interest which would restrict the Lessee's ability to deal with its interest in this Lease without procuring from any such party obtaining an interest in the Land on each occasion that such party's consent is required, the consent of that party to any dealing with the Lessee's interest under this Lease including the renewal of this Lease. The Lessor shall procure that the Lessee is appointed the agent of any third party obtaining an interest in the Land for the purpose of confirming to any relevant authority that that third party's consent has been given to the renewal or other dealing with the Lessee's interest under this Lease.]

19. RE-ENTRY

19.1 Subject to clause 19.3 the Lessor may (in addition to the Lessor's right to apply to the Court for an order for possession) cancel this Lease by re-entering the premises at the time or at any time thereafter:

- (a) if the rent shall be in arrear twenty (20) Working Days after any of the rent payment dates and the Lessee has failed to remedy that breach within ten (10) Working Days after service on the Lessee of a notice in accordance with section 245 of the Property Law Act 2007;
- (b) in case of breach by the Lessee of any covenant or agreement on the Lessee's part herein expressed or implied (other than the covenant to pay rent) after the Lessee has failed to remedy that breach within the period specified in a notice served on the Tenant in accordance with section 246 of the Property Law Act 2007;
- (c) if the Lessee shall make or enter into or endeavour to make or enter into any composition assignment or other arrangement with or for the benefit of the Lessee's creditors;
- (d) in the event of the insolvency bankruptcy or liquidation of the Lessee;

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

19.3 Notwithstanding clause 19 of this Lease at section 218 and clause 12 of Schedule 3 of the Property Law Act 2007, and pursuant to section 217 of that Act, and due to the nature of the Permitted Use and the need to ensure the ongoing operational integrity and security of the Lessee's operations from the Land, the Lessor agrees that it may not cancel the Lease because of the breach of any covenant or condition by the Lessee (including a covenant or condition to pay rent) while the Crown or any Government Agency is the Lessee under this Lease

20. [DEALINGS WITH THE LESSOR'S AND LESSEE'S INTERESTS]

20.1 [The Lessee shall not assign, transfer, sell or otherwise dispose of the Lessee's interest in the Land under this Lease without the consent of the Lessor, which consent shall not be unreasonably or arbitrarily withheld, provided that the Lessee has complied with the Lessee's obligations under

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

clauses 20.2 to 20.9. There shall be no restriction on the Lessee's right to sublet or otherwise part with possession of the Land nor shall the Lessee be required to comply with clauses 20.2 to 20.9 in doing so. If the Crown or a Government Agency is the Lessee under this Lease, the Crown or any such Government Agency shall cease to be liable for the future performance of the Lessee's obligations under this Lease as from the date of any assignment or transfer of the Lessee's interest under this Lease by the Crown or any such Government Agency to the Lessor or to a third party.

- 20.2 If at any time before the expiry or earlier termination of this Lease, either party:
- (a) wishes to assign, transfer, sell or otherwise dispose (actions collectively referred to in the remainder of this clause 20 as "sell"), their interest in the Land (except as provided in clause 20.1); or
 - (b) receives an offer to purchase their interest in the Land which they wish to accept;

the party who wishes to sell ("Vendor") must immediately give written notice ("Vendor's Notice") to the other party ("Purchaser") setting out the terms on which the Vendor wishes to sell their interest in the Land, or the terms of the offer received by them for their interest (as the case may be). In the case of the Vendor's desire to sell, the offer must comprise the agreement for sale and purchase in the then most recent form approved by the Real Estate Institute of New Zealand and by the Auckland District Law Society, modified as set out in clause 20.9.

- 20.3 The Purchaser will have ninety (90) Working Days after and excluding the date of receipt of the Vendor's Notice in which to exercise the Purchaser's right to purchase the Vendor's interest in the Land, by serving written notice on the Vendor accepting the offer contained in the Vendor's Notice ("Purchaser's Notice").
- 20.4 If the Purchaser does not serve the Purchaser's Notice on the Vendor in accordance with clause 20.3, then the Vendor may sell the Vendor's interest in the Land to any other person on no more favourable terms than those previously offered to the Purchaser.
- 20.5 If the Vendor wishes, or agrees, to offer more favourable terms of sale (of the Vendor's interest in the Land) than the terms contained in the Vendor's Notice, the Vendor must first re-offer its interest in the Land to the Purchaser on those terms, by written notice to the Purchaser. This offer must also comprise the agreement for sale and purchase in the then most recent form approved by the Real Estate Institute of New Zealand and by the Auckland District Law Society, modified as set out in clause 20.9.
- 20.6 The Purchaser will have forty (40) Working Days after and excluding the date of receipt of notice from the Vendor of the more favourable terms upon which the Vendor is then prepared to sell, in which to exercise the Purchaser's right to purchase the Vendor's interest in the Land on those more favourable terms, by serving written notice on the Vendor accepting those more favourable terms.

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

- 20.7 If the Purchaser does not agree to purchase the Vendor's interest in the Land on the more favourable terms offered by the Vendor in accordance with clause 20.5, then the Vendor may sell the Vendor's interest in the Land to any other person on no more favourable terms than those offered to the Purchaser and the provisions of clauses 20.4 and 20.5 will continue to apply to any offer to sell by the Vendor.
- 20.8 On the Purchaser serving a notice at any time that the Purchaser accepts the terms upon which the Vendor wishes to sell the Vendor's interest in the Land ("Purchaser's Subsequent Notice"), the parties will be taken to have entered into a contract for the sale and purchase of the Vendor's interest in the Land on the terms offered by the Vendor and accepted by the Purchaser ("Contract").
- 20.9 The terms of the Contract will be modified as follows:
- (a) the Purchaser will be deemed to have accepted the title to the Vendor's interest in the Land;
 - (b) the provisions of the Contract under which the Purchaser has the right to requisition or object to the title to the Vendor's interest in the Land will not apply; and
 - (c) the Purchaser will not be required to complete the purchase earlier than three (3) months from the date of service of the Purchaser's Notice or the Purchaser's Subsequent Notice (as the case may be).]

21. ENTIRE AGREEMENT

- 21.1 This Lease constitutes the entire and complete agreement between the parties in relation to the lease of the Land and no variation will be effective or binding unless it is recorded in writing and executed in the same manner as this Lease.

22. DIFFERENCES AND DISPUTES

- 22.1 Unless any dispute or difference is resolved by mediation or other agreement, the same will be submitted to the arbitration of two arbitrators and an umpire, unless the parties agree otherwise, who will conduct the arbitral proceedings in accordance with the Arbitration Act 1996 and any amendment to or statute passed in substitution for that Act.
- 22.2 If the arbitrators are unable to agree on an umpire, the umpire may be appointed, upon the request of either party, by the President of the New Zealand Law Society. That appointment will be binding on all parties to the arbitration with no right of appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject to this clause and varied accordingly.

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

22.3 The procedures described in this clause will not prevent the Lessor from taking proceedings for the recovery of any rent or other moneys payable under this Lease which remain unpaid.

23. NOTICES

23.1 Any notice or document required or authorised to be given or served under this Lease must be in writing and may be given or served unless otherwise required by sections 352 to 361 of the Property Law Act 2007:

- (a) in the manner authorised by sections 354 to 361 of the Property Law Act 2007; or
- (b) by personal delivery, or by posting by registered mail or mail, or by facsimile, or by email to the address of the be notified, as set out in Schedule One, or to such other address as either party may notify to the other in writing.

23.2 Any notice or other document will be treated as given or served and received by the other party in the case of:

- (a) personal delivery, when received by the addressee;
- (b) posting by mail, three (3) Working Days after being posted to the addressee's last known address in New Zealand;
- (c) facsimile transmission, on completion of an error free transmission, when sent by facsimile; or
- (d) email, when acknowledged by the addressee by return email or otherwise in writing.

23.3 Any notice or document to be given or served under this Lease must be in writing and may be signed by:

- (a) any attorney, officer, employee or solicitor for the party serving or giving the notice; or
- (b) the party serving the notice or any other person authorised by that party.

24. PROPERTY LAW ACT 2007

24.1 The covenants and powers contained in clauses 4, 5, 6, 10, 11 and 12 of Part 2 and clause 13 of Part 3 of Schedule 3 of the Property Law Act 2007 will not be implied in this Lease and are expressly negated.

25. [REGISTRATION OF LEASE]

25.1 The parties agree that this Lease will be granted in registrable form and will be registered against the computer freehold registers for the Land under the provisions of the Land Transfer Act 1952 at the expense of the Lessee. The

**PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE**

Lessor consents to the Lessee caveating the computer freehold registers for the Land to protect the Lessee's interest prior to registration.

- 25.2 [Where under this Lease the Lessor is required to consent to anything that obligation shall extend to include an obligation to procure the consent of any mortgagee or chargeholder over the Lessor's interest in the Land.]

26. COSTS

- 26.1 The parties shall each pay their own costs of and incidental to the negotiation, preparation and execution of this Lease.
- 26.2 The Lessee will pay the Lessor's costs of and incidental to the negotiation, preparation and execution of any variation (where a variation is requested by the Lessee), renewal or surrender of this Lease or the obtaining of any consents or approvals associated with this Lease.

PORT NICHOLSON BLOCK (TARANAKI WHANUI KI TE UPOKO O TE IKA) DEED OF SETTLEMENT:
LEASEBACK SCHEDULE

SCHEDULE THREE

(Plan of the Land)