

**Licence to Occupy Premises
(On-Campus Form)**

between

**The Australian National University
(ABN: 52 234 063 906)**

and

**Tuckwell Scholars House Pty Ltd
(ACN: 610 165 243)**

TABLE OF CONTENTS

1 DEFINITIONS AND INTERPRETATIONS4

2 APPLICATION OF STATUTORY PROVISIONS6

3 LICENCE FEE.....6

4 LICENCE FEE REVIEW6

5 CHARGES AND OUTGOINGS8

6 ALTERATIONS9

7 MAINTENANCE AND REPAIRS.....9

8 ASSIGNMENT, SUBLICENSE AND MORTGAGES9

9 USE OF THE PREMISES11

10 INSPECTION OF THE PREMISES12

11 ADVERTISEMENT AND SIGNS12

12 INSURANCE AND INDEMNITY12

13 WATER DAMAGE.....13

14 VACANCY NOTICE.....13

15 REMOVAL OF FIXTURES AND FITTINGS.....13

16 TAXES, DUTIES, COSTS AND EXPENSES14

17 DAMAGE TO PREMISES OR BUILDING14

18 DEFAULT AND TERMINATION.....14

19 ESSENTIAL TERMS16

20 NOTICES16

21 INTEREST ON OVERDUE MONEY16

22 OWNER ITEMS17

23 DISPUTE RESOLUTION17

24 OPTION FOR FURTHER TERM17

25 EARLY TERMINATION18

26 HOLDING OVER18

27 GUARANTEE AND INDEMNITY.....18

28 GENERAL CLEANING AND SECURITY19

29 DISCLOSURE STATEMENT20

30 THE ACT.....20

31 REPRESENTATION20

32 PARKING20

33 WAIVER.....20

34 SPECIAL CONDITIONS20

35 NO WARRANTY21

36 LICENSOR’S RIGHT TO SET-OFF21

SCHEDULE 1 SPECIAL CONDITIONS (IF APPLICABLE).....25

SCHEDULE 2 SITE/PREMISES PLAN26

SCHEDULE 3 COPY OF SIGNED DISCLOSURE STATEMENT ERROR! BOOKMARK NOT DEFINED.

SCHEDULE 4 COPY OF SIGNED CONDITION REPORT – INCLUDING PHOTOGRAPHS.. ERROR! BOOKMARK NOT DEFINED.

PARTIES

THE AUSTRALIAN NATIONAL UNIVERSITY (ABN 52 234 063 906) an educational and research institute and body corporate pursuant to the *Australian National University Act 1991* (Cth) of Acton in the Australian Capital Territory, 2601 (the “**Licensor**”)

AND

Tuckwell Scholars House Pty Ltd ACN 610 165 243 C/- Chancelry (Building 10), Australian National University, in Acton ACT 2601, Australia (the “**Licensee**”)

THE LICENCE

The **Licensor** grants to the **Licensee** described in item 1 of the Particulars (Licensee) the exclusive right to use the premises under licence, and for the purpose/use described in item 2 of the Particulars (Premises, Purpose and Use), in the building described in item 3 of the Particulars (Building) for the term specified in item 4 of the Particulars (Term) commencing on the date specified in item 5 of the Particulars (Commencement Date) and expiring on the date specified in item 6 of the Particulars (Expiry Date) and as otherwise on the terms and conditions contained in the Agreed Terms below.

AGREED TERMS

THE PARTICULARS

| | | |
|----|---|---|
| 1. | Licensee: | Name: Tuckwell Scholars House Pty Ltd ACN: 610 165 243 Address: Chancelry (Building 10), Australian National University, Acton ACT 2601 |
| 2. | Premises: Purpose and Use: | Building 3L Fellows Lane, Australian National University, Acton 2601 (the area delineated on the site/premise plan at Schedule 2) For study, research and meetings only. |
| 3. | Building: | Australian National University, Building No 3L, Fellows Lane, Acton, ACT, 2601. |
| 4. | Term: Further Term: (Clause 24) | 5 years. Not applicable (<u>Note:</u> The Term period is generally to be of 5 years, either outright or combination of Term and Further Term, otherwise the licensee must obtain and produce an independent certificate from a legal adviser for any lesser period of 5 years) |
| 5. | Commencement Date: | 1 July 2016 |
| 6. | Expiry Date: | 30 June 2021] |

| | | |
|-----|---|--|
| 7. | <p>Licence Fee: (Clause 3)</p> <p>Monthly Payment:</p> <p>Due Day of the Month:</p> <p>Method of Payment:</p> <p>Date of First Payment:</p> | <p>\$ 12.00 per annum (exclusive of GST and subject to clause 16).</p> <p>\$1.00</p> <p>On or before the first day of each month.</p> <p>Direct debit made payable to the Australian National University.</p> <p>1 July 2016</p> |
| 8. | <p>Licence Fee Review Date(s): (Clause 4)</p> <p>(a) Market Licence Fee Review Date(s):</p> <p>(b) CPI Licence Fee Review Date(s):</p> <p>(c) Fixed Rate and Review Date(s):</p> | <p>Not applicable</p> <p>Not applicable</p> <p>Not applicable</p> |
| 9. | <p>Amount of Public Risk Insurance Cover: (Clause 12)</p> <p>Amount of Licensee's Product/Business Liability Insurance Cover (Including Coverage for Glass): (Clause 12)</p> <p>Workers' Compensation and Common Law Liability Insurance Cover: (Clause 12)</p> <p>Professional Indemnity Insurance Coverage: (Clause 12)</p> | <p>\$20,000,000</p> <p>\$20,000,000</p> <p>As per applicable State and Territory legislation</p> <p>\$5,000,000</p> |
| 10. | <p>Interest Rate (Overdue Money): (Clause 21)</p> | <p>10% per annum.</p> |
| 11. | <p>Guarantor/s: (Clause 27)</p> | <p>Not applicable</p> |
| 12. | <p>Licensee's Outgoing Percentage: (Definition of Licensee's Contribution in Clause 5)</p> | <p>Not applicable</p> |
| 13. | <p>Base Outgoings Year: (Definition of Licensee's Contribution in Clause 5)</p> | <p>Not applicable</p> |

1 Definitions and Interpretations

1.1 The following words have these meanings unless the contrary intention appears. Other words have the meanings indicated on the cover sheet and the Particulars.

Item numbers refer to those numbers in the Particulars.

Act means the Australian Capital Territory (**ACT**) *Leases (Commercial and Retail) Act 2001*.

Auditor means an auditor who is a member of either the Institute of Chartered Accountants or the Australian Society of Certified Practising Accountants.

Building means the building in which the Premises are located.

Consumer Price Index or CPI means the Consumer Price Index - All Groups (Canberra) or the index officially substituted for it.

Current CPI means the Consumer Price Index number last published before the relevant CPI Adjustment Date.

Crown Lease means the crown lease of which the Premises form part or whole.

Disclosure Statement means a statement signed on behalf the Licensor and given to the Licensee.

Effective Control means control:

- (a) of the composition of the board of directors; or
- (b) of more than one-half of the voting rights.

Essential Terms mean clauses 3, 4, 5, 6, 7.1, 8.1, 9.1, 9.2, 15.1, 16, 18, 19, 21, 26, 27 and 31.

GST has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (referred to as the 'GST Act') and associated imposition statutes.

Land means Block 1 Section 39 Division of Acton in the ACT.

Licence includes this document including schedules, attachments, any inventory or special condition annexed to this document.

Licensee includes the executors, administrators, successors and assigns of the licensee.

Licensee's Contribution means for an Outgoings Year:

- (a) if a Base Outgoings Year is specified in item 13 of the Particulars, the Licensee's Percentage of the increase in outgoings since the Base Outgoings Year; and
- (b) if a Base Outgoings Year is not specified in item 13, the Licensee's Percentage of Outgoings,

and, if the Term commences or expires during that Outgoings Year, the Licensee's Contribution for that Outgoings Year is the amount in paragraph (a) or (b) as applicable, multiplied by the number of days of the Term in that Outgoings Year and divided by the number of days in that Outgoings Year.

Licensee's Property means the fixtures and fittings and other property of the Licensee in, on or used in the Premises.

Minister means the Commonwealth government minister or authority responsible for oversight of the Australian National University under its enabling legislation.

Outgoings mean in respect of each Outgoings Year the aggregate of all:

- (c) general rates and charges including (but not limited to) charges for garbage and trade waste removal;

- (d) water, sewerage and drainage rates and charges;
- (e) land tax;
- (f) other rates and statutory charges;
- (g) insurance premiums payable in respect of the insurance the Licensor must take out pursuant to clause 12;
- (h) telephone and other information related service charges;
- (i) gas and electricity; and
- (j) any other items specified in the Disclosure Statement;

levied, charged, assessed, imposed or payable by the Licensor in respect of the Premises, the Building or the Land.

Outgoings Year means the 12 month period ending on 31 December in each year.

Previous CPI means the Consumer Price Index number last published before the Review Date immediately preceding the relevant CPI Adjustment Date (or, if there has not been one, the Commencement Date).

Review Date means a Fixed Review Date, a CPI Adjustment Date or a Market Review Date.

Services means such services (such as water, sewerage, drainage, gas, electricity, communications, fire-fighting, air conditioning, lifts and escalators) (if any) to or of the Building or any premises in it, as may be provided by authorities, the Licensor or any person authorised by the Licensor (other than the Licensee), and includes all plant and equipment in connection with those services.

Special Conditions means those identified under that clause heading (if any).

Term means the period from and including the Commencement Date to and including the Expiry Date in item 6, unless terminated earlier.

Valuer means a valuer with the qualifications and expertise required under the Act in determining market value rentals or some other suitably qualified person.

1.2 Certain Terms

Unless the **contrary** intention appears:

- 1.2.1 a reference to a statute, ordinance or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- 1.2.2 the word "person" includes a corporation, a partnership, an incorporated or unincorporated association or an authority;
- 1.2.3 where a party consists of more than one person, this Licence binds those persons jointly and individually;
- 1.2.4 a reference to a month means a calendar month;
- 1.2.5 if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- 1.2.6 a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- 1.2.7 the singular includes the plural and vice versa;
- 1.2.8 references to "Licensee", "Licensor" and "Licensee's Fittings" are a reference to "Tenant", "Owner" and "Tenant's Items", respectively, in the Disclosure Statement.

- 1.2.9 if this document is not registered as a licence at the Registrar-General's Office, a reference to "this Licence" is a reference to:
- (a) any licence implied by the common law because of occupation and payment of a licence fee substantially in accordance with this document; and
 - (b) any licence arising in equity due to the agreement between the parties as evidenced by this document.

1.3 Headings

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

2 Application of Statutory Provisions

- 2.1 The covenants, powers and provisions implied in every lease/licence by the Land Titles Act 1925 are declared not to apply or to be modified only so far as they are inconsistent with these conditions.

3 Licence Fee

- 3.1 The Licensee agrees to pay the Yearly Licence Fee specified in item 7 of the Particulars to the Licensor monthly in advance (or as the Licensor directs) in the amount specified in item 7 of the Particulars, without reduction, on the day specified in item 7 of the Particulars at the location (or in the manner the Licensor directs) in item 7 of the Particulars from the date of first payment specified in item 7 of the Particulars. GST is payable by the Licensee additional to this fee.
- 3.2 If an instalment is for a period of less than one month, then that instalment is that proportion of one-twelfth of the Yearly Licence Fee which the number of days in the period bears to the number of days in the month in which that period begins.

4 Licence Fee Review

4.1 Market Licence Fee Review

- 4.1.1 The following Market Licence Fee Review clauses do not apply if there are no Market Licence Fee Review Dates in item 8 of the Particulars.
- 4.1.2 Before each Market Licence Fee Review Date the annual licence fee may be adjusted by the Licensor for the Premises.
- 4.1.3 Before the Market Licence Fee Review Date the Licensor must give the Licensee a notice stating the Licensor's assessment for the annual Licence Fee for the Premises effective from the next Market Licence Fee Review Date.
- 4.1.4 The annual Licence Fee from and including the relevant Market Licence Fee Review Date is the amount stated in the notice under clause 4.1.3 unless the Licensee gives the Licensor a notice within one month after receipt of the notice under clause 4.1.3, disagreeing with that amount.
- 4.1.5 If the parties do not agree on the annual Licence Fee of the Premises from the relevant Market Licence Fee Review Date within 14 days after the Licensee's notice given under clause 4.1.3, then the annual Licence Fee is to be determined in accordance with clause 4.1.6.
- 4.1.6 Where the parties disagree under clause 4.1.5 then:
- (a) the Licensor and the Licensee will appoint a Valuer to determine the annual market licence fee of the Premises;

- (b) if the Licensor and the Licensee do not agree upon the nomination of a Valuer then each of them must nominate a Valuer to determine the annual market licence fee of the Premises:
 - (i) if the Valuers do not agree then they must appoint an umpire whose determination of the annual market licence fee will be final and binding;
 - (ii) if the Valuers do not agree upon the appointment of an umpire then the President of the ACT division of the Australian Institute of Valuers and Land Economists Incorporated (Valuation Stream) may appoint a valuer of not less than 5 years standing as the umpire;
- (c) in determining the annual market licence fee any valuer will:
 - (i) act as an expert and not as an arbitrator; and
 - (ii) exclude the value of any goodwill of the Licensee's business, the value of the Licensee's Fittings in the Premises and the deleterious condition of the Premises if that condition results from any breach of this Licence by the Licensee;
- (d) the costs of the determination of the annual licence fee under clause 4 will be paid by the parties equally;
- (e) the annual licence fee until the next Market Licence Fee Review Date will be:
 - (i) the licence fee determined under this clause; or
 - (ii) until the determination under this clause 4 is completed, the Licence Fee payable immediately beforehand;
- (f) any variation in the annual licence fee resulting from the determination will take effect from the Market Licence Fee Review Date or from the date of commencement of any further term granted to the Licensee.
- (g) On the first Monthly Licence Fee date after the annual Licence Fee is agreed or determined under this clause 4, the Licensee must pay the Licensor (or the Licensor must credit the Licensee with) the difference between what the Licensee has paid on account of annual Licence Fee and the annual Licence Fee for the period from and including the relevant Market Licence Fee Review Date to but excluding that monthly Licence Fee date.

4.2 CPI Licence Fee Review

4.2.1 The following CPI Licence Fee Review clauses do not apply if there are no CPI Licence Fee Review Dates in item 8 of the Particulars.

4.2.2 On each CPI Licence Fee Review Date the yearly licence fee then payable is to be the annual licence fee that is calculated in accordance with the following formula:

Where:

A is the annual licence fee payable from and including the relevant Licence Fee Review Date;

B is the annual licence fee payable immediately before the relevant Licence Fee Review Date;

C is the Current CPI;

D is the Previous CPI.

4.2.3 If either:

- (a) the Consumer Price Index All Groups (Canberra) ceases to be published quarterly; or
- (b) the method of calculation of the Consumer Price Index All Groups (Canberra) substantially alters,

then the Consumer Price Index All Groups (Canberra) is to be replaced by the nearest equivalent index and any necessary consequential amendments are to be made.

4.3 Fixed Rate Review

4.3.1 The following Fixed Rate Review clauses do not apply if there are no Fixed Rate amount or percentage and Fixed Rate Review Dates in item 8 of the Particulars.

4.3.2 The annual Licence Fee increases from and including each Fixed Rate Review Date to the amount or by the percentage set out against the dates in item 8 of the Particulars.

5 Charges and Outgoings

5.1 Charges

5.1.1 The Licensee agrees to pay on time all amounts payable by the Licensee which are separately charged or imposed in connection with the Premises or by the Licensee's use or occupation of the Premises including any charge levied by the University for maintenance of the Building, including security and fire protection, and for electricity or other utility or Services provision for the public areas of the Building.

5.1.2 If any charge is not paid within 1 month of the due date then the Licensor may pay that amount. Any amount paid by the Licensor must be repaid by the Licensee on demand.

5.1.3 The Licensee agrees to produce to the Licensor when required the receipts for payment for all charges.

5.1.4 The Licensee acknowledges that the Licensor may procure Services not separately charged to the Premises at the Commencement Date (including water and electricity) to be separately charged to the Premises during the Term or any further term of this Licence.

5.2 Outgoings

5.2.1 The following clauses in this clause 5 do not apply if the words "not applicable" appear in item 12 of the Particulars.

5.2.2 The Licensee must pay to the Licensor on demand the Licensee's Contribution for each Outgoings Year.

5.2.3 At least one month before the beginning of each of Outgoings Year the Licensor must give to the Licensee a notice stating the Licensor's estimate of the Outgoings for that Outgoings Year using the item descriptions used in the list of outgoings in the Disclosure Statement.

5.2.4 Within one month after the end of each Outgoings Year, the Licensor must make available for examination of the Licensee a written expenditure statement detailing all expenditure by the Licensor on account of Outgoings during the last Outgoings Year using the item descriptions used in the list of outgoings in the Disclosure Statement.

5.2.5 Within three months after the end of each Outgoings Year the Licensor must give the Licensee a written report detailing all expenditure by the Licensor in the last Outgoings Year on account of Outgoings.

5.2.6 The report provided pursuant to clause 5.2.5 must be accompanied by copies of receipts in respect of all expenditure by the Licensor on account of Outgoings.

6 Alterations

- 6.1 The Licensee must not make or allow to be made any alteration or addition to the Premises (whether structural or otherwise) without the written consent of the Licensor.
- 6.2 If the Licensee is likely to be affected by proposed alterations to or refurbishment of the Building or grounds surrounding the Building, the Licensor must give the Licensee at least 2 months written notice of the alterations or refurbishment including details of the proposed alterations or refurbishment and the measures, if any, that will be taken by the Licensor to minimise the effect of the alterations or refurbishment. In cases of emergency the Licensor need only give the Licensee reasonable notice of the proposed alteration or refurbishment.

7 Maintenance and Repairs

- 7.1 In addition to clause 28, the Licensee must:
- 7.1.1 keep the Premises clean and in a tidy condition; and
 - 7.1.2 keep the Premises (including the air-conditioning (if any)) and the Licensor's property in good repair; and
 - 7.1.3 hand over the Premises in good repair at the end of the licence, in each case to the reasonable satisfaction of the Licensor, fair wear and tear and damage by fire, storm, lightning, flood or earthquake excepted.
- 7.2 The Licensee must comply with any written notice of the Licensor to repair or clean the Premises in accordance with the Licensee's obligations contained in this clause.
- 7.3 If the Licensee does not comply:
- 7.3.1 within 14 days with a notice to repair; or
 - 7.3.2 within 48 hours with a notice to clean,
- and does not complete the repair or cleaning within a reasonable time then the Licensor may complete the repair or cleaning. Any cost of the repair or cleaning is repayable by the Licensee on demand.
- 7.4 The Licensor or any properly authorised person of the Licensor may enter the Premises at any reasonable time to carry out cleaning or repairs to be carried out by the Licensor.
- 7.5 If the Premises' glass windows are destroyed or damaged the Licensee must promptly replace them with glass of at least the same standard, suitability and thickness.

8 Assignment, Sublicense and Mortgages

- 8.1 The Licensee must not assign this Licence without the prior written consent of the Licensor (which may be refused, or granted with conditions, at the sole discretion of the Licensor), and must not sublicense or grant a mortgage over or otherwise part with possession of the Premises.
- 8.2 The following events or circumstances will be an assignment of the Licence:
- 8.2.1 If the Licensee is a company, any change in Effective Control of the Licensee or its holding company;
 - 8.2.2 if the Licensee is a trustee:
 - (a) its trust deed is altered, amended, varied or revoked;

- (b) its retirement or removal as trustee of its trust;
- (c) any new or additional trustee to be appointed as trustee of its trust;
- (d) the transfer of the assets of the trust to any other trust or person;
- (e) the removal or diminishing of its rights of indemnity from the trust assets; or
- (f) the appointment of a date of distribution (being a date upon which the assets of its trust will vest in the beneficiaries of its trust) while any obligations as Licensee remain outstanding or unsatisfied; and
- (g) if the trustee is a company, any change in Effective Control of the trustee company or its holding company.

8.3 If the Licensee requests the Licensor's consent to an assignment of this Licence of the Premises, the Licensee must provide the Licensor with:

8.3.1 a written application for consent;

8.3.2 for each proposed assignee and any proposed guarantor:

- (a) their full names and addresses (including, for individuals their current residential addresses); and
- (b) any information concerning the financial standing of the proposed assignee (including details of any finance they may have, or propose to have, approved); and
- (c) information concerning the business skills of the proposed assignee, and ability to obtain appropriate regulatory licences for the Premises; and
- (d) information concerning the financial standing of any proposed guarantor for the proposed assignee; and
- (e) the proposed use of the Premises by the proposed assignee; and
- (f) the ability of the proposed assignee to operate the business conducted or to be conducted from the Premises; and
- (g) references for the proposed assignee.

8.3.3

8.4 Before an assignment of this Licence can take effect:

- 8.4.1 the consent of the Licensor in accordance with this clause 8 must have been obtained; and
- 8.4.2 the Licensor, the Licensee and the proposed assignee and any guarantor (if required) must have entered into a consent document relating to the assignment in the form reasonably required by the Licensor and prepared by the Licensee; and
- 8.4.3 any guarantee, bond or guarantee and indemnity reasonably required by the Licensor must be given; and
- 8.4.4 the Licensee must comply, and ensure that the proposed assignee complies, with all the Licensor's requirements in relation to the assignment (including compliance by the assignee with the insurance requirements of this Licence); and
- 8.4.5 the Licensee must obtain the Licensor's confirmation that the Licensee has obtained any consents it has agreed to obtain; and
- 8.4.6 any default under this Licence must be remedied; and

- 8.4.7 the reasonable legal and other expenses incurred by the Licensor in connection with the assignment must be paid.
- 8.5 On assignment of this Licence in accordance with this clause 8, the Licensee and, where applicable, the Licensee's Guarantor are released from further obligations under this Licence, without prejudice to any right or claim the Licensor has against the Licensee or the Licensee's Guarantor arising prior to the assignment.

9 Use of the Premises

- 9.1 The Licensee must only use the Premises for the purpose or use stated in Item 2 of the Particulars.
- 9.2 The Licensee must not:
- 9.2.1 carry on or permit to be carried on any noxious, noisy, dangerous or offensive business in the Premises; or
 - 9.2.2 allow anything to be done on the Premises which may annoy or cause damage to other persons in the immediate area or neighbourhood or on the campus of the Australian National University; or
 - 9.2.3 without the Licensor's consent bring anything on to the Premises that might overload the floor; or
 - 9.2.4 do anything to overload the facilities or Services of the Premises or Building nor use them for anything other than their intended purpose.
- 9.3 The Licensee must:
- 9.3.1 take all reasonable precautions against the outbreak of fire in the Premises; and
 - 9.3.2 immediately notify the Licensor of the occurrence of any fire or other event which damages the Premises.
- 9.4 The Licensee must comply with published Statutes, Rules and Orders made under the *Australian National University Act 1991* and any policies of the University in force from time to time including those relating to the use of tobacco products.
- 9.5 The activities conducted from the Premises must be carried out in accordance with good trade and business practice for the industry, and in accordance with occupational, health and safety requirements under law.
- 9.6 The Licensee must take reasonable measures to keep the Premises free from pests or vermin and is responsible for pest control for the term of the Licence.
- 9.7 The Licensee must comply with all Commonwealth and Australian Capital Territory laws, any requirements of authorities (including obtaining and maintaining all necessary licences and permits), and those reasonable orders issued by the Australian National University's authorised delegate, in connection with the Premises, or the Licensee's use or occupation of the Premises.
- 9.8 The Licensee must observe and perform the terms of the Crown Lease or any head lease of the Land insofar as those terms affect the Premises.
- 9.9 The Licensee must do all things reasonably possible in an endeavour to control usage without waste including for Services supplied and in respect of recycling and environmental issues.
- 9.10 Notwithstanding clause 9 the Licensee acknowledges and agrees that this Licence does not confer upon the Licensee any estate or interest in land in respect of any part of the Premises or Building, possession and control of which remains vested in the Licensor at all times.

10 Inspection of the Premises

- 10.1 The Licensee must permit:
- 10.1.1 the Minister or any person authorised by the Minister or the Australian National University to enter the Premises for the purposes of the Crown Lease; and
 - 10.1.2 the Licensor or any person authorised by the Licensor to enter and inspect the Premises at all reasonable times after giving reasonable notice.

11 Advertisement and Signs

- 11.1 The Licensee must not display, or allow to be displayed, any sign on the Premises without the written consent of the Licensor.
- 11.2 The Licensee will remove its signs when the Term has expired or this Licence has been determined and will pay to the Licensor on demand the costs of the repair of any damage caused by their removal.

12 Insurance and Indemnity

- 12.1 During the Term the Licensee must take out and maintain current, noting the interest of the Licensor on each policy, the following:
- 12.1.1 an insurance policy for all plate glass windows on the Premises; and
 - 12.1.2 a public risk liability policy for an amount not less than the amount referred to in item 9 of the Particulars; and
 - 12.1.3 a policy to cover the business liability of the Licensee at law, in contract or tort for an amount not less than the amount referred to in item 9 of the Particulars; and
 - 12.1.4 a building contents policy sufficient to cover replacement value of the Licensor's items or third party items; and
 - 12.1.5 workers' compensation and common law liability policy for persons employed by the Licensee; and
 - 12.1.6 professional indemnity policy to cover the conduct of the professional business of the Licensee and for an amount not less than the amount referred to in item 9 of the Particulars.
- 12.2 By written notice to the Licensee, the Licensor may from time to time increase the amount referred to in item 9 to an amount reasonably required by the Licensor.
- 12.3 The Licensee must indemnify the Licensor against all liabilities or losses arising out of any:
- 12.3.1 injury to; or
 - 12.3.2 death of; or
 - 12.3.3 damage to the property of,
- the Licensee or its employees, agents, invitees, contractors or licensees while upon or entering any part of the Building and Premises, including any shared space, except if caused by the Licensor or the Licensor's employees, agents or contractors.
- 12.4 The insurance policies and the insurers must at all times be acceptable to the Licensor.
- 12.5 At commencement of this Licence and any time thereafter if requested by the Licensor the Licensee must promptly produce proof of the insurances and the payment of premiums.
- 12.6 If the Licensee does not promptly produce evidence of the insurances when requested the Licensor may effect the insurances and the Licensee must reimburse the Licensor for its costs.

- 12.7 The Licensee must not do anything or allow anything to be done, or fail to do anything that would allow an insurer to refuse or reduce a claim.
- 12.8 The Licensee will not hold the Licensor liable for, and indemnifies the Licensor against, any loss, liability or expense incurred by the Licensee as a result of a loss, interruption or a variation in the quality or frequency of a Service (ie. electricity, water or similar utility service supplied to the Premises) or a claim by a third party on the Premises arising out of or in connection with any interruption, loss or variation of the supplied Service.

13 Water Damage

- 13.1 The Licensor is not liable for damage to property of the Licensee arising from water supply or rain water which leaks or flows into the Premises, except if caused by the Licensor or the Licensor's employees, agents or contractors.

14 Vacancy Notice

- 14.1 If requested by the Licensor the Licensee will permit any agent of the Licensor to take prospective licensees through the Premises during the last 3 months of the Term or permit any agent of the Licensor to take prospective licensees through the Premises where either party has given notice of termination.

15 Removal of Fixtures and Fittings

- 15.1 On expiry of the Term or termination of this Licence, whichever is earlier, the Licensee must promptly remove all of the Licensee's property from the Premises.
- 15.2 If the Licensee does any damage to the Premises in removing any Licensee's property the Licensee must:
- 15.2.1 repair any damage promptly; and
 - 15.2.2 continue to pay the Licence Fee and all other charges under this Licence until the damage is repaired.
- 15.3 If the Licensee does not comply with clause 15.1 the Licensee is deemed to have (at the option of the Licensor):
- 15.3.1 abandoned the Licensee's property remaining on the Premises; and
 - 15.3.2 appointed the Licensor the Licensee's agent for the purpose of removing the Licensee's property from the Premises and either storing it at the risk and cost of the Licensee or selling it in any manner the Licensor decides, without in each case having any liability to the Licensee.
- 15.4 If pursuant to clause 15.3 the Licensor sells the Licensee's property (as agent for the Licensee):
- 15.4.1 the Licensor may apply the net proceeds firstly in satisfaction of any amount owing to the Licensor by the Licensee pursuant to this Licence and secondly in payment of the cost of removing and selling the Licensee's property;
 - 15.4.2 the Licensor is to account to the Licensee for any balance of the net proceeds; and
 - 15.4.3 the provision of clause 15.3 and this clause 15.4 do not limit any other rights or remedies of the Licensor under this Licence or at law.

16 Taxes, Duties, Costs and Expenses

- 16.1 Subject to the Act the Licensee must pay to the Licensor on demand any taxes, duties, cost and expenses which the Licensor incurs in relation to this Licence other than costs associated with the preparation of this Licence.
- 16.2 The Goods and Services Tax (GST) under *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act) applies to the License. The Licence Fee and any other payments under this licence do not include GST.
- 16.3 If GST is imposed on any supply by the Licensor under this Licence, the Licensee must pay the amount imposed to the Licensor at the same time as and in addition without setoff to the amount the Licensee is required to pay to the Licensor for the supply in question.
- 16.4 In relation to taxable supplies made under this Licence, the Licensor agrees to issue the Licensee with either:
- 16.4.1 a tax invoice in accordance with the GST Act and Regulations; or
 - 16.4.2 a document satisfying the minimum information requirements set out in *A New Tax System (Goods and Services Tax) Regulations 1999* to entitle a recipient of a taxable supply to claim an input tax credit without holding a tax invoice.

17 Damage to Premises or Building

- 17.1 If during the Term the Building or the Premises are damaged in a material way or destroyed:
- 17.1.1 the Licensor must notify the Licensee that either:
 - (a) the Licensor considers that repair of the Building or the Premises is impracticable or undesirable and the Licensor does not intend to repair the Premises or the Building, or
 - (b) the Licensor intends to repair or reinstate the Premises or the Building, stating a date by which the works will be completed.
 - 17.1.2 If the Licensor has given a notice to the Licensee under clause 17.1.1(a), the Licensor or the Licensee may, by giving not less than 30 days' notice to the other, terminate this Licence and no compensation is payable in respect of that termination.
 - 17.1.3 the Licensee may terminate this Licence by giving not less than 30 days' notice in writing to the Licensor if the Licensor has given a notice to the Licensee under clause 17.1.1(a) and the Licensor fails to repair or reinstate the Premises within the time stated in the notice.
- 17.2 If the Building is damaged so that the Premises are unfit for the Licensee's occupation and use or (having regard to the nature and location of the Premises and the normal means of access) inaccessible, then a proportionate part of the Licence Fee and other amounts payable under this Licence, according to the nature and extent of damage or inaccessibility, abates until the Premises have been reinstated.
- 17.3 Clause 17.2 will not apply and clause 17 does not affect any rights the Licensor may have against the Licensee in connection with the damage or destruction to which clause 17 applies.
- 17.4 This clause 17 does not oblige the Licensor to restore or reinstate the Building or the Premises or access to either.

18 Default and Termination

- 18.1 The Licensor may terminate this Licence by giving the Licensee notice or by re-entry if:
- 18.1.1 the Licensee:

- (a) does not comply with an Essential Term;
- (b) does not comply with a term which is not an Essential Term and, if the failure to comply with the non-Essential Term can be remedied, it is not remedied within seven days after the Licensor asks the Licensee to remedy it;
- (c) repudiates this Licence; or
- (d) being a corporation or business entity, an insolvent event (such as, but not limited to, bankruptcy, liquidation, any arrangement with creditors, or insolvency) occurs in respect of the Licensee; or

18.1.2 the Licensee disregards or breaches:

- (a) the Licensor's Liquor Statute or any other statutory regulation of the Licensor; or
- (b) the terms of the Licensor's liquor sale and use arrangement with the ACT government; or
- (c) the ACT liquor legislation in general including not making the necessary inquiries about the requirement for a licence or obtaining and maintaining an appropriate liquor licence; and

18.1.3 for an event in clauses 18.1.1 and 18.1.2, the Licensee does not remedy that event within 14 days (or such longer period set out in the notice) after written notice (**Termination Notice**) of the event and proposed termination of this Licence has been given to the Licensee.

18.2 Any claim that the Licensor has against the Licensee under clause 18.1 in respect of any breach of this Licence will continue and is not a waiver, even if notice is given and not acted on by the Licensor.

18.3 The Licensee acknowledges:

18.3.1 the 14 days referred to in the Termination Notice in clause 18.1.3 is a reasonable opportunity to remedy a breach of this Licence; and

18.3.2 an event in clause 18.3.1 justifies termination of this Licence.

18.4 The Licensee:

18.4.1 if the Licensee is not in default of any term of this Licence, may terminate this Licence on provision to the Licensor of not less than three months' written notice; and

18.4.2 must vacate the Premises on the earlier of the Expiry Date or sooner determination of this Licence.

18.5 Prior to vacating the Premises, the Licensor may by written notice require the Licensee at the Licensee's expense to:

18.5.1 make good the Premises (with "make good" having the meaning given in clause 18.6 within sixty (60) days of receipt of such notice; or

18.5.2 ensure the Premises is in good repair, order and condition and otherwise in accordance with the provisions of this Licence (fair wear and tear excepted) within fourteen (14) days of receipt of such a notice.

18.6 For the purposes of clause 18.5.1, "make good" means:

18.6.1 Preservation of any item, surface, structure, feature or thing identified by the Licensor to be of heritage significance either by inclusion in item 15 or by notice to the Licensee during the Term;

- 18.6.2 Subject to clause 18.6.1 returning the Premises to core shell configuration, including but not limited to:
- (a) removal of all of the Licensee's fixtures, fittings, stock-in-trade and all property of the Licensee from the Premises, the Building and the Land;
 - (b) properly repairing any damage whatsoever caused to the Premises, Building or the Land by the removal as described in clause 18.6.2;
 - (c) reinstating any part of the structure or the Land which has been penetrated or otherwise altered by the Licensee during the Term, including to the floor of the Premises;
- 18.6.3 thoroughly cleaning the Premises and removing all rubbish, waste and other materials from the Premises, Building and the Land; and
- 18.6.4 if required by the Licensor, re-altering any alterations made by the Licensee so that the Premises must be converted back to its original condition having regard to the Premises before the Licence as recorded in Condition Report at Attachment 4.

18.7 This clause survives the expiration or early termination of this Agreement.

19 Essential Terms

- 19.1 Although the Licensor may waive or defer compliance with the Essential Terms from time to time the Licensee is not excused from future compliance with them.
- 19.2 In addition to any rights the Licensor has to terminate this Licence or to re-enter the Premises, the Licensee must compensate the Licensor for any loss the Licensor suffers, including the Licence Fee for the balance of the Term if:
- 19.2.1 the Licensee breaches an Essential Term; or
 - 19.2.2 the Licensor exercises its right to terminate this Licence; or
 - 19.2.3 the Licensor re-enters the Premises.
- 19.3 The Licensor must take all reasonable steps to mitigate any loss suffered by the Licensor arising from any breach by the Licensee of this Licence. Any steps taken by the Licensor to mitigate damage will not constitute acceptance by the Licensor of the Licensee's default.

20 Notices

- 20.1 Any notice or other communication to be given by either party to the other must be signed by or on behalf of the party giving the notice and be:
- 20.1.1 sent in a prepaid letter addressed to the other party at the address of that party shown in this Licence or the last address of that party advised in writing to the party giving the notice; or
 - 20.1.2 (in the case of the Licensee only) left at the Premises.
- 20.2 A notice or other communication sent in a prepaid letter is deemed to have been received on the third day after posting.

21 Interest on Overdue Money

- 21.1 If any sum of money is not paid on the due date, then interest must be paid on such sum calculated at the Interest Rate specified in item 10 of the Particulars. Interest will be calculated on daily balances and be payable on the first day of each month. Interest not paid will itself bear interest.

22 Owner Items

- 22.1 The Licensor owns and has supplied the Premises with Licensor's property (**Owner Items**) referred to in the Disclosure Statement (where applicable).
- 22.2 The Licensee may use the Owner Items for the purposes of conducting its business from the Premises. The Owner Items must not be removed from the Premises by the Licensee.
- 22.3 At the Licensee's own expense and cost, the Licensee must keep the Owner Items clean, maintained and in good working condition at all times, and use only reputable, suitably qualified and licensed tradespersons for repairs and maintenance of the Owner Items.
- 22.4 The Licensee must pay to the Licensor the cost of replacing or repairing the Owner Items on demand, if the damage, breakdown or problem is caused by the Licensee's deliberate or negligent act or omission, including a failure to comply with clause 22.3.

23 Dispute Resolution

- 23.1 Before resorting to any external dispute resolution mechanisms, the parties will attempt in the first instance to settle by negotiation any dispute that arises in relation to this Licence. If, after 30 days of first notification in writing of the dispute to the other party, any unresolved dispute remains between the Licensor and the Licensee arising under or in connection with this Licence or the use or occupation of the Premises then such remaining dispute may then be referred in accordance with the Act.

24 Option for Further Term

- 24.1 This clause 24 does not apply if the words "not applicable" appear in item 4 (**Further Term**).
- 24.2 The Licensor will grant to the Licensee a new licence for the Further Term commencing on the day after the Expiry Date if:
 - 24.2.1 the Licensee gives the Licensor a notice stating that it wants a further licence of the Premises for the term specified in Item 4 (Further Term) and asking the Licensor to give the Licensee an updated Disclosure Statement (if applicable) at least seven days before the further licence is entered into; and
 - 24.2.2 the Licensor receives that notice within the period from and including the day that is six months before the expiry of the current Term to but including the day that is three months before the expiry of the current Term; and
 - 24.2.3 when the Licensee gives that notice, and on the expiry of the Term, the Licensee is not in breach of this Licence; and
 - 24.2.4 the Licensee delivers to the Licensor before the expiry of the Term any guarantee and indemnity and security in connection with the Licensee's compliance with its obligations under the Further Term, on the same terms as any given in connection with the Licensee's compliance with its obligations under this Licence.
- 24.3 The new licence must contain the same conditions as this Licence except that:
 - 24.3.1 if the particulars of only one further term are specified in item 4 this clause 24 and item 4 (Further Term) are to be deleted;
 - 24.3.2 if the particulars of more than one further term are specified in item 4 the particulars of the first further term are to be deleted from item 4;
 - 24.3.3 the Yearly Licence Fee at the commencement of the further term is to be determined in accordance with the Licence Fee Review procedure set out in clause 4 as indicated in item 8;

- 24.3.4 the new licence may be altered in its form or layout to comply with any present or future requirements under law or for the Licensor;
- 24.3.5 the new licence may be altered because of any change in legislation applicable to the new licence or Licensor and having effect after the date of this Licence.
- 24.4 The Licensee must redecorate the Premises and the Licensee's Property in accordance with the following redecoration requirements within 30 days of the Further Term (if the option is exercised):
 - 24.4.1 wash down the inside surfaces of the Premises; and
 - 24.4.2 paint, stain, wallpaper, tile or otherwise treat all inside surfaces of the Premises in the same way that those surfaces were painted, stained, wallpapered or otherwise treated when last redecorated with the Licensor's approval or, if the Premises have not been redecorated with the Licensor's approval, then as they were at the Commencement Date; and
 - 24.4.3 replace floor coverings, curtains, blinds and other furnishings and decorations which, in the Licensor's opinion, acting reasonably, are worn or damaged

25 Early Termination

- 25.1 If the Licensor requires the Premises for reasons in relation to the Crown Lease, due to change, amendment or variation under the *Australian National University Act 1991*, or requires the Premises for a higher priority University use then the Licensor may terminate this Licence by giving the Licensee such reasonable notice as and when the Licensor becomes aware of the change or priority use, and must give the Licensee at least 90 day's written notice of the termination.
- 25.2 Upon termination of the Licence under clause 25.1 the Licensor will not be liable to the Licensee for or to pay any compensation for loss of profit or prospective profit or costs associated with any removal or movement of the Licensee from the Premises including storage and/or removal of the Licensee's property.

26 Holding Over

- 26.1 If the Licensee continues to occupy the Premises after the expiry of the Term (or Further Term, if applicable) then the Licensee does so as a monthly tenant at the Licence Fee then applying and on the conditions of this Licence.
- 26.2 The monthly tenancy may be terminated by either party by one month's notice in writing to the other.

27 Guarantee and Indemnity

- 27.1 This clause 27 does not apply if the words "not applicable" appear in item 11.
- 27.2 The Guarantor has requested the Licensor to enter into this Licence with the Licensee.
- 27.3 In consideration for the Licensor granting this request, the Guarantor for the term of this Licence, any renewal of it and any holding over period:
 - 27.3.1 guarantees the due payment of all sums to be paid by the Licensee and the due compliance by the Licensee with all the terms and conditions of this Licence; and
 - 27.3.2 indemnifies the Licensor against all losses incurred by the Licensor as a consequence of any breach by the Licensee of this Licence.
- 27.4 The Guarantor must pay all sums to be paid by the Licensee and indemnify the Licensor even if the Licensor has not made a demand on the Licensee when:

- 27.4.1 the Licensee fails to pay the Licence Fee or is otherwise in breach of this Licence; and
 - 27.4.2 the Licensor demands from the Guarantor payment of the Licence Fee or any other sum owing under this Licence.
- 27.5 The Guarantor will remain liable to the Licensor even if any of the following events occur:
- 27.5.1 the Licensor exercises any right under this Licence including the Licensor's rights of re-entry; or
 - 27.5.2 the Licensee (being a body corporate or registered business or partnership or any other relationship) is wound up or dissolved; or
 - 27.5.3 the Licensee (being a natural person) is declared bankrupt; or
 - 27.5.4 either or both this Licence or this guarantee and indemnity is or are wholly or partly unenforceable; or
 - 27.5.5 the Licensor grants time or other indulgence to, compounds or compromises with or releases the Licensee, or any other Guarantor; or
 - 27.5.6 on the part of the Licensor there is acquiescence, delay, an act, omission or mistake; or
 - 27.5.7 any novation of a right of the Licensor; or
 - 27.5.8 any variation of this licence; or
 - 27.5.9 any extension or renewal or holding over of the term or other continued occupation of the Premises by the Licensee; or
 - 27.5.10 the term is determined (by whatever means); or
 - 27.5.11 the obligation or liability of a person other than the Guarantor is invalid or unenforceable.
- 27.6 Subject to clause 8.5, anything which has the effect of releasing the Guarantor wholly or partly from the Guarantor's obligations under this guarantee and indemnity will not have that effect unless the Licensor has agreed in writing to release the Guarantor.
- 27.7 The Licensor may treat the Guarantor as a primary debtor and contractor jointly and severally with the Licensee.
- 27.8 If there is more than one Guarantor the provisions of this clause will apply to them jointly and severally.
- 27.9 This guarantee and indemnity is a continuing security and is not discharged by any one payment.
- 27.10 If a claim that a payment or transfer to the Licensor in connection with this Licence or this guarantee and indemnity is void or voidable (including a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then the Licensor is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this guarantee and indemnity if the payment or transfer had not occurred.
- 27.11 The Licensor may assign the Licensor's rights under this guarantee and indemnity.

28 General Cleaning and Security

- 28.1 The Licensee is responsible for cleaning of the internal floors, floor coverings, windows, walls, doors and partitions of the Premises in a proper and workmanlike manner on a regular basis, and when requested, to the reasonable satisfaction of the Licensor.
- 28.2 The Licensee must:

28.2.1 keep the Premises and the Licensee's Property in good repair excluding fair wear and tear; and

28.2.2 (promptly replace worn or damaged items in or attached to the Premises (including plate glass, Licensee's Property (other than stock) and those floor coverings and furnishings which are part of the Licensor's Property) with items of similar quality.

28.3 The Licensee is responsible for security of the Premises.

29 Disclosure Statement

29.1 The Licensee acknowledges having received and reviewed a Disclosure Statement from the Licensor prior to entering into this Licence.

30 The Act

30.1 If the provisions of this Licence are inconsistent with the Act the provisions of the Act prevail but only to the extent of the inconsistency and except in so far as any Commonwealth law applies to the License and the Licensor is acting within that law.

31 Representation

31.1 The Licensee shall not represent itself, nor shall it hold itself out as, and shall ensure that its officers, employees, and agents do not represent themselves, when representing the Licensee, as being a part of the Licensor's organisation or as an officer, employee, partner or agent of the Licensor, or as otherwise able to bind or represent the Licensor.

31.2 The Licensee is not by virtue of this Licence an officer, employee, partner or agent of the Licensor, nor does the Licensee have any power or authority to bind or represent the Licensor.

31.3 The Licensee shall not use the Licensor's name, address, logo, trademark or identifying marks in or on any communication or correspondence whatsoever without the prior written consent of the Licensor. Any consent given under this clause 31 is at the sole discretion of the authorised delegate of the Licensor.

31.4 The Licensee must not do, or fail or omit to do, any act or thing that is likely to bring the Licensor into disrepute or damage the Licensor's reputation.

32 Parking

32.1 The Licensee may obtain parking permits for parking on the Licensor's ground in accordance with the Licensor's *Parking and Traffic Statute*. Parking spaces are subject to availability and the Licensor makes no guarantee about the availability of parking spaces.

33 Waiver

33.1 The waiver by the Licensor of any default or obligation of the Licensee is not in any circumstance to be construed or operate as a licence to the Licensee to repeat or continue such default or not undertake the obligation nor is any such waiver to be construed or operate as a waiver of any subsequent default or obligation whether of a like nature or not.

34 Special Conditions

34.1 The Special Conditions set out in the attachment are in addition to the terms and conditions of this Licence and form part of this Licence.

35 No Warranty

- 35.1 The Licensor gives no warranty (either present or future) as to the fitness or suitability of the Premises or the use to which the Premises may be put. The Licensee:
- 35.1.1 has fully informed itself of, and accepts this Licence subject to, any prohibitions or restrictions on the use of the Land, Building, or Premises from time to time under any law or requirement;
 - 35.1.2 must, at its own cost, obtain, maintain, and comply with any consent or approval from any authority necessary or appropriate for the Licensee's business or activities in the Premises, Building or Land under any requirement or law and;
 - 35.1.3 must not by any act or omission cause or permit any consent or approval referred to in paragraph (b) to lapse or be revoked.

36 Licensor's Right to Set-Off

- 36.1 The Licensor may, at its absolute discretion, deduct any claim of money or debt owed by the Licensor to the Licensee from any Licence Fees payable under this Agreement.

37 Trade Waste

Trade Waste Devices

- 37.1 The Licensee must ensure that any trade waste generated by its use of the Premises is disposed of in accordance with applicable laws, guidelines and Australian codes and standards (including but not limited to the *Utilities Act 2000* (ACT) and applicable guidelines issued by the body with authority to administer the *Utilities Act 2000* (ACT) ("the **Water Authority**")).
- 37.2 Where the Licensee's use of the Premises requires use of a grease trap or triple interceptor or similar device ("**Trade Waste Device**"), and such items are located in or under, or connected to, the Premises, the Licensee must promptly repair and keep said device(s) in proper working order, clean and free from blockage.
- 37.3 Where the Premises are not connected to a Trade Waste Device, and the Licensee's use requires such a connection, at the Licensee's cost and subject to the prior written approval of the Licensor, the Licensee must promptly install that device.

Cleaning, maintenance and record-keeping

- 37.4 All installation, cleaning, repairs, maintenance and record-keeping involving Trade Waste Devices must be carried out:
- 37.4.1 subject to the Licensor's prior written approval including such conditions as the Licensor may impose on that approval;
 - 37.4.2 promptly and in a professional manner by suitably qualified, licensed tradespersons using high quality materials;
 - 37.4.3 with the consent or approval of any statutory authority as may be required to carry out the work and the conditions of approval are observed; and
 - 37.4.4 in accordance with guidelines issued by the Water Authority.
- 37.5 The Licensee must keep a record of installation, cleaning and maintenance of Trade Waste Devices in accordance with guidelines issued by the Water Authority and make those records available for inspection by the Water Authority and the Licensor when requested.

38 Tenant's acknowledgements

- 38.1 The Licensee acknowledges that the Licensor negotiated the terms of, and entered into this Licence on the understanding that the Licensee's activities in the Premises (under the Licence) were not commercial or retail businesses (as defined in the Act) and as a consequence, the Act does not apply to this Licence.
- 38.2 The Licensee warrants that it will not:
 - 38.2.1 use the Premises for the operation of a commercial or retail business (as defined in the Act);
 - 38.2.2 vary the operation or nature of the Licensee's activity in the Premises in such a way that it becomes the operation of a commercial or retail business (as defined in the Act);
or
 - 38.2.3 permit any person to use the Premises for the operation of a commercial or retail business (as defined in the Act).

EXECUTED AS AN AGREEMENT

SIGNED

for and on behalf of the **Australian National University** ABN (52 234 063 906) by an authorised officer in the presence of:

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) (Signature of authorised officer)
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) (Printed name of authorised officer)
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)
.....
) (Printed name of witness)
) Date

SIGNED

for and on behalf of **Tuckwell Scholars House Pty Ltd** ACN (610 165 243) in accordance with s127 of the *Corporations Act 2001 (Cth)*:

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) (Signature of Director)
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) (Signature of witness)
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) (Printed name of Director)
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) (Printed name of witness)
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) (Signature of Director/Secretary)

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) (Printed name of witness)
) Date

Schedule 1 Special Conditions (if applicable)

Schedule 2 Site/Premises Plan



