

LEASE
New South Wales
Real Property Act 1900

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Insert Duties Assessment No. as issued by Revenue NSW Office.
Duties Assessment No.

(A) TORRENS TITLE

Property leased
Part folio identifier 45/1096536 being Red Cross House situate at Queen Elizabeth Park, Main Street, Lithgow and shown framed in red on the plan Annexed C to this lease

(B) LODGED BY

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any.	CODE L
	Email: _____ Reference: _____	

(C) LESSOR

Lithgow City Council (ABN 59 986 092 492)

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) LESSEE

Australian Red Cross Society (ABN 50 169 561 394)
TENANCY:

- (G) 1. TERM** Five (5) years
- 2. COMMENCING DATE** TO BE COMPLETED
- 3. TERMINATING DATE** TO BE COMPLETED
- 4.** With an **OPTION TO RENEW** for a period of N.A.
set out in clause N.A. of N.A.
- 5.** With an **OPTION TO PURCHASE** set out in clause N.A. of N.A.
- 6.** Together with and reserving the **RIGHTS** set out in clause N.A. of N.A.
- 7.** Incorporates the provisions or additional material set out in **ANNEXURE(S)** A, B and C hereto.
- 8.** Incorporates the provisions set out in N.A.
No. N.A.
- 9.** The **RENT** is set out in item No. 13 of Annexure A and clause 5 of Annexure B

DATE

(H) I certify that I am an eligible witness and that an authorised officer of the lessor signed this dealing in my presence. [See note* below].

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness:
Address of witness:

Authorised officer's name: Craig Butler/General Manager
Authority of officer: s.377 Local Government Act 1993
Signing on behalf of: Lithgow City Council

I certify that I am an eligible witness and that an authorised officer of the lessee signed this dealing in my presence. [See note* below].

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness:
Address of witness:

Authorised officer's name:
Authority of officer:
Signing on behalf of: Australian Red Cross Society

(I) **STATUTORY DECLARATION ***

I solemnly and sincerely declare that—

- 1. The time for the exercise of option to _____ in expired lease No. _____ has ended; and
- 2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at _____ in the State of New South Wales on _____ in the presence of _____ of _____,

Justice of the Peace (J.P. Number: _____) Practising Solicitor
 Other qualified witness [specify] _____,

who certifies the following matters concerning the making of this statutory declaration by the person who made it:

- 1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
- 2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a _____ [Omit ID No.]

Signature of witness:

Signature of applicant:

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. # If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

Item 13 (continued) (cl 5) For the further period in item 12A:
 From the commencement date to the first rent review date: N/A
 (for example: Current market rent)
 Afterwards: At the new yearly rent beginning on each review date by monthly instalments of one twelfth of the new yearly rent.

For the further period in item 12B:
 From the commencement date to the first rent review date: N/A
 (for example: Current market rent)
 Afterwards: At the new yearly rent beginning on each review date by monthly instalments of one twelfth of the new yearly rent.

Item 13 (continued) (cl 15) B. **GST**
 Clause 15 provides for payment by the lessee of GST unless otherwise here indicated:

Item 14 (cl 5) **Outgoings**
 A. Share of outgoing: Nil
 B. Outgoings –
 [Select applicable items]
 (a) local council rates and charges;
 (b) water sewerage and drainage charges;
 (c) land tax;
 (d) public liability insurance and building insurance;
 (e) all levies and contributions of whatsoever nature determined and/or levied by the owners corporation with the exception of any contribution to a capital works fund or special levy in respect of the strata scheme of which the property forms part (if applicable);
 (f) other: _____

for the land or the building of which the property is part, fairly apportioned to the period of this lease.

Item 15 (cl 5.1.5) **Interest rate:** 10 %

.....

Item 16
(cl 5.5)

Rent review

Rent review date	Method of rent review	If Method 1 applies, increase by
1 July 2023	Method 2	(the increase should show percentage or amount)
1 July 2024	Method 2	
1 July 2025	Method 2	
1 July 2026	Method 2	

Method 1 is a fixed amount or percentage.

Method 2 is Consumer Price Index.

Method 3 is current market rent.

Method 2 applies unless another method is stated.

NOTE: Clause 5.7 provides that despite the method selected the new rent on a rent review date must not be less than the rent immediately before the rent review date.

Item 17
(cl 6.1)

Permitted use: Activities undertaken by or on behalf of the Australian Red Cross Society

Item 18
(cl 8.1.1)

Amount of required public liability insurance: \$ 20,000,000

Item 19
(cl 16)

Bank Guarantee

N/A month(s) rent and the lessee's proportion of outgoings increased by the rate of GST (expressed as a percentage) applicable from time to time, or an amount of \$ N/A

Item 20
(cl 17)

Security Deposit

N/A month(s) rent and the lessee's proportion of outgoings increased by the rate of GST (expressed as a percentage) applicable from time to time, or an amount of \$ N/A

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Item 21 **Address for service of notices**
(cl 14.2)

Lessor:

Street address: 180 Mort Street, Lithgow, NSW, 2790

Fax: N/A
Email: council@lithgow.nsw.gov.au

Lessee:

Street address: 23-47 Villiers Street, North Melbourne, Vic 3051

Fax: N/A
Email: natleasing@redcross.org.au

Guarantor:

Street address: N/A

Fax: _____
Email: _____

Item 22 **Execution by guarantor**
(cl 13)

I certify that I am an eligible witness and
that the guarantor signed this dealing in
my presence.
[See note * at end]

) Certified correct for the purposes of the *Real*
) *Property Act 1900* and signed by the guarantor.

Signature of guarantor

Signature of witness

Name of witness

Address of witness

* Section 117 of the *Real Property Act 1900* requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

Details of strata manager/secretary of the owners corporation (if applicable)

N/A

The following alterations and additions are to be made to the Lease Covenants in Annexure B:

Please see pages 8, 9 and 10

The following alterations and additions are made to the Lease Covenants in Annexure B:

A new clause 1.10 is inserted, as follows:

In this lease, "Authority" means any government or governmental department, statutory authority or other person that is charged with the administration of a law.

A new clause 1.11 is inserted, as follows:

In this lease, "Business Day" means a day that is not a Saturday, Sunday or public holiday in the state of New South Wales.

A new clause 1.12 is inserted, as follows:

In this lease, "law" means any requirement of any statute, regulation, regulatory instrument, proclamation or common law present or future, whether state, federal or otherwise.

A new clause 3.5 is inserted, as follows:

3.5 The lessor makes no warranty as to the suitability of the property for the lessee's use and the lessee acknowledges that it is leasing the property, together with all appurtenances, in their present condition and state of repair.

Clause 6.1.3 is amended by adding the following words before the semi colon:

6.1.3 and use its best endeavours to keep the property free from mice, rats and other vermin and will not, or will not allow, any accumulation of rubbish on the property.

A new clause 6.2.8 is inserted as follows:

6.2.8 bring or allow any animal or pet onto the property, other than an assistance animal registered under the *Companion Animals Act 1989*.

Clause 7.1.3 is amended to read as follows:

7.1.3 maintain essential services, and if an essential fire safety measure (within the meaning of the *Environmental Planning and Assessment (Development Certificate and Fire Safety) Regulation 2021* (NSW) (**Regulations**) applies to the property, the lessor must obtain an Annual Fire Safety Statement under Part 12 of the Regulations and affix same to the property.

A new clause 7.1.4 is inserted, as follows:

7.1.4 Notwithstanding clause 7.1.3, the lessee will maintain and replace (as necessary) the following at its cost:

- 2 x fire extinguishers
- 1 x fire blanket
- 2 x domestic smoke detectors
- 1 x RCD

- Thermal imaging of switchboard

Clauses 7.3.2 and 7.3.3 are deleted.

A new clause 7.7 is inserted, as follows:

- 7.7 The lessee must give the lessor notice in writing of any accident to or defects in water pipes, gas pipes, lights or fittings, connections, cables or wires used in connection with water gas or electricity services, within three (3) Business Days of becoming aware of such accident or defect.

A new clause 7.8 is inserted, as follows:

- 7.8 If the lessee receives a notice from an Authority requiring alterations, additions, repairs or improvements to the property, the lessee must forward a copy of such notice to the lessor within three (3) Business Days of receiving such notice.

Clauses 10.1 to 10.7 are deleted and replaced with the following clause 10.1:

- 10.1 The lessee may not transfer this lease.
- 10.2 The lessee may not sub-let, grant a licence or concession, share or part with possession of the whole or any part of the property or mortgage or otherwise charge or encumber the lessee's estate or interest in this lease.

Clauses 11.5 to 11.7 are deleted and replaced with the following:

- 11.5 The parties acknowledge and agree that this lease is not to be registered with NSW Land Registry Services.

Clause 12.3.2 is amended by deleting the full stop and replacing it with a semi colon, and a new clause 12.3.3 is inserted, as follows:

- 12.3.3 if the lessor requests, restore the property to its condition as at the commencement date of the initial lease and repaint the perimeter walls and ceilings with two (2) coats of quality paint in a workmanlike manner, fair wear and tear considered.

A new clause 19 is inserted, as follows:

19. Termination of lease due to defect(s)

- 19.1 The lessor may terminate this lease if any substantial repair, renovation or reconstruction of the property is required due to a defect or potential risk to health and/or safety and the defect or potential risk cannot practically or safely be carried out without vacant possession of the property.
- 19.2 Should the situation in clause 19.1 arise, the lessor must give the lessee 6 months' written notice of termination, provided however, if the defect or risk needs urgent attention the notice period may be reduced having regard to the nature and extent of the defect.

19.3 No compensation shall be payable to the lessee due to the lessor's termination under this clause 19, provided it is a valid termination.

A new clause 20 is inserted, as follows:

20. Consent Authority

The lessee acknowledges that:

- (a) the lessor is a consent authority with statutory rights and obligations under legislation;
- (b) the lessor enters this lease in its capacity as owner of the property, and this lease does not, and is not to be construed as, conferring on the lessee any right, licence, approval, authorisation or consent required to be granted by a local consent authority; and
- (c) the lessee must obtain and maintain throughout the term of this lease any licence, approval, authorisation or consent required for the Permitted Use or the lessee's activities on the property.

A new clause 21 is inserted as follows:

21. Community classification

The lessee acknowledges that the property is classified community under the *Local Government Act 1993* and this lease is conditional upon the lessee maintaining its status as a not-for-profit incorporated association and using the property in that capacity and only for the permitted use stated in Item 17.

A new clause 22 is inserted as follows:

22. Maintenance of air-conditioning unit

The lessee will, at its own cost, attend to the regular servicing of the air-conditioner on the property. If the air-conditioner should breakdown and be incapable of repair, the lessor will replace the air-conditioner at its cost, unless the breakdown is caused by the negligent or willful misuse or abuse of the air-conditioner by the lessee.

A new clause 23 is inserted as follows:

23. Red Cross Emblem

- (a) The Lessor acknowledges that the emblem and logo of the Red Cross (Marks) may only be used with the written consent of the Federal Minister for Defence. Any unauthorised use of the Marks is a criminal offence under Australian law.
- (b) Notwithstanding any other provision of this lease, upon termination of this lease, the Lessee may enter the Building and the Premises and remove any of the Lessee's signage which includes the Marks or otherwise identifies the Lessee, provided that the Lessee repairs any damage caused by such removal.

ANNEXURE B – COMMERCIAL LEASE

Lessor: Lithgow City Council (ABN 59 986 092 492)

Lessee: Australian Red Cross Society (ABN 50 169 561 394)

This annexure consists of 14 pages.

Property: Part folio identifier 45/1096536 being Red Cross House sitaute at Queen Elizabeth Park, Main Street, Lithgow and shown framed in red on the Plan Annexed C to this lease

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NOTE: Any alterations and additions to Lease Covenants in Annexure B **must** be made by additional clauses in Annexure A. The printed clauses in Annexure B are to remain in their copyright form without alteration.

CONTENTS

CLAUSE	SUBJECT	PAGE	CLAUSE	SUBJECT	PAGE
1	Interpretation	2	11	Lessor’s other Obligations	8
2	Grant of Lease	2	12	Forfeiture and End of Lease	9
3	The Property	2	13	Guarantee	10
4	Lease Period	2	14	Exclusions and Notices	11
5	Money	3	15	Goods and Services Tax	11
6	Use	5	16	Bank Guarantee	11
7	Condition and Repairs	6	17	Security Deposit	12
8	Insurance and Damage	7	18	Strata	12
9	Access	7			
10	Transfer, Sublease and Change in Control	8			

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CLAUSE 1 INTERPRETATION

About this lease.

- 1.1 There are three parts to this lease – a lease form, Annexure A and this Annexure B.
- 1.2 This lease is a deed even if it is not registered.
- 1.3 A reference in this deed to the schedule is to the schedule of items commencing at item 1 on the lease form.
- 1.4 The lessor is named on page 1 of this lease.
- 1.5 The lessee is named on page 1 of this lease.
- 1.6 The guarantor is named in item 10 in the schedule, if there is a guarantor.
- 1.7 If a party consists of two or more persons, obligations of that party can be enforced against any one or more of them.
- 1.8 In this lease, “property” means the Property leased described on page 1 of this lease.
- 1.9 A reference to any legislation is also a reference to any corresponding later legislation.

CLAUSE 2 GRANT OF LEASE

The lessor grants to the lessee, and the lessee accepts, a lease of the property.

CLAUSE 3 THE PROPERTY

What property is leased?

- 3.1 The property leased is described on page 1 of this lease.
- 3.2 The lessor’s fixtures are included in the property.
- 3.3 If anything else is leased (such as furniture belonging to the lessor) and is described in item 11 in the schedule it is included in the property.
- 3.4 If the property has facilities and services shared in common with other persons in the same building as the property, clause 11.3.2 applies to those common facilities. The lessee shares the common facilities with the lessor, and with others. The lessor can set reasonable rules for sharing these common facilities.

CLAUSE 4 LEASE PERIOD

How long is this lease for?

- 4.1 This lease is for the period stated in item (G)1 in the schedule, commences on the date stated in item (G)2 in the schedule and ends on the date stated in item (G)3 in the schedule.
- 4.2 If a further period, commencing when this lease ends, is stated in item 12A in the schedule then the lessee has the option to renew this lease for that period.
- 4.3 The lessee can renew this lease more than once if that is stated in item 12B in the schedule. However the period of tenancy under this lease and under any renewal(s) is, in total, not longer than the maximum period stated in item 12C in the schedule.
- 4.4 The lessee can exercise the option only if –
 - 4.4.1 the lessee serves on the lessor a notice of exercise of option not earlier than the first day stated in item 12D in the schedule and not later than the last day stated in item 12E in the schedule;
 - 4.4.2 there is at the time of service no rent or outgoing that is overdue for payment; and
 - 4.4.3 at the time of service all the other obligations of the lessee have been complied with or fully remedied in accordance with the terms of any notice to remedy given by the lessor.
- 4.5 After exercising the option the lessee must continue to pay all rents and outgoing on time and continue to comply with all of the lessee’s obligations under this lease. If the lessee does not do so, the lessor may treat any breach as being a breach of the new lease as well as of this lease.

- 4.6 A new lease will be the same as this lease except for –
- 4.6.1 the new rent;
 - 4.6.2 the commencement date and the termination date;
 - 4.6.3 the omission of clauses 4.2, 4.3, 4.4, 4.5 and 4.6 and items 12A and 12B in the schedule in the last lease allowed in item 12 in the schedule;
 - 4.6.4 item 12B becoming item 12A;
 - 4.6.5 adjustment of item 12C in the schedule; and
 - 4.6.6 adjustment of items 12D and 12E in the schedule. The number of days between the dates stated in items 12D and 12E in the schedule of the new lease and the termination date of the new lease and the number of days between each date stated in items 12D and 12E in the schedule of this lease and the termination date of this lease are to correspond.

If the new rent is to be current market rent it will be decided in the same way that current market rent is to be decided under Method 3 stated in clause 5 assuming that this lease and the new lease were one continuous lease and the commencement date of the new lease was a rent review date.

CLAUSE 5 MONEY

What money must the lessee pay?

- 5.1 The lessee must pay to the lessor or as the lessor directs –
- 5.1.1 the rent stated in item 13A in the schedule;
 - 5.1.2 the share stated in item 14A in the schedule of those outgoings stated in item 14B in the schedule and the utility charges referred to in clauses 5.23 and 5.24;
 - 5.1.3 the reasonable cost to the lessor of remedying a default by the lessee;
 - 5.1.4 the reasonable cost to the lessor (including legal costs) of dealing with any application by the lessee for the lessor's consent or where applicable an owners corporation's consent under this lease (whether or not it is given);
 - 5.1.5 interest on these moneys at the rate stated in item 15 in the schedule when payment is more than 14 days overdue, calculated from the due date to the date of payment;
 - 5.1.6 registration fee for registration of this lease at NSW Land Registry Services (payable on delivery to the lessor's solicitor or conveyancer of the executed lease);
 - 5.1.7 if the lessee defaults, the lessor's reasonable legal costs relating to the default;
 - 5.1.8 the lessor's reasonable costs and expenses in connection with the preparation of this lease, excluding expenses incurred in connection with obtaining the consent of the mortgagee; and
 - 5.1.9 GST as provided for in clause 15.
- 5.2 The first month's instalment of rent is to be paid by the commencement date. Each later month's instalment of rent is to be paid in advance.
- 5.3 A payment under clause 5.1.2 must be paid on the next rent day after a request for payment is made by the lessor.
- A request for payment can be made –
- 5.3.1 after the lessor has paid an outgoing; or
 - 5.3.2 after the lessor has received an assessment or account for payment of an outgoing.
- 5.4 If item 14B in the schedule refers to land tax, the liability of the lessee is not to exceed the amount of that liability had the amount of land tax payable by the lessor been assessed on the basis that the land was the only land owned by the lessor and that there was no special trust or non-concessional company involved and –
- 5.4.1 if the property is a strata lot, the relevant land tax is land tax on that lot; or
 - 5.4.2 if the property is not a strata lot but is part of a building, the relevant land tax is land tax on the land on which the building is situated, plus any land of the lessor used or available for use by or for the benefit of lessees conducting business in the building or in connection with trading in the building.

When and how is the rent to be reviewed?

- 5.5 The rent is to be reviewed on the rent review dates stated in item 16 in the schedule.
- 5.6 The lessee must continue to pay rent at the old rate until the new rate is known. After that, the lessee is to pay the new rent from the next rent day. By that rent day the lessee is also to pay any shortfall between the old and new rate for the period since the rent review date.
- 5.7 There are three different methods described here for fixing the new rent on a rent review date. The method agreed by the lessor and the lessee is stated at item 16 in the schedule. Despite the method selected, the new rent on a rent review date must not be less than the rent immediately before the rent review date.

Method 1. By a fixed amount or percentage.

- 5.8 In this case the rent beginning on each review date will be increased by the percentage or amount stated in item 16 in the schedule.

Method 2. By reference to Consumer Price Index.

- 5.9 In this case –
- take the yearly rent as of the last review date or if none, the rent at the commencement date (\$X),
 - divide that rent by the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just before that date (CPI 1),
 - multiply the result by the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just before the review date (CPI 2).

The product is the new rent for the year beginning on the review date (\$Y), written as a formula –

$$\frac{\$X}{\text{CPI 1}} \times \text{CPI 2} = \$Y$$

- 5.10 The lessor must calculate the new rent after each review date and give the lessee written notice of the new rent.
- 5.11 If the Australian Bureau of Statistics makes a change in the reference base of the index and there is a published co-relation between the old and new base then the published co-relation is to be applied to convert the CPI 1 figure to the new reference base. If there is none then the lessor and the lessee agree to accept the calculations of the lessor's solicitor or conveyancer who must be retained to determine a fair co-relation between the old and the new series of numbers.
- 5.12 If the index used to calculate the new rent is discontinued the lessor may substitute another index that, as nearly as practicable, serves the same purpose and, if there is no such index, then the rent will be fixed by Method 3.

Method 3. By reference to current market rent.

- 5.13 In this case the rent is to be the current market rent. This is the rent that would reasonably be expected to be paid for the property having regard to the following matters –
- 5.13.1 the provisions of this lease;
 - 5.13.2 have regard to premises of comparable, position, size and quality in the same local government area where the property is located;
 - 5.13.3 the rent that would reasonably be expected to be paid for the property if it were unoccupied and offered for renting for the same or a substantially similar use to which the property may be put under this lease; and
 - 5.13.4 the gross rent, less the lessor's outgoings payable by the lessee,
- and disregard –
- 5.13.4 the value of goodwill created by the lessee's occupation and the value of lessee's fixtures and fittings; and
 - 5.13.6 any alterations or refurbishment works done by the lessee to the property at its expense.

- 5.14 The lessor or the lessee may inform the other in writing at least 60 days before the rent review date of the rent that the lessor or lessee thinks will be the current market rent at the review date.
- 5.15 If the lessor and the lessee agree on a new rent then that rent will be the new rent beginning on the rent review date and the lessor and the lessee must sign a statement saying so.
- 5.16 If the lessor and the lessee do not agree on the amount of the new rent 30 days before the rent review date, the current market rent will be decided by a valuer appointed under clause 5.17.
- 5.17 If the lessor and the lessee do not agree on the appointment of a valuer 14 days before the rent review date, either can ask the President of the Law Society of New South Wales to nominate a person who is a valuer to decide the current market rent.
- 5.18 The valuer will act as an expert not an arbitrator. The lessor and the lessee can each make submissions in writing to the valuer.
- 5.19 The valuer's decision is final and binding. The valuer must state in writing how the decision was reached.
- 5.20 If the valuer –
- 5.20.1 does not accept the nomination to act;
 - 5.20.2 does not decide the current market rent within 1 month after accepting the nomination;
 - 5.20.3 becomes incapacitated or dies; or
 - 5.20.4 resigns,
- then another valuer is to be appointed in the same way.
- 5.21 The lessor and lessee must each pay half the valuer's costs.
- 5.22 If the lessor and lessee do not agree upon a valuer and neither asks for a valuer to be appointed within 6 months after a review date then the rent will not change on that rent review date.

Utility Charges

- 5.23 The lessee must pay separately metered utility charges for utilities such as water usage, gas, electricity, telecommunications, trade waste or grease trap charges with respect to the property directly as they fall due.
- 5.24 If the utilities are not separately metered the lessor, acting reasonably, must apportion an amount attributable to the property. The amount apportioned by the lessor to the lessee must be paid by the lessee to the lessor on the next date that rent is due to be paid by the lessee to the lessor.
- 5.25 If the lessee does not pay the utility charges under either clause 5.23 or 5.24 the lessor may pay the same and immediately recover from the lessee the amount paid by the lessor as if the charges were rent in arrears payable by the lessee.

CLAUSE 6 USE

How must the property be used?

- 6.1 The lessee must –
- 6.1.1 use the property for the purpose stated in item 17 in the schedule and not for any other purpose;
 - 6.1.2 open for business at times usual for a business of the kind conducted by the lessee;
 - 6.1.3 keep the property clean and dispose of waste properly;
 - 6.1.4 comply with all laws regulating how the property is used, obtain any consents or licences needed, comply with any conditions of consent, and keep current any licences or registrations needed for the use of the property or for the conduct of the lessee's business there; and
 - 6.1.5 do all things required by the lessor from time to time (including, without limitation, signing any documents required by the lessor) to enable the lessor to register its security interests under the *Personal Property Securities Act 2009* (Cth) and to release any security interests under that Act.

- 6.2 The lessee must not –
- 6.2.1 do anything that might invalidate any insurance policy covering the property or that might increase the premium unless the lessor consents in which case the lessee must pay the increased premium;
 - 6.2.2 use the property as a residence or for any activity that is dangerous, offensive, noxious, illegal or immoral or that is or may become a nuisance or annoyance to the lessor or to the owner or occupier of any neighbouring property;
 - 6.2.3 hold any auction, bankrupt or fire sale in the property;
 - 6.2.4 display signs or advertisements on the outside of the property, or that can be seen from the outside, unless the lessor consents (but the lessor cannot withhold consent unreasonably);
 - 6.2.5 overload the floors or walls of the property;
 - 6.2.6 without the prior written consent of the lessor use any common area for any purpose other than for access to and egress from the property; or
 - 6.2.7 create a security interest (as that term is defined in the *Personal Property Securities Act 2009* (Cth)) in favour of a third party in respect of the additional leased property without the lessor's consent which must not be unreasonably withheld.

CLAUSE 7 CONDITION AND REPAIRS

Who is to repair the property?

- 7.1 The lessor must –
- 7.1.1 maintain in a state of good condition and serviceable repair the roof, the ceiling, the external walls and external doors and associated door jambs, and the floors of the property and must fix structural defects;
 - 7.1.2 maintain the property in a structurally sound condition; and
 - 7.1.3 maintain essential services.
- 7.2 The lessee must otherwise maintain the property in its condition at the commencement date and promptly do repairs needed to keep it in that condition but the lessee does not have to –
- 7.2.1 alter or improve the property;
 - 7.2.2 fix structural defects; or
 - 7.2.3 repair fair wear and tear.
- 7.3 The lessee must also –
- 7.3.1 reimburse the lessor for the cost of fixing structural damage caused by the lessee, apart from fair wear and tear;
 - 7.3.2 maintain and decorate the shop front if the property has one; and
 - 7.3.3 decorate the inside of the property in the last 3 months of the lease period (however it ends) – 'decorate' here means restoring the surfaces of the property in a style and to a standard of finish originally used e.g. by repainting.
- 7.4 If an authority requires work to be done on the property and it is structural work or work needed to make the property safe to use then the lessor must do the work unless it is required only because of the way the lessee uses the property. If it is any other work, or is required only because of the way the lessee uses the property, then the lessee must do the work.
- 7.5 If the lessee fails to do any work that the lessee must do the lessor can give the lessee a notice in writing stating what the lessee has failed to do. After the notice is given the lessee must –
- 7.5.1 do the work immediately if there is an emergency; and
 - 7.5.2 do the work promptly and diligently in any other case.
- If the lessee does not do the work, the lessor can do it and the lessee must reimburse the lessor for the cost of the work.
- 7.6 The lessee must not make any structural alterations to the property. Any other alterations require the lessor's consent in writing (but the lessor cannot withhold consent unreasonably).

CLAUSE 8 INSURANCE AND DAMAGE

What insurances must the lessee take out?

- 8.1 The lessee must keep current an insurance policy noting the interests of the lessor and covering –
- 8.1.1 liability to the public in an amount not less than the amount stated in item 18 in the schedule (for each accident or event); and
 - 8.1.2 damage or destruction from any cause to all plate glass in the windows and other portions of the property,
- and must produce to the lessor, upon request, the policy and the receipt for the last premium.

What happens if the property is damaged?

- 8.2 If the property or the building of which it is part is damaged (a term which includes destroyed) –
- 8.2.1 the lessee is not liable to pay rent, or any amount payable to the lessor in respect of outgoings and other charges, that is attributable to any period during which the property cannot be used under this lease or is inaccessible due to that damage;
 - 8.2.2 if the property is still useable under this lease but its useability is diminished due to the damage, the lessee's liability for rent and any amount in respect of outgoings attributable to any period during which useability is diminished is reduced in proportion to the reduction in useability caused by the damage;
 - 8.2.3 if the lessor notifies the lessee in writing that the lessor considers that the damage is such as to make its repair impracticable or undesirable, the lessor or the lessee can terminate this lease by giving not less than 7 days' notice in writing of termination to the other and no compensation is payable in respect of that termination;
 - 8.2.4 if the lessor fails to repair the damage within a reasonable time after the lessee requests the lessor to do so the lessee can terminate this lease by giving not less than 7 days' notice in writing of termination to the lessor; and
 - 8.2.5 nothing in clause 8.2 affects any right of the lessor to recover damages from the lessee in respect of any damage or destruction to which the clause applies.

CLAUSE 9 ACCESS

What are the lessor's rights of access to the property?

- 9.1 The lessee must give the lessor (or anyone authorised in writing by the lessor) access to the property at any reasonable time for the purpose of –
- 9.1.1 inspecting the condition of the property, or how it is being used;
 - 9.1.2 doing anything that the lessor can or must do under this lease or must do by law;
 - 9.1.3 viewing the property as a valuer, prospective buyer or mortgagee;
 - 9.1.4 fixing a notice in a reasonable position on the outside of the property saying that it is for sale;
 - 9.1.5 viewing the property as a prospective lessee not earlier than 6 months before the lease period ends;
 - 9.1.6 fixing a notice not earlier than 6 months before the lease period ends in a reasonable position on the outside of the property saying that it is to let; or
 - 9.1.7 inspecting, cleaning or repairing another property or any services to another property.
- 9.2 The lessor must give the lessee at least 2 days' written notice for access (except in an emergency). The day of the giving of the notice and any Saturday, Sunday or public holiday on which the property is not open for business are not counted.
- 9.3 The lessor must promptly make good any damage caused to the property and to any of the lessee's belongings which results from exercising these rights.
- 9.4 The lessee must give to the lessor a copy of any notice relating to the property or relating to any neighbouring property immediately after receiving the notice.

CLAUSE 10 TRANSFER, SUB-LEASE AND CHANGE IN CONTROL

Can this lease be transferred or the property shared or sub-let?

- 10.1 The lessee must not transfer this lease without the lessor's written consent, which cannot be unreasonably withheld.
- 10.2 Before any transfer,
- 10.2.1 the lessee must not be in breach of this lease unless the breach has been waived by the landlord or remedied; and
- 10.2.2 the lessee must prove to the lessor's reasonable satisfaction that the transferee is respectable and has financial resources sufficient to satisfy the lessee's obligations under this lease.
- 10.3 A request for the lessor's consent to a transfer of lease must be made in writing and the lessee must provide the lessor with such information as the lessor may reasonably require concerning the financial resources of the proposed transferee.
- 10.4 The lessor must deal expeditiously with a request for consent to assignment of lease.
- 10.5 The lessee has to pay in connection with any consent the lessor's reasonable legal costs, the stamp duty, mortgagee's consent fees and the registration fee for the transfer.
- 10.6 The lessee can sub-let, grant a licence or concession, share or part with the possession of the whole or any part of the property or mortgage or otherwise charge or encumber the lessee's estate or interest in this lease only with the written consent of the lessor which cannot be unreasonably withheld.
- 10.7 **Change in control of lessee: company**
- 10.7.1 If the lessee is a company and there is a proposal for the lessee or any company controlling the lessee to change its shareholding or change its constitution so that the effective control of the lessee is altered then that proposed change in control is treated as a proposed transfer of this lease and clause 10.1 applies.
- 10.7.2 Clause 10.7.1 does not apply if the lessee is listed on the Australian Securities Exchange or, if the change occurs to a company controlling the lessee, that company is listed on the Australian Securities Exchange.

CLAUSE 11 LESSOR'S OTHER OBLIGATIONS

What are the lessor's other obligations?

- 11.1 So long as the lessee does all the things that must be done by the lessee under this lease the lessor must allow the lessee to possess and use the property in any way permitted under this lease without interference from the lessor, or any person claiming under the lessor or having superior title to the title of the lessor.
- 11.2 The lessor must pay all outgoing for the land or the building of which the property is part when they fall due.
- 11.3 If the property is part of a building owned or controlled by the lessor –
- 11.3.1 the lessor must maintain in reasonable structural condition all parts of the building that the lessee can use under this lease; and
- 11.3.2 if the property has facilities and service connections shared in common with other persons the lessor must –
- 11.3.2.1 allow reasonable use of the facilities and service connections including –
- the right for the lessee and other persons to come and go to and from the property over the areas provided for access;
 - access by the lessee to service connections; and
 - the right for the lessee's customers to park vehicles in any area set aside for customer parking, subject to any reasonable rules made by the lessor.
- 11.3.2.2 maintain the facilities and service connections in reasonable condition.

- 11.4 The lessor must provide the lessee with an executed copy of the lease within 3 months after the lease is returned to the lessor or the lessor's solicitor, conveyancer or agent following its execution by the lessee. That 3 month period is to be extended for any delay attributable to the need to obtain any consent from a head lessor or mortgagee (being delay not due to any failure by the lessor to make reasonable efforts to obtain consent).
- 11.5 If this lease is for a term of more than 3 years or is to be registered –
- 11.5.1 the lessor must lodge the lease for registration in accordance with the *Real Property Act 1900* within 3 months after the lease is returned to the lessor or the lessor's solicitor, conveyancer or agent following its execution by the lessee; and
- 11.5.2 the 3 month period within which a lease must be lodged for registration is to be extended for any delay attributable to –
- 11.5.2.1 the need to obtain any consent from a head lessor or mortgagee (being delay not due to any failure by the lessor to make reasonable efforts to obtain consent), or
- 11.5.2.2 requirements arising under the *Real Property Act 1900* that are beyond the control of the lessor.
- 11.6 For the purposes of clause 11.5 the term of this lease includes any term for which the lease may be extended or renewed at the option of the lessee. Clauses 11.5 and 11.6 do not affect the operation of the *Real Property Act 1900*.
- 11.7 Where this lease is lodged for registration, the lessor must:
- 11.7.1 ensure that this lease is registered; and
- 11.7.2 provide the original registered lease to the lessee, where available.
- 11.8 If a consent is needed for this lease, from someone such as a mortgagee or head lessor of the property, then the lessor must get the consent.

CLAUSE 12 FORFEITURE AND END OF LEASE

When does this lease end?

- 12.1 This lease ends –
- 12.1.1 on the date stated in item 3 in the schedule;
- 12.1.2 if the lessor lawfully enters and takes possession of any part of the property; or
- 12.1.3 if the lessor lawfully demands possession of the property.
- 12.2 The lessor can enter and take possession of the property or demand possession of the property if –
- 12.2.1 the lessee has repudiated this lease;
- 12.2.2 rent or any other money due under this lease is 14 days overdue for payment;
- 12.2.3 the lessee has failed to comply with a lessor's notice under section 129 of the *Conveyancing Act 1919*; or
- 12.2.4 the lessee has not complied with any term of this lease where a lessor's notice is not required under section 129 of the *Conveyancing Act 1919* and the lessor has given at least 14 days' written notice of the lessor's intention to end this lease.
- 12.3 When this lease ends, unless the lessee becomes a lessee of the property under a new lease the lessee must –
- 12.3.1 return the property to the lessor in the state and condition that this lease requires the lessee to keep it in (including any obligation to decorate under clause 7.3.3); and
- 12.3.2 have removed any goods (unless otherwise directed by the lessor to the extent the lessor has any security interest) and anything that the lessee fixed to the property and have made good any damage caused by the removal.

Anything not removed becomes the property of the lessor who can keep it or remove and dispose of it and charge to the lessee the cost of removal, making good and disposal.

- 12.4 If the lessor allows the lessee to continue to occupy the property after the end of the lease period (other than under a new lease) then –
- 12.4.1 the lessee becomes a monthly lessee and must go on paying the same rent and other money in the same way that the lessee had to do under this lease just before the lease period ended (apportioned and payable monthly);
 - 12.4.2 the monthly tenancy will be on the same terms as this lease, except for –
 - clause 4; and
 - clauses 5.5 to 5.22 inclusive;
 - 12.4.3 either the lessor or the lessee can end the monthly tenancy by giving, at any time, 1 month written notice to the other expiring on any date; and
 - 12.4.4 anything that the lessee must do by the end of this lease must be done by the end of the monthly tenancy.
- 12.5 Essential terms of this lease include –
- 12.5.1 the obligation to pay rent not later than 14 days after the due date for payment of each periodic instalment (and this obligation stays essential even if the lessor, from time to time, accepted late payment);
 - 12.5.2 the obligations of the lessee in clause 5.1.2 (outgoings);
 - 12.5.3 the obligations of the lessee in clauses 5.23 to 5.25 (utility charges);
 - 12.5.4 the obligations of the lessee in clause 6.1, 6.2.1, 6.2.2 and 6.2.5 (use);
 - 12.5.5 the obligations of the lessee in clause 7 (repairs);
 - 12.5.6 the obligations of the lessee in clause 8.1 (insurance);
 - 12.5.7 the obligations of the lessee in clause 10 (transfer, sub-lease and change in control);
 - 12.5.8 the obligations of the lessee in clause 15 (GST); and
 - 12.5.9 the obligations of the lessee in clause 16 (bank guarantee) or clause 17 (security deposit).
- 12.6 If there is a breach of an essential term the lessor can recover damages for losses over the entire period of this lease but must do every reasonable thing to mitigate those losses and try to lease the property to another lessee on reasonable terms.
- 12.7 The lessor can recover damages even if –
- 12.7.1 the lessor accepts the lessee's repudiation of this lease;
 - 12.7.2 the lessor ends this lease by entering and taking possession of any part of the property or by demanding possession of the property;
 - 12.7.3 the lessee abandons possession of the property; or
 - 12.7.4 a surrender of this lease occurs.

CLAUSE 13 GUARANTEE

What are the obligations of a guarantor?

- 13.1 This clause applies if a guarantor of the lessee is named in item 10A in the schedule and has signed or executed this lease in item 22 or, if this lease is a renewal of an earlier lease, the earlier lease.
- 13.2 The guarantor guarantees to the lessor the performance by the lessee of all the lessee's obligations (including any obligation to pay rent, outgoings or damages) under this lease, under every extension of it or under any renewal of it or under any tenancy and including obligations that are later changed or created.
- 13.3 If the lessee does not pay any money due under this lease, under any extension of it or under any renewal of it or under any tenancy the guarantor must pay that money to the lessor on demand even if the lessor has not tried to recover payment from the lessee.
- 13.4 If the lessee does not perform any of the lessee's obligations under this lease, under any extension of it or under any renewal of it or under any tenancy the guarantor must compensate the lessor even if the lessor has not tried to recover compensation from the lessee.
- 13.5 If the lessee is insolvent and this lease or any extension or renewal of it is disclaimed the guarantor is liable to the lessor for any damage suffered by the lessor because of the disclaimer. The lessor can recover damages for losses over the entire period of this lease or any extension or renewal but must do every reasonable thing to mitigate those losses and try to lease the property to another lessee on reasonable terms.

- 13.6 Even if the lessor gives the lessee extra time to comply with an obligation under this lease, under any extension of it or under any renewal of it or under any tenancy, or does not insist on strict compliance with the terms of this lease or any extension of it or renewal of it or of any tenancy, the guarantor's obligations are not affected.
- 13.7 If an amount is stated in item 10B in the schedule the guarantor's liability under this clause is limited to that amount.
- 13.8 The terms of this guarantee apply even if this lease is not registered, even if any obligation of the lessee is only an equitable one, and even if this lease is extended by legislation.

CLAUSE 14 EXCLUSIONS AND NOTICES

- 14.1 No covenant or power is implied in this lease by section 84 or 85 of the *Conveyancing Act 1919*.
- 14.2 A document under or relating to this lease is –
- 14.2.1 signed by a party if it is signed by the party or the party's solicitor or conveyancer;
 - 14.2.2 served if it is served by the party or the party's solicitor or conveyancer;
 - 14.2.3 served if it is served in any manner provided in section 170 of the *Conveyancing Act 1919*;
 - 14.2.4 served on the lessee if it is left at the property;
 - 14.2.5 served if it is sent by email or by fax to the email address or fax number for either the lessor or the lessee set out in this lease in item 21 (or any substitute email address or fax number given by either of them), unless it is not received;
 - 14.2.6 served on a person if it or a copy of it comes into possession of that person; and
 - 14.2.7 served at the earliest time it is served, if it is served more than once.

CLAUSE 15 GOODS AND SERVICES TAX

Unless item 13B in the schedule has been completed in a way that indicates that this clause is not to apply:

- 15.1 As consideration in whole or in part for a taxable supply the person receiving the supply must pay to the party making the supply an additional amount equal to the amount of GST payable on the supply.
- 15.2 To the extent that the lessee is required to reimburse the lessor in whole or in part for outgoings incurred by the lessor, for the purposes of this lease the amount of the outgoings must be reduced by the amount of any credit or refund of GST to which the lessor is entitled as a result of incurring outgoings.
- 15.3 Outgoings in item 14B in the schedule are to be calculated after deducting any input tax credit to which the lessor is entitled.
- 15.4 For the purposes of this lease GST means a tax in the nature of a supply of goods and services tax levied or imposed by the Commonwealth of Australia.

CLAUSE 16 BANK GUARANTEE

- 16.1 If an amount or a number of months appears in item 19 in the schedule, clauses 16.2 to 16.6 apply.
- 16.2 On or before the commencement date of this lease the lessee will deliver to the lessor a guarantee for the performance of the lessee's obligations under this lease by an authorised deposit-taking institution trading in the State of New South Wales in the form of an unconditional and irrevocable undertaking to pay drawn in favour of the lessor (unlimited as to time) in a form acceptable to the lessor, acting reasonably, and for an amount equivalent to the number of months or the amount referred to in item 19 in the schedule.
- 16.3 The lessor is entitled to claim under the guarantee an amount equal to any moneys due but unpaid by the lessee to the lessor under this lease and the lessee must deliver to the lessor within 14 days of a notice from the lessor, an additional guarantee equal to the amount claimed.
- 16.4 The lessee agrees to vary the amount of the guarantee within 28 days of a written request from the lessor after any rent review so that the amount represents the equivalent of the number of months referred to in the schedule.

- 16.5 The lessor will deliver the guarantee (or so much of it as is then held by the lessor) to the lessee within 2 months after the lessee completes performance of the obligations under this lease for which the guarantee is provided as security. The lessor is not required to return a bank guarantee if it has expired or has been cancelled.
- 16.6 If there is a change in lessor, the lessee must at the cost of the lessor provide a replacement guarantee that complies with clause 16.2 drawn in the name of the new lessor, within 2 months of receipt of a written request for a replacement guarantee.

CLAUSE 17 SECURITY DEPOSIT

- 17.1 If an amount or a number of months appears in item 20 in the schedule, clauses 17.2 to 17.6 apply.
- 17.2 On or before the commencement date of this lease the lessee will pay the security deposit to the lessor.
- 17.3 The lessor is entitled to deduct from the security deposit an amount equal to any monies due but unpaid by the lessee to the lessor under this lease and the lessee must deliver to the lessor within 14 days of a notice from the lessor, an additional amount equal to the amount claimed.
- 17.4 The security deposit will be held by the lessor.
- 17.5 The lessee agrees to vary the amount of the security deposit within 28 days of a written request from the lessor after any rent review so that it represents the equivalent of the number of months referred to in the schedule.
- 17.6 The lessor will pay the security deposit (or so much of it as is then held by the lessor) to the lessee within 2 months after the lessee completes performance of the obligations under this lease for which the security deposit is provided as security.

CLAUSE 18 STRATA

- 18.1 "Strata Acts" means the *Strata Schemes Management Act 2015* and the *Strata Schemes Development Act 2015*, and includes any amending Acts, rules, regulations, ordinances, by-laws, statutory instruments, orders or notices made under those Acts.
- 18.2 "Owners corporation", "owner", "strata scheme", "lot" and "parcel" where used in this lease have the meanings given under the Strata Acts.
- 18.3 "Strata conversion" means a subdivision of the property under the *Strata Schemes Development Act 2015* or the *Community Land Development Act 1989* or the *Community Land Management Act 1989* or other legislation permitting such subdivision.
- 18.4 **Strata Conversion**
- 18.4.1 By its entry into this lease the lessee acknowledges that the lessor can register a strata plan, a strata plan of subdivision, a strata plan of consolidation or a building alteration plan insofar as any of these may relate to the property, the building or the land. The lessor will provide the lessee with copies of the proposed strata plan and associated documentation for the lessee's approval, which approval must not be unreasonably withheld.
- 18.4.2 Unless the lessee raises an objection to the strata conversion referred to in clause 18.4.1, then within 14 days of written request by the lessor the lessee will sign and return to the lessor any consents or other documents necessary to enable the lessor to carry out the strata conversion and will make no objection or claim for compensation in relation to the strata conversion.
- 18.4.3 If the strata conversion occurs:
- 18.4.3.1 any reference in this lease will be deemed to be a reference to the buildings comprised in the registered plan or plans of which the property forms part;
- 18.4.3.2 any levies or other monies payable to the owners corporation will be payable by the lessee with the exception of any contribution to a capital works fund or special levy; and
- 18.4.3.3 this lease will be deemed to be amended in any respect that is necessary to ensure that this lease reflects that the strata conversion has been carried out.

18.5 Not to prejudice interests of owners corporation.

- 18.5.1 Without the prior written consent of the owners corporation, the lessee must not do any act, matter or thing under the exercise of its rights and obligations elsewhere contained in this lease or permit or allow any act, matter or thing to be done which will or may:
- 18.5.1.1 increase the rate of premium payable by the owners corporation under any policy of insurance taken out by the owners corporation; or
 - 18.5.1.2 invalidate, avoid or suspend the operation of any policy of insurance or otherwise prejudice the owners corporation rights under any such policy.
- 18.5.2 Upon the occurrence of any of the matters referred to in clause 18.5.1, the lessee must:
- 18.5.2.1 pay to the lessor or such other person responsible for payment any amounts payable to the owners corporation as a consequence of any such matters;
 - 18.5.2.2 pay to the lessor for and on behalf of the owners corporation any amounts payable by the owners corporation as a consequence of any such matters and not the subject of clause 18.5.1; and
 - 18.5.2.3 pay to the lessor for and on behalf of the owners corporation the amount of any and all losses and damages arising from the occurrence of any such matters.

18.6 Indemnity

The lessee indemnifies the lessor for any loss or damage suffered by the lessor if the lessee or the lessee's employees fail to comply with the obligations as to conduct imposed upon the lessee or the lessee's employees by this lease or by reason of the Strata Acts.

18.7 Use

- 18.7.1 Where the property is a lot in a strata scheme the lessee must:
- 18.7.1.1 use the common property only in connection with the use of the property and to obtain access to and egress from the property;
 - 18.7.1.2 co-operate with all other permitted users of the common property;
 - 18.7.1.3 comply with the provisions of the Strata Acts and the by-laws and all lawful orders, motions and directives under the Strata Acts as may be applicable to the exercise of the lessee's rights and obligations under this lease;
 - 18.7.1.4 meet the cost of all damage to the common property caused by the lessee or any invitee or licensee of the lessee;
 - 18.7.1.5 permit the owners corporation, temporarily, to close any part of the common property for the purpose of making and effecting repairs to it; and
 - 18.7.1.6 permit the owners corporation access to the property on giving the lessee reasonable prior notice for the purpose of making and effecting any repairs to the common property.
- 18.7.2 Where the property is a lot in strata scheme the lessor must use its reasonable endeavours to:
- 18.7.2.1 assist the lessee, at the expense of the lessee, to obtain the consent of the owners corporation to the lessee's fit out of the property (as approved by the lessor) and the lodgment of any development application in relation to the lessee's use of the property; and
 - 18.7.2.2 cause the owners corporation to maintain and repair the common property, to the extent of any obligation of the lessor to maintain the building.

IMPORTANT NOTES

The following notes are for guidance and do not form part of this lease.

If you are a lessor, a solicitor or conveyancer will prepare this lease for you. This lease is specifically for use for commercial premises only. It does not comply with the requirements of the *Retail Leases Act 1994*. This lease should not be used for a lease of retail premises.

If you are a lessee, a solicitor or conveyancer can advise you about it.

1. This document creates legal rights and legal obligations.
2. The Commercial Building Disclosure (CBD) Program requires most sellers and lessors of office space of 1000 square metres or more to have an up-to-date Building Energy Efficiency Certificate (BEEC). This is necessary to comply with legal obligations under the Building Energy Efficiency Disclosure Act 2010.
3. Failure to register a lease can have serious consequences.
4. If an option for renewal is not exercised at the right time it will be lost.
5. The lessee can exercise an option for renewal even if there has been a breach of this lease in a case where section 133E of the *Conveyancing Act 1919* applies. The lessor must give a prescribed notice within 14 days after the option is exercised if the lessor wants to rely on the breach to prevent the exercise of the option.
6. The Law Society of New South Wales is not responsible for any loss resulting from the use of this lease as printed whether authorised or not.

This is Annexure C referred to in the Lease between Lithgow City Council (ABN 59 986 092 492) and Australian Red Cross Society (ABN 50 169 561 394)

The leased property is bounded by a metal fence and the eastern side of the hall, comprising an area of approximately 270 m² and shown framed in red on the image below

Dated _____

