

**SCHEDULE 5**

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**COMMERCIAL REDRESS – DEFERRED  
SELECTION PROPERTIES**

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**PART 1: DESCRIPTIONS OF PROPERTIES**

**PART 1: DESCRIPTIONS OF PROPERTIES**

**(Clause 12.17-12.29)**

THE AFFILIATE TE ARAWA IWĪHAPU DEED OF SETTLEMENT  
SCHEDULE 5: COMMERCIAL REDRESS – DEFERRED SELECTION PROPERTIES

PART 1: DESCRIPTIONS OF DEFERRED SELECTION PROPERTIES

Name of Site	Location	Legal Description	Land Holding Agency	Leaseback Property	Joint or Independent Valuations
Ministry of Social Development Residential Dwelling	18 Alastair Avenue, Owhata	South Auckland Land District – Rotorua District 0.1454 hectares, more or less, being Lot 20 DPS 8048. All Gazette Notice S.449324.	Ministry of Social Development	Yes	Joint
Horohoro Forest	South Road, Mamaku	1458.2500 hectares, more or less, being Lots 1-4 DPS 65055, Lots 1 and 2 DPS 64931, and Lots 1-3 DPS 64930. All Computer Freehold Registers SA55B/834, SA55B/835 and SA55B/836.	Ministry of Agriculture and Forestry	No	Independent
Former Te Puni Kokiri property	Collier Road, Waireka	68.6701 hectares, more or less, being Waikaukau A5. All Computer Freehold Register SA7A/231.	Ministry of Justice (Office of Treaty Settlements)	No	Independent

*Or*

**PART 2: INTERPRETATION AND NOTICE**

**PART 2: INTERPRETATION AND NOTICE**

**(Clauses 12.17-12.28)**



PART 2: INTERPRETATION AND NOTICE

INTERPRETATION AND NOTICE

DEFINITIONS

1.1 In **clauses** 12.17-12.28 and in this Schedule, unless the context otherwise requires:

**Arbitration Commencement Date** means the date the Crown makes the referral to arbitration referred to in paragraph 8.1 of Part 3;

**Arbitrator** means a person appointed under paragraphs 4.3 or 4.4 of Part 3;

**Commencement Rent**, in relation to a Deferred Selection Property, means the Commencement Rent for that property determined or agreed under the Valuation Process;

**Crown's Valuation Report** means the valuation report prepared by the Crown's Valuer in accordance with Part 3;

**Crown's Valuer** means a Registered Valuer appointed by the Crown to take part in the Valuation Process;

**Deferred Selection Property** has the meaning set out in clause 16.3;

**Disclosed Encumbrance**, in relation to a Deferred Selection Property, is an Encumbrance disclosed under paragraph 2.2 of Part 3 or Part 4;

**Disclosure Information**, in relation to a Deferred Selection Asset, means the information given by the Crown in relation to that property under paragraph 2.1 of Part 3 or Part 4;

**Independent Valuer's Report** means the valuation report prepared under Part 4;

**Independently Valued Asset** means a Deferred Selection Property in respect of which "Independent" is written in the last column in Part 1;

**Jointly Valued Asset** means a Deferred Selection Property in respect of which "Joint" is written in the last column of Part 1;

**Lease** means, in respect of a Leaseback Property, the lease to be entered into under clauses 12.24 and 12.25;

**Market Rental** is the amount, exclusive of GST and expressed as annual payment, at which a Leaseback Property would lease subject to specific lease terms and conditions, between a willing lessor and a willing lessee, in an arms length transaction, after proper marketing in an arms' length transaction, if the parties to the transaction had each acted knowledgeably, prudently, and without compulsion. In applying this definition to the Deferred Selection Property, the following matters (in addition to all other relevant factors) must be taken into account:

- (a) the Terms of Transfer; and
- (b) the Disclosed Encumbrances affecting or benefiting that property;

**PART 2: INTERPRETATION AND NOTICE**

**Market Value** is the amount, exclusive of GST, for which the Deferred Selection Property might be expected to exchange on the Valuation Date, between a willing buyer and a willing seller, in an arms' length transaction, after proper marketing, if the parties to the transaction had each acted knowledgeably, prudently and without compulsion. In applying this definition to the Deferred Selection Property, the following matters (in addition to all other relevant factors) must be taken into account:

- (a) the Terms of Transfer; and
- (b) the Disclosed Encumbrances affecting or benefiting that property;

**Notification Date**, in relation to a Deferred Selection Property, is the date the Te Pumautanga Trustees give the Crown Notice under clause 12.17 that they are interested in purchasing that property;

**Party** means the Crown and the Te Pumautanga Trustees;

**Registered Valuer** means a valuer registered with the Valuers' Registration Board of New Zealand and with experience in the valuation of properties similar to the Deferred Selection Property;

**Te Pumautanga Trustees' Valuation Report** means the valuation report prepared by the Te Pumautanga Trustees' Valuer in accordance with Part 3;

**Te Pumautanga Trustees' Valuer** means a Registered Valuer appointed by the Te Pumautanga Trustees to take part in the Valuation Process;

**Terms of Transfer** means the terms of transfer set out in Part 5;

**Transfer Value**, in relation to a Deferred Selection Property, means the Transfer Value for that property determined or agreed under the Valuation Process;

**Valuation Date**, in relation to:

- (a) an Independently Valued Asset means the Valuation Date as provided under paragraph 3 of Part 3; and
- (b) a Jointly Valued Asset, means the Valuation Date as provided under paragraph 3 of Part 4;

**Valuation Exchange Date** has the meaning set out in paragraph 5.3 of Part 3; and

**Valuation Process**, in relation to a Deferred Selection Property, means the process to determine or agree the Transfer Value of that property in accordance with clauses 12.17-12.28 and this Schedule.

**NOTICE**

- 1.2 Until any other address or facsimile number of a Land Holding Agency is given by Notice to the Governance Entity, the addresses of the Land Holding Agency are as follows:

**Ministry of Agriculture and Forestry**

THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
SCHEDULE 5: COMMERCIAL REDRESS - DEFERRED SELECTION PROPERTIES

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**PART 2: INTERPRETATION AND NOTICE**

Chief Executive and Director General  
Ministry of Agriculture and Fisheries  
P O Box 2526  
Wellington

Facsimile: 04 819 0379

**Ministry of Social Development**

Chief Executive  
Ministry of Social Development  
P O Box 1556  
Wellington

Facsimile: 04 918 0099

**Office of Treaty Settlements**

The Director  
Office of Treaty Settlements  
P O Box 919  
Wellington

Facsimile: 04 494 9801

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT**  
**SCHEDULE 5: COMMERCIAL REDRESS – DEFERRED SELECTION PROPERTIES**  
**PART 3: VALUATION PROCESS FOR INDEPENDENTLY VALUED ASSETS**

**PART 3: VALUATION PROCESS FOR INDEPENDENTLY  
VALUED ASSETS**

**(Clause 12.18)**

**PART 3: VALUATION PROCESS FOR INDEPENDENTLY VALUED ASSETS**

**VALUATION PROCESS FOR INDEPENDENTLY VALUED ASSETS**

**1 APPLICATION OF THIS PART**

- 1.1 This Part 3 applies to an Independently Valued Asset if the Transfer Value of that property is to be determined or agreed under this Part pursuant to clause 12.18.1.

**2 DISCLOSURE**

- 2.1 The Land Holding Agency will, within 10 Business Days of being given Notice by the Te Pumautanga Trustees under clause 12.17 that the Te Pumautanga Trustees are interested in purchasing an Independently Valued Asset, give the Te Pumautanga Trustees all material information that relates to the Independently Valued Asset that the Land Holding Agency is aware of. The date the Te Pumautanga Trustees give the Land Holding Agency Notice under clause 12.17 is the "**Notification Date**".
- 2.2 The information that the Land Holding Agency gives under paragraph 2.1 will include all Encumbrances of which the Land Holding Agency is aware that affect or benefit the Independently Valued Asset (the "**Disclosed Encumbrance**").

**3 VALUATION DATE**

- 3.1 The **Valuation Date**, in relation to an Independently Valued Asset, will be as at the Notification Date.

**4 APPOINTMENT OF VALUERS AND ARBITRATOR**

- 4.1 No later than 5 Business Days after the Notification Date, the Te Pumautanga Trustees and the Land Holding Agency must each:

- 4.1.1 appoint a Registered Valuer;
- 4.1.2 instruct the Registered Valuer to assess the Market Value of the Independently Valued Asset, in accordance with this Part 3; and
- 4.1.3 Notify each other of the identity of the Registered Valuer.

- 4.2 The Crown and the Te Pumautanga Trustees must ensure that the terms of appointment of their Registered Valuers require them to participate in the Valuation Process.

- 4.3 The Crown and the Te Pumautanga Trustees must endeavour to agree on and appoint a person who is suitably qualified and experienced in determining disputes about the value of assets similar to the Independently Valued Asset no later than 10 Business Days after the Notification Date.

- 4.4 If no appointment has been made under paragraph 4.3 by that date, the Crown must request that the President of the NZ Institute of Valuers make the appointment.

**THE AFFILIATE TE ARAWA IWI/HAPU DEED OF SETTLEMENT  
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**PART 3: VALUATION PROCESS FOR INDEPENDENTLY VALUED ASSETS**

4.5 An appointment of an Arbitrator is made once the appointee has confirmed that he or she will conduct an arbitration, if requested by the Crown, in accordance with this Part.

**5 VALUATION REPORTS**

5.1 Either the Crown or the Te Pumautanga Trustees may carry out an inspection of the Independently Valued Asset. The Registered Valuer of the Crown or the Te Pumautanga Trustees intending to carry out an inspection must give at least 5 Business Days' notice of the date and time of the inspection to the other Registered Valuer appointed under this Part and give that valuer an opportunity to attend the inspection.

5.2 Both the Crown's Valuer and the Te Pumautanga Trustees' Valuer must prepare a Valuation Report that includes their respective assessments of the Market Value of the Independently Valued Asset, on the Valuation Date.

5.3 The Land Holding Agency and the Governance Entity must each deliver a copy of its Valuation Report to the other by no later than 50 Business Days after the Notification Date (the "**Valuation Exchange Date**").

5.4 Both Valuation Reports must:

5.4.1 meet the requirements of the New Zealand Institute of Valuers' Standards and other relevant standards insofar as those requirements are consistent with this Part 3;

5.4.2 include an executive summary containing:

- (a) a summary of the valuation along with key valuation parameters;
- (b) a summary of any key issues affecting the value; and

5.4.3 attach appendices setting out:

- (a) a statement of valuation policies; and
- (b) relevant market and sales and leasing information.

5.4.4 in the case of the MAF Forest Land and without limiting paragraphs 5.4.1-5.4.3, set out:

- (a) the amount that the Valuer considers will be payable by way of stumpage rental and other rental under the terms of the existing lease of the MAF Forest Land for each year ending on 31 March from the Notification Date to and including the year in which the Deferred Settlement Date falls; and

**PART 3: VALUATION PROCESS FOR INDEPENDENTLY VALUED ASSETS**

- (b) how the Valuer factored these amounts into the assessment of the Market Value of the MAF Forest Land.

**6 SINGLE VALUATION REPORT MAY DETERMINE TRANSFER VALUE**

- 6.1 If only one Valuation Report is delivered by a Party by the Valuation Exchange Date, then the assessment of Market Value in that report will be the Transfer Value.

**7 NEGOTIATIONS TO AGREE MARKET VALUE**

- 7.1 If each Party has provided a Valuation Report, the Crown and the Te Pumautanga Trustees must endeavour to agree on, and record in writing, the Market Value. The amount agreed as the Market Value is the Transfer Value.
- 7.2 Where Transfer Value is not determined or agreed within 20 Business Days after the Valuation Exchange Date, the determination of the Transfer Value must be referred to an Arbitrator in accordance with paragraph 8.

**8 DETERMINATION OF MARKET VALUE**

- 8.1 Within 5 Business Days of paragraph 7.2 applying, the Crown must refer the dispute to the Arbitrator (the "**Arbitration Commencement Date**").
- 8.2 The Arbitrator must promptly give notice of a meeting to be attended by the Crown and the Te Pumautanga Trustees and their Registered Valuers, at a venue and time to be decided by the Arbitrator after consultation with the Parties but not later than 30 Business Days after the Arbitration Commencement Date.
- 8.3 The Crown and the Te Pumautanga Trustees must by no later than 5.00pm on the day which is 5 Business Days prior to the date of the meeting give to the Arbitrator and to each other, their Valuation Reports, sales and rental evidence and any submission or expert evidence based on that information that the Crown or the Te Pumautanga Trustees intend to present at the meeting.
- 8.4 At the meeting, the Arbitrator must:
- 8.4.1 establish a procedure and give each Party the right to examine, cross examine and re-examine the Registered Valuers and other experts appointed by the other Parties in relation to the information provided to the Arbitrator; and
- 8.4.2 have regard to the requirements of natural justice in the conduct of the meeting.
- 8.5 The Arbitrator shall hold the meeting and give his or her determination of the Market Value no later than 50 Business Days after the Arbitration Commencement Date. In the case of the MAF Forest Land, the Arbitrator must include the Arbitrator's assumptions and methodology as set out in paragraph 5.4.4.

**PART 3: VALUATION PROCESS FOR INDEPENDENTLY VALUED ASSETS**

8.6 The Transfer Value will be the Arbitrator's determination of the Market Value. That determination must be no higher than the higher, and no lower than the lower, of the assessment of Market Value contained in the Crown's Valuation Report and in the Te Pumautanga Trustees' Valuation Report.

8.7 The determination of the Arbitrator is final and binding on the Crown and the Te Pumautanga Trustees.

**9 GENERAL PROVISIONS**

9.1 The Crown and the Te Pumautanga Trustees must each bear their own costs in connection with the Valuation Process.

9.2 The costs of the Arbitrator and the costs of the hire of a venue for the meeting referred to in paragraph 8.2 must be borne by the Crown and the Te Pumautanga Trustees equally.

9.3 Despite paragraphs 9.1 and 9.2, the Arbitrator may award costs against the Crown or the Te Pumautanga Trustees where the Arbitrator considers that it would be just to do so on account of unreasonable conduct.

**PART 4: VALUATION PROCESS FOR JOINTLY VALUED ASSETS**

**PART 4: VALUATION PROCESS FOR JOINTLY VALUED  
ASSETS**

**(Clause 12.18)**

**PART 4: VALUATION PROCESS FOR JOINTLY VALUED ASSETS**

**VALUATION PROCESS FOR JOINTLY VALUED ASSETS**

**1 APPLICATION OF THIS PART**

- 1.1 This Part 4 applies to a Jointly Valued Asset if the Transfer Value of that property is to be determined or agreed under this Part pursuant to clause 12.18.1.

**2 DISCLOSURE**

- 2.1 The Land Holding Agency will, within 10 Business Days of being given Notice by the Te Pumautanga Trustees under clause 12.17 that the Te Pumautanga Trustees are interested in purchasing a Jointly Valued Asset, give the Governance Entity all material information that relates to the Jointly Valued Asset that the Land Holding Agency is aware of. The date the Te Pumautanga Trustees give the Land Holding Agency Notice under clause 12.17 is the "**Notification Date**".
- 2.2 The information that the Land Holding Agency gives under paragraph 2.1 will include all Encumbrances of which the Land Holding Agency is aware that affect or benefit the Jointly Valued Asset (the "**Disclosed Encumbrance**").

**3 VALUATION DATE**

- 3.1 The **Valuation Date**, in relation to a Jointly Valued Asset, will be as at the Notification Date.

**4 APPOINTMENT OF VALUER**

- 4.1 The Crown and the Te Pumautanga Trustees must endeavour to agree on and appoint a Registered Valuer no later than 5 Business Days after the Notification Date to determine the Market Value of a Jointly Valued Asset, and its Market Rental if a Jointly Valued Asset is a Leaseback Property, in accordance with this Part 4.
- 4.2 If no appointment has been made under paragraph 4.1 by that date, the Crown must request that the President of the NZ Institute of Valuers make the appointment.
- 4.3 An appointment of a Registered Valuer is made once the appointee has confirmed that he or she will produce a valuation report in accordance with this Part on receipt of the joint instructions to be given under paragraph 4.4.
- 4.4 No later than 5 Business Days after the appointment under paragraphs 4.1-4.3, the Te Pumautanga Trustees and the Land Holding Agency must jointly instruct the Registered Valuer to assess the Market Value of the Jointly Valued Asset, and its Market Rental if a Jointly Valued Asset is a Leaseback Property on the terms of the agreed instructions to Valuer attached, in accordance with this Part 4.

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**PART 4: VALUATION PROCESS FOR JOINTLY VALUED ASSETS**

**5 VALUATION REPORT**

- 5.1 The Registered Valuer must prepare a valuation report that includes his or her assessment of the Market Value of the Jointly Valued Asset, and its Market Rental if the Jointly Valued Asset is a Leaseback Property, on the Valuation Date.
- 5.2 The Registered Valuer must deliver a copy of the Independent Valuer's Report to the parties by no later than 50 Business Days after the Notification Date.
- 5.3 The Independent Valuer's Report must:
- 5.3.1 meet the requirements of the New Zealand Institute of Valuers' Standards and other relevant standards insofar as those requirements are consistent with this Part 4;
  - 5.3.2 include an executive summary containing:
    - (a) a summary of the valuation along with key valuation parameters;
    - (b) a summary of any key issues affecting the value; and
  - 5.3.3 attach appendices setting out:
    - (a) a statement of valuation policies; and
    - (b) relevant market and sales and leasing information.

**6 VALUATION REPORT DETERMINES TRANSFER VALUE AND COMMENCEMENT RENT**

- 6.1 The assessment of:
- 6.1.1 Market Value in the Independent Valuer's Report will be the Transfer Value; and
  - 6.1.2 Market Rental in the Independent Valuer's Report will be the Commencement Rent.
- 6.2 The effect of paragraph 6 is final and binding on the Crown and the Te Pumautanga Trustees.

**7 GENERAL PROVISIONS**

- 7.1 The costs of the Registered Valuer must be borne by the Crown and the Te Pumautanga Trustees equally.

**PART 5: TERMS OF TRANSFER**

**PART 5: TERMS OF TRANSFER**

**(Clause 12.20.2)**

**PART 5: TERMS OF TRANSFER**

**TERMS OF TRANSFER**

**1 APPLICATION OF THIS PART**

This Part 5 applies if the Crown and the Te Pumautanga Trustees are deemed under clause 12.20 to have entered into an agreement for the sale and purchase of a Deferred Selection Property.

**2 TRANSFER OF THE DEFERRED SELECTION ASSET**

- 2.1 The Crown must transfer the fee simple estate in the Deferred Selection Property to the Te Pumautanga Trustees on the terms set out in clauses 12.17-12.28, and in this Part 5 of Schedule 5, subject to and, where applicable, with the benefit of the Relevant Encumbrances affecting or benefiting that property (as those Relevant Encumbrances may be varied under paragraph 2.2).
- 2.2 The Crown and the Te Pumautanga Trustees may agree in writing to vary or add to the Relevant Encumbrances affecting the Deferred Selection Property.
- 2.3 The Te Pumautanga Trustees must not unreasonably withhold or delay its consent to varying a Relevant Encumbrance or granting a new Encumbrance affecting the Deferred Selection Property.
- 2.4 The Crown will pay any survey and registration costs required to transfer the fee simple estate in the Deferred Selection Property to the Te Pumautanga Trustees.

**3 OBLIGATIONS PRIOR TO ACTUAL DEFERRED SETTLEMENT DATE**

**3.1 The Crown must:**

- 3.1.1 manage the MAF Forest Land, or ensure its management, in accordance with good commercial forestry practice; and
- 3.1.2 in respect of the other Deferred Selection Properties, maintain the Deferred Selection Property, or ensure its maintenance, until the Actual Deferred Settlement Date in substantially the same condition as it was in at the Notification Date, fair wear and tear excepted.

**3.2 Between the Notification Date and the Actual Deferred Settlement Date the Crown must consult with, and obtain the prior written consent of, the Te Pumautanga Trustees (which will not be unreasonably withheld or delayed) before:**

- 3.2.1 agreeing to any material variation in the terms of a Relevant Encumbrance affecting or benefiting a Deferred Selection Property; or
- 3.2.2 procuring any consent, or providing any waiver, under the Resource Management Act, or other legislation, that materially affects the Deferred Selection Property.

**3.3 The Crown must, if it carries out works, or gives specific authority in writing for works to be carried out, on a Deferred Selection Property, between the Notification Date and the Actual Deferred Settlement Date, for which the Crown must by law obtain a**

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**PART 5: TERMS OF TRANSFER**

building consent or permit, comply with any obligations imposed on the Crown under the Building Act in respect of such works.

- 3.4 The Crown must pay all charges for electric power, gas, water, and other utilities that the Crown owes as owner of a Deferred Selection Property until the Actual Deferred Settlement Date except where those charges are payable by any tenant or occupant directly to the relevant supplier.
- 3.5 Subject to the terms of any Relevant Encumbrance affecting the Deferred Selection Property, the Crown must use reasonable endeavours to obtain permission for the Te Pumautanga Trustees (or a person authorised by the Te Pumautanga Trustees), upon reasonable notice, to enter a Deferred Selection Property on one occasion before the Deferred Settlement Date to examine it.

**4 POSSESSION AND SETTLEMENT**

4.1 On the Deferred Settlement Date:

4.1.1 possession must be given and taken of the Deferred Selection Property subject to the Relevant Encumbrances (as they may be varied under paragraph 2.2); and

4.1.2 vacant possession must be given and taken of the Deferred Selection Property if it is not:

(a) a Leaseback Property; or

(b) subject to any Relevant Encumbrance (as they may be varied under paragraph 2.2) that prevent vacant possession being given and taken.

4.2 Subject to paragraph 10, on the Deferred Settlement Date the Crown must hand to the Te Pumautanga Trustees:

4.2.1 a registrable memorandum of transfer of the Deferred Selection Property;

4.2.2 all other instruments in registrable form which may be required by this Part 5, including those referred to in paragraph 4.3; and

4.2.3 all contracts and other documents which create unregistered rights, interests and obligations affecting the registered proprietor's interest (but not proclamations, *Gazette* notices and similar public notices) and which will continue following the Actual Deferred Settlement Date.

4.3 The Te Pumautanga Trustees must, within 5 Business Days of the Actual Deferred Settlement Date or if paragraph 10 applies, within the timeframe set out in paragraph 10, lodge the following documents for registration in the following order in relation to the Deferred Selection Property:

4.3.1 where applicable, a written application for a computer freehold register in the name of the Crown;

4.3.2 the transfer to the Te Pumautanga Trustees;

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- 4.3.3 any easements to be granted under Part 12; and
- 4.3.4 the Lease, in the case of the Leaseback Property.
- 4.4 All outgoing and incoming (including rates, excluding insurance premiums) must be apportioned at the Actual Deferred Settlement Date.
- 4.5 The Crown must supply a statement of apportionments to the Te Pumautanga Trustees before the Actual Deferred Settlement Date. On the Actual Deferred Settlement Date:
- 4.5.1 the Te Pumautanga Trustees must pay to the Crown the amount by which the outgoing (except for insurance premiums) for the Deferred Selection Properties pre-paid by the Crown in respect of a period after the Actual Deferred Settlement Date exceed the incoming received by the Crown for that period; or
- 4.5.2 the Crown must pay to the Te Pumautanga Trustees the amount by which the incoming received by the Crown in respect of a period after the Actual Deferred Settlement Date exceed the outgoing (except for insurance premiums) for the Deferred Selection Property pre-paid by the Crown for that period.
- 4.6 The Crown must make available to the Te Pumautanga Trustees on the Actual Deferred Settlement Date any keys to gates, exterior doors, and electronic door openers (if any) and/or security codes to alarms (if any) for the Deferred Selection Property that are in the possession of the Crown at the Actual Deferred Settlement Date.
- 4.7 The Deferred Selection Property must be transferred inclusive of all fixtures and fittings that are owned by the Crown and are situated on the Deferred Selection Property at the Notification Date and those fixtures and fittings must not be mortgaged or charged to any person.
- 4.8 No chattels situated on the Deferred Selection Property will be included in its transfer.
- 4.9 In respect of a Leaseback Property, paragraphs 4.3-4.8 apply only to the extent they are consistent with the Lease.

**5 RISK AND INSURANCE**

- 5.1 The Deferred Selection Property will remain at the sole risk of the Crown until the Actual Deferred Settlement Date and, from the Actual Deferred Settlement Date, it will remain at the sole risk of the Te Pumautanga Trustees.
- 5.2 In the event that, prior to the Actual Deferred Settlement Date, the Deferred Selection Property is destroyed or damaged and such destruction or damage has not been made good by the Actual Deferred Settlement Date, then the following provisions apply:
- 5.2.1 the Te Pumautanga Trustees must complete the transfer of the Deferred Selection Property at its Transfer Value on the condition that the Crown pay

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to the Te Pumautanga Trustees an amount equal to the amount (if any) by which the Transfer Value for the Deferred Selection Property is more than the value of the Deferred Selection Property as at the Actual Deferred Settlement Date as a result of the destruction or damage; and

5.2.2 either Party may give the other Party notice in writing requiring that any dispute as to the application of this paragraph 5.2 be determined by an arbitrator to be appointed by the president or vice-president of the law society for the district where the Deferred Selection Property is located, and the Party serving the notice may at any time after that refer the dispute to the arbitrator for determination under the Arbitration Act.

5.3 If a dispute relating to a claim by the Te Pumautanga Trustees for a diminution in value of the Deferred Selection Property under paragraph 5.2.2 is not determined by the Actual Deferred Settlement Date, then:

5.3.1 settlement shall take place on the Actual Deferred Settlement Date in accordance with this Part 5 as if there had been no destruction or damage; and

5.3.2 upon the determination of the dispute the Crown shall pay to the Te Pumautanga Trustees Entity within 7 Business Days from such determination a sum equal to the diminution in value of the Deferred Selection Property and interest from the Deferred Settlement Date to the date of that payment at the rate set out in clause 15.2.

5.4 The Te Pumautanga Trustees will not be required to take over from the Crown any insurance policies in relation to the Deferred Selection Property.

**6 TRANSFER VALUE**

6.1 To avoid doubt, the Parties acknowledge that the Transfer Value of the Deferred Selection Property will not be affected by:

6.1.1 any addition or variation to the Relevant Encumbrances agreed in writing by the Crown and the Te Pumautanga Trustees under paragraph 2.2; or

6.1.2 any variation to a Relevant Encumbrance agreed by the Crown and the Te Pumautanga Trustees under paragraph 3.2.1.

**7 BOUNDARIES, TITLE, ETC**

7.1 The Crown will not be bound to point out the boundaries of the Deferred Selection Property.

7.2 If the Deferred Selection Property is subject only to Relevant Encumbrances (as they may be varied under paragraph 2.2), the Te Pumautanga Trustees:

7.2.1 will be treated as having accepted the Crown's title to the Deferred Selection Property as at the Actual Deferred Settlement Date; and

7.2.2 may not make any objections to, or requisitions on, it.

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- 7.3 Except as otherwise expressly set out in this Part 5 no error, omission or misdescription of the Deferred Selection Property or its title shall annul the transfer of the Deferred Selection Property.
- 7.4 The Crown will not be liable to pay for, or contribute towards, the expense of erection or maintenance of any fence between the Deferred Selection Property and any contiguous land of the Crown (unless it is the Crown that requires the fence in which case the Crown shall meet all the costs of erecting the fence); and
- 7.4.1 this clause will not continue for the benefit of any subsequent purchaser of the contiguous land; and
- 7.4.2 the Crown may require the inclusion of a fencing covenant to this effect in any transfer of the Deferred Selection Property.

**8 OBLIGATIONS AFTER SETTLEMENT**

- 8.1 If the Crown receives any notice or demand in relation to the Deferred Selection Property from the Crown, any territorial authority or any tenant after the Actual Deferred Settlement Date, the Crown will, if not paying or complying with such notice or demand, promptly deliver it to the Te Pumautanga Trustees or the Te Pumautanga Trustees' solicitor and, if the Crown fails to do so, the Crown will be liable for any penalty incurred.
- 8.2 Immediately after the Actual Deferred Settlement Date, the Crown will give notice of the transfer of the Deferred Selection Property to the territorial authority having jurisdiction in respect of that property.

**9 DISCLOSURE INFORMATION**

- 9.1 The Crown warrants to the Te Pumautanga Trustees that, as at the Notification Date, the Disclosure Information in relation to the Deferred Selection Property is all the material information that relates to the Deferred Selection Property, of which the Land Holding Agency is aware, the Land Holding Agency having inspected its records but not having undertaken a physical inspection of the Deferred Selection Property or made enquiries beyond its records.
- 9.2 Except as provided in paragraph 9.1, the Crown gives no representation or warranty (whether express or implied) nor accepts any responsibility with respect to:
- 9.2.1 the Deferred Selection Property including as to its ownership, management, occupation, physical condition, use or compliance with:
- (a) any legislation including by-laws; or
- (b) any enforcement or other notice, requisition or proceedings issued by any authority; or
- 9.2.2 the completeness or accuracy of the Disclosure Information in relation to the Deferred Selection Property.
- 9.3 The Te Pumautanga Trustees acknowledge that (although the Crown is not giving any representation or warranty in relation to the Deferred Selection Property except

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as provided in paragraph 9.1) the Te Pumautanga Trustees had the opportunity prior to the Deferred Settlement Date (in addition to being able to examine the Disclosure Information) to:

9.3.1 inspect the Deferred Selection Property; and

9.3.2 determine its state and condition.

**10 DELAYED TRANSFER OF LEGAL TITLE**

10.1 If all the land comprising the Deferred Selection Property is not all of the land contained in a computer freehold register or registers, the Crown covenants for the benefit of the Te Pumautanga Trustees that it will:

10.1.1 arrange for the creation of a computer freehold register for all that Deferred Selection Property; and

10.1.2 transfer title to the Deferred Selection Property, as soon as is reasonably practicable, but no later than five years after the Actual Deferred Settlement Date.

10.2 The covenant given by the Crown under paragraph 10.1 shall have effect and be enforceable, despite being positive in effect and there being no dominant tenement.

10.3 If paragraph 10.1 applies, then, for the period from the Actual Deferred Settlement Date until the date that the Crown transfers the title to that Deferred Selection Property to the Te Pumautanga Trustees:

10.3.1 the Te Pumautanga Trustees will be the beneficial owner of that property; and

10.3.2 all obligations and rights will be performed and arise as if full legal title had passed to the Te Pumautanga Trustees on the Actual Deferred Settlement Date.

**11 SETTLEMENT PROVISIONS**

11.1 On the Deferred Settlement Date:

11.1.1 the Te Pumautanga Trustees shall pay to the Crown by way of bank cheque drawn on a New Zealand registered bank and made payable to the Land Holding Agency an amount equal to the Transfer Value (plus GST if any); and

11.1.2 subject to paragraph 10, the Crown shall concurrently deliver to the Te Pumautanga Trustees all documents and instruments necessary to effect transfer of the Deferred Selection Property to the Te Pumautanga Trustees.

11.2 If from any cause whatever (save the default of the Crown) all or any part of the Transfer Value or any other moneys payable by the Te Pumautanga Trustees to the Crown is not paid on the Deferred Settlement Date, the Crown shall not be obliged to give possession to the Te Pumautanga Trustees, and the Te Pumautanga Trustees shall pay to the Crown default interest at the rate of 12% per annum on all

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or that part of the Transfer Value (plus GST if any) so unpaid for the period from the Deferred Settlement Date to the Actual Deferred Settlement Date, but without prejudice to any other rights or remedies available to the Crown at law or in equity.

- 11.3 If, without the written agreement of the parties, settlement is not effected on the Deferred Settlement Date then without prejudice to the rights of the party not in default the following provisions shall apply:
- 11.3.1 either the Crown or the Te Pumautanga Trustees may at any time after the Deferred Settlement Date serve on the other of them notice in writing ("**Settlement Notice**") to effect settlement but the notice shall be effective only if the party serving it is at the time of service either in all material respects ready able and willing to proceed to effect settlement in accordance with the Settlement Notice or is not so ready able and willing to effect settlement only by reason of the default or omission of the other party. For the sake of clarity the Te Pumautanga Trustees acknowledge that they may not serve a Settlement Notice where there is a delay or transfer of legal title as contemplated by paragraph 10;
- 11.3.2 upon service of a Settlement Notice, the party on which the Settlement Notice is served shall effect settlement within 10 Business Days after the date of service of the Settlement Notice (excluding the date of service) and in respect of that period time shall be of the essence but without prejudice to any intermediate right of cancellation (if any) by the other party;
- 11.3.3 if the party in default does not comply with the terms of a Settlement Notice then without prejudice to any other rights or remedies available to the party serving the Settlement Notice at law or in equity that party may cancel the agreement constituted by clause 12.22 by written notice.

**12 MAF FOREST LAND**

- 12.1 The Transfer Value for the MAF Forest Land will be adjusted to give effect to any difference between the actual amounts payable by way of stumpage since the Notification Date and the amounts assumed in establishing the Transfer Value under this Part 5.
- 12.2 In the event that, prior to the Actual Deferred Settlement Date, there is a dispute about the adjustment to be made to the Transfer Value under paragraph 12.1, then the following provisions apply:
- 12.2.1 the Te Pumautanga Trustees must complete the transfer of the MAF Forest Land at its Transfer Value on the condition that the appropriate Party must pay to the other Party an amount equal to the amount (if any) by which the Transfer Value following adjustment differs from the Transfer Value as determined under Part 3 of this Schedule; and
- 12.2.2 either Party may give the other Party notice in writing requiring that any dispute as to the application of this paragraph 12.2 be determined by an arbitrator to be appointed by the president or vice-president of the law society for the district where the MAF Forest Land is located, and the Party serving the notice may at any time after that refer the dispute to the arbitrator for determination under the Arbitration Act.

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12.3 If a dispute relating to paragraph 12.2.2 is not determined by the Actual Deferred Settlement Date, then:

12.3.1 settlement shall take place on the Actual Deferred Settlement Date in accordance with this Part 5 as if no adjustment to the Transfer Value were necessary;

12.3.2 upon the determination of the dispute the appropriate Party shall pay a balancing payment to the other party and interest from Settlement Date to the date of that payment at the rate set out in clause 15.2.

12.4 For the purposes of paragraphs 12.2 and 12.3, "appropriate Party" means:

12.4.1 if the adjustment reduces the Transfer Value, the Crown; and

12.4.2 if the adjustment increases the Transfer Value, the Te Pumautanga Trustees.

**13 MISCELLANEOUS**

**Further Assurances**

13.1 The Crown and the Te Pumautanga Trustees must, at the request of the other, sign and deliver any further documents or assurances and do all acts and things that the other may reasonably require to give full force and effect to clause 12.20 and this Part 5.

**Non merger**

13.2 On transfer of the Deferred Selection Property to the Te Pumautanga Trustees, the provisions of this Part 5 will not merge and, to the extent any provision has not been fulfilled, will remain in force.

**PART 6: LEASE**

**PART 6: LEASE**

**(Clauses 12.36 and 12.37 and Schedule 5, Part 1)**

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**MINISTRY OF SOCIAL DEVELOPMENT LEASE**





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DATES	Renewal Date
USE OF LAND	Actual Use: Any use associated with the activities of the Ministry of Social Development Permitted Use: Any use consistent with the Improvements on the Land from time to time being such other use determined in accordance with the requirements of clause 3



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SCHEDULE B

1 Definitions Interpretations and Exclusions

1.1 **Definitions:** In this Lease, unless a contrary intention appears:

**"Authority"** means each and every local body, territorial, government or other authority having jurisdiction or authority over or in respect of the Land and/or the Improvements or the use thereof.

**"Improvements"** means all Improvements excluding the Lessor's Improvements whether constructed or installed on the Land before or at any time hereafter including any building, structure or other improvements on or fixed to the Land and any concrete paving, tiles, carpark sealing, mechanical services, plant, machinery, equipment, fixtures and fittings, any subsoil works constructed or installed, sealed yards, paths, lawns, gardens and other like property of any kind, which Improvements shall at all times belong to the Lessee.

**"the Land"** means the land described on the first page of this Lease and where not repugnant to the context includes the Improvements.

**"the Lessee"** means the Lessee the executors administrators or successors and permitted assigns or subtenants or licensees of the Lessee and where not repugnant to the context the servants and agents of the Lessee.

**"the Lessor"** means the Lessor and its successors and assigns, and where not repugnant to the context the servants and agents of the Lessor (including for the purpose of giving notice any management agent appointed from time to time by the Lessor).

**"Lessor's Improvements"** means work done or material used on or for the benefit of the Land (whether during the term of this Lease or any further term pursuant to any renewal or variation of this Lease) including:

- (a) the draining, excavation, filling, or reclamation of the Land, or the making of retaining walls or other works appurtenant to that draining, excavation, filling or reclamation; or
- (b) the grading or levelling of the Land or the removal of rocks, stone, sand, or soil therefrom; or
- (c) the removal or destruction of vegetation, or the effecting of any change in the nature or character of the vegetation; or
- (d) the alteration of soil fertility or of the structure of the soil; or
- (e) the arresting or elimination of erosion or flooding.

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**"Person"** shall include any individual person, a corporation, a company or other body corporate, an unincorporated body of persons, a public body, firm, partnership, joint venture, association, organisation, trust or a Crown entity as defined in Section 7(1) of the Crown Entities Act 2004 or a State Owned Enterprise in each case whether or not having separate legal personality.

**"Registered Valuer"** means a person who is a full, registered member of the NZ Property Institute (or any successor organization) and who is competent to practise as a valuer of the kind of premises demised by the Lease and currently practicing in the market at the time of appointment.

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

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, New Zealand's anniversary day or the Anniversary Day celebrated in Rotorua; and
- (b) a day in the period starting on 24 December in any year and ending on 5 January in the following year, both days included.

**1.2 Interpretation**

- (a) Words importing the singular number shall include the plural, the masculine gender shall include the feminine, persons shall include companies, and vice versa.
- (b) Any provision of this Lease to be performed by 2 or more persons shall bind those persons jointly and severally.
- (c) The Index to this Lease and any headings and marginal notations in this Lease have been inserted for convenience only and shall not in any way limit or govern the construction of the terms of this Lease.
- (d) Any reference in this Lease to any statute or regulation is deemed to include all amendments and revisions made from time to time to that statute or regulation.
- (e) Any reference in this Lease to a "month" or "monthly" shall mean, respectively, calendar month or calendar monthly.

**1.3 Exclusion of Statutory Provisions**

- (a) The covenants conditions agreements and restrictions implied in leases by the Property Law Act 2007 are hereby negated to the fullest extent permitted by law.
- (b) To the extent permitted by law the application to this Lease of any moratorium or other law, act or regulation having the effect of extending the term, reducing or postponing the payment of rent or other moneys payable under this Lease or otherwise affecting the operation of the terms of this Lease is expressly

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excluded and negated.

**1.4 Lessor's Consent**

Where the Lessor's consent or approval is required pursuant to any provision of this Lease such consent or approval shall not be unreasonably or arbitrarily withheld unless otherwise herein provided. Such consent or approval shall be required for each separate occasion notwithstanding any prior consent or approval obtained for the like purpose on a prior occasion.

**1.5 Relationship of Parties**

Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of partnership or of principal and agent or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent nor any other provisions contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of lessor and lessee upon the terms provided in this Lease.

**1.6 Severability**

If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall be or become invalid or unenforceable the remaining terms conditions and covenants shall not be affected thereby.

**1.7 Non-Merger**

The covenants, conditions, agreements and obligations of the parties in this Lease and this Lease document shall not merge with or be extinguished by the grant of any further or other lease but shall remain in full force and effect and operative according to their tenor.

**1.8 Service of Notices**

(a) All notices relevant to this Lease must be served in writing.

(b) All notices must be served by one of the following means:

(i) in the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and

(ii) in all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:

(A) in the manner authorised by sections 354 to 361 of the Property Law Act 2007; or

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- (B) on the party or on the party's solicitor by personal delivery or by posting by ordinary mail or by fax or by email, or in the case of the party's solicitor only, by sending by document exchange.
- (c) In respect of the means of service specified in subclause (b), a notice is deemed to have been served:
  - (i) in the case of personal delivery, when received by the party or at the relevant party's solicitor's office;
  - (ii) in the case of posting by ordinary mail:
    - (A) if sent within New Zealand to another New Zealand address, the second Working Day;
    - (B) if sent from one address to an overseas address, the tenth day of posting to the address for service notified in writing by the party or to the postal address of the solicitor's office;
  - (iii) in the case of fax transmission, when sent to the fax number notified in writing by the party or to the fax number of the solicitor's office and a confirmation is printed indicating that transmission occurred;
  - (iv) in the case of email, when acknowledged by the party or the solicitor by return email or otherwise in writing;
  - (v) in the case of sending by document exchange, on the second Working Day following the date of sending to the document exchange number of the solicitor's office.
- (d) Notice served by a party after 5 p.m. on a Working Day or on a day which is not a Working Day shall be deemed to have been served by that party at 9 a.m. on the next succeeding Working Day.
- (e) When 2 or more notices are deemed to have been served at the same time they shall take effect in the order in which they would have been served but for this clause.
- (f) Any period of notice required to be given under this Lease shall be computed by excluding the day of service.
- (g) Unless and until a party gives notice of any change, the address for service specified in Schedule A shall apply for the purposes of this clause 1.8.

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**1.9 Settlement of Disputes**

- (a) Any dispute or difference which may arise between the parties concerning the interpretation of this Lease or relating to any other matter arising under this Lease will be actively and in good faith negotiated by the parties with a view to a speedy resolution of such differences.
- (b) If the parties cannot resolve a dispute or difference within 15 business days of any dispute or difference arising then, unless otherwise expressly provided in this Lease they will without prejudice to any other right, explore whether such dispute or difference can be resolved by agreement between them using informal dispute resolution techniques such as mediation. The rules governing any such technique if adopted will be agreed between the parties or as selected by the organisation known as "LEADR" (Leading Edge Alternative Dispute Resolvers) or any other alternative dispute organisation agreed upon by the parties.
- (c) If the parties cannot agree on any dispute resolution technique then the dispute or difference shall be settled by reference to arbitration. Except as otherwise expressly provided in this Lease the reference shall be to a single arbitrator if one can be agreed upon, or to two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to their arbitration), such arbitration to be carried out in accordance with the Arbitration Act 1996 or any successor Act.
- (d) The parties will co-operate to ensure the expeditious conduct of any arbitration. In particular, each party will comply with any reasonable time limits sought by the other for settling terms of reference, interlocutory matters and generally all steps preliminary and incidental to the hearing and determination of the proceedings.

**2 Rent and Outgoings**

**2.1 Payment of Rental**

- (a) The Lessee will pay the rent referred to in Schedule A and any adjusted or varied rent pursuant to this Lease to the Lessor (or as the Lessor may in writing otherwise direct) without demand from the Lessor and without any deduction howsoever.
- (b) The rent shall be paid by equal instalments in advance in the frequency specified in Schedule A with a first instalment to be paid on the Commencement Date of this Lease.
- (c) The rent due under this Lease from time to time shall be paid by automatic bank authority or in such other manner as the Lessor may from time to time direct.
- (d) Rent shall be paid on the first day of each January, April, July and October in each year by equal quarterly payments in advance but the first payment shall

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be on the Date of Commencement of this Lease on a proportionate basis for any broken period until the first day of the next quarter.

- (e) The Lessee shall pay the Goods and Services Tax payable by the Lessor in respect of the rental. The tax shall be paid on each occasion when any rental payment falls due for payment and shall be payable to the Lessor or as the Lessor shall direct.

**2.2 Rental Review**

- (a) The rent shall be reviewed on the 5<sup>th</sup> Anniversary of the Commencement Date and thereafter on each Renewal Date, as specified in Schedule A (if the lease is renewed).
- (b) On each Review Date the annual rent shall be reviewed to a sum equal to the current market rental of the Land assessed as a vacant undeveloped site.
- (c) The Lessor shall no earlier than 4 calendar months and no later than 2 months prior to any Review Date (time being strictly of the essence) give written notice to the Lessee specifying the new annual rent proposed by the Lessor as the current market rent to apply from that Review Date.

Such notice shall be null and void if not accompanied by a certificate signed by a Registered Valuer which fixes the current market rent as at the relevant Review Date at the same figure as that fixed in the Lessor's written notice.

- (d) Should the Lessor not have commenced the review 2 months prior to the Review Date, the Lessee may at any time thereafter commence the review by giving to the Lessor written notice specifying the annual rent considered by the Lessee to be the current market rent as at the Review Date provided that no such notice shall be given after that date 6 months subsequent to the Review Day.

Such notice shall be null and void if not accompanied by a certificate signed by a Registered Valuer which fixes the current market rent as at the relevant Review Date at the same figure as that fixed in the Lessee's written notice.

- (e) If by further written notice from one party to the other ("the Disputing Party's Notice") given within 42 days from receipt of notice under clause 2.2(c) or (d) (time not being of the essence) the other party disputes that the proposed new current market rent is the current market rent and specifies the annual rent considered by such party to be the current market rent, and supports the Disputing Party's Notice with a certificate from a Registered Valuer, which fixes the current market rent at the same figure as that specified in the Disputing Party's Notice, then the new current market rent shall be determined in accordance with clauses 2.2(j) and 2.2(k).
- (f) Should further written notice not be given by one party to the other under the provisions of clause 2.2(e), the party served under clause 2.2(c) or (d) shall be deemed to have accepted the rental so notified by the other party.

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- (g) The current market rent deemed to have been accepted in accordance with the provisions of clause 2.2(f) or determined in accordance with the provisions of clauses 2.2(j) and 2.2(k), shall be the annual rent payable by the Lessee from the relevant Review Date.
- (h) Pending the determination of the new annual rent the Lessee shall pay the average of the rent specified in the Lessor's notice under clause 2.2(c) or the Lessee's notice under clause 2.2(d) (whichever issues first) and the rent specified in the Disputing Party's Notice (if any). Upon determination of the new current market rent an appropriate adjustment shall be made immediately. Any overpayment shall be immediately refunded to the Tenant and any shortfall shall be immediately payable by the Tenant.
- (i) Any variation in the annual rent resulting from such determination shall take effect on and from the relevant Review Date notwithstanding that either party's rent assessment may have been given or the new annual rent may have been determined after that Review Date.
- (j) In the event that the Disputing Party's Notice is given and the parties cannot determine the current market rental by negotiation within 2 months after date of service of the Disputing Party's Notice, then the current market rental shall be determined by the arbitration of 2 Registered Valuers, one appointed by the Lessor and one appointed by the Lessee. If the 2 Registered Valuers cannot agree an umpire shall be appointed by the 2 Registered Valuers to determine any points of difference between such Registered Valuers and the decision of such Registered Valuers or the umpire shall be binding on both the Lessor and the Lessee. The said arbitration shall be determined in accordance with the provisions of the Arbitration Act 1996 and its amendments and any enactments passed in substitution therefor.
- (k) The annual rent of the Land shall be assessed on the basis of current market rental of the Land as determined as at the review date. In determining the annual rent of the Land the valuers and any umpire shall, in addition to other relevant factors:
- (i) Disregard:
- any deleterious condition of the Land if such condition results from any breach of this Lease by the Lessee;
  - the value of any goodwill attributable to the Lessee's business; and
  - all Improvements made to the Land.
- (ii) Have regard to:
- the Lessor's Improvements; and
  - in considering the use to which the Land may be put, only the

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actual permitted use under this Lease as at the Review Date.

- (l) Each party shall bear its own costs, but the costs of the determination by the umpire of the current market rental shall be borne equally by the Lessor and the Lessee.
- (m) If any moratorium or other law, act or regulation that applies to this Lease has the effect of postponing any periodic review of rent as at a date of review then if and whenever such moratorium is lifted or the law, act or regulation is repealed or amended so as to permit the rent to be reviewed then the review that has been postponed shall take place as at the date that such moratorium is lifted or such law, act or regulation is repealed or amended to the intent that the rent review shall establish the rent of the Land as at such date and not as at the postponed review date, but any subsequent rent review shall take place on the next following Review Date fixed in accordance with clause 2.2(a).

**2.3 Outgoings**

- (a) The Lessee will pay all rates, taxes (including without limitation land or improvements tax but excluding any income tax or capital gains tax or such similar tax which is personal to the Lessor and which is imposed as a result of any sale or other disposal of the Land or because of income gained by the Lessor from the Land or any tax imposed on unrealised gains from the Land such as capital accretion tax), charges, assessments, impositions and outgoings whatsoever which now are or which during the term or any renewed lease shall be taxed, rated, charged, assessed or imposed on the Land, any Improvements or on the Lessor or Lessee in respect thereof by any Authority.
- (b) The obligation of the Lessee to pay the outgoings and other payments hereunder shall be to pay the Goods and Services Tax inclusive cost thereof.
- (c) The Lessee shall pay to the proper Authorities all charges for water, gas, electricity, telephone and all utility and other services connected to the Land and/or the Improvements.
- (d) The Lessee shall pay for all costs of service, installation, maintenance and connection to the nearest approved Authority connection points for services used by the Lessee.
- (e) Should the Lessee make default in payment of such outgoings, taxes or charges required under this clause 2.3 the Lessor may pay the same and forthwith recover the amount paid as if the same were rent in arrear payable by the Lessee.

**2.4 Goods and Services Tax**

The Lessee shall pay to the Lessor upon demand any taxes paid or payable by the Lessor or accountable by the Lessor pursuant to the provisions of the Goods and Services Tax Act 1985 or any similar tax levied in substitution therefor including all amendments and any enactments in substitution therefor or in addition thereto or

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otherwise in respect of any payments made by the Lessee under this Lease (including the payment of ground rent) or paid by the Lessor on behalf of the Lessee's obligation to make such payment under this Lease.

**3 Use of Land**

**3.1 Use of Land**

The Lessee will not use or permit to be used the Land or any part thereof or any Improvements erected thereon otherwise than in accordance with the Actual Use specified in Schedule A or such other permitted use as may be approved in writing by the Lessor. The Lessor's consent shall not be unreasonably or arbitrarily withheld in respect of any proposed use:

- (a) reasonably suitable for Land; and
- (b) which complies with Regional or District Plans or the consent of any Authority having jurisdiction in respect of the Land, and where any agreed change of use requires compliance with sections 114 to 116 of the Building Act 2004 the Lessee shall as a condition of any consent granted by the Lessor comply with the requirements of sections 114 to 116 of the Building Act 2004 and pay all compliance costs where the Improvements are the Lessee's.

**3.2 No Warranty as to Use**

The Lessor does not in any way warrant that the Land is or will remain suitable or adequate for any of the approved purposes of the Lessee and to the full extent permitted by law all warranties as to suitability and to adequacy implied by law are expressly negated. Should any of the purposes of the Lessee be permissible only with the consent of any Authority under or in pursuance of any statute, ordinance, regulation, by-law or other enactment or order of Court the Lessee shall obtain such consent at the sole cost and expense of the Lessee including but not limited to any costs of complying with any conditions of any such consent.

**3.3 No Objection to Consent Process**

Where the Lessee is lawfully obliged to obtain any licence, resource consent (including any land use consent or discharge permit) or (without limiting the generality of the foregoing) other consents from any Authority, the Lessor agrees that it and any officer, or employee or agent of the Lessor or any person claiming under the Lessor shall not raise any objection or requisition relating thereto as landowner of the Land where the Lessee is using the Land for any permitted use under this Lease and is not in any material breach or likely to be in any material breach at any time in the future of any terms and conditions of this Lease.

**3.4 Compliance with Enactments**

The Lessee will at all times observe and comply with all statutes ordinances regulations by-laws or other enactments affecting or relating to the use of the Land

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and with all requirements which may be given by any Authority and will in particular but without limitation:

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

**3.5 Right to Inspect**

The Lessee shall permit the Lessor and its agents, servants or contractors no more than two times each year during the term after having given reasonable prior written notice to enter upon the Land to view the condition thereof. At all times the Lessor shall be accompanied by the Lessee's agent.

**3.6 Compliance with Easements**

The Lessee will perform and observe the obligations of the Lessor in connection with any easement of any kind for the time being affecting the Land (whether as dominant or servient tenement) PROVIDED THAT any works of a capital nature, including the carrying out effecting or contributing to any repairs or maintenance to any easement of any kind either existing at the date of commencement of this Lease or brought down on the Land during the term of this Lease or any renewal thereof, shall be at the cost of the Lessor unless the requirement for such works is directly attributable to the actions of the Lessee and the use of the Improvements.

**3.7 No Fencing Liability on Lessor**

The Lessor shall not be liable nor be called upon to erect or repair or contribute towards the cost of erection or repair of any boundary fence between the Land and any adjoining land now or at any time owned by the Lessor but nothing herein contained shall be deemed to limit any liability imposed by statute upon any present or future lessee from the Lessor of any adjoining land.

**3.8 Improvements During Lease**

- (a) Throughout the term of this Lease and on any renewal any Improvements installed or erected on the Land shall be deemed to remain in the ownership of the Lessee unless the Lessor and the Lessee otherwise agree in writing. The Lessor shall, prior to granting any charge or mortgage over or affecting the Land or any other interest, request a written acknowledgement from the mortgagee or chargeholder or other person that the Improvements are not subject to such mortgage, charge or interest.

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

**4 Assignment/Subletting**

**4.1 Control of Subletting and Assignments**

The Lessee will not without the previous consent in writing of the Lessor assign or transfer this Lease. Such consent shall not be unreasonably or arbitrarily withheld or delayed where the Lessor is satisfied that the proposed assignee or transferee is able to meet its obligation under the Lease. Notwithstanding this clause where the Crown (as that term is defined in section 2 of the Public Finance Act 1989) remains as the Lessee under this Lease and in occupation of the Land no consent from the Lessor shall be required to any assignment or transfer of this Lease except that on each occasion that a different Crown Entity (as defined in section 7(1) of the Crown Entities Act 2004) or other Crown body or State Owned Enterprise assumes the role and obligations of the Lessee under this Lease the Lessee shall notify the Lessor in writing of that change.

**4.2 Application to Subleases**

Subject to the provisions of this clause the Lessee shall not sublet the Land or any part thereof without first obtaining the written consent of the Lessor (on the same basis provided for in clause 4.1) provided however that if the term of any proposed sublease granted pursuant to this clause is for less than the term of this Lease or would not extend beyond the date of any authorised termination of this Lease by the Lessee:

- (a) the Lessee shall be permitted to grant any sublease of the Land, or any part of the Land, to any party at its discretion, for a term (including renewals or options to extend or any such other right to extend) not exceeding three years; or
- (b) the Lessee shall be permitted to grant any tenancy in terms of the Residential Tenancies Act 1986; or
- (c) the Lessee shall be permitted to grant any sublease of the Land or any part of the Land to any party at its discretion where that party is to provide the Lessee with services or assistance of any kind with the Lessee's activities and functions,

without requiring the Lessor's consent which shall be deemed to have been given provided and every case the Lessee shall promptly notify the Lessor of the names and addresses of any subtenant or residential tenant in lawful occupation and supply reasonable details including rent and term of such subleases or tenancies. For the sake of clarity, it is hereby acknowledged by the Lessor that nothing in this Lease shall preclude the Land or the Improvements being used for any residential purpose associated with the activities of the Lessee.

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**4.3 Change of Effective Control**

- (a) For the purposes of clause 4.1 (but not clause 4.3(c)) any proposed change in the effective control of any Lessee that is a Crown Entity as that term is defined in section 7(1) of the Crown Entities Act 2004 or a State Owned Enterprise shall be a proposed assignment of this Lease. The Lessor in deciding whether or not to grant consent shall only be entitled to consider the effect of the alteration of the effective control on the ability of the Lessee to continue to meet its obligations under the Lease. For the purposes of this clause any change in the management structure of the Lessee shall not be construed as a change in the effective control of the Lessee.
- (b) Clause 4 applies to any assignment or subletting of the interest of the Lessee by any assignee of a bankrupt Lessee or any liquidator or receiver of a Lessee that is a company.
- (c) For the purposes of clause 4.1 any proposed change in the shareholding of the Lessee or any amalgamation under Section 219 of the Companies Act 1993 altering the effective control of the Lessee shall be a deemed assignment of this Lease and will require the consent of the Lessor unless such deemed assignment involves a change of effective control to any of the entities mentioned in clause 4.3(a).

**5 Improvements on Termination of Lease**

**5.1 Lessee's Obligations**

On termination of this Lease (whether by expiry of time or otherwise) except where the Lessee has exercised any rights of renewal the Lessee may remove any Improvements specified in a written notice ("the Lessee's Removal Notice") given to the Lessor no later than six months prior to the expiry of the term or one month after any sooner termination.

**5.2 Yielding up Clean**

Except where the Lessee has exercised any rights of renewal, the Lessee will forthwith upon the expiration of the term or sooner determination of this Lease peaceably surrender and yield up unto the Lessor the Land and Improvements together with all conveniences, amenities and appurtenances relating thereto clean and free from rubbish.

**5.3 Compensation for Improvements**

- (a) Any Improvements remaining on the Land after termination of this Lease and not included in the Lessee's Removal Notice, shall become the property of the Lessor who shall purchase such remaining Improvements and pay to the Lessee the greater of:
  - (i) the market value of the Improvements; or

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- (ii) the book value of the Improvements as set out in the Lessee's financial records for the then current year,

such payment to be made either on the date of expiration of the term or where this Lease is sooner terminated on the date one month after the Lease is so terminated.

- (b) For the purposes of clause 5.3(a) the market value of the Improvements shall be as agreed between the Lessor and the Lessee, or failing agreement shall be fixed as follows:
- (i) each party shall obtain a current market valuation of the Improvements from a Registered Valuer of their choice;
- (ii) the value of the Improvements will be the average of the above two valuations;
- (iii) each party shall bear its own costs of the valuation so obtained.

**6 Insurance, Destruction and Redevelopment**

**6.1 Lessee to Insure**

The Lessee shall insure all Improvements on the Land for replacement or indemnity cover (noting the interest of the Lessor on any policy so effected as an interested party) against destruction or damage by fire, earthquake, fire as a consequence of earthquake, storm, water damage and malicious damage and all other risks normally covered by a prudent lessee having regard to the nature of the Lessee's business. This obligation shall not be applicable in the event that the Lessee self insures while the Lessee remains in the beneficial ownership and control of the Crown.

**6.2 Compliance with Fire Requirements**

The Lessee shall at all times and in all respects comply with the requirements of the Insurance Council of New Zealand and all Authorities and with the requirements of any relevant statute, regulation, by-law or other notice issued by any Authority relating to fires.

**6.3 Destruction, Damage or Redevelopment**

The Lessee shall be entitled to carry out repairs, reinstatement or redevelopment to any Improvements on the Land in the event of total or partial destruction or in the event of the Lessee wishing to redevelop or replace any Improvements on the Land provided the following conditions are or will be satisfied:

- (a) any repair, reinstatement or redevelopment shall fully comply with Regional and District Plans and all statutory and regulatory requirements in force at the time; and

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- (b) the Lessee is able to obtain all resource and building consents necessary to carry out any works programme;
- (c) the Lease is not frustrated or the repairs or reinstatement or rebuilding prevented for any other reason beyond the control of the Lessee,

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

**6.4 Inability to Reinstate or Repair**

In the event that the Lessee is prevented from repairing or reinstating having regard to the provisions of clause 6.3 or to the insurance moneys available, then this Lease may be terminated at the option of the Lessee by notice in writing to the Lessor. The Lessee shall be under no obligation to clear the Improvements or restore the Land, where termination is pursuant to this clause.

**6.5 No Compensation Following Destruction**

In the event of any destruction or damage to the Improvements or any other improvements on the Land or any other chattels or fixtures whatsoever in or on the Land the Lessee or any one claiming under the Lessee shall not be entitled to any compensation or payment whatsoever from the Lessor.

**7 Indemnities**

**7.1 Lessee to Occupy at Own Risk**

The Lessee agrees to occupy and use the Land at the Lessee's risk and hereby releases the Lessor from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to the Lessee or any other person or any property in or about the Land.

**8 Default by Lessee**

**8.1 Default by Lessee**

If at any time:

- (a) the annual rent is in arrears for 20 Working Days and the Lessor thereafter gives notice to the Lessee specifying that breach and the same is not remedied within 20 Working Days after the date of the Lessor's notice; or
- (b) any other material breach of this Lease which prejudices the Lessor remains unremedied for 30 Working Days after the Lessor gives written notice to the Lessee specifying that breach; or
- (c) if the Lessee shall make or enter into or endeavour to make or enter into any

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composition assignment or other arrangement with or for the benefit of the Lessee's creditors; PROVIDED THAT this subclause (c) shall not apply while the Sovereign is the Lessee; or

(d) in the event of the insolvency bankruptcy or liquidation of the Lessee;

the Lessor may re-enter and the term shall terminate on such re-entry but without prejudice to the rights of either party against the other PROVIDED THAT for so long as the Sovereign is the Lessee hereunder, the Lessor shall be required to give to the Lessee 20 Working Days prior notice of any intention on the part of the Lessor to re-enter the Land and terminate the lease.

**8.2 Interest on Unpaid Moneys**

Without prejudice to the other rights, powers and remedies of the Lessor under this Lease, if any rent or other moneys owing by the Lessee to the Lessor or by the Lessor to the Lessee on any account whatsoever pursuant to this Lease shall be in arrear and unpaid for 20 Working Days after the due day for payment thereof (whether any formal or legal demand therefor shall have been made or not) such moneys shall bear daily interest compounded on quarterly rests and computed in respect of each quarter from such due date until the date of payment in full of such moneys at the rate of 2% over the average weighted overdraft rate for the last completed quarter, as published by the Reserve Bank, and such interest shall be recoverable in like manner as rent in arrears. In the event that the Reserve Bank ceases to publish such rate then the rate of interest for the purposes of this clause shall be 2% above the bank overdraft rate charged by the Lessor's banker as at the said due date of payment.

**8.3 Lessor may Remedy Lessee's Default**

Without prejudice to the other rights powers and remedies of the Lessor the Lessor may elect to remedy at any time without notice any default by the Lessee under this Lease and whenever the Lessor so elects all costs and expenses incurred by the Lessor (including legal costs and expenses) in remedying such default shall be paid by the Lessee to the Lessor forthwith on demand.

**9 Option for Renewed Lease**

**9.1 Option for Renewed Lease**

If the Lessee shall during the term duly and punctually pay the rental payable hereunder and duly observe perform and keep all the covenants and conditions on the part of the Lessee herein contained or implied, and shall give notice in writing to the Lessor at least 3 months prior to the expiry of the term of the desire of the Lessee to take a renewed lease of the Land, then the Lessor at the cost and expense of the Lessee will grant to the Lessee a renewed lease of the Land and the Lessee will take on lease the Land for the term specified for the purposes of this clause in Schedule A, such term to run from the expiration of the prior term.

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**9.2 Terms of Renewed Lease**

- (a) The renewed Lease shall be at a rental as at the commencement of the term of the renewed lease determined pursuant to clause 2.2 as if the commencement date of the renewed Lease was a "review date" for the purposes of that clause,
- (b) The renewed Lease shall otherwise be upon the same terms and conditions as this Lease including this present provision for the renewal thereof and all provisions ancillary or in relation thereto except that the term of this Lease plus all further terms specified in Schedule A shall expire on the Final Expiry Date specified in Schedule A.

**10 Costs**

- 10.1 The parties shall each pay their own solicitors' costs on preparing and finalising this Lease or any renewal or variation of this Lease.
- 10.2 Subject to clause 12 the Lessee shall be responsible for payment of all registration fees including agency charges imposed and all government tax duty or imposts at any time payable on this Lease or any renewal or variation to this Lease.
- 10.3 The Lessee shall pay for all reasonable costs, charges and expenses for which the Lessor shall become liable in consequence of or in connection with any breach or default by the Lessee in the performance or observance of any of the terms, covenants and conditions of this Lease.

**11 Quiet Enjoyment**

- 11.1 The Lessee paying the rent hereby reserved and performing and observing the terms of this Lease on its part to be performed and observed shall peaceably hold and enjoy the Land without hindrance or interruption by the Lessor or any person or persons claiming under the Lessor until the expiration or sooner determination of this Lease.
- 11.2 The Lessor shall pay all taxes and assessments charged upon the Land other than those which the Lessee is obliged to pay hereunder

**12 Registration**

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