**Common Property Licence Agreement**

**Common Property [No.XX on XDXXXXXXXX]**

**Owners Corporation [No.X on Plan No. XXXXXXXXX]**

**The party or parties whose details are set out in Item 1 of the Schedule The party or parties whose details are set out in Item 2 of the Schedule**

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**THIS COMMON PROPERTY LICENCE AGREEMENT** is made on the ………….. day of 2016

**PARTIES**

1. The party or parties named and described in Item 1 of the Schedule as the Licensor. (“**Licensor**”)
2. The party or parties named and described in Item 2 of the Schedule as the Licensee. (“**Licensee**”)
3. The party or parties named and described in Item 3 of the Schedule as the Guarantor. (“**Guarantor**”)

**RECITALS:**

1. The Licensor is the registered proprietor of the Licensed Area.
2. The Licensee is or will be the registered proprietor of the Premises.
3. The Licensor has agreed to grant to the Licensee a Licence of the Licensed Area on the terms and conditions contained in this Agreement.
4. The Guarantor has agreed to guarantee the performance of the Licensee’s obligations under this Agreement.

**THE PARTIES AGREE:**

# DEFINITIONS AND INTERPRETATION

## Definitions

In this Agreement:

“**Agreement**” means this Common Property Licence Agreement.

“**Building**” means the building situated at [ADDRESS]

“**Claim**” means and includes any claim, action, proceeding or demand made against a person however arising including out of the terms of this Agreement.

“**Commencement Date**” means the date in item 7 of the Schedule.

“**Common Property**” means the areas identified as Common Property [No. X in the Plan of Subdivision.]

“**Government Agency**” means any government or any public, statutory, governmental, semi- governmental, local governmental or judicial body, entity or authority and includes a Minister of the Crown (in any right), and any person, body, entity or authority exercising a power pursuant to any law.

“**GST**” means GST within the meaning of the GST Act.

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

“**Guarantor**” means the person(s) named in item 3 of the Schedule and, if more than one Guarantor is named, means both of them jointly and severally.

“**Insolvency Event**” in relation to a party to this Agreement means and includes where:

* + 1. a body corporate fails to comply with a statutory demand, is unable to pay its debts when due, obtains protection from its creditors, is or takes any steps to be wound up or otherwise dissolved, has a liquidator, provisional liquidator, official manager, receiver, receiver and manager, an administrator or an agent appointed to it or, except to reconstruct or amalgamate while solvent, or enters into a scheme of arrangement or composition with, or conducts a re-organisation, moratorium or other administration involving any class of its creditors;
    2. a person becomes entitled to exercise any power of sale over any part of the undertaking or property of the relevant party;
    3. an individual or any director or authorised officer of a body corporate becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth), or becomes or is declared bankrupt; or
    4. anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

“**Land**” means the land described in Item 4 of the Schedule on which the Building is situated.

“**Licence**” means the irrevocable licence granted by the Licensor to the Licensee pursuant to clause 2.1 of this Agreement.

“**Licence Fee**” means the fee described in Item 5 of the Schedule.

“**Licensed Area**” means that part of Common Property No. 1 shown marked in yellow and blue in Annexure A.

“**Loss**” means and includes any damage, loss, cost, expense or liability incurred or sustained by a person (either directly or indirectly) however arising and whether present or future, fixed or unascertained, actual or contingent, special or consequential including:

1. liability to third parties;
2. legal costs (on a solicitor own-client basis) incurred including legal costs incurred as a result of a default under this Agreement or in respect of enforcing any indemnity or defending any Claim brought by any party, including a third party, in respect of a matter which is the subject of an indemnity; and
3. loss, liability, damage or expense arising from or in any way connected with an act, default or omission or other event in respect of which an indemnity is given;

“**Lot**” means a lot in the Plan of Subdivision.

“**Occupant**” means any lawful occupant from time to time of the Premises and includes the officers, employees and invitees of the Occupant.

“**Owners Corporation Rules**” means the rules of the Licensor (as amended from time to time).

“**Payment Date**” means the Commencement Date.

“**Permit**” means any permit, consent or approval required by any Government Agency in connection with the Permitted Use including any planning permit.

“**Permitted Use**” means the right for the Licensee to use the Licensed Area for the use set out in Item 10 of the Schedule.

“**Plan of Subdivision**” means Plan of Subdivision [No. XXXXXXXXX], a copy of which is hereto attached as Annexure B

“**Premises**” means the Premises referred to in Item 9 of the Schedule.

“**Services**” means the services provided to the Licensed Area (if any) including, without limitation, electricity and all plant and equipment necessary for the delivery of the Services to the Licensed Area.

## Interpretation

In this Agreement, unless the context requires otherwise:

* + 1. the singular includes the plural and vice versa;
    2. a gender includes the other genders;
    3. the headings are used for convenience only and do not affect the interpretation of this Agreement;
    4. other grammatical forms of defined words or expressions have corresponding meanings;
    5. a reference to a document includes the document as modified from time to time and any document replacing it;
    6. if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
    7. the word “person” includes a natural person and any body or entity whether incorporated or not;
    8. the word “month” means calendar month and the word “year” means 12 months;
    9. the words “in writing” include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
    10. a reference to a thing includes a part of that thing;
    11. a reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
    12. wherever “include” or any form of that word is used, it must be construed as if it were followed by “(without being limited to)”;
    13. money amounts are stated in Australian currency unless otherwise specified;
    14. a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (defunct body), means the agency or body that performs most closely the functions of the defunct body; and
    15. an agreement, obligation, covenant, representation or warranty made by two or more persons is made by them jointly and by each of them severally and an agreement, obligation, covenant, representation or warranty made in favour of two or more persons is made for the benefit of them jointly and for each of them severally.

## Inconsistencies

To the extent of any inconsistencies between the terms of this Agreement, the terms of any prior agreement or the Owners Corporation Rules, the terms of this Agreement shall prevail and the parties shall execute such further documentation as may be required to amend such agreements or documents in accordance with this Agreement.

# LICENCE

## Licence

In consideration of the Licence Fee and the obligations of the Licensee under this Agreement, the Licensor grants to the Licensee, a licence; for the term specified in Item 6 of the Schedule, to:

* + 1. use and occupy the Licensed Area for the Permitted Use;
    2. enter onto and use the Common Property in common with the Licensor and others permitted by the Licensor for the purpose of gaining access to the Licensed Area.

## Assignment and sub-licence by licensee

* + 1. If the Licensee transfers its interest as registered proprietor of the Premises to a third party, the Licensee must transfer, assign or novate all or part (as applicable) of its rights and obligations under this Agreement to the transferee of the Premises with effect from the date of the transfer of the Premises.
    2. The parties acknowledge and agree that the Licensee may, in its absolute discretion and without deferring to or seeking the consent of the Licensor, grant a sub-licence of its rights and obligations under this Agreement to any Occupant of the Premises.
    3. If the transferee pursuant to clause 2.2(a) or the sub-licensee pursuant to clause 2.2(b) is a corporation, the directors of the transferee or sub-licensee (as applicable) must guarantee the performance of the Licensee's obligations under this Agreement on substantially the same terms as set out in clause 7.
    4. The Licensor hereby consents to any assignment or novation contemplated by clause 2.2(a) and to any sub-licence contemplated by clause 2.2(b) and agrees to sign (if required) any agreement, deed or other document in respect of such assignment, novation or sub-licence if it is requested to do so by the Licensee.

## Licensee's Positive Obligations

The Licensee must:

* + 1. pay the Licence Fee to the Licensor on or before the Commencement Date and thereafter annually on each anniversary of the Commencement Date;
    2. reimburse to the Licensor the cost of any insurance premiums effected by the Licensor in respect of the Licensed Area;
    3. pay or reimburse to the Licensor the amount of any Loss or Claim suffered or incurred by the Licensor as a result of the Licensee's use or occupation of the Licensed Area including any Claim by a third party;
    4. pay or reimburse to the Licensor the amount of any Loss or Claim suffered or incurred by the Licensor in relation to any breach of this Agreement by the Licensee;
    5. observe and comply with all reasonable directions given by the Licensor in connection with the Licensed Area which are not inconsistent with the terms of this Agreement;
    6. maintain the Licensed Area and repair any damage caused to the Licensed Area as a result of the Licensee's conduct (or otherwise reimburse to the Licensor for the cost of all cleaning and maintenance of the Licensed Area);
    7. obtain at its cost (or the cost of any Occupants) any Permit which is required in connection with the Licensee's use of the Licensed Area and comply with the provisions of such Permit at all times; and
    8. comply and ensure that its officers, employees, subcontractors and invitees comply with the Owners Corporation Rules at all times.

## Licensee's Negative Obligations

The Licensee must not:

* + 1. do or suffer to be done anything in the Licensed Area which is inconsistent with the Permitted Use;
    2. do anything in the Licensed Area which would prejudice any insurance policy of the Licensor;
    3. cause any nuisance, damage, obstruction, annoyance or inconvenience to the occupiers of the Building or to other users of the Licensed Area;
    4. damage or deface any part of the Licensed Area;
    5. other than in connection with the Permitted Use, install any fixtures or fittings in the Licensed Area without the prior written consent of the Licensor;
    6. permit or suffer to be permitted any activity in the Licensed Area which constitutes a breach of any Permit issued in respect of the Licensed Area, any law or the Owners Corporation Rules; or
    7. assign or in any way dispose of its interest in this Agreement without the prior written consent of the Licensor, except where clause 2.2 applies.

## Licensee Acknowledgements

The Licensee acknowledges that:

* + 1. unless clause 2.3 applies, the Licensed Area is to be used only by and for the benefit of the Occupant of the Premises and in connection to any business conducted at the Premises;
    2. the Licensor shall be entitled to enter the Licensed Area at any time without prior notice for any purposes whatsoever;
    3. the Licensor has or may grant rights to any other person upon any terms it deems appropriate provided that such rights do not conflict with the rights granted to the Licensee under this Agreement;
    4. the Licensor, shall be entitled to the free and uninterrupted passage of Services through ducts, pipes and wires which are now or may at any later time be in, under, over or passing through the Licensed Area; and
    5. the Licensor shall be entitled to access for itself or such persons claiming through or under it such Services as is reasonably necessary from time to time for the purposes of inspecting, repairing, replacing, altering or cleaning them.

## Rights subject to third parties

The Licensee acknowledges that the rights are granted to the Licensee under this Agreement are subject to the rights of the Licensor and the owners and occupants of other Lots.

# OBLIGATIONS OF THE LICENSOR

## Permits

* + 1. The Licensor must promptly sign all applications and consents necessary to enable the Licensee (or its Occupants) to obtain any Permit required for the Permitted Use.
    2. The Licensor authorises the Licensee to execute any document on its behalf in connection with an application by the Licensee (or its Occupants) for any Permit or approval.

## Notify the Licensee

The Licensor must immediately provide to the Licensee a copy of any notice or communication received by the Licensor from any Government Agency affecting or otherwise in connection with the Licensed Area.

## No Change to Common Property

The Licensor shall not do any thing or sign any document that results in the Licensed Area (or any part of it) becoming a part of the common property of a third party or a Lot unless:

* + 1. the Licensor first obtains the Licensee's consent (which will not be unreasonably withheld); and
    2. the Licensor procures that the transferee of the Licensed Area enters into such documentation as is reasonably required by the Licensee to ensure that the Licensee's rights

# RISK, LIMITATION OF LIABILITY AND INDEMNITY

## Use of Licensed Area at Licensee's Own Risk

Subject to and to the extent permitted by any law, the Licensee shall use the Licensed Area at its own risk and the Licensor will not be liable in contract, tort or otherwise for any Loss or Claim suffered by the Licensee or any of its officers, employees or invitees irrespective of whether any such Loss or Claim is caused by the negligence or otherwise of the Licensor.

## Indemnity

Subject to and to the extent permitted by any law, the Licensee indemnifies and shall keep indemnified the Licensor from and against any Loss or Claim by any person whether direct, indirect, consequential or special arising out of or alleged to arise out of the use by the Licensee of the Licensed Area howsoever such Loss or Claim may arise and irrespective of whether it is due to the negligence, omission or default of the Licensor or its officers, employees or invitees.

## Release of Licensor

The Licensee hereby releases and forever discharges the Licensor from all liability in relation to any Loss or Claim suffered or incurred by the Licensee in respect of the loss or damage to any property of the Licensee that is used or kept in the Licensed Area irrespective of whether any such loss or damage is caused by the negligence or otherwise of the Licensor.

# DEFAULT BY LICENSEE

## Termination by Licensor

The Licensor may terminate this Agreement by written notice to the Licensee if the Licensee breaches a term of this Agreement and such breach continues for 30 days after written notice of such breach has been given by the Licensor to the Licensee.

## Automatic Termination

The Licence shall automatically terminate without prejudice to any rights accrued by the Licensor for any antecedent breach of this Agreement by the Licensee, if:

* + 1. an Insolvency Event occurs in relation to the Licensee; or
    2. the Licensee is no longer the registered proprietor of the Premises and the Licensee has not transferred, assigned or novated its interest in this Agreement to the transferee of the Premises in accordance with clause 2.2.

# REMOVAL OF LICENSEE'S PROPERTY

1. Upon termination of this Agreement, the Licensee must, at its own cost, immediately remove its property from the Licensed Area and make good any damage caused to the Licensed Area or the Building as a result of such removal to the Licensor's satisfaction.
2. If the Licensee fails to comply with its obligations under clause 6(a), the Licensor may, at its option, perform the Licensee's obligations under clause 6(a) and recover the cost of doing so from the Licensee as a debt due payable on demand.

# GUARANTEE

## Guarantee

The Guarantor hereby guarantees to the Licensor the due, punctual and proper performance by the Licensee of all duties and obligations to be observed and performed by the Licensee under this Agreement and each Guarantor hereby indemnifies and shall keep so indemnified the Licensor against any Loss incurred or sustained (either directly or indirectly) by the Licensor and against any Claim made against the Licensor as a result of, in connection with or due to any default in the performance or observance of any duties and obligations on the part of the Licensee to be performed and observed under this Agreement.

## Indemnity

Each of the indemnities set out in clause 7.1 are continuing indemnities and shall constitute a separate and independent obligation of the party giving the indemnity from its other obligations under this Agreement and shall survive the execution, delivery, and termination of this Agreement and shall not be discharged by the winding up of the Licensee.

## Liability of Guarantor

The liability of the Guarantor will not be affected by:

* + 1. any party granting the Licensee time or any other indulgence, or the party agreeing or electing not to sue the Licensee; or
    2. any variation of this Agreement.

# NO TENANCY

The rights hereby conferred are non-exclusive and contractual only and nothing in this Agreement shall be construed as creating any tenancy between the parties or shall confer upon the Licensee any proprietary right or interest in the Licensed Area (or any part thereof) and subject to the rights of the Licensee conferred by this Agreement the Licensor shall be entitled to the full use and enjoyment of the Licensed Area for such purpose or purposes as it thinks fit.

# COSTS

## Costs Payable by Licensee

The Licensee must pay upon demand the reasonable costs incurred by the Licensor in respect of:

* + 1. the negotiation and execution of this Agreement including the review of this

Agreement by a Solicitor;

* + 1. any variation, assignment, surrender or termination of this Agreement;
    2. any breach of this Agreement by the Licensee; and
    3. the exercise or attempted exercise by the Licensor of any right or remedy against the Licensee.

# GST

## Amounts otherwise payable do not include GST

Except where express provision is made to the contrary and subject to this clause 10 the consideration payable by any party under this Agreement represents the value of any taxable supply for which payment is to be made.

## Liability to pay any GST

Subject to clause 10.4, if a party makes a taxable supply in connection with this Agreement for a consideration which, under clause 10.1 or clause 10.3 represents its value, then the party liable to pay for the taxable supply must also pay at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.

## Reimbursements

If this Agreement requires a party to pay, reimburse or contribute to an amount paid or payable by the other party in respect of an acquisition from a third party for which the second party is entitled to claim an input tax credit the amount required to be paid, reimbursed or contributed by the first party will be the value of the acquisition by the second party plus, if the second party's recovery from the first party is a taxable supply, any GST payable under clause 10.2.

## Tax Invoice

A party's right to payment under clause 10.2 is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

# MISCELLANEOUS

## Notices

A notice, consent, approval, request or demand in connection with this Agreement must be left at or posted by prepaid post to the address of the addressee, in item 8 of the Schedule, or to such other address (including email) or facsimile number notified in writing by that party to the other party and is taken to be received:

* + 1. if email, in accordance with the *Electronic Transactions Act 2000*;
    2. if hand delivered, upon delivery;
    3. if posted in Australia, on the third business day after posting;
    4. if posted outside Australia, on the seventh business day after posting; and
    5. if sent by facsimile, when the machine sending the facsimile generates a report showing that the total number of pages of the facsimile were successfully sent to the facsimile number of the addressee.

## Governing Law, Jurisdiction and Service

This Agreement is governed by the law applicable in [STATE] and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of [STATE].

## Severability

Part or all of any provision of this Agreement that is illegal or unenforceable may be severed from this Agreement and the rest of this Agreement continue in force unless the severance means that this Agreement no longer substantially gives effect to the parties' intentions under this Agreement immediately before severance.

## Prior Breaches

Rights in connection with a breach of this Agreement are not affected by the expiry or termination of this Deed.

## Approvals or Consent

Unless this Agreement expressly says otherwise, the Licensor must act reasonably in giving its consent or approval to any request by the Licensee.

* 1. **Counterparts**

This Agreement may consist of a number of counterparts.

* 1. **Waiver**

No waiver by a party of one breach of any covenant or provision in this Agreement shall operate as a waiver of another breach of the same or any other.

* 1. **No Variation**

The parties acknowledge and agree that a variation to this Agreement will not be effective unless it is documented in writing and signed by the parties.

**EXECUTED** as an Agreement.

**THE COMMON SEAL** of **OWNERS CORPORATION** )

**[NO. X ON XXXXXXXXX]** is affixed to this document ) in accordance with section [X] of the [RELEVANT LEGISLATION] in the presence of: )

…………………………………………………………………………. Director

………………………………………………………………. Director / Secretary

…………………………………………………………………………. Full Name:

………………………………………………………………. Full Name:

**SIGNED SEALED AND DELIVERED** by **[NAME]**

in the presence of: )

………………………………………………………………………….. Witness

………………………………………………………………..

**[NAME]**

…………………………………………………………………………. Full Name of Witness

**SIGNED SEALED AND DELIVERED** by **[NAME]**

in the presence of: )

………………………………………………………………………**..** Witness

……………………………………………………………

**[NAME]**

……………………………………………………………………… Full Name of Witness

**[SCHEDULE]**

|  |  |  |
| --- | --- | --- |
| **Item 1** | **Licensor:** | **OWNERS CORPORATION [NO. X ON PLAN NO.XXXXXXXXX]**  of [ADDRESS] |
| **Item 2** | **Licensee:** | The party or parties who are registered proprietors of the Premises, which as at the date of this Agreement:  **[NAME]**  and  **[NAME]**  Both of  [ADDRESS] |
| **Item 3** | **Guarantor:** | Where the Licensee is a corporation, the directors of the Licensee, who as at the date of this Agreement are:  **N/A** |
| **Item 4** | **Land:** | The land situated at and known as [ADDRESS] being the whole of the land contained in the Plan of [Subdivision No. XXXXXXXXX] |
| **Item 5** | **Licence Fee:** | [$1 per annum] |
| **Item 6** | **Term** | [99 years] |
| **Item 7** | **Commencement Date:** | The date of this Agreement. |
| **Item 8** | **Address for service:** | **Licensor's address for service**  Address: [ADDRESS]  **Licensee's address for service**  Address: [ADDRESS] |
| **Item 9** | **Premises:** | That part of the area known as Common Property [No. X in the Plan of Subdivision XXXXXXXXX] shown marked in yellow and labelled ‘A’ in Annexure A. |
| **Item 10** | **Permitted Use:** | The licensee will be granted access to the Premises for the purposes of:  1. The installation, maintenance and repair of solar panels which benefit the property at [ADDRESS] |

|  |  |  |
| --- | --- | --- |
|  |  | more particularly described on certificate of title [Volume XXXXX Folio XXX] as well as all appurtenances necessary for the continued use and uninterrupted operation of the solar panels. |

**ANNEXURE A**

“A” – Licensed Area

(The photograph below is for demonstation pruposes only - insert your own)



ANNEXURE B

PLAN OF SUBDIVISION [NO. XXXXXXXXX]