

Dated this day of 20

BETWEEN

The University of the South Pacific

LESSOR

AND

LESSEE

LEASE

**MUNRO LEYS
LAWYERS
LEVEL 3 PACIFIC HOUSE
BUTT STREET
SUVA, FIJI**

Common Areas	means all those areas of the Land and Building provided by the Lessor from time to time for common use by the Lessee and other occupants of the Building, including the entrances, roads, paths, gardens, stairways, elevators, car parking areas, lighting and other common amenities
Conditions	means the conditions set out in Item 7 to be fulfilled prior to the Lessor taking on lease of the Premises
Default Interest	means the rate set out in Item 8
Expiration Date	means date set out in Item 9 on which the Term will expire
Fixtures and Fittings	means the improvements, fixtures, fittings, furnishings, plant, machinery, chattels and equipment of the Lessor in or on the Premises as set out in Schedule 2
Item	means an Item set out in Schedule 1
Land	means the land described in Item 10
Lease	means this lease of the Premises to the Lessee
Lessee	means the Lessee and the Lessee's executors, administrators, successors and permitted assigns and where the context permits the sub lessees, licensees, servants, employees, agents, contractors, customers and other invitees of the Lessee
Lessee's Property	means any improvements, fixtures, fittings, furnishings, plant, machinery, chattels and equipment brought onto the Premises by the Lessee (whether before or after the Commencement Date)
Lessor	means the Lessor and the Lessor's permitted successors and assigns, and where the context permits the servants and agents of the lessor
Non-Resident	a person or entity which is not a Resident
Number of renewals	means the further terms set out in Item 11
Permitted Use	means the intended use of the Premises as set out in Item 12

Premises	means the premises described in Item 13 including Fixtures and Fittings (if any) and all floor coverings, curtains, blinds, ceilings, light fittings, air conditioning, lifts, partitioning and other equipment provided by the Lessor from time to time to service the Premises
Premises Rent	means the amount set out in Item 14
Percentage	means percentage set out in Item 15 representing area taken up by the Premises as percentage of the total Building area excluding Common Areas
Rent	means the Premises Rent, the Car Park Rent and the Pro-Rated Percentage of the Building Expenses, and any other amounts payable by the Lessor as required by the Lease or as agreed between the parties
Rent Review Dates	means the dates identified in Item 16
Rent Review Process	means the process specified in Schedule 3
Renewed Term	means the additional term(s) set out in Item 11
Schedule	means a schedule to this Lease
Security Bond	means the sum set out in Item 17
Term	means the term described out in Item 18
VAT Decree	means value added tax charged or levied under the VAT Decree
VAT Decree	means the Value Added Tax Decree 1991 as amended and all regulations made under it.

1.2 Interpretation

In this Lease

- a) words denoting one gender shall include all other genders and words denoting the singular number include the plural and vice versa

- b) a “person” includes any individual, company, corporation, incorporated society, limited partnership, firm, partnership, joint venture, association, organization, trust, state, or agency of state, government department or authority in each case whether or not having separate legal personality
- c) reference to any legislation or to any provision of any legislation includes any amendment, modification, consolidation or re-enactment of, or any legislative provision substituted for, and all legislative and statutory instruments issued under, such legislation or such provision
- d) the words "written" and "in writing" include any means of visible reproduction of words in a tangible and permanently visible form
- e) reference to clauses, items in a schedule, schedules and annexures are references to clauses, items in a schedule, schedules and annexures of this Lease
- f) any schedules to this Lease shall have the same effect as if set out in the body of this Lease
- g) reference to any party to this Lease or any other agreement or document includes the party’s successors and permitted assigns or nominees
- h) where a word or phrase is defined, other grammatical forms of that word or phrase have corresponding meanings
- i) reference to any document or agreement includes references to such document or agreement as novated, supplemented, varied or replaced from time to time except to the extent excluded by the terms of this Lease or that other document or agreement
- j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Lease or any part of it
- k) the headings to clauses or schedules are for ease of reference only and do not form part of this Lease or affect its interpretation
- l) if any day appointed or specified by this Lease for the payment of any money or the doing of any act falls on a day that is not a Business Day, the day appointed or specified will be the next Business Day

- m) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Suva, Fiji even if the obligation is to be performed elsewhere
- n) reference to “agree” or “agreement” means agreement in writing
- o) where obligations bind more than one person those obligations shall bind those persons jointly and severally
- p) benefits and burdens shall be binding upon the parties and their respective successors and personal representatives and any permitted assigns or transferees and references to the parties shall be construed accordingly
- q) any covenant not to do anything also constitutes an obligation not to suffer, permit or cause that thing to be done
- r) references to covenants include conditions and agreements and include covenants implied or expressed
- s) to “perform” a covenant shall include to keep, observe and fulfil that covenant
- t) a right granted or reserved may be exercised from time to time and at all times
- u) any reference to a “month” or “monthly” shall mean respectively calendar month and calendar monthly

2. LEASE

The Lessor leases the Premises to the Lessee for the Term, at the Rent and the Lessee takes on lease from the Lessor, the Premises and the use of the Car Park Spaces and the right of the Lessee to use in common with the Lessor and any other occupants of the Premises, the Common Areas upon the terms set out in this Lease.

3. RENT AND CHARGES

3.1 Covenant to pay Rent

The Lessee shall pay Rent (or any reviewed Rent set in accordance with clause 3.2) to the Lessor monthly in advance, the first of such payments to be made on the Commencement Date and then on the same day of each month thereafter, during the Term.

3.2 Rent Reviews

Rent shall be reviewed on the Rent Review Dates in accordance with the Rent Review Process.

3.3 VAT

The Lessee shall pay to the Lessor, or as the Lessor shall direct, VAT on the Rent and other moneys payable by the Lessee under this Lease. VAT in respect of Rent shall be payable on each Rent payment date and in respect of any other payment shall be payable upon demand.

3.4 Rates, taxes and charges

If demanded by the Lessor in writing, the Lessee shall duly and punctually pay to the appropriate authority or to the Lessor, or to such person as the Lessor may direct, all rates, taxes, assessments, duties, impositions, service charges and outgoings which may be imposed or charged upon the Premises or upon the owner or occupier of them. In the event of any rates, taxes, assessments, duties, impositions, service charges and outgoings imposed or charged upon the Land or the Building, the Lessee shall be liable to pay the Lessor the amount imposed or charged as a pro-rated proportion of the area of the Premises over the area of the Land or the Building, as applicable. For the avoidance of doubt, the Lessee's pro-rated share for rates, taxes, assessments, duties, impositions, service charges and outgoings in respect of the Land and Buildings shall be at the Pro-Rated Percentage.

3.5 Interest on overdue payments

The Lessee shall pay to the Lessor at the Default Interest on all rent, payments and other monies payable by the Lessee to the Lessor under this Lease, if any amount is overdue for more than fourteen (14) Business Days whether formally demanded or not.

4. SECURITY DEPOSIT

The Lessee shall pay the Security Deposit to the Lessor on or before Commencement Date which shall be:

- (a) held by the Lessor as security for all or any loss or damage accruing to the Lessor during the Term arising from any breach by the Lessee of this Lease (and may be applied by the Lessor whether during the Term or after its end to compensate it for such loss or damage) and

- (b) refundable to the Lessee no later than 30 Business Days after the end of the Term provided that or to the extent that there has been no breach by the Lessee for which some or all of the Security Deposit has had to or will be applied.

5. TERM

5.1 Term of lease

The Term shall commence on the Commencement Date and, unless earlier extended, shall expire on the Expiration Date.

5.2 Right to renew

If Item 11 provides for a right to Renewed Terms and the Lessee has:

- (a) at all material times and in respect of each of the terms and conditions duly observed such terms and conditions of this Lease and
- (b) given to the Lessor not less than three months' notice in writing prior to the Expiration Date (which notice shall be irrevocable) of intention to renew
- (c) the Lessor shall at the cost of the Lessee renew this Lease by way of a deed of renewal (or as near to it as circumstances require) for the next relevant further term of years fixed in Item 11 commencing from the day after the Expiration Date of the preceding term.

5.3 Monthly tenancy

If the Lessee with the consent of the Lessor continues to occupy the Premises beyond the Expiration Date ("holding over") or sooner determination of the Term, such occupation shall be a monthly tenancy terminable by one month's written notice, at the Rent then payable and otherwise on the same covenants and agreements (so far as applicable to a monthly tenancy) as are expressed or implied in this Lease.

6. INSURANCE

6.1 Parties' responsibilities

The Lessor shall insure, and keep insured, the Property against destruction or damage by fire, earthquake, storm, water damage and malicious damage and such other risks as the Lessor may from time to time require, to the full insurable value of the Property on an indemnity cover basis or, at the option of the Lessor, up to the full replacement value of the Property, such insurance to be effected with such insurance office as the Lessor may from time to time select.

6.2 Lessee's responsibilities

The Lessee will insure its fit out, furniture, fittings, stock equipment and/or machinery. The Lessee will effect and keep in force a policy of insurance with a reputable insurance company and punctually pay all premiums in respect of such policies. If requested by the Lessor, the Lessee must provide copies of all its current insurance policies to the Lessor within 24 hours of request.

6.3 Lessee's warrants

The Lessee will not do anything by which any insurances for the Premises or the Building may be rendered void or voidable or for which the premiums may be increased beyond the ordinary rates charged for similar premises or buildings and will immediately upon demand pay to the Lessor any increase in the premiums which may be payable by reason of any act or default of the Lessee but without in any way limiting the liability of the Lessee in respect of any breach of this clause.

6.4 Lessee's cover

The Lessee will effect and keep effected in respect of the Premises and its business, a public risk policy being not less than \$1,000,000.00 (One Million Dollars) with a reputable insurance company and will, if requested by the Lessor, provide the Lessor with copies of the receipts for the premiums paid for that policy and /or a certificate of currency of such policy. The Lessee must not let any insurance policy lapse under any circumstance and in the event any policy of insurance lapses, it must advise the Lessor of such lapse and immediately takes steps to reinstate it. Once reinstated, it must advise the Lessor and provide it with evidence of the reinstatement.

7. INDEMNITIES

7.1 Lessee's indemnity

The Lessee agrees to occupy use and keep the Premises at the risk of the Lessee and hereby releases to the full extent permitted by law the Lessor and its agents, employees, contractors and employees, in the absence of any negligence or intention on their part, from all claims and demands of every kind resulting from

any accident damage or injury occurring therein and the Lessee expressly agrees that, in the absence of any such negligence or intention, the Lessor shall have no responsibility or liability for any loss of or damage to fixtures or personal property of the Lessee.

7.2 Extent of indemnity

The Lessee will and does indemnify the Lessor and forever holds it harmless from and against all actions, claims, demands, losses, damages, costs and expenses for which the Lessor shall or may be or become liable in respect of or arising from:

- (a) the negligent use, misuse, waste or abuse by the Lessee or any employee, agent, sub-tenant or any other person claiming through or under the Lessee, of the water, gas, electricity, oil, lighting and other services and facilities of the Premises
- (b) overflow or leakage of water, including rain water, in or from the Premises, having origin within the Premises or caused or contributed to by any act or omission on the part of the Lessee, employees, agents, sub-tenants or other persons claiming under the Lessee
- (c) loss, damage or injury from any cause within the direct or indirect control of the Lessee, to property or person caused or contributed to by the use of the Premises by the Lessee or any employee, agent, sub-tenant or other person claiming under the Lessee
- (d) loss, damage or injury from any cause within the direct or indirect control of the Lessee, to property or person within or without the Premises, occasioned or contributed to by any act, omission, neglect, breach or default of the Lessee or any employee, agent, contractor, sub-contractor, sub-tenants or other person claiming under the Lessee
- (e) loss, damage or injury from any cause within the direct or indirect control of the Lessee, to property or person within or without the Premises occasioned by any defect or want of repair for which the Lessor is responsible under this Lease, but of which the Lessee has not notified the Lessor
- (f) any action or omission of the Lessee or any employee, agent, contractor, sub-contractor, sub-tenants or other person claiming under the Lessee.

8. MAINTENANCE, REPAIR AND ALTERATION

8.1 Lessee to keep Premises in good repair

- (a) The Lessee shall keep the interior of the Premises, including the Fixtures and Fittings, in good repair and condition as they were at the Commencement Date and at the expiration, or sooner determination, of the Lease shall yield up the Premises in good repair and condition.
- (b) The obligation of the Lessee stated in clause 8.1(a) does not include responsibility for fair wear and tear from reasonable use and any damage caused by flood, fire, storm, tempest, act of God where such damage is not attributable to any act or omission on the part of the Lessee or persons under the control of the Lessee.
- (c) The Lessee shall replace, at the Lessee's expense, any broken glass or breakage or damage to doors, windows, light fittings and power points in the Premises and keep that part of the electrical system of the Premises from the switchboard to all power outlets in good operating condition.

8.2 Lessee's further maintenance obligations

The Lessee shall punctually, at the Lessee's expense:

- (a) ensure that all routine waste is placed daily in suitable receptacles and any excess waste and rubbish is removed from the Property
- (b) make good to the satisfaction of the Lessor acting reasonably any damage to any part of the Property caused by the Lessee or Persons under the control of the Lessee
- (c) replace all glass in the Property broken by the Lessee or Persons under the control of the Lessee
- (d) keep clean and replace all damaged or non-operative light globes, tubes and fittings within the Premises
- (e) take any steps necessary to control any pest infestation occurring in, or emanating from, within the Premises
- (f) repair, or where appropriate replace, heating, lighting, electrical, or plumbing fittings installed in the Premises broken or damaged by the Lessee or Persons under the control of the Lessee
- (g) paint and decorate those parts of the interior of the Premises which have previously been painted and decorated when they reasonably require repainting and redecoration
- (h) keep all floor coverings in the Premises clean and replace all worn or

damaged floor coverings with floor coverings of a similar quality when reasonably required by the Lessor

- (i) keep the suspended ceiling in the Premises clean and replace all ceiling worn or damaged other than by fair wear and tear with ceiling of a similar quality when reasonably required by the Lessor
- (j) be responsible for the security of the Premises (including where the Lessor provides security for the Property)
- (k) comply with all Building Rules, statutes, regulations and by-laws
- (l) comply with any notices or orders which may be given by any competent authority in respect of the Premises or their use by the Lessee and keep the Lessor indemnified in respect of all such matters and
- (m) shall, except during business hours, keep the windows and exterior doors of the Premises closed and securely fastened or locked and at the appropriate times before or during severe storms or cyclones, ensure that all windows and doors are closed and securely fastened or locked and securely affix to the Premises any cyclone shutters supplied by the Lessor.

provided that the Lessee shall be under no liability in respect of any structural alterations required in terms of clauses 8.2(k) and (l) unless that liability arises out of the Lessee's use or occupation of the Premises and the number and/or gender of persons under the control of the Lessee.

8.3 Toilets, sinks and drains

The toilets, sinks and drains shall be used for their designed purposes only and no substance or matter shall be deposited in them which could damage or block them and any damage to them caused by misuse of the Lessee or those for whom the Lessee is responsible shall be made good by the Lessee forthwith.

8.4 Rubbish removal

The Lessee shall ensure the regular removal of all rubbish and trade wastes from the Premises and the area surrounding the Premises and will not leave bins or containers outside Premises nor deposit any goods or rubbish or other obstruction in any entrance to the Premises or in any corridor or passage or stairway to the Premises nor allow any goods to be packed or unpacked at the corridors, passage or stairways.

8.6 Security

The Lessor may in its sole discretion provide security personnel to guard the Building at the cost of the Lessee and incorporated in the Building Expenses. The Lessee may hire its own security guard or security firm to provide security to the Premises during such hours as considered reasonable by it. If the Lessee wishes to hire its own security, it shall give written notice to the Lessor and it must comply with any reasonable direction given to it by the Lessor in regulating any security arrangements. Notwithstanding anything else contained in this Lease, under no circumstances whatsoever shall the Lessor be liable to the Lessee or any of its employees, agents, customers, permitted sub-tenants or any other person claiming through or under the Lessee for any loss, injury or damage caused as a result of the Lessor not providing security to the Building or Premises.

8.7 Air conditioning and smoke detection systems

The Lessee shall be responsible for the upkeep, maintenance and servicing of any air conditioning system or any smoke detection system installed in the Premises, in accordance with a servicing program provided by the Lessor and all servicing costs will be paid by the Lessee

8.8 Notice of damage and defects by Lessee

The Lessee shall immediately give notice to the Lessor of:

- (a) any damage or accident to, or defects in, the Premises or in the Property or in any of the Services or other facilities provided by the Lessor in the Premises or the Property and
- (b) any circumstances occurring within the Premises or the Property likely to cause damage or injury.

9. ASSIGNMENTS, SUBLETTING AND CAVEATS

9.1 Assignment

The Lessee shall not assign, sublet or otherwise part with the possession of the Premises or any part of it without first:

- (a) Obtaining prior written consent of the Lessor and
- (b) Providing the name, addresses and professions of any assignee to the Lessor

9.2 Conditions to assignment

As a condition precedent to the granting of the consent to an assignment to a

limited liability company that is not a public company, the Lessee shall also satisfy the Lessor that the shareholders of such company are responsible and financially solvent persons and if so requested by the Lessor, the holders of the majority of the shares in the capital of the Company must unconditionally guarantee the due and punctual observance and performance by such company of its obligations under this Lease.

9.3 Subletting

Where the Lessor consents to a subletting, such consent shall extend only to such subletting and shall not be considered or construed as permitting any further sub-lease, without the prior written consent of the Lessor.

9.4 Deemed assignment

If the Lessee or any permitted sub-lease is a limited liability company that is not a public company, then any change in the legal or beneficial ownership of any of the shares in the capital of the company which results in the change in the effective management or control of the company shall be deemed to be an assignment of this Lease and shall be deemed to be an assignment of this Lease and shall be subject to the provisions of this clause.

9.5 Insolvency

This clause shall extend to all assignees by operation of law or any bankruptcy or insolvency of the Lessee or any permitted assignee of the Lessee.

9.6 Caveats

The Lessee:

- (a) must not register a caveat against the Land nor permit anyone claiming an interest through the Lessee to do so;
- (b) will, if the Lessee does register a caveat or permits anyone claiming an interest through or on behalf of or at the instruction of the Lessee to register such a caveat the Lessee, be liable for all damages suffered and costs incurred by the Lessor or any other persons in connection therewith including the costs and expenses removal
- (c) will withdraw the caveat or procure the withdrawal of the caveat (as appropriate) forthwith upon being requested to do so by the Lessor
- (d) irrevocably appoints the Lessor (or the Lessor's solicitor) as the Lessee's attorney and agent to prepare, sign, and register a withdrawal of any

caveat lodged by the Lessee and will pay the costs of so doing immediately upon demand by the Lessor.

10. PERMITTED USE

The Lessee shall not use the Premises or any part of it, nor will it permit the Premises or any part of it to be used for the purpose other than for the Permitted Use.

11. COMMON AREAS

The Lessor shall maintain the Common Areas throughout the Term and the Lessee is granted the right of non- exclusive use, in common with others, for their proper and intended purposes.

12. ALTERATIONS

12.1 Alterations and additions to premises by Lessee

- (a) The Lessee shall not use or install in the Premises internal partitions other than of a type, quality and size approved by the Lessor.
- (b) The Lessee shall not bring upon the Premises or Land any plant, machinery or other equipment:
 - (i) which is not reasonably necessary or proper for the conduct of the Lessee's use of the Premises or
 - (ii) which is of a weight, nature or size as to cause or be likely to cause any structural or other damage to or to exceed the designed loadings of the floors, walls or lifts or any other parts of the Property
 - (iii) the operation of which is likely to interfere with the quiet use and enjoyment of the Property by any Occupant(s), or any person lawfully entitled to the use and enjoyment of any contiguous or proximate property.
- (c) Before bringing any heavy or bulky machinery, plant or equipment onto the Property the Lessee shall give to the Lessor **10 Business Days** prior notice, included within such notice shall be a full specification of the equipment. The Lessee shall observe and comply with any directions given by the Lessor and, if deemed to be necessary by the Lessor, allow the Lessor to supervise the routing, installation and location.

- (d) Notwithstanding anything to the contrary expressed or implied in this Lease to the contrary, the Lessee shall indemnify the Lessor from any and all costs losses or expenses (howsoever defined) incurred as a direct or indirect result of the Lessee's introduction to and/or use in the Premises of any machinery, plant or equipment.
- (e) The Lessee shall not make alterations or additions to the Premises, nor install or alter any partitioning, nor install, alter or interfere with any equipment, fitting or fixture or the heating, ventilating or other system servicing, or relating to the Premises or the Property, without the Lessor's prior written approval.
- (f) In seeking the Lessor's approval under clause 12.1(e) the Lessee shall submit plans and specifications of the proposed work. The Lessor may require as a condition of approval that:
 - (i) the work be supervised by a person nominated by the Lessor
 - (ii) the work be executed by contractors or tradesmen approved by the Lessor
 - (iii) the Lessee pays all costs incurred by the Lessor in considering the proposed works and in their supervision including the fees of architects or other building consultants employed by the Lessor
 - (iv) the Lessee obtains all approvals or permits necessary to enable the proposed work to be lawfully effected, and on request produces to the Lessor copies of them and
 - (v) upon completion of the work the Lessee produces to the Lessor any certificates of compliance issued by the relevant authorities.
- (g) The Lessee shall reimburse the Lessor for any costs incurred by the Lessor as a result of the installation, operation, or removal of any alterations, additions, partitions, equipment, fixtures, fittings, plant or machinery.

12.2 Removal of Lessee's Property on termination

- (a) The Lessee shall, if required by the Lessor:
 - (i) prior to, or on, the expiration of the Term remove all partitions, alterations or additions installed or made by the Lessee and

- (ii) make good any damage to the Property caused by such removal or otherwise caused by the Lessee and
 - (iii) where the Term is determined for any reason, effect such removal and making good of damage immediately after determination.
- (b) If the Lessee fails to complete any removal and making good when required under clause 12.2 the Lessor may either:
 - (i) do so, and the Lessee shall on demand pay all costs and expenses incurred by the Lessor in so doing or
 - (ii) elect not to effect such removal in which case the Lessor shall give notice in writing to the Lessee that unless the Lessee effects removal and reinstatement/making good within **10 Business Days** of the date on which the notice is given, the partitions, additions, fixtures and/or fittings not removed shall be forfeited to the Lessor without compensation. If the Lessee fails to comply with the notice the partitions, alterations, additions fixtures and/or fittings shall, at the expiration of the 10 Business Day period, become the property of the Lessor.
- (c) If the Lessee has at the Expiration Date observed all of the terms and conditions of this Lease, the Lessee shall be entitled to remove all partitions in and improvements to the Premises made by the Lessee subject to the Lessee both repairing and making good all damage caused in the removal, and restoring the Premises to their condition prior to the Lessee making those alterations and improvements.

13. RIGHTS RESERVED BY LESSOR

13.1 Maintenance by Lessor

The Lessor may use, maintain and repair all Services and Fixtures and Fittings in, on or passing through the Premises or the Property, but in so doing the Lessor will cause as little inconvenience to the Lessee as is reasonably possible.

13.2 Entry by Lessor to view and effect repairs and alterations

The Lessor may enter upon the Premises with all necessary materials and equipment at all reasonable times and on reasonable notice (but at any time and without notice in the case of an emergency):

- (a) to view the condition or state of repair of the Premises and to ascertain whether or not there has been any breach of the covenants in this Lease
- (b) to carry out maintenance, repairs or other works to the Premises or Services to the property or to any adjacent Property
- (c) to execute any work required to remedy a defect which is the Lessee's duty to remedy if the Lessee has not, within **10 Business Days** of the date of receipt of written notice from the Lessor requiring remedial action, taken that action, and without prejudice to other remedies, the Lessor may recover the costs of the remedial action from the Lessee on demand
- (d) for the purpose of complying with the terms of any statute affecting the Premises or the Property or any notice served on the Lessor or Lessee by any competent authority for which the Lessee is not responsible under this Lease
- (e) in the event the Premises or the Property are either destroyed or damaged for the purpose of rebuilding or restoration and
- (f) for the purpose of carrying out any repairs, alterations, additions or other works to the utility or other services provided to the Premises and other areas of the Property.

In exercising such rights the Lessor shall use best endeavours to minimise disturbance to the Lessee.

13.4 Work by Lessor to remedy Lessee's default

The Lessor may elect to, at any time without notice, remedy 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 on a solicitor/client basis) in remedying such default shall be paid by the Lessee to the Lessor immediately on demand. Penalty interest at the Default Interest Rate shall accrue upon any sums expended by the Lessor, in remedying a default by the Lessee of seeking to enforce compliance by the Lessee, from the date of payment by the Lessor until repayment in full by the Lessee.

13.5 Removal of Lessee's chattels and improvements

Upon the expiration or earlier determination of this Lease, the Lessor may remove from the Premises any chattels situated in the Premises and place them outside the Property without being responsible or liable for any resultant loss or damage.

13.6 Access for re-letting

The Lessee shall at all reasonable times permit the Lessor to exhibit the Premises to prospective tenants or purchasers and shall during the period of **three months** prior to the Expiration Date allow the Lessor to affix to the Premises appropriate sale or re-letting notices.

14. COVENANTS BY LESSOR

14.1 Rates

Subject to the provisions of this Lease, the Lessor shall pay all rates, taxes and assessments charged upon the Property except those which the Lessee is obliged to pay. The Lessor has the right to recover appropriate apportionment of such rates and taxes through the allocation of Building Expenses under the terms of this Lease.

14.2 Quiet enjoyment

Subject to this Lease, the Lessee performing the Lessee's obligations under this Lease shall peaceably possess and enjoy the Premises without any undue interruption or disturbance from the Lessor.

14.3 Maintenance by Lessor

- (a) The Lessor shall keep and maintain the Property and all Services in good order and repair and shall:
 - (i) keep the roof and external walls of the Building, including external doors and windows, in waterproof condition and
 - (ii) take all reasonable steps to keep the Services in working order and condition

except so far as any repairs are necessitated by:

- A. the wrongful acts or defaults of the Lessee or Persons under the control of the Lessee
- B. repair or maintenance which the Lessee is responsible to undertake
- C. want of repair or defect in respect of building services so long as the Lessor is maintaining a service maintenance

contract covering the work to be done

- D. repair or maintenance which is not reasonably necessary for the Lessee's use and enjoyment of the Premises or
 - E. loss suffered by the Lessee arising from any want of repair or defect unless the Lessor shall have received notice in writing of such loss from the Lessee and shall not within a reasonable time after such notice have taken appropriate steps to remedy it.
- (b) The maintenance by the Lessor of a service maintenance contract for the work to be done shall be a sufficient discharge of the Lessor's obligations under clause 14.3(a) (ii).
 - (c) The Lessor shall not be liable for any damage, injury or loss incurred by the Lessee or by any person under the control of the Lessee caused by breach of this clause unless notice in writing of the disrepair causing the damage, injury or loss has previously been given to the Lessor by the Lessee and the Lessor has failed to remedy such disrepair within a reasonable time after receipt of such notice.
 - (d) The Lessor shall use its best endeavours to keep and maintain service maintenance contracts for lifts, air-conditioning and at the Landlord's option any other Services unless it is the obligation of the Tenant to maintain such contracts.

15. DEFAULT

15.1 Default by Lessee

If at any time:

- (a) the Rent is in arrears and unpaid for **10 Business Days** after any payment date (whether it has been demanded or not)
- (b) repairs required by any notice given by the Lessor under this Lease are not commenced within **10 Business Days** of such notice having been given, or if commenced are not diligently completed
- (c) the Lessor gives written notice to the Lessee specifying any breach (other than a breach of the type referred to in (a) or (b) above) in this Lease which breach remains unremedied **5 Business Days** after giving the notice

- (d) the Lessee (if an individual) shall be declared or adjudicated bankrupt or insolvent
- (e) any assignment shall be made of the Lessee's property for the benefit of creditors or if the Lessee compounds with the Lessee's creditors
- (f) the interests of the Lessee in or under this Lease or in the Premises shall be attached or taken in execution under any legal process or
- (g) the Lessee (if a company) has a resolution passed, or an order made by a Court, for the liquidation of the Lessee (except for the purposes of reconstruction approved by the Lessor), or if the Lessee is placed into receivership or under official or statutory management

the Lessor may:

- (i) distrain for rent or other moneys payable under this Lease remaining unpaid after the due date
- (ii) immediately, or at any time subsequently, and without any notice or demand re-enter (forcibly if necessary) the Premises or any part of the Premises and
- (iii) by such action determine the Lessee's estate and interest in the Premises and
- (iv) expel and remove the Lessee and the chattels of the Lessee and those claiming under the Lessee without being guilty of any manner of trespass or conversion

and in which event the Lessor shall not be liable for any loss or damage resulting from the exercise of any of its powers set out in this clause. Upon such event, this Lease shall cease and determine, but without releasing the Lessee from liability in respect of any breach of any covenant.

15.2 Default by Lessor

- (a) If the Lessor defaults under any provision of this Lease, the Lessee may give the Lessor notice of the default.
- (b) If the Lessor does not remedy the default within 10 Business Days after the Lessee giving that notice, the Lessee may (but is not obliged to) remedy the default.

- (c) The Lessor must pay on demand the Lessee's reasonable costs and expenses incurred in remedying the Lessor's default.
- (d) If the Lessor does not remedy the default within 20 Business Days after the Lessee giving that notice, the Lessee may end this Lease by giving notice to the Lessor.
- (e) If any payment is due from the Lessor to the Lessee under this Lease, the Lessee may with the prior written consent of the Lessor deduct that amount from the Rent and from other payments due from the Lessee to the Lessor under this Lease.
- (f) If the Lessee exercises any of its rights under this clause, the Lessee will not be liable to the Lessor and the Lessee's rights and remedies under this Lease or in connection with the Lessee's occupation and use of the Premises will not be affected.

15.3 Essential terms

- (a) The following covenants by the Lessee are agreed to be essential terms of this Lease:
 - (i) the covenants to pay Rent and other monies due to the Lessor throughout the Term where such breach of covenant gives rise to a right of re-entry pursuant to Lease
 - (ii) the covenant dealing with the use of the Premises
 - (iii) the covenant dealing with assignments, subletting and parting with possession
 - (iv) the covenant dealing with insurance and indemnities
 - (v) the covenants dealing with fit-out, repair and maintenance
 - (vi) the covenant dealing with alterations and additions
- (b) The Lessor is not prevented under this clause from stipulating any other provision of this Lease to be essential terms.

15.4 Compensation for breach

- (a) In the event the Lessee's conduct (whether acts or omissions) constitutes a repudiation of this Lease (or of the Lessee's obligations under this Lease) or constitutes a breach of any lease covenants, the

Lessee shall compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach.

- (b) The Lessor shall be entitled to recover damages against the Lessee in respect of repudiation or breach of covenant for the damage suffered by the Lessor during the whole of the Term.
- (c) The Lessor's entitlement to recover damages shall not be affected or limited by any of the following:
 - (i) the Lessee abandoning or vacating the Premises
 - (ii) the Lessor electing to re-enter or to terminate the Lease
 - (iii) the Lessor accepting the Lessee's repudiation
 - (iv) the parties' conduct constituting a surrender by operation of law.
- (d) The Lessor shall be entitled to recover damages against the Lessee in respect of the entire Term, including the periods before and after the Lessee has vacated the Premises and before and after the events referred to in clause 15.4(c) whether recovery proceedings are instituted before or after such conduct.

16. DAMAGE AND DESTRUCTION OF PREMISES AND BUILDING

16.1 Total destruction

If the Premises or any portion of the Property shall be destroyed or so damaged:

- (a) as to render the Premises untenantable, then the Term shall at once terminate or
- (b) in the reasonable opinion of the Lessor as to require the demolition or reconstruction of the Premises or the Building, then the Lessor may within three months of the date of damage or destruction give the Lessee one month's written notice terminating this Lease

and, in either case, the Rent shall cease to accrue from the date of termination. Any termination pursuant to this clause shall be without prejudice to the rights of either party against the other for any prior breach of

this Lease.

16.2 Partial destruction

- (a) If the Premises or any portion of the Property shall be damaged but not so as to render the Premises untenantable, and:
 - (i) the Lessor's policy or policies of insurance shall not have been invalidated or payment of the policy monies refused in consequence of some act or default of the Lessee and/or any person under the control of the Lessee and
 - (ii) the insurance monies actually received by the Lessor shall be adequate to repair the damage
 - (iii) all the necessary permits and consents shall be obtainable within a reasonable timeframe and
 - (iv) the Lessor does not exercise the right to terminate under clause 16.1(b)

the Lessor shall, with all reasonable speed, expend the insurance monies received by the Lessor towards repairing such damage or reinstating the Premises and the Property, but the Lessor shall not be liable to expend any sum of money greater than the amount of the insurance monies received.

- (b) Any repair or reinstatement shall be:
 - (i) carried out using such materials and form of construction and according to such plan as the Lessor thinks fit and
 - (ii) sufficient, so long as it is reasonably adequate, for the Lessee's occupation and use of the Premises and
 - (iii) carried out so as to cause as little disturbance to the Lessee as is reasonably possible.

The Lessee shall permit the Lessor and the Lessor's agents, servants and contractors with all necessary equipment and materials to enter the Premises to carry out repairs or reinstatement to the Premises or the Property.

- (c) Until the completion of the repairs or reinstatement a fair proportion of the Rent shall cease to be payable having regard to the nature and extent of the damage.
- (d) If any of the conditions in clause 16.2(a) are not met then the Term shall at once terminate but without prejudice to the rights of either party against the other for any prior breach.

17. TERMINATION FOR CONVENIENCE

- (a) In the event a party wishes to terminate this Lease for reasons best known to either of the party, six (6) months' written notice must be given by the terminating party to the other party of its intention.
- (b) Prior to terminating this Lease, the terminating party must ensure that all its obligations under this Lease (rent and other obligations) are fulfilled.
- (c) Any outstanding breach or obligation not satisfied as at the date of termination of the Lease by any event whatsoever including an early termination, shall be recoverable and the parties' rights shall survive termination of the Lease.

18. GENERAL

18.1 Notices

(a) Notices to be in writing

Any notice given pursuant to this Lease must be in writing and may be given by pre-paid express courier addressed to each other party at the address specified in this Lease or as subsequently notified in writing, or by hand delivery or facsimile to the same address and any such notice is deemed to have been received

- (i) if served by express courier on the date signed for
- (ii) if served by hand delivery, on the date delivered by hand
- (iii) if sent by facsimile transmission, when the transmitting machine produces a written report that the notice has been effectively sent to the other party

provided that if the notice is deemed under paragraph 18.1(c) to have been received on a day which is not a Business Day, it will be deemed to

have been received on the next Business Day.

(b) Address for service

The address for service of any notice is:

- (i) to the Lessor at the address and details set out in **Item 19**
 - (ii) to the Lessee at the address and details set out in **Item 20**
- (c) In the case of any notice or document required to be served or given by the Lessor, the same may be signed **on** behalf of the Lessor by any authorized officer of the Lessor or by the Lessor's solicitors.

18.2 Arbitration

- (a) Any dispute that arises from or touches upon this Lease must be referred to arbitration before a single arbitrator agreed upon by the parties or otherwise appointed in accordance with the Arbitration Act and with arbitration to take place otherwise in accordance with the Arbitration Act.
- (b) Nothing in the forgoing provisions shall prevent any party to this Lease from seeking urgent interlocutory relief from any court of competent jurisdiction.
- (c) Notwithstanding anything to the contrary expressed or implied in this Lease, the provisions of this clause shall survive the cancellation or termination of this Lease.

18.3 Compliance with laws

If any change in use requires compliance with any law or legal requirement the Lessor, as a condition of granting consent, may require the Lessee to comply with such law or legal requirement and to pay any compliance costs incurred by or otherwise for the account of the Lessor.

18.4 Compliance with Statutes and Regulations

- (a) The Lessee shall comply with the provisions of all statutes, ordinances, regulations and by-laws including any amendments to them relating to the use of the Premises by the Lessee or other lessees and will also comply with the provisions of all licenses, requisitions and notices issued by any competent authority in respect of the Premises or their use by the Lessee or other occupant **PROVIDED THAT:**

- (i) the Lessee shall not be required to make any structural repairs or alterations other than those required by reason of the particular nature of the business carried on by the Lessee or other occupants of the Premises or the number or gender of persons employed on the Premises
- (ii) the Lessee shall not be liable to discharge the Lessor's statutory or regulatory obligations as owner unless any particular obligation is the responsibility of the Lessee as an occupier of the Premises.

18.5 Acknowledgement

The Lessee acknowledges that it has before Commencement Date examined the entire interior and exterior of the Premises, including plumbing, heating and electrical appliances, smoke detector(s), Fixtures and Fittings, carpets and paint and have found them to be in good, safe and clean condition and repair and satisfactory in all respects for its purposes.

18.6 Confidentiality

The contents of this Lease are confidential and will not be disclosed by either party to this Lease. No third party (other than the parties' relevant employees, professional advisers or insurers) or may have access to this Lease except with the consent of the other party or as required by law or in order to enforce or take any step under this Lease. This clause survives the expiry or termination of this Lease.

18.7 Resumption

If the Premises or the normal means of access to the Premises are resumed or taken for any public purpose by any Authority, either party may by notice to the other end this Lease (without prejudice to the accrued rights of either party in respect of any default before the end of the Lease).

18.8 Reading down

If a provision of this Lease is held to be invalid or unenforceable, it is to be read down or severed to the extent of its invalidity or unenforceability and the validity and enforceability of the remaining provisions shall not be affected.

18.9 No set-off

Subject to any right of set-off that may be contained in this Lease, the Lessee

may not withhold or make a set-off against any money due to the Lessor:

- (a) under this Lease or in connection with the Lessee's occupation of the Premises on the grounds of any claim by the Lessee that the Lessor allegedly owes the Lessee money or has some cause of action against the Lessor arising out of this Lease or the Lessee's occupation of the Premises and
- (b) under any other agreement or arrangement with the Lessor on the grounds of any claim by the Lessee that the Lessor owes the Lessee money or has some cause of action against the Lessor under such agreement or arrangement.

18.10 Exclusion of implied statutory provisions

All covenants, powers or other provisions implied into leases by statute or law (including those implied in leases by virtue of the Property Law Act are to the extent permissible at law excluded from this Lease.

18.11 Entire agreement

This Lease constitutes the entire agreement between the parties in relation to its subject matter and supersedes any prior agreement(s) between the parties whether written or oral.

18.12 Variation

Any provision in this Lease may be varied by written agreement between the parties. No variation to this Lease will be legally enforceable unless it is in writing and signed by the parties.

18.13 Amendment, modification, etc

No amendment, modification or waiver in respect of this Lease will be effective unless evidenced in writing (including writing evidence by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes, or electronic messages on an electronic messaging system.

18.14 Force Majeure

- (a) In the event of inability of any party(s) to this Lease to perform its obligations under this Lease by reason of riot, earthquake, volcanic

activity, fire, storm, operation of law or other like cause beyond the control of that party (“**force majeure event**”), such party(s) shall, upon service of notice specifying the force majeure event (including due particulars of the time the force majeure event commenced having effect) (“**force majeure notice**”) on all other parties to this Lease, be released from its obligations under this Lease if and to the extent that such party(s) is prevented or delayed from performing such obligations by reason of that force majeure event (“**release**”), but without prejudice to any pre-existing claim or pre-existing liability in respect of this Lease.

- (b) No force majeure notice will be effectual unless it is served within a reasonable time of the occurrence of the force majeure event, such time to be determined having regard to the circumstances then prevailing.
- (c) The non-performing party shall forthwith upon the cessation of a force majeure event, serve each party to this Lease with notice specifying the cessation of the force majeure event (including due particulars of the time the force majeure event ceased having effect) (“**cessation notice**”).
- (d) For the avoidance of doubt:
 - (i) the service of a force majeure notice is a condition precedent to the non-performing parties’ reliance upon any release pursuant to this clause.
 - (ii) a release shall continue only for such time as the non-performing party is incapable of performing its obligations by virtue of the force majeure event.
 - (iii) any dispute concerning whether an event constitutes a force majeure event shall be resolved pursuant to the dispute resolutions provisions of this Lease.
 - (iv) no strike, lockout or similar industrial action shall comprise a force majeure event.

18.15 Counterparts

This Lease may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this Lease by signing any counterpart. The parties agree to execute any counterpart copies delivered to them for execution.

18.16 No representations

Each party warrants that it has entered into this Lease solely in reliance upon its own skill and judgment and it has not relied upon any oral or written representation made to it by the other party(s), or its employees or agents, and that it has made (and has been permitted a reasonable opportunity to make) its own independent investigations into all matters relevant to the subject matter of this agreement.

18.17 Further assurances

Each party shall sign, execute and do all deeds, acts, documents and things as may reasonably be required by any other party effectively to carry out and give effect to the terms and intentions of this Lease whether before or after the Commencement Date.

18.18 No registration

The Lessee shall not call upon the Lessor to execute a registrable memorandum of lease of the Premises and the Lessee shall not at any time lodge a caveat against any title to the Land comprised in the Property.

18.19 Independent Advice

The parties acknowledge that prior to entering into this Lease they were provided with a copy of this Lease and advised to, and provided with the opportunity of seeking independent legal advice as to its provisions.

18.20 Jurisdiction

This agreement is governed by Fiji law and the parties shall and do hereby submit to jurisdiction of the Fiji courts.

SCHEDULE 1

Item 1

Lessor

University of South Pacific, a regional tertiary institute established under the University of the South Pacific Act, Cap 266 with its main campus located at Laucala, Suva, Fiji

Item 2

Lessee

....., a duly registered company having its registered office at
....., Suva, Fiji

Item 3

Building Expenses per annum

- (a) Rates or levies payable to any local or statutory authority.
- (b) Charges for water, gas, electricity, sewerage and other utilities or services in the common areas. Rubbish collection charges.
- (c) National Fire Authority charges and the maintenance charges in respect of all fire detection and firefighting equipment.
- (d) Insurance premiums, related valuation fees, and any insurance excess in respect of a claim but not exceeding \$500.
- (e) Service contract charges for air conditioning, cleaning, other building services and security services.
- (f) Cleaning, maintenance and repair charges including charges for repainting, decorative repairs but excluding charges for structural repairs to the building (minor repairs to the roof of the building shall not be a structural repair).
- (g) Car parking area maintenance and repair charges but excluding charges for structural repair to any car parking area of the building.

Item 4

Car Park Rent

Included in the Rent

Item 5

Car Parking Spaces

One [1] car parking space(s) in the area outlined in yellow in Schedule 2

Item 6

Commencement Date

The Lease shall commence on XXst January 20XX unless otherwise agreed to by the parties in writing.

Item 7**Conditions**

[This Agreement shall be subject to the prior written consent of the Director of Lands, as head lessor of the Property, being granted to the Lessor to sublease the Property to the Lessee.]

[The Lessor and Lessee agree that:

- (a) This Agreement shall not be or become an agreement to lease any land unless and until the following is obtained:
 - (i) the consent of the Minister for Lands under section 6 and 7 of the Land Sales Act (Cap. 137) being granted to the Lessee to take on lease of the Premises and
 - (ii) the consent of the Director of Lands as head lessor of the Premises, being granted to the Lessor to sublease the Premises to the Lessee.
- (b) The Lessor (if clause a (ii) applies) shall be responsible for obtaining the consents set out in clause (ii) above. Parties shall co-operate with each other in all respects using best endeavors to secure the consents of the Minister for Lands and Director of Lands.
- (c) If such consents are not obtained by the within 180 days of the Agreement Date or such later date as the parties may in writing agree:
 - (i) this Agreement shall be void and of no effect save that the Lessee shall vacate possession and the Lessor shall be bound to refund to the Lessee the rent paid in advance (less an apportionment of rent up to the date of the Lessee vacating possession) and Bond paid by the Lessee
 - (ii) neither party shall have any further right or claim against the other under this Agreement.]

Item 8**Default Interest**

10%

Item 9**Expiration Date**

31st December 2017

- Item 10** **Land**
The whole of the land described as Crown Lease No.....being Lot ... located in the city of..., in Viti Levu and having an area ofha.
- Item 11** **Further terms**
1 [One] further terms of 3[Three] years
- Item 12** **Permitted use**
The Permitted Use will be for restaurant and fast food purposes.
- Item 13** **Premises**
That area situated at the of the Building known asand having an area of square meters as more particularly outlined in yellow on the plan in Schedule 2.
- Item 14** **Premises Rent**
\$..... (*In words*) Inclusive of VAT per annum
- Item 15** **Pro-Rated Percentage**
2.25%
- Item 16** **Rent Review Dates**
Commencement date of a further term
- Item 17** **Security Deposit**
The equivalent of 1 [one] months' Rent payable in accordance with clause ____.
- Item 18** **Term**
1 [One] year commencing on the Commencement Date.

Item 19

Address of the Lessor

Address:

The University of the South Pacific
Laucala Bay Rd
Suva

Facsimile:

Attention:

Email:

Item 20

Address of the Lessee

Address:

Facsimile:

Attention:

Email:

SCHEDULE 2

Affix here a clearly defined sketch plan of the Building and in respect of each Lease for a separate Lessee, highlight that tenant's space

SCHEDULE 3

Rent Review Process

Review

1. The Rent may be reviewed by the Lessor as follows (and for the avoidance of doubt the Lessor may combine or separate reviews of Rent and Car park Rent or waive its right to review any or all of them):
 - (a) The Lessor shall commence a review by not earlier than three (3) months prior to a rent review date or at any time up to the next following review date giving written notice to the Lessee (“Rent Review Notice”) specifying the rent considered by the Lessor to be the current market rent for that period between the Review Date and the next Review Date or the expiration of the Lease together with reasonable evidence which substitutes the rent (“New Rent”).
 - (b) If the parties cannot agree on the New Rent within fourteen (14) days of the Lessee receiving the Rent Review Notice, the Lessee may by written notice to the Lessor within twenty-eight (28) days after receipt of the Rent Review Notice, dispute the New Rent (“Dispute Notice”); the New Rent shall be determined in accordance with clause 2 below **PROVIDED THAT** the New Rent shall not be less than the Rent payable during the period of twelve (12) months immediately preceding the relevant Review Date.
 - (c) If the Lessee fails to give a Dispute Notice (time being of the essence) the Lessee shall be deemed to have accepted the New Rent specified in the Rent Review Notice.
 - (d) The New Rent so determined or accepted shall be the Rent from the Review Date.
 - (e) Pending the determination of the New Rent, the Lessee shall pay the Rent specified in the Rent Review Notice provided that the New Rent is substantiated by and made in accordance with clause 2 (below). Within 30 days of a binding determination of the New Rent being made, the parties must make an appropriate adjustment to the Rent for the difference in Rent actually paid and the Rent which should have been paid since the Review Date.

- (f) The New Rent at the option of either party may be recorded in a deed, the cost of which and the stamp duty on which shall be payable by the Lessee.
- (g) In the event that the Commerce Commission or any other governmental authority shall make any order or other determination under the Commerce Commission Decree 2010 or any other legislation restricting the amount of the New Rent below the sum otherwise determined under this clause then the New Rent shall be reduced to the same amount as the maximum Rent permitted by that order or determination but only for so long as that order or determination shall affect the New Rent.

2. Rent determination if parties disagree

- 2. If a Dispute Notice is given by the Lessee the New Rent may be determined by registered valuers acting as experts as follows:
 - (a) each party shall appoint a valuer and give written notice of the appointment to the other party within fourteen (14) days of the receipt by the Lessor of the Dispute Notice
 - (b) if a party fails to appoint a valuer within the fourteen (14) day period then the valuer appointed by the other party shall determine the New Rent and such determination shall be binding on both parties
 - (c) the appointed valuers, before commencing their determination, shall appoint an umpire who need not be a registered valuer
 - (d) the valuers shall determine the New Rent according to law of the premises and if they fail to agree then the New Rent shall be determined by the umpire
 - (e) each party shall be given the opportunity to make written or oral representations to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe and they shall have regard to any such representations but not be bound by them.

When the New Rent has been determined the valuers shall give written notice thereof to the parties. The notice shall provide as to how the costs of the determination shall be borne and such provision shall be binding on the parties.

If Lessee is an individual