

LEASE
New South Wales
Real Property Act 1900

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additional pages to the top left-hand
corner.

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

STAMP DUTY

Office of State Revenue use only

(A) **TORRENS
TITLE**

Property leased: if appropriate, specify the part or premises

Folio identifier **[INSERT]** PART, being the premises known as **[INSERT]** identified on the plan at Annexure B.

(B) **LODGED BY**

Document
Collection
Box

Name, Address or DX, Telephone and Customer Account Number if any

Reference (optional):

CODE

L

(C) **LESSOR**

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

(D)

Encumbrances (if applicable): Nil

(E) **LESSEE**

(F)

TENANCY:

(G) 1. **TERM:**

2. **COMMENCING DATE:**

3. **TERMINATING DATE:**

4. With an **OPTION TO RENEW** for a period of **[INSERT]** years set out in clause **22**

5. With an **OPTION TO PURCHASE** set out in clause N/A

6. Together with and reserving the **RIGHTS** set out in clause N/A

7. Incorporates the provisions or additional material set out in **ANNEXURE(S) A, B, C, D and E** hereto.

8. Incorporates the provisions set out in **MEMORANDUM** filed pursuant to section 80A Real Property Act 1900 as / registered **LEASE** No. N/A.

9. The **RENT** is set out in **item 9** of the Reference Schedule included in Annexure A.

DATE:
dd mm yyyy

(H) See Annexure A for execution.

Note: where applicable, the lessor must complete the statutory declaration below.

(I) **STATUTORY DECLARATION ***

Isolemnly and sincerely declare that--

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

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

Made and subscribed at in the State of on in the presence of-

- ☐ Justice of the Peace (J.P. Number:) Practising Solicitor
- ☐ Other qualified witness.....,

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

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

Signature of
witness:

Signature of
lessor:

.....

.....

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

** s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

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THIS IS ANNEXURE A TO THE LEASE BETWEEN [INSERT] AS LANDLORD AND
[INSERT TENANT] AS TENANT OF [INSERT DESCRIPTION OF PREMISES] DATED
[INSERT DATE]

Parties

Landlord: [INSERT NAME (ABN)]
6 Parramatta Square, 10 Darcy Street, Parramatta NSW 2150

Tenant: [Insert Tenant name and address]

Guarantor: [Insert Guarantor name and address (if any)]

Dated:

Reference Schedule

Item 1: Date:

Item 2: Trust Lands Folio Identifier **[INSERT]**, known as **[INSERT]**

Item 3: Premises: Part of the Trust Lands, being the premises known as **[INSERT ADDRESS]** identified hatched on the plan at Annexure B.

Item 3A: Licensed Area **[Insert]** identified on the plan attached at Annexure E

**Item 4: Delivery of notices:
(clause 23)**

Landlord **[INSERT]** (ABN **[INSERT]**)

Delivery address: 6 Parramatta Square, 10 Darcy Street, Parramatta
NSW 2150

Postal address: Same as delivery address

Email: **[INSERT]**

Attention: Director, Property Services

Tenant **[INSERT]** (ACN **[INSERT]**)

Delivery address: **[INSERT]**

Postal address: Same as delivery address

Email: **[INSERT]**

Attention: **[INSERT]**

Item 5: Payment Day: The first day of each month

Item 6: Term: **[Insert]** years

Item 7: Commencing Date: **[INSERT]**

Item 8: Terminating Date: **[INSERT]**

Item 9: Rent: (a) Rent (**clause 4.1**)
 [\$[insert] per annum

**Item 10: Rent Review Dates and
Rent Review Methods:**

Rent Review Date(s)

Rent Review Method

(a) Each anniversary of the Commencing Date during the Term (other than the Commencing Date and every **[x]** year anniversary of the Commencing Date); **[x]%**

(b) Every **[x]** years from the Commencing Date during the Term (other than the Commencing Date) Market rent review

Date);

- (c) During the Further Term – Each anniversary of the Commencing Date (other than the Commencing Date and every [x] year anniversary of the Commencing Date). [x]%

During the Further Term – every [x] years from the Commencing Date (other than the Commencing Date) Market rent review

Item 11: CPI city: Sydney

Item 12: Operating Costs: (a) **Tenant's Proportion of Operating Costs (clause 6.1(a))**

The proportion determined by the Gross Lettable Area of the Premises divided by the Gross Lettable Area of the Trust Land as calculated from time to time expressed as a percentage to two decimal places.

The Tenant's Proportion of the Operating Costs as at the Commencing Date is 100%.

Item 13: Use: (a) **Permitted Use (clause 10.1)**

Commercial offices including ancillary and related uses permitted by Law.[and any additional permitted use in accordance with the HOA]

(b) **Minimum Trading Hours (clause 10.4)**

Monday to Friday, between: [Insert as agreed]

or as varied in accordance with clause 16.7.

(c)

Licensed Area Permitted Use

[INSERT]

Item 15: Bank Guarantee: An amount equivalent to six (6) months' base Rent plus operating costs plus GST being [insert bank guarantee amount] as at the Commencing Date.

Item 16: Refurbishment Dates: Every [x] years from the Commencing Date, or as otherwise specified by the Landlord under clause 16.2(b).

Item 17: Further Term: [INSERT]

Item 18: Last Date: [INSERT]

Item 19: Guarantor: [INSERT]

Item 20: Licence Fee [INSERT]

Agreed terms

1 Interpretation

1.1 Definitions

In this document these terms have the following meanings:

Accounting Year

- (a) the period from the Commencing Date to the next 30 June or any other day that the Landlord notifies to the Tenant;
- (b) **each** successive period of 12 months commencing on 1 July; and
- (c) the period expiring on the Terminating Date or earlier termination of this lease and commencing on the preceding 1 July.

Asset Management Plan

means the asset management plan **[insert]**, a copy of which is attached to **Annexure C** to this lease and have been signed by the parties for the purpose of identification, as updated from time to time in accordance with **clause 12.7. [TO BE UPDATED IF THERE IS NOT YET A MANAGEMENT PLAN]**

ASX

ASX Limited ABN 98 008 624 691.

Authority

Any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal or other public or statutory authority, agency or entity.

Bank

An authorised deposit-taking institution as defined in the *Banking Act 1959* (Cth), the Reserve Bank of Australia or a state bank.

Bank Guarantee

A guarantee by a Bank acceptable to the Landlord to pay the Bank Guarantee Amount to the Landlord without reference to the Tenant that is:

- (a) for the Premises and covers all the Tenant's obligations under this document and any storage licence, car parking licence or other agreements ancillary to this document;
- (b) unconditional and irrevocable;
- (c) assignable;
- (d) without an expiry date; and
- (e) otherwise in a form and substance reasonably acceptable to the Landlord.

Bank Guarantee Amount

Initially the amount specified in **item 15** and then that amount as varied from time to time under **clause 21.4**.

Building	The building erected on the Land of which the Premises forms part, including the Landlord's Property.
Business Day	A day which is not a Saturday, Sunday or Bank or public holiday in New South Wales.
Claim	Includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.
Commencing Date	The commencing date set out in item 7 .
Common Areas	Those parts of the Building or the Land (as the case may be), if any, which are from time to time provided by the Landlord for common use by the occupants of the Building and Land (as the case may be) and others and include the entrances, stairways, toilets, escalators, lifts, passageways and other common amenities and conveniences.
Conservation Management Plan	Is the most updated management plan as found on https://www.environment.nsw.gov.au/topics/heritage/management-heritage-items/conservation-management-plans
Cost	A cost, charge, expense, outgoing, payment, fee or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid).
Current Market Rent	The current annual market rent for the Premises (exclusive of GST) on a Rent Review Date.
Dealing	Any: <ul style="list-style-type: none"> (a) Transfer; (b) Sublease; or (c) creation of a Security.
Default Rate	The rate which is 2% per annum above the rate charged by the Landlord's Bank on an unsecured overdraft accommodation over \$100,000 as at the due date for payment. A written statement by a manager of the Landlord's Bank is, in the absence of manifest error, conclusive evidence of that overdraft rate.
Further Term	The further term specified in item 17 of the reference schedule .
Gross Lettable Area	The gross lettable area calculated in accordance with the publication 'PCA Method of Measurement of Lettable Area (1997 Revision)' or, if the Landlord elects at any time during the Term, any subsequent method of measurement published or used by the Property Council of Australia.
Guaranteed Money	The Rent and all other amounts payable by the Tenant under this document.
Guarantor	The guarantor specified in item 19 .

Index Number	<ul style="list-style-type: none"> (a) The Consumer Price Index (All Groups) for the city set out in item 11 published from time to time in the Australian Statistician's Summary of Australian Statistics; or (b) if the Consumer Price Index (All Groups) is discontinued or suspended: <ul style="list-style-type: none"> (i) a replacement index agreed to by the Landlord and the Tenant which reflects fluctuations in the cost of living in the city set out in item 11; or (ii) if the Landlord and the Tenant do not agree on a replacement index, a replacement index which reflects fluctuations in the cost of living in the city set out in item 11 determined by a Valuer nominated by the president for the time being of the Australian Property Institute Inc (State Division) whose determination will be binding upon the Landlord and the Tenant. The cost of that determination will be shared equally between the Landlord and the Tenant.
Intellectual Property	<p>Any and all intellectual property rights throughout the world, including:</p> <ul style="list-style-type: none"> (a) any patent, copyright (including future copyright), trade mark (whether registered or unregistered), software, design, circuit layout right, trade, business or company name or other proprietary right, or any right to register such rights; and: (b) all present and future rights in an invention, discovery, trade secret, know-how, concepts, idea, data or formula
Landlord	The person identified on the covering Land and Property Information NSW lease form as the 'Lessor' and, where relevant, includes the Landlord's successors, assigns, employees, agents and contractors.
Landlord's Assessment	The Landlord's assessment of the Current Market Rent as at a Rent Review Date.
Landlord's Notice	A notice given by the Landlord to the Tenant stating the Landlord's Assessment.
Landlord's Policies and Procedures	The operating policies, procedures, guidelines and operations manual for the Premises and the Trust Lands prepared by the Landlord, as notified by the Landlord to the Tenant, and as may be amended from time to time
Landlord's Property	All plant, equipment, fixtures, fittings, furnishings and other property in the Premises which the Landlord provides and, if relevant, includes the Services in or connected to the Premises.

Last Date	The date specified in item 18 .
Law	Any statute, regulation, rule, proclamation, ordinance, by-law or code.
Lease End Date	The earlier of the expiry or termination of this lease.
Licence	means the licence over the Licensed Area granted in accordance with clause 2.2 of the lease.
Licence Fee	means the licence fee specified in Item 20 and reviewed and paid in accordance with the lease.
Licensed Area Permitted Use	means the use of the Licensed Area as specified in Item 13(c).
Loss	<p>Any loss (including loss of profit, loss of expected profit, loss of business (including loss or reduction of goodwill) and damage to reputation), Claim, action, liability, proceeding, summons, demand, notice, damage, death, personal injury, suit, judgment, injunction, order, decree, Cost, charge, expense, outgoing, payment, damages, diminution in value or deficiency of any kind or character which a party pays, suffers or incurs or is liable for including:</p> <ul style="list-style-type: none"> (a) liabilities on account of taxes; (b) interest and other amounts payable to third parties; (c) legal (on a full indemnity basis) and other expenses reasonably incurred in connection with investigating or defending any Claim or action, whether or not resulting in any liability; (d) amounts paid in settlement of any Claim or action; and <p>consequential loss and damage (irrespective of its nature or occurrence).</p>
Maintenance Schedule	means the schedule at Annexure D.
Minimum Trading Hours	The minimum required trading hours of the Premises as set out in item 13(b) .
Minister	means the Minister for Planning and Public Spaces, or any other Minister responsible for the Department of Planning, Housing and Infrastructure, or any person appointed to carry out the duties of the Minister in accordance with the Trust Act and also where the context allows, the Government of the State of New South Wales
National Construction Codes	The most updated version of the construction codes as found at https://ncc.abcb.gov.au/editions-national-construction-code or as updated from time to time.
Non-Structural Works	Means:

- (i) any items which would normally be included in the definition of Structural Works but which form part of the Tenant's fitout, Tenant's redevelopment, equipment and/or services;
- (ii) all applied finishes including paint, stains, wallpaper, plaster, render of tiles, membranes and coverings;
- (iii) any toppings, approved floor coverings and applied finishes which are to be maintained by the Tenant at the Tenant's cost, according to approved Landlord colours and finishes;
- (iv) all moldings, skirting, architraves, picture railings, cabinet work and associated joinery;
- (v) applied linings, claddings, finishes, paint, plaster stains, wallpaper, plaster, render, tiles, membranes, carpet or floor coverings;
- (vi) roof cladding material and associated flashings, drainage system, rainwater goods, gutters, rainwater heads, membranes;
- (vii) floor coverings, paint, coatings, oils, linings, carpets, floating floors and toppings;
- (viii) false and suspended ceilings and systems;
- (ix) doors, windows, shutters, footpath pavement lights, pavement cellar doors, ladders under-stair cupboards, vents, signs and associated frames, moldings and all hardware including hinges, locks hinges, door handles etc;
- (x) all building services fixtures, fittings, plant and equipment including plumbing, gas, drainage, stormwater, electrical, fire, communications, mechanical ventilation, airconditioning, refrigeration, lifts hoists etc;
- (xi) below ground basement and cellar water proofing;
- (xii) footpath cellar doors, ladders, under-stair cupboards;
- (xiii) all external pavement surfaces and timber decking; and
- (xiv) in relation to the Premises, any work agreed in writing between the Landlord and the Tenant as not being Structural Works.

Operating Costs

The money the Landlord is liable to pay relating to the operation and maintenance of the Land, including:

- (c) rates, charges, assessments, duties and levies

	imposed by any Authority;
	(d) taxes, other than income or capital gains taxes, imposed by any Authority;
	(e) land tax, calculated on the basis that: <ul style="list-style-type: none"> (i) the Land is the only land owned by the Landlord; (ii) the Land is not subject to a special trust within the meaning of the <i>Land Tax Management Act 1956</i> (NSW); and (iii) the Landlord is not a company classified as a non-concessional company under section 29 of the <i>Land Tax Management Act 1956</i> (NSW);
	(f) reasonable Costs of insurance premiums and related Costs and charges against all risks concerning the Land and the Landlord including: <ul style="list-style-type: none"> (i) public liability insurance; (ii) workers' compensation insurance for the Landlord's employees; (iii) reinstatement of the Land; (iv) machinery breakdown; and (v) consequential and economic loss;
	(g) cleaning the exterior and interior of the Land, including maintaining the bathrooms and the toilets in the Common Areas;
	(h) services to the Land, including internet services, pest control, waste, liquid and other garbage removal, fire prevention, caretaking and security (including, if the Landlord considers appropriate, 24 hour security monitoring services), air conditioning and electricity for the Common Areas; and
	any other items specified by the Landlord as operating costs to which the Tenant must contribute
Park	[TBA] Park
Payment Day	The Commencing Date and then in each subsequent month the day specified in item 5 .
Permitted Use	The use set out in item 13(a) .

Premises	<p>That part of the Building described in item 3 and shown on the Premises Plan, the boundaries of which are:</p> <ul style="list-style-type: none"> (a) the inside surface of the walls (under any paint or wall covering); (b) the outside surface of the shopfront and any windows, doors, gutters and soffits; (c) the lower surface of the ceiling (above any false or suspended ceiling); and (d) the upper surface of the floor (under any floor covering), <p>and includes the Landlord's Property.</p>
Premises Plan	The plan in annexure B .
Proposed Tenant	The proposed transferee, subtenant, licensee or other occupier under any proposed Dealing.
Refurbishment Date(s)	The date(s) specified in item 16 .
Refurbishment Works	Has the meaning given to it in clause 12.4(a) .
Relocation Notice	Has the meaning given to it in clause 16.4 .
Rent	The yearly amount set out in item 9(a) as varied under this document.
Rent Review Date	Each of the dates specified in item 10 .
Rent Review Method	The method of reviewing the Rent on each Rent Review Date as specified in item 10 .
Rules	The rules applicable to the Building and the Land, as set out in the schedule 1 , as changed from time to time in accordance with this document.
Security	A mortgage, charge (fixed or floating), pledge, lien (including unpaid vendor's lien or similar), lease, hire or hire purchase agreement and any other security interest or encumbrance.
Services	<p>Any services or systems provided to the Building and the Land, including:</p> <ul style="list-style-type: none"> (a) water, power, fuel, oil, garbage compacting and removal, waste disposal, sewerage, telecommunications, communication systems and public address systems, background music, security, air conditioning, ventilation, escalators, fire protection, lift services, washroom and toilet services; and (b) the wires, pipes, ducting and other means of providing those services or systems to the Building.

State Heritage Register	Has the meaning as defined in Part 3A of the <i>Heritage Act 1977</i> (NSW).
Structural Work	<p>Means any works carried out to any primary load bearing element of a structure or building or part thereof which primary function is to form the structural load supporting framework to which all internal and external claddings, roof coverings, finishes, fixtures, fittings, plant and equipment are attached and supported. For the sake of clarity, Structural Works include:</p> <ul style="list-style-type: none"> (i) external and internal load bearing walls, columns, piers, footings, sacrificial render and damp courses designed to prevent the vertical migration of moisture in load bearing walls; (ii) roofing framework including bearers, rafters, batons and elements supporting roof claddings and membranes; (iii) ceiling framework including hanging beams, batons, joists and struts; (iv) floor structure including bearers, joists, floor boards, concrete slabs, columns, piers and footings; (v) internal stairwells and associated balustrades; (vi) damp courses and flashings incorporated within walls and fixed structural elements; (vii) retaining walls; (viii) arch bars and lintels and associated flashings incorporated into the wall during construction; and (ix) in relation to the Premises, any other work agreed in writing between the Landlord and Tenant and being Structural Works.
Sublease	A sublease or other parting with possession of the whole or part of the Premises and the granting of any licence or concession relating to the Premises.
Tenant	The person identified on the covering Land and Property Information NSW lease form as the 'Lessee' and, where relevant, includes the Tenant's successors, assigns, employees, agents, contractors, invitees and customers.
Tenant's Assessment	The Tenant's assessment of the Current Market Rent as at a Rent Review Date.
Tenant's Notice	A notice given by the Tenant to the Landlord disputing the Landlord's Assessment and stating the Tenant's Assessment.

Tenant's Property	All plant, equipment, fixtures, fittings, furniture and other goods in the Premises and which are not the Landlord's Property.
Tenant's Proportion	The Gross Lettable Area of the Premises as a proportion of the Gross Lettable Area of the Land from time to time.
Related Body Corporate	Has the meaning given in the <i>Corporations Act 2001</i> (Cth).
Term	The term of this lease set out in item 6 . The expression includes, in the context of any of the Tenant's obligations or the Landlord's rights, any holding over period.
Terminating Date	The terminating date set out in item 8 .
Transfer	The transfer or assignment of the Tenant's interest under this document or in the Premises.
Trust Act	[TBA]
Trust Lands	The land described in Item 1 and known as [INSERT]
Trust Objects	The objects of the Trust as set out in [section 8 of the Trust Act] .
Valuer	A person who is a full member of the Australian Property Institute Inc (New South Wales Division) or a member of the Royal Institute of Chartered Surveyors and who has at least five years' experience as a valuer of similar premises of a similar premises as the subject.
WHS Law	The relevant work or occupational health and safety legislation (including the <i>Work Health and Safety Act 2011</i> (NSW), the WHS Regulation, acts, regulations, codes of practice, guidelines and Australian Standards).
WHS Regulation	The <i>Work Health and Safety Regulation 2017</i> (NSW) as amended from time to time.

1.2 Construction

Unless expressed to the contrary, in this document:

- (a) headings do not affect the interpretation of this document;
- (b) a reference to an item number is a reference to the corresponding item in the **reference schedule**;
- (c) words in the singular include the plural and vice versa;
- (d) any gender includes the other genders;
- (e) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (f) if any form of the word 'include' is used, it is to be read as if followed by the words 'without limitation';
- (g) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;

- (h) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, permitted assigns and persons substituted by novation;
 - (iii) any thing (including any amount) includes either the whole or any part of that thing;
 - (iv) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (v) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (vi) a right includes a benefit, remedy, discretion or power;
 - (vii) time is to local time in the city of Sydney;
 - (viii) '\$' or 'dollars' is a reference to Australian currency;
 - (ix) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (x) writing includes:
 - (A) any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and
 - (B) words created or stored in any electronic medium and retrievable in perceivable form;
 - (xi) the president of an Authority includes any person acting in that capacity;
 - (xii) an Authority which ceases to exist includes the Authority that replaces it or substantially performs the same functions or powers;
 - (xiii) a group of persons includes all of them together, any two or more of them together and each of them separately;
 - (xiv) this document includes all schedules and annexures to it;
 - (xv) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;
 - (xvi) this lease means the lease granted under **clause 2.1** and includes any renewal of it, holding over under it or any equitable lease or lease at law evidenced by the terms of this document, and irrespective of the lease not being effective as a lease or not being registered; and
 - (xvii) any act or omission of the Tenant includes any act or omission of any subtenant, licensee or assign;
- (i) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;
- (j) if the words 'Not applicable to this lease' appear against an item in the **reference schedule**, any clause referring or relating to that item does not apply to this lease; and
- (k) if there is any inconsistency between this lease and the Law, the Law will prevail and the relevant inconsistent provision of this lease will be deemed to

be varied or deleted accordingly

2 Grant of lease and licence

2.1 Grant of lease

Subject to the provisions of this document, the Landlord, for the Term:

- (a) leases the Premises to the Tenant; and
- (b) grants to the Tenant the right to use the Services and the Common Areas in common with others.

2.2 Grant of licence

- (a) The Landlord agrees to grant to the Tenant a non-exclusive licence of the Licensed Area during the Term for the Licensed Area Permitted Use in consideration of the Licence Fee.
- (b) For clarity, the Tenant must permit members of the public to use the Licensed Area.
- (c) The Tenant must pay the Licence Fee at the same time and in the same manner as the Rent. The Licence Fee will increase in accordance with clauses 5.1, 5.2, 5.3 and 5.10.
- (d) The Tenant warrants that it will use the Licensed Area in accordance with the Licensed Area Permitted Use.
- (e) In accordance with the Maintenance Schedule, the Tenant:
 - (i) is responsible for all necessary repairs and maintenance of the Licensed Area; and
 - (ii) must clean the Licensed Area, during the Term (at the Tenant's cost).
- (f) The Licence will terminate on the Terminating Date, or otherwise in accordance with clauses 16.4, 16.5 or 18 of this lease.
- (g) The Landlord may suspend the Licence temporarily at any time if it requires the Licensed Area (or any part of it) for any purpose including:
 - (i) carrying out repairs or other works to the Licensed Area, or any utilities or services located on, above or below Licensed Area;
 - (ii) to comply with any Laws or any notice affecting the Licensed Area for which the Tenant is not responsible under the Licence;
 - (iii) for any special promotions or major events as notified by the Landlord from time to time; and
 - (iv) for redevelopment or access to carry out works.
- (h) The Landlord agrees to give at least one week's written notice in the event that it wishes to exercise its rights under clause 2.2(g), except in the case of an emergency.
- (i) For clarity, the grant of the Licence under this clause 2.2 is a right in contract only and does not create any interests in the Premises or the Trust Land to the Tenant, including but not limited to an equitable lease.
- (j) Unless otherwise stated, the provisions of this lease also apply to the licence of the Licensed Area.

2.3 Holding over

- (a) If the Tenant continues to occupy the Premises after the Terminating Date with the Landlord's consent, the Tenant does so as a monthly tenant.

- (b) The terms of the monthly tenancy are the terms of this document which apply on the Terminating Date modified so as to apply to a monthly tenancy.
- (c) The Landlord or the Tenant may terminate the monthly tenancy on any day by giving at least one month's notice to the other.

3 Renewal or extension

3.1 Conclusion of the Lease

The Tenant acknowledges that the lease is for the Term and that no representation has been made to the Tenant that any extension or renewal of this lease will be granted by the Landlord save for any option to renew this lease expressly provided for in this lease.

4 Rent

4.1 Rent

- (a) The Tenant must pay the Rent to the Landlord by equal monthly instalments in advance on each Payment Day.
- (b) If necessary, the Landlord and Tenant must apportion the first and last instalments of the Rent on a daily basis.

5 Rent variation

5.1 CPI review

If the Rent Review Method specified for a Rent Review Date refers to (or includes) a reference to CPI, the Rent will vary on that Rent Review Date to the amount represented by A in the formula:

$$A = \frac{B \times C}{D}$$

where B is the Rent payable for the year immediately preceding the relevant Rent Review Date;

C is the Index Number for the quarter ending immediately before the relevant Rent Review Date; and

D is the Index Number for the quarter ending immediately before the immediately preceding Rent Review Date.

5.2 Fixed review

If the Rent Review Method specified for a Rent Review Date refers to (or includes) a reference to an amount or a percentage, the Rent will vary on that Rent Review Date:

- (a) in the case of a percentage, to an amount represented by A in the formula:

$$A = B + (B \times C)$$

where B is the Rent payable for the year immediately preceding the relevant Rent Review Date; and

C is the percentage rate; and

- (b) in the case of an amount, to that amount.

5.3 Market review

If the Rent Review Method for a Rent Review Date refers to (or includes) a reference to market or market rent review, the Rent must be reviewed as at that Rent Review Date in accordance with the procedural steps and the time period for each step provided in the following table.

Procedural step	Time period
(a) The Landlord gives a Landlord's Notice to the Tenant.	At any time before or after the relevant Rent Review Date but before the earlier of the next Rent Review Date and the Terminating Date.
(b) The Tenant may give a Tenant's Notice to the Landlord. If the Tenant fails to do so within the time period, the parties agree that the Rent as at that Rent Review Date is the Landlord's Assessment.	Within 28 days after the Landlord gives the Landlord's Notice.
(c) If a Tenant's Notice is given within the time period under clause 5.3(b) , the parties must try to agree on the Current Market Rent. If the parties agree within the time period, the Rent as at that Rent Review Date is the Current Market Rent as agreed.	Within 14 days after the Tenant gives the Tenant's Notice.
(d) If the parties do not agree on the Current Market Rent within the time period under clause 5.3(c) , the Landlord and the Tenant must jointly appoint a Valuer, to determine the Current Market Rent.	Within 28 days after the Tenant gives the Tenant's Notice.
(e) If the parties do not agree on the Valuer to be appointed within the time period under clause 5.3(d) , either party may request the President of the New South Wales Division of the Australian Property Institute Incorporated to nominate in writing a Valuer.	At any time after the expiry of the time period in clause 5.3(d) .

Procedural step	Time period
(e) The Valuer agreed on by the parties or nominated by the President of the New South Wales Division of the Australian Property Institute Incorporated must be instructed to notify the parties that it accepts the appointment as Valuer and the terms of that appointment under clauses 5.3(h) and 5.6 .	Within seven days after the agreement or nomination of the Valuer.
(g) If requested by the Valuer the Landlord and/or Tenant must when requested by the Valuer give the Valuer relevant information about the lease.	Within 14 days after the request by the Valuer.
(h) The Valuer must determine the Current Market Rent in accordance with the criteria under clause 5.7 . The amount determined by the Valuer as the Current Market Rent is the Rent as at that Rent Review Date. The Valuer will provide a report and valuation to the Landlord and Tenant. The Valuer's determination is final and binding on the parties.	Within one month after the Valuer's acceptance of the appointment.
(i) If the Valuer fails to comply with clauses 5.3(f), 5.3(h) or 5.6 , either party may request the President of the New South Wales Division of the Australian Property Institute Incorporated to nominate another Valuer until the Current Market Rent is determined under this clause 5.3 .	At any time.

5.4 Time of the essence

Time is of the essence as regards the time periods under **clause 5.3**, and if any time period is altered by agreement between the parties, time is of the essence as regards the altered time period. This means that if a time limit is not kept, the right attached is lost.

5.5 Current Market Rent agreement

Despite **clause 5.3**, the parties may at any time agree on the Current Market Rent and the Rent as at that Rent Review Date is the Current Market Rent as agreed.

5.6 Terms of Valuer's appointment

Any Valuer appointed under this document:

- (a) must give a written report and valuation:
 - (i) providing complete details of the reasons for the determination;
 - (ii) specifying the matters to which the Valuer had regard for the purposes of making their determination; and
 - (iii) specifying that the amount determined is exclusive of GST; and
- (b) acts as an expert and not as an arbitrator.

5.7 Criteria for determining Current Market Rent

- (a) The Current Market Rent must be assessed, agreed or determined:
 - (i) having regard to the current market rent of any comparable premises in the Building as at the relevant Rent Review Date;
 - (ii) having regard to the Australian Property Institute definition of Market Rent;
 - (iii) having regard to the terms of this document;
 - (iv) assuming, if the Building or the Premises are destroyed or damaged on or prior to the relevant Rent Review Date, that the Building and the Premises have been restored;
 - (v) by disregarding any period of rent abatement or reduction or other concession, inducement or arrangement, of whatsoever nature, agreed to secure in whole or in part the Tenant and any tenant of any premises in the Building;
 - (vi) by disregarding any breach of this document by the Tenant which may adversely affect the condition or rental value of the Premises;
 - (vii) by disregarding any alterations made to the Premises by the Tenant which may adversely affect the condition of the Premises or decrease the rental value of the Premises;
 - (viii) by disregarding the fact that part of the Term has elapsed as at the relevant Rent Review Date;
 - (ix) by disregarding any rent, fee or money received by any person under any sub-lease, sub-tenancy or occupation arrangement in respect of the Premises (other than this document); and
 - (x) by disregarding the value of any goodwill attributable to the Tenant's business or any fixtures or fittings within the Premises owned, hired or leased (other than from the Landlord) by the Tenant.

5.8 Costs of determination

The Landlord and the Tenant must pay:

- (a) their own costs relating to the determination of the Current Market Rent; and
- (b) the costs of any Valuer in equal shares.

5.9 Rent pending determination of review

If the Current Market Rent has not been determined as at a Rent Review Date to which **clause 5.3** applies, the Tenant must continue to pay Rent at the rate equal to the Rent immediately before the relevant Rent Review Date on account of the Rent until the Current Market Rent is determined.

5.10 Rent adjustment

On the next Payment Day after the Rent as at a Rent Review Date is agreed or determined under this **clause 5** the parties must adjust between themselves for the difference between any Rent paid by the Tenant on account under **clause 5.9** and the Rent payable on and from the relevant Rent Review Date.

5.11 Effect of variations

- (a) A variation in Rent under **clause 5**:
 - (i) takes effect on the relevant Rent Review Date; and
 - (ii) applies until the earlier of the next Rent Review Date and the Terminating Date.
- (b) Rent must not decrease as a result of a variation in Rent under this **clause 5**:

6 Operating costs

6.1 Payment of Operating Costs

- (a) The Tenant must pay the Tenant's Proportion of the Operating Costs to the Landlord.
- (b) If it has not already done so, the Landlord must, as soon as reasonably practicable after the Commencing Date, give to the Tenant the Landlord's estimate of the Tenant's Proportion of the Operating Costs for the first Accounting Year to the Tenant.
- (c) At least one month before the start of each Accounting Year other than the first Accounting Year, the Landlord must give to the Tenant the Landlord's estimate of the Tenant's Proportion of the Operating Costs for that Accounting Year.
- (d) The Tenant must pay the Landlord's estimate of the Tenant's Proportion of the Operating Costs to the Landlord by equal monthly instalments in advance on or before each Payment Day in the same way that the Tenant must pay Rent.
- (e) Within three months after the end of each Accounting Year, the Landlord must give to the Tenant a statement of all expenditure on Operating Costs in the previous Accounting Year and the Tenant's Proportion of the Operating Costs.
- (f) If the Tenant's Proportion of the Operating Costs is greater than the Landlord's estimate of the Tenant's Proportion of the Operating Costs then, subject to **clause 6.1(h)**, the Tenant must pay the difference to the Landlord on the next Payment Day.
- (g) If the Tenant's Proportion of the Operating Costs is less than the Landlord's estimate of the Tenant's Proportion of the Operating Costs then, subject to **clause 6.1(h)**, the Landlord must credit the difference to the Tenant in the next monthly statement or refund that amount.
- (h) For the month in which the Terminating Date or the date of earlier termination of this lease falls, the Landlord or Tenant must make the adjustment referred

to in **clause 6.1(f)** or **clause 6.1(g)** within 30 days of the Terminating Date or the date of earlier termination of this lease.

6.2 Calculation of Tenant's Proportion

- (a) The Landlord must, acting reasonably, calculate the Tenant's Proportion from time to time.
- (b) The Landlord must notify the Tenant if the Tenant's Proportion changes.

6.3 Separately assessed Operating Costs

If any item of Operating Costs is attributable or assessed solely in respect of the Premises, the Tenant must pay the whole of that item of Operating Costs and the Landlord must exclude that item of Operating Costs from the Operating Costs for which all tenants are liable.

7 Utilities

7.1 Specific tenancy charges

The Tenant must pay to the Landlord:

- (a) all rates, taxes and other charges imposed on or in relation to the Premises, the Tenant's Property and the Permitted Use to the extent not included in Operating Costs; and
- (b) to the extent not included in **clause 7.1(a)**, the Landlord's Costs for trade waste, water, and other Costs which the Landlord reasonably determines to have been incurred in respect of the Premises as a result of the Tenant's use of the Premises.

7.2 Services

- (a) The Tenant must pay for all Services separately connected and supplied to the Premises or connected and supplied to the Building and separately metered to the Premises, including water, electricity, gas, garbage removal and telephone.
- (b) The Tenant must pay for the Cost of the installation of meters to separately service the Premises if:
 - (i) required by the Landlord (acting reasonably); or
 - (ii) requested by any relevant Authority.

7.3 Services outside Minimum Trading Hours

If the Tenant opens the Premises for trading outside the Minimum Trading Hours with the Landlord's prior consent, then the Tenant must pay, on demand by the Landlord, its share of the Landlord's Costs of providing any of the Services to the Premises or the Building at the Tenant's request outside the Minimum Trading Hours. The Tenant's share is based on the Gross Lettable Area of the Premises as a proportion of the total of the Gross Lettable Areas of other premises in the Trust Land which are open for trading at those times.

8 Other Costs

8.1 Landlord's Costs

The Tenant must pay the Landlord's reasonable legal and other Costs of and incidental to:

- (a) stamping and registering this document;
- (b) an application for consent, even if consent is not given;
- (c) any proposed Dealing by the Tenant;
- (d) any variation, waiver, release, surrender or termination of this lease, other than by expiry on the Terminating Date or if the variation occurs at the Landlord's request;
- (e) an application for the Landlord's mortgagee's consent;
- (f) supervising anything being done by the Tenant under this document;
- (g) reviewing anything done, being done or that ought to have been done by the Tenant under this document;
- (h) doing anything that ought to have been done by the Tenant under this document;
- (i) the Tenant being in default under this document;
- (j) the exercise or attempted exercise by the Landlord or the preservation of any right against the Tenant; and
- (k) any proceedings brought by the Landlord to enforce the compliance by the Tenant with the terms of this document that apply to the Tenant,

to the extent that such costs are not prohibited from being recovered from the Tenant under the Law.

8.2 Extent of Landlord's Costs

In relation to any matter under **clause 8.1**, the Landlord's:

- (a) legal Costs and expenses are payable on a solicitor and client basis or on a full indemnity basis, whichever is the higher; and
- (b) other Costs and expenses include:
 - (i) fees payable to any consultant, agent or other person retained by the Landlord; and
 - (ii) its administration Costs.

8.3 Tenant's and Guarantor's Costs

Except as expressly stated otherwise in this document, the Tenant and the Guarantor must pay their own legal and other Costs and expenses of complying with their obligations under this document.

8.4 Duty

- (a) The Tenant as between the parties is liable for, must pay, and indemnify the Landlord for, all stamp duty, duty, or like duties or imposts (**Duty**) (including any fine, interest or penalty) payable or assessed on or in connection with:
 - (i) this document;
 - (ii) any document executed under or required by or contemplated by this document; and
 - (iii) any transaction evidenced, effected or contemplated by a document referred to in **clause 8.4(a)(i)** or **clause 8.4(a)(ii)**.
- (b) If a party other than the Tenant pays any Duty referred to in clause 8.4(a)

(including any fine, interest or penalty), in whole or in part, the Tenant must reimburse the paying party without set-off or deduction immediately on demand.

8.5 Payments

The Tenant must pay money payable to the Landlord under this document:

- (a) on or before the date that the payment is due or, if this document does not specify a particular date for payment, within five Business Days of demand;
- (b) without set-off, counter-claim, withholding or deduction;
- (c) to the Landlord or as the Landlord directs; and
- (d) if the Landlord requires, by direct credit to the Landlord's nominated bank account.

8.6 Late fees

If the Tenant does not pay any money payable to the Landlord under this document on time, the Tenant must pay late fees to the Landlord on the outstanding amount:

- (a) at the Default Rate compounding on the last day of each month; and
- (b) from the date that the payment becomes due until the date the payment is made.

9 GST

9.1 Construction

In this clause 9:

- (a) unless there is a contrary indication, words and expressions which are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
- (c) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

9.2 Consideration GST exclusive

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this document is exclusive of GST (**GST-exclusive consideration**).

9.3 Payment of GST

If GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the

capacity in which a party acts,

(Supplier) under or in connection with this document, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

9.4 Timing of GST payment

The amount referred to in **clause 9.3** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

9.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 9.3**.

9.6 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this document, any amount that is payable under **clause 9.3** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

9.7 Reimbursements

- (a) Where a party is required under or in connection with this document to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This clause 9.7 does not limit the application of **clause 9.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 9.7(a)**.

9.8 Calculations based on other amounts

If an amount of consideration payable or to be provided under or in connection with this document is to be calculated by reference to:

- (a) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost**), that reference will be to the amount of that Cost excluding the amount of any input tax credit entitlement of that person relating to the Cost suffered or incurred; and
- (b) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

9.9 No merger

This clause 9 does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

10 Use of the Premises

10.1 Permitted Use

The Tenant must use the Premises only for the Permitted Use.

10.2 Quiet enjoyment

Except as otherwise provided for in this document, the Tenant may peacefully occupy the Premises for the Term without interruption or disturbance by the Landlord provided the Tenant pays the Rent and other money payable and complies with the Tenant's obligations under this document.

10.3 Tenant's obligations

(a) The Tenant must:

- (i) comply with all Laws including all WHS Laws and the requirements of Authorities in connection with the Premises, the Tenant's business, the Tenant's Property and the Tenant's use and occupation of the Premises;
- (ii) comply with any notices or orders issued by any Authority in connection with the Premises, the Tenant's business, the Tenant's Property or the Tenant's use and occupation of the Premises;
- (iii) comply with all Landlord's Policies and Procedures, including the operations manual;
- (iv) keep all licences, approvals, certificates and permits required to use the Premises for the Permitted Use in force;
- (v) subject to the terms of this document, continue to use and occupy the Premises for the Term:
 - (A) to the best of the Tenant's ability;
 - (B) in a professional and competent way; and
 - (C) in accordance with best industry practice;
- (vi) make sure that the Tenant does not become Insolvent;
- (vii) allow the Landlord to exercise its rights or comply with its obligations under and in accordance with the terms of this document;
- (viii) not do or permit anything to be done that is likely to adversely affect, cause Loss or damage to or disparage the business or reputation of the Landlord;
- (ix) comply with Schedule 2.

(b) For the purposes of all WHS Laws, the Tenant is the occupier of the Premises and has responsibility for the management and control of the Premises.

10.4 Minimum trading hours

The Tenant must keep the Premises open for business during the Minimum Trading Hours unless prohibited by Law.

10.5 Proper use of facilities

- (a) The Tenant must use the toilets, sinks, basins, drainage and plumbing facilities in the Premises and the Common Areas only for the purpose for which they were provided and must not deposit any rubbish in those facilities.
- (b) The Tenant must promptly decontaminate and make good any damage the

Tenant causes to those facilities to the Landlord's reasonable satisfaction.

- (c) The Tenant must store, prepare or cook food only in an area provided for those purposes.
- (d) The Tenant must not do anything that may overload the Services to the Premises or the Building.
- (e) The Tenant must observe the maximum load weights of the Building.

10.6 Work Health and Safety

LONG FORM CLAUSE FOR WHEN WORKS ARE REQUIRED

- (a) In this **clause 10.6**, the following terms have the following meaning:
 - (i) **Building Impact Works** means Works which occur in or impact on the Common Areas including but not limited to works involving any of the following:
 - (A) temporary occupancy or access (to conduct Works) outside the Premises;
 - (B) isolations to the fire system;
 - (C) isolations or connections at any electrical board or panel or communications panel not located in the Premises;
 - (D) welding, grinding, cutting;
 - (E) roof access;
 - (F) the drilling of core holes through walls or slabs;
 - (G) the use of dangerous goods or hazardous substances;
 - (H) the installation of heavy objects (such a compactus or safe);
 - (I) the removal or modification of the Landlord's assets (such as lighting, sprinklers, ceilings, and air conditioning plant); and
 - (J) permission from an Authority in accordance with applicable environmental legislation in order to proceed with the works;
 - (ii) **Principal Contractor** means the Tenant, or the Tenant's nominee as authorised in writing by the Landlord, appointed in accordance with **clause 10.6(b)**; and
 - (iii) **Safe Works Method Statement** means a statement that meets the requirements of clause 299 of the WHS Regulation.
- (b) The Tenant:
 - (i) acknowledges that the Tenant is the relevant duty holder under WHS Law with responsibility for all health and safety matters in connection with any work performed in connection with the Tenant's use of the Premises other than in relation to the matters set out in **clauses 10.6(b)(iii)(C) and 10.6(b)(iii)(D)** below;
 - (ii) acknowledges that the Landlord has no control or influence over health and safety matters in connection with the Tenant's use of the Premises other than in relation to the matters set out in **clauses 10.6(b)(iii)(C) and 10.6(b)(iii)(D)** below;
 - (iii) must not proceed with any Building Impact Work without:

- (A) providing the Landlord at least 48 hours' notice (including a description of the scope of the work) of the intention to commence any Building Impact Work;
 - (B) providing the Landlord with information relevant to the Building Impact Work requested, which may include any or all of the following:
 - (1) permits to be completed prior to commencement;
 - (2) detailed drawings;
 - (3) specialist/consultant design/ specifications;
 - (4) safety data sheets;
 - (5) Safe Work Method Statements or safety plans; and
 - (6) the verification of insurances and licences;
 - (C) ensuring that a person engaged by the Tenant either to perform or to supervise the performance of the Building Impact Work has undertaken the Landlord's induction program; and
 - (D) receiving approval from the Landlord prior to proceeding with the Building Impact Works;
- (iv) must ensure that the Tenant's employees, agents, contractors, invitees and customers who enter into the Building comply with the WHS Law and are briefed in the Landlord's emergency evacuation requirements;
 - (v) must comply with the requirements of the WHS Law and associated codes of practice in relation to the Premises and any work carried out on the Premises (including the obligations of a person with management and control of the Premises), including providing appropriate training and induction concerning working in the Premises, to any persons the Tenant engages or supervises;
 - (vi) must have adequate systems in place to assess and eliminate all risks and hazards associated with the Premises and any work carried out at the Premises as required by the WHS Law;
 - (vii) must ensure that where risks and hazards associated with the Premises and work carried out at the Premises cannot be eliminated, the Tenant does or procures to be done, all things reasonable to ensure the risks and hazards are adequately controlled and minimized as required by the WHS Law;
 - (viii) must ensure that only qualified and competent persons are engaged by or on behalf of the Tenant to carry out any work at the Premises;
 - (ix) must immediately comply with directions on safety issued by any relevant Authority or by the Landlord;
 - (x) must do all things necessary to ensure the Landlord complies with its obligations under the WHS Law in relation to the Premises;
 - (xi) must consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter, including the Landlord where relevant;
 - (xii) must fulfil, or engage a competent person to fulfil, the responsibilities of

a Principal Contractor, where those obligations arise under the WHS Regulation in connection with the Tenant's use of the Premises;

- (xiii) is authorised (or its nominee, if another person has been engaged under **clause 10.6(b)(vii)**, is authorised) to the extent applicable, to have management or control of the Premises and discharge the responsibilities of a Principal Contractor;
- (xiv) if the Tenant engages another person as principal contractor in respect of a construction project under the WHS Law, the Tenant must:
 - (A) ensure that the person fulfils its obligations as principal contractor under the WHS Law;
 - (B) ensure that the person prepares a project specific WHS management plan and provide a copy to the Landlord before work commences; and
 - (C) impose obligations on the principal contractor in the terms of this **clause 10.6**;
- (xv) must provide all notices and correspondence concerning work health and safety issued by a relevant Authority, and the Tenant's responses to such notices and correspondence, to the Landlord within 1 Business Day after the receipt or provision of such notice or correspondence, including but not limited to;
 - (A) any prohibition notice, improvement notice, non-disturbance notice or notice to produce documents or information issued pursuant to the WHS Law; and
 - (B) any notice or correspondence (including notices of non-conformance or notices to rectify) issued in respect of fire safety requirements;
- (xvi) must take the following steps in respect of any incident that is notifiable under WHS Law and/or which requires a person to attend hospital:
 - (A) report the incident to the relevant Authority (and provide written evidence of the notification to the Landlord as soon as practicable) as required;
 - (B) promptly notify the Landlord of the incident, provide the Landlord with reasonably requested additional information in respect of the incident and immediately provide the Landlord with a copy of an incident report;
 - (C) provide the Landlord with such assistance as the Landlord reasonably requires in relation to the incident; and
 - (D) immediately take steps to understand the cause of the incident and put in place measures to prevent its re-occurrence, and provide confirmation of this to the Landlord;
- (xvii) must attend meetings with the Landlord at the Premises as required by the Landlord to facilitate consultation between the parties regarding identification and management of overlapping safety risks and to confirm the Tenant is complying with its safety obligations under this **clause 10.6**;

- (xviii) must facilitate any inspections or safety audits carried out by or on behalf the Landlord at the Premises, and remedy any non-conformances arising from such inspections or safety audits as notified by the Landlord;
- (xix) must provide a written safety report to the Landlord on a **quarterly** basis containing the following information:
 - (A) confirmation that the Tenant has in place an appropriate safety management system, including providing a copy of its safety management system, any updates to the system or accreditation obtained in relation to the system, where such information has not already been provided to the Landlord;
 - (B) confirmation that the Tenant's safety management system is being implemented at the Premises;
 - (C) copies of any safety inspections carried out or certifications obtained pursuant to WHS Law, environmental law or public health law, including but not limited to records of:
 - (1) annual fire safety statements;
 - (2) inspection and testing of plant, including lifts and roof anchor systems; and
 - (3) legionella testing, including annual audits of water cooling systems;
 - (D) where requested by the Landlord, confirmation of compliance with the safety, incident and emergency management requirements contained in the AIDR [Safe and Healthy Crowded Places Handbook](#) and Checklists;
 - (E) up to date copy of the Tenant's hazard/risk/register for the Premises; and
 - (F) results of any safety audits carried out in respect of the Tenant's compliance with work health and safety laws, and confirmation of steps being taken by the Tenant in response to those audits; and
- (xx) must provide evidence of compliance with WHS Law and this clause **10.6** if requested by the Landlord.
- (c) The Landlord will not be responsible for the provision of any safety training or inductions other than to persons engaged directly by the Landlord or as set out in **clause 10.6(b)(iii)(C)** above.

INSERT BELOW FOR SIMPLE COMMERCIAL TENANCY

- (a) The Tenant:
 - (i) must comply with all WHS Law affecting the Premises, in particular the Tenant specifically acknowledges that the Tenant has control of the Premises within the meaning of the *Work Health and Safety Act 2011* (NSW);
 - (ii) must carry out all necessary tasks, risk assessments, document preparation, training, induction, consultation and management of Work Health and Safety in accordance with their responsibilities within WHS laws;

- (iii) must initiate appropriate consultation with the Landlord or other parties where such consultation is deemed necessary by the Tenant to manage Work Health and Safety issues adequately;
- (iii) is to arrange and conduct induction for any subcontractors or visitors brought onto the premises by the Tenant under this lease;
- (iv) must provide a written safety report to the Landlord on a **quarterly** basis containing the following information:
 - (A) confirmation that the Tenant has in place an appropriate safety management system, including providing a copy of its safety management system, any updates to the system or accreditation obtained in relation to the system, where such information has not already been provided to the Landlord;
 - (B) confirmation that the Tenant's safety management system is being implemented at the Premises;
 - (C) copies of any safety inspections carried out or certifications obtained pursuant to WHS Law, environmental law or public health law, including but not limited to records of:
 - (1) annual fire safety statements;
 - (2) inspection and testing of plant, including lifts and roof anchor systems; and
 - (3) legionella testing, including annual audits of water cooling systems;
 - (D) where requested by the Landlord, confirmation of compliance with the safety, incident and emergency management requirements contained in the AIDR [Safe and Healthy Crowded Places Handbook](#) and Checklists;
 - (E) up to date copy of the Tenant's hazard/risk/register for the Premises; and
 - (F) results of any safety audits carried out in respect of the Tenant's compliance with work health and safety laws, and confirmation of steps being taken by the Tenant in response to those audits;
- (v) must attend meetings with the Landlord at the Premises, as required by the Landlord, to facilitate consultation between the parties regarding identification and management of overlapping safety risks and to confirm the Tenant is complying with its safety obligations under this **clause 10.6**; and
- (vi) must provide evidence of compliance with WHS Law and this **clause 10.6** if requested by the Landlord.

10.7 Pest control

The Tenant must:

- (a) immediately notify the Landlord of any pest incidence or infestation occurring within the Premises;
- (b) do, at its own Cost, all things reasonably required by the Landlord in response to the pest incidence or infestation, including engaging a pest control

contractor to carry out a pest extermination service; and

- (c) not otherwise use, or engage any other person to use, any chemical or other potentially noxious product at the Premises without the Landlord's prior consent.

10.8 Rules of the Building and the Land

- (a) The Tenant must comply with the Rules.
- (b) The Landlord may change the Rules as the Landlord thinks necessary or desirable, but any change must be for the good management of the Building and the Land.
- (c) The Landlord must give the Tenant a copy of the changed Rules.
- (d) If a provision of this document and a Rule are inconsistent, the provision of this document prevails.

10.9 Visitors

On the first Business Day of each quarter, the Tenant must provide to the Landlord the number of visitors (including staff) to the Premises per day.

10.10 Tenant's staff

- (a) The Tenant must ensure that its staff act in a courteous, responsible and respectful manner to all persons on the Trust Lands and not do anything which may harm, damage or bring into disrepute the goodwill and reputation of the Landlord or which cause the Landlord to have any liability to any person or any claim made against the Landlord or which may in any way endanger or cause harm to the public or any person or animals on the Trust Lands.
- (b) In no circumstances will the Tenant be permitted to engage any employees of the Landlord for assistance in its business, particular for assistance in taking deliveries of supplies to the Premises.
- (c) If any employee of the Tenant damages the botanical collection or heritage or other assets of the Landlord, or, in the Landlord's reasonable opinion, is guilty of any misconduct in or in the vicinity of the Premises or anywhere within the Trust Lands:
 - (i) the Landlord may require the Tenant to remove such staff member from the Premises; and
 - (ii) the Landlord shall not in any way be liable for any claim by any such employee for wages or damages and the Tenant shall indemnify the Landlord against any such claim.
- (d) Every person employed by the Tenant shall be employed on such terms as will enable the Tenant freely to discharge the obligations imposed under this **clause 10.10**.

10.11 Contamination

- (a) The Tenant must not use or permit to be used or stored in or at the Premises any radioactive, toxic or hazardous chemicals, wastes or substances, except in concentrations and quantities permitted by Laws or Authorities and in accordance with any licences, permits or authorisations required by Law and in accordance with the conditions imposed by Authorities or under their permission.

- (b) The Tenant must comply with all demands, notices and requirements of any Authorities regarding contamination and notify the Landlord within seven (7) Business Days after receiving any demand or notice from an authority.
- (c) The Tenant releases and indemnifies the Landlord against any liability, loss, damage, expense or claim which the Landlord may incur as a consequence of the breach by the Tenant of any of these obligations, including without limit, any fines, legal costs, consultants' fees and remediation costs.

11 Limitation of liability

- (a) The Tenant acknowledges that the Landlord is a statutory trust established under the Trust Act.
- (b) No matter or thing done or omitted to be done by the Landlord, any trustee or any person acting under direction of the Landlord, if the matter or thing was done in good faith for the purposes of executing the Trust Act or any other Law, subjects a trustee or a person so acting personally to any Claim.

12 Repair

12.1 Condition on Commencing Date

The Tenant acknowledges that the Premises were in good and substantial repair on the Commencing Date.

12.2 Good repair

The Tenant must:

- (a) maintain the Premises in good repair and condition, including by undertaking any required Non-Structural Works (subject to any obligation in this lease to obtain the Landlord's prior written consent);
- (b) comply with the Maintenance Schedule;
- (c) comply with the Landlord's reasonable directions relating to the repair of the Premises and keep the Premises in good and substantial repair except for work that is required due to fair wear and tear; and
- (d) clean and maintain the Premises in accordance with the Rules contained in **Schedule 1**.

12.3 Structural Work

- (a) The Tenant is not obliged to carry out Structural Work unless that work is required:
 - (i) as a result of the Tenant's act, neglect or default;
 - (ii) as a result of the Tenant's particular use of the Premises; or
 - (iii) as an express requirement in this document to carry out Structural Work,
 and then only with the Landlord's prior written consent.
- (b) The Tenant must repair or pay the Landlord's Cost of repairing:
 - (i) the structure of the Premises;

- (ii) the Landlord's Property; and
 - (iii) the appliances, fittings or fixtures providing services to the Premises,
- if the need for repair arises from the Tenant's act, neglect or default.
- (c) If the Landlord undertakes Structural Work, the Tenant agrees that the Landlord will be entitled to access to the Premises where necessary to carry out such Structural Works and the Tenant agrees that any interruption to the Tenant's Business are necessary and that such interruption will not be deemed disturbances for the purposes of the Law.

12.4 Refurbishment

- (a) On each Refurbishment Date or other date notified by the Landlord under **clause 12.4(b)**, the Tenant must refurbish the Premises at the Tenant's Cost, including
- (i) cleaning and preparing all internal surfaces;
 - (ii) repainting, wallpapering, staining, varnishing, polishing or otherwise treating all internal surfaces (with good quality, suitable materials and in colours or finishes first approved by the Landlord in writing in its absolute discretion);
 - (iii) maintaining, repairing, replacing or renewing the plant, equipment, fixtures, fittings and furniture comprised in the Tenant's Property; and
 - (iv) refurbishing or, if necessary, replacing:
 - (A) the floor coverings;
 - (B) signs and lighting in the Premises; and
 - (C) the Tenant's Property,

(Refurbishment Works).

- (b) In addition to any Refurbishment Date, the Landlord may notify the Tenant requiring the Tenant to carry out Refurbishment Works by the date specified in the notice, but only if the state and condition of the plant, equipment, fixtures, fittings, furniture and floor coverings comprised in the Tenant's Property and the internal surfaces in the Premises have markedly deteriorated since the Premises were last refurbished.
- (c) If the Landlord requires the Tenant to carry out Refurbishment Works under **clause 12.4(b)**, the Tenant must carry out those Refurbishment Works at the Tenant's Cost, in accordance with the notice issued under **clause 12.4(b)** and otherwise in accordance with any applicable provisions of this document.

12.5 Specific repairs

The Tenant must promptly and at the Tenant's Cost maintain, repair and, if necessary, replace the following items installed in or forming part of the Premises:

- (a) broken glass including exterior show-windows (irrespective of the cause) with glass of the same or substantially similar quality;

- (b) any damage to the Building or the Land caused by the Tenant's act, neglect or default, provided that the Landlord may, in its absolute discretion, require the Tenant to pay or reimburse the Landlord on demand for the cost of those repairs instead of completing those repairs;
- (c) damaged, broken or inoperative fittings or lighting, heating and other electrical equipment (including light globes, fluorescent tubes and starters, inoperative switches and power points);
- (d) all plumbing within the Premises up and to including the external boundaries of the Premises, so that the plumbing is kept clear of blockages and in proper operating condition; and
- (e) all plant, equipment and other items exclusively servicing the Premises.

These obligations are not subject to the exceptions to the Tenant's repair obligations set out in **clauses 12.2 and 12.3**.

12.6 Alterations of Premises

- (a) The Tenant may not make any alterations, modifications, refurbishment or fitout of the Premises without the prior written consent of the Landlord and any relevant Authority. The Tenant acknowledges and agrees that it may not apply for consent from the relevant Authority (whether or not the relevant Authority may be the Landlord) without first complying with **clauses 12.6(b) and (c)**;
- (b) The Tenant must before doing anything to the Premises (however small the alteration), first apply for the Landlord's consent as landowner by submitting detailed CAD plans and specifications or plans and specifications in such format acceptable to the Landlord in its absolute discretion together with any other detail required by the Landlord.
- (c) If the Landlord has granted landowner's consent, the Tenant must then apply to the relevant Authority (including the Landlord's planning and/or heritage division if relevant) for approval (including development approval and/or heritage approval under the *Heritage Act 1977* (NSW) (**Heritage Act**) if necessary).
- (d) Any alterations to the Premises or to any services of the Premises must only be carried out by such person approved by the Landlord in writing and where appropriate, the Tenant must in addition comply with **clause 12.6(i)** as if such alterations were a fitout.
- (e) The Tenant must provide to the Landlord on demand, any certification that any such alterations to the Premises or to any services in the Premises have complied with all requirements of any relevant Authority or of any laws.
- (f) The Tenant may not carry on business or occupy the Premises without providing satisfactory evidence to the Landlord as required under **clause 12.6(e)**.
- (g) The Tenant acknowledges and agrees that where the Premises forms part or is heritage listed, the Tenant must not paint, drill or in any way penetrate or affix any item to any surfaces of the Premises including walls, ceilings, architraves and floors without the prior written consent of the Landlord and must comply with the Heritage Act, including obtaining any development approval and/or heritage approval under the Heritage Act if necessary.

- (h) The Tenant acknowledges that it may not perform any alterations or new installations to the Premises' or Building's electrical system unless it first obtains all relevant approvals and the prior written consent of the Landlord. The Tenant must perform such approved electrical works in accordance with relevant Authority standards and directions and all works must be tested and certified and the Landlord provided with copies of such certificates, before using such electrical systems.
- (i) In carrying out any fitout, the Tenant must:
 - (i) do so in accordance with the Landlord's tenancy fitout guide;
 - (ii) do so in accordance with plans and specifications prepared by the Tenant at its cost but approved first by the Landlord and then by any relevant Authority;
 - (iii) obtain the Landlord's and any relevant Authority's prior written consent and approval to any variations of the Tenant's plans and specifications previously approved by the Landlord and the relevant Authority (and provide to the Landlord evidence that approval has been obtained from all relevant Governmental Agencies including providing on request by the Landlord copies of any relevant certificates to that effect);
 - (iv) use contractors approved by the Landlord in its absolute discretion in relation to any substantial work;
 - (v) ensure that all contractors have current licences and carry all insurances required under all relevant legislation or usually required for building contractors;
 - (vi) have in place and provide the Landlord with certificates of all currency of all insurances required under the lease;
 - (vii) ensure any fitout, signage, lighting and general presentation are to be carried out to the highest standard and quality as may be appropriate for the Permitted Use and must be approved by the Landlord's representative prior to commencement of the fitout;
 - (viii) appoint a qualified designer to prepare the necessary documentation and adequate drawings for proposed fitout works and submit to the Landlord for their approval, prior to obtaining any Council, local authority, statutory authority or heritage consent;
 - (ix) find out and obtain any Council or other statutory authority consents which may be required to undertake the fitout works, and to obtain such consents prior to the commencement of the fitout works. Where an approval is required for proposals to heritage significant premises, the Tenant may be required to obtain heritage approvals. A heritage impact statement must be lodged with all applications that involve work to heritage items listed on the New South Wales State Heritage Register. Furthermore, these applications may require approval under the Heritage Act. It is the sole responsibility of the Tenant to ensure that Tenant identifies and obtains any necessary Council, local authority, statutory authority or heritage approvals. A team member from the Landlord's heritage and design team may be made available to the Tenant for direction during this stage;

- (x) comply with any Conservation Management Plan, and the National Construction Code;
 - (xi) be carried out promptly and in a proper and workmanlike manner and by contractors approved by the Landlord;
 - (xii) obtain the Landlord's prior written consent and approval to any variations of the Tenant's plans and specifications previously approved;
 - (xiii) permit the Landlord to inspect any fitout. No trading is to commence prior to the Landlord's written approval following such inspection;
 - (xiv) maintain the fitout throughout the term of the lease to the highest possible standard, including repairing or replacing any damaged or worn items including glazing, doors and locks as damages occur, or as reasonably requested by the Landlord from time to time; and
 - (xv) any additional works which are necessitated by the Tenant's fitout will be carried out by the Landlord at the cost of the Tenant.
- (j) All works which are necessitated by the Tenant's fitout, in particular to the building services, are subject to approval by the Landlord and if approved will be made by the Landlord at the expense of the Tenant.
 - (k) The Tenant indemnifies the Landlord against any claims, injury, loss and damage whatsoever suffered as a consequence of the carrying out of the Tenant's fitout.

12.7 Asset Management Plan

- (a) The Tenant must comply with the Asset Management Plan (if applicable).
- (b) At intervals of not less than 12 months, the parties must meet to review and update the Asset Management Plan. Both parties may propose changes to the Asset Management Plan. If the parties are unable to agree on any matter, the Landlord shall be entitled, acting in good faith, to determine the matter.

13 Insurance

13.1 Tenant's insurance

The Tenant must take out and maintain insurance cover:

- (c) for public liability to cover legal liability to third parties in respect of the Premises or the Tenant's use or occupation of the Premises for an amount of at least \$20,000,000 for any one claim, or any other amount the Landlord may reasonably require from time to time, with an endorsement to extend the cover to include the indemnities given by the Tenant to the Landlord under this document;
- (d) for industrial special risks for the usual risks and covering the Tenant's Property for their full value;
- (e) for the full replacement value of plate and other fixed glass in the Premises (excluding the external windows of the Building);
- (f) for stock, consignment stock and cash;

- (g) in accordance with the requirements of the *Workers Compensation Act 1987* (NSW), covering liability for compensation and/or damages in respect of death of or injury to persons employed or engaged as workers or subcontractors by the Tenant and related liability to the fullest extent insurable under that Act;
- (h) as required by Law; and
- (i) for any other risks the Landlord may reasonably require from time to time.

13.2 Tenant's insurance policies

All insurance policies for the cover taken out under **clause 13.1** must:

- (a) be with an insurer approved by the Landlord, with that approval not to be unreasonably withheld;
- (b) be in the name of the Tenant and note the respective rights and interests of the Landlord, and if required by the Landlord from time to time, the Landlord's mortgagee and any other person having a superior interest in the Building;
- (c) include a cross liability clause under which the insurer agrees to waive all rights of subrogation against each party noted on the policy under **clause 13.2(b)**;
- (d) require the insurer to give three weeks' notice of cancellation to the Landlord before cancelling or refusing to renew the policy;
- (e) not have any exclusions, endorsements or variations without the Landlord's prior consent; and
- (f) be for an amount, cover the risks and contain terms that are acceptable to or required by the Landlord, acting reasonably, from time to time.

13.3 Evidence of insurance

For each insurance policy for the cover taken out under **clause 13.1**, the Tenant must give:

- (a) a copy of that policy; and
 - (b) a certificate of currency,
- to the Landlord promptly when requested.

13.4 No effect on obligations

- (a) The Tenant's obligations under **clause 13.1** do not limit the Tenant's other obligations under this document.
- (b) The existence of the Landlord's insurance cover or the Tenant's contribution to the payment of the premiums for that insurance cover does not affect any liability of the Tenant or prejudice any right of the Landlord to make a claim against the Tenant if an event occurs for which the Landlord would be entitled to make a claim under that insurance.

13.5 Landlord's insurance

The Tenant must not allow any circumstance to arise that might result in:

- (a) any of the Landlord's insurance cover being voided or prejudiced;
- (b) a claim by the Landlord being refused;
- (c) the Landlord being required to pay an increased premium on any of its insurance cover, unless the Tenant pays that increased premium on demand by the Landlord;

- (d) the Landlord being in breach of any Law or the requirements of any Authority relating to fire prevention; or
- (e) any actual or potential fire hazard being created in or near the Premises or the Building.

13.6 Tenant's obligations

For all insurance policies for the cover taken out under **clause 13.1**, the Tenant must:

- (a) pay the premium for each policy on time;
- (b) not vary or cancel a policy without the Landlord's prior consent;
- (c) renew immediately any lapsed policy;
- (d) not knowingly or otherwise allow any circumstance to arise that might result in any of the policies being voided or prejudiced;
- (e) rectify immediately any situation when a policy has been voided or prejudiced (in breach of **clause 13.6(d)**);
- (f) notify the Landlord of the cancellation of a policy or any circumstance that may affect a policy or a claim or lead to a claim as soon as reasonably practicable after the Tenant becomes aware of it;
- (g) use the insurance proceeds received for a claim made under a policy for the replacement of the item insured or satisfaction of the claim made, or otherwise as directed by the Landlord, acting reasonably; and
- (h) not deal with any material claim under a policy without giving prior notice to the Landlord. The Landlord may require that it assume conduct of that claim or that its consent be obtained before anything is done about that claim.

14 Release and indemnity

14.1 Tenant's risk

- (a) The Tenant enters, occupies, and uses the Premises and the Land at the Tenant's own risk.
- (b) The Tenant has satisfied itself that the Premises and the Land are sufficient for the Tenant's occupation and use.

14.2 Release

The Tenant releases the Landlord, the Minister and agents, servants, contractors and employees of the Landlord or the Minister from any Claim which the Tenant may have against the Landlord in connection with the Tenant's occupation and use of the Premises and the Land except if and to the extent that that Claim arises because of the Landlord's default or negligence.

14.3 Indemnity

The Tenant is liable for and indemnifies the Landlord at all times for any Loss paid, suffered or incurred by the Landlord or that the Landlord may be or becomes or would except for this indemnity have been liable and that is wholly or partly due to or arising out of:

- (a) the Tenant's occupation and use of the Premises;
- (b) the Tenant's act, neglect or default;
- (c) an incident occurring on the Premises;

- (d) the entry into or escape from the Premises of water, gas, electricity or other substance or thing;
- (e) the failure of the Tenant to notify any damage to or defect in the Premises or the Building to the Landlord as soon as reasonably practicable after the Tenant becomes aware of it;
- (f) a faulty item of Tenant's Property;
- (g) the Tenant being in default under this document; or
- (h) any breach by the Tenant of a Law or the requirements of any Authority,

except if and to the extent that that Loss arises because of the Landlord's default or negligence. It is not necessary for the Landlord to incur any expense or make any payment before enforcing this right of indemnity.

15 Dealings

15.1 Consent

- (a) The Tenant must not complete a Dealing without the Landlord's prior consent.
- (b) Subject to the remaining terms of this document, the Landlord may:
 - (i) give or withhold its consent to a Dealing; and
 - (ii) impose such conditions as it determines in respect of a Dealing, in its absolute discretion.

15.2 Consent to Transfer

The Landlord must give the Landlord's consent to a Transfer or Sublease if:

- (a) the Tenant gives to the Landlord prior written notice of the Tenant's intention to enter into a Transfer or Sublease;
- (b) the Tenant satisfies the Landlord that the Proposed Tenant has experience in and a good reputation for conducting a business permitted under the lease, and will not use the Premises for any use other than the Permitted Use;
- (c) the Proposed Tenant satisfies the Landlord that the Proposed Tenant's financial resources and/or retailing skills are not inferior to the Tenant's financial resources and/or retailing skills;
- (d) the Tenant pays all amounts payable under this document up to and including the date of the Transfer or sublease, to the Landlord;
- (e) the Tenant remedies any default under this document (unless waived by the Landlord);
- (f) if the Proposed Tenant is a corporation whose shares are not listed on the official list of the ASX or another stock exchange approved by the Landlord, the directors and shareholders of the Proposed Tenant or any other person approved by the Landlord give a guarantee of and indemnity relating to the performance by the Proposed Tenant of its obligations under this document in favour of the Landlord; and
- (g) if this document is registered or required to be registered by Law, the Tenant or the Proposed Tenant:
 - (i) gives an undertaking from their solicitors to the Landlord to lodge for registration any necessary transfer form at the relevant titles office or

registry as soon as reasonably practicable after completion of the Transfer; and

- (ii) lodges for registration the transfer form as soon as reasonably practicable after completion of the Transfer and gives a copy of the registered transfer form to the Landlord within seven days after registration;
- (h) the Tenant and the Proposed Tenant comply with all the Landlord's reasonable requirements (including payment of the Landlord's reasonable legal costs and disbursements);
- (i) in the case of a subtenant, the Tenant either:
 - (i) satisfies the Landlord that the Proposed Tenant is required to pay a full market rental; or
 - (ii) provides the Landlord with a written acknowledgement that the Sublease rent is not a market rent or fee and may not be taken into account in any market review of the Premises.

15.3 Notification of Consent

The Landlord must notify the Tenant whether or not the Landlord consents to a proposed Transfer within 30 days following the receipt of:

- (a) the Tenant's request to transfer the Tenant's interest under this document; and
- (b) the required information as reasonably required by the Landlord, including evidence that the financial resources and retailing skills of the proposed assignee are not inferior to those of the Tenant.

15.4 Deed of covenant on Transfer

If the Landlord consents to a Transfer, the Tenant and the Guarantor must, before the Transfer takes place, enter into and must ensure that the Proposed Tenant (and proposed new guarantor, if any) enters into a deed in a form which the Landlord reasonably requires under which:

- (a) the Proposed Tenant (and proposed new guarantor, if any) covenants with the Landlord to comply with the Tenant's obligations under this document; and
- (b) each of the Tenant and the Guarantor releases the Landlord from any Claim the Tenant and Guarantor may then or subsequently have against the Landlord.

15.5 Other formalities

The Tenant must ensure that the Proposed Tenant gives to the Landlord:

- (a) in the case of a Transfer, before the Transfer is executed, any securities which the Landlord reasonably requires in respect of the transferee's obligations under this document, including bank guarantees and personal guarantees and indemnities;
- (b) a copy of each insurance policy in accordance with **clause 13**; and
- (c) on the date of the Transfer, a copy of any executed and, if relevant, stamped documents relating to the proposed Dealing.

15.6 Lease as Security

- (a) The Tenant must not, without the Landlord's prior consent, grant a Security over the Tenant's interest in this document, or relating to the Tenant's

Property.

- (b) If the Tenant grants a Sublease over or in respect of the Premises, the Tenant must ensure that the subtenant, licensee or concessionaire complies with **clause 15.6(a)** in respect of the sublease, licence or concession agreement.
- (c) The Landlord may require, as a condition of giving the Landlord's consent, the Tenant, subtenant or licensee and the financier to enter into a deed in a form which the Landlord requires under which the financier agrees to comply with this document or the sublease, licence or concession agreement if the financier enters into possession of the Premises.

15.7 Change of ownership of shares in company

If the Tenant is a company (except a company whose shares are listed on the ASX), a change in the beneficial ownership or control of a majority of the company's voting shares constitutes a Dealing and the Tenant must obtain the Landlord's prior consent to any change in the beneficial ownership or control of a majority of the company's voting shares.

15.8 Preparation of documents

Any deed, guarantee and indemnity or other document required under this **clause 15** must:

- (a) except if otherwise agreed between the parties, be prepared by the Landlord's solicitors; and
- (b) be in a form and content reasonably satisfactory to the Landlord.

16 Landlord's additional rights and obligations

16.1 Maintenance

The Landlord must use reasonable endeavours to:

- (a) keep the Building in a watertight and structurally sound condition; and
- (b) clean the Common Areas to the Landlord's reasonable satisfaction.

16.2 Alterations and refurbishments

- (a) The Landlord may alter or refurbish the whole or any part of the Building or the Land (other than the Premises) and, without limitation, may:
 - (i) construct buildings or improvements on the Common Areas;
 - (ii) move or change the direction, areas, levels or location of any part of the Building in any way which the Landlord thinks appropriate; and
 - (iii) restrict access to the Common Areas.
- (b) The Landlord may only alter or refurbish the Building or the Land (other than the Premises) in a manner likely to adversely affect the business of the Tenant:
 - (i) after the Landlord notifies the Tenant of the proposed alteration or refurbishment at least two months before it commences; or
 - (ii) in the case of an emergency, after the Landlord gives to the Tenant the maximum period of notice that is reasonably practicable in the circumstances.
- (c) The Landlord must cause as little inconvenience to the Tenant as is practicable in the circumstances when making any alterations, refurbishments

or improvements in accordance with this **clause 16.2**.

- (d) The Tenant must not make any Claim against the Landlord in respect of any disturbance to or in the Building or the Land if the Landlord provided to the Tenant, before this document was entered into, a written statement which specifically draws the Tenant's attention to details of the anticipated disturbance and the statement includes:
 - (i) a specific description of the nature of the disturbance;
 - (ii) a statement assessing the likelihood of the disturbance occurring, including an indication of the basis on which the assessment was reached; and
 - (iii) a statement of the timing, duration and effect of the disturbance, so far as that can be predicted.

16.3 Security and emergency

- (a) The Tenant must immediately inform the Landlord as soon as the Tenant becomes aware of any matter which may:
 - (i) affect the safety or security of the Premises or the Building; or
 - (ii) give rise to an emergency.
- (b) The Tenant must:
 - (i) comply with all reasonable requirements of the Landlord to participate in emergency evacuation procedures; and
 - (ii) ensure that each employee of the Tenant and every other person who occupies or is in the Premises, takes part in emergency evacuation procedures.
- (c) If the Landlord reasonably forms the opinion that there is an actual or anticipated emergency or threat to the Building or persons or property in or near the Building, the Landlord may close the whole or part of the Building and require the Building to be evacuated for as long as is reasonably necessary in the circumstances.
- (d) The Tenant cannot make any Claim against the Landlord resulting from the Landlord's closure of the Building in accordance with **clause 16.3(a)**.
- (e) The Tenant must pay for the Cost of engaging an external security service or installing any additional security measures in the Premises or the Building if in the Landlord's reasonable opinion, the Tenant's particular use of the Premises or public profile constitutes a heightened risk to the Premises or the Building.

16.4 Relocation [INSERT FOR ANY LEASES OVER 10 YEARS]

- (a) If the Landlord proposes to carry out building work to refurbish, redevelop or extend the Building and, in the Landlord's opinion, the work will affect the Premises, the Landlord may require the Tenant to relocate to alternative premises in the Trust Lands and to surrender the Tenant's interest under this lease.
- (b) If the Landlord requires the Tenant to relocate to alternative premises in the Trust Lands in accordance with 16.4(a), the Landlord will provide the Tenant with details of the proposed refurbishment, redevelopment or extension sufficient to indicate a genuine proposal that it is to be carried out within a reasonably practicable time after relocation of the Tenant's business and that

proposed refurbishment, redevelopment or extension cannot be carried out practicably without vacant possession of the Premises.

- (c) The Landlord may not require the Tenant to relocate to alternative premises in the Trust Lands unless the Landlord has given the Tenant at least [six months'] notice of relocation and that notice (**Relocation Notice**) gives details of alternative premises to be made available to the Tenant within the Trust Lands.
- (d) If the Landlord gives a Relocation Notice, the Landlord must offer the Tenant a lease of the alternative premises:
 - (i) on the same terms and conditions as this lease for the remainder of the Term, having regard to any additional terms and conditions required by the alternative premises; and
 - (ii) with rent the same as the Rent, adjusted to take into account the difference in the commercial values of the Premises and the alternative premises at the time of relocation.
- (e) If the Landlord gives a Relocation Notice, the Tenant may terminate this lease within one month after the Relocation Notice is given by giving written notice of termination to the Landlord in which case this lease will terminate three months after the Relocation Notice was given unless the Landlord and the Tenant agree that this lease is to terminate at some other time.
- (f) If the Tenant does not give a notice of termination under **clause 16.4(e)**, the Tenant is taken to have accepted the Landlord's offer of a lease as referred to in **clause 16.4(d)**, unless the Landlord and the Tenant have agreed to a lease on some other terms.
- (g) If the Tenant accepts or is taken to have accepted the Landlord's offer of a lease as referred to in **clause 16.4(d)**:
 - (i) the Tenant must:
 - (A) do all things reasonably required by the Landlord to surrender the Tenant's interest under this lease;
 - (B) execute that new lease before its commencing date; and
 - (C) fit out the alternative premises in keeping with the standards of the Building; and
 - (ii) after the Tenant has complied with **clause 16.4(g)(i)**, the Landlord must pay to the Tenant the Tenant's reasonable Costs of the relocation including:
 - (A) Costs incurred by the Tenant in moving the Tenant's Property and dismantling fittings, equipment or services;
 - (B) Costs incurred by the Tenant in replacing, re-installing or modifying finishes, fittings, equipment or services to the standard existing immediately before the relocation but only to the extent that they are reasonably required in the premises to which the Tenant's business is relocated; and
 - (C) legal costs incurred by the Tenant.
- (h) If the Landlord and the Tenant are not able to agree on what the actual amount of reasonable Costs of the relocation under **clause 16.4(e)(C)** are, the amount of the Costs is to be determined by a quantity surveyor appointed by

agreement between the Landlord and the Tenant.

- (i) If the Landlord and the Tenant are unable to reach an agreement as to the appointment of the quantity surveyor, then the quantity surveyor will be appointed by the person for the time being holding or acting in the office of President of the Australian Institute of Quantity Surveyors.
- (j) The Landlord is not liable to the Tenant for and the Tenant releases the Landlord from any Loss arising from or incurred in connection with the Tenant's relocation to the alternate premises (other than the relocation costs payable under this **clause 16.4**).

16.5 Demolition

- (a) If the Landlord wants to demolish, substantially repair, renovate or reconstruct the Building or the part of it containing the Premises, the Landlord may terminate this lease by giving the Tenant:
 - (i) sufficient details of the proposed works to indicate a genuine proposal to carry them out after this lease is terminated; and
 - (ii) at least six months' notice of termination, unless the Term is 12 months or less in which case the notice of termination must be at least three months,
(Demolition Notice).
- (b) After the Landlord has given a Demolition Notice under **clause 16.5(a)**, the Tenant may terminate this lease at any time within six months before the termination date in the Demolition Notice by giving the Landlord at least seven days' notice of termination (unless the Term is 12 months or less in which case the Tenant may give the Tenant's notice at any time within three months before the termination date in the Demolition Notice).
- (c) Not used.
- (d) If this document requires the Tenant to fit out the Premises and this lease is terminated under this **clause 16.5**, the Landlord may be liable to pay the Tenant compensation for the fit out.
- (e) Except as provided by the **clause 16.5(d)** of this document, the Tenant is not entitled to any form of compensation or damages as a result of the Landlord exercising its rights pursuant to **clause 16**.

16.6 Availability of Services

Subject to the remaining terms of this document, the Landlord must use reasonable endeavours to keep the Services working and reasonably available for the Tenant's use at all times during the Minimum Trading Hours.

16.7 Change to Minimum Trading Hours

The Landlord may change the Minimum Trading Hours in its discretion by giving notice to the Tenant.

16.8 Enforcing rights and no exclusive use

The Tenant acknowledges that the Landlord may:

- (a) enforce the Landlord's rights against the Tenant whether or not the Landlord enforces the Landlord's rights against other tenants or occupiers of the Park; and
- (b) grant a lease or licence over, or allow any person to hold a function, exhibition,

parade or other activity or display goods in, any part of the Park on terms it sees fit in its absolute discretion, including for a business which competes with the Tenant's business (and in any such case, the relevant area of the Park, if part of the Common Areas, is excluded from the Common Areas for the duration of the right so granted).

16.9 Landlord's rights

The Landlord reserves the right to:

- (a) subdivide or strata title the Building or the Land, or grant a Security or easements or other rights over them or the Premises unless this would have a substantially adverse effect on the Tenant's business;
- (b) use the exterior walls of the Building and of the Premises (other than shopfronts and doors) and the roof of the Building for any purpose as it sees fit in its absolute discretion;
- (c) install, maintain, use, repair, alter and replace any Services, including any Services leading through, contiguous or adjacent to or servicing the Premises;
- (d) without limiting its rights under **clause 16.6**, suspend at its discretion on reasonable notice to the Tenant:
 - (i) the Minimum Trading Hours for special events; and
 - (ii) access to Land and the Premises on any occasion when road closures take place,

and the Tenant is not entitled to make any Claim against the Landlord in relation to anything specified in this **clause 16.8**.

16.10 Landlord's right of entry

- (a) The Landlord may enter the Premises at reasonable times after giving the Tenant reasonable notice or, in the case of any default by the Tenant under this document or in the case of emergencies, without notice, to:
 - (i) view the state of repair of the Premises, the Landlord's Property, the Tenant's Property and the Services in the Premises;
 - (ii) install, maintain, repair, alter or inspect the Building or the Services in or to the Building;
 - (iii) carry out repairs, renovations, maintenance or alterations to the Premises which are reasonably necessary;
 - (iv) stop any actual or potential damage to the Building occurring in or about the Premises;
 - (v) comply with any Laws or the requirements of any relevant Authority that are not the Tenant's responsibility to comply with; and
 - (vi) at the Cost of the Tenant, do anything which the Tenant should have done under this document but which the Tenant has not done or which the Landlord reasonably considers that the Tenant has not done properly.
- (b) In exercising the Landlord's rights under this **clause 16.9** the Landlord must cause as little inconvenience to the Tenant as is practicable in the circumstances.

16.11 Change of Landlord

If the Landlord deals with the Landlord's interest in the Building so that another person becomes the landlord:

- (a) the Tenant releases the Landlord from any obligation under this document arising after that other person acquires the Landlord's interest in the Premises;
- (b) without limiting any other liability of the Tenant to the Landlord, the Tenant remains liable to the Landlord for any obligations accrued or arising before that event, including the obligations to pay the Rent and Operating Costs , and must make any further payments on demand by the Landlord; and
- (c) anything that the Tenant is required to give under this document in favour of the Landlord or do in the name of the Landlord must be amended at the Landlord's reasonable cost so that it is in favour of or in the name of the new landlord.

16.12 Repairs

The Landlord may give a notice to the Tenant requiring the Tenant to carry out specified maintenance or repairs that are the Tenant's responsibility within the period specified in the notice. If the Tenant fails to comply with the Landlord's notice, the Landlord may enter the Premises and carry out the specified maintenance or repairs at the Tenant's cost.

16.13 To show Premises

The Landlord may show the Premises to prospective buyers, tenants and financiers of the Building or the Land.

16.14 Entry to Building

The Landlord may:

- (a) close the Building or the Land to the general public outside the Minimum Trading Hours;
- (b) close all or any part of the Building or the Land if the Landlord thinks it is necessary for the safety of the Building or the Land or any person in the Building or the Land; and
- (c) stop any person from entering or remaining in the Building:
 - (i) if, in the Landlord's reasonable opinion, there is an emergency;
 - (ii) to ensure the safety of any other person or item in the Building or the Land; or
 - (iii) if they fail to comply with the Rules.

16.15 Landlord may perform Tenant's obligations

If the Tenant fails to perform an obligation under this document to the Landlord's reasonable satisfaction after being given reasonable notice by the Landlord, the Landlord may perform that obligation at the Tenant's cost.

16.16 Agents

The Landlord may appoint agents to exercise any of its rights or carry out any of its obligations under this document. The Tenant must comply with any directions from or requirements of an agent unless they are inconsistent with any communication from the Landlord.

16.17 Special Events

The Landlord reserves the right to suspend the Tenant's operations under this lease, without compensation to the Tenant, on dates during the Term which, acting reasonably, the Landlord regards as special and significant events. The Tenant and Landlord will act in good faith and cooperation with each other in order to achieve the least inconvenience and disruption to the Tenant's business.

16.18 Special Events Road Closures

- (a) The Landlord reserves the right to suspend at its discretion on reasonable notice to the Tenant the following:
 - (i) the Minimum Trading Hours for Special Events; and
 - (ii) access to the Trust Lands and the Premises on any occasion when road closures take place.
- (b) The Tenant is not entitled to make any Claim against the Landlord in relation to **clause 16.18 (a)**.
- (c) The Landlord may nominate specific dates (**Blackout Dates**) on which the Tenant may not trade in the Premises or Trust Lands due to safety or operational reasons. These dates may include:
 - (i) Christmas Day;
 - (ii) Good Friday;
 - (iii) New Year's Eve (December 31);
 - (iv) New Year's Day (January 1); and
 - (v) any other days that may be advised from time to time by the Landlord, acting reasonably.
- (d) If the Tenant wishes to trade in the Premises or Trust Lands on any of the specific dates noted or any other days advised by the Landlord as Blackout Dates, the Tenant must first seek written approval from the Landlord no less than thirty (30) days prior to the trading date, and such approval may be withheld in the Landlord's absolute and sole discretion.

16.19 Car Parking

- (a) The Tenant acknowledges that:
 - (i) the Landlord is responsible for the management of vehicle access to, and parking within the Trust Lands and the Premises, in accordance with the Trust Act and any Ministerial directions;
 - (ii) the Landlord reserves to itself the exclusive rights to manage vehicle access to, and parking within the Trust Lands and the Premises;
 - (iii) the Landlord will provide vehicular access to the Premises to allow for the delivery of goods to the Tenant, subject to the Operations Manual; and
 - (iv) the Tenant must comply with all directions of the Landlord and its officers in relation to the movement and parking of vehicles on or near the Premises or on other parts of the Trust Lands.
- (b) During the Term, the Landlord may implement paid or ticketed parking within the Trust Lands and the Premises and the Tenant must comply with the Landlord's directions, policies and procedures in relation such parking.
- (c) The Tenant is not entitled to make any Claims against the Landlord in relation to the Landlord's policies or actions taken to manage vehicle access to, and

parking within the Trust Lands and the Premises, irrespective of how such policies or actions may impact the Tenant's business at the Premises.

- (d) The Tenant also acknowledges that the Landlord does not control the traffic or parking provisions on the public roads adjacent to the Trust Lands and is not entitled to make any Claims against the Landlord in relation to the policies or actions of any Authority in relation to the management of those surrounding areas.

16.20 Events [for PARRAMATTA PARK ONLY]

- a) The Landlord discloses and the Tenant acknowledges that up to twenty-five (25) major annual events may be held within Parramatta Park, of which some could be declared Pedestrian Only Events.
- b) The Landlord agrees to work with the Tenant to provide controlled access for the Tenant's purposed shuttle bus (if applicable) during all events, including Pedestrian Only Events, subject to the specific access arrangements for each event.
- c) The Landlord will grant a 2.5 per cent abatement of annual rent for each event, occurring on a day that the Premises would normally be open and where vehicular access to the Premises is significantly restricted, greater than ten (10) events per annum, up to a maximum rent abatement cap of ten (10) per cent of annual rent.
- d) The Landlord agrees to provide information with respect to forward event bookings to the Tenant so that events that qualify for the abatement can be identified in advance.
- e) Both parties agree to work together in good faith regarding the operation of this clause.

17 Resumption, destruction or damage to the Building or Premises

17.1 Resumption

The Landlord or the Tenant may terminate this lease by notice to the other if the Building or any part of it is resumed and, due to that resumption, the Premises permanently cannot be used under this document or are permanently inaccessible due to that resumption.

17.2 Damaged premises

- (a) If the Premises or the Building is damaged:
 - (i) the Tenant is not obliged to pay Rent or the Tenant's Proportion of the Operating Costs that is attributable to any period during which the Premises cannot be used under this document or the Premises are inaccessible due to that damage;
 - (ii) and the Premises are still useable under this document but its useability is diminished due to the damage, the Tenant's liability for Rent and the Tenant's Proportion of the Operating Costs attributable to any period during which the useability is diminished is reduced in proportion to the reduction in useability caused by the damage;
 - (iii) and the Landlord notifies the Tenant that the Landlord considers the damage is such as to make the Landlord's repair impracticable or undesirable, the Landlord or the Tenant may terminate this lease by giving not less than seven days' notice to the other and no compensation is payable in respect of that termination;
 - (iv) the Landlord has no obligation to repair the Building or the Premises;

- (v) and the Landlord fails to repair the damage within a reasonable time after the Tenant requests the Landlord to do so, the Tenant may terminate this lease by giving not less than seven days' notice of termination to the Landlord; and
 - (vi) and the Landlord repairs the damage, the Landlord's Cost in doing so is not an Operating Cost.
- (b) **Clause 17.2(a)** does not entitle the Tenant to an abatement of the Tenant's obligation to pay Rent or the Tenant's Proportion of the Operating Costs under this document if:
- (i) the event resulting in the damage, destruction or inaccessibility arises from the Tenant's act, neglect or default; or
 - (ii) the Landlord fails to recover the benefit of any insurance for loss or damage to the Building or the Premises because of the Tenant's act, neglect or default.

17.3 Effect of termination

Termination of this lease under **clause 17.1** or **clause 17.2** does not affect a party's rights in respect of a prior breach or matter.

18 Default

18.1 When a default occurs

The Tenant is in default if the Tenant fails to comply with any obligation under this document.

18.2 Landlord may give notice

- (a) If the Tenant is in default, the Landlord may give the Tenant a notice specifying the non-compliance giving rise to the default (this may be a demand for the Rent).
- (b) If the non-compliance specified in the notice cannot be remedied (in the opinion of the Landlord, acting reasonably), the notice must include a statement to that effect.
- (c) If the non-compliance specified in the notice can be remedied (in the opinion of the Landlord, acting reasonably), the notice must require the Tenant to remedy the non-compliance to the reasonable satisfaction of the Landlord within a reasonable time.
- (d) If the Landlord wishes to claim compensation from the Tenant for the non-compliance specified in the notice, the notice must require the Tenant to pay to the Landlord reasonable compensation within a reasonable time.

18.3 Landlord's termination rights following default

If:

- (a) the Tenant fails to pay any amount payable by it under this document on the due date for payment (whether or not any demand for payment is made or notice is given);
- (b) the Landlord issues a notice of the type referred to in **clause 18.2(b)**;
- (c) the Tenant fails to comply with the requirements of a notice issued under **clause 18.2** (not being a notice of the type referred to in **clause 18.2(b)**); or

- (d) if the Tenant:
 - (i) is Insolvent;
 - (ii) ceases or threatens to cease to carry on business from the Premises;
or
 - (iii) repudiates this document,

the Landlord may, subject to the requirements of any applicable Law:

- (e) re-enter and take possession of the Premises and eject the Tenant and all other persons from the Premises;
- (f) terminate this lease by giving notice to the Tenant;
- (g) elect to convert the unexpired portion of the Term into a tenancy from month to month by giving notice to the Tenant, in which case **clause 2.3** will apply to that tenancy from month to month except that the amount payable for Rent will be based on the amount payable by the Tenant at the date the Landlord's notice is given under this **clause 18.3(g)**; or
- (h) take any other action which may be available to it under the Law.

The Landlord may take action under this **clause 18.3** immediately or at any time after the default occurs. The termination of this lease will not affect or limit the entitlement of the Landlord to recover damages under **clause 18.4** or at law or in equity.

18.4 Damages

- (a) If the Landlord terminates this lease under this **clause 18**, the Tenant indemnifies the Landlord against any Loss paid, suffered or incurred by the Landlord (whether arising before or after termination) in connection with:
 - (i) the Tenant's breach of this document; or
 - (ii) the termination of this lease,including the Landlord's loss of the benefit of the Tenant performing the Tenant's obligations under this document from the date of termination until the Terminating Date.
- (b) If the Landlord terminates this lease, the Landlord must take reasonable steps to mitigate the Landlord's loss.

18.5 No waiver

- (a) The Landlord's failure to exercise the Landlord's rights or delay in exercising the Landlord's rights arising from the Tenant's breach is not a waiver of that default.
- (b) The demand or acceptance by the Landlord from the Tenant of any overdue payment does not prevent the Landlord from exercising or enforcing the Landlord's other rights under this document.
- (c) A waiver by the Landlord of a non-compliance with an obligation is not a waiver of a further non-compliance with the same or any other obligation.

18.6 Custom

A custom that develops between the parties does not affect the Landlord's right to demand strict compliance with an obligation in the future.

18.7 Subsequent payments

Any payment made by the Tenant or accepted by the Landlord after termination does

not amount to a waiver or evidence of a fresh tenancy and may be applied by the Landlord in its absolute discretion.

18.8 Landlord's rights and entitlements

The Landlord's rights and entitlements under this **clause 18** are not affected or limited by:

- (a) any lawful conduct of the Landlord;
- (b) any action taken under **clause 18.3**;
- (c) the Landlord taking any steps to mitigate its loss; or
- (d) any other circumstance amounting to surrender by operation of law.

19 End of Term

19.1 State of repair

- (a) On the Lease End Date, the Tenant must:
 - (i) deliver the Premises back to the Landlord in a neat and tidy state and in good and substantial repair;
 - (ii) replace any item of the Landlord's Property which the Tenant has broken or damaged and which cannot be repaired;
 - (iii) remove all the Tenant's Property and make good any damage caused by that removal;
 - (iv) leave the Premises in a condition consistent with the Tenant's obligations under this document; and
 - (v) remove the Tenant's Property from the Premises.
- (b) If the Tenant fails to deliver the Premises to the Landlord in a neat and tidy state and in good and substantial repair in accordance with **clauses 19.1(a)**:
 - (i) the Landlord may undertake any necessary works; and
 - (ii) the Tenant must pay the Landlord's Cost of doing so.

19.2 First right of refusal to purchase Tenant's Property

- (a) If the Tenant wants to sell any of the Tenant's Property on or before the Lease End Date, the Tenant must give the Landlord a notice:
 - (i) informing the Landlord that the Tenant wants to sell the relevant items of Tenant's Property; and
 - (ii) outlining the price and the terms and conditions of sale of each item of Tenant's Property.
- (b) If the Landlord wants to purchase any items of Tenant's Property for the price and on the terms and conditions set out in the Tenant's notice given under **clause 19.2(a)**, then within 20 Business Days after the Tenant gives the notice under **clause 19.2(a)**, the Landlord must:
 - (i) notify the Tenant that it agrees to purchase the relevant item of Tenant's Property; and
 - (ii) deliver to the Tenant the purchase money and any signed documents reasonably required by the Tenant to be handed over to effect purchase of the Tenant's Property.

- (c) On and from the date the Landlord complies with clause **19.2(b)**, the Landlord is bound to buy and the Tenant is bound to sell the relevant items of Tenant's Property for the price and on the terms and conditions notified by the Tenant under **clause 19.2(a)**.
- (d) The right of first refusal outlined in this **clause 19.2** is granted to the Landlord, the Landlord's legal representative, and the Landlord's successors and assigns. On the assignment of this lease, the benefit of the right of first refusal may be assigned to the assignee of this lease.

19.3 Tenant's Property not removed

If the Tenant does not remove any of the Tenant's Property under **clause 19.1(a)**, or if the Tenant is in default under **clause 19.1**, the Landlord may:

- (a) as the agent of the Tenant, remove any items of the Tenant's Property remaining and store them at the Cost and risk of the Tenant with a power of sale for non-payment of storage charges and the Tenant releases the Landlord absolutely from all Loss paid, suffered or incurred by or available to the Tenant in that case;
- (b) treat any items of the Tenant's Property remaining as abandoned and deal with them as it sees fit in its absolute discretion at the Tenant's Cost; and
- (c) carry out the Tenant's obligations under **clause 19.1** at the Tenant's Cost.

19.4 Transfer of title

The Landlord may elect to deal with any items of the Tenant's Property remaining on the Premises in accordance with either **clause 19.3(a)** or **19.3(b)**. The unencumbered title to those items of Tenant's Property that the Landlord elects to deal with under **clause 19.3(b)** is transferred to the Landlord when the Landlord either:

- (a) gives a notice to the Tenant; or
 - (b) takes unequivocal action,
- that confirms that **clause 19.3(b)** applies.

19.5 Costs

The Tenant:

- (a) must pay to the Landlord, as a liquidated debt payable on demand, any Cost incurred by the Landlord in exercising the Landlord's rights under **clauses 19.3 and 19.4**; and
- (b) indemnifies the Landlord against any Claim against the Landlord resulting from the Landlord exercising the Landlord's rights under **clauses 19.3 and 19.4**.

19.6 Tenant to return keys

On the Lease End Date, the Tenant must return all access cards, keys and other security items providing access to the Building or the Premises to the Landlord and pay the replacement cost of any access cards, keys and other security items not returned to the Landlord, on demand by the Landlord.

20 Guarantee

20.1 Acknowledgement

The Guarantor acknowledges that the Landlord enters into this document at the request of the Guarantor relying on (amongst other things) the Guarantor executing this document to assure the performance by the Tenant of its obligations under this document.

20.2 Guarantee

In consideration of the Landlord entering into this document at the request of the Guarantor, the Guarantor irrevocably and unconditionally guarantees to the Landlord the punctual payment by the Tenant of the Guaranteed Money and the performance by the Tenant of the obligations of the Tenant under this document.

20.3 Payment on demand under guarantee

If the Tenant defaults in the punctual payment of any of the Guaranteed Money, the Guarantor must pay that Guaranteed Money on demand by the Landlord. The Landlord may demand payment from the Guarantor from time to time and whether or not the Landlord has made demand on the Tenant or any other person.

20.4 Compliance

The Guarantor agrees with the Landlord that the Guarantor will use its best endeavours to ensure the Tenant's compliance with the terms of this document.

20.5 Indemnity

As a separate covenant, the Guarantor unconditionally and irrevocably indemnifies the Landlord against all Loss paid, suffered or incurred by the Landlord (including all Loss incurred by the Landlord in the enforcement or attempted enforcement of the obligations of the Tenant or the Guarantor under this document) relating directly or indirectly to:

- (a) any failure by the Tenant to pay the Guaranteed Money or to comply with any of its obligations under this document; or
- (b) this document or a related security, transaction or document being or becoming unenforceable in accordance with its terms or the priority or effectiveness of any of them being adversely affected.

The Guarantor must pay any amounts payable to the Landlord under this **clause 20.5** on demand by the Landlord.

20.6 Guarantee and Indemnity not affected

The liability of the Guarantor under this **clause 20** is a principal, unconditional and absolute obligation and is not adversely affected by:

- (a) the granting of time, forbearance or other concession to the Guarantor or to the Tenant;
- (b) the making of any arrangement, composition or compromise with or the discharge or release of the Tenant;
- (c) the actual or alleged invalidity or unenforceability of any term of this document;
- (d) any delay, laches, acquiescence, mistake, negligence or other act or omission of the Landlord;
- (e) any Dealing or any renewal, release, surrender, termination, variation or novation of this document;
- (f) any Guarantor not executing or not properly executing this document;
- (g) this document not being registered; or

- (h) anything else which, but for this **clause 20.6**, could operate to adversely affect this Guarantee and Indemnity.

If a payment made by the Tenant is set aside or avoided by any Law or otherwise, that payment is taken not to have been made and does not reduce the liability of the Guarantor under this document.

20.7 Continuing Guarantee and Indemnity

This Guarantee and Indemnity:

- (a) is a continuing guarantee and indemnity;
- (b) is irrevocable; and
- (c) remains in full force, despite termination or expiry of this lease, until all obligations of the Tenant under this document have been performed in full to the Landlord's satisfaction.

20.8 No competition

Until the Tenant has fully performed all its obligations under this document to the Landlord's satisfaction, the Guarantor must not:

- (a) reduce its liability under this Guarantee and Indemnity by:
 - (i) raising a set-off or counter-claim available to itself, the Tenant or a co-surety or co-indemnifier against the Landlord; or
 - (ii) claiming a set-off or making a counter-claim against the Landlord; or
 - (b) prove in competition with the Landlord against the Tenant,
- without the prior consent of the Landlord.

20.9 Guarantee and Indemnity in addition to other rights of the Landlord

This Guarantee and Indemnity:

- (a) is in addition to any other security or right which the Landlord may now have or may subsequently take or hold against the Tenant or the Guarantor; and
- (b) may be enforced without first recourse to that other security or right and without taking steps or proceedings against the Tenant, despite any rule of law or equity or any Law to the contrary.

20.10 Warranties by the Guarantor

The Guarantor warrants to the Landlord that:

- (a) if a Guarantor is a corporation, it has the corporate power to enter into and perform and has taken all necessary corporate and other action to authorise the execution and performance of this document;
- (b) if a Guarantor is a natural person, it has the capacity to enter into and perform this document;
- (c) this Guarantee and Indemnity constitutes a legal and binding obligation of the Guarantor;
- (d) the execution and performance of this document does not violate:
 - (i) existing Law;
 - (ii) the constitution of the Guarantor if a Guarantor is a corporation; or
 - (iii) any mortgage, contract or other undertaking to which the Guarantor is

a party or which is binding on the Guarantor or its assets; and

- (e) the Guarantor is not aware of any matter material to the decision of the Landlord to enter into this document which has not been adequately disclosed to the Landlord in writing.

20.11 Assignment

The Landlord may assign the benefit of this Guarantee and Indemnity in its absolute discretion.

21 Bank Guarantee

21.1 Giving of Bank Guarantee

The Tenant must give the Bank Guarantee to the Landlord on or before the Commencing Date.

21.2 Use of Bank Guarantee

The Landlord may, without notice to the Tenant, recover from the Bank Guarantee any Cost incurred or Loss suffered by the Landlord if the Tenant breaches this document.

21.3 Replacement and maintenance

The Tenant must:

- (a) replace either the whole Bank Guarantee or the proportion of the Bank Guarantee recovered by the Landlord in accordance with **clause 21.2** within seven days of receiving notice from the Landlord to do so; and
- (b) make sure that the Bank Guarantee has no expiry date, and is current and enforceable at all times.

21.4 Increase in the Bank Guarantee

If the Landlord determines that the amount of the Bank Guarantee required under this document increases as a result of an increase in Rent or other money payable by the Tenant under this document, then the Tenant must deliver to the Landlord a replacement or additional Bank Guarantee for that increased amount within twenty (20) Business Days of the date of the Landlord's demand.

21.5 Return of Bank Guarantee

Unless the Landlord is entitled to exercise the Landlord's rights under **clause 21.2**, the Landlord must return the Bank Guarantee to the Tenant within four months after the Lease End Date.

21.6 Change of Landlord

If the Landlord deals with the Landlord's interest in the Building so that another person becomes the landlord:

- (a) the Landlord may assign the Bank Guarantee to that other person;
- (b) the Landlord has no personal liability to the Tenant for returning the Bank Guarantee; and
- (c) the Tenant must either:
 - (i) enter into any document that the Landlord reasonably requires to effect or to perfect an assignment of the Bank Guarantee to that other person; or
 - (ii) provide a replacement Bank Guarantee in favour of that other person.

21.7 Retention by Landlord

If:

- (a) the Landlord demands payment under the Bank Guarantee for part of the Bank Guarantee Amount only; and
- (b) the issuer pays the whole of the Bank Guarantee Amount to the Landlord,
the Landlord may retain the balance of the money on terms as it sees fit in its absolute discretion.

21.8 Application of this clause

This **clause 21** will apply to any other security accepted by the Landlord excluding a guarantee under **clause 20**.

22 Option to extend lease for a Further Term

22.1 Option

Subject to **clauses 22.3, 22.4, and 22.6**, the Landlord must grant the Tenant a lease of the Premises for the Further Term if the Tenant exercises its option to extend the lease of the Premises for the Further Term by giving notice to the Landlord between 12 and six months, both dates inclusive, before the Terminating Date. The option is not exercisable before or after that period.

22.2 Lease for Further Term

The lease for the Further Term will:

- (a) commence on the day after the Terminating Date and expire on the last day of the Further Term; and
- (b) otherwise be on the same terms as this document except that:
 - (i) the following clauses and items in the **reference schedule** will be marked 'Not applicable to this lease':
 - (A) this **clause 22**;
 - (B) the definition of Further Term in **clause 1.1**;
 - (C) the references to the *Rent Review Dates and Rent Review Methods - During Further Term* in **item 10** of the **reference schedule**;
 - (D) the references to *Refurbishment Dates – During Further Term* in **item 16** of the **reference schedule**.
 - (ii) the Rent applying as at the commencement date of the Further Term will be determined under **clause 4** in accordance with the Rent Review Method specified in the **reference schedule**;
 - (iii) the Rent Review Dates and the Rent Review Methods during the Further Term (if any) will be as specified in the **reference schedule** as *Rent Review Dates and Rent Review Methods - During Term*;
 - (iv) the Refurbishment Dates during the Further Term (if any) will be as specified in the **reference schedule** as *Refurbishment Dates - During Term*;

- (v) the Bank Guarantee Amount will be increased to the amount determined under **clause 21.4**;
- (vi) the **reference schedule** to this document will then be varied by updating the references to the *Term*, the *Starting Date*, the *Expiry Date*, the *Rent* and the *Bank Guarantee Amount* with the references that apply to the Further Term as determined under this **clause 22** and replacing any remaining references to *Further Term* with *Term*;
- (vii) if a Transfer has been completed in accordance with **clause 15.2**, the Tenant will be replaced by the proposed tenant and any continuing obligations of the proposed tenant under any document entered into by the Tenant, the proposed tenant and the Landlord will be included (without limiting any other liability of the proposed tenant to the Landlord under this document or the relevant document); and
- (viii) any variations made by the parties to this document during the Term that are intended to apply during the Further Term will be included.

22.3 Last Date

The Tenant acknowledges that, subject to the terms of this document:

- (a) the total period for the Term and each Further Term granted under this lease will end on the Last Date; and
- (b) the Landlord cannot be required to grant a lease of the Premises to the Tenant for a period that extends beyond the Last Date.

22.4 Landlord not required

The Landlord cannot be required to grant a lease of the Premises for the Further Term to the Tenant if the Tenant:

- (a) has not remedied to the Landlord's reasonable satisfaction any default of which the Landlord has given notice to the Tenant, either when the Tenant exercises the option or at any time after that up to and including the Expiry Date; or
- (b) has persistently defaulted during the Term and the Landlord has given notice of those defaults to the Tenant.

22.5 Execution of new documents

If the Tenant exercises the option to extend the lease of the Premises for the Further Term under and in accordance with **clause 22.1**:

- (a) the document for the new lease will be prepared by the Landlord's solicitors; and
- (b) the Tenant must return the document for the new lease properly executed by the Tenant to the Landlord or its solicitors within one month after it is given to the Tenant or its solicitors.

22.6 Failure to execute new documents

If the Tenant fails to comply with **clause 22.5**, then the Tenant is taken to have repudiated the agreement for the lease for the Further Term resulting from the Tenant's exercise of the option to extend the lease of the Premises for the Further Term and the Landlord may by notice to the Tenant accept the repudiation. If the Landlord accepts the Tenant's repudiation then:

- (a) if the Term has not expired, this lease will end on the Terminating Date; or
- (b) if the Term has expired, the Tenant is taken to be a monthly tenant and **clause 2.3** will apply.

The Landlord's rights under this **clause 22** are not in substitution for or derogation from any other rights the Landlord may have under this document or at Law or in equity, including its rights under **clause 18**.

22.7 Tenant may request determination of Current Market Rent

Despite **clause 22.2(b)(ii)** (and if the Landlord and the Tenant have not already agreed on what the Rent applying as at the starting date of the Further Term is to be), the Tenant may give the Landlord a notice within the period beginning six months before and ending three months before the last day on which this option may be exercised (unless the Term is less than 12 months where the respective period will be three months and 30 days) asking for a determination of the Current Market Rent at the date the notice is given.

22.8 Landlord's Assessment

If the Tenant gives a notice asking for that determination, the Landlord must give the Tenant a notice within one month after the Tenant gives its notice stating the Landlord's Assessment at the date the Tenant's notice is given. If the Tenant does not accept the Landlord's Assessment as a determination of that Rent within one month after the Landlord gives its notice, then the Rent is to be determined in accordance with **clauses 5.3 to 5.10**. If the Tenant accepts the Landlord's Assessment, then the Tenant is taken to have been given a notice that the Rent has been determined.

22.9 Exercise of option

If the Tenant gives a notice under **clause 22.7**, **clause 22.1** is varied so that the last day on which the option can be exercised is the earlier of 21 days after a notice is given to the Tenant that the Rent has been determined and the Terminating Date.

23 Notices

23.1 General

A notice, demand, certification, process, consent, request, waiver, agreement or other communication relating to this document must be in writing in English and may be given by an agent of the sender and is not effective unless it is in writing.

23.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current delivery address for notices;
- (c) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) emailed to the party's current email address for notices.

23.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially as specified in the **reference schedule** and are taken to be the current particulars unless **clause 23.3(b)** applies.
- (b) Each party may change its particulars for delivery of notices by notice to each other party and the changed particulars will then be taken to be the current particulars.

23.4 Communications by post

Subject to **clause 23.6**, a communication is given if posted:

- (a) within Australia to an Australian postal address, five days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, 14 days after posting.

23.5 Communications by email

Subject to **clause 23.6**, if a communication is emailed, a delivery confirmation report received by the sender, which records the time that the email was delivered to the addressee's current email address is prima facie evidence of its receipt by the addressee, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the addressee.

23.6 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
 - (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,
- it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

23.7 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this document may be served by any method contemplated by this **clause 23** or in accordance with any applicable Law.

24 Confidentiality

24.1 Confidentiality

- (a) All information exchanged between the parties under this lease and during the negotiations of this lease is confidential. The parties must keep the confidential information confidential and not disclose it or allow it to be disclosed to any other person except:
 - (i) with the consent of the party that owns the confidential information or to whom it relates;
 - (ii) with the consent of each other party;
 - (iii) to officers, employees, directors, investors, financiers, consultants or advisers of the party with a need to know (and only to the extent that each has a need to know) and who agree that the confidential information must be kept confidential;
 - (iv) disclosure to the Minister, within the NSW Government or NSW Parliament;

- (v) disclosures required by law, including if required pursuant to the *Government Information (Public Access) Act 2009* (NSW), the *Independent Commission Against Corruption Act 1988* (NSW), the *Public Interest Disclosures Act 1994* (NSW) or equivalent legislation in any jurisdiction or any existing or future equivalent applicable legislation in any jurisdiction; and
- (vi) disclosures required to enable a party to perform and enforce its rights or obligations under this document.
- (b) Each party must take or cause to be taken responsible precautions necessary to maintain the secrecy and confidentiality of and to prevent the disclosure of the confidential information.

25 General

25.1 Form of this document

This document is a deed even if it is not registered.

25.2 Compliance on Business Day

Anything to be done on a day which is not a Business Day must be done on the next Business Day.

25.3 Governing Law and Jurisdiction

- (a) This document is governed by and is to be construed in accordance with the Law applicable in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

25.4 Exclusion of statutory provisions

- (a) The obligations, powers and provisions implied in leases by sections 84, 84A, 85, 86, 133 and 133A of the *Conveyancing Act 1919* (NSW) do not apply to this document.
- (b) So far as it is possible to do so, the application of any moratorium or Law affecting the operation of this document, or any rights of the Landlord, is excluded.

25.5 Covenants

Each obligation undertaken by a party to this document is a covenant by that party.

25.6 Entire understanding

- (a) This document contains the entire understanding between the parties as to the subject matter of this document.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this document are merged in and superseded by this document and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this document; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

25.7 Severability

- (a) If a provision of this document is illegal, invalid or unenforceable, then that provision is read down to the extent necessary to give it a valid operation.
- (b) If a provision or part of it cannot be read down then that provision or part is deemed to be void and severable and the remainder of this document continues to be valid and enforceable.

25.8 Notice before Landlord liable

Despite anything to the contrary in this document, the Landlord is not in default of a remediable breach of this document unless:

- (a) the Tenant has given written notice of the breach to the Landlord; and
- (b) the Landlord has failed to remedy the breach within a reasonable time after receipt of the notice.

25.9 Landlord's consent

- (a) Subject to any other provision of this document, if the Tenant requires the Landlord's consent to do something under this document or the Rules, the consent:
 - (i) may be granted at the Landlord's discretion;
 - (ii) may be granted with conditions; and
 - (iii) must be in writing.
- (b) If the Tenant requests the consent of the Landlord under this document, the Tenant must pay to the Landlord the Landlord's Costs for the consent.

25.10 Tenant's Cost

If this document requires the Tenant to do something then, unless this document specifically provides otherwise, the Tenant must do that thing at the Tenant's own Cost.

25.11 Tenant to ensure compliance

If, under this document, the Tenant must not do something:

- (a) the Tenant must not authorise another person to do that thing;
- (b) the Tenant must ensure that the Tenant's employees, agents and contractors do not do that thing; and
- (c) the Tenant must also not allow that thing to be done.

25.12 Tenant as trustee

If the Tenant is the trustee of a trust, the Tenant enters into this document both in the Tenant's own capacity and in the Tenant's capacity as trustee of the trust and the Tenant's liability under this document is not limited in any way.

25.13 Survival of indemnities

Each indemnity in this document:

- (a) is a continuing obligation, separate from the other obligations of a party; and
- (b) survives termination of this lease.

25.14 Acknowledgement

- (a) The Tenant acknowledges that it has received a copy of the Landlord's draft lease document before this document was entered.

25.15 Statements

A notice by the Landlord stating any amount payable or determined or any other thing to be done or not done under this document is sufficient evidence of that fact unless manifestly wrong.

25.16 Continuing obligations

Obligations that are due for performance but which have not been performed by the Lease End Date continue in force.

25.17 Prior defaults

Termination of this lease does not affect rights that arise before termination.

25.18 Caveats

The Tenant must not lodge or cause to be lodged any caveat against the title to the Land to protect any interest of the Tenant under this document.

25.19 Amendment

This document may only be varied or replaced by a document executed by the parties.

25.20 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

25.21 Binding on parties

This document binds all of the parties to it whether or not all of the parties have executed or properly executed the document.

25.22 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

25.23 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

25.24 Non-merger

None of the terms or conditions of this lease nor any act matter or thing done under or by virtue of or in connection with this lease or any other agreement between the parties hereto shall operate as a merger of any of the obligations, rights and remedies of the parties in or under this lease or in or under any such other agreement all of which shall continue in full force and effect.

25.25 Liability

An obligation of two or more persons binds them separately and together.

25.26 Relationship of parties

This document is not intended to create a partnership, joint venture or agency relationship between the parties.

25.27 Electronic execution

- (a) Each party agrees that this lease may be electronically signed, and that any electronic signatures appearing on this lease are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.
- (b) The parties agree that the provisions of the *Electronic Transactions Act 2000* (NSW) will apply to this lease and that a signed copy of this lease transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this lease for all purposes.

25.28 Counterparts

This lease may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.

25.29 Landlord's position as a public authority

The parties acknowledge that nothing in the lease can in any way restrict or otherwise affect the Landlord's:

- (a) unfettered discretion as to the use of the Landlord's statutory powers as a Government agency or a public authority;
- (b) obligations, if any under the Trust Act or any other legislation.

26 Essential terms

- (a) The Tenant hereby agrees that the following are essential terms of the Tenant's agreement with the Landlord, namely:
 - (i) that the Tenant holds the Premises for the whole of the Term;
 - (ii) that the Tenant carries out in the Premises only the Permitted Use and complies with **clause 10** of the lease;
 - (iii) that the Tenant pays the Rent and all moneys payable by the Tenant under the lease;
 - (iv) that the Tenant will not assign the lease in breach of the lease nor sub-let, part with, share the possession of, mortgage, charge or otherwise deal with any part of the Premises or by any act procure any of those things;
 - (v) that the Tenant keeps the Premises open for business at least during the Minimum Trading Hours in accordance with **clause 10.4**;
 - (vi) that the Tenant repairs, maintains, paints and cleans the Premises in accordance with **clause 12**; and
 - (vii) that the Tenant complies with the insurance provisions of the lease.
- (b) In the event of a breach of an essential term, in addition to the remedies referred to in **clause 18.3**, the Landlord will be entitled to recover from the Tenant damages for all loss suffered because the lease will not run the Term including, but not limited to the costs of recovery of possession, the costs of reinstating the Premises, the costs of re-letting and any loss arising out of any lapse of time before re-letting or any re-letting at a rent and upon terms not as advantageous to the Landlord as the terms of the lease.

27 Landlord's Intellectual Property

27.1 Intellectual Property

- (a) Subject to the terms of this lease, the Landlord grants the Tenant a non-exclusive, royalty-free and non-transferable licence to use the Landlord's trademarks, logos, indicia, images and mascots (**Landlord's Marks**) during the Term:
 - (i) solely for the purpose of exploiting the Tenant's rights under this lease; and
 - (ii) in accordance with the Landlord's written guidelines for use of the Landlord's Marks and any updates to such guidelines as provided by the Landlord to the Tenant from time to time (**Landlord's Branding Guidelines**) and this lease.
- (b) The Tenant must not:
 - (i) use any of the Landlord's Marks as part of its trade name, corporate name or domain name;
 - (ii) use the Landlord's Marks in a manner which, in the Landlord's reasonable opinion, may be prejudicial to the Landlord or the Landlord's Marks; or
 - (iii) apply to register any trade mark, business name, company name or domain name which includes any of the Landlord's Marks, or which is substantially identical or deceptively similar to any of the Landlord's Marks.
- (c) If the Tenant's use of the Landlord's Marks does not comply with the terms of this lease or the Landlord's Branding Guidelines from time to time, the Tenant must, at its expense, correct the use of the Landlord's Marks to the Landlord's reasonable satisfaction.
- (d) Nothing in this lease affects the Landlord's ownership of the Landlord's Marks or any other Intellectual Property, including the Landlord's ownership of Intellectual Property in any scientific or horticulture discovery or research.
- (e) If a party contributes any works or ideas to or as part of the activities conducted under this lease (**IP Works**), the Intellectual Property in those IP Works is retained by the contributing party.
- (f) Each party grants to the other party a non-exclusive, royalty-free and non-transferable licence for the Term to use the Intellectual Property in that party's IP Work solely for the purposes of carrying out or promoting the rights and obligations under this lease.
- (g) Notwithstanding any other provision of this lease, all Intellectual Property in any scientific or horticulture discovery or research by either party will be owned by the Landlord, and the Tenant assigns all such Intellectual Property upon its creation to the Landlord.

27.2 Submission of samples

- (a) The Tenant must submit to the Landlord for the Landlord's approval representative samples of all materials that include the Landlord's Marks, the IP Works, or otherwise refers to Tenant's use of the Premises.

- (b) If the Tenant's use of the Landlord's Marks complies with the Landlord's Branding Guidelines (as the case may be), the Landlord may not unreasonably withhold its consent to the use of the Landlord's Marks.

28 Dispute Resolution

28.1 Dispute Resolution

If any difference or dispute arises out of or in connection with this lease, the following procedure must be followed to resolve it:

- (a) a party may give written notice of the dispute to the other party, which provides details of the dispute and the action reasonably required to be taken by that party to resolve the dispute (**Dispute Notice**);
- (b) a representative nominated by each party must meet within five (5) Business Days of receipt of the Dispute Notice and attempt in good faith to resolve the dispute within fifteen (15) Business Days of receipt of the Dispute Notice;
- (c) a dispute which is not resolved within fifteen (15) Business Days after service of the Dispute Notice may be referred by either party for determination by an Expert who is agreed upon by both parties;
- (d) if the parties cannot reach agreement within 7 Business Days as to the appropriate Expert, then the Expert must be appointed (at the request of either party) by:
 - (i) the president of the professional body most appropriate to determine the dispute or, if the parties are unable to agree on the appropriate body, the President for the time being of the New South Wales Law Society; or
 - (ii) if there is no such body in existence at the time of the request or if such body is not able to make a binding nomination of an Expert, then the president for the time being of an equivalent body;
- (e) each party may make a submission to the Expert (either orally or in writing) within 20 Business Days after the date of the Expert's appointment;
- (f) in making a determination, the Expert must:
 - (i) act as an expert and not as an arbitrator;
 - (ii) consider any submission made to it by a party; and
 - (iii) provide the parties with a written statement of reasons for the determination;
- (g) in the absence of manifest error, the determination of the Expert is conclusive and binding on the parties;
- (h) the costs of the Expert will be shared equally between the parties unless otherwise determined by the Expert;
- (i) if the Expert fails to deliver a determination within 40 Business Days after the date of appointment, then either party may require the appointment of a further Expert to determine the dispute;
- (j) the provisions of this clause do not prevent the parties from applying to an appropriate court for urgent interlocutory or other urgent relief; and

- (k) in this clause, **Expert** means an appropriate practising professional who is an expert with at least five years' continuous experience in the topic over which a dispute under this lease has arisen.

28.2 Continuing Performance

Each party must continue to perform its obligations under this lease, notwithstanding the existence of a dispute.

Schedule 1

Rules

These Rules are in addition to the Tenant's obligations under its lease of the Premises. Expressions that are defined in that document have the same meaning in these Rules.

Rule 1: Contact point

- 1.1 The Tenant must provide the Landlord with the Tenant's contact address and telephone number for all emergencies. The Tenant must keep the Landlord up to date with any changes.

Rule 2: Security

- 2.1 The Tenant must do the Tenant's best to keep the Premises safe and secure, and to protect them against theft. The security of the Premises is the Tenant's responsibility.
- 2.2 The Tenant must make sure all doors and openings are locked or shut securely whenever the Premises are unoccupied.
- 2.3 The Tenant must make sure when closing the Premises for the day that:
- (a) there is nobody in the Premises;
 - (b) there is nothing in the Premises likely to cause fire;
 - (c) all taps are turned off with plugs removed; and
 - (d) all cash is secured.
- 2.4 The Landlord may lock the Trust Lands each day after the Minimum Trading Hours. The Tenant may only enter or remain in the Trust Lands after it is locked with the prior consent of the Landlord.
- 2.5 The Landlord may enter the Premises for any purposes concerning the security of the Premises.
- 2.6 The Tenant must take all necessary precautions for the safe custody of keys, access cards or other security items and must not give any of them to a third party. The Tenant must immediately inform the Landlord if a key, access card or other security item is lost.

Rule 3: Presentation of Premises

- 3.1 The Tenant must ensure that the Premises are presented in accordance with the best standards of practice in the retail and/or commercial industry.
- 3.2 The Tenant must get the Landlord's consent before the Tenant does any thing that affects the quality and standard of the Premises and its presentation. The Tenant must comply with the Landlord's reasonable requirements and standards of design, quality, style and appearance.
- 3.3 This rule applies to:
- (a) fixtures, fittings, equipment, lighting, facilities or display (inside or outside the Premises);
 - (b) the design and labelling of stationery, carry bags and food court utensils; and

- (c) anything on or visible from the outside of the Premises (for example: a sign, window blind or awning).
- 3.4 The Landlord may withdraw its consent at any time where the Landlord reasonably believes it is in the interests of the Trust Lands or other people using the Trust Lands.

Rule 4: Display

- 4.1 If requested by the Landlord, the Tenant must keep the display windows and appropriate parts of the Premises adequately lit during the Minimum Trading Hours.

Rule 5: Music in Premises

- 5.1 If the Tenant plays music, makes any sound using sound equipment or uses a television, the Tenant must make sure the sound is not heard or likely to be heard outside the Premises.
- 5.2 The Tenant may play 'background recorded music' as long as the Tenant makes sure that it does not annoy any other tenants or occupiers using the Building or adjoining / neighbouring residential or commercial areas.
- 5.3 The Tenant may not spruik or permit any other loud or like noise either inside or outside the Premises without the Landlord's written consent.

Rule 6: No electronic games

- 6.1 The Tenant must not have any electronic games, vending machines or similar equipment in the Premises except if permitted by the lease.

Rule 7: Cooling and heating of Premises

- 7.1 The Tenant must get the Landlord's consent before the Tenant uses any services for cooling or heating the Premises other than those the Landlord supplies (for example: lighting, cooling, heating or circulating air).

Rule 8: Cleaning

- 8.1 The Tenant's obligation to keep the Premises clean includes cleaning all grease traps and food preparation areas and arranging for the removal of any wet refuse from the Premises on a regular basis.
- 8.2 The window cleaning must be done outside the Minimum Trading Hours.
- 8.3 The Tenant must comply with the Trust Lands' waste recycling programme.
- 8.4 Where possible, the Tenant must use biodegradable products (i.e. plates, cups, cutlery) in relation to sales of takeaway items.

Rule 9: Services

- 9.1 The Tenant must obey the Landlord's requirements concerning the Services that the Landlord supplies (for example: air-conditioning and smoke detectors). The Tenant must not do anything that might interfere with their efficient operation.
- 9.2 If the Tenant activates any of the services to the Premises (for example: smoke detectors, fire alarms) the Tenant is responsible for any charges that result.

Rule 10: No dangerous behaviour

- 10.1 The Tenant must promptly tell the Landlord about any accident to or problem with any services or facilities that are the Landlord's responsibility to maintain under the lease agreement and that need repair or any other damage or defect in the Premises or the Building especially if the Tenant is aware, or ought reasonably to be aware, that this may be a danger or risk to the Premises, the Building or any person in the Building.

Rule 11: Use of Common Areas for business

- 11.1 The Tenant must get the Landlord's consent before the Tenant uses or allows any part of the Common Areas to be used for:

- (a) any business or commercial purposes; or
- (b) display or advertising.

It will be a condition of any consent given by the Landlord under this Rule that the relevant clauses in the lease relating to cleaning, works and insurance apply as if references in those clauses to the Premises were references to that part of the Common Areas used by the Tenant under this Rule.

Rule 12: Delivering goods using trolley

- 12.1 The Tenant must only use the delivery areas of the Common Areas at the times the Landlord approves.
- 12.2 The Tenant must make sure that any trolley the Tenant uses for carrying goods does not mark or damage the floor of the Building and makes minimal noise.

Rule 13: Equipment

- 13.1 The Tenant must get the Landlord's consent before the Tenant installs equipment on the Premises.
- 13.2 In particular, the Tenant must get the Landlord's consent before the Tenant brings any heavy equipment onto the Premises. The equipment must be reasonably necessary for carrying on the Tenant's business in the Premises. The Landlord does not consent to any equipment that may cause any structural or other damage to the floors or other parts of the Premises or the Common Areas or nuisance (including noise or vibration) to any occupier of the Building.
- 13.3 Before the Tenant brings any of the Tenant's equipment onto the Premises or the Common Areas the Tenant must give the Landlord at least two days' notice.
- 13.4 The Landlord may direct the routing, installation and location of the equipment. The Tenant must obey all the Landlord's directions.
- 13.5 The Tenant must not affix any television or radio masts, antenna or other telecommunications equipment to any part of the Building without the Landlord's prior consent.

Rule 14: Rubbish

- 14.1 The Tenant:
- 14.1.1 must not burn any rubbish or any other material in the Premises or any part of the Building or the Land;
 - 14.1.2 must, at its cost, ensure that the rubbish bins on the Premises are emptied on a regular basis; and

14.1.3 must place rubbish bins in locations on the Premises approved by the Landlord.

Rule 15: No auctions

15.1 The Tenant must not conduct any auction, liquidation or fire sale in the Premises.

Rule 16: Public address system

16.1 The Landlord may provide a public address system in the Common Areas.

Rule 17: Loading zone

17.1 The Tenant may only receive deliveries to the Premises via the designated loading zones.

17.2 The Tenant must ensure that deliveries to the Premises are completed before 10:00am or after 4:00pm each day.

17.3 The Landlord must provide the Tenant with reasonable access to the Premises for the purpose of receiving deliveries.

17.4 The Tenant must follow the instructions of the Landlord in relation to delivery vehicle access to the Land the Premises.

17.5 If the Landlord asks, the Tenant must give the Landlord the licence numbers of the Tenant's vehicles.

Rule 18: Keeping Common Areas clear

18.1 The Tenant must keep the Common Areas clear. In particular, the Tenant must not block or obstruct the fire doors (if any) or evacuation paths of travel. The Tenant must not cover or obstruct any service duct, any fire prevention devices or any other thing that allows light into or ventilation of the Building. If the Tenant does not keep the Common Areas clear, the Landlord may remove any offending item at the Tenant's cost.

Rule 19: The Tenant must obey fire regulations

19.1 The Tenant must not store or use inflammable or explosive substances on the Premises, except as required in the normal course of the Tenant's business.

Rule 20: Fire or emergency drills

20.1 The Tenant must observe and obey all fire or emergency drills. The Landlord aims to give the Tenant prior notice of these drills.

20.2 The Tenant must make sure that it is fully aware of all safety and emergency procedures and have their own procedures for management of emergencies within the Premises.

Rule 21: Danger or risk to Building

21.1 If the Tenant is aware of a risk or a danger (for example: a bomb threat or riot) in any part of the Premises, the Building, or Land, the Tenant must notify emergency services tell the Landlord immediately.

21.2 If there is, or may be, any thing that is a risk or a danger (for example: a bomb threat or riot) the Tenant must immediately obey any instructions given by the emergency services or Landlord, including leaving the Premises.

21.3 The Tenant must obey the instructions of the police or the fire brigade or other emergency authority. The Tenant must not re-enter the Premises or the Building unless the Landlord or the police or fire brigade or other appropriate authority tell the Tenant it is safe to do so.

Rule 22: Directory boards and directional signage

- 22.1 The Tenant may not install any signage in the Premises without the prior written consent of the Landlord, acting reasonably.
- 22.2 The Tenant must not interfere with any directory boards or directional signs provided by the Landlord.
- 22.3 If there are directory boards or directional signs, the Tenant must pay the Landlord the cost of placing any information relating to the Tenant them.

Rule 23: Hand bills

- 23.1 The Tenant must not advertise or promote their business by the use of hand bills, samplers or sandwich boards.

Rule 24: Animals

- 24.1 The Tenant must not have any kind of animal, bird or insect in the Premises (unless the Permitted Use under the lease allows otherwise).

Schedule 2

Marketing

1 Signs

- (a) The Tenant must not erect, attach, display or permit to be displayed on the Building or any part of the Premises signs, lights, placards, names, neon lights or other advertisements or notices visible from outside the Premises including umbrellas without the Landlord's prior written approval.
- (b) On vacating the Premises, the Tenant must at its own cost remove any signs approved under **clause 1(a)** of this **schedule 2** and make good any damage caused by the sign or the removal of the sign.
- (c) The Landlord may at any time by notice in writing require the Tenant to discontinue to use any sign or mode of advertising to which the Landlord has granted approval under **clause 1(a)** of this **schedule 2** and the Tenant on receipt of the notice must comply accordingly.

2 Landlord's marketing

- (a) The Landlord may:
 - (i) market and promote the Park in any way;
 - (ii) name the Building and create an identifying feature or logo for the Park;
 - (iii) at any time grant any person the right to name or change the name or any other identifying feature or logo of the Trust Lands; and
 - (iv) from time to time change that name or any other identifying feature or logo of the Premises or the Building.
- (b) The Tenant must co-operate with any marketing or promotion of the Park that the Landlord carries out.
- (c) The Tenant must submit to the Landlord a proposed trading name for the Tenant's operations in the Lease for the approval of the Landlord.
- (d) The Tenant must co-operate with the Landlord in promoting the use of any names, features or logos connected with the Park.
- (e) The Tenant must not use the name of the Landlord, the Premises or the Building or any logo for the Park without the Landlord's prior consent or as otherwise expressly permitted in this document.

3 Tenant's marketing plan

- (a) At least two months before the beginning of each financial year during the Term (including the Further Term), the Tenant must provide to the Landlord a marketing plan giving details of the Tenant's proposed marketing for advertising and promoting the Premises and the Tenant's business during that financial year.

Execution

Executed as a deed.

Landlord

Executed on behalf of the [INSERT NAME OF TRUST] by its authorised officer but not so as to incur any personal liability whose signature appear(s) below pursuant to the authority specified.

Body: [INSERT NAME OF TRUST] (ABN INSERT)

Authority: [INSERT]

.....
Signature of Witness

.....
Name of Witness (print)

.....
Address of Witness

.....
Signature of Authorised Officer

.....
Name of Authorised Officer (print)

.....
Authority

Tenant

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company:

Authority: Section 127(1) of the Corporations Act 2001

.....
Signature of Company Secretary/Director

.....
Name of Company Secretary/Director (print)

.....
Signature of Director

.....
Name of Director (print)

Guarantor

Signed, sealed and delivered by [insert name])
in the presence of:)

.....
Signature of Witness

.....
Signature of [insert name]

.....
Name of Witness (print)

.....
Address of Witness

Annexure B

Premises Plan

Annexure C

Asset Management Plan

Annexure D

Maintenance Schedule

Maintenance Item	Frequency
Waste Removal	As required
Sanitary and hygiene	As Required
Trade Waste - (e.g. sewer, garbage)	As Required
Security - Alarm Response and Monitoring by Council's preferred supplier	As Required
Repair and Maintenance of Security Alarm system	As Required
Replacement of Security Alarm System	As Required
Cleaning - Minor	Daily
Cleaning Major	3 Monthly
Air Conditioner- Maintenance	Quarterly
Air Conditioner - Replacement	As Required
Kitchen Extractor Fan – Repair and Maintenance	As Required
Grounds and Gardens	To keep in a clean and tidy condition, maintained to a similar standard as the surrounding parklands.
Pest - Termite/Borers/White Ants	As Specified and as Required
Pest and Vermin except Termites/Borers/White Ants	Quarterly and as Required
Fire compliance certification – Annual Fire Safety Statement	12 Monthly
Emergency and electrical lighting	6 monthly
Electrical - Tag and Testing	As required
Plumbing - blockages, leaks, cleaning, repair and maintenance.	As Required
Plumbing – roof and gutter cleaning	6 monthly
Repair and Maintenance of Hot Water System	Annually
Replacement of Hot Water System	As Required
Repair and maintenance of all floor surfaces – carpet, vinyl, tiles, wood and concrete.	As required.
Repair and maintenance of internal walls, ceilings and all doors (Non-Structural Works)	As Required
Repair and maintenance of ceiling and walls – Non-Structural Works	As Required
Repair and Maintenance of services in the Building shell - water, gas, electricity and sewer	As Required
Repair and Maintenance of services outside the building shell - water, gas, electricity, telephone, lighting and sewer	As Required
Painting Internally	Every 5 years and as required
Repair of lighting inside and attached to the Building	As Required

Repair of all fixtures and fittings	As Required
Window furnishings e.g. blinds	As Required
Repair of power points, lighting switches and television points	As Required
Repair & replacement of locks and key system	As Required
Maintenance and replacement of portable fire services	As Required
Replacement of fixed fire services	As Required
Maintenance of fixed fire services	As Required
Removal of graffiti	As Required
Repair aerals on roof - If applicable	As Required
Repair of windows (glass) and certification	As Required
Repair of window frames	As Required
Repair and maintenance of footpaths and external paving	As Required
Fire audit report	Annually

Annexure E

Licensed Area Plan