



DRAFT LEASE

City of Parramatta Council

and

|insert name |

for

|insert address |

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1 Definitions and interpretation

1.1 Definitions

In this Lease, unless the contrary intention appears:

Access Hours means the hours stated in Item 10;

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities intended by this Lease;

Authorised Officer means a person appointed by each party to act as an authorised representative for the purpose of this Lease including their solicitor;

Authority means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law;

Bank Guarantee means a bank guarantee:

- (a) issued by a bank approved by the Lessor;
- (b) containing an unconditional undertaking to pay the Lessor on demand, the Security Amount in full or part as demanded;
- (c) for the Security Amount; and
- (d) without an expiry date;

Base Building Condition means the following items to be made good:

- (a) ceiling tiles;
- (b) equipment and mechanical services;
- (c) light fittings and globes;
- (d) fire safety equipment (thermals/sprinklers);
- (e) skirting boards;
- (f) redundant cabling (as notified by the Lessor);
- (g) painting/redecoration;
- (h) window coverings;
- (i) floor penetrations;
- (j) Services;
- (k) partitions;
- (l) plumbing in the Premises,

and the scope of the works will include the following:

- (m) removal of all partitions installed and/or modified by the Lessee, with all ceilings (including tiles), walls and floors to be made good;

- (n) align ceiling tiles and grid, lights and fire protection equipment to the Lessor's open floor plan;
- (o) cleaning and repairing any ceiling grid and replacing any broken or damaged ceiling tiles;
- (p) ensure that no live wires are left exposed and strip out redundant cabling from ceiling and skirting boards back to the floor distribution board;
- (q) remove excess general power outlets and make good skirting boards;
- (r) either:
 - (i) replace all flooring to the Premises with new material of the same quality as that provided by the Lessor; or
 - (ii) if the Lessor does not require the replacement of flooring, put the flooring in good repair and condition including steam cleaning all carpeting and replacing any damaged areas;
- (s) paint, stain, wallpaper or otherwise treat or wash down all inside surfaces of the Premises in the same way that those surfaces were painted, stained, wallpapered or otherwise treated, to the Lessor base building design and colour or, if there is no design, to the reasonable specifications of the Lessor;
- (t) remove tenancy plumbing;
- (u) reconfigure all Services to the Lessor's open floor plan; and
- (v) replace all curtains, blinds and other furnishings and decorations provided by the Lessor which are, in the Lessor's reasonable opinion, worn or damaged;

Bond means a bond paid by the Lessee to the Lessor for the Security Amount in accordance with clause 5.

Building means the buildings erected on the Land;

Business Day means a day that is not a Saturday, Sunday or public holiday in Sydney;

Capital Works means works undertaken to create a new asset or space, or to change the use, function or layout of an existing asset or space.

Car Park means any part of the improvements on the Land or any adjoining land designated by the Lessor for use as a car park, including the Car Spaces;

Car Park Licence Fee means the amount in Item 14;

Car Spaces means those car spaces in Item 14;

Centre means all car parks, buildings and improvements erected on the Land including, without limitation, all plant and equipment, fixtures, fittings, signs, furniture and furnishings (other than the Lessee's Property) or the property of any other occupier of the Centre;

Claim means any Cost, claim, loss, liability, damage, proceeding, order, judgment or expense;

Commencing Date means the date in Item 5(a);

Common Area means any part of the Centre or Land provided by the Lessor for common use and includes any plazas, forecourts, pedestrian ways, car parks, stairways, toilets, elevators, landscaped areas and common amenities other than those reserved by the Lessor;

Contamination means any substance or organism present in the soil, substrata or groundwater on the Land or otherwise anywhere in the Premises in concentrations greater than the background levels naturally present for the substance or organism and which (based on generally accepted knowledge and practice at the Commencing Date) harms the Environment or is hazardous or otherwise harmful to health;

Cost includes any cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid);

CPI means the Consumer Price Index (All Groups) for Sydney published by the Australian Bureau of Statistics or any similar published index which replaces it;

Current CPI means the CPI for the quarter last published at the relevant Review Date;

Demolition means:

- (a) demolition of the Centre or that part of it as contains the Premises; or
- (b) any substantial repairs, renovations or reconstruction of the Centre (or that part of it as contains the Premises) that cannot be carried out practicably without the vacant possession of the Premises,

and “**Demolish**” has the corresponding meaning;

Electronic Communication has the same meaning as in the *Electronic Transactions Act 2000* (NSW).

Encumbrance means a caveat, charge, bill of sale, mortgage, pledge, lien, option to acquire, lease, security, preferential interest or arrangement of any kind and any agreement to grant or create any of those encumbrances whether registered or unregistered;

Environment includes:

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) all natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and
- (d) the social, economic, aesthetic and cultural condition;

Fitout Guide means the fitout guide provided by or on behalf of the Lessor applicable to the Centre;

GST means the same as in the GST Law;

GST Law means the same as “GST law” means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Guarantor means a person who gives a guarantee or a guarantee and an indemnity in connection with the Lessee's obligations, including the person named in Item 13;

Insolvency Event means, in relation to a party, the happening of any one or more of the following events:

- (a) that party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (b) a receiver, receiver and manager, administrator, provisional liquidator, trustee, controller, inspector or analogous person is appointed in relation to, or over, all or any part of that party's business, assets or securities;
- (c) a presumption of insolvency has arisen under legislation because of the party's failure to comply with a statutory demand or analogous process;
- (d) an application for the winding up of, or for the appointment of a receiver to, that party, other than winding up for the purpose of solvent reconstruction or re-amalgamation, is presented and not withdrawn or dismissed within 21 days (or such longer period agreed to by the parties), or an order is made or an effective resolution is passed for the winding up of, or for the appointment of a receiver to, that party, or any analogous application is made or proceedings initiated;
- (e) any shareholder or director of that party convenes a meeting for the purpose of considering or passing any resolution for the winding up or administration of that party;
- (f) that is an individual, a creditor's petition or a debtor's petition is presented to the official receiver or analogous authority in connection with that party;
- (g) an execution or similar process is levied or enforced against the property of that party;
- (h) that party ceases or suspends, or threatens to cease or suspend, the conduct of all or a substantial part of its business;
- (i) that party disposes of, or threatens to dispose of, a substantial part of its assets;
- (j) that party stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or
- (k) that party is unable to pay the party's debts as and when they become due and payable;

Interest Rate means a rate equal to 2% above the overdraft rate for \$100,000 or more charged by the Lessor's bank per annum, capitalised daily;

Item means an item in Schedule 1 – Reference Schedule.

Keys means any key, access card or other opening device to access the Premises, Building, Car Park or Land.

Land means the Land described in Item 3;

Law includes any requirement of statute, rule, regulation, common law, proclamation, ordinance, by-law or Australian Standard present or future and whether state, federal or otherwise;

Lease means this lease and any variation, amendment, annexure or exhibit in connection with this lease;

Lease Document means this Lease and any document giving rise to this Lease, any guarantee or guarantee and indemnity given in connection with this Lease, any consent required under this Lease, any assignment or transfer of this Lease and any other instrument ancillary to them or otherwise incidental to this Lease;

Lessee means the party named in Item 2 and includes all permitted executors, assigns, nominees and transferees;

Lessee PPS Items means any item of Personal Property:

- (a) which is owned or leased by the Lessee;
- (b) which is situated on the Premises at any time during the term of this Lease; and
- (c) in which the Lessor can require the Lessee to transfer ownership to the Lessor, or in which the Lessee is required to transfer ownership to the Lessor, before or after the end of the term of this Lease,

but does not include any Lessor PPS Items;

Lessee's Business means the business carried on by the Lessee from the Premises in accordance with the Permitted Use;

Lessee's Employees means each of the Lessee's employees, officers, agents, contractors, licensees and invitees;

Lessee's Property means all property owned or leased by the Lessee in the Premises or elsewhere in the Centre and any other property in the Premises other than the Lessor's Property;

Lessor means the party named in Item 1 and includes all executors, assigns, nominees and transferees;

Lessor's Assessment means the Lessor's written determination of the current market rent for the Premises from the relevant Review Date, having regard to anything the Lessor in its absolute discretion considers relevant;

Lessor's Employees means each of the Lessor's employees, officers, agents and contractors;

Lessor PPS Items means any item of Personal Property which is owned or leased by the Lessor and is situated on the Premises at any time during the term of this Lease;

Lessor's Property means all plant, equipment, fixtures, fittings, furniture, furnishings and other property the Lessor provides on the Land;

Make Good means:

- (a) removing all Lessee's Property (unless the Lessor directs otherwise);
- (b) removing any of the Lessor's Property directed to be removed by the Lessor and removed in the manner the Lessor directs;
- (c) removing all alterations or additions to the Premises made by or on behalf of the Lessee including signs, advertisements, notices (unless the Lessor directs otherwise);
- (d) properly repairing any damage to the Premises, Centre or Land caused by the Lessee or the Lessee's Employees;
- (e) thoroughly cleaning the Premises including where necessary removing all rubbish and other materials; and
- (f) reinstating the Premises and the Services to Base Building Condition (unless the Lessor directs otherwise);

Old Rent means the Rent payable immediately before the relevant Review Date;

Option Term means the term(s), if any, specified in Item 6;

Parking Levy means any amount the Lessor is required to pay pursuant to any statute or regulation which imposes any fee, levy or charge on the parking of motor vehicles in the Car Park;

Permitted Use means the use set out in Item 9;

Personal Information means personal information as defined in the *Privacy and Personal Protection Act 1998* (NSW);

PPS Act means the *Personal Property Securities Act 2009* (Cth);

Premises means:

- (a) the part of the Land or Centre described in Item 4, extending to:
 - (i) the internal surface of external walls and of internal structural walls and pillars of the Centre;
 - (ii) the internal surfaces of the ceiling and of concrete or other floors;
 - (iii) the central line of partitions separating the Premises from adjoining premises;
 - (iv) the external surfaces of partitions and doors separating the Premises from Common Areas or from premises not intended to be leased; and
 - (v) the external surfaces of glass in external windows;
- (b) all internal partitions, windows and window frames, doors and door frames, which are fully within the Premises;
- (c) any finishes on walls, floors, ceilings, partitions, doors and windows included in the Premises, including paint, wallpaper and other materials;

- (d) any Lessor's Property located in the Premises; and
- (e) any pipes, wires, ducting and other connections which are located in the Premises and used for the supply of Services to the Premises, but not to any other part of the Centre;

Previous CPI means the CPI number for the quarter last published before:

- (a) in the case of the first Review Date, the Commencing Date; or
- (b) in all other cases, the Review Date immediately before the relevant Review Date;

Principal Contractor has the same meaning given under the WHS Law;

Rent means the annual rent specified in Item 7 as varied under this Lease;

Rent Commencing Date means the date specified in Item 5(c);

Rent Day means the Commencing Date and the first day of every month after;

Review Date means each date specified in Item 8;

Rules mean the rules in Schedule 2 as varied or amended by the Lessor from time to time and any other rules of the Centre made by the Lessor;

Secured Party has the same meaning as that term is defined in the PPSA;

Security means the security in the form specified in Item 12 payable by the Lessee to the Lessor in accordance with clause 5.

Security Amount means the security amount specified in Item 12.

Security Interest has the same meaning as that term is defined in the PPSA;

Services means any utility or services to the Premises or the Centre by an Authority or the Lessor (for example air conditioning, communication, drainage, power, escalators, fire and emergency services, garbage removal, gas, heating, lifts, information booths, sewerage, telephone, televisions, trade waste and water) and the pipes, wires, ducting and other means of providing those services to the Premises or the Centre;

Term means the term of this Lease beginning on the Commencing Date and ending on the Terminating Date;

Terminating Date means the date specified in Item 5(b);

Valuer means a full member (for at least 5 years) of the NSW Division of the Australian Property Institute Inc. who:

- (a) is licensed to practice as a valuer of the same type of property as the Premises;
- (b) has at least 5 years' experience in valuing that type of property; and
- (c) is active in the market for valuation of that type of property;

WHS means work, health and safety;

WHS Law means the *Work Health and Safety Act 2011* (NSW);

WHS Regulation means the *Work Health and Safety Regulation 2017* (NSW);

WHS Management Plan has the same meaning given under the WHS Regulations; and

Work includes maintenance, repair, replacement, redecoration, alteration or addition (including the erection of signage).

1.2 *Interpretation*

In this Lease, unless the contrary intention appears:

- (a) **(documents)** a reference to this Lease or another document includes any document which varies, supplements, replaces, assigns or novates this Lease or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this Lease;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect the interpretation of this Lease.
- (d) **(Item)** a reference to an Item means a reference to an Item in Schedule 1;
- (e) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (g) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (h) **(rights and obligations)** a reference to a right or obligation of a party is a reference to a right or obligation of that party under this Lease;
- (i) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (j) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (k) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (l) **(singular)** the singular includes the plural and vice-versa;
- (m) **(gender)** words importing one gender include all other genders;

- (n) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (o) **(rules of construction)** neither this Lease nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (p) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (q) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in New South Wales, even if the obligation is to be performed elsewhere;
- (r) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (s) **(writing)** a reference to a notice, consent, request, approval or other communication under this Lease or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (t) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (u) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (v) **(month)** a reference to a month is a reference to a calendar month;
- (w) **(year)** a reference to a year is a reference to twelve consecutive calendar months;
- (x) **(GST)** words defined in the GST Law have the same meaning in clauses about GST, and references to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST Law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled;
- (y) **(GST group)** if a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled;

- (z) (**prohibited matter**) if this Lease prohibits the Lessee from doing a thing, then:
 - (i) the Lessee must use all reasonable endeavours to ensure that the Lessee's Employees do not do that thing; and
 - (ii) the Lessee may not allow or cause any person to do that thing;
- (aa) (**consent**) if any consent is required by the Lessee from the Lessor then the Lessor is at liberty to withhold its consent in its absolute discretion unless otherwise specified;
- (bb) (**accounting**) a reference to an accounting term is to be interpreted in accordance with approved accounting standards under the Corporations Law, Schedule 5 of the Corporations Regulations and, if not inconsistent with those account standards and that schedule, generally accepted principles and practices in Australia consistently applied by a body corporate or as between bodies corporate and over time; and
- (cc) (**business day**) if the day on or by which a person must do something under this Lease is not a Business Day:
 - (i) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
 - (ii) in any other case, the person must do it on or by the previous Business Day.

2 Grant of lease

2.1 Grant

Subject to the terms of this Lease, the Lessor leases the Premises to the Lessee and the Lessee accepts the Lease for the Term.

2.2 Holding over

- (a) If the Lessee continues to occupy the Premises after the Terminating Date with the Lessor's approval (which may be given or withheld in the Lessor's absolute discretion), it does so under a monthly tenancy.
- (b) Either party may terminate the monthly tenancy at any time by providing one month's written notice to the other.

2.3 Terms of holding over

If the Lessor agrees to allow the Lessee to continue occupation of the Premises under clause 2.2, the monthly tenancy will be on the same terms and conditions as this Lease except:

- (a) for those changes which are necessary to make this Lease appropriate for a monthly tenancy;
- (b) for those changes which the Lessor requires as a condition of giving its approval to the holding over;

- (c) any guarantee given under this Lease must continue in full force and effect; and
- (d) the Rent is to be reviewed after the Terminating Date on each Review Date in accordance with the procedure described in clause 4.

3 Option

3.1 *What Lessee must do*

- (a) If there are particulars of a new lease in Item 6, the Lessor will grant a new lease of the Premises to the Lessee on the Terminating Date to commence on the next day if:
 - (i) the Lessee gives the Lessor a written notice stating that it wants a new lease of the Premises for the Option Term;
 - (ii) the Lessor receives that notice at least three months before the Terminating Date but no more than six months before the Terminating Date;
 - (iii) the Lessee has paid the Rent on time and not committed any breach of the Lease and, when the Lessee gives notice under clause 3.1(a)(ii), and on the Terminating Date, the Lessee is not in breach of this Lease; and
 - (iv) the Lessee delivers to the Lessor, on or before the commencing date of the new lease, any security in connection with the Lessee's obligations under the new lease on the same terms as this Lease or as required under the lease for the Option Term.

3.2 *Option Lease*

- (a) The new lease (**Option Lease**) is to be identical with this Lease except that:
 - (i) if the particulars of the Option Lease are the only particulars specified in Item 6, this clause 3 and Item 6 are deleted;
 - (ii) if particulars of more than one Option Lease are specified in Item 6, the particulars of the Option Lease first specified are deleted from Item 6;
 - (iii) the term, commencing date, terminating date, review dates and types of reviews are to be those specified in Item 6;
 - (iv) the rent on the commencing date of the Option Lease is to be decided under Item 6 in the manner specified in Item 6;
 - (v) the Option Lease must reflect any variations to this Lease which become effective during the Term; and
 - (vi) the Option Lease may include any term which the Lessor reasonably requires due to any change in the Law.
- (b) As soon as reasonably practical, the Lessor must cause the Option Lease to be provided to the Lessee for execution.

- (c) The Lessee must promptly execute and return the Option Lease and any requirements to the Lessor or its Authorised Officer.

3.3 *Transition Provisions*

- (a) The parties acknowledge that the execution of the Option Lease is a formality only and is not required to confirm the parties' respective rights and obligations under the Option Lease.

4 Rent and Rent Reviews

4.1 *Payment*

The Lessee must pay to the Lessor the Rent:

- (a) during the Term (and any holding over) without any set-off or deduction against any other amount and without demand by the Lessor;
- (b) by equal calendar monthly instalments in advance on the Rent Day (and proportionately for any part of a month), with the first instalment to be paid on the Rent Commencing Date; and
- (c) to the Lessor or as the Lessor may in writing otherwise direct, and in any manner specified by the Lessor.

4.2 *No Set Off*

All payments required to be made by the Lessee under this Lease must be made as and when they fall due and must be made without any set off, counterclaim or deduction of any kind.

4.3 *Rent reviews*

The rent review method applicable on a Review Date is the method specified next to that Review Date.

4.4 *Fixed amount*

If a fixed amount appears next to a Review Date, the Rent to be paid from that Review Date is that amount.

4.5 *Fixed percentage increase*

If a percentage appears next to a Review Date, the Rent to be paid from the Review Date is the amount calculated by the following formula:

$$NR = OR + (OR \times P)$$

where:

NR means the Rent to be paid from the Review Date

OR means the Old Rent

P means the percentage next to the Review Date.

4.6 *CPI Review*

If the letters “CPI” appear next to a Review Date, the Rent to be paid from the Review Date is the amount calculated by the following formula:

$$NR = OR \times \left(\frac{C}{R} \right)$$

where:

NR means the Rent to be paid from the Review Date

OR means the Old Rent

C means the Current CPI

R means the Previous CPI.

4.7 *CPI Plus percentage*

If the letters “CPI+ (x)%” appear next to a Review Date, the Rent to be paid from the Review Date is the amount calculated by the following formula:

$$NR = OR \times \left(\frac{C}{R} + P \right)$$

where:

C means the Current CPI

NR means the Rent payable from the Review Date

OR means the Old Rent

P means the percentage next to a Review Date

R means the Previous CPI.

4.8 *Market review*

- (a) If “Market Review” appears next to a Review Date, the Lessor may give the Lessee a Lessor’s Assessment no more than 6 months before (and at any time after) the Review Date.
- (b) The amount stated in the Lessor’s Assessment is the Rent to be paid from the Review Date unless the Lessee gives the Lessor notice that it does not agree with the amount (**Dispute Notice**) within 21 days of the Lessor giving a Lessor’s Assessment (or any longer period agreed between the parties in writing). Time is of the essence in this clause 4.8(b).

4.9 *Appointment of Valuer*

- (a) If:
 - (i) the Lessee gives a Dispute Notice under clause 4.8(b); and
 - (ii) the Lessor and the Lessee do not agree in writing on the Rent payable from the relevant Review Date within seven days of the Lessee giving a Dispute Notice,

then the Lessee and the Lessor must, within 14 days of the Lessee giving a Dispute Notice, jointly appoint a Valuer to do the following within 1 month of the Valuer’s appointment:

- (iii) determine the current market rent for the Premises (exclusive of GST), which is the Rent to be paid from the relevant Review Date; and
 - (iv) give the Lessor and the Lessee a written copy of its determination and reasons for its determination.
- (b) If the Lessor and Lessee do not agree on a Valuer under clause 4.9(a), the Lessor must ask the Chair of the Australian Property Institute Inc. (NSW Division) to appoint a Valuer for the Lessor and the Lessee to do those things, and must notify the Lessee of the Valuer's appointment.
 - (c) If a Valuer appointed under this clause declines its appointment or does not make its determination in time, the Lessor and the Lessee may (and must, if one party gives a notice asking the other to do so before the Valuer makes its determination) appoint another Valuer in its place.
 - (d) If the Lessor and the Lessee do not agree on the appointment of another Valuer within 14 days of a notice being given, clause 4.9(b) applies.

4.10 Determination by Valuer

- (a) When determining the current market rent of the Premises as at the relevant Review Date the Valuer must observe all relevant valuation principles and:
 - (i) take into account:
 - (A) the terms of this Lease;
 - (B) the Term, including the expired part of the Term, and any option term;
 - (C) the value of the Lessor's Property in, on or servicing the Premises; and
 - (D) the rent currently paid for comparable premises;
 - (ii) make a determination on the basis that the Premises are fit for immediate occupation and offered with vacant possession;
 - (iii) value the Premises as being available to be let by a willing Lessor to a willing Lessee as a whole without a premium but with vacant possession and subject to the provisions of this Lease for a term equal to the original term of this Lease;
 - (iv) any rent incentive or reduction, rent free period or other incentive or benefit applicable to the Lessee's occupation of the Premises under this Lease or to any other lease; and
 - (v) not take into account:
 - (A) the Rent paid by the Lessee at the time of review;
 - (B) the value of the Lessee's Property or the Lessee's goodwill;

- (C) any condition of the Premises resulting from the Lessee's default under this Lease; or

when making a determination under this Lease.

- (b) The Valuer acts as an expert and not as an arbitrator and the Valuer's decision is final and binding.
- (c) The Lessor and the Lessee may make written submissions to the Valuer, and the Valuer is obliged to consider the reasonable submissions of the parties.
- (d) The Lessor and the Lessee must comply with the requirements of the Valuer which relate to the Valuer's appointment or determination.

4.11 Valuer's costs

The Lessor and the Lessee must pay the Valuer's costs in equal shares.

4.12 Adjustment

- (a) The Lessee must continue to pay the Rent payable immediately before the relevant Review Date and in addition pay 80% of the difference between the amount stated in the Lessor's Assessment and the Rent that was payable immediately before the relevant Review Date until the current market rent is calculated under this clause 4.
- (b) The current market rent calculated under this clause 4 is the Rent to be paid from the relevant Review Date and the Lessor and the Lessee must make any adjustment necessary immediately after the determination of the current market rent.

4.13 Agreement to co-operate

The Lessor and the Lessee must act reasonably, in good faith and co-operate when conducting any market rent review.

5 Security

5.1 Delivery of Security

On or before the Commencing Date, the Lessee must give the Lessor the Security for the Security Amount.

5.2 Lessor's right to call

If the Lessee defaults under this Lease (including any extension or holding over), whether this Lease is registered or not, then the Lessor may call on the Security without notice to the Lessee, and apply the proceeds towards remedying the default.

5.3 Obligation to replace

If the Lessor calls on the Security, or the Rent is increased, then no later than 14 days after the Lessor gives the Lessee a notice asking for it, the Lessee must deliver to the Lessor a replacement or additional Security so that the amount guaranteed is the Security Amount.

5.4 *Transfer*

- (a) If the Lessor transfers its interest in the Premises and hands over the Security to the transferee, the Lessor is released from all obligations to the Lessee under the Security.
- (b) If asked by the transferee, the Lessee must promptly give to the transferee a replacement Security in favour of the transferee.
- (c) If the Lessee does not give the replacement Security, the transferor may make a demand under the Security and hand over the proceeds to the transferee to hold as a security deposit instead of the Security until the Lessee gives the replacement Security to the transferee.

5.5 *Return*

The Lessor must return to the Lessee any Security on:

- (a) the later of the termination of this Lease, and the Lessee's fulfilment of its obligations under this Lease; or
- (b) the Lessor's receipt of a replacement Security under clause 5.3.

6 Other payments, Interest and GST

6.1 *Services*

The Lessee must pay all Costs for the:

- (a) connection of;
- (b) consumption of; and
- (c) installation of separate metering in the Premises for,

all Services in connection with the Lessee's use of the Premises (including those provided by the Lessor).

6.2 *Charges for after hours air conditioning and access*

The Lessee must pay the amount determined by the Lessor, acting reasonably, for:

- (a) the Lessee obtaining access to the Premises outside the Access Hours; and
- (b) Services being supplied to the Premises at the request of the Lessee outside the Access Hours.

6.3 *Costs of Lease*

- (a) In connection with this Lease, the Lessee must pay promptly:
 - (i) for everything the Lessee must do under this Lease unless this Lease expressly states otherwise; and
 - (ii) on demand all stamp duty (if applicable), survey and registration fees.
- (b) Each party must bear their own legal Costs incurred in the preparation, negotiation, execution, completion and delivery of this Lease.

- (c) The Lessor is not required to pay or reimburse the Lessee for any Costs or Claims, including but not limited to legal Costs, in relation to the preparation, negotiation and entering into of this Lease or any Lease Document.

6.4 *Cost of Consents*

The Lessee must promptly pay to the Lessor all reasonable Costs of the Lessor, including but not limited to legal Costs, in connection with:

- (a) any consent, approval, agreement, waiver or amendment relating to this Lease;
- (b) obtaining or giving consent or approval and considering matters in connection with the Lessee's request for approval or consent;
- (c) the Lessee's dealings and proposals for any dealing in relation to this lease, the Premises or the Lessee's Property;
- (d) in considering, approving, supervising or removing the Works (including the fees of the Lessor's consultants); and
- (e) in modifying or varying the Centre because of the Works.

6.5 *Cost of Notices*

The Lessee must, upon demand by the Lessor, pay to the Lessor all Costs incurred by the Lessor, including but not limited to legal Costs on a full indemnity basis, in connection with:

- (a) any notice lawfully given to the Lessee;
- (b) the lawful termination or attempted termination of this Lease;
- (c) the lawful re-entry or attempted re-entry by the Lessor into the Premises;
- (d) the surrender or transfer of this Lease (including any stamp duties and registration fees payable);
- (e) the exercise, contemplated or actual enforcement, attempted enforcement or preservation of any rights under any Lease Document; and
- (f) any waiver in connection with any Lease Document.

6.6 *Interest on overdue money*

- (a) The Lessee must pay on demand, interest on each amount that is not paid when due, from (and including) the day on which it falls due to the day on which it is paid in full, at the rate calculated in accordance with clause 6.6(b).
- (b) Interest on an unpaid amount accrues each day at the Interest Rate.
- (c) Nothing in this clause affects the Lessee's obligation to pay each amount under this Lease when it is due.

6.7 *GST*

- (a) Unless otherwise stated all amounts to be paid by one party to the other party under this Lease are exclusive of GST.

- (b) A recipient of a taxable supply made under this Lease must:
 - (i) pay to the supplier an amount equivalent to any GST paid or to be paid by the supplier for the taxable supply without deduction or set-off of any other amount; and
 - (ii) make that payment at the same time as the payment for the taxable supply or other consideration or part of it must be paid or provided.
- (c) A party making a taxable supply under this Lease must issue a valid tax invoice in accordance with the GST law to the recipient.
- (d) A party's obligation to reimburse the other party for an amount paid or to be paid to a third party includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed may claim an input tax credit for that GST.
- (e) A party must issue an adjustment note to the other party as soon as it becomes aware of an adjustment event in connection with a taxable supply by it under this Lease.

7 Payment requirements

7.1 *Method*

The Lessee must make payments under this Lease in accordance with the methods specified in the tax invoice issued by the Lessor or as notified by the Lessor from time to time.

7.2 *Correction of payments*

If the Lessee pays an amount and it is found later that the amount was not correct, then even if the Lessor has given the Lessee a receipt, the Lessee must pay the Lessor (or the Lessor must credit the Lessee with) the difference between what the Lessee has paid and what the Lessee should have paid within 14 days after either party gives the other a notice about the mistake and the party receiving the notice agrees that a mistake has been made.

7.3 *Due date for payments*

If this Lease does not specify a due date or period for payment of an amount, then the Lessee must pay that amount within 14 days of demand.

7.4 *Obligations not affected*

Expiry or termination of this Lease does not affect the Lessee's obligations to make payments under this Lease for periods before or after them where applicable.

7.5 *Broken periods*

Any amounts to be paid for part of a month are to be calculated as a proportion of the number of days in the month and must be paid, unless this Lease says otherwise, on the first day of the broken period.

8 Fixtures and fittings

- (a) The Lessee accepts the Premises in the condition, state of repair, fit out and configuration at the Commencing Date.
- (b) The Lessor makes no warranty as to the ownership of the fixtures and fittings at the Premises at the Commencing Date.
- (c) The Lessee:
 - (i) must not terminate this Lease;
 - (ii) must not make any claim for compensation or damages against the Lessor; and
 - (iii) does not have any right of abatement of Rent or of any other amount to be paid under this Lease,in relation to anything disclosed or acknowledged in this clause 8.

9 Use of Premises, Centre or Land

9.1 *What the Lessee must do*

The Lessee must:

- (a) **(Permitted Use)** occupy the Premises and use the Premises only for the Permitted Use;
- (b) **(Laws)** comply with all statutes, ordinances, proclamations, orders or regulations by any Authority present or future affecting or relating to the Premises, the Lessee's Business, the Lessee's Equipment and the Lessee's use and occupation of the Premises;
- (c) **(Lessee's Business)** conduct the Lessee's Business at all times in a professional and competent way;
- (d) **(fire prevention and insurance)** comply with:
 - (i) all requirements of the Lessor or any insurer concerning fire safety in the Centre or Land including by installing further equipment and upgrading the fire safety facilities in the Premises; and
 - (ii) the terms of any insurance policy for the Centre or Land and its contents;
- (e) **(Rules)** comply with all Rules of the Centre or Land;
- (f) **(fire equipment)** maintain and keep in good working order and condition any fire protection and safety equipment servicing the Premises (including all sprinklers, alarms, hose, cocks, reels, extinguishers and detectors) to the standard required or recommended by Law, by the Lessor's insurer or by Standards Australia International, and provide the Lessor with appropriate certification of compliance with those standards as requested by the Lessor from time to time and on an annual basis;

- (g) (**Lessor's rights**) promptly, when asked by the Lessor, do everything necessary for the Lessee to do to enable the Lessor to exercise its rights under this Lease;
- (h) (**cleaning**) keep the Premises and everything in them clean and only dispose of refuse in appropriate refuse bins or waste disposal facilities provided by the Lessor for use by tenants of the Centre and must not dispose of any refuse in any bins provided by the Lessor for public use;
- (i) (**removal of additional refuse**) remove from the Premises refuse additional to what may reasonably be expected to be disposed of on an everyday basis (which specifically includes chemical, industrial or bulky refuse, including such refuse resulting from the Lessee's fitout and any refurbishment works) and must not dispose of such refuse in any bins provided by the Lessor;
- (j) (**vermin**) keep the Premises free of pests and take necessary steps to control any pest infestation occurring within the Premises and if required by the Lessor engage a pest exterminator approved by the Lessor;
- (k) (**pipes**) keep and maintain all waste pipes, drains, lavatories, hand basins, sinks and other plumbing facilities within or servicing the Premises clean, clear and operative and promptly employ licensed tradesmen to clear any blockages which may occur and regularly clean and service any grease traps used in the Premises;
- (l) (**weight loads**) observe the maximum load weights throughout the Centre;
- (m) (**prohibit smoking**) if required by the Lessor, put up signs in the Premises prohibiting smoking;
- (n) (**drills**) participate in any emergency or safety drill of which the Lessor gives reasonable notice;
- (o) (**emergency**) evacuate the Centre immediately and in accordance with the Lessor's directions when informed of any actual or suspected emergency;
- (p) (**security**) secure the Premises when they are unoccupied and comply with the Lessor's directions about Centre security;
- (q) (**directory**) if there are directory boards, submit the form in which the Lessee requires its name and description to appear on them to the Lessor for its approval, make whatever changes the Lessor reasonably requires and pay the Lessor on demand the cost of placing that information on the directory boards and removing it at the end of this Lease;
- (r) (**keys**) if the Lessor gives the Lessee Keys to access the Centre, the Lessee must:
 - (i) not copy it without the Lessor's consent;
 - (ii) reimburse the Lessor for any cost it incurs because the Lessee loses any Keys;

- (iii) give the Keys to current employees only, and must keep a list of those employees and give the list to the Lessor on request; and
- (iv) return all Keys to the Lessor on the expiration or termination of this Lease;
- (s) **(notice of defects)** immediately on becoming aware of the following give notice to the Lessor (or where appropriate to the managing agent) of:
 - (i) any damage and of any accident to or defects in the Premises or in the Centre or in any of the Services or other facilities provided by the Lessor in the Premises or the Centre;
 - (ii) any notice from an Authority or Approval (other than an account for Services provided to the Premises); or
 - (iii) any circumstances likely to cause damage or injury within the Premises or the Centre;
- (t) **(Alcohol)** not consume or permit any of the Lessee's Employees to consume any intoxicating or alcoholic liquor upon the Premises or within the Centre; and
- (u) **(Infectious diseases)** in the event of any infectious disease occurring upon the Premises, immediately give all necessary notice and any other information which may be required to the Lessor and all proper authorities and at its own Cost and expense thoroughly fumigate and disinfect the Premises.

9.2 *Requirement to Trade*

Except as prohibited by law the Lessee must:

- (a) keep the Premises open for business during the Access Hours; and
- (b) keep the Premises open for business during such hours other than the Access Hours if the Lessor changes the Access Hours.

9.3 *Lessee not to allow breach*

If the Lessee must not do something in connection with this Lease, then it must not do anything which may result in it happening.

9.4 *Lessee's Employees to comply*

The Lessee must ensure that the Lessee's Employees comply, if appropriate, with the Lessee's obligations under this Lease.

9.5 *Operation of Business*

The Lessee must:

- (a) operate the Premises during the Term of the Lease with sound business practice, due diligence and efficiency;
- (b) keep the Premises open for business during the Access Hours provided that nothing herein contained will require the Premises to be open for business in excess of any maximum trading hours prescribed by law;

- (c) apply to an Authority for any licence, consent or approval to use the Premises for a purpose other than the Permitted Use or apply for a liquor licence in respect of the Premises (unless expressly permitted by the Permitted Use);
- (d) provide, install and at all times maintain in the Premises all suitable furniture, fixtures, equipment and other property necessary for the conduct of the Lessee's Business and that no second-hand fittings or fixtures will be installed in the Premises without the Lessor's prior written consent; and
- (e) keep the Premises fully stocked with appropriate saleable items in consideration of the Permitted Use.

9.6 *Air conditioning/ventilation*

- (a) Where any heating, ventilation or air-conditioning equipment is installed in or services the Premises the Lessee must pay to the Lessor all amounts reasonably charged to the Lessee by the Lessor in respect of such supply or the maintenance and repair of such heating, cooling, ventilation or air-conditioning equipment (where maintenance and repair are the Lessor's obligations under this Lease).
- (b) The Premises is deemed to have received such heating, ventilation or air-conditioning if the Premises receive the benefit as a result of being wholly or partly open to any part of the Common Area.
- (c) Where heating, ventilation or air-conditioning equipment is installed in or about the Premises, the Lessee must, to the extent of the Lessee's control, at all times, use and regulate the heating, ventilation or air-conditioning to ensure that equipment is used to the best advantage in the conditions from time to time prevailing and will keep the equipment in good repair and condition.
- (d) The control of, use and operation of any heating, ventilation or air-conditioning equipment is at all times at the discretion of the Lessor.

9.7 *Health Regulations*

Where applicable, the Lessee covenants:

- (a) it holds all required licences and other requirements as may be required under the *Food Regulation 2015* (NSW) and the NSW Food Authority;
- (b) to ensure that all health and safety requirements of the NSW Food Authority and *Food Regulation 2015* (NSW) are continually met and satisfied;
- (c) to notify the Lessor in the event of any notice by any Authority, including the NSW Food Authority, which alleges a breach of the *Food Regulation 2015* (NSW) or any other health or safety regulation or requirement in connection with the use and occupation of the Premises as a place of food handling, service or preparation; and
- (d) not to do anything which may otherwise breach or be deemed to be in breach of the *Food Regulation 2015* (NSW) or any health or safety requirement as specified by the NSW Food Authority from time to time.

9.8 No warranty by Lessor as to suitability of Premises

- (a) The Lessor does not in any way warrant or represent that the Premises are or will remain suitable or adequate for any of the Lessee's Business or the Permitted Use.
- (b) The Lessee:
 - (i) is taken to have accepted this Lease with full knowledge of and subject to any prohibitions or restrictions on the use of the Premises under any Law; and
 - (ii) must at its own expense obtain any Approval required by an Authority for the Permitted Use.

9.9 Legal compliance

- (a) The Lessee must at its own cost:
 - (i) comply with all Approvals, Laws, the requirements of any Authority and all restrictions, easements, and covenants concerning:
 - (A) the Premises;
 - (B) its use or occupation of the Premises;
 - (C) the Lessee's Property; and/or
 - (D) the Lessee's Business;
 - (ii) **(licences)** obtain and maintain Approval required to enable the Lessee to trade in connection with the Lessee's Business, the Lessee's Property and the Lessee's use or occupation of the Premises in accordance with this Lease.
- (b) The Lessee must not do or allow any act or omission which results in the Lessor breaching any Law, restriction, easement, covenant or requirements of any Authority concerning the Premises.
- (c) The Lessee must promptly give the Lessor a copy of any Approval or other notice or order which it receives in connection with the use or occupation of the Premises or fixtures or fittings in the Premises.
- (d) The Lessee must not do anything on the Premises which is reasonably regarded by the Lessor as dangerous.

9.10 No Representation by Lessor

The Lessee covenants that no promise, representation or warranty has been given by or on behalf of the Lessor:

- (a) that the Lessee has any exclusive or limited shared right to carry on a type of use or business or to sell any particular product permitted under this Lease and the Lessor is at liberty at any time to grant any right of occupation for any part or parts of the Centre or Land for any purposes;
- (b) that other occupants of the Centre or Land have leased or will continue to lease any premises; or

- (c) about any financial aspect dealing with or related to the Lessee's Business, the Premises, Centre or Land or any other matter.

9.11 *Lessee's General Covenants*

The Lessee must:

- (a) promptly pay to the Lessor when asked to do so, the reasonable cost of replacing any Keys which is damaged or lost by the Lessee or any of the Lessee's Employees and give to the Lessor when asked to do so a list of the Lessee's Employees who have received a Key in respect of the Centre or the Premises;
- (b) allow access to the Premises for any pest exterminators engaged by the Lessor;
- (c) not carry on, do, suffer or permit the Lessee's Employees to suffer, permit, carry on or do anything which may cause annoyance, nuisance, grievance, damage or disturbance to any occupier of the Centre or Land or any owner of any adjoining or neighbouring land or buildings;
- (d) obtain the prior written consent of the Lessor to affix or exhibit any sign, light, advertisement, name or notice on the Land or Centre unless it:
 - (i) is located wholly within the Premises;
 - (ii) is not visible from outside the Premises; and
 - (iii) does not contravene any other provision of this Lease; and
- (e) not interfere with any fire fighting equipment, sprinkler or fire alarm installation in the Premises except in accordance with the requirements of and with the consent of the Lessor.

10 *Repair, Maintenance and Redecoration*

10.1 *Repair of Premises*

- (a) The Lessee must:
 - (i) keep the Premises in good and substantial repair and working condition as first class retail premises excluding fair wear and tear;
 - (ii) keep the Lessee's Property in good and substantial repair and working condition;
 - (iii) keep the shop frontage (including the entrance door, shutter and grills) of the Premises in good and substantial repair and working condition;
 - (iv) maintain and repair any damage to the Services (including the air conditioning) located on or in the Premises, including pipes, wires or other means of providing those Services located on or in the Premises;

- (v) immediately repair any damage to the Premises or the Centre caused by the Lessee or the Lessee's Employees or by the Lessee's default under this Lease;
 - (vi) immediately repair or replace all damaged plate glass within the Premises, including interior and exterior windows with glass of the same quality; and
 - (vii) immediately repair or replace any faulty or damaged heating, lighting, plumbing or electrical equipment (including light globes and fluorescent tubes) on the Premises.
- (b) The Lessee is not obliged to do any capital Work under clause 10.1(a) unless the Work is required because of:
- (i) the act, negligence or default of the Lessee or the Lessee's Employees;
 - (ii) the Lessee's Works or fit out of the Premises; or
 - (iii) the Lessee or the Lessee's Employees use or occupation of the Premises, Centre or Land.

10.2 *Redecoration*

- (a) The Lessee must, if required by the Lessor:
- (i) as and when reasonably necessary, and in any event not less than every 5 years, redecorate the Premises to the following specification:
 - (A) clean and prepare all walls and ceilings;
 - (B) paint (with at least 2 coats), wallpaper, stain, varnish or polish each wall and ceiling in the Premises according to the previous treatment of that surface; and
 - (C) replace the shopfront, signage, floor coverings, ceiling, lighting and fittings and fixtures with new items;
 - (ii) carry out the redecoration in line with the Fitout Guide.
- (b) In carrying out the redecoration under clause 10.2(a) the Lessee must submit detailed work specifications and architectural plans (where necessary), obtain the Lessor's prior written approval and otherwise abide by the requirements of clause 11.

11 Lessee's Works

11.1 Lessee's Works on Premises

- (a) The Lessee must not carry out any Works to the Premises without the Lessor's express written consent which may be withheld in its absolute discretion.
- (b) Subject to clause 11.1(a), the Lessee must prior to carrying out any Work to the Premises:
 - (i) if required by the Lessor, give the Lessor detailed working drawings and specifications of any proposed Lessee Works within sufficient time to allow the Lessor to review and, if agreed to by the Lessor, approve;
 - (ii) if the Lessor does not approve of the Lessee's drawings and specifications in clause 11.1(b)(i), amend prepare and submit further drawings and specifications as are necessary to obtain the Lessor's approval;
 - (iii) if the Lessor does approve of the Lessee's drawings and specifications then immediately following the Lessor's approval of the drawings and specifications in clause 11.1(b)(i) or 11.1(b)(ii) and before the commencement of the Works, obtain the Approval of all relevant Authorities to the Works at the Lessee's Cost;
 - (iv) obtain all necessary Approvals for the Works and give the Lessor evidence of all the Approvals obtained that are required under clause 11.1(b)(iii); and
 - (v) pay to the Lessor on demand all Costs incurred by the Lessor for reviewing and approving the Works.

11.2 Carrying out of Lessee's Works

The Lessee must carry out Lessee's Works:

- (a) promptly at the Lessee's Cost;
- (b) in accordance with the drawings and specifications approved by the Lessor pursuant to clause 11.1;
- (c) using suitably qualified, competent and experienced persons;
- (d) with due care and skill;
- (e) in a proper, professional and workmanlike manner;
- (f) using good quality materials;
- (g) in accordance with all Approvals and the requirements of all Authorities and all Laws;
- (h) in accordance with the Fitout Guide, which the Lessee acknowledges it has read and understood and has provided to each of the Lessee's Employees;
- (i) in accordance with the reasonable directions of the Lessor and its representatives;

- (j) without:
 - (i) causing any damage to the Premises, Centre or Land;
 - (ii) interfering with the proper operation of any Services; or
 - (iii) disturbing any or creating a nuisance to the Lessor, other occupiers of the Centre and Land or to members of the public; and
- (k) using access points to and goods lifts in the Centre as directed by the Lessor or the Lessor's Representative; and
- (l) in accordance with the requirements of all relevant building site awards and conditions of such awards relevant to the construction of the Lessee's Works.

11.3 *Cost of Alterations*

The Lessee must pay to the Lessor the Costs of any alterations to the Services or capital works to the Centre or Land necessitated by any Lessee Works.

11.4 *Insurance and safe work methods*

Before commencing any Works, the Lessee must give to the Lessor evidence of a contractor's all risk policy in a form acceptable to the Lessor covering the Lessee's Works for the full replacement value to which the relevant provisions of clause 13 apply.

12 *Work Health and Safety*

12.1 *Compliance with WHS Law*

- (a) At all times during the undertaking of any Works on the Premises the Lessee and the Lessee's Employees must at all times identify and exercise all necessary precautions and take all reasonably practicable steps to ensure the health and safety of all persons on the Premises or the Land who may be affected by those Works.
- (b) The Lessee:
 - (i) must comply and must ensure that the Lessee's Employees comply with the WHS Law and WHS Regulation;
 - (ii) warrants that it is familiar with and has the capability, appropriate resources and processes to comply with the WHS Law and WHS Regulation;
 - (iii) must develop and implement WHS processes and programs to identify WHS requirements and to manage any third parties engaged by it;
 - (iv) must comply with the Lessor's WHS policies and procedures to the extent that they are not inconsistent with WHS Law and WHS Regulation; and

- (v) must perform all relevant functions and fulfil all relevant duties under all WHS Law and WHS Regulations as a person conducting a business or undertaking or otherwise applicable to the role of the Lessee under this Lease.

12.2 Control and Management of Risks

- (a) The parties acknowledge and agree that the Lessee has control of:
 - (i) the manner in which the Works are performed; and
 - (ii) all matters arising out of or as a consequence of the carrying out of or failure to carry out the Works that give rise or may give rise to risks to WHS.
- (b) The Lessee must, prior to the performance of any part of the Works:
 - (i) undertake an assessment of the WHS risks associated with the performance of the Works;
 - (ii) identify and take all reasonably practicable steps to implement appropriate WHS risk control measures to eliminate and minimise all such WHS risks; and
 - (iii) in accordance with any request by or on behalf of the Lessor, provide the Lessor with details of the WHS risk assessment undertaken and evidence of implementation of appropriate WHS risk control measures.

12.3 Appointment of the Lessee as the Principal Contractor

- (a) The Lessor:
 - (i) appoints the Lessee as a principal contractor for the Works; and
 - (ii) authorises the Lessee to manage and control the Premises to discharge the responsibilities and duties of a principal contractor under the WHS Regulation.
- (b) The Lessee irrevocably accepts the engagement as a principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Regulation.
- (c) The Lessee acknowledges that:
 - (i) as the principal contractor, the Lessee has sole authority, management and control of the Premises and all WHS matters involved in the Works including ensuring the Premises and the means of entering the Premises are at all times safe and without risk to health (Sole Authority); and
 - (ii) the Sole Authority shall not be affected by any approval, authorisation, direction, instruction, order, permission, request or requirement of the Lessor or its representatives or the operation of any other clause of this Lease.

12.4 Consultation, Co-operation and Co-ordination

- (a) The parties acknowledge that the Centre is a multi-user site for the purposes of the WHS Law and that each party must play a role in the review, control and management of WHS matters in connection with the Centre.
- (b) The parties must, so far as is reasonably practicable, consult, co-operate and co-ordinate the Works with:
 - (i) each other party and any person, supplier, contractor or other person engaged in or associated with the Land or the Works; and
 - (ii) any person who has control of access to or from the Land,so as to achieve effective co-ordination of activities to ensure optimal WHS risk management and enable the Lessor and the Lessee and any other party engaged in or associated with the Works and any person who has control of access to or from the site, to comply with their respective obligations under all relevant WHS Law.

12.5 Notification and provision of information

- (a) The Lessee must:
 - (i) immediately notify the Lessor of any incident, injury or property or environmental damage which occurs during the undertaking of the Works;
 - (ii) ensure that any person engaged to provide any part of the Works has obtained the necessary Approvals for the Works prior to the commencement of the Works and provide the Lessor with a copy of the same;
 - (iii) maintain and prepare such necessary records, documents and information concerning the health, safety and welfare of persons, and damage to property or the environment, arising out of or as a consequence of the carrying out of or failure to carry out the Works;
 - (iv) at all reasonable times provide the Lessor with access to such records, documents and information as may be necessary to establish the Lessee's compliance with its WHS obligations under this Lease;
 - (v) provide the Lessor a copy of the Lessee's Principal Contractor WHS Management Plan; and
 - (vi) provide the Lessor with any other report, management plan or other document reasonably required by the Lessor in connection with the Lessee's requirements under this clause 12.
- (b) If the Lessee is required by any legislative requirement to give any notice of any event specified in clause 12.5 to an appropriate Authority, the Lessee must at the same time give a copy of the notice to the Lessor.

12.6 Release and indemnity

The Lessee releases and indemnifies the Lessor from and against any Claim arising out of or in connection with any breach by the Lessee of its obligations under this clause 12, the WHS Law or WHS Regulation.

13 Insurances

13.1 Lessee to Insure

The Lessee must:

- (a) in connection with the Premises and any Car Spaces, maintain with insurers and on terms reasonably approved by the Lessor in the name of the Lessee, and noting the interest of the Lessor and any other person specified by the Lessor:
 - (i) public liability insurance for at least the amount in Item 11 (as varied by notice from the Lessor from time to time);
 - (ii) plate glass insurance for its full insurable value;
 - (iii) insurance for the Lessee's Property for its full replacement value, including stock, theft, fire and flood damage;
 - (iv) other insurances which are required by Law or which, in the Lessor's reasonable opinion, a prudent lessee would take out including those in connection with workers compensation, the Lessee's Business, the Lessee's Property and any Lessee Works on the Premises;
- (b) include all standard cross liability clauses for insurances under clause 13.1(a);
- (c) no less than 1 month before each anniversary of the Commencing Date give the Lessor a certificate of currency for all insurances under clause 13.1(a) and, if requested, a copy of the full policy;
- (d) notify the Lessor immediately if an insurance policy required by clause 13.1 is cancelled or an event occurs which may allow a claim or affect rights under an insurance policy in connection with the Premises, Centre, Land or any property in or on them.

13.2 National/Global Policy

The Lessee's obligations to insure under clause 13.1(a) will be satisfied if:

- (a) the insurances required to be effected are covered under a blanket policy of insurance held by the Lessee; and
- (b) the interests of the Lessor are as protected as they would have been if the Lessee had complied with clause 13.1(a).

13.3 Proceeds of insurance

If any loss or damage occurs which is covered by any insurance the Lessee is required to maintain under this Lease the Lessee must:

- (a) apply for the insurance proceeds immediately; and

- (b) use the proceeds to restore, replace, repair or reinstate the loss or damage and must supplement the proceeds with the Lessee's own money to the extent that the proceeds are insufficient.

13.4 *Increased premium*

- (a) The Lessee must not do anything without the Lessor's consent which does or could:
 - (i) increase the premium to be paid on any insurance policy taken out by the Lessor; or
 - (ii) affect the Lessor's rights under any insurance policy or make the policy invalid or able to be cancelled.
- (b) The Lessee must pay any extra premium payable by the Lessor on account of extra risk caused by the Lessee's use or occupation of the Premises.

13.5 *Claims*

The Lessor may, but the Lessee may not without the consent of the Lessor, enforce, conduct, settle or compromise any claim under any policy of insurance required under this Lease in relation to the Premises, whether or not that policy also covers other property.

14 Indemnity, release and risk

14.1 *Indemnity*

The Lessee is liable for and indemnifies the Lessor against any Claim arising from, or which the Lessor incurs or is liable for in connection with:

- (a) anything occurring on the Premises except to the extent caused by the negligence or default of the Lessor;
- (b) overflow or leakage of water or any other harmful agent from or onto the Premises except to the extent caused by the negligence or default of the Lessor;
- (c) damage, loss, injury or death caused or contributed to by the act, negligence or default of the Lessee or of the Lessee's Employees;
- (d) any Works the Lessee carries out;
- (e) the Lessee's or the Lessee's Employees use or occupation of the Premises, Centre or Land at any time;
- (f) any breach or default by the Lessee or the Lessee's Employees under this Lease; and
- (g) the Lessor doing anything which the Lessee must do under this Lease but has not done or which the Lessor considers the Lessee has not done properly.

14.2 Release

The Lessee releases the Lessor from, and agrees that the Lessor is not liable for any Cost or Claim arising out of or incidental to:

- (a) damage, loss, injury or death to or of any person or property on the Premises, Centre or Land;
 - (b) anything the Lessor is allowed or required to do under this Lease;
 - (c) a Service being unavailable, being interrupted or not working properly;
 - (d) the Lessor's Property not working properly;
 - (e) the Centre or Land not complying with any requirements of any Laws or Authority;
 - (f) the Premises not being watertight;
 - (g) loss of the Lessee's profits or loss of trade; or
 - (h) a danger created by the Lessee or the Lessee's Employees,
- except to the extent caused by the negligent act or omission of the Lessor.

14.3 Lessee's risk

- (a) The Lessee occupies the Premises, uses the Common Areas and carries out any work at its own risk.
- (b) If the Lessee is obliged to do anything under this Lease, it does so at its own risk.

14.4 Guarantor

- (a) In consideration of the Lessor leasing the Premises to the Lessee at the request of the Guarantor, the Guarantor unconditionally and irrevocably guarantees to the Lessor:
 - (i) the payment of all money payable by the Lessee to the Lessor under this Lease; and
 - (ii) the performance and observance by the Lessee of the terms and conditions of this Lease.
- (b) The Guarantor indemnifies the Lessor against any loss and/or liability arising out of the default by the Lessee of the terms and conditions of this Lease.
- (c) Neither this Lease, nor the obligations of the Guarantor under this Lease, will be affected by anything which might otherwise operate to release the Guarantor from the provisions of this clause, including the death of the Guarantor.
- (d) This guarantee and indemnity:
 - (i) is a continuing guarantee and indemnity;
 - (ii) will not be discharged by any partial payment; and
 - (iii) remains in force until all money payable by the Lessee to the Lessor has, in fact, been paid and the obligations of the Lessee under this Lease have been completely performed.

15 Assignment and other dealings

15.1 *Restriction on assignment and other dealings*

The Lessee must not do any of the following unless it first complies with the provisions under this clause 15.1 and obtains the Lessor's prior written approval:

- (a) assign this Lease;
- (b) grant a sublease of the Premises;
- (c) grant any licence of the Premises;
- (d) grant any security over or otherwise encumber this Lease or the Lessee's Property; or
- (e) deal with its rights under this Lease in any other way;
- (f) grant any management agreement (or like agreement) to a third party regarding the Permitted Use; or
- (g) enter into any commercial arrangement with a third party that permits that third party to sell or assist the Lessee with the sale of any goods or services from the Premises (whether or not that arrangement also includes any of the dealings in clauses 15.1(a) to (f) (inclusive)).

15.2 *Assignment*

- (a) The Lessor is only required to consider an application for consent to an assignment of this Lease under clause 15.1 after the Lessee has:
 - (i) provided written notification to the Lessor of the Lessee's intention to assign the Lease;
 - (ii) provided the Lessor all information relating to the financial standing and business experience of the proposed assignee the Lessor reasonably requires;
 - (iii) satisfied the Lessor that the business or activity which the proposed assignee proposes to carry on from the Premises is the Permitted Use;
 - (iv) satisfied the Lessor that the proposed assignee is respectable and financially sound, experienced in and has a good reputation for conducting a business of the kind being substantially the same as the Lessee's Business; and
 - (v) provided the Lessor at least two (2) independent business references for the proposed assignee; and
 - (vi) provided the Lessor with a statement by a certified chartered practicing accountant specifying the proposed assignee's assets and liabilities and financial capacity to fulfil the lease obligations.
- (b) In the event the Lessor approves of the proposed assignment, the assignment may only take place after the Lessee has:

- (i) executed and ensured the proposed assignee executes a deed prepared by the Lessor agreeing to be bound by this Lease from the assignment date;
- (ii) provided any guarantee reasonably required by the Lessor for the proposed assignee;
- (iii) remedied any default which has occurred and of which written notice has been given to the Lessee; and
- (iv) complied with and ensured the proposed assignee complies with all reasonable requirements of the Lessor in relation with the drawing, stamping and registration of any documents required by the Lessor at the Cost of the Lessee.

15.3 Withholding of Consent

- (a) The Lessor may withhold consent:
 - (i) in the case of a request for assignment of this Lease:
 - (A) if the Lessee has failed to satisfy clause 15.2;
 - (B) if the proposed assignee proposes to change or use the Premises for any other manner other than the Permitted Use; or
 - (C) if the proposed assignee has financial, business or retailing skills inferior to that of the Lessee; or
 - (ii) in any other case, at the absolute discretion of the Lessor.
- (b) For the purposes of clause 15.3(a), the Lessor must notify the Lessee of its intention to grant or withhold its consent within 28 days of the Lessor receiving all requirements as set out in clause 15.2(a) from the Lessee.
- (c) In the event the Lessee has complied with all requirements as set out in clause 15.2(a) and the Lessor has failed to notify the Lessee as required by clause 15.3(b) then the Lessor shall be taken to have consented to the proposed assignment subject to the requirements of clause 15.2(b).

15.4 Assignee's acknowledgment

By taking an assignment of this Lease the assignee irrevocably covenants to comply with all obligations and requirements of this Lease as Lessee whether the obligations relate to a period before or after the assignment shall have taken effect.

15.5 Change in control of Lessee

If:

- (a) the Lessee is a company which is neither listed nor wholly owned by a company which is listed on the Australian Stock Exchange; and
- (b) there is a proposed change in the shareholding of the Lessee or its holding company so that a different person or group of persons will

control the composition of the board of directors or more than 50% of the shares giving a right to vote at general meetings,

then the Lessee must not make that change unless it obtains the Lessor's prior approval and complies with clause 15.2 as if the person or group of persons acquiring control were a proposed assignee.

16 Mortgage and security interests

16.1 *Charge*

The Lessee charges its interest in all Lessee PPS Items situated on the Premises from time to time in favour of the Lessor, as security for the performance of the Lessee's obligations under this Lease, including but not limited to the Lessee's obligations to transfer ownership in the whole or any part of the Lessee PPS Items to the Lessor.

16.2 *Lessee's warranty and covenants*

- (a) The Lessee:
 - (i) warrants that it has not created a Security Interest in respect of any Lessor PPS Items on or prior to execution of this Lease;
 - (ii) must not create a Security Interest in respect of any Lessor PPS Items or Lessee PPS Items in favour of any person other than the Lessor without the Lessor's prior written consent, which consent may be granted or withheld in the Lessor's absolute discretion;
 - (iii) must indemnify and hold harmless the Lessor against all Claims, and Costs incurred by the Lessor as a consequence of any breach by the Lessee of this clause 16; and
 - (iv) must on the expiration or earlier termination of this Lease, sign (and procure any holder of a registered Security Interest to sign) any document that the Lessor considers necessary or desirable under or as a result of the PPS Act to discharge any registered Security Interests under the PPS Act in relation to the Lessee PPS Items and the Lessor PPS Items.
- (b) This clause is an essential term of this Lease.

16.3 *Requirements for security over lease*

If the Lessee proposes to create or allow to come into existence a security over the Lessee's interest in this Lease, before it enters the security, the Lessee and the entity receiving the security must obtain the prior written consent of the Lessor and enter into a deed relating to the security in a form required by the Lessor including (among other things) provisions that:

- (a) the entity receiving the security must promptly give the Lessor notice if the Lessee is in default under the security;
- (b) if the entity receiving the security or its appointee enters into possession of the Premises, then the entity receiving the security must remedy any subsisting default by the Lessee under this Lease and comply with the Lessee's obligations under this Lease; and

- (c) if the entity receiving the security exercises a power of sale under the security, it will comply with clause 16 of this Lease, even if it does not take possession of the Premises.

17 Lessor's obligations and rights

17.1 *Quiet enjoyment*

Subject to the Lessor's rights, while the Lessee complies with its obligations under this Lease, it may:

- (a) occupy the Premises without interruption by the Lessor; and
- (b) use the Common Areas for the purposes for which they are intended (as determined by the Lessor).

17.2 *Common Area Cleaning and Repair*

Except to the extent that this Lease otherwise provides and subject to the Lessee's obligation under this Lease, the Lessor must take all reasonable action to keep:

- (a) the Common Areas clean; and
- (b) the Centre in good structural repair and weatherproof having regard to the nature and quality and age of the Centre.

17.3 *Services*

- (a) The Lessor must use reasonable endeavours to keep:
 - (i) the Services available to the Premises for the Access Hours; and
 - (ii) the Services in good repair and condition (except where this is an obligation of the Lessee under this Lease),but is not liable to the Lessee for any breach of this obligation due to:
 - (iii) the need to repair, maintain or replace any Service;
 - (iv) the requirement of any Authority;
 - (v) any accident or other unforeseen event; or
 - (vi) any malfunction or failure of any Service.
- (b) Without limiting the obligation of the Lessee under clause 10 to keep the Premises in good repair, the Lessor may use, maintain, alter or repair any Services.
- (c) If any of the Services fail or do not function properly for any reason:
 - (i) the Lessee must not terminate this Lease;
 - (ii) the Lessee must not make any claim for compensation or damages against the Lessor; and
 - (iii) the Lessee does not have any right of abatement of Rent or of any other amount to be paid under this Lease due to the failure.

17.4 Lessor's rights to alter the Centre

- (a) The Lessor may carry out any works on the Centre, including:
 - (i) demolition, with or without reconstruction;
 - (ii) enlargement or reduction in building floor area;
 - (iii) renovation or refurbishment;
 - (iv) changes in the size and location of the Common Areas or any facilities including furniture and planting in them;
 - (v) changes in the layout, direction, level or position of any premises, walkways, travelators, elevators, escalators or pathways; and/or
 - (vi) changes to the access to the Centre or the Premises for vehicles or for pedestrians.
- (b) In exercising its rights under clause 17.4(a) the Lessor must use its reasonable endeavours to cause as little inconvenience to the Lessee as is practical in the circumstances.
- (c) Notwithstanding, any other obligation in this Lease, the Lessor has no obligation under this Lease to carry out any Capital Works,

17.5 Common Areas

- (a) The Common Areas, at all times, will be subject to the control of the Lessor.
- (b) The Lessor may:
 - (i) change the area, level, location and arrangement of any part of the Common Areas;
 - (ii) exclude or remove any person from the Common Areas;
 - (iii) restrict or prohibit access to the Common Areas;
 - (iv) allow functions, displays, parades and other activities in the Common Areas;
 - (v) install and use a public address system in the Common Areas;
 - (vi) if the Lessor decides there is an emergency, stop the Lessee and the Lessee's employees from entering the Centre or using the Common Areas until after the emergency ends; and/or
 - (vii) grant leases and licences or other rights of occupation to use any part of the Common Areas.
- (c) The Lessee must not display goods or merchandise outside the Premises without the Lessor's prior written consent, which may be withheld at the Lessor's sole discretion.
- (d) The Lessee must not solicit business or distribute pamphlets or other advertising material in the Common Area or Car Park.
- (e) The Lessee must not:

- (i) obstruct or permit to be obstructed by the Lessee's Employees any part of the Common Area by leaving or placing any article or thing or by any meeting of persons; or
 - (ii) erect, affix or display any structure in the Common Areas.
- (f) If the Lessee breaches clause 17.5(e) the Lessor may remove and dispose of the article, thing or structure at the Lessee's cost without notice to the Lessee.

17.6 To enter the Premises

- (a) The Lessor or the Lessor's Authorised Officer may, at any reasonable time, enter the Premises, together with all necessary equipment and workmen at any reasonable time on giving reasonable notice to:
- (i) view the state of repair of the Premises;
 - (ii) see that the Lessee is complying with its obligations under this Lease;
 - (iii) do anything the Lessor must or may do under this Lease;
 - (iv) show prospective purchasers or mortgagees through the Premises;
 - (v) during the last 6 months of the Term, show prospective lessees through the Premises and display from the Premises a sign indicating that the Premises are available for lease;
 - (vi) carry out any work to the Centre or to any adjacent property; and
 - (vii) comply with any Law or requirement of any Authority affecting the Centre.
- (b) If the Lessor reasonably decides there is an emergency, the Lessor may enter the Premises at any time without notice.

17.7 To deal with the Land

The Lessor may:

- (a) subdivide (including by strata subdivision) the Land, the Centre or other premises in it. The Lessee must do anything the Lessor reasonably requires concerning the subdivision;
- (b) give a lease, licence or other right of occupation for any part of the Land or Centre (other than the Premises except in the case of a concurrent lease) on any terms to any person;
- (c) grant easements or other similar rights over the Land, Centre or Premises to any person on any terms and for any purposes except where the use of the easement or exercise of the right would have a material or permanent adverse effect on the benefit of this Lease to the Lessee. The Lessee must do anything the Lessor reasonably requires concerning the grant;

- (d) create or allow to exist any Encumbrance over the Land or any interest in a Lease Document or assign, transfer or otherwise dispose of or deal with the Land or its rights under a Lease Document as the Lessor sees fit;
- (e) change the direction of pedestrian or vehicular traffic into, out of or through the Centre; or
- (f) change the name or description of the Centre.

17.8 *Change of Lessor*

If another person (**new lessor**) becomes entitled to receive the Rent to be paid by the Lessee then:

- (a) the Lessor is released from any obligation under this Lease arising after the new lessor acquires or exercises the Lessor's interest in this Lease;
- (b) the Lessee must procure the changes required by the new lessor to the insurances referred to in clause 13.1; and
- (c) the Lessee and the Guarantor must enter into any documents and assurances that the Lessor or the new lessor reasonably require to enable the new lessor to enforce the benefit of any obligation owed under this Lease in the new lessor's name.

17.9 *Lessor may rectify*

- (a) After giving the Lessee reasonable notice of what is to be done, the Lessor may, at the Lessee's Cost, do anything which the Lessee should have done under this Lease but which it has not done in accordance with that notice or which the Lessor considers the Lessee has not done properly.
- (b) Any Cost incurred by the Lessor in exercising the Lessor's rights under clause 17.9(a) must be paid by the Lessee to the Lessor within 7 days of demand by the Lessor. If the Lessee fails to make payment the Lessor may claim the Costs as a liquidated damage.
- (c) For the purpose of clause 17.9(a), the Lessor, its Authorised Officer's or the Lessor's Employees may enter the Premises without notice and at any time.

17.10 *Rules*

- (a) The Lessor discloses the Rules and may at any time vary the Rules, in connection with the operation, use, safety, management and occupation of the Centre.
- (b) The Lessee and the Lessee's Employees must comply with the Rules at all times.
- (c) If any Rules are inconsistent with the rights granted to the Lessee under this Lease, the Rule must be read down to the extent of the inconsistency.

17.11 Centre Manager

- (a) The Lessee acknowledges that the Lessor may appoint a managing agent and/or a facilities manager to manage the Centre and to represent the Lessor as the Lessors Authorised Officer in all matters relating to the Centre, except those which have been delegated to another person or which the Lessor notifies the Lessee are not to be dealt with by the managing agent or by the facilities manager (as the case may be).
- (b) Any communications from the Lessor supersede those from the Lessor's managing agent and/or facilities manager (as the case may be) if there is any inconsistency between them.

17.12 Restricted access to Centre

- (a) Subject to clause 17.12(b), the Lessee and the Lessee's Employees may use the Premises during those hours permitted by law and enter and access the Premises at any time subject to the Lessor's rights in this Lease.
- (b) The Lessor may exclude any person (including the Lessee) from the Centre:
 - (i) during public holidays;
 - (ii) if required by Law; or
 - (iii) for safety or security reasons.

17.13 Resumption

- (a) The Lessor may terminate this Lease by notice to the Lessee if the Centre or Land or any part of it is resumed by any Authority.
- (b) The Lessor is not liable to the Lessee for any loss or damage or other Claim or Cost suffered by the Lessee in connection with the termination in accordance with this clause.

17.14 Superior interests

If any person has an interest in the Premises which is concurrent with or superior to the Lessor's interest, the Lessee must allow that person to:

- (a) exercise its rights, or the Lessor's right, to enter the Premises;
- (b) carry out repairs, maintenance and other work in the Premises; and
- (c) exercise its rights and obligations as to the Premises.

17.15 No exclusive use

- (a) The Lessor may lease or licence any other part of the Building for a business which competes with the Lessee's Business.
- (b) The Lessor may enforce its rights against the Lessee without having to enforce comparable rights against any other Lessee of the Building.

17.16 Lessor's right to roof and exterior

The Lessor reserves the right to use the Building's roof and the exterior of the Building.

17.17 Name of building

- (a) The Lessor may at any time name (or change the name of) the Centre and may give naming rights over the Centre to any person.
- (b) The Lessee must not use a corporate or business name or logo which includes the words or logos connecting the Lessee's Business with the name of the Centre without obtaining the prior written approval of the Lessor.
- (c) If the Lessor gives approval under clause 17.17(b) the Lessee must not in any way defame or denigrate the name of the Centre or use the name in any derogatory way and must, on termination of this Lease, immediately stop using the corporate or business name and logo consented to and give the Lessor a copy of confirmation of termination or change of the corporate or business name or logo within a reasonable time.

18 Damage to Premises or Centre

18.1 Procedure

- (a) If the Centre is destroyed or damaged so that, in the reasonable opinion of the Lessor, the whole of the Premises or a substantial part of it is unfit for occupation or use by the Lessee, then the Lessor may give notice to the Lessee at any time after that the Lessor:
 - (i) intends to repair the Centre or damage; or
 - (ii) considers the damage is such that its repair is impracticable or undesirable.
- (b) If the Lessor notifies the Lessee that the damage is such that its repair is impracticable or undesirable then either party may terminate this Lease by giving at least 7 days' written notice to the other.
- (c) The Lessee may provide written notice to the Lessor requesting repair of the damage within a reasonable time.
- (d) If the Lessor does not repair the damage within a reasonable time after notice by the Lessee in accordance with clause 18.1(c) then the Lessee may terminate this Lease by giving at least 7 days' written notice to the Lessor.

18.2 Abatement

Subject to clause 18.3, if the Premises or the Centre are damaged and the Premises:

- (a) cannot be used or are inaccessible, the Lessee is not liable to pay Rent for the period that the Premises cannot be used or are inaccessible; or
- (b) are still useable but the useability is diminished due to the damage, the Lessee's liability to pay Rent is reduced in proportion to the reduction in useability for the period that the useability of the Premises is diminished.

18.3 *Damage caused by Lessee*

If:

- (a) the destruction or damage is caused by the Lessee or the Lessee's Employees; and/or
- (b) rights under an insurance policy in connection with the Building are prejudiced or a policy is validly cancelled or a claim is refused by the insurer because of an act, negligence or default of the Lessee or of the Lessee's Employees.

then:

- (c) the Lessee cannot terminate this Lease under clause 18.1; and
- (d) clause 18.2 does not apply.

18.4 *No Obligation to Repair*

Clause 18 does not impose an obligation on the Lessor to restore or reinstate the Centre or the Premises.

18.5 *Dispute*

- (a) If any dispute arises under clause 18 either party may ask the Chair of the Australian Property Institute Inc (NSW Division) to appoint a Valuer to determine the dispute and the proportion of the Valuer's costs that each party must pay.
- (b) The Valuer acts as an expert and not as an arbitrator and the Valuer's decision is final and binding.
- (c) The parties may make written submissions to the Valuer and the Valuer is obliged to consider the reasonable submissions of the parties.
- (d) The parties must comply with the requirements of the Valuer which relate to the Valuer's appointment or determination.
- (e) The Lessee must continue making payments of Rent until the dispute under this clause 18 is resolved.

18.6 *Mutual Release*

Each party releases the other from all Costs, Claims, liability or loss arising from or incurred in connection with the termination of this Lease under this clause 18.

19 Repairs, building work and redevelopment

- (a) The Lessor may do any:
 - (i) repairs, maintenance or building work to the Building; and
 - (ii) building work to extend or change the Building.
- (b) When the Lessor does repairs, maintenance or building work to the Premises, the Building or the Land, the Lessor must use reasonable endeavours to cause as little disruption to the Lessee's use of the Premises as is reasonable in the circumstances.

- (c) The Lessor specifically discloses and the Lessee acknowledges that the Lessor may conduct building works including the redevelopment and reconstruction of the Building during and after the Term. The Lessee must not and will not be entitled to make any Claim against the Lessor for compensation under any Law arising out of or in connection with the building work referred to in this clause 19.
- (d) The Lessor does not warrant that the Lessee will be offered premises in the Building following the completion of the building works or at any time. The Lessee warrants and agrees that it enters into this Lease on the understanding that the Lessee will be required to vacate the Premises on the Terminating Date or such earlier date that this Lease is terminated in accordance with the terms of this Lease.

20 Demolition

- (a) If the Lessor proposes to Demolish the whole or part of the Building within which the Premises are located, the Lessor may terminate this Lease.
- (b) In exercising its rights under clause 20(a), the Lessor must:
 - (i) provide the Lessee with details of the proposed Demolition that are sufficient to indicate a genuine proposal to Demolish the whole or part of the Building within which the Premises are located within a reasonably practicable time after the Lease is to be terminated; and
 - (ii) give the Lessee at least six (6) months' written notice of the termination date. Where the balance of the unexpired Term is twelve (12) months or less, the Lessor must give the Lessee at least three (3) months' written notice of the termination date.
- (c) If the Lessor gives the Lessee a notice of termination in accordance with clause 20(b)(ii), the Lessee may terminate the Lease by giving the Lessor not less than 7 days' written notice of termination at any time within 6 months before the termination date notified by the Lessor.
- (d) The Lessee is not entitled:
 - (i) to make a Claim; or
 - (ii) to any form of compensation or damages,
- (e) as a result of the Lessor exercising its rights pursuant to this clause 20.

21 Contamination

21.1 *No warranty by Lessor*

The Lessor does not make any representation or warranty about any subsisting or previous contamination on or about the Premises or Land.

21.2 *Lessee's warranty*

- (a) The Lessee warrants it has relied on its own due diligence for all matters concerning any contamination issues relevant to the Lessee or the Premises.
- (b) The Lessee covenants not to contaminate the Premises or Land in any way.

21.3 *Requirements upon Contamination*

If the Lessee contaminates the Premises or Land then the Lessee must immediately:

- (a) notify the Lessor in writing and all relevant Authorities including details of the nature and extent of the contamination;
- (b) undertake, at the Lessee's Cost, all audits, tests, surveys and other investigations required by the Lessor or any Authority (**Reports**) to determine the full nature and extent of the contamination and give the Lessor a copy of all Reports;
- (c) submit to the Lessor details of the Lessee's proposed remediation plans for the Premises and Land (**Remediation Plan**); and
- (d) after obtaining the Lessor's prior consent, remediate the Premises and Land in accordance with:
 - (i) the Remediation Plan;
 - (ii) to the extent that a higher degree of remediation is necessary to comply with the recommended or preferred guidelines or standards issued by the Environmental Protection Agency or its successor or other organisation replacing it, those guidelines; and
 - (iii) the requirements of any relevant Authority.

21.4 *Costs*

- (a) The Lessee must pay the Lessor's reasonable Costs of and incidental to all matters under this clause including approving, monitoring and liaising with any relevant parties in connection with any contamination of the Premises or Land.
- (b) If the Lessee does not attend to any matters in accordance with this clause within a reasonable time, the Lessor may attend to those matters and the Lessee must pay the lessor immediately on demand all Costs incurred by the Lessor.

21.5 *Indemnity*

The Lessee indemnifies and must keep the Lessor indemnified against any Claims and Costs arising during or after the Term of this Lease in connection with any matters of and incidental to any contamination of the Premises or Land caused by the Lessee.

22 *Car parking*

22.1 *Licence*

- (a) The Lessor grants to the Lessee the exclusive licence for the Term to park motor vehicles in the Car Spaces (**Licence**).
- (b) The Licence is personal to the Lessee and does not constitute a leasehold interest.
- (c) Nothing in this clause:
 - (i) confers on the Lessee any rights over the Car Spaces; or
 - (ii) creates the relationship of landlord and tenant between the parties.

22.2 *Lessor's rights*

- (a) The Lessee must comply with all of the directions of the Lessor in relation to the Car Spaces and the Lessee's motor vehicles.
- (b) The Lessee must at all times comply with any rules or direction regarding car parking in the Centre.

22.3 *Payment of Car Park Licence Fee*

The Lessee must pay the Car Park Licence Fee to the Lessor by equal monthly instalments in advance on each Rent Day in the same manner as the Rent.

22.4 *Review of Car Park Licence Fee*

The parties agree that the Car Park Licence Fee will be reviewed on the same dates and in the same manner as the Rent.

22.5 *Parking Levy*

If the Lessor is required to pay any amount pursuant to any statute or regulation which imposes any fee, levy or charge on the parking of motor vehicles in the Car Spaces the Lessee must reimburse the Lessor that amount within 7 days of demand from the Lessor.

22.6 *No assignment or subletting*

The Lessee must not assign, sublicense or in any other way deal with any rights conferred on it under this clause 22 except in accordance with a permitted assignment of this Lease to a permitted assignee.

22.7 *Release*

- (a) Motor vehicles brought onto the Land by the Lessee or the Lessee's Employees are at the sole risk of the Lessee.

- (b) The Lessee releases the Lessor from any Claims arising or in connection with:
 - (i) damage to or by the motor vehicles;
 - (ii) theft of the motor vehicles; or
 - (iii) theft of items in or from the motor vehicles,
 while located in the Car Park or on the Land.
- (c) The Lessor is under no duty to check the identity or authority of any person seeking to park or to remove any car on the land or parked in the Car Park.

22.8 Indemnity

The Lessee indemnifies the Lessor against all Claims and Costs which the Lessor may sustain or incur in connection with:

- (a) any property damage or death or injury to any person caused or contributed to by, or arising out of, the use of any motor vehicle brought onto the Land by the Lessee, the Lessee's Employees or any person claiming though or under the Lessee; and
 - (b) the Lessee's or the Lessee's Employees use of the Car Park,
- except to the extent that Claim is caused solely by the negligent act or omission of the Lessor.

22.9 Insurance

The Lessee must ensure that the insurance cover required by clause 8 also covers the Lessee's use of the Car Spaces.

22.10 Removal of motor vehicles

- (a) During the 14 days immediately before the Terminating Date; or
- (b) if the Lessor terminates this Lease by re-entry, within 7 days after the date of termination,

the Lessee must (during hours reasonably approved by the Lessor):

- (a) remove from the Land and Car Park all of its and the Lessee's Employees property and motor vehicles unless the Lessor agrees or directs otherwise in writing; and
- (b) thoroughly clean and make good any damage to the Car Spaces including where necessary removing all rubbish and other materials.

22.11 Motor vehicles not removed

- (a) If the Lessee does not remove the motor vehicles in accordance with clause 22.10 the motor vehicles not removed may be moved by the Lessor to a place chosen by the Lessor.
- (b) The Lessor will not be liable for any damage to any motor vehicle caused by its removal.
- (c) The Lessee, on being requested to do so by the Lessor, must pay to the Lessor any Cost incurred by the Lessor in connection with that removal.

- (d) The Lessee indemnifies the Lessor against any Claim or Cost by any third party because of the Lessor acting in accordance with this clause.

22.12 Terminate

The Licence will automatically terminate when this Lease terminates.

22.13 Lessee and Lessee's Employee Parking

The Lessee must ensure that no Lessee Employee parks or causes to be parked any motor vehicle in their possession or control in any car parking area within the Car Park except in any area allocated by the Lessor as tenants parking.

22.14 Car Details

The Lessee must, within 7 days after being requested by the Lessor, supply the Lessor with the make and registration number of any motor vehicle of the Lessee and the Lessee's Employee's employed at the Premises.

22.15 No Obstruction

The Lessee must prohibit the Lessee's Employees from parking delivery vehicles during loading or unloading or otherwise obstructing, in any manner the entrances, exits and driveways of the Car Park.

23 Dispute

23.1 Procedure

- (a) If a dispute arises between the parties about this Lease, then the party who raises the dispute must tell the other party about the dispute in writing.
- (b) The parties must take all reasonable steps to resolve such dispute by negotiation within 10 Business Days of notice under clause 23.1(a) (or such other time as agreed by the parties in writing).
- (c) If the dispute is not resolved under clause 23.1(b):
 - (i) the parties may refer the dispute to mediation on such terms as they may agree; or
 - (ii) either party may commence legal proceedings.
- (d) If there is a dispute, the parties must continue to perform their obligations under this Lease.
- (e) Nothing in this clause 23 prevents either party from seeking urgent interim or interlocutory relief.

24 Default

24.1 *Events of default*

Each of the following is a default by the Lessee under this Lease:

- (a) if the Lessee does not pay the Rent within 7 days of the due date for payment, whether demanded or not by the Lessor;
- (b) if the Lessee does not pay any other amount that is due and payable under this Lease within 14 days of its due date, whether demanded or not by the Lessor;
- (c) if the Lessee does not comply with any other essential term of this Lease;
- (d) if the Lessee does not comply with any other obligation under this Lease;
- (e) if the Lessee repudiates an obligation under this Lease; and
- (f) an Insolvency Event occurs.

24.2 *Lessor's termination after default*

If the Lessee defaults under clause 24.1, the Lessor may terminate this Lease by:

- (a) re-entering and taking possession of the Premises, using reasonable force to secure possession if necessary
- (b) serving written notice of termination on the Lessee;
- (c) instituting proceedings for possession of the Premises against the Lessee; or
- (d) taking action under clauses 24.2(a) and (b) or clauses 24.2(b) and (c).

24.3 *Essential terms*

Each of the following obligations of the Lessee is an essential term of this Lease:

- (a) to pay Rent under clause 4;
- (b) to provide Security under clause 5;
- (c) to pay interest and GST under clause 6;
- (d) regarding the use of the Premises under clause 9;
- (e) to keep the Premises open for business under clause 9.2;
- (f) regarding repair, redecoration and Lessee's works under clause 10;
- (g) to maintain the insurances under clause 13; and
- (h) regarding assignment and other dealings under clause 15.

24.4 *Breach of essential term*

The Lessor may treat the Lessee's breach of an essential term as a repudiation of this Lease and may terminate this Lease for breach of the essential term and for repudiation.

24.5 *Lessor's entitlement to damages*

- (a) If the Lessee:
 - (i) repudiates this Lease;
 - (ii) breaches an essential term of this Lease; or
 - (iii) defaults under this Lease in any other way,the Lessee must compensate the Lessor for the loss or damage suffered by the Lessor as a consequence of the repudiation, breach or other default.
- (b) The compensation to be paid by the Lessee under clause 24.5(a) extends to the loss or damage suffered by the Lessor during the Term, including the periods before and after any termination of this Lease.
- (c) The Lessee's obligation to compensate the Lessor for loss or damage is not affected if:
 - (i) the Lessee abandons or vacates the Premises;
 - (ii) the Lessor elects to re-enter or to terminate this Lease;
 - (iii) the Lessor accepts the Lessee's repudiation; or
 - (iv) the parties' conduct constitutes a surrender by operation of Law.
- (d) The Lessor's entitlement to damages is in addition to any other remedy or entitlement, including termination of this Lease.
- (e) The Lessor's right to damages includes:
 - (i) the payment of Rent from the date of termination to the Terminating Date less any amount received on account of re-letting of the Premises;
 - (ii) any costs attributed to the Lessor dealing with any Lessee's Property remaining on the Premises;
 - (iii) any costs incurred by the Lessor in re-letting the Premises including agent's commission, listing fees and legal costs; and
 - (iv) any costs incurred by the Lessor in attending to any requirements of the Lessee under this Lease.

24.6 *Instituting proceedings*

The Lessor may institute legal proceedings claiming damages against the Lessee in connection with the Term:

- (a) including the periods before and after the Lessee vacates the Premises;
- (b) including the periods before and after the abandonment, termination, repudiation, acceptance of repudiation or surrender by operation of Law referred to in clause 24.5(c); and
- (c) whether the proceedings are instituted before or after the conduct referred to in clause 24.5(c).

24.7 Lessor's other rights

The Lessor's rights to compensation for loss or damage are in addition to its rights to:

- (a) recover an amount under clause 5;
- (b) recover costs and expenses under clause 5; and
- (c) receive interest under clause 5.

24.8 Mitigation of damages

- (a) The Lessor must mitigate the Lessee's damages by attending to any requirements under this Lease as soon as reasonably practical and by attempting to let the Premises to a new tenant as soon as feasible.
- (b) The Lessor's duty to mitigate damages:
 - (i) does not constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of Law;
 - (ii) does not apply if the Lessee vacates or abandons the Premises during the last year of the Term; and
 - (iii) does not apply if the Lessee vacates or abandons the Premises and the Lessor intends to demolish or renovate the Premises.

24.9 Lessor's rights after Lessee vacates during Term

- (a) If the Lessee vacates or abandons the Premises during the Term, the Lessor may:
 - (i) accept the Keys to the Premises from the Lessee;
 - (ii) renovate, restore and clean the Premises;
 - (iii) change the locks and secure the Premises; or
 - (iv) allow prospective Lessees to inspect the Premises.
- (b) The Lessor may take any action in clause 24.9(a) without the Lessor's conduct constituting:
 - (i) a re-entry or termination of this Lease; or
 - (ii) the acceptance of a surrender of this Lease.
- (c) The Lessee's obligation to pay Rent and to comply with its other obligations under this Lease continues, even if the Lessee vacates or abandons the Premises, until the termination or expiry of this Lease.

24.10 No waiver

If the Lessor:

- (a) accepts Rent or other money under this Lease (before or after termination);
- (b) does not exercise or delays exercising any right under this Lease;
- (c) gives any concession to the Lessee;
- (d) attempts to mitigate its loss; or

- (e) shows prospective Lessees through the Premises,
- it is not a waiver of any breach or of the Lessor's rights under this Lease.

24.11 Conversion of tenancy

In addition to the Lessor's rights under clause 24.2, the Lessor may convert this Lease into a monthly tenancy terminable by either party on providing at least 1 month's written notice at any time to the other. The monthly tenancy will be on the same terms as this Lease except for those changes which are necessary to make the Lease appropriate for a monthly tenancy.

24.12 Payment after notice

- (a) If either party gives a notice terminating this Lease, or the Lessor gives a notice demanding immediate possession of the Premises, the Lessor's acceptance of, or demand for, Rent or any other money:
 - (i) is not evidence of a new lease for the Premises; and
 - (ii) does not alter the legal effect of the notice.
- (b) If the Lessee continues to occupy the Premises unlawfully after the expiry or termination of this Lease the Lessee must pay (by weekly instalments) an amount equal to the total of the Rent plus other money payable by the Lessee to the Lessor under this Lease increased by 10%.

25 Expiry or Termination

25.1 Lessee to vacate

On the earlier of the Terminating Date and the date this Lease is terminated the Lessee must:

- (a) give vacant possession of the Premises; and
- (b) Make Good the Premises.

25.2 Make Good and removal of Lessee's Property

The Lessee's must Make Good the Premises

- (a) during the 14 days immediately before the Terminating Date or if the Lessor terminates this Lease by re-entry, within 14 days after the date of Termination;
- (b) during hours reasonably approved by the Lessor;
- (c) using contractors approved by the Lessor.

25.3 Damage

The Lessee must immediately make good any damage caused to the Premises, Centre or Land in the course of complying with clauses 25.1 and 25.2.

25.4 Lessee's Property not removed

If the Lessee does not Make Good in accordance with clause 25.1 or repair damage in accordance with clause 25.3:

- (a) the Lessor may:
 - (i) carry out the Lessee's obligations at the Lessee's Cost;
 - (ii) store the Lessee's Property at the Lessee's Cost;
 - (iii) dispose of the Lessee's Property at the Lessee's Cost; and/or
 - (iv) take ownership of all or any of the Lessee's Property and deal with them in any manner the Lessor's thinks fit at the Lessee's Cost and without any liability to the Lessee or any other party; and
- (b) the Rent and other money payable under this Lease continues to be payable by the Lessee until the Lessee has Made Good.

25.5 *Keys*

- (a) On the earlier of the Terminating Date or the date this Lease is terminated, the Lessee must give to the Lessor any Keys held by the Lessee and the Lessee's Employees or any other person who has been given them by the Lessee or the Lessee's Employees.
- (b) In the event the Lessee fails to return all Keys to the Lessor as required by clause 25.5(a) then the Lessee must pay to the Lessor as a liquidated debt all Costs incurred by the Lessor in replacing Keys and in having any locks or access readers or similar devices replaced or re-programmed as the case may be.

25.6 *No merger*

The provisions of clause 25 do not merge on termination.

26 *Power of attorney*

26.1 *Appointment of attorney*

- (a) The Lessee irrevocably appoints the Lessor and each officer (as defined in the Corporations Act) and solicitor of the Lessor severally as its attorney to:
 - (i) complete and register this Lease (if required for the exercise of any power);
 - (ii) do anything that the Lessee must or may do under this Lease if the Lessor considers that the Lessee has not done it or has not done it properly;
 - (iii) do anything that the Attorney considers is necessary or desirable to remedy any breach of this Lease by the Lessee;
 - (iv) exercise any right, power, authority, discretion or remedy of the Lessee under this Lease, after the Lessee has breached this Lease; and
 - (v) execute a transfer or surrender of this Lease or a withdrawal of any caveat, after the Lessee has breached this Lease.

- (b) Each Attorney may appoint and remove substitutes, and may delegate its powers (including this power of delegation) and revoke any delegation.

26.2 *General*

- (a) An Attorney may do anything intended by this clause even if the Attorney is affected by an actual or potential conflict of interest or duty, or might benefit from it.
- (b) An Attorney may do anything intended by this clause in its name, in the name of the Lessee or in the name of both of them.
- (c) The Lessee must ratify anything done by an Attorney under this clause.
- (d) The Lessee gives the power of attorney in this clause:
 - (i) to secure performance by the Lessee of its obligations to the Lessor under this Lease and any property interest of the Lessor under this Lease; and
 - (ii) for valuable consideration, receipt of which is acknowledged by the Lessee.

26.3 *Protected power*

If the Lessee is a natural person, the power of attorney is given with the intention that it continues even if the Lessee suffers loss of capacity through unsoundness of mind after signing this Lease.

27 Notices

27.1 *Requirements of Effective Notice*

- (a) A party giving notice or notifying under this Agreement must do so in English and in writing or by Electronic Communication:
 - (i) directed to the other party's representative (as set out in the Reference Schedule and as varied by any notice); and
 - (ii) hand delivered or sent by prepaid post or Electronic Communication to that address.

27.2 *Deemed Delivery*

- (a) A notice given in accordance with clause 27.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:
 - (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or
 - (iii) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 2000* (NSW),

but if the delivery, receipt or transmission is not on a Business Day or is after 4.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

28 General

28.1 *Lessor's approval or consent*

If this Lease says that the Lessor's approval or consent must be obtained by the Lessee, then:

- (a) it must be obtained before the act or thing is done; and
- (b) the Lessor may withhold that approval or consent in its absolute discretion unless this Lease says otherwise.

28.2 *Lessee's warranties*

The Lessee warrants that it has relied only on its own enquiries in connection with this Lease and not on any statement, promise, representation, warranty or undertaking by the Lessor or any person acting or seeming to act on the Lessor's behalf other than as set out in this Lease has notice of the Rules current when signing this Lease.

28.3 *Caveats*

- (a) The Lessee must not:
 - (i) lodge a caveat on the title to the Land; or
 - (ii) allow a caveat lodged by a person claiming through the Lessee to remain on that title,

except a caveat noting the Lessee's interest under this Lease (if this Lease is not registered but must be to ensure that it is enforceable against the Lessor's successors in title).
- (b) If the Lessee lodges a caveat under this clause, it must do everything necessary to allow registration of any dealing if its rights under this Lease are protected. The Lessee must withdraw that caveat on the earlier of registration and expiry or termination of this Lease.

28.4 *Giving effect to this Lease*

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this Lease.

28.5 *Operation of indemnities*

- (a) Each indemnity in this Lease is a continuing obligation, separate and independent from the other obligations of the party and survives expiry or termination of this Lease.
- (b) It is not necessary for the Lessor to incur a Cost or Claim or make payment before enforcing a right of indemnity conferred by this Lease.

28.6 *Operation of this Lease*

- (a) The Lease Documents taken together contain the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty concerning that subject matter is replaced by this Lease and has no further effect.
- (b) Any right that a person may have under this Lease is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Lease which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Lease enforceable, unless this would materially change the intended effect of this Lease.

28.7 *Governing Law*

- (a) This Lease is governed by the law in force in the state of New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the state of New South Wales and any court that may hear an appeals from any of those courts, for any proceedings in connection with this Lease, and waives any right it might have to claim that those courts are an inconvenient forum.
- (c) Any present or future legislation which operates to vary the obligations of the Lessee or any guarantor in connection with this Lease with the result that the Lessor's rights, powers or remedies are adversely affected, including without limitation by way of delay or postponement, is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

28.8 *Exclusions of implied covenants*

- (a) The covenants, powers and previsions implied in leases by sections 84, 84A, 85 and 86 and 132 of the *Conveyancing Act 1919* (NSW) do not apply to this Lease.
- (b) Words used in any of the forms of words in the first column of Part 2 of Schedule 4 to the *Conveyancing Act 1919* do not imply a covenant under section 86 of that Act.

28.9 *Exclusions of contrary legislation*

Any legislation that adversely affects an obligation of the Lessee, or the exercise by the Lessor of a right or remedy, under or relating to this Lease is excluded to the fullest extent permitted by Law.

28.10 *Waiver*

- (a) A provision of or a right under this Lease may not be waived except in writing signed by the party waiving the provision or right.
- (b) A delay by a party in exercising a right or remedy or failure to exercise a right or remedy, or a custom or practice between the parties does not constitute a waiver of that right or remedy.

- (c) A waiver (either wholly or in part) by a party of a right does not operate as a subsequent waiver of the same right or of any other right of that party.

28.11 Variation

A variation of any term of this Lease must be in writing and signed by the parties.

28.12 Invalidity

- (a) A word or provision must be read down if:
 - (i) this Lease is void, voidable, or unenforceable if it is not read down;
 - (ii) this Lease will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause 28.12(a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this Lease will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Lease has full effect even if clause 28.12(a) or 28.12(b) applies.

28.13 Lessor's right not affected

The rights, powers and remedies of the Lessor under this Lease are in no way affected or limited by the Lessor:

- (a) granting to the Lessee any time or indulgence regarding paying Rent;
- (b) releasing the Lessee from paying Rent or any part of it;
- (c) agreeing to the substitution of a different Rent either for the unexpired term of this Lease or during any part of the Term;
- (d) extending the time for payment of any money due on account of Rent;
- (e) postponing any rights, powers or remedies conferred on the Lessor following the Lessee's default under this Lease or the exercise of any of those rights, powers or remedies at any time and in any manner;
- (f) not enforcing any covenant of the Lessee in this Lease; or
- (g) granting any other concession to the Lessee regarding paying Rent or otherwise complying with the Lessee's covenants under this Lease.

28.14 Relationship between parties

Nothing in this Lease:

- (a) constitutes a partnership between the parties; or
- (b) except as expressly provided, makes a party an agent of another party for any purpose.

28.15 *Time for doing acts*

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.
- (c) If a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
- (d) A day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
- (e) Time is a reference to Australian Eastern time.

28.16 *Deed*

This Lease operates as a deed even if it is not registered.

28.17 *No Defamation*

- (a) The Lessee acknowledges that the Premises form part of a shopping centre community dedicated to the successful operation and promotion of the Centre and the Lessee must not act or speak to the detriment of or defame the Centre, other occupants of the Centre or the Lessor in any manner.
- (b) The parties acknowledge this clause 28.17 shall not merge upon termination of this Lease.

28.18 *Privacy*

The Lessee acknowledges and agrees that:

- (a) the Lessor has collected or may collect Personal Information about the Lessee for the purpose of assessing its suitability as a lessee;
- (b) the Personal Information may be disclosed to prospective purchasers of the Centre and existing or prospective mortgagees;
- (c) the Lessee has a right under the *Privacy and Personal Information Protection Act 1998* (NSW), subject to certain exceptions, to obtain access to the Personal Information;
- (d) if the Personal Information is not given to the Lessor, the Lessor will be hindered in deciding whether or not to lease the Premises to the Lessee; and
- (e) this clause does not limit or affect any other acknowledgment or agreement that the Lessee has given or entered into, or gives or enters into in the future, under the *Privacy and Personal Information Protection Act 1998* (NSW).

This Lease may only be amended or supplemented in writing signed by the parties.

28.19 Power of Attorney/Agent

Each attorney or agent who executes this Lease on behalf of a party declares that the attorney/agent has no notice of the revocation or suspension of the power of attorney or other authority or death of the grantor.

28.20 Joint Parties

If 2 or more parties are included within the same meaning in this Lease:

- (a) a liability of those parties under this Lease is a joint and several liability of one and all parties;
- (b) a right given to those parties is a right given severally; and
- (c) a representation, warranty or undertaking made by those parties is made by each of them.

28.21 Remedies Cumulative

The rights, powers and remedies provided in this Lease are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Lease.

28.22 Role as a Government Agency

- (a) Nothing in this Lease in any way restricts or otherwise affects the unfettered discretion of the Lessor in the exercise of its statutory powers as a governmental agency and in the event of any conflict between the unfettered discretion of the Lessor in the exercise of such powers and the performance of obligations under this Lease, the former prevails.
- (b) To avoid doubt, any consent or approval given by the Lessor under this Lease will not be a consent or approval given by the Lessor in its capacity as an Authority and the Lessee is responsible to obtain the relevant consent or approval from the Lessor as an Authority, if required.

Schedule 1

Reference Schedule

Item	Details
<i>Item 1</i>	<p>Lessor</p> <p>Name: City of Parramatta Council</p> <p>ABN: 49 907 174 773</p> <p>Address: 126 Church Street, Parramatta NSW 2150</p> <p><u>Lessor's Representative</u></p>
<i>Item 2</i>	<p>Lessee</p> <p>Name:</p> <p>ABN:</p> <p>Address:</p> <p><u>Lessee's Representative</u></p>
<i>Item 3</i>	<p>Land</p> <p>Lot DP being known as</p>
<i>Item 4</i>	<p>Premises</p> <p>As identified as in the plan at Schedule 3</p>
<i>Item 5</i>	<p>Term = 5 Years</p> <p>(a) Commencing Date:</p> <p>(b) Terminating Date:</p> <p>(c) Rent Commencing Date:</p>
<i>Item 6</i>	<p>Option Term</p> <p>Term: 2 x 1 year extension</p> <p>Commencing Date:</p> <p>Rent Commencing Date:</p> <p>Terminating date:</p> <p>Review date and type of review:</p>
<i>Item 7</i>	Rent

	\$ per annum	
<i>Item 8</i>	Review Date	Method
<i>Item 9</i>	Permitted Use	
<i>Item 10</i>	Access Hours Monday Tuesday Wednesday Thursday Friday Saturday Sunday Public Holidays	
<i>Item 11</i>	Insurance Public Liability Insurance: [insert]	
<i>Item 12</i>	Security Form of Security: Security Amount : Amount equal to 3 months' Rent being	
<i>Item 13</i>	Guarantor	
<i>Item 14</i>	(a) Car Spaces (b) Car Park Licence Fee	

The Lessee agrees with the Lessor that this Lease comprises the coversheet, this Annexure A, the Schedules, the provisions, and any annexures to any of those documents.

Schedule 2 Rules

- 1 Except as provided for in this Lease, a Lessee must not do any one or more of the following:
- (a) anything in or about the Premises or the Centre (notwithstanding any consent given by the Lessor under this Lease) which in the reasonable opinion of the Lessor is noxious, offensive, audibly or visually a nuisance or which interferes with the orderly operation of the Centre;
 - (b) use or permit any person to use any plant, equipment or machinery on or in the Premises which through noise, odour, vibration or otherwise cause any annoyance, nuisance, grievance, damage or disturbance to the Lessor or any other occupant of the Centre or Land or occupiers of neighbouring land or to the customers or invitees of the Centre
 - (c) not erect, install or use upon, within or without the Premises any aerial, radio, television or form of loudspeaker, screen or other similar device or equipment without the prior written consent of the Lessor;
 - (d) carry out works which interfere with the Services, unless the Lessee has complied with the provisions of the Lease relating to Lessee's works or otherwise misuse, interfere with the Services or obstruct access to or overload the Services;
 - (e) use any method of heating, cooling or lighting the Premises other than those provided by the Lessor or as approved in writing by the Lessor upon request by the Lessee;
 - (f) use the facilities in or about the Premises or the Centre for any purpose other than that for which they were constructed;
 - (g) place anything in the toilets, urinals, drains, basins or sinks which they were not designed to receive;
 - (h) fix blinds or awnings to the outside of the Premises or blinds to the inside of the windows or doors of the Premises unless first approved in writing by the Lessor;
 - (i) fix shop fittings in the Premises;
 - (j) alter, add to or redecorate the Premises;
 - (k) damage the Premises except so far as is reasonably necessary to fix or place signs, notices, advertisements, blinds, awnings or shop fittings approved by the Lessor;
 - (l) install or operate any coin operated or similar type of entertainment or vending or amusement machines in the Premises;
 - (m) hold any auction, bankrupt, closing down, liquidation, relocation, fire or similar sale on the Premises;
 - (n) hold, prepare or cook food except in any areas which are designed for and approved by the Lessor for that purpose;
 - (o) use the Premises as a residence;
 - (p) keep an animal or bird on the Premises, Building or Land;

- (q) to smoke or permit any of the Lessee's Employees to smoke in or about the Premises or the Centre;
 - (r) bring upon or store in the Premises any dangerous, hazardous, explosive, flammable or corrosive material or chemical without the prior written consent of the Lessor;
 - (s) use any radio, gramophone, television or other like media or equipment likely to be heard or seen from outside the Premises which is of a volume unacceptable to the Lessor;
 - (t) spruik from the Premises or on the Common Areas;
 - (u) erect, install or place upon the Common Areas any A-frame signs, brochure holders, stands or similar items;
- 2 The Lessee must immediately provide a copy of all consents, licences and approvals received from any Authority relating to the Premises or the Lessee's Business.

Schedule 3

Plan



Certified correct for the purpose of the Real Property Act 1900.

Bryan Hynes
Acting Chief Executive Officer

Donna Davis
Lord Mayor

Signed by **[insert name]** in accordance
with section 22(1) of the Associations
Incorporation Act 2009 (NSW).

Signature of authorised officer

Signature of authorised officer

Name of authorised officer

Name of authorised officer

Position of authorised officer

Position of authorised officer