

**LEASE**  
New South Wales  
Real Property Act 1900

Leave this space clear. Affix additional pages to the top left-hand corner.

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

**STAMP DUTY**

Office of State Revenue use only

**(A) TORRENS TITLE**

Property leased  
Folio Identifier 33/SP102286 being 2/116 Tudor Street Hamilton 2303

**(B) LODGED BY**

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE  L
	Reference:	

**(C) LESSOR**

SCDJ Pty Ltd ACN 152 717 836 and SR Tant Pty Ltd ACN 634 749 438

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

**(D)**

Encumbrances (if applicable):

**(E) LESSEE**

Coatstrap Pty Ltd ACN 158 325 869 ACN 158 325 869

**TENANCY:**

**(G) 1. TERM**

3 Years

**2. COMMENCING DATE** 01/07/2021

**3. TERMINATING DATE** 30/06/2024

**4. With an OPTION TO RENEW** for a period of N/A  
set out in clause Item N/A

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

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

**7. Incorporates the provisions or additional material** set out in **ANNEXURE(S)** A hereto.

**8. Incorporates the provisions** set out in N/A  
No.

**9. The RENT** is set out in Item No. 7 of Annexure A

DATE

1st July 2021

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

Company: SCDJ Pty Ltd ACN 152 717 836
Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Name of authorised person: Sarah Carmen Kilpatrick
Office held: Director

Signature of authorised person:

Name of authorised person: Dene Jason Kilpatrick
Office held: Secretary

[Handwritten signature]

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

Company: SR Tant Pty Ltd ACN 634 749 438
Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Name of authorised person: Raelene Maree Tant
Office held: Director

Signature of authorised person:

Name of authorised person: Simon Christopher Tant
Office held: Secretary

[Handwritten signature]

[Handwritten signature]

(I) STATUTORY DECLARATION \*

I

solemnly and sincerely declare that—

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

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

Made and subscribed at Newcastle in the State of New South Wales on
in the presence of of

[ ] Justice of the Peace (J.P. Number: ) [X] Practising Solicitor
[ ] Other qualified witness [specify]

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

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

Signature of witness:

Signature of applicant:

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

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

DATE 1<sup>st</sup> July 2021

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

Company: Coatstrap Pty Ltd ACN 158 325 869

Authority: section 127 of the Corporations Act 2001

Signature of authorised person:

Signature of authorised person:

Name of authorised person: Sarah Carmen Kilpatrick

Name of authorised person:

Office held: Sole Director / Director

Office held:

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

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

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**THIS IS THE ANNEXURE "A" REFERRED TO IN THE LEASE**

**Dated:**

**Between:** SCDJ Pty Ltd ACN 152 717 836 atf the Kilpatrick Superannuation Fund ABN 76 606  
159 152 and SR Tant Pty Ltd 634 749 438 atf the Tant Family Super Fund ABN 50 830  
398 387 ("Lessor")

**And:** Coatstrap Pty Ltd ACN 158 325 869 atf The Coatstrap Trust ABN 70 368 355 879  
("Lessee")

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## REFERENCE SCHEDULE

Item 1	Lessor SCDJ Pty Ltd ACN 152 717 836 atf the Kilpatrick Superannuation Fund ABN 76 606 159 152 and SR Tant Pty Ltd 634 749 438 atf the Tant Family Super Fund ABN 50 830 398 387 2/116 Tudor Street Hamilton NSW 2303 ("Lessor")	
Item 2	Lessee Coatstrap Pty Ltd ACN 158 325 869 atf The Coatstrap Trust ABN 70 368 355 879 2/116 Tudor Street Hamilton NSW 2303 ("Lessee")	
Item 3	Guarantor Not Applicable	
Item 4	Premises 2/116 Tudor Street Hamilton NSW being Folio Identifier 33/SP102286	
Item 5	Lease term Commencement date Last day of lease term	3 years 1 July 2021 30 June 2024
Item 6	Exclusive car spaces for Lessee	One
Item 7	Rent (incl. GST) Payable in advance by equal monthly instalments of (incl. GST) First payment	\$34,100.00 Dollars per annum \$2,841.66 Dollars 1 July 2021
Item 8	Review Dates commencement Review Method	Annually on each anniversary of CPI (Australia – all groups)
Item 9	Percentage of outgoings	100 (%)
Item 10	Rate of interest	6%
Item 11	Amount of Bond	Not applicable
Item 12	Use of Leased Premises	Professional Offices - Accountant
Item 13	Amount of public risk cover	\$20million

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## PART 1 – DEFINITIONS AND INTERPRETATION

### 1. Definitions

In this Lease the following expressions have the following meanings:

- (a) **Building** means the building in which the Leased Premises are situated, including
  - i. the land on which the Building is erected;
  - ii. land, buildings and structures owned or controlled by the Lessor in conjunction with the Building, which is or may in the future be erected or altered;
  - iii. Lessor's Fixtures, and the Lessor's chattels, plant, equipment, property and amenities.
- (b) **Business day** means any day which is not Saturday, Sunday or a public holiday.
- (c) **Lease** means this document and includes the schedules and annexures to this Lease.
- (d) **Leased Premises** means the premises described in Item 4 and includes, with reference to those premises:
  - i. the internal surfaces of external walls and of internal structural walls of the Building;
  - ii. the internal surfaces of the ceiling and of concrete or other floors;
  - iii. the central line of partitions separating the Leased Premises from other adjoining premises;
  - iv. the external surfaces of partitions and doors separating the Leased Premises from Common Areas of the Building or from other premises not intended to be leased;
  - v. the internal surfaces of glass contained in external windows;
  - vi. all internal partitions, divisions, windows and window frames, doors and door frames, which are fully within the Leased Premises;
  - vii. the external surfaces and finishes on walls, floors, ceilings, partitions, doors and windows included in the Leased Premises, including paint, wallpaper and other materials or substances;
  - viii. the Lessor's Fixtures and any chattels provided by the Lessor for the Lessee within the Leased Premises at any time during the lease term;
  - ix. pipes and connections to water, sewerage, electricity, gas, telecommunications, air conditioning and other services and supplies, situated within above or under the Leased Premises which connect those services to the Leased Premises.
- (e) **Lessee** includes
  - i. when an individual, the Lessee's legal personal representatives;
  - ii. when several individuals, the Lessees jointly and their respective legal personal representatives;
  - iii. the Lessee's assigns;
  - iv. when a company or corporation, its successors and assigns.
- (f) **Lessor** includes
  - i. when an individual, the Lessor's legal personal representatives;
  - ii. when several individuals, the Lessors jointly and their respective legal personal representatives;
  - iii. the Lessor's assigns;
  - iv. when a company or corporation, its successors and assigns.
- (g) **Lessor's Fixtures** means all the plant, equipment and chattels which have been or become permanently or securely affixed to the Leased Premises and are the Lessor's property.
- (h) **Services** means electricity, gas, water, sewerage, telephone, telecommunication, and any other services provided or available to leased premises in the Building or to Common Areas of the Building by public or local or statutory authorities and the pipes, wires, ducting and other means of providing those services to the Building and to leased premises.
- (i) **Structural repairs** means repairs to the structure of the Building, such as the foundations, floors, walls and load bearing columns.

### 2. Interpretation

#### 2.1. Terms

- (a) Words expressed in the singular include the plural and vice versa.

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(b) Words expressed in one gender include the other genders, as is appropriate in the context.

(c) The reference to "person" includes a corporation.

2.2. Statutes

(a) References to statutes, regulations, ordinances and by-laws when contained in this Lease include amendments, re-enactments or consolidations of any of them.

(b) Covenants implied by statute

(c) Covenants and powers implied by statute are excluded from this Lease, unless any such covenant or power cannot be excluded by force of statute or is expressly incorporated in this Lease.

2.3. Joint and several liability

(a) In the event of there being two or more lessors or two or more lessees under this Lease (including whilst the Lease or the reversion is held by legal personal representatives, successors or assigns) each of them is jointly and severally liable to perform covenants and obligations under this Lease.

(b) When there are two or more lessors or lessees, any conduct under or in respect of this Lease, including the exercise of any entitlement or taking any action under this Lease or a provision of this Lease, shall be undertaken by all of the lessors or all of the lessees jointly, unless this Lease expressly provides otherwise.

2.4. Severance

(a) If any provision contained in this Lease is or becomes legally ineffective, under the general law or by force of legislation, the ineffective provision shall be severed from this Lease which otherwise continues to be valid and operative.

2.5. Governing law

(a) This Lease is governed and construed in accordance with the law of New South Wales.

2.6. Lease comprises entire agreement

(a) It is agreed that this Lease contains the whole of the agreement between the Lessor and the Lessee relating to the Leased Premises.

## **PART 2 – THE SUBJECT MATTER AND TERM OF THIS LEASE**

### **3. Rights and entitlements granted to Lessee**

3.1. The Lessor grants to the Lessee for the duration of this Lease:

(a) exclusive possession of the Leased Premises;

(b) use and enjoyment of the Lessor's Fixtures; and

(c) the entitlement to exclusive use of the car spaces described in Item 6.

### **4. The term of this Lease**

4.1. The Lessor leases the Leased Premises to the Lessee for the term specified in Item 5.

### **5. Holding over after expiry of Lease**

5.1. After the expiry of the term of this Lease, when the Lessee remains in occupation of the Leased Premises with the consent of the Lessor this Lease continues as a monthly tenancy

(a) commencing on the day immediately following the last day of the term of this Lease;

(b) the rent being payable monthly in advance, comprising the rent payable immediately before the end of this Lease and the Lessee's contributions to operating expenses, calculated and payable from time to time in accordance with this Lease;

(c) on the terms contained in this Lease, except those terms which are inapplicable to a monthly tenancy;

(d) the tenancy being terminable by either party on one month's written notice expiring at any time.

## **PART 3 – LESSEE'S FINANCIAL OBLIGATIONS**

### **6. Rent payments**

6.1. The Lessee covenants to pay Rent as specified in Item 7



- 
- (a) by an initial payment in advance on the date for commencement of rent to the end of that calendar month and then by calendar monthly payments in advance on the first day of each month, each payment being one-twelfth of the annual rent then due as fixed or varied under this Lease;
  - (b) without demand by the Lessor;
  - (c) by depositing or transferring the payments into an account as directed by the Lessor.

## **7. Abatement of Lessee's financial obligations**

- 7.1. If during the continuance of this Lease the Building or the Leased Premises is wholly or partly damaged or destroyed or is rendered wholly or substantially inaccessible through an event described in clause 7.2, rendering the Leased Premises or any part of it wholly or substantially unfit for the Lessee's use and occupation or inaccessible for a period exceeding seven (7) days, then the Lessee's financial obligations abate in accordance with this clause.
- 7.2. Abating events
  - (a) This clause applies in case of fire, lightning, storm, flood, earthquake, explosion, malicious damage, war damage, and any other event beyond the Lessee's control.
- 7.3. Lessee's financial obligations
  - (a) Abatement extends to all the Lessee's financial obligations to the Lessor under this Lease, including rent, rates, outgoings and operating expenses.
- 7.4. Period of abatement
  - (a) The period of abatement is from the date of the destruction, damage or inaccessibility until the date when the premises are restored and rendered suitable for the Lessee's use and occupation or accessible.
- 7.5. Effect of abatement
  - (a) During and for the period of abatement the Lessee's liability to pay the whole or proportion of the financial obligations under this Lease, as agreed or determined under clause 7.7, calculated on a daily basis, ceases and abates.
- 7.6. Exception to abatement
  - (a) The Lessee is not entitled to an abatement of the Lessee's financial obligations under this clause if
    - (i) the event resulting in the damage, destruction or inaccessibility is caused or contributed to by the act or negligent omission of the Lessee or the Lessee's employees; or
    - (ii) the Lessor fails to recover the benefit of any insurance for loss or damage to the Building or the Leased Premises because of any act or omission of the Lessee or the Lessee's employees.
- 7.7. Determination of abatement
  - (a) The parties shall endeavour to agree on the commencement and period of abatement of the Lessee's financial obligations, and if the Lessee is able to have partial use and enjoyment of the Leased Premises, the proportion of the abatement having regard to the nature and extent of the damage to and use of the premises.
  - (b) If the parties have any dispute regarding the Lessee's entitlement to an abatement, its period or amount, the dispute shall be determined by a loss assessor:
    - (i) who is then a member of the Insurance Council of Australia Ltd and is experienced in assessing premises of the nature of the Leased Premises and is nominated by the President for the time being or senior officer of that Council on the application of either party;
    - (ii) acting as an expert;
    - (iii) who is entitled to accept written submissions and expert reports from either party;
    - (iv) whose costs shall be borne equally by the parties;
    - (v) whose decision is final and binding on the parties.
  - (c) If the loss assessor nominated under paragraph (b) fails to proceed or to determine the dispute, either party may seek the nomination of another loss assessor in accordance with paragraph (b).

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## 8. Goods and services tax (GST)

### 8.1. Interpretation

#### (a) In this clause:

- (i) "GST" refers to goods and services tax under *A New Tax System (Goods and Services) Act 1999* ("GST Act") and the terms used have the meanings as defined in the GST Act.

### 8.2. Rent and other amounts are exclusive of GST

- (a) It is agreed that rent and all other amounts agreed to be paid by the Lessee to the Lessor, being the consideration for the supply expressed in this Lease, are exclusive of GST.

### 8.3. Lessee's obligation to reimburse lessor

- (a) In respect of any liability of the lessor for GST under this Lease, and the renewal or extension of this lease including for rent, rates, outgoings, or any consideration for any other taxable supply:
- (b) the Lessee covenants to pay to the Lessor, at the same time as any payment is made involving the Lessor in GST liability, the additional amount of GST, together with the payment to which it relates.

### 8.4. Lessor's input tax credits

- (a) The Lessee's liability under clause 8.3 is to reimburse the full amount of GST, disregarding and excluding the Lessor's entitlement to input tax credits or other credits or reimbursements for GST.
- (b) Notwithstanding clause 8.4(a) if the Lessor is entitled to an input tax credit in relation to any amount recoverable from the Lessee under clause 8.3, the amount payable by the Lessee shall be reduced by the amount of the input tax credit which the Lessor has received or claims and is entitled to receive.

### 8.5. Tax invoice

- (a) In respect of each payment by the Lessee under clause 8.3, the Lessor agrees to deliver to the Lessee, as required under the GST Act, tax invoices in a form which complies with the GST Act and the regulations, to enable the Lessee to claim input tax credits in respect of the taxable supply.

## 9. Rent Review

### 9.1. The annual rent shall be reviewed at the dates in Item 8 (each called "Review Date").

### 9.2. Lessor's assessment

- (a) The Lessor shall, at a date not less than 28 days prior to a Review Date, serve on the Lessee written notice of intention to increase the yearly rent from the Review Date and of the Lessor's reasonable assessment of the current market rent of the Leased Premises at the Review Date.

### 9.3. Determination of current market rent

- (a) If the Lessee fails or refuses to accept the Lessor's assessment within 28 days after service of the assessment or if the Lessor fails to provide an assessment or if they are unable to agree within that period on some other amount as the current market rent at the Review Date, the current market rent shall be determined in accordance with this clause.

### 9.4. Meaning of current market rent

- (a) **Current market rent** means the best annual rent that can be reasonably obtained for the Leased Premises, which is calculated
  - (i) on the basis that the premises are available for leasing with vacant possession by a willing lessor to a willing lessee for a term equal to the whole term of this Lease and any additional option for renewal;
  - (ii) having regard to the permitted use of the Leased Premises;
  - (iii) on the basis of the terms and conditions contained in this Lease (other than the amount of rent reserved in this Lease, but including the provisions for rent review);
  - (iv) on the basis that
    - A. the Leased Premises are fit for immediate occupation and use by the Lessee;

- 
- B. the Lessee's lease covenants and obligations shall have been fully performed at the Review Date;
  - (v) without taking into account
    - A. any improvements or fixtures erected or installed at the Lessee's expense which the Lessee is permitted or required to remove at the termination of this Lease, except for permanent structural improvements to the Leased Premises installed at the Lessee's expense which the Lessee is not permitted to remove at the termination of this Lease, which shall be taken into account;
    - B. any goodwill attributable to the Leased Premises through the Lessee's business activity;
    - C. that the Lessee has been in occupation of the Leased Premises;
    - D. any relocation costs which would be incurred by the Lessee when moving to other premises;
    - E. any lease incentive, concession or inducement paid, given or provided by the Lessor to or on behalf of the Lessee in relation to the grant of this Lease;
  - (vi) having regard to the rental values of comparable premises.
- 9.5. Appointment of nominee
- (a) Either party may apply to the President or principal officer for the time being of the Australian Institute of Valuers (or if it does not exist an association with substantially similar objects) to nominate a person who is a licensed valuer and
    - (i) has practised as a valuer for not less than five years;
    - (ii) is a member of the Australian Institute of Valuers (or if it does not exist an association with substantially similar objects); and
    - (iii) is licensed to practise as a valuer of the kind of premises whose rent review is required under this Lease to determine the current market rent at the Review Date.
- 9.6. Conduct of rent review
- (a) The nominee shall act as an expert and not as an arbitrator.
  - (b) The nominee's determination is final and is binding on the parties.
  - (c) The nominee shall conclude the determination and shall inform the parties of it within 14 days after having accepted the nomination to act and shall provide detailed written reasons for the determination.
- 9.7. Costs of rent determination
- (a) The parties shall bear equally the total costs of the rent determination at each Review Date including the cost of any aborted rent review.
- 9.8. Late rent reviews
- (a) Except as provided in paragraph (b), the current market rent may be determined from a Review Date even if the review is instituted after that Review Date.
  - (b) In the event of the parties having failed to institute a rent review to determine the rent from a Review Date in any of the situations specified in this paragraph, then the existing rent shall continue to be the rent for that review period, and thereafter neither party may have the current market rent determined for that period:
    - (i) after a later Review Date has arrived;
    - (ii) after the expiry of the lease term, in respect of any Review Date within that term;
    - (iii) during the last six calendar months of the lease term, in respect of the last Review Date within that lease term.
- 9.9. Rent payments
- (a) If the current market rent from a Review Date shall not be determined until after that Review Date:
  - (b) The Lessee shall continue to pay the current instalments of rent due until the new rent is determined.
  - (c) When the rent is determined, the Lessee shall pay the additional amount (if any) due for rent from the Review Date to the date when the next monthly instalment of rent is
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payable on the rent day next succeeding the expiration of thirty (30) days after the date when the Lessee is informed of the rent determination.

- (d) In addition the Lessee shall pay to the Lessor interest in accordance with clause 12.5 at a daily rate from the Review Date calculated monthly on the additional amount due each month to the date of payment of rent and interest.
- (e) If the rent due from the Review Date is reduced below the rent actually paid by the Lessee, the Lessor shall repay the excess to the Lessee together with interest calculated on the same basis as is indicated in paragraphs (b) and (c).

## **10. Outgoings**

### **10.1. Rates, taxes and insurance**

- (a) The Lessee shall pay to the Lessor the Lessee's percentage of rates, taxes and insurance (called "outgoings") specified in Item 9 for the term of this Lease.
- (b) In this clause "rates and taxes" means all rates, taxes, charges and impositions, currently and in the future, payable to any Federal, State, local government, statutory or public authority or corporation, in respect of the property, the Building or the Leased Premises including
  - (i) municipal, local and other rates and charges payable to a local authority;
  - (ii) strata levies including special levies;
  - (iii) rates and charges for the supply, reticulation or discharge of water (including excess water), sewerage, drainage and removal of waste;
  - (iv) land tax or any similar tax, at the rate payable if the land on which the Leased Premises is situated was the only land owned by the Lessor; but not including
  - (v) any income tax, capital gains tax or similar tax payable by the Lessor.
- (c) In this clause "insurance" means the insurance costs and charges paid by the Lessor in respect of risks to or in connection with the property and the Building and its use, control and management, which the Lessor reasonably considers necessary to cover by insurance.
- (d) The Lessee's contributions to outgoings are payable monthly together with the rent.

## **11. Services**

### **11.1. Lessee's liability for services and utilities**

- (a) The Lessee will pay throughout this Lease for any electricity, power, fuel, gas, oil, water, telephone, garbage removal, waste disposal, and other services or utilities provided by public local or other authorities or suppliers to the Leased Premises and charged separately in respect of the Leased Premises, to the supplier of the service or utility.

### **11.2. Installation of meters**

- (a) The Lessee will, if required by the Lessor or by an authority supplying any such service or utility, permit the installation of meters required to measure the quantity of the service supplied to the Leased Premises.

## **12. Costs**

### **12.1. Costs of preparation of Lease**

- (a) The Lessee shall bear the costs of negotiation, preparation, execution and registration of this Lease.
- (b) The Lessee shall pay on execution of this Lease the stamp duties and registration fees, and subsequently the costs and stamp duty when upstamping this Lease.

### **12.2. Consents, transactions and default**

- (a) The Lessee agrees to pay the Lessor's costs, charges, and expenses which are incurred reasonably, properly and in good faith, in connection with
  - (i) the obtaining of any consent from the Lessor, and from any headlessor, mortgagee or other person, which is required by the Lessee under this Lease;
  - (ii) the negotiation and preparation of all documents relating to any consent required by the Lessee, and all costs incurred by the Lessor, and by any other party whose consent is required, whether a consent is given, refused, or the application for consent is withdrawn;

- 
- (iii) any breach or default by the Lessee under this Lease;
  - (iv) the exercise or attempted exercise by the Lessor of any right, power, privilege, authority or remedy, against the Lessee or against any Guarantor, to enforce the Lessee's obligations under this Lease, or to terminate this Lease for the Lessee's breach or default.
- 12.3. Lessee's obligation to pay costs
- (a) The Lessor is entitled to render to the Lessee an itemised statement of any costs charges and expenses for which the Lessee is liable at any time after they have been incurred. In respect of any such statement, the Lessee shall pay the amount claimed
    - (i) when the Lessor's consent is provided to the Lessee;
    - (ii) in any other case, within thirty (30) days after service of the statement on the Lessee.
- 12.4. Precluding deduction for set-off or counterclaim
- (a) The Lessee expressly agrees to make all payments due under this Lease, including for rent and outgoings, punctually on the date when each payment is due and shall not withhold or be entitled to withhold the whole or part of any such payment by way of deduction, set-off or counterclaim, in respect of any claim for damages or for compensation which the Lessee shall make or has made against the Lessor, until after the Lessor's liability for damages or compensation is determined and the amount due to the Lessee is determined or agreed.
- 12.5. Lessee's liability for interest on overdue payments
- (a) In the event of the Lessee being in default for a period of more than fourteen (14) days with the payment of rent, rates, outgoings, costs or any other liability to or on behalf of the Lessor under this Lease, the Lessee is liable to pay additional interest at the rate of interest indicated in Item 10 to the Lessor in accordance with this clause.
- 12.6. Recovery of interest
- (a) The Lessor may demand the payment of interest and take legal action to recover the amount due at any time after not less than fourteen (14) days notice is given to the Lessee indicating the amount due and its calculation.

#### **PART 4 – SECURING THE LESSEE'S OBLIGATIONS**

##### **13. Guarantee**

###### 13.1. Entering into Guarantee

- (a) In consideration of the Lessor agreeing to grant this Lease to the Lessee at the request of the Guarantor the Guarantor enters into this guarantee (called "Guarantee") in favour of the Lessor on the terms specified in this clause.

###### 13.2. Scope of guarantee

- (a) The Guarantor agrees to guarantee the payment of rent and the observance and performance of all the Lessee's obligations as specified in this Lease throughout the lease term, including during holding over as periodical tenant after the expiry of the lease term, by the Lessee, its successors and assignees of this Lease.
- (b) This Guarantee covers the whole period whilst the Lessee occupies or is entitled to occupy the Leased Premises under this Lease as the lessee, or whilst holding an equitable interest over the Leased Premises under an agreement for lease or as a periodical tenant.
- (c) This Guarantee extends to claims by the Lessor
  - (i) for damages for breaches of lease covenants;
  - (ii) for breaches of any essential terms of this Lease;
  - (iii) for repudiation of this Lease;
  - (iv) for the Lessor's loss or damage in the event of the Lessee abandoning or vacating the Leased Premises;
  - (v) in the event of the Lessor electing to re-enter or to terminate this Lease;
  - (vi) for the Lessor's reasonable legal and other expenses of seeking to enforce those obligations against the Lessee and the Guarantor, recovering possession and terminating this Lease, on the basis specified in clause 12;

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- (vii) for loss or damage consequent on disclaimer of this Lease on the Lessee's insolvency, as if this Lease had not been disclaimed.
- 13.3. This Guarantee is in favour of the Lessor and its successors and assigns being the owner of the Leased Premises from time to time during the continuance of this Guarantee.
- 13.4. Liability of several Guarantors
- (a) When there is more than one Guarantor under this Lease
    - (i) the term Guarantor in this clause refers to each of the Guarantors and to all of them;
    - (ii) their obligations as Guarantor are joint and several;
    - (iii) the Lessor may enforce this Guarantee against all or any of them;
    - (iv) any notice or demand may be served on all of them by serving any one of them;
    - (v) this Guarantee remains binding on the other Guarantors, even if
      - A. any Guarantor fails to execute this Lease or to enter into this Guarantee;
      - B. this Guarantee is not binding on any Guarantor;
      - C. the Lessor shall release any Guarantor from liability under this Guarantee.
- 13.5. Guarantee not discharged
- (a) This Guarantee is not discharged and the Lessor's rights against the Guarantor are not affected by any of the following
    - (i) the granting of any indulgence or extension of time by the Lessor to the Lessee or to the Guarantor;
    - (ii) the Lessor's neglect or failure to enforce lease covenants against the Lessee or waiver of any breaches or defaults under this Lease;
    - (iii) the total or partial release of liability of the Lessee or of a Guarantor by the Lessor;
    - (iv) the entry into any arrangement, composition or compromise relating to this Lease between the Lessor and the Lessee or any other person;
    - (v) the variation of any provision of this Lease between the Lessor and the Lessee without the Guarantor's consent but only if they are minor and are not prejudicial to the Guarantor;
    - (vi) the death or bankruptcy or winding up of the Lessee or the Guarantor;
    - (vii) the Lessee's liability under this Lease, or this Lease, being or becoming invalid, illegal, or unenforceable, including through any act, omission or legislation;
    - (viii) the disclaimer of this Lease following the Lessee's insolvency.

## **14. Security bond**

### 14.1. Payment of Bond

- (a) At the commencement of this Lease the Lessee shall pay to the Lessor the sum in Item 11 as a security bond in earnest of performance of the Lessee's obligations under this Lease (called "Bond").

### 14.2. Deposit of Bond

- (a) The Lessor shall incur no liability to the Lessee for loss of the Bond through failure of the financial institution in which it is deposited.
- (b) The interest (if any) shall be accumulated and added to the amount held as the Bond and credited to the Lessee.

### 14.3. Use of Bond

- (a) In the event of the Lessee defaulting in the payment of rent or any financial obligation to the Lessor or in performing some other obligations under this Lease, the Lessor is entitled to
  - (i) appropriate the whole or part of the Bond and interest accrued on it in satisfying the outstanding obligation and for compensation for breach of covenant; or
  - (ii) to forfeit the Bond and the accrued interest.

### 14.4. Notification to Lessee

- (a) If the Bond is forfeited or appropriated under clause 14.3 the Lessor shall notify the Lessee that the Bond and interest are applied in full or in partial satisfaction of the

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Lessor's claim and shall itemise the Lessor's claim, giving credit for the Bond and for interest.

14.5. Lessor's additional entitlement

(a) The Lessor is entitled to recover rent and damages from the Lessee without being limited to the Bond, but if any further claim is made against the Lessee, the Lessor shall credit the Lessee with the Bond and interest.

14.6. Consequences of forfeiture

(a) The Lessor's conduct in forfeiting the Bond or in appropriating whole or part of the Bond, or in failing to do so, does not constitute waiver of the Lessee's breach or default or preclude the Lessor from exercising any of its rights or remedies.

14.7. Assignment of Lease

(a) In the event of an assignment of this Lease the Bond shall be held on behalf of the assignee and the Bond and interest shall be deemed to have been assigned to the assignee and held in accordance with this clause.

14.8. Sale of Leased Property

(a) In the event of a sale of the Leased Property subject to this Lease, control over the Bond and accrued interest shall be vested in the purchaser as trustee for the Lessee.

(b) The rights and obligations of the Lessor under this clause enure in favour of and against the purchaser as assignee of the reversion.

14.9. Repayment of Bond

(a) The Lessor shall repay to the Lessee the Bond and accrued interest on expiry or termination of this Lease, unless forfeited or appropriated in accordance with this clause.

## **PART 5 – USE OF LEASED PREMISES AND BUILDING**

### **15. Use of Leased Premises**

15.1. The Lessee will not use or permit the Leased Premises to be used for any other purpose than that stated in Item 12.

### **16. Warranties and representations**

16.1. Regarding the present or future suitability or adequacy, for the Lessee's intended use or the business intended to be conducted by the Lessee, of the Leased Premises, the Building or the fixtures, fittings, furnishings, plant, machinery, equipment, services and facilities provided by the Lessor

(a) the Lessee acknowledges that no promise, representation or warranty was given by or on behalf of the Lessor to or on behalf of the Lessee;

(b) the Lessor makes no warranty;

(c) any warranties implied under the general law or by statute are excluded under this Lease and negated to the extent permitted by law.

### **17. Lessee's responsibility for approvals**

17.1. The Lessee has satisfied itself, before entering into this Lease, regarding the need for the availability and existence of all approvals, consents and licences required for use of the Leased Premises by the Lessee for its business and for the intended and permitted use of the Leased Premises.

17.2. The Lessee has full responsibility, at its expense, to ensure that all approvals, consents and licences required by the Lessee for the conduct of the business and use of the Leased Premises are obtained and maintained throughout the term of this Lease and that all their conditions are observed.

### **18. Alterations**

18.1. The Lessee shall not

(a) affix signage;

(b) make or permit to be made any alterations or additions in or to the Leased Premises;

(c) install, or make any additions or alterations to, any electrical, gas, water, plumbing and other services, fixtures, or appliances, or any other equipment or appliances for heating, cooling, ventilating or air conditioning the Leased Premises;

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(d) mark, paint, damage, deface, drive nails or screws into, any walls, floors, ceilings, partitions, or any wood, stone or metal surface of the Leased Premises or the Building without the prior written consent of the Lessor.

#### **19. Compliance with regulations and Notices**

- 19.1. The Lessee shall at its expense observe and comply with all laws, notices by relevant authorities and requirements relating to
- (a) the Lessee's use and occupation of the Leased Premises for the use permitted in this Lease;
  - (b) the fixtures, fittings, machinery, plant and equipment in the Leased Premises;
  - (c) occupational health, safety and environmental matters.

#### **20. Lessee's obligations regarding use of Leased Premises**

- 20.1. The Lessee shall not, during the term of this Lease:
- (a) Allow the Leased Premises to be used for any illegal, immoral, noxious, dangerous or offensive purpose, activity or occupation.
  - (b) Use or permit any part of the Leased Premises to be used as sleeping quarters or for residence.
  - (c) Keep any animals in the Leased Premises.
  - (d) Hold or permit any auction or public meeting in the Leased Premises.
  - (e) Use or permit the use of any sound producing equipment in the Leased Premises at a volume which may be heard outside the premises.
  - (f) Use the Leased Premises in a noisy or in any other manner which would cause damage, nuisance or disturbance to the Lessor, to other lessees of the Building, or to the owners or occupiers of adjoining properties.
  - (g) Trade or display merchandise outside the Leased Premises.
  - (h) Use the Leased Premises in an excessively noisy or noxious or offensive manner.
  - (i) Use plant or machinery in the Leased Premises so as to constitute a nuisance or disturbance to the Lessor or to other lessees of the Building, due to noise, vibration, odours or otherwise.

#### **21. Mode of conducting Lessee's business**

- 21.1. The Lessee agrees, regarding the conduct of the business in the Leased Premises, throughout the term of this Lease, to conduct the business in an orderly, efficient and reputable manner, consistent with the standard and quality of the Building.

#### **22. Inflammable substances**

- 22.1. The Lessee shall not bring into, store or use in the Leased Premises any inflammable, dangerous or explosive substances.

#### **23. Cleaning**

- 23.1. The Lessee agrees to keep the Leased Premises clean and
- (a) to have the Leased Premises cleaned as frequently as required to maintain them in a clean condition;
  - (b) not allow the accumulation of rubbish in the Leased Premises.
- 23.2. Use of toilets and drainage
- (a) The Lessee shall
    - (i) not use the toilets, sinks, drainage and plumbing in the Leased Premises or in the Building for purposes other than those for which they were designed;
    - (ii) not place in any of those facilities rubbish, chemicals, contaminated and other substances, which they are not designed to receive or which would infringe health or environmental regulations;
    - (iii) repair any damage caused to any of those facilities by breach of this clause.

#### **24. Security and keys**

- 24.1. The Lessee shall



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- (a) take reasonable action to secure the Leased Premises against unauthorised entry whilst the premises are unoccupied;
  - (b) securely lock and fasten external doors and windows in the Leased Premises whilst the premises are unoccupied.

24.2. Lessor to provide keys and access cards

- (a) At the commencement of this Lease the Lessor shall provide to the Lessee at the Lessor's cost a sufficient number of keys and access cards reasonably required by the Lessee for entry into the Building, the Leased Premises, including outside normal business hours.

**25. Exemption of Lessor's financial responsibility**

25.1. The Lessor is exempted from any liability to the Lessee for financial loss or inconvenience, including for damages, abatement of rent or for repudiation, and the Lessee is not entitled to terminate this Lease, because

- (a) any of the Facilities is out of order and is not functioning properly or at all;
- (b) any of the Facilities is temporarily stopped or interrupted pending inspection, repair, maintenance, replacement for any other cause beyond the Lessor's control.

**PART 6 – REPAIRS, MAINTENANCE AND ALTERATIONS**

**26. Lessor's repair obligations**

26.1. The Lessor shall keep the Building and Services in and to the Building in good repair throughout the term of this Lease.

26.2. The Lessor is not required to carry out structural repairs or to remedy fair wear and tear, except

- (a) when required for the stability or safety of the Building; or
- (b) to maintain the reasonable use and enjoyment of the Building and the Leased Premises by the Lessee.

**27. Lessee's repair obligations**

27.1. The Lessee shall keep the Leased Premises and the Lessor's fixtures situated in the Leased Premises in good repair and working condition throughout this Lease and shall on expiry or termination of this Lease yield up the Leased Premises to the Lessor in the state of repair and condition as is specified in this clause.

27.2. Lessee's specific repair obligations

- (a) In addition to the Lessee's obligations under the preceding subclause, the Lessee shall throughout the term of this Lease carry out the following repair and maintenance
  - (i) promptly repair or replace all broken, cracked or damaged glass in the Leased Premises, with glass of the same or similar gauge and quality, unless the damage was caused by the Lessor or the Lessor's tradespersons;
  - (ii) promptly repair or replace all damaged, broken or faulty light globes, fluorescent lights, power points, light switches, heating, lighting and electrical appliances, services and wiring in the Leased Premises;
  - (iii) promptly repair and keep in proper working order and free from blockage plumbing fittings, drains, water pipes, sewerage pipes, toilets and sinks, to the extent to which they are situated in or under the Leased Premises and provide Services or Facilities to the Leased Premises;
  - (iv) maintain and repair all door and window locks and fittings in the Leased Premises;
  - (v) repair any damage or breakage to the Leased Premises, to the Lessor's Fixtures and property in the Leased Premises, and to Services and Facilities in the Leased Premises, caused by lack of care or misuse by the Lessee or by its employees or agents; and
  - (vi) keep in good condition the Lessor's air-conditioning system and enter into and maintain a comprehensive maintenance contract which provides for regular service of the air-conditioning system at least once every 6 months;
  - (vii) If required by the Lessor, the Lessee shall paint the Leased Premises once during the last 3 months of the Term.

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## **28.Lessor's right to inspect Leased Premises**

- 28.1. The Lessor, or persons authorised by the Lessor, may enter the Leased Premises
- (a) to inspect the condition and state of repair of the Leased Premises, Services and Facilities;
  - (b) to ascertain that the Lessee complies with the Lessee's obligations under this Lease.

### **28.2. Prior notice**

- (a) The Lessor shall exercise its entitlement under this clause
- (i) not more frequently than twice annually during the lease term;
  - (ii) at reasonable times during business hours on a Business day;
  - (iii) after giving not less than seven (7) days prior written notice to the Lessee of the intended time of the inspection, except in an emergency when the Lessor has an additional right to enter the Leased Premises and prior notice is not required before entry.

## **29.Lessor's right to repair Leased Premises**

- 29.1. The Lessor and persons authorised by the Lessor, including consultants and contractors, may enter the Leased Premises, together with tools, equipment and materials, and remain on the Leased Premises, at and for such reasonable times as is necessary for the purpose of carrying out repairs and other work, in accordance with this clause.
- 29.2. Before entering the Leased Premises the Lessor shall give to the Lessee not less than seven (7) days prior written notice of the intended date and time of entry, its purpose and the likely duration of the intended work, except in an emergency, when prior notice before entry is not required.
- 29.3. The Lessor may carry out repairs, including maintenance, installations, alterations, replacement or renewal, in respect of the Building, the Leased Premises, Services and Facilities to or situated in the Leased Premises, in order
- (a) to undertake work which the Lessor is required or desires to carry out in accordance with this Lease;
  - (b) to comply with the requirements of any authority;
  - (c) to carry out work in conjunction with or to adjoining leased premises of the Building which cannot be reasonably undertaken without access from or through the Leased Premises;
  - (d) to undertake work which the Lessee failed to carry out, in breach of its obligations under this Lease, or following notice from the Lessor or failed to complete in a workmanlike manner;
  - (e) to remove unauthorised work, alterations or signs, undertaken or installed by the Lessee in breach of its obligations under this Lease;
  - (f) to restore or rebuild the Leased Premises following damage or destruction.

## **PART 7 – INSURANCE, INDEMNITIES, DAMAGE AND DESTRUCTION**

### **30.Lessee's obligations to insure**

- 30.1. The Lessee shall effect and maintain throughout the term of this Lease the following insurances:
- (a) A public risk insurance policy
    - (i) in the form of a standard public risk policy or in the form commonly used by reputable insurers;
    - (ii) in the sum in Item 13 in respect of any single event or accident;
    - (iii) or for such higher amount as the Lessor, acting reasonably and prudently, may require, during any year of the term of this Lease after the first year of the term of this Lease;
    - (iv) relating to the Lessee's liability for death, personal injuries and property damage arising from the Lessee's occupancy of the Leased Premises and use of the Building, whilst entering, leaving, using and being in the Leased Premises or any portion of the Building, in circumstances in which the Lessee may incur liability for the injury, loss or damage;

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- (v) and extended to include claims, risks and events covered under indemnities provided by the Lessee to the Lessor under this Lease.
- (b) Plate glass
    - (i) For the full replacement value, through breakage or damage from any cause
    - (ii) of all plate and other glass in windows, doors and other fixed glass in the Leased Premises; and
    - (iii) of any doors, windows or other frames containing the glass;
    - (iv) within or forming part of the Leased Premises.
  - (c) Lessee's property
    - (i) A comprehensive insurance policy
    - (ii) for the full insurable and replacement value of the Lessee's fixtures, fittings, plant, equipment and stock in trade in the Leased Premises;
    - (iii) against loss or damage by fire, storm, tempest, earthquake, lightning, explosion, burglary and other risks usually covered under a comprehensive insurance policy for fire and related risks.
  - (d) Workers' compensation
    - (i) A workers' compensation insurance policy, providing unlimited cover in respect of the Lessee's employees for workers' compensation, as required by law.
- 30.2. Lessor's approval
- (a) The Lessee's insurances shall be effected with one or more insurance companies which are
    - (i) respectable, reputable and financially sound;
    - (ii) approved by the Lessor, and the Lessor's approval shall not be unreasonably withheld.
- 30.3. Joint insurances
- (a) The Lessee's insurances relating to public risk, plate glass and the Lessee's property (in order to cover fixtures)
    - (i) shall be in the joint names of the Lessor and the Lessee;
    - (ii) shall cover the Lessor's and Lessee's interests;
    - (iii) and, if requested by the Lessor, shall include the interest of any mortgagee over the Building.
- 30.4. Payment of premium
- (a) The Lessee shall pay punctually when due the insurance premiums and other moneys payable to effect and maintain the insurances required under this clause.
  - (b) If the Lessee fails to pay an insurance premium when due, the Lessor may make such payment, which shall become due and payable by the Lessee to the Lessor, together with interest, within seven (7) days after service of written notice by the Lessor on the Lessee requiring payment.
- 30.5. Replacement of property
- (a) In the event of loss or damage to the Lessor's or Lessee's property which is covered by insurance effected by the Lessee, the Lessee will promptly replace, repair or reinstate the damaged or destroyed property, utilising the proceeds from the insurance.
    - (i) The Lessee shall pay any additional costs of replacement, repair or reinstatement not covered by the proceeds from the insurance,
    - (ii) unless the Building is seriously damaged or destroyed and is not repaired or reinstated by the Lessor or this Lease is terminated as a consequence of the damage or destruction.
  - (b) In the events under paragraph (a)(i), the proceeds from any insurance effected by the Lessee in respect of damage or loss to the Lessor's property shall be remitted to the Lessor as compensation for its loss.
- 30.6. Lessee's conduct relevant to insurance
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- (a) The Lessee agrees to comply with the requirements imposed by the Lessor's insurer for the Building and under fire safety regulations, in respect of the authorised use by the Lessee of the Leased Premises
    - (i) with regard to the installation, repair and maintenance of fire alarms, sprinklers, and fire prevention equipment in the Leased Premises, except those provided by the Lessor at or before the commencement of this Lease;
    - (ii) including in respect of partitions and alterations in the Leased Premises.
  - (b) The Lessee is liable to the Lessor for the reasonable cost of installations and equipment, which the Lessor may install in the Leased Premises during this Lease, in order to comply with the requirements under paragraph (a), if the Lessee shall have failed to comply with those obligations in any respect.

### **31. Lessee's indemnities to Lessor**

#### **31.1. Indemnities**

- (a) The Lessee agrees to indemnify the Lessor from and against any liability, loss, damage, expense or claim, which the Lessor may incur, including to a third party, during or after the term of this Lease, in respect of or arising from:
  - (i) Loss, damage or injury to property or person occurring within the Building or the Leased Premises, caused or contributed to by the Lessee's failure (including through the Lessee's agents or employees) to comply with the obligations imposed under this Lease.
  - (ii) The negligent use or misuse by the Lessee (and by its agents or employees) of any Services or Facilities in the Building or in the Leased Premises.
  - (iii) The overflow, leakage or escape of water, gas, electricity, fire, or other materials or substances in or from the Leased Premises, caused or contributed to by the Lessee's (and its agents' or employees') negligence.
  - (iv) Loss, damage or injury to property or person, caused or contributed to by the Lessee's negligence, arising out of use of the Leased Premises.
  - (v) Loss, damage or injury to property or persons, caused or contributed to by the defective installation of plant, fixtures and equipment in the Leased Premises by or on behalf of the Lessee.
  - (vi) The Lessee's failure to notify the Lessor regarding any defect in the Facilities or Services in the Leased Premises.

#### **31.2. The indemnities under this clause**

- (a) include penalties, fines, legal and other costs incurred by the Lessor;
- (b) do not apply when the loss, damage or injury was caused or substantially contributed to by the wilful or negligent act or omission of the Lessor, its employees or agents;
- (c) do not apply when the Lessor is indemnified for the loss or damage from moneys paid or recovered from insurances effected by the Lessor.

## **PART 8 – ASSIGNMENT AND SUBLETTING**

### **32. Prohibition against assignment, subletting and mortgage over lease**

#### **32.1. Prohibition of dealings**

- (a) During the continuance of this Lease, in respect of whole or part of this Lease or the Leased Premises, the Lessee shall not
  - (i) assign, transfer, sublet, deal with, hold on trust, or grant any interest in, this Lease;
  - (ii) mortgage, charge or encumber this Lease;
  - (iii) part with possession of whole or any part of the Leased Premises;
  - (iv) grant any licence, or share the right of occupation or possession, in respect of whole or part of the Leased Premises;
  - (v) grant any franchise or concession over the Lessee's business conducted at the Leased Premises which would entitle any other person to use, occupy or trade from whole or part of the Leased Premises.

### 33. Consent to assignment

33.1. The Lessee may apply to the Lessor for consent to the assignment of this Lease, which shall not be unreasonably withheld if the following conditions precedent are satisfied:

- (a) the Lessee shall make a written application to the Lessor for consent and furnish complete copies of all written documents entered into between the Lessee and the proposed assignee relating to the Lessee's business and the premises, written personal and business references and financial statements relating to the assignee and any proposed new guarantors;
- (b) the Lessee shall establish to the reasonable satisfaction of the Lessor that
  - (i) the proposed assignee is respectable, responsible and solvent;
  - (ii) the proposed assignee has adequately performed its obligations as the lessee or former lessee of other business premises;
  - (iii) in respect of the business or profession intended to be conducted by the assignee at the Leased Premises the assignee has sufficient financial resources and business experience to be capable of adequately complying with the Lessee's obligations under this Lease and of efficiently conducting the assignee's business at the Leased Premises;
- (c) the Lessee shall have paid to the Lessor all moneys due under this Lease up to the date of the assignment (and, in respect of any liability which can not be accurately determined, will secure it to the Lessor's reasonable satisfaction at the date of the assignment);
- (d) there are no unremedied breaches of the Lessee's obligations under this Lease at the date of the assignment;
- (e) any other consents which are required to the assignment, by headlessors, mortgagees or others, are obtained before the assignment;
- (f) when the assignee is a company, other than a company whose shares are listed on an Australian Stock Exchange, personal guarantees for performance of lease covenants for the duration of the lease term by the assignee be provided, in a form reasonably acceptable to the Lessor and prepared on behalf of the Lessor at the Lessee's expense, by two of the assignee's directors or principal shareholders chosen by the Lessor;
- (g) the execution by the Lessee and the assignee of a transfer of this Lease, which shall be duly stamped and which the assignee or the assignee's solicitor shall undertake to have registered promptly after completion of the assignment;
- (h) the execution of a deed in a form reasonably required by and prepared on behalf of the Lessor, by the Lessor, Lessee, assignee, continuing guarantors and new guarantors, in which
  - (i) the Lessee confirms its liability under this Lease for the balance of the current lease term;
  - (ii) the Lessor is released from liability to the Lessee under this Lease;
  - (iii) the assignee covenants to observe the Lessee's obligations under this Lease during the duration of this Lease;
  - (iv) any continuing guarantors confirm their consent and continuing liability, unless that is adequately covered in their guarantee;
  - (v) new guarantors execute guarantees under this Lease for the assignee;
  - (vi) the payment by the Lessee to the Lessor of the Lessor's reasonable costs and disbursements in accordance with clause 12.

33.2. Change in control of Lessee

- (a) When the Lessee is not a company whose shares are listed on an Australian Stock Exchange, any proposed
  - (i) transfer in the legal or beneficial interest in shares of the Lessee if a company;
  - (ii) allotment of shares in the Lessee company; or
  - (iii) changes in the company's articles of association,which would have the consequence of altering the effective control of the Lessee company, is considered to be an assignment of this Lease and requires the

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Lessor's consent in accordance with this clause as if the parties which would acquire control over the company were assignees of the Lease.

## **PART 9 – LESSOR'S COVENANTS, OBLIGATIONS AND RESERVATION OF ENTITLEMENTS**

### **34.Lessor's covenant for quiet enjoyment**

34.1. The Lessor covenants with the Lessee that whilst the Lessee complies with the financial and other obligations under this Lease, the Lessee may occupy and have the use and enjoyment of the Leased Premises for the term of this Lease without interruption or disturbance from the Lessor and other persons lawfully claiming through or under the Lessor.

### **35.Miscellaneous reservations**

35.1. Right to inspect Leased Premises

(a) The Lessor, its employees, agents and persons authorised by the Lessor, may enter and remain on the Leased Premises, for reasonably short periods of time, for the purpose of inspecting the Leased Premises, with a prospective purchaser or mortgagee of the building or with a prospective lessee of the Leased Premises.

35.2. The right to enter and inspect the Leased Premises shall be exercised

- (a) during the last two months of the lease term, with prospective lessees;
- (b) during two hours in any week, to be nominated by the Lessor, with prospective purchasers or mortgagees of the Building.

## **PART 10 – DEFAULT AND TERMINATION**

### **36.Lessee's obligation to yield up Leased Premises**

36.1. The Lessee agrees, immediately on the expiry or legally effective termination of this Lease, to yield up possession and control over the Leased Premises to the Lessor, in the condition and state of repair as required under this Lease.

### **37.Essential terms of lease**

37.1. It is agreed that the following obligations by the Lessee are essential terms of this Lease:

- (a) the covenant to pay rent throughout the lease term at a date not later than fourteen (14) days after the due date for the payment of each monthly instalment of rent (clause 6);
- (b) the covenant to pay GST not later than fourteen (14) days after the due date for the payment of instalments (clause 8);
- (c) the covenant to pay outgoings throughout the lease term at a date not later than fourteen (14) days after the due date for the payment of instalments (clause 10);
- (d) the covenant dealing with the use of the Leased Premises (clause 15);
- (e) the covenant dealing with assignment and subletting (clause 32).

### **38.Lessor's entitlements after Lessee vacates during lease term**

38.1. Lessor's entitlements

- (a) If the Lessee vacates or abandons the Leased Premises during the lease term in breach of the Lessee's obligations under this Lease, the Lessor may
  - (i) accept the keys to the Leased Premises from the Lessee;
  - (ii) renovate, restore and clean the Leased Premises;
  - (iii) change the locks and secure the Leased Premises;
  - (iv) permit prospective tenants to inspect the Leased Premises;
  - (v) take any action in paragraph (a) without the Lessor's conduct constituting
  - (vi) a re-entry or termination of this Lease;
  - (vii) the acceptance of a surrender of this Lease.

### **39.Power of attorney by Lessee to Lessor**

39.1. Appointment

- (a) The Lessee appoints the Lessor (and its successors and assigns, being the owner of the property for the time being) the Lessee's attorney with the powers contained in this clause.

### 39.2. Irrevocable power

- (a) This power of attorney is
  - (i) irrevocable by the Lessee,
  - (ii) granted by the Lessee for valuable consideration (the grant of this Lease by the Lessor), to secure the performance of the Lessee's obligations and the Lessor's proprietary interest over the Leased Premises.

### 39.3. Extent of power

- (a) The Lessor as the Lessee's attorney and in the name and on behalf of the Lessee may
  - (i) remove from the Leased Premises, store and sell, any plant, equipment, chattels and other property left on the Leased Premises by the Lessee, after the Lessee has vacated the premises and this Lease is terminated or has expired;
  - (ii) surrender this Lease, after
  - (iii) the Lessor has become entitled to terminate this Lease; and
  - (iv) the Lessee vacates or abandons the Leased Premises; or
  - (v) the Lessor terminates this Lease by serving notice of termination;
  - (vi) withdraw any caveat lodged by the Lessee in respect of this Lease, after the Lessor effectively terminates this Lease.
- (b) The Lessor may
  - (i) act as attorney under this clause during the continuance of this Lease and during the period of 6 months after the termination of this Lease;
  - (ii) register this Lease (or lease provision) as a power of attorney, at any time including after the termination of this Lease, if that is required for the exercise of any power;
  - (iii) ratify and confirm any power when exercised under this clause, as attorney and agent for the Lessee.

## 40. Waiver

### 40.1. Demand and acceptance of rent and other financial obligations

- (a) After the Lessee is in default or breach under this Lease, including in breach of an essential term of this Lease, the demand or acceptance from the Lessee by the Lessor of arrears or of any late payment of rent, rates, taxes, outgoings, operating expenses, or other financial obligations does not
  - (i) preclude the Lessor from exercising any rights or remedies under this Lease, including enforcing or terminating this Lease;
  - (ii) constitute a waiver of the essentiality of the Lessee's obligation to make those payments;
  - (iii) waive the Lessee's continuing obligation to make those payments during the lease term.

## 41. Termination after damage to or destruction of Building

### 41.1. Lessor's entitlement to terminate lease

- (a) The Lessor may terminate this Lease when the Building is seriously damaged by fire, storm, tempest, earthquake, lightning, explosion, or other similar event, in any of the following circumstances:
  - (i) when the Building is required to be demolished and wholly replaced;
  - (ii) when the serious damage or destruction extends to more than fifty per cent (50%) of the Building, including the Leased Premises;
  - (iii) when the Lessor is not required to repair, replace or reinstate the Building under this Lease;
  - (iv) when the Building cannot be repaired or reinstated by the Lessor, acting reasonably and promptly, within 6 months after the damage;
  - (v) when the Leased Premises are incapable of being used and occupied due to the damage and this Lease expires, with no option for renewal, within two (2) years after the date when the damage occurs.

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- (b) In any of the circumstances specified in paragraph (a) the Lessor may give written notice at any time terminating this Lease on one month's notice.

#### **42. Lessee's entitlement to terminate Lease**

- 42.1. The Lessee may terminate this Lease when the Leased Premises are seriously damaged by fire, storm, tempest, earthquake, lightning, explosion, or other similar event, or the Leased Premises are rendered incapable of being used and occupied as a consequence of serious damage to the Building from such an event, in any of the following circumstances:
- (a) when the Lessor takes no action to repair or reinstate the Leased Premises for a consecutive period of the 8 weeks, at any time after the date of the damage;
  - (b) when the Leased Premises will not be capable of being used and occupied for a period in excess of 3 months from the date of the damage.
- 42.2. In any of the circumstances specified in paragraph (a), the Lessee may give one month's written notice terminating this Lease.

#### **43. Termination of Lease for default**

##### 43.1. Default

- (a) Each of the following constitutes a default by the Lessee under this Lease
- (i) the failure to pay to the Lessor rent or comply with any other financial obligation under this Lease, including the payment of outgoings, for a period in excess of fourteen (14) days after the due date for payment, whether a formal demand for payment has or has not been made;
  - (ii) the failure to comply with an essential term of this Lease;
  - (iii) any serious, persistent and continuing breach by the Lessee of its covenants and obligations under this Lease.

##### 43.2. Termination after default

- (a) The Lessor may terminate this Lease, after a default by the Lessee in accordance with clause 43.1, and continuance of the default, after the Lessor shall have served a legally effective notice of breach of covenant (if required) by
- (i) re-entering and taking possession of the Leased Premises, using reasonable force to secure possession;
  - (ii) serving on the Lessee written notice terminating this Lease;
  - (iii) instituting proceedings for possession against the Lessee.

##### 43.3. Lessor's entitlement to damages

- (a) Damages for breach or for repudiation
- (i) In the event that the Lessee's conduct (whether acts or omissions) constitutes
  - (ii) a repudiation of this Lease (or of the Lessee's obligations under this Lease);
  - (iii) a breach of any Lease covenants;
  - (iv) a breach of an essential term of this Lease;
- (b) the Lessee covenants to compensate the Lessor for the loss or damage suffered by the Lessor as a consequence of the repudiation or breach, whether this Lease is or is not terminated for the repudiation, breach or on any other ground.
- (c) The Lessor's entitlement to damages is in addition to any other remedy or entitlement, including termination of this Lease.

43.4. The Lessor is entitled to recover damages against the Lessee in respect of the repudiation or breach of covenant or essential term for the loss suffered by the Lessor during the term of this Lease, including the periods before and after termination of this Lease.

43.5. The Lessor's entitlement to recover damages is not affected or limited by any of the following:

- (a) if the Lessee abandons or vacates the Leased Premises;
- (b) if the Lessor elects to re-enter or to terminate the Lease;
- (c) if the Lessor accepts the Lessee's repudiation;
- (d) if the parties' conduct constitutes a surrender by operation of law.



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#### **44. Additional entitlements of Lessor**

- 44.1. The Lessor's entitlement to damages is in addition to
- (a) the entitlement to recover rent, rates, taxes, outgoings and operating expenses until the date of expiry or termination of this Lease;
  - (b) interest on late payments in accordance with this Lease;
  - (c) costs of any breach or default, including the costs of termination.

#### **45. Removal of Lessee's property**

- 45.1. Lessee's obligation to remove property
- (a) The Lessee shall remove all its property, including furniture, plant, equipment and stock in trade, from the Leased Premises, before the expiry or termination of this Lease or, if it is terminated by the Lessor, within seven (7) days after this Lease is terminated.
  - (b) After the Lessor terminates this Lease, the Lessee and its employees and agents may have access to the Leased Premises, whilst the Lessor has possession and control over those premises, for the next seven (7) days (excluding Sundays and public holidays), between 8am and 5pm, for the purposes of removing the Lessee's property and cleaning, repairing or restoring the Leased Premises.
  - (c) The Lessee shall not cause any damage to the Building or to the Leased Premises whilst removing its property, shall leave the Leased Premises clean and tidy after the removal and shall be liable for the cost of repair of the damage caused by or during the removal.
- 45.2. Lessee's failure to remove property
- (a) If the Lessee fails to remove any of its property from the Leased Premises, the Lessor may
    - (i) have that property removed from the Leased Premises and stored, using reasonable care in removing and storing the property, but being exempted from any liability to the Lessee for loss or damage to any of its property through the negligence of the Lessor, its employees or agents;
    - (ii) sell or otherwise dispose of all or any of the Lessee's property, with or without removing them from the Leased Premises, in the name of and as agent for the Lessee.
  - (b) In respect of all or any of the Lessee's property which the Lessee has failed to remove from the Leased Premises, the Lessee is deemed to have abandoned the property and title to it and the Lessor at its option acquires title to that property through abandonment.
    - (i) The Lessor is not obliged to account to the Lessee for the value of any property whose title vests in the Lessor by abandonment.
- 45.3. The Lessee is responsible for and indemnifies the Lessor in respect of
- (a) any loss or damage caused by the Lessee, its employees or agents during the removal of the Lessee's property from the Leased Premises;
  - (b) the costs of removal, storage and sale of any of the Lessee's property.

### **PART 11 – MISCELLANEOUS**

#### **46. Service of notices**

- 46.1. Notice
- (a) Any notice, document or demand (called "notice") under this Lease shall be served in accordance with this clause.
- 46.2. Signature of notice
- (a) The notice shall be in writing, signed by the party giving it, or by the party's duly authorised officer (if a corporation), agent or solicitor.
- 46.3. Service of notice
- (a) A notice may be served on a party to this Lease, including their successors, assigns, and guarantors
    - (i) by personal delivery to that party or if more persons than one are lessors or lessees to any one of them;

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- (ii) by delivering the notice to the Leased Premises and leaving it with an employee of the Lessee;
  - (iii) by delivering the notice to the Lessor's business address and leaving it with an employee of the Lessor;
- (b) by sending it, addressed to the party at that party's address by prepaid security post or certified post;
- 46.4. if the Lessor maintains a centre manager's or administrator's office in the Building, by delivering any notice addressed to the Lessor to that office whilst it is open and leaving it with a person working in that office.
- 46.5. Additional or altered address
- (a) Either party may advise the other party of an additional or an altered address for the service of notices.
- 46.6. Time of service
- (a) A notice is considered to have been served
- (i) at the time of delivery;
  - (ii) on the fourth Business day after the day on which it is posted, the first Business day being the day of posting.