

Dealing Number

Duty Imprint



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1. Lessor	Lodger (Name, address & phone number)	Lodger Code
Berrinba Superannuation Holdings Pty Ltd ACN 645 736 778 as trustee under instrument 720491895	Enyo Lawyers 26 Market Street Brisbane QLD 4000 Tel: 07 3180 0510 Email: info@enyolawyers.com.au	2699

2. Lot on Plan Description	Title Reference
Lot 10 on RP70918	12800071

3. Lessee	Given names	Surname/Company name and number	(include tenancy if more than one)
		BSF Mobile Cranes Pty Ltd ACN 119 342 880	

4. Interest being leased
Fee Simple

5. Description of premises being leased
Whole of the Land

6. Term of lease	7. Rental/Consideration
Commencement date/event: Expiry date: #Options: 2 x 5 years #Insert nil if no option or inset option period (eg 3 years or 2 x 3 years)	See Schedule

8. Grant/Execution

The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in:- *the attached schedule; *the attached schedule and document no.

* document no.; *Option in registered Lease no. has not been exercised.

* delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

Berrinba Superannuation Holdings Pty Ltd ACN 645 736 778 as trustee under instrument 720491895

..... signature
 Oliver Richard Gibbins full name
 JP Qual qualification
Witnessing Officer
 (Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)



..... Director
 Director
Lessor's Signature

9. Acceptance

The Lessee accepts the lease and acknowledges the amount payable or other considerations for the lease.

..... signature
 Oliver Richard Gibbins full name
 JP Qual qualification
Witnessing Officer



BSF Mobile Cranes Pty Ltd ACN 119 342 880
 Director
 Director
Lessee's Signature

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Summary of Lease Particulars

Item 1.	Base Rent (clause 3.1) \$215,000.00 per annum plus GST	
Item 2.	Base Rent review dates and type of review (clauses 3.2 to 3.6)	
	Review Date	Review Type
	On each anniversary of the Commencement Date or Practical Completion Date (if applicable) On the Practical Completion Date (special condition 2) The parties agree that if a Market Review has occurred because of Practical Completion the next Review Dates will be the anniversary of the Practical Completion Date	CPI with a maximum of 2% Market Review
Item 3.	Permitted Use (clause 5.1) Industrial	
Item 4.	Option/s for Renewal (clause 17) 2 x 5 years	
Item 5.	Guarantor/s Not applicable	
Item 6.	Amount of Bond or Bank Guarantee (clause 20) Not applicable	
Item 7.	Amount of public risk insurance (clause 11) \$20 million	
Item 8.	Rent review dates and types of review at the commencement of and during the option(s) (clause 17)	
	Review Date	Review Type
	For the first year of the option(s) For the second and subsequent years of the option(s)	Market Review CPI with a maximum of 2%
Item 9.	Address of Premises 500-506 Wembley Road, Berrinba QLD 4117	

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1. Definitions and Interpretation

1.1 Definitions

In this Lease the following words have the following meanings unless the context otherwise requires:

Air Conditioning Equipment includes the plant, electrical installations, ductwork and diffusers used for the manufacture and reticulation of conditioned air through or into the Premises and includes all mechanical ventilation;

Amenities includes any drain, basin, sink, toilet or urinal;

Authority includes any state or federal government, any semi or local government, any statutory or public authority or instrumentality or body or any other Person, having jurisdiction over the Premises or the Land or any part of them or anything in relation to them;

Base Rent means the amount stated in Item 1 of the Summary as varied under this Lease;

Claim includes any claim, demand, remedy, suit, injury, damage, loss, liability, action, proceeding, right of action, claim for compensation and claim for abatement of rent obligation;

Commencement Date means the date this Lease is stated to commence on the Form 7 Lease;

Contamination means a noxious or hazardous substance which makes or may make the Premises or the surrounding environment unsafe or unfit for habitation or occupation by persons or animals or otherwise environmentally degraded;

Cost includes any cost, charge, expense, outgoing, payment or other expenditure of any nature whatever, including all Solicitor/client legal fees;

Default Rate means 10% per annum;

DNRM means the Department of Natural Resources, Mines and Energy;

Excepted Damage means:

- (a) damage caused without negligence on the part of the Tenant or the Tenant's Employees by reason of fire, lightning, storm, tempest, inevitable accident, flood or earthquake;
- (b) caused by reason of fair wear and tear;
- (c) structural repairs unless required because of the use or occupation of the Premises by the Tenant or any act, negligence or default of the Tenant or of the Tenant's Employees;

Guarantor means the person or persons (if any) named in Item 5 of the Summary;

Insolvency Event means the happening of any of the following events in relation to the Tenant or the Guarantor (or both):

- (a) in the case of a natural person:
 - (i) is or becomes bankrupt;
 - (ii) enters into any agreement or makes any arrangement with creditors for liquidation of debts by composition or otherwise (other than an agreement or arrangement that would because of any statute relating to the bankruptcy of persons render this provision void);

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- (b) in the case of a corporation:
- (i) an application is made to a court for it to be wound up or for the appointment of a provisional liquidator;
 - (ii) a meeting is convened to place it in voluntary liquidation or to appoint an official manager or an administrator;
 - (iii) the appointment of a controller, as defined in the Corporations Act 2001, in respect of any of its assets;
 - (iv) it is wound up or dissolved;
 - (v) it proposes to enter into or enters into any form of arrangement with its creditors or any of them;
 - (vi) it is, or is deemed to be under Section 46(2) or 585 of the Corporations Act 2001, unable to pay its debts;
 - (vii) it becomes insolvent under administration as defined in Section 9 of the Corporations Act 2001; or
 - (viii) is deregistered.

Land means the land described on the Form 7 Lease, on which the Premises are situated;

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

Landlord means, the Landlord named in Item 1 of the Form 7 Lease;

Landlord's Fixtures includes all plant, equipment, fittings, fixtures, furniture and furnishings of whatever nature, that the Landlord provides to the Tenant for use in the Premises and any other property of the Landlord on or servicing the Premises;

Lease or this **Lease** means the Lease between the Landlord and the Tenant made up of the Form 7, this Schedule and any plan annexed to it;

Month or **Monthly** means respectively calendar month and calendar monthly;

Officer includes any director, alternate director, secretary, assistant secretary, executive officer, attorney, managing agent or any authorised person of the particular Party;

Outgoings means all expenses and outgoings paid or payable by the Landlord in relation to the Premises and the Land including, but not limited to, under the following heads of expenditure:

- (a) rates, levies (including fire service levy), taxes (including land tax on a single holding basis if it is able to be recovered by Law) and other charges imposed by any Authority and levies and charges imposed under any Law including those imposed under Strata, Community Title or similar legislation;
- (b) insurance which the Landlord reasonably considers is appropriate;
- (c) supplying, maintaining repairing and replacing Services and upgrading them to comply with requirements of Authorities and all Laws and charges for the supply of Services;
- (d) repairs, redecoration and maintenance;

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- (e) all costs for the management and administration of the Premises including all fees payable to the Landlord's managing agent;

Outgoings Year means the twelve-month period ending on the 30th June in each year or on another day specified in a notice by the Landlord;

Party means a party to this Lease and includes any Guarantor;

Premises means the building and other improvements from time to time existing on the Land and any other improvements which the Landlord (as owner, lessee or licensee) develops in conjunction with the Land and where appropriate includes the Land and the Landlord's Fixtures;

Proposed Work includes any proposed work, alteration, addition or installation in or to the Premises, to the Landlord's Fixtures or to the Tenant's Fittings;

Provisions includes a sentence, part, paragraph, clause, promise, covenant, condition, restriction, right and provision whether express or implied;

Redecorate includes:

- (a) cleaning of the whole of the interior of the Premises including walls, ceilings, floors and partitions;
- (b) fixing any marks or holes in the walls or partitions in the interior of the Premises;
- (c) treating as previously treated all internal surfaces of the Premises by painting, staining, polishing or otherwise to a specification approved by the Landlord;
- (d) replacing all carpet and/or floor coverings with items of similar quality which, in the reasonable opinion of the Landlord, are worn or damaged and in need of replacement;
- (e) fixing or replacing (as may be required) any damaged plumbing which is exposed that includes but is not limited to taps, toilets, urinals and sinks;
- (f) upgrading and renewing all internal and external signs at the Premises which, due to deterioration or wear and tear, require replacement, repair or repainting.

Requirement includes any requirement, notice, order, direction, recommendation, stipulation or similar notification received from or given by any Authority or pursuant to any Law, whether in writing or otherwise;

Services means all services or systems to or of the Premises and includes the provision of any electronic medium, energy source, lighting, gas, fuel, power, water, sewerage, drainage, loading docks, plant rooms, storage areas, fire services, sprinkler systems or devices and the fittings, fixtures, appliances, plant and equipment utilised for any such Services, and includes any services or systems from time to time utilised for access to the Premises;

Stipulated Rate means the aggregate of two (2) per centum and the interest rate per annum charged by the Landlord's principal bankers to customers for unsecured overdrafts of in excess of \$100,000.00. A certificate signed by an officer of the relevant bank will be evidence of that rate;

Summary means the Summary of Lease Provisions at the beginning of this Schedule;

Tenant means the Tenant named in Item 3 of the Form 7 Lease;

Tenant's Covenants means the obligations contained or implied in the Lease or imposed by law and which must be observed or performed by the Tenant;

Tenant's Employees means each of the Tenant's employees, agents, contractors, consultants, customers, visitors or others (whether with or without invitation), who may at any time be in or upon the Premises or the Land;

Tenant's Fittings means all property on the Premises which are not the Landlord's Fixtures;

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Term means the period from and including the Commencement Date to and including the Termination Date and also includes (where appropriate) any period during which the Tenant holds over with the Landlord's consent;

Termination Date means the date this Lease is stated to expire on the Form 7 Lease;

1.2 Interpretation

In this Lease unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) **Person** includes a firm, a body corporate, an incorporated association and an Authority;
- (c) an agreement, representation or warranty:
 - (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;
- (d) a reference to:
 - (i) a person includes that person's personal representatives, administrators, successors, substitutes and assigns;
 - (ii) a document includes any variation or replacement of it;
 - (iii) a Law includes regulations and other instruments under it and amendments or replacements of any of them;
 - (iv) a thing includes the whole and each part of it;
 - (v) a group of persons includes all of them collectively and two or more of them collectively and each of them individually;
 - (vi) the President of a body or authority includes any person acting in that capacity;
- (e) **including** when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind
- (f) Headings are inserted for convenience and do not affect the interpretation of this Lease.

1.3 Exclusion of statutory provisions

- (a) The covenants, powers and provisions implied in leases by virtue of any Law are expressly negated.
- (b) To the extent permitted by Law, no Law or moratorium will apply to this Lease so as to prejudicially affect any rights or remedies given to the Landlord.

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1.4 Liability for Employees

If in connection with this Lease the Tenant may not do something:

- (a) it must do everything necessary to ensure that the Tenant's Employees do not do it;
- (b) it may not allow or cause to be done or do or omit to do anything which results in it happening;
- (c) must do something, it must, if appropriate, ensure that the Tenant's Employees also do it.

1.5 Governing law and jurisdiction

This Lease is governed by the law of the state of Queensland. The parties submit to the non-exclusive jurisdiction of its courts. The parties will not object to the exercise of jurisdiction by those courts on any basis.

1.6 Entire agreement

This Lease contains everything which the parties have agreed to in relation to the matters it deals with. No party can rely on any other document, or on anything which another party or which a director, officer, agent or employee of that party said or did before this Lease was executed, except as may be permitted by any Law.

1.7 Severability

If a clause or part of a clause of this Lease can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Lease, but the rest of this Lease is not affected.

1.8 Waiver

The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Lease, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

1.9 Cumulative Rights

Unless otherwise specified in this Lease, each right or remedy of a party:

- (a) is cumulative and not alternative;
- (b) may be exercised on more than one occasion and at any time;
- (c) if exercised, is without prejudice and in addition to any other right and remedy and is not deemed a waiver or satisfaction of any right or remedy.

1.10 No adverse construction

No provision of this Lease will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Lease or that provision.

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2. Grant of lease and term

- (a) The Landlord grants to the Tenant the right to possess and use the Premises for the Term according to the Provisions of this Lease.
- (b) If the Tenant continues to occupy the Premises after the end of the Lease with the written consent of the Landlord, it will do so as a Tenant from month to month. The provisions of this Lease will apply to that tenancy as far as they may be applicable. Either the Landlord or the Tenant may end the tenancy by one month's written notice to the other, expiring at any time.

3. Base Rent

3.1 Base Rent

- (a) The Tenant must pay the Base Rent to the Landlord or as the Landlord directs free of exchange and without any deduction:
 - (i) on the first day of each month; and
 - (ii) by monthly instalments in advance equal to one twelfth of the then annual Base Rent.
- (b) The Base Rent payable for the first year of this Lease is that amount specified in Item 1 of the Summary and for each other year of the Lease is that amount calculated by reference to Item 2 of the Summary.

3.2 Base Rent Reviews

Reference to Review Date means the date on which the Base Rent is to be reviewed and Review Type means the type of review relevant for the respective Review Date. The Base Rent must be varied from the date, or the first year of the Term, which is stated in the Review Date column and by the method stated in the Review Type column of Item 2 or Item 8 of the Summary as the case may be.

3.3 CPI Review

If Item 2 or Item 8 states "CPI Review" for a particular Review Date the Base Rent must be varied according to the following formula:

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

Where:

- R means the Base Rent payable for the next lease year
- A means the Base Rent payable during the lease year just ended
- B means the Index Number last published before the expiration of the lease year just ended
- C means the Index Number last published before the commencement of the lease year just ended

Index Number means the Consumer Price Index (All Groups) for the City of Brisbane (**Index**).

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- (a) If the Index is suspended or discontinued or the method of calculating the Index is materially altered, Index Number will mean the price index substituted by the Australian statistician.
- (b) If no price index is substituted, Index Number will mean an index which the parties agree most closely reflects changes in the cost of living.
- (c) If the parties cannot agree on a substitute index the President of the Australian Property Institute Inc. (Queensland Division), at the request of either party, may appoint an expert to determine a substitute index which most closely reflects changes in the cost of living and Index Number will mean that index.
- (d) If the Index is suspended or discontinued and the expert appointed under clause 3.3(c) is unable to determine a substitute index within 45 days of being appointed, the method of adjustment of Base Rent in relation to the Index Number will cease and the Base Rent must be increased in accordance with clause 3.6.

3.4 Percentage Increase

If Item 2 or Item 8 states a percentage for a particular review date, the Base Rent must be increased by that percentage on the relevant Review Date.

3.5 CPI or Percentage

If Item 2 or Item 8 of the Summary states "CPI with minimum of x%" or "CPI with a maximum of x%" for a particular Review Date, the Base Rent must be increased on the relevant Review Date in accordance with that formula.

3.6 Market Review

If Item 2 or Item 8 of the Summary states "Market Review" for a particular Review Date, the Base Rent must be varied according to this clause and by the following procedure:

- (a) The Landlord's assessment of the current annual market rent of the Premises as at the Review Date may be given by written notice to the Tenant.
- (b) If the Tenant does not in writing dispute the amount notified within 14 days of receipt of the Landlord's notice, that amount will be the Base Rent for the lease year under review.
- (c) If the Tenant does dispute the amount notified, the Tenant must notify the Landlord in writing of the dispute (the **Dispute Notice**) within fourteen (14) days after receiving the Landlord's notice. It is essential to comply with this time limit. If the Tenant does not do so, the Tenant will be treated as not disputing the amount stated in the Landlord's notice.
- (d) If the Tenant notifies a dispute under paragraph 3.6(c), the current market rental of the Premises will be decided by valuation, as follows:
 - (i) The Landlord and the Tenant will appoint a valuer or if they cannot agree on a valuer within fourteen (14) days of the Tenant giving notice of the dispute then either of them may request the President of the Australian Property Institute (Qld) Incorporated to nominate a valuer to decide the current market rental.
 - (ii) The valuer must give both the Landlord and the Tenant a reasonable opportunity to make submissions and to put before him or her any material they think is relevant, but is to decide the current market rental acting as an expert and not as an arbitrator.

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- (iii) The current market rental decided by the valuer will be the Base Rent for the lease year under review but must not be less than the Base Rent payable for the year of the Lease just ended.
- (iv) The valuer must give a written valuation setting out what was taken into account, what was disregarded, their respective weightings and any other adjustments.
- (v) The valuer's fees will be paid equally by the Landlord and Tenant and if one party pays the whole fee that party can recover the other party's share as a present debt due.

3.7 Current Base Rent

Until the review of Base Rent for a particular Review Date is complete, the Tenant must continue to pay the current Base Rent. When the review is complete, any necessary adjustment is to be made on the day on which the next Base Rent instalment is due.

4. Other costs

4.1 Outgoing expenses

- (a) In addition to the Base Rent the Tenant must pay to the Landlord on demand the Outgoings for each Outgoings Year.
- (b) At the beginning of the Lease and at the beginning of each successive year of the Lease, the Landlord may notify the Tenant in writing of the Landlord's estimate of the Outgoings for the next Outgoings Year of the Lease. The Tenant must pay one twelfth of the Outgoings for each Outgoings Year and these payments are to be made in advance on the same days and in the same manner as the Tenant must pay the Base Rent.
- (c) If the Tenant pays the Outgoings monthly as set out above, then not later than three (3) months after the end of each Outgoings Year, the Landlord will give the Tenant a written statement giving reasonable details of the actual Outgoings for that year. An adjustment will then be made based on the actual Outgoings for that year and one party will pay to the other the amount necessary to make the adjustment on the day on which the next Base Rent instalment is due.
- (d) All such Outgoings will be calculated on an accrual and pre-payment basis and to that end will be deemed to have been paid at a time when the obligation to pay or charge the same arose, despite the actual date of payment and any such outgoings, costs and expenses which are assessed at intervals or for periods other than a period of twelve (12) months or which may vary during each Outgoings Year shall be apportioned by the Landlord in so far as may be necessary to calculate the Outgoings for such period.

4.2 Tenant to pay for utilities

The Tenant must pay all charges for services including electricity, gas, water, oil and any other source or type of energy or fuel, telephone, trade waste removal, grease trap cleaning, directly supplied to the Premises and must pay or reimburse any costs incurred by the Landlord in installing meters or sub-meters in the Premises for the measurement of the consumption of those services.

4.3 Charges relating to the Tenant's business

The Tenant must pay all amounts which are assessed, charged or imposed upon or in respect of or by virtue of the Tenant's business or the Tenant's occupancy of the Premises and whether assessed against the Landlord or

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the Tenant If assessed against the Tenant such amounts will be paid by the Tenant to the relevant Authority by the due date for payment and if assessed against the Landlord will be paid to the Landlord upon demand.

4.4 Special Services

The Tenant will pay to the Landlord, upon demand, the amount of any additional or unusual costs, charges and expenses incurred by the Landlord at the request of the Tenant in having the alterations, repairs or maintenance to the Premises or to any Services to the Premises effected outside the normal working hours of tradesmen concerned or in providing any special, additional or unusual services for the Tenant.

4.5 Costs of Lease, covenants and default

The Tenant must pay to the Landlord on demand all of the Landlord's reasonable Solicitor and own client costs and other Costs in respect of:

- (a) the preparation, negotiation, execution of this Lease;
- (b) all registration fees (if any) assessable against this Lease;
- (c) plan preparation costs.

4.6 Costs of Re-Entry and Consents

The Tenant must upon demand pay to the Landlord the Landlord's reasonable legal costs and disbursements in relation to:

- (a) the Tenant's default or breach under the provisions of the Lease;
- (b) the lawful determination or lawful attempted determination of the Lease;
- (c) the lawful re-entry or lawful attempted re-entry by the Landlord into the Premises;
- (d) the surrender of the Lease (including any stamp duties and registration fees thereon);
- (e) any application for consent of the Landlord or the Landlord's mortgagee whether that consent is or is not granted;
- (f) any proceedings brought by the Landlord to enforce performance by the Tenant of the Tenant's Covenants; and
- (g) any litigation to which the Landlord is made a party commenced by or against the Tenant (other than litigation between the Landlord and the Tenant) and arising directly or indirectly out of the Tenant's use or occupation of the Premises.

The Landlord's reasonable legal costs will be calculated on a solicitor and own client basis.

4.7 Payment requirements

- (a) The Tenant must make payments under this Lease to the Landlord (or to a person nominated by the Landlord) without set-off, counterclaim, holding or deduction by the method the Landlord reasonably requires.

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- (b) If the Tenant pays an amount and it is found later that the amount was not correct, then, even though the Landlord has given the Tenant a receipt for the other amount, within seven days after the Landlord gives the Tenant a written notice of the mistake, the Tenant must pay the Landlord (or the Landlord must credit the Tenant with) the difference between what the Tenant has paid and what the Tenant should have paid.
- (c) The Landlord need not make demand for any payment payable by the Tenant unless this Lease states that demand must be made.
- (d) Expiry or termination of this Lease does not affect the Tenant's obligations to make payments under this Lease for periods before then.
- (e) Time is of the essence of this Lease in connection with the Tenant's obligations to pay money.
- (f) If the Tenant does not pay any amount payable by it under this Lease on time, it must pay on written demand by the Landlord, interest on that amount from when it becomes due for payment until it is paid. Interest will be paid at the greater of the Default Rate and the Stipulated Rate and will be calculated on a daily basis.

4.8 Goods and services tax

- (a) In this Lease the following terms have the following meanings:

GST means any consumption tax imposed by any Authority which operates during the Term or any renewal or holding over period and includes (without limitation a goods and services tax, a broad based consumption or indirect tax and value added tax);

GST Law means A New Tax System (Goods and Services) Act 1999 (Cwth) as amended from time to time and includes any Law introducing, related to or in furtherance of, a GST;

Input Tax Credit in relation to a supply, means a credit under the GST Law for the GST payable by the recipient in respect of the supply;

Price means the consideration for a taxable supply inclusive of GST;

Tax Invoice in relation to a supply, means an invoice for the supply required by the GST Law to support a claim by the recipient for an Input Tax Credit for the GST on the supply.

- (b) An amount payable by a party under this Lease, in respect of a supply by the other party which is a taxable supply under the GST Law, unless expressed to represent the Price of the supply, represents the GST exclusive value of the supply and the recipient of the supply must, in addition, pay to the supplier the GST payable in respect of the supply.
- (c) If this lease requires the Tenant to pay, reimburse or contribute to an amount paid or payable by the Landlord in respect of an acquisition from a third party for which the Landlord is entitled to an Input Tax Credit, the amount for payment, reimbursement or contribution will be the GST exclusive value of the acquisition by the Landlord plus, if the Landlord's recovery from the Tenant will be a taxable supply under the GST Law, the GST payable in respect of that supply.
- (d) A party's obligation under this Lease to pay the GST on a taxable supply to it by the other party, arises on the delivery by the supplier of a Tax Invoice for the supply.

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- (e) If the Price of the supply is expressed as a GST inclusive amount then the Landlord must provide a Tax Invoice or Tax Invoices in accordance with the GST Law to allow the recipient of the supply to claim an Input Tax Credit.

5. Use of premises

5.1 Use of premises

The Tenant may only use the Premises for the permitted use specified in Item 3 of the Summary and will not use the Premises for any other purpose without obtaining the Landlord's prior written consent.

5.2 Tenant's Positive Obligations

The Tenant must:

- (a) conduct the Tenant's business in a safe and proper manner;
- (b) inform the Landlord of damage to the Premises or of a faulty Service immediately it becomes aware of it;
- (c) observe maximum load weights throughout the Premises;
- (d) secure the Premises when they are unoccupied;
- (e) immediately notify the Landlord if the Tenant becomes aware of any threat to the Premises and comply with the Landlord's reasonable directions for the purpose of protecting property or persons on the Premises;
- (f) take, from time to time, all reasonable precautions to keep the Premises free of rodents, termites, insects, vermin and other pests;
- (g) at the Tenant's own expense, regularly clean the interior and exterior of the Premises including the exterior plate glass to the reasonable satisfaction of the Landlord and keep the Premises free from rubbish and dirt and store all trade waste refuse and garbage in proper receptacles in the areas designated for the purpose and arrange for the regular removal of same from the Premises;
- (h) regularly maintain all fire extinguishers in the Premises to the specifications of the manufacturer and the requirements of any Authority;
- (i) ensure that the Tenant's Employees comply with the Tenant's Covenants.

5.3 Tenant's Negative Obligations

The Tenant must not:

- (a) carry on, in or on the Premises any noxious or offensive act, trade, business, occupation or calling nor do any act or thing which is or may become an annoyance, nuisance, grievance or disturbance to any occupier or owner of any adjacent premises;
- (b) alter or interfere with the Services, use them for any purpose other than those for which they were constructed or provided or remove them from the Premises;

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- (c) do anything to overload, block or interfere with the Services nor use them for anything other than their intended purpose;
- (d) put up signs, advertisements, lights, blinds, awnings, antennae or receiving dishes without the prior written approval in writing of the Landlord which will not be unreasonably withheld including where the Tenant obtains any necessary approval of an Authority;
- (e) hole, mark or damage any of the floors, walls, ceilings, partitions or other parts of the Premises except so far as may be necessary for the erection of approved signs, notices, advertisements, blinds, awnings, etc;
- (f) store or use inflammable, volatile or explosive substances on the Premises except where the substances are required for the Permitted Use for the Tenant's business and in that case the Tenant must promptly notify the Landlord and comply with all relevant Requirements and the requirements of any Authority and the Landlord's insurer in respect of such storage or use;
- (g) affix nor attach anything to any wall of the Premises causing any wall to be overloaded without the Landlord's prior written approval which approval may be given subject to any conditions the Landlord sees fit but otherwise will not be unreasonably withheld;
- (h) hold or permit to be held any auction, bankruptcy or fire sale in the Premises;
- (i) keep any animal or bird on the Premises; and
- (j) do anything on the Premises or bring to or keep anything in the Premises whereby any policy of insurance relating to the Premises may be rendered void or voidable.

5.4 Tenant to comply with Laws

The Tenant must at the Tenant's expense comply with all Laws relating to:

- (a) the Premises and the Tenant's Fittings;
- (b) the use or occupation of the Premises; and
- (c) the use of any plant and equipment in the Premises,

but will not be responsible for any structural works to the Premises unless required because of the default of the Tenant or the Tenant's Employees under this Lease or the use to which the Premises are put by the Tenant or the number or gender of the Tenant's employees.

5.5 Source of Light and Power

The Tenant must not use any form of light, power or heat other than that supplied by the usual Services to the Premises except during any power failure at which time the Tenant may use auxiliary power or lighting other than exposed flame.

5.6 Removal of Rubbish

- (a) The Tenant must not allow any rubbish or useless property to accumulate on the Premises.

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- (b) The Tenant must at its own Cost regularly remove all rubbish and refuse from the Premises and whilst on the Premises must make sure it is confined in suitable containers.
- (c) The Tenant must not burn any rubbish or refuse upon the Premises.

5.7 Security

The Tenant must secure the Premises when they are unoccupied and authorises the Landlord or any Officer of the Landlord to enter the Premises whenever necessary for the purpose of securing any part of the Premises that remains unsecured.

5.8 Keys and Access Cards

The Tenant: agrees that all keys held by the Tenant during the Lease whether provided by the Landlord or made or obtained by the Tenant for the Tenant's own use must be surrendered to the Landlord on the expiration or earlier determination of this Lease. The expression "keys" means keys, access cards or other methods of access from time to time used for the Premises.

5.9 Signs

- (a) The Tenant must not display any sign, advertisement, name, flag, notice (collectively called "signs") on any part of the Premises except with the Landlord's written consent. The Landlord will not unreasonably withhold consent to the erection of signs usual or necessary for the conduct of the Tenant's business but can impose reasonable conditions upon any consent it gives.
- (b) The Tenant must keep such signs of good appearance and in good condition.
- (c) Upon termination of this Lease the Tenant must at its own cost remove all signs and other distinctive marks from the Premises and must make good any damage caused by such removal.

5.10 Tenant's Responsibility for Approvals

- (a) The Tenant has satisfied itself, before entering into this Lease, regarding the need for the availability and existence of all approvals, consents and licences ("approvals") required for use of the Premises by the Tenant for its business and for the intended and permitted use of the Premises.
- (b) The Tenant has full responsibility, at its expense, to ensure that all approvals required by the Tenant for the conduct of the business and use of the Premises are obtained and maintained through the Term and that all their conditions are observed.
- (c) The failure or inability of the Tenant to obtain any of the approvals or to comply with any of their conditions will not relieve the Tenant of any of its obligations under this Lease.

5.11 Tenant's obligation not to Contaminate

The Tenant covenants that during the continuance of this Lease, it will:

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

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- (b) comply with the demands, notices and requirements of the regulatory Authorities in respect of Contamination of the Premises caused by the Tenant or the Tenant's Employees including notices to remediate the Premises;
- (c) notify the Landlord in writing within 7 days after receiving any demand or notice from a regulatory Authority in respect of Contamination of the Premises;
- (d) indemnify the Landlord against all Claims which are made against or which the Landlord may incur as a consequence of the breach by the Tenant of any obligation under this sub-clause, including fines, legal costs, consultants' fees and remediation costs.

6. Maintenance and Repair

6.1 Acknowledgement of good repair

The Tenant acknowledges that except for possible latent defects of which the Tenant could not be aware the Premises are in good repair at the Commencement Date.

6.2 Maintenance and Repair

Subject to Excepted Damage, the Tenant must, at its own expense:

- (a) keep the Premises, the Tenant's Fittings and the Landlord's Fixtures in good repair and condition;
- (b) keep clean and clear all plumbing and drainage systems and other Services on the Premises;
- (c) properly replace worn or damaged items in or attached to the Premises (including the Tenant's Fittings and Landlord's Fixtures including floor coverings) with items of similar quality;
- (d) on vacating the Premises return to the Landlord the Premises and the Landlord's Fixtures in as good repair and condition as they were in when the Tenant first took possession of the Premises;
- (e) immediately repair any damage to the Premises or the Landlord's Fixtures caused by acts or omission of the Tenant or the Tenant's Employees; and
- (f) give prompt written notice to the Landlord of any actual or likely damage to, defects in or leakage to or from the Premises, the Services, the Amenities or the Landlord's Fixtures.

6.3 Tenant not liable for capital works

The Tenant will not be responsible for any structural or capital works with regards to the Premises unless required because of the default of the Tenant or the Tenant's Employees under this Lease or the use to which the Premises are put by the Tenant.

6.4 Redecorate

The Tenant must at its own expense Redecorate to the reasonable satisfaction of the Landlord during the last three (3) months of the Term, or if the option to renew under this Lease (if any) has been exercised, then during the last three (3) months of the renewed Term. If the Tenant fails to Redecorate, the Landlord may Redecorate at the Tenant's expense.

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6.5 Quality of Redecoration

The redecoration must be carried out by qualified tradespersons approved by the Landlord, in high class workmanship and with good quality materials. If the Tenant wishes to change the colours, nature, style or quality of any aspect of the redecoration, the Tenant must submit to the Landlord full details of the intended changes or a detailed proposal for redecoration indicating those changes, for the prior written approval of the Landlord, which approval must not be unreasonably withheld.

6.6 Tenant's failure to Redecorate

If the Tenant fails to redecorate the Premises in accordance with the provisions of this clause, the Landlord may give notice to the Tenant requiring it to commence to redecorate within 14 days and if the Tenant fails to commence to redecorate in accordance with that notice and proceed efficiently with redecoration, the Landlord may redecorate the Premises and recover from the Tenant the reasonable cost of the redecoration.

6.7 Landlord's right of Inspection

The Landlord may at all reasonable times upon giving the Tenant reasonable notice (except in the case of emergency when no notice will be required) enter the Premises, to see if the Tenant is complying with its obligations under the Lease.

6.8 Landlord may repair the Premises

- (a) At all reasonable times, upon giving the Tenant reasonable notice (except in the case of emergency when no notice is required), the Landlord and any Officers of the Landlord or its agents may enter the Premises to carry out any works in the Premises but will do everything reasonably necessary to minimise interference with the Tenant's business.
- (b) Should the Tenant fail to attend to its repair obligations under this Lease within a reasonable time of receipt of notice from the Landlord requiring such repairs then the Landlord may carry out the repairs;
- (c) If the Landlord carries out any works in the Premises that should have been carried out by the Tenant, the Tenant must pay the Landlord on demand all Costs that the Landlord incurs in doing so.

7. Alterations to Premises

7.1 Alterations

- (a) The Tenant must not carry out any Proposed Work (including installing inter-tenancy partitions and laying floor coverings) to the Premises without the Landlord's written consent. The Landlord may impose conditions on any consent given, including that any Proposed Work be supervised by a Person approved by the Landlord;
- (b) The Tenant must make sure the Proposed Work is done:
 - (i) only by qualified contractors or tradespersons;
 - (ii) in a proper and workmanlike manner;
 - (iii) in accordance with all Laws and requirements of Authorities;

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- (iv) in accordance with any plans and specifications required and approved by the Landlord;
 - (v) in accordance with the Landlord's reasonable requirements and direction.
- (c) The Tenant must pay to the Landlord on demand any Costs the Landlord incurs in approving or monitoring the Proposed Work and indemnifies the Landlord from any Costs or Claims suffered or incurred by the Landlord as a result of the Proposed Work.

7.2 Compliance with laws and requirements

The Tenant must comply with and observe at the Tenant's cost all Laws and all Requirements regarding or affecting the Premises, the Tenant's Fittings the Tenant's business and the use or occupation of the Premises (including obtaining all necessary permits).

7.3 Tenant must not mark

The Tenant must not without the prior written consent of the Landlord mark, paint or damage any part of the Premises or erect any external blinds, screens or awnings on the Premises.

8. Damage and destruction

8.1 Full Abatement

If the whole or any part of the Premises are destroyed or damaged and as a result the Premises are unusable or inaccessible then the Tenant is not liable to pay Base Rent or any amount payable to the Landlord for Outgoings or other charges payable to the Landlord for the period that the Premises cannot be used or are inaccessible.

8.2 Partial Abatement

If the Premises are still usable but the usability is diminished because of the damage, the Tenant's liability to pay Base Rent and amounts for Outgoings is reduced in proportion to the reduction in usability.

8.3 Termination if Reinstatement not proposed

If the Landlord considers that the damage is such that repairing it is impractical or undesirable, then the Landlord may terminate this Lease by giving not less than one month's notice to the Tenant and no compensation is payable for that termination.

8.4 Termination if Reinstatement not timely

If the Landlord does not within a reasonable time after the damage or destruction occurs make the Premises fit for the use of the Tenant, the Tenant may serve on the Landlord written notice of intention to terminate this Lease. If after receiving this notice the Landlord does not proceed with reasonable expedition and diligence to make the Premises fit for the use of the Tenant, the Tenant may terminate this Lease by giving a further one month's notice in writing to the Landlord.

8.5 Landlord's Rights not affected

This clause does not affect any rights the Landlord may have if:

- (a) the damage is caused or contributed to by; or

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- (b) rights under an insurance policy in connection with the Premises are prejudiced or a policy is cancelled or payment of a premium or claim is refused by the insurer because of,

the act, negligence or default of the Tenant or the Tenant's Employees.

8.6 No obligation to rebuild

The Landlord has no obligation to rebuild the Premises or any part of the Premises or make them fit for occupation.

8.7 No liability

No liability will attach to the Landlord or the Tenant by reason of termination of this Lease under this section and any such termination will be without prejudice to the rights of either Party for any preceding breach of this Lease.

8.8 Dispute

Any dispute arising under this clause will be determined by a loss assessor being a member of the Insurance Council of Australia Ltd. appointed by its President. The person appointed will act as an expert and not as an arbitrator and his or her determination will be final and binding on each Party. The cost of that determination will be paid equally by the Landlord and the Tenant and if one Party pays the whole of the costs that Party can recover the other Party's share as a present debt due.

9. Reservations

9.1 Rights reserved to Landlord

The Landlord may at any time:

- (a) use the Premises for the passage of any Services and may enter the Premises at all reasonable times after giving reasonable notice (except in the case of an emergency when no notice will be necessary) to install, maintain or repair any of the Services;
- (b) show the Premises to prospective tenants and purchasers and put notices on the Premises at all reasonable times after giving reasonable notice;
- (c) grant easements or other rights over the Land, provided that such grant does not cause derogation of the rights of the Tenant under this Lease.

9.2 Other interests

Any Person other than the Landlord who at any time has any estate or interest in the Premises superior to or concurrent with the Landlord or is entitled to receive the Base Rent, may exercise all of the Landlord's rights and powers under this Lease and will have the benefit of all the Tenant's covenants and agreements in favour of the Landlord. The Tenant will, at the Landlord's cost, enter into any covenants with the other Person that the Landlord reasonably requires.

9.3 Landlord's Licence

The Landlord has the right to sell, dispose of, transfer, lease, mortgage or otherwise deal with the Land provided these do not disrupt the conduct of the Tenant's business on the Premises.

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10. Landlord's Liabilities

10.1 Quiet enjoyment

Subject to the Landlord's rights the Landlord agrees that while the Tenant does not breach the Lease, the Tenant may use and occupy the Premises during the Term without any interference from the Landlord or any Person lawfully claiming under the Landlord.

10.2 Interruption of Services

The Landlord is not liable for any Cost incurred by the Tenant due to any malfunction, interruption, blockage or overflow of any Services or Amenities contained in or servicing the Premises. Save and except where such malfunction, interruption, blockage or overflow is caused or contributed to any negligent act or omission on the part of the Landlord, its servants and or agents to properly maintain such Services or Amenities. The Landlord must use its reasonable endeavours to maintain any Services and Amenities.

10.3 Condition Precedent

Despite anything in this Lease or any rule or Law to the contrary, the Landlord will not be liable for any Cost the Tenant may incur by reason of the neglect or omission of the Landlord to do anything in respect of the Premises and which, as between the Landlord and Tenant, the Landlord might be legally liable to do unless the Tenant gives notice to the Landlord of the neglect or omission and the Landlord has not, within a reasonable time or without reasonable cause, taken proper steps to rectify the neglect or omission. For the avoidance of doubt, the Landlord acknowledges that the Tenant is only required to provide notice where the Tenant is aware of the Landlord's neglect or omission or ought to be aware of the Landlord's neglect or omission.

11. Insurance

11.1 Tenant to insure

The Tenant, at its own cost, must maintain the following insurance policies in relation to the Premises, which must note the respective interests of the Landlord and the Tenant and which must be with an insurance company approved in writing by the Landlord:

- (a) A public risk policy that provides for a minimum cover for each accident, claim or event of the amount stated in Item 7 of the Summary or any reasonable higher sum that the Landlord notifies. The policy must include those risks referred to in clause 11.8;
- (b) A plate glass policy to the full insurable value, over any plate glass, windows, doors and show cases including the frames and architraves in or about the Premises;
- (c) Any other policy which is required by Law.

11.2 Proof of Insurance

Whenever reasonably required by the Landlord the Tenant must produce to the Landlord the insurance policies, the receipts for the last premiums and certificates of currency of all such insurance policies.

11.3 Tenant not to void Insurance

The Tenant must not do anything or allow anything to be done which might affect any insurance policy on or relating to the Premises.

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11.4 Tenant to pay Increased Premium

If any extra Costs of insurance (including increased insurance premiums or charges) are incurred because of the use to which the Premises are put by the Tenant or because of anything done by the Tenant or the Tenant's Employees, the Tenant must pay the extra Cost to the Landlord upon demand.

11.5 Tenant to comply with Regulations

The Tenant must comply with all Laws as they may relate to the use of the Premises and with the Requirements of any insurer of the Premises. The Tenant must pay to the Landlord upon demand the Cost of any alteration to any Services, sprinkler or fire prevention equipment and installations that may become necessary because of the Tenant's use of the Premises.

11.6 Assumption of risk by Tenant

The Tenant shall, at all times during the Term, use and occupy the Premises and use the Services at the sole and exclusive risk of the Tenant and without limiting that risk, the doing of any act, matter or thing by the Tenant or Tenant's Employees in or upon the Premises and the Tenant's occupation and keeping of the Premises shall be at the sole and exclusive risk and expense of the Tenant unless this Lease otherwise expressly provides.

11.7 Exclusion of Landlord's Liability

The Tenant agrees that the Landlord will not be responsible for and releases the Landlord from liability in respect of any:

- (a) Claim relating to any property of the Tenant or any other person in the Premises, or on the Land or any part of it however occurring; or
- (b) damage or injury to any person or property in the Premises, or on the Land,

unless the Claim, damage or injury results from the negligence, wilful or negligent act or omission of the Landlord, its servants or agents.

11.8 Indemnity by Tenant

The Tenant agrees to indemnify and keep indemnified the Landlord from any Claim for which the Landlord may become liable (except to the extent that the Landlord has caused or contributed to any such Claim), whether during or after this Lease, in respect of or arising from:

- (a) any damage caused to the Premises, to any property or to any person inside or outside the Premises or the Land occasioned or contributed to by any breach of the terms of this Lease by the Tenant or by any neglect or default of the Tenant or the Tenant's Employees or by the use of the Premises by the Tenant or the Tenant's Employees;
- (b) the negligent or careless use or neglect of the Services and Amenities of the Premises by the Tenant or the Tenant's Employees or any other person claiming through or under the Tenant;
- (c) the overflow, leakage or escape of any harmful substance (including water, gas and electricity) from any Services or from any of the Amenities or the Landlord's Fixtures, whether originating inside or outside the Premises or caused or contributed to by any act or omission on the part of the Tenant or the Tenant's Employees or other person claiming through or under the Tenant;
- (d) the Tenant's failure to give Notice to the Landlord of any defect in any of the Services or Amenities in or about the Premises of which the Tenant is or ought to be aware;

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- (e) any injury sustained by any person in or about the Premises howsoever caused other than by the wilful or negligent act or omission of the Landlord, its servants or agents.

12. Assignments, Subleases and Mortgages

12.1 Restriction of assignment

Unless the Landlord consents in writing, the Tenant must not:

- (a) assign this Lease; or
- (b) sub-let or part with possession of any part of the Premises; or
- (c) otherwise deal with or part with any interest of the Tenant in or under this Lease.

12.2 Assignments and Sub-Leases

The Landlord will not unreasonably withhold its consent under clause 12.1 if the Tenant:

- (a) proves to the Landlord's reasonable satisfaction that the proposed assignee or sub-lessee (**Incoming Tenant**) is respectable, responsible and solvent. The Tenant must supply whatever information about the Incoming Tenant and any proposed Guarantor that the Landlord reasonably requires.
- (b) pays all the Landlord's reasonable Costs incurred in investigating the Incoming Tenant and any proposed Guarantor, including the Landlord's administrative, legal and other costs of and incidental to the proposed assignment or sub-lease, whether or not it proceeds to completion;
- (c) is not in breach of this Lease;
- (d) and the Incoming Tenant enter into a deed with the Landlord in any form reasonably required by the Landlord which includes provisions that the Incoming Tenant will:
 - (i) agree to be bound by this Lease as if it were the Tenant;
 - (ii) indemnify and keep the Landlord indemnified in the same manner that the Tenant is obliged to under this Lease;
 - (iii) appoints the Landlord its attorney for the purposes stated in clause 13.3;
- (e) and the Incoming Tenant comply with all the Landlord's reasonable requirements;
- (f) procures any guarantee and indemnity reasonably required by the Landlord and pays the Landlord's costs for the preparation of same.

12.3 Corporate Ownership

If the Tenant is a Corporation whose shares are not listed on any Stock Exchange in Australia and there is any change in the principal shareholding of it or any change in the principal shareholding of any holding corporation of the Tenant altering the effective control of the Tenant, the Tenant will be treated as assigning this Lease and must first seek the Landlord's written consent.

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12.4 Landlord's Rights on Subletting

If the Tenant sub-lets or parts with possession of the Premises other than by way of assignment consented to by the Landlord in writing and then continues to be in breach of this Lease, the Landlord may, without prejudice to any of its rights under this Lease, demand and receive moneys payable to the Tenant by any person holding by, through or under the Tenant.

12.5 Restriction on Mortgaging

- (a) The Tenant must not, without the Landlord's written consent, mortgage or charge this Lease or any estate or interest in the Premises.
- (b) The Landlord's consent may be granted conditionally but will not be unreasonably withheld.
- (c) If the Landlord does consent, it will not be obliged to enter into any contract or agreement with the Tenant's mortgagee or chargee nor waive, modify or abandon any of its rights or benefits under this Lease save for any reasonable right of entry deeds required by the Tenant's mortgagee or chargee.

13. Default of Tenant

13.1 Tenant's obligation to yield up Premises

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

13.2 Essential Terms of Lease

It is agreed that the following obligations by the Tenant are essential terms of this Lease:

- (a) the covenant to pay Base Rent throughout the Term at a date not later than 7 days after the due date for the payment of each monthly instalment of Base Rent (clause 3);
- (b) the covenant to pay Outgoings and GST throughout the Term at a date not later than 7 days after the due date for the payment of same (clause 4);
- (c) the covenant dealing with the use of the Premises (clause 5);
- (d) the covenant dealing with assignment and subletting (clause 12);
- (e) the covenant to provide and maintain the bond or bank guarantee (clause 20).

13.3 Landlord's Entitlements

If the Tenant vacates or abandons the Premises during the Term in breach of the Tenant's obligations under this Lease, the Landlord may:

- (a)
 - (i) accept the keys to the Premises from the Tenant;
 - (ii) renovate, restore and clean the Premises;
 - (iii) change the locks and secure the Premises;

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- (iv) permit prospective tenants to inspect the Premises;
- (b) take any action in paragraph 13.3(a) without the Landlord's conduct constituting:
 - (i) a re-entry or termination of this Lease;
 - (ii) the acceptance of a surrender of this Lease.

13.4 Tenant's obligations continue

The Tenant's obligation to pay the Base Rent, to comply with other financial obligations under this Lease and to comply with other lease obligations continues, despite the fact that the Tenant vacates or abandons the Premises, until the expiry of this Lease.

13.5 Entitlement to remedy default

The Landlord may remedy defaults by the Tenant under this Lease without being required to do so:

- (a) when the Tenant fails to pay any money due to someone other than the Landlord or to perform some obligation under this Lease, but only
- (b) after the Landlord has given to the Tenant notice in writing requiring the Tenant to pay the money or to perform the obligation within 14 days and the Tenant fails to comply with that notice.

13.6 Tenant's liability to reimburse Landlord

The Tenant is liable to reimburse the Landlord on demand the money paid by the Landlord and the reasonable Costs and expenses incurred by the Landlord in remedying any default under this Lease.

13.7 Termination of Lease for default

Each of the following constitutes a default by the Tenant under this Lease:

- (a) the failure to pay the Base Rent to the Landlord or to comply with any other financial obligation under this Lease, including the payment of Outgoings and GST, for a period in excess of 7 days after the due date for payment, whether a formal demand for payment has or has not been made;
- (b) the failure to comply with an essential term of this Lease;
- (c) any serious, persistent and continuing breach by the Tenant of its covenants and obligations under this Lease;
- (d) an Insolvency Event occurs.

13.8 Termination after Default

The Landlord may terminate this Lease, after a default by the Tenant in accordance with clause 13.7, and continuance of the default, after the Landlord has served a legally effective notice of breach of covenant (if required) by:

- (a) re-entering and taking possession of the Premises, using reasonable force to secure possession;

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- (b) serving on the Tenant written notice terminating this Lease;
- (c) instituting proceedings for possession against the Tenant;
- (d) taking the actions in both (a) and (b) or in (b) and (c).

13.9 Damages for breach or for repudiation

- (a) In the event that the Tenant's conduct (whether acts or omissions) constitutes:
 - (i) a repudiation of this Lease (or of the Tenant's obligations under this Lease);
 - (ii) a breach of any Lease covenants;
 - (iii) a breach of an essential term of this Lease,
 - (iv) the Tenant covenants to compensate the Landlord for the loss or damage suffered by the Landlord as a result of the repudiation or breach, whether this Lease is or is not terminated for the repudiation, breach or on any other ground.
- (b) The Landlord's entitlement to damages is in addition to any other remedy or entitlement, including termination of this Lease.
- (c) The Landlord is entitled to recover damages against the Tenant in respect of the repudiation or breach of covenant or essential term for the loss suffered by the Landlord during the Term, including the periods before and after termination of this Lease.
- (d) The Landlord's entitlement to recover damages is not affected or limited by any of the following:
 - (i) if the Tenant abandons or vacates the Premises;
 - (ii) if the Landlord elects to re-enter or to terminate the Lease;
 - (iii) if the Landlord accepts the Tenant's repudiation;
 - (iv) if the parties' conduct constitutes a surrender by operation of law.

13.10 Instituting Proceedings

The Landlord is entitled to commence legal proceedings claiming damages against the Tenant in respect of the entire Term, including the periods before and after the Tenant vacates the Premises, and before and after the abandonment, termination, repudiation, acceptance of repudiation or surrender by operation of law referred to above, whether the proceedings are commenced before or after such conduct.

13.11 Additional entitlements of Landlord

The Landlord's entitlement to damages is in addition to:

- (a) the entitlement to recover Base Rent, Outgoings and GST until the date of expiry or termination of this Lease;

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- (b) interest on late payments in accordance with this Lease;
- (c) Costs of any breach or default, including the Costs of termination.

13.12 Mitigation of damages

- (a) In the event of the Tenant vacating the Premises, with or without the Landlord's consent, the Landlord is obliged to take reasonable steps to mitigate the damages and to endeavour to lease the premises at a reasonable rent and on reasonable terms.
- (b) The Landlord's entitlement to recover Base Rent, Outgoings, GST and damages for the period after the Tenant has vacated the Premises, must be assessed on the basis that the Landlord should have observed the obligation to mitigate the damages.
- (c) The Landlord's conduct taken in pursuance of the duty to mitigate damages does not by itself constitute acceptance of the Tenant's breach or repudiation or a surrender by operation of law.

13.13 Power of Attorney by Tenant to Landlord

The Tenant irrevocably appoints the Landlord and the Directors, the General Manager and the Secretary of the Landlord together and separately to be the attorneys of the Tenant at any time after the Termination Date or earlier termination of this Lease to:

- (a) sign a transfer or a surrender of this Lease; and
- (b) have the transfer or surrender registered; and
- (c) from time to time appoint substitutes and revoke those appointments; and
- (d) do anything under this clause as fully and effectually as the Tenant could do.

The Tenant must ratify and confirm everything the attorneys or any substitute or substitutes lawfully do under this clause.

13.14 Waiver

After the Tenant is in default or breach under this Lease, including in breach of an essential term of this Lease, the demand or acceptance from the Tenant by the Landlord of arrears or of any late payment of Base Rent, Outgoings, GST or other financial obligations does not:

- (a) preclude the Landlord from exercising any rights or remedies under this Lease, including reinforcing or terminating this Lease;
- (b) constitute a waiver of the essentiality of the Tenant's obligation to make those payments;
- (c) waive the Tenant's continuing obligation to make those payments during the lease term.

13.15 Failure to enforce Lease obligation

The Landlord's failure to enforce any of the Tenant's obligations under this Lease, and to terminate this Lease, does not waive the Landlord's entitlement to require the Tenant to observe all obligations under this Lease, to enforce that and all other obligations and to terminate this Lease.

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13.16 Waiver of individual obligations

The waiver by the Landlord of performance of some of the Tenant's obligations under this Lease, temporarily or permanently, is not a waiver of any other or subsequent breach or default by the Tenant.

13.17 Breaches before termination

The termination of this Lease on any basis does not affect the Landlord's rights and remedies for earlier breaches by the Tenant of the obligations under this Lease.

14. Determination of term

14.1 Tenant to deliver up

The Tenant must at the expiration or sooner determination of this Lease deliver up the Premises in the order described in clause 6.2.

14.2 Removal of Tenant's fittings

- (a) The Tenant must remove from the Premises all the Tenant's fittings immediately before the Premises must be vacated.
- (b) The Tenant must make good any damage caused by the removal and must leave the Premises in a clean state and condition.

14.3 Failure by Tenant to remove the Tenant's fittings

If the Tenant does not remove the Tenant's fittings as required by clause 14.2, or in the event of re-entry under clause 13.8, the Landlord may at its option:

- (a) cause any of the Tenant's Fittings to be removed and stored in whatever manner the Landlord in its absolute discretion considers fit, at the risk and Cost of the Tenant; or
- (b) treat the Tenant's Fittings as if the Tenant had abandoned its interest in them and they had become the property of the Landlord, and deal with them in whatever manner the Landlord thinks fit without being liable in any way to account to the Tenant for them and without being guilty of trespass, wrongful detention, conversion or negligence.

14.4 Tenant to indemnify and pay Landlord's Costs

The Tenant must:

- (a) indemnify and keep indemnified the Landlord in respect of the removal and storage of the Tenant's Fittings and also in respect of all Claims which the Landlord may suffer or incur at the suit of any Person (other than the Tenant) claiming an interest in the Tenant's Fittings by reason of the Landlord acting in any manner permitted in clause 14.3;
- (b) pay to the Landlord as a liquidated debt on demand any Costs incurred by the Landlord in exercising its rights under clause 14.3, including the excess of Costs over monies received in disposal of the Tenant's Fittings in exercise of the Landlord's rights contained in clause 14.3(b).

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14.5 Earlier Breaches

The termination or determination of this Lease will not prejudice or affect any rights or remedies of the Landlord against the Tenant in respect of any earlier breach by the Tenant of any covenants and conditions on the part of the Tenant.

15. General provisions

15.1 Waiver and variation

- (a) A provision of or a right under this Lease may not be waived or varied except in writing signed by whoever is to be bound.
- (b) None of the following things will preclude the Landlord from insisting upon strict compliance by the Tenant with the provisions of this Lease:
 - (i) the Landlord's failure to take advantage of any default or breach of any provision by the Tenant;
 - (ii) any custom or practice which may develop between the Landlord and the Tenant;
 - (iii) a waiver by the Landlord of a particular breach; or
 - (iv) acceptance of Base Rent, Outgoings, GST or other moneys payable under this Lease including the non-payment of any of those amounts and whether before or after termination.
- (c) An attempt by the Landlord to mitigate its loss is not a surrender by operation of law or a waiver of the Tenant's breach or an acceptance of the Tenant's repudiation of this Lease.

15.2 Managing Agent

The Landlord may at any time appoint a managing agent to manage the Premises.

15.3 Notices

A notice or approval or consent must be in writing and may be served by any means permitted by Law, including by post and by facsimile sent to the party to whom it is addressed. A notice may also be served on the Tenant by leaving it at or affixing it to the Premises. A notice or approval is taken to be given:

- (a) if posted on the third day after posting and
- (b) if sent by facsimile on the next business day after it is sent unless the sender is aware that transmission is impaired.

15.4 Representations

- (a) The Tenant represents and warrants that it has relied only on its own enquiries in connection with the Premises and not on any representation or warranty by the Landlord or any person acting or seeming to act on the Landlord's behalf and in particular no representation has been made that the use that the Tenant proposes for the Premises is lawful under any town planning scheme, City plan or otherwise and the Tenant confirms that it has satisfied itself in that regard.

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- (b) The Tenant acknowledges that before this Lease became binding on the Tenant and before the Tenant entered into possession of the Premises the Tenant had the opportunity to disclose to the Landlord any representations upon which the Tenant had relied when entering this Lease.
- (c) This Lease constitutes the entire agreement of the parties about the subject matter and any previous agreements understandings and negotiations on that subject matter cease to have any effect.

16. Representations

- (a) The Tenant represents and warrants that it has relied only on its own enquiries in connection with the Premises and not on any representation or warranty by the Landlord or any person acting or seeming to act on the Landlord's behalf and in particular no representation has been made that the use that the Tenant proposes for the Premises is lawful under any town planning scheme, City plan or otherwise and the Tenant confirms that it has satisfied itself in that regard.
- (b) The Tenant acknowledges that before this Lease became binding on the Tenant and before the Tenant entered into possession of the Premises the Tenant had the opportunity to disclose to the Landlord any representations upon which the Tenant had relied when entering this Lease.
- (c) This Lease constitutes the entire agreement of the parties about the subject matter and any previous agreements understandings and negotiations on that subject matter cease to have any effect.

17. Option for renewal

17.1 Option for renewal

If the Tenant:

- (a) has paid the Base Rent regularly during the Lease;
- (b) is not in breach of the Lease;
- (c) notifies the Landlord according to clause 17.2; and
- (d) between the time of notification and the end of the Lease, does not breach the Lease,
- (e) then subject to clause 17.4, at the end of the Lease, the Landlord must grant and the Tenant must take a further Lease of the Premises in accordance with clause 17.3 but at the Cost of the Tenant.

17.2 Notice

A notice of exercise of option pursuant to clause 17.1:

- (a) Must be in writing and must state clearly that the Tenant wishes to take a further Lease of the Premises according to the option contained in this Lease;
- (b) Must be served no earlier than six months and not later than three months before the Termination Date.

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17.3 Terms of Option

The provisions of the further Lease will be the same as the provisions of this Lease with the following exceptions:

- (a) the Term of the further Lease will be that specified in Item 4 of the Summary and the Commencement Date and Termination Date will be varied accordingly;
- (b) the Base Rent payable during the option period will be as specified in Item 8 of the Summary;
- (c) the number options specified in Item 4 of the Summary is to be reduced by one (1); and
- (d) once the last option has been exercised, this section is to be deleted from the lease for that option period.

17.4 Further Guarantee

If there is a Guarantor of this Lease, the Landlord may decline to grant a further Lease of the Premises unless the Tenant obtains a further guarantee by the Guarantor or by other Guarantors acceptable to the Landlord on terms similar to the guarantee required by the Landlord for this Lease.

17.5 Covenant upon assignment

The Landlord agrees that if this Lease is not registered in the DNRM and the Landlord disposes of its interest in the Premises or the Land to any Person other than the Tenant during the term of this Lease, the Landlord will obtain from that Person a covenant in favour of the Tenant that such Person will be bound by the option for renewal contained in clause 17.1 as if that Person had originally been named in this Lease as Landlord. It is the intention of the parties that the rights of the Tenant for the time being under this Lease will be exercisable against the Landlord only for the time being who is or is entitled to be registered as owner of the Land.

18. Trusts

If the Tenant at any time upon or after entering into this Lease or entering into or incurring the obligations contained in this Lease is acting in the capacity of trustee of any trust (called "Trust") then whether or not the Landlord may have notice of the Trust, the Tenant covenants with the Landlord as follows:

- (a) This Lease extends to all rights of indemnity which the Tenant now or subsequently may have against the Trust and the trust fund.
- (b) The Tenant has full and complete power and authority under the Trust to enter into this Lease and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Tenant against the Trust or the trust fund. The Tenant will not release that right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) Despite the terms of any deed of trust or settlement or other document, the Tenant will be and at all times remain personally liable to the Landlord for the performance fulfilment and observance of the obligations in this Lease.
- (d) During the currency of this Lease the Tenant will not without the written consent of the Landlord cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Tenant as sole trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;

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- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.

The Tenant further covenants with the Landlord that it will be a default by the Tenant under this Lease if the Tenant is guilty of any breach of trust in respect of the Trust or ceases to be the sole trustee of the Trust or otherwise suffers removal, replacement, or retirement as trustee of the Trust.

19. Air conditioning

19.1 Operation

The Tenant must pay any Cost for the operation of the Air Conditioning Equipment in the Premises.

19.2 Maintenance

The Tenant must maintain the Air Conditioning Equipment in good working order and condition in accordance with the specifications of the manufacturer. The Tenant will not be responsible for repairs to the Air Conditioning Equipment of a capital nature or for part replacement (except for minor part replacement required as part of the ordinary regular servicing of the Air Conditioning Equipment).

19.3 Service

In addition to the obligations of the Tenant referred to above, the Tenant must forthwith on the expiration or sooner determination of this Lease produce to the Landlord written evidence that the Air Conditioning Equipment has been serviced by a reputable service contractor immediately preceding such expiration or determination.

19.4 Application

The provisions of this clause 19 apply despite anything else contained in this Lease.

20. Security

20.1 Definitions

In this Lease the following words have the following meanings:

Bank Guarantee means an unconditional undertaking (or any replacement or addition to it) with an expiry date of no less than 90 days from the Expiry Date of this Lease by an Australian bank on terms acceptable to the Landlord to pay on demand the amount in Item 6 of the Summary of Lease Particulars.

Security Deposit means a cash payment equal to the amount in Item 6 of the Summary of Lease Particulars.

20.2 Provision

On or before the Date of Commencement, the Tenant must deliver to the Landlord the Bank Guarantee or a Security Deposit as security for the due and punctual performance of all of the covenants, obligations and provisions on the Tenant's part contained in the Lease.

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20.3 Failure to Provide

If the Tenant does not comply with any of its obligations under the Lease (including any extension or holding over), whether the Lease is registered or not, then the Landlord may, without notice to the Tenant:

- (a) in the case of a Bank Guarantee, call on the Bank Guarantee; and
- (b) in the case of a Security Deposit, appropriate and apply so much of or the whole of the Security Deposit, as may be necessary in the opinion of the Landlord to compensate the Landlord for loss or damage sustained or suffered by the Landlord by reason of such breach by the Tenant. Any such calling up or appropriation by the Landlord shall not be deemed to and shall not operate to waive the Tenant's breach and shall not prejudice any other right of the Landlord arising from such breach.

20.4 Calling on the Security Deposit or Bank Guarantee

If the Landlord calls on the Bank Guarantee or appropriates the Security Deposit then no later than 14 days after the Landlord gives the Tenant a notice asking for it, the Tenant shall deliver to the Landlord a replacement or additional Bank Guarantee or an additional Security Deposit so that the amount guaranteed is the amount specified in Item 6 of the Summary of Lease Particulars.

20.5 Increase

Each time there is an increase in the amount of Base Rent at a Market Review date, the Tenant must supplement or replace the Bank Guarantee or Security Deposit so that at all times during the Term it represents the proportion of the Base Rent and Outgoings as expressed in Item 6 of the Summary of Lease Particulars.

20.6 Return of Bank Guarantee of Security Deposit

The Bank Guarantee or Security Deposit (so far as it has not been resorted to) shall be surrendered or refunded by the Landlord to the Tenant (as the case requires) as soon as practicable after the Lease has ended upon:

- (a) the performance by the Tenant of all of its obligations under the Lease; and
- (b) the Tenant vacating the Premises.

20.7 Assignment by Landlord

- (a) The Landlord will be at liberty:
 - (i) in the case of the Security Deposit, pay the Security Deposit (less any sums appropriated by the Landlord in accordance with this Lease and not reinstated); and
 - (ii) in the case of the Bank Guarantee, provide the Bank Guarantee (to the extent that it has not been called upon by the Landlord),to any assignee or transferee of the Landlord's interest in the Premises.
- (b) If the Landlord transfers or assigns its interest in the Lease or the Land, then the Landlord will also be entitled to assign the benefit of all obligations of the Tenant under this clause and the Tenant must, if requested by the Landlord, either:

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- (i) enter into a deed or agreement with any transferee or assignee to perfect that assignment (at the cost of the Landlord); or
- (ii) provide a replacement Bank Guarantee in a form acceptable to the Landlord (acting reasonably) in favour of the transferee or assignee (at the cost of the Tenant).

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Schedule 1 Guarantee and Indemnity

1. Obligations

In consideration of the Landlord entering into this Lease with the Tenant at the request of the Guarantor, the Guarantor joint and severally hereby agrees with the Landlord as follows:

- (a) The Guarantor guarantees
 - (i) the payment of the Base Rent and other monies payable to the Landlord;
 - (ii) performance by the Tenant of the Tenant's obligations;
 - (iii) the payment of all loss and damage recoverable by the Landlord from the Tenant.
- (b) This Guarantee will be a continuing Guarantee and will not be affected or avoided in any way by
 - (i) any agreement or arrangement made between the Landlord and the Tenant;
 - (ii) any alterations or variations to the rights and obligations of either the Landlord or the Tenant;
 - (iii) the granting of any time or other indulgence or forbearance by the Landlord to the Tenant or to the Guarantor;
 - (iv) the making of any composition with or waiver of any breach or default by the Tenant;
 - (v) the neglect or forbearance of the Landlord to enforce the provisions of this Lease or those of this Guarantee;
 - (vi) the avoidance for any reason whatsoever by statute or otherwise of any payment by or on behalf of the Tenant or any Guarantor to the Landlord;
 - (vii) any restriction, requirement for notice or lapse of time stipulated or required by any statute;
 - (viii) the order of any Authority;
 - (ix) any transfer, assignment, subletting or other dealing with the Lease or the Tenant's interest in the Lease; or
 - (x) any further Guarantee being given to the Landlord by any Person;

it being the intention that this Guarantee be unconditional and absolute in any and all circumstances.

- (c) The obligations of the Tenant the performance of which are hereby guaranteed include any obligations arising during
 - (i) any extension or renewal of the Lease;
 - (ii) any tenancy arising from any holding over after the Term or the term of any extension or renewal of the Lease; or
 - (iii) from the conversion of the Term or the term of any extension or renewal of the Lease into a monthly tenancy;

and notwithstanding any transfer, assignment, subletting or other dealing with the Lease or the Tenant's interest in the Lease.

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- (d) The Landlord will be at liberty to regard the Guarantor in all respects as a principal debtor and will not be obliged to take action first against the Tenant.
- (e) The obligations of the Guarantor will not merge or be deemed to have merged in any judgment obtained by the Landlord against the Tenant.
- (f) In the event of any term of the Lease not being enforceable against the Tenant as principal whether by reason of any legal limitation, disability or incapacity or by reason of any liquidator of the Tenant disclaiming the Lease the Guarantor will be responsible under this Guarantee as though the Guarantor was solely or principally liable as Tenant under the Lease and the term of the Lease had continued for the Term or until any earlier date nominated by the Landlord.
- (g) The Guarantor waives in favour of the Landlord, the Tenant and any other Person any estate or assets so far as necessary to give effect to anything contained in this Guarantee.

2. Indemnity

As a separate and independent obligation and for the consideration referred to the Guarantor hereby agrees to indemnify the Landlord from all claims suffered or incurred by the Landlord by reason of the Tenant's default in observing or performing the Tenant's obligations under the Lease and the preceding provisions of this clause will apply to this indemnity.

3. Period

This Guarantee and Indemnity covers the whole period whilst the Tenant occupies or is entitled to use the Premises under this Lease as Tenant, or whilst holding an equitable interest over the Premises under an agreement for lease, as a periodic tenant or as a tenant at will.

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Schedule 2 Special Conditions

The parties covenant and agree that the following Special Conditions will apply to this Lease and that all provisions shall be read subject to these Special Conditions.

1. Rent Adjustment for Compulsory Works

If the Landlord is required by Law or by an Authority to carry out works to the Premises which are required as a direct result of the Tenant occupying the Premises or the Permitted Use then, on and from the date on which those works are completed, the Rent will be increased by W in the formula:

$$W = \frac{T \times E}{B}$$

where:

- T = Lettable Area of Land;
- B = Lettable Area of Premises affected by the works; and
- E = sum in dollars equal to 100% of the total cost of the works incurred by the Landlord.

2. Development

2.1 Agreement

The Landlord and Tenant have agreed that the Landlord will develop the Land and Premises generally in accordance with the specifications agreed between the Landlord and Tenant (**Specifications**).

2.2 Landlord to Effect

The Landlord will:

- (a) use its reasonable endeavours to obtain all necessary Approvals to the construction of the development and building works in accordance with the Specifications (**Building Works**) from each relevant Regulatory Authority;
- (b) once the Approvals have been obtained, cause the Building Works to be practically completed as soon as reasonably possible as agreed between the Landlord and Tenant (**Practical Completion Date**); and
- (c) carry out the Building Works in a good and workmanlike manner in conformity with the Approvals and with all Laws.

(**Development Phase**)

2.3 Variations and Delays

- (a) The Landlord may make modifications to the Specifications and Building Works:
 - (i) required by any Regulatory Authority as a condition of the grant or continuance of all approvals, consents, permissions, and licences which may from time to time be necessary to enable the Building Works to be lawfully carried out; or
 - (ii) reasonably required by the Landlord.

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- (b) The Practical Completion Date may be extended if the Building Works are delayed for any of the following reasons:
- (i) inability to obtain contractors, labour or materials beyond Landlord's reasonable control to obtain;
 - (ii) weather conditions that prevent the work having regard to normal construction industry practices;
 - (iii) strikes or other labour disputes that Landlord could not avoid;
 - (iv) changes to legislation or regulations impacting the Building Works;
 - (v) government action;
 - (vi) variations to the Building Works;
 - (vii) delay by any Authority in the provision of any approvals, licences or permits that are required.

2.4 Assistance

- (a) The Tenant acknowledges:
- (i) the Tenant must co-operate with Landlord to ensure both parties are able to carry out their respective obligations with minimum disruption and in a co-ordinated and timely fashion; and
 - (ii) the Tenant must promptly comply with all reasonable directions of the Landlord in respect of the co-ordination of the Building Works.
- (b) The Tenant will not object to:
- (i) the use by the Landlord and any party authorised by the Landlord of the Land or parts of the Land for constructions access and storage of materials, vehicles, equipment or fill; or
 - (ii) the Landlord and any party authorised by the Landlord causing areas to be temporarily closed off to facilitate completion of the Building Works.

2.5 Rent and Rent Review

The parties acknowledge and agree that:

- (a) the Landlord has acquired the Land and will carry out the Building Works at the request of the Tenant;
- (b) Rent will be paid during the Development Phase notwithstanding all or part of the Land being unavailable for use and the Tenant will not make a claim for abatement of Rent unless reasonably agreed between the parties;
- (c) Rent paid during the Development Phase is valuable consideration in support of the Landlord's capital expenditure on the Building Works which is being carried out to increase and support the Tenant's Permitted Use; and
- (d) a Market Review will take place as soon as possible after Practical Completion to account for the improvement of the Land, the value of the Building Works, the lettable area and the increased use.

3. Right to Further Development Reserved

- (a) The Tenant acknowledges that the Landlord reserves the right to further develop, subdivide or amalgamate the Land and any land adjacent to the Land.

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- (b) The Tenant agrees to not make any claim, objection, requisition or seek any relief in relation to the manner in which, or means by which, the Land including the adjacent lands are developed, subdivided and/or amalgamated.
- (c) The Landlord acknowledges that if the Land or land adjacent to the Land is being developed or further developed, in one or more stages that the Landlord must use reasonable endeavours to minimise dust, noise, vibration and other nuisance or disturbance to the Tenant and its servants, agents, employees, invitees, customers and visitors, and if it does so, the Landlord will not be in breach of the covenant for quiet enjoyment contained in or implied into this Lease.
- (d) The Tenant must not object to, and if required by the Landlord will execute a form of consent to, any town planning consent application or any other town planning application necessary for the Landlord to develop or further develop the Land (or any part of it), including the Premises and any adjacent land.
- (e) The Tenant appoints the Landlord and its directors and each of them jointly and severally to be its attorney to sign any documents necessary to consent to or facilitate any town planning consent application or any other town planning application necessary for the Landlord, or its successors in title to develop the Land and/or any adjacent land. The Tenant must ratify and confirm any acts deeds or other things undertaken by its attorney pursuant to this appointment.