

**Lease**

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Between

**DOUGLAS NEARY, MAVIS JOAN NEARY, MARK ADAM NEARY, DEBRA FAYE NEARY AS TRUSTEE  
UNDER INSTRUMENT 712466927**

of care of Level 3, 33 Elkhorn Avenue, Surfers Paradise in the state of Queensland  
(‘Lessor’)

and

**CIVFORCE TRAFFIC MANAGEMENT PTY LTD A.C.N. 141 899 952**

of care of 49 Chetwynd Street, Loganholme in the state of Queensland  
(‘Lessee’)

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MacGregor O’Reilly Nash  
SOLICITORS

Level 3, 33 Elkhorn Avenue  
Surfers Paradise QLD 4217

PO Box 949  
Surfers Paradise QLD 4217

Telephone: (07) 5570 6766  
Facsimile: (07) 5570 6788

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Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in DERM see the department's website.

<b>1. Lessor</b> DOUGLAS NEARY MAVIS JOAN NEARY MARK ADAM NEARY DEBRA FAYE NEARY TRUSTEE UNDER INSTRUMENT 712466927	<b>Lodger</b> (Name, address, E-mail & phone number) MACGREGOR O'REILLY SOLICITORS PO BOX 949 SURFERS PARADISE QLD 4217 Ph: 07 5570 6766	<b>Lodger Code</b> GC36
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<b>2. Lot on Plan Description</b>	<b>Title Reference</b>
LOT 1 ON SP 122907	50286776

<b>3. Lessee</b>	Given names	Surname/Company name and number	(include tenancy if more than one)
		CIVFORCE TRAFFIC MANAGEMENT PTY LTD A.C.N. 141 899 952	

**4. Interest being leased**  
FEE SIMPLE

**5. Description of premises being leased**  
THE WHOLE OF THE LAND

**6. Term of lease**  
Commencement date/event: 01 / 10 / 2019  
Expiry date: 30 / 09 / 2020  
Options: 2 X 1 YEARS

**7. Rental/Consideration**  
SEE ATTACHED 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;

\* delete if not applicable

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

.....signature	
.....full name	SEE ENLARGED PANEL
.....qualification	/ /

**Witnessing Officer**

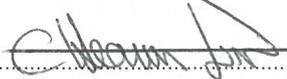
(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

**Execution Date**

**Lessor's Signature**

**9. Acceptance**

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

 signature

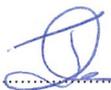
~~CIVFORNER NEARON JUDGE~~ full name

~~COMMISSIONER FOR DECLARATIONS~~ qualification

~~REG 11485~~

CIVFORCE TRAFFIC MANAGEMENT PTY LTD A.C.N. 141 899 952

26/9/19  
**Execution Date**

 signature

**Sole Director**  
**Lessee's Signature**

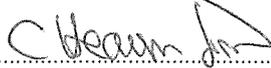
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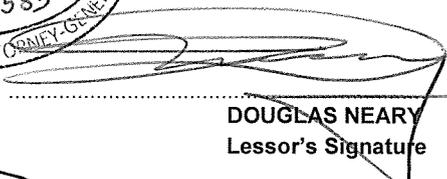
Title Reference 50286776

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.

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

  
signature  
CHRISTOPHER HEAVON-JONES full name  
COMMISSIONER FOR DECLARATIONS qualification  
Witnessing Officer REG No. 119585  
(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

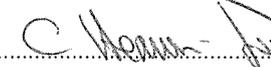
  
6/10/2019 Execution Date  
  
DOUGLAS NEARY  
Lessor's Signature

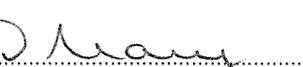
  
signature  
CHRISTOPHER HEAVON-JONES full name  
COMMISSIONER FOR DECLARATIONS qualification  
Witnessing Officer REG. No. 119585  
(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

  
6/10/2019 Execution Date  
  
MAVIS JOAN NEARY  
Lessor's Signature

  
signature  
CHRISTOPHER HEAVON-JONES full name  
COMMISSIONER FOR DECLARATIONS qualification  
Witnessing Officer REG. No. 119585  
(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

  
6/10/2019 Execution Date  
  
MARK ADAM NEARY  
Lessor's Signature

  
signature  
CHRISTOPHER HEAVON-JONES full name  
COMMISSIONER FOR DECLARATIONS qualification  
Witnessing Officer REG. No. 119585  
(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

  
6/10/2019 Execution Date  
  
DEBRA FAYE NEARY  
Lessor's Signature

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**APPENDIX**

Lessor: **DOUGLAS NEARY, MAVIS JOAN NEARY, MARK ADAM NEARY, DEBRA FAYE NEARY AS TRUSTEE UNDER INSTRUMENT 712466927**  
Address for service: c/- MacGregor O'Reilly Solicitors  
PO Box 949  
SURFERS PARADISE QLD 4217

Lessee: **CIVFORCE TRAFFIC MANAGEMENT PTY LTD A.C.N. 141 899 952**  
Address for service: 49 Chetwynd Street  
LOGANHOLME QLD 4129

Item 1 -	Rent (clause 2):	\$60,000.00 per annum plus GST (being \$5,000.00 per month plus GST) payable monthly in advance.
Item 2 -	Annual Increases (clause 2.2):	Annual rent to be increased by 4% or the Index Number, whichever is greater, annually in the following years:-  1 October 2020, 1 October 2021.
Item 3 -	Use (clause 4):	Vehicle storage, administration and other associated activities of the Tenant.
Item 4 -	Outgoings (clauses 1.1 & 3):	100% of the Outgoings associated with the Premises, Land and Building.
Item 5 -	First Option (clause 18.1):	One (1) years
Item 6 -	Second Option (clause 18.3):	One (1) years
Item 7 -	Market Review Dates (clause 2.3):	Not Applicable
Item 8 -	Condition of the Premises:	Good for a Premises of its age and in a clean and tidy state
Item 9 -	Bond/Bank Guarantee (clause 21):	\$11,000.00 (being the equivalent of two (2) month's Rent inclusive of GST, to be updated on each Market Review Date, at the Landlord's discretion)
Item 10 -	Tenant's Fitout/Access Date (clause 22.4):	Upon execution of lease, payment of Bond and provision of insurance
Item 11 -	Lessor's Fixtures/Property (clause 22.1):	Any fixtures/property installed at the Premises, at the Landlord's expense, after the Commencement of the Lease or existing as at Commencement of the Lease.

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- Item 12 - Guarantors: Jeffrey Walter Trim  
43 Stubbin Street  
BELIVAH QLD 4207
- Item 13 - Interest Rate on Late Payments:  
(clauses 1.1 & 12.5) 5% per annum over and above the Lessor's bank's  
prime lending rate.
- Item 14 - Breach/Default of Lease (clause 12): If any of the following occur:-
- Rent unpaid for 7 days after due;
  - Failure to comply with Lessor's Notice;
  - Failure to comply with any Court judgment;
  - Tenant is in liquidation.
- Item 15 - Address of the Premises: 33 Dulwich Street, LOGANHOLME QLD 4129

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless otherwise provided or unless there is something inconsistent in the subject matter the expressions following (whether appearing with or without capital letters) have the meanings assigned to them in this clause:

**'Accounting Period'** means in the case of the first Accounting Period the period commencing on the Date of Commencement and expiring on the 30th June next. The last Accounting Period commences on the 1st July immediately preceding the date of determination of this Lease and expires on the date of determination. Between the first Accounting Period and the last Accounting Period this term is divided into Accounting Periods of twelve (12) months *each* commencing on the 1st July and expiring on the 30th June next.

**'the Air Conditioning Equipment'** means the plant electrical installations ductwork and diffusers used for the manufacture and reticulation of conditioned air throughout the Building and includes all mechanical ventilation.

**'the Building'** means the building or buildings of the Landlord erected or to be erected on the Land.

**'Business Day'** means a day other than a Saturday, Sunday or public holiday in Brisbane.

**'the Car Park'** means those parts of the Building from time to time allocated by the Landlord to the parking of cars and includes the driveways to and from those parts.

**'the Date of Commencement'** means the date referred to in Item 6 of the Form 7 as the Date of Commencement.

**'the Fire Equipment'** includes all stopcocks hydrants, fire hoses, fire alarms, fire sprinklers, fire doors and other fire prevention extinguishing and detection equipment including all emergency lighting in or about the Building.

**'Floor Area'** means with reference to an area of the Building, the area determined in the same way as the Floor Area of the Premises.

**'Floor Area of the Premises'** has the meaning given to that expression in the definition of the Prescribed Percentage.

**'Form 7'** means the lease in Form 7 prescribed by the Queensland Land Registry for the purposes of the *Land Title Act 1994* to which this Schedule is attached.

**'the Guarantor'** means the guarantor or collectively the guarantors referred to in **Item 12** of the Appendix and also any person who enters into covenants with the Landlord as a guarantor in the Deed of Guarantee and Indemnity annexed to this Lease. If the Guarantor is one person the expression includes that person his executors and administrators and if the Guarantor is more persons than one includes those persons and each of them their and each of their respective executors and administrators and if the guarantor is a corporation includes that corporation and its successors or if more than one corporation includes those corporations and their respective successors.

**'Index Number'** means the Consumer Price Index (All Groups) for the city of Brisbane as published by the Australian Bureau of Statistics. If that index is suspended, discontinued, or modified so that it does not reflect on a consistent basis changes which have occurred in the cost of living in the city of Brisbane during any Lease Year, the expression will mean an index which in the opinion of the Australian Statistician (whether published or advised at the request of either party) does reflect on a consistent basis changes which have occurred in the cost of living in the City of Brisbane during any Lease Year. If the Australian Statistician has not published and will not advise an appropriate index, the expression will mean an index or method of measuring increases in the cost of living agreed in writing by the Parties and in default of agreement within a period of fourteen (14) days, an index or method determined at the request of either party by the President or Acting President of the Australian Property Institute (QLD Division) or their nominee.

**'Insured Risks'** means the risks against which the Landlord is required by this Lease to effect insurance and any additional risks against which the Landlord effects insurance relating to the Building.

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**'the Land'** means the land described in Item 2 of the Form 7.

**'the Landlord'** means the Lessor referred to in Item 1 of the Form 7 its successors and assigns and unless inconsistent with the subject matter or context includes all persons for the time being authorised by the Lessor.

**'this Lease'** means this lease including the Form 7 together with any annexures and schedules and any covenant or agreement expressed to be supplemental to this Lease and all amendments to those documents.

**'Lease Year'** means each separate year of the term of this Lease the first Lease Year commencing on the Date of Commencement and each subsequent Lease Year commencing on the corresponding day of each succeeding year including any Option Period; the expression includes any broken period between the end of the last complete Lease Year and the date of termination.

**'Lessee's Fitout'** means the Tenant's fitout, fittings and fixtures and other items present in the Premises at commencement of the Tenant's occupation of the Premises that form part of the Tenant's business and use of the Premises, as modified by the Tenant from time to time (excluding the Lessor's Property/Fixtures).

**'Lessor's Property/Fixtures'** means the items listed in Item 11 of the Appendix together with the air-conditioning and Fire Equipment (if any) and other items present in the Premises at commencement of the Tenant's occupation of the Premises, as modified by the Landlord from time to time (excluding the Lessee's Fitout).

**'Market Review Dates'** are the dates specified in Item 7 of the Appendix.

**'Month'** means a calendar month.

**'the Outgoings'** means all expenses and outgoings paid or incurred by the Landlord in respect of the Premises under the following heads of expenditure:

- (a) Rates, charges and other levies (including any benefited mall area levy) payable to the local authority in whose area the Premises are located.
- (b) Rates and charges payable to any local or other authority responsible for the provision or reticulation of water and/or sewerage and/or drainage services.
- (c) Property management fees and costs incurred as a result of the Tenant's occupation of the Premises
- (d) Levies, contributions and/or other amounts payable to any local or other authority for or on account of fire protection services.
- (e) All rates, taxes (including land tax strictly on a single holding basis), charges, assessments, outgoings and impositions (whether parliamentary municipal or otherwise and whether assessed charged or imposed by or under Federal or State law or by Federal State or Local authorities and whether on a capital, revenue value or any other basis and even though of a novel character) which are assessed charged or imposed in respect of the Premises or any part of them other than:
  - (i) income tax and capital gains tax.
- (f) All charges for electricity gas oil or other fuel incurred in the operation of the Air Conditioning Equipment and other plant and equipment in the Premises.
- (g) Insurance premiums and other charges (including stamp duties) for insurance of the Premises against fire with extended cover endorsement for vandalism malicious mischief earthquake flood water damage boiler and pressure vessel explosion fusion and mechanical breakdown in broad cover form with repair and replacement terms and other risks determined by the Landlord in its absolute discretion (including, but not limited to, consequential losses and loss of all rents receivable from the Premises including all other charges payable in addition to the Rent in an amount or amounts and for periods determined by the Landlord).

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- (h) Public risk liability insurance against third party liability hazards including exposure to personal injury bodily injury and property damage on an occurrence basis including insurance for all contractual obligations and covering also actions of all employees, other persons, subcontractors and agents while working on behalf of the Landlord. The policy will be written on a comprehensive basis with limits of not less than \$10 million per occurrence or higher amounts reasonably required by the Landlord from time to time.
- (i) Repairs and maintenance costs in repair and maintenance of minor items that are not covered by other items and includes materials, locks, painting and plumbing, the air conditioning, the Fire Equipment, roller doors and gates, security equipment, garden and lawn maintenance.
- (j) Any other charges, levies or impositions imposed upon the Landlord or levied upon the premises as a result of the Tenant's occupation of the premises strictly excluding expenses of a capital or structural nature.

**'Outgoings Year'** means each period of 12 months ending on 30 June in each year regardless of any part of that 12 month period falling outside the Term.

**'Pipes'** means all pipes sewers drains mains conduits ducts gutters water courses wires cables channels flues and all other conducting media and including any fixings louvres cowls and any ancillary apparatus.

**'the Premises/ the Property'** means the part of the Land in Item 2 of the Form 7 as described in Item 5 of the Form 7 of the Lease, including:

- (a) all additions and improvements to the Premises;
- (b) all the Landlord's fixtures and fittings and fixtures of every *kind* which from time to time are in or upon the Premises (whether originally fixed or fastened to or upon the Premises or otherwise) except any fixtures installed by the Tenant that can be removed from the Premises without defacing the Premises;
- (c) all pipes that are in or on and that exclusively serve the Premises; and
- (d) any equipment or apparatus (for air extraction or otherwise) that is in or on and that exclusively serves the Premises.

**'the Prescribed Percentage'** means the percentage of the Total Lettable Floor Area of the Premises which is from time to time represented by the Floor Area of the Premises where:

- (a) **'Floor Area of the Premises'** means the Gross Lettable Area determined in accordance with the Method for the Measurement of Buildings (or any replacement of it) effective at the Date of Commencement published by the Building Owners and Managers Association of Australia Limited; and
- (b) **'Total Lettable Floor Area'** means the Floor Area of all those parts of the Premises demised or occupied by any tenant or which are available from time to time for lease or licence, but does not include:
  - (i) the Floor Area of the Common Areas and the Car Park; and
  - (ii) any part of the Premises to be used exclusively for the purpose of storage.

**'Quarterly Period'** means each consecutive period of three (3) months during the term of this Lease ending respectively on the last days of March June September and December; the expression also includes any broken period prior to the first complete Quarterly Period and after the last complete Quarterly Period.

**'Redecorate'** includes:

- (a) washing down the interior of the Premises including all partitions and additions made to the Premises; and

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- (b) having regard to the condition of the premises at the commencement date treating as previously treated all internal surfaces of the Premises by painting staining polishing, re-carpeting or otherwise to a specification approved by the Landlord; and
- (c) having regard to the condition of the premises at the commencement date, replacing all carpet, replacing all floor tiles which are worn or damaged and in the Landlord's reasonable opinion are in need of replacement.

'Rent' has the meaning given to that expression in clause 2.2.

'Review Date' has the meaning given to that expression in clause 2.3(a).

'the Stipulated Rate' means a percentage interest rate per annum equal to the prime lending rate charged by the Landlord's bank plus five (5) per centum.

'the Tenant' means the lessee referred to in item 3 of the Form 7 and if this Lease is taken by one person includes that person his executors administrators and permitted assigns and if this Lease is taken by more persons than one includes those persons and each of them their and each of their respective executors administrators and permitted assigns and if a corporation is a Tenant includes that corporation its successors and permitted assigns.

'Valuers' Institute' means the Australian Property Institute (QLD Division).

'writing' includes printing typing lithography and other modes of reproducing words in a visible form and 'written' has a corresponding meaning.

## 1.2 Interpretation

- (a) Every covenant agreement or obligation expressed or implied in this Lease by which two or more persons covenant agree or are bound binds those persons jointly and each of them severally and every provision expressed or implied in this Lease which applies to two or more persons applies to those persons jointly and each of them severally.
- (b) References to the Australian Property Institute (QLD Division) and any other authorities associations and bodies whether statutory or otherwise will if any of those authorities associations or bodies ceases to exist or is reconstituted renamed or replaced or if its powers or functions are transferred to any other authority association or body be deemed to refer to the authority association or body established or constituted in its place and/or as nearly as may be succeeding to its powers or functions.
- (c) References to any right of the Landlord to have access to the Premises extend to all persons authorised by the Landlord including agents, professional advisers, contractors, workmen and others.
- (d) References to the Premises, in the absence of any provision to the contrary, include any part of the Premises.
- (e) Any covenant by the Tenant not to do any act or thing is deemed to include an obligation not to permit that act or thing to be done, and to use its best endeavours to prevent that act or thing being done by a third party.
- (f) Any provision in this Lease requiring the consent or approval of the Landlord also requires the consent or approval of any mortgagee of the Building and any superior landlord where that consent is required but nothing in this Lease implies that any obligation is imposed upon any mortgagee or superior landlord not unreasonably to refuse any consent or approval.
- (g) References to the 'Consent of the Landlord' or words to similar effect mean a consent in writing signed by or on behalf of the Landlord and references to 'Approved' and 'Authorised' or words to similar effect mean approved or authorised in writing by or on behalf of the Landlord.
- (h) The terms 'the Parties' or 'Party' mean the Landlord and/or the Tenant but except where there is an express indication to the contrary, exclude the Guarantor.

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- (i) Words denoting the singular number only include the plural number and vice versa a reference to any gender includes every other gender and words denoting individuals include corporations.
- (j) A reference in this Lease to an Act of Parliament or any section of an Act is to be read as though the words 'or any statutory modification or re-enactment of it or any statutory provision substituted for it' were added to the reference. Any general reference to 'Statute' or 'Statutes' includes any regulations or orders made under the Statute or Statutes.
- (k) Every obligation or covenant (whether positive or negative) undertaken by any Party (including the Guarantor) will, notwithstanding the wording, be deemed to be and will be construed as if each obligation or covenant is a separate and independent covenant made by the Party undertaking the obligation and continuing (unless the context otherwise requires) throughout the term of this Lease and subsequently so long as it remains to be performed.
- (l) References in this Lease to any clause, sub-clause, paragraph or Schedule without further designation will be construed as a reference to the clause, sub-clause paragraph or Schedule of this Lease so numbered.
- (m) The headings or marginal notes in this Lease are included for convenience only and do not affect the construction of this Lease.

**2. RENT**

**2.1 Payment of Rent**

The Tenant will **pay to the** Landlord (by electronic funds transfer to the bank account nominated by the Landlord) in each Lease Year the Rent without any formal or other demand by equal monthly instalments in advance on the first day of each month and in the case of *any* broken period of less than one month by an installment on the first day of the broken period of an amount ascertained *by* multiplying the number of days in that broken period by the Rent for the Lease Year of which it forms part and dividing the result by 365.

**2.2 Rental Reviews**

(a) *Rent and Annual Reviews*

The expression Rent means an annual sum calculated as follows:

- (i) for the first (1st) Lease Year the sum specified in **Item 1** of the Appendix;
- (ii) for the second (2<sup>nd</sup>) and each subsequent Lease Year that amount determined by increasing the Annual Rent for the Lease Year last concluded by the greater of the following:-
  - (a) four percent (4%) per annum; or
  - (b) the Index Number.

(b) *Reviews to Market*

The Rent will be further reviewed so that the Rent for the Lease Years commencing on the Market Review Dates will be the greater of:

- (i) the market rent for that Lease Year calculated in accordance with cl. 2.3, and
  - (ii) the Rent for the immediately preceding Lease Year increased in accordance with cl. 2.2(a)(ii),
- and the Rent so determined will be reviewed annually in accordance with cl. 2.2(a) (ii).

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2.3 Market Rent Reviews

- (a) The Landlord may at any time prior to the date which is twelve (12) months after a Market Review Date give written notice to the Tenant of the amount of Rent the Landlord believes is the market rent for the Premises as at that Market Review Date.
- (b) If the Landlord does not give written notice in accordance with clause 2.3(a) in respect of a Market Review Date the Rent payable for the Lease Year commencing from that Market Review Date will be the same Rent as was payable in the preceding Lease Year.
- (c) If the Landlord gives written notice in accordance with clause 2.3(a), the Tenant may give written notice to the Landlord within twenty-one (21) days of receipt of the Landlord's notice disputing the Landlord's assessment of the market rent.
- (d) If the Tenant does not give notice in accordance with clause 2.3(c) the amount set out in the Landlord's notice will be the Rent payable from the Market Review Date.
- (e) If the Tenant gives notice in accordance with clause 2.3(c) the market rent will be determined as follows:
  - (i) the market rent will be determined by a person ('the Arbitrator') who has been a member of the Valuers' Institute for at least five (5) years and is nominated by the President for the time being of the Valuers' Institute on the application of either the Landlord or Tenant;
  - (ii) the Arbitrator will act as an arbitrator in accordance with the *Commercial Arbitration Act 2013* (Qld); and
  - (iii) the Arbitrator will determine the market rent of the Premises and must be instructed that in deciding on the annual open market rental of the Premises at the Market Review Date it must:-
    - A. have regard to the terms of this Lease excluding the Rent then applicable (but including this clause 2.3);
    - B. assume the Tenant and the Landlord have complied with all terms in this Lease;
    - C. assume that the Landlord is a willing but not anxious Landlord and the Tenant is a willing but not anxious Tenant and that the Tenant is being offered vacant possession;
    - D. have regard to the rental value of similar Premises (not necessarily the Building) leased at their highest and best use;
    - E. have regard to the value of the local goodwill attaching to the Premises (as distinct from the personal goodwill attached to the Tenant's business conducted at or from the Premises) attributable to the location of the Building;
    - F. not take into account any of the following:-
      - (i) the value of any personal goodwill attributable to the Tenant's business and the value of the Lessee's Fitout in the Premises;
      - (ii) any deleterious condition of the Premises if that condition results from a breach of this Lease by the Tenant;
      - (iii) any concessions or incentives required to secure a Tenant; and
      - (iv) concessions, incentives, periods of Rent abatement or Rent holidays under or in connection with this Lease,
    - G. have regard to all relevant valuation principles to the extent that they are not inconsistent with this clause **Error! Reference source not found.**; and

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- H. provide the determination in the form of a written "speaking" valuation.
- (iv) the Tenant shall pay the costs of the Arbitrator.

**2.4 Obligation to Pay Pending Determination**

Pending determination of the Rent for any Lease Year, rent will be paid at the rate payable during the Lease Year last concluded and will be adjusted retrospectively to the beginning of the Lease Year under review.

**2.5 Net Lease**

This Lease is a net lease and the Tenant's obligation to pay all Rent and the rights of the Landlord to the Rent are absolute and unconditional and are not subject to any abatement reduction set off defence counterclaim or recoupment, except as permitted or contemplated by this Lease. Except as may otherwise be expressly provided in this Lease and notwithstanding any law to the contrary, this Lease will not terminate and the respective obligations of the Landlord or the Tenant will not otherwise be affected, by reason of:

- (a) the invalidity or unenforceability or lack of due authorisation or other defect of this Lease; or
- (b) the lack of any right power or authority of the Tenant to enter into this Lease; or
- (c) the interference with that use operation or possession by any person or entity who is not under the reasonable control of the Landlord; or
- (d) any insolvency bankruptcy or similar proceedings by or against the Landlord or the Tenant.

The Rent will continue to be payable in all events and in the manner and at the times provided in this Lease unless the obligations to pay it is terminated under the express provisions of this Lease.

**3. OUTGOINGS**

**3.1.1 Tenant's Proportion of Outgoings**

- (a) The term Tenant's Proportion means that proportion of the Outgoings which the area of the Premises bears to the Lettable Area at the date of furnishing the statement under clause 3.1.2(a).
- (b) At the date this Lease commences, the Tenant's Proportion is the percentage stated in **Item 4** of the Appendix; otherwise it is calculated in accordance with clause 3.1.1(a).

**3.1.2 Payment by the Tenant on Account of Outgoings**

- (a) The Tenant must pay all of the Outgoings for each Financial Year (or part of a Financial Year) as provided under this clause.
- (b) Before the commencement of each Financial Year (and before the Commencement Date), the Landlord may give the Tenant:
- (i) an itemised estimate of the Outgoings payable during or attributable to the current or next Financial Year, whichever is relevant, and
- (ii) details of the monthly instalments payable by the Tenant, each payment being 1/12th of the Outgoings (excluding the first and last payments which may, if necessary, be apportioned on a daily basis).
- (c) When, during a Financial Year, some additional item of Operating Expense is incurred, the Landlord may reassess the Outgoings and require the Tenant to pay it by monthly instalments during that Financial Year.
- (d) The Outgoings are payable monthly, together with and in the same manner, as Rent.

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- (e) After the end of each Financial Year, the Landlord may provide to the Tenant an itemised statement of the total Outgoings for that Financial Year, which the Landlord may choose to have audited. This itemised statement is prima facie evidence of the Outgoings during a Financial Year unless the statement has not been audited, then the Tenant may have the statement audited by an independent external auditor at its cost, to be effected within 14 days of the Tenant receiving the statement.
- (f) Within 21 days after the Tenant receives an itemised statement of Outgoings, an appropriate adjustment will be made by the payment of any deficiency by the Tenant or the crediting of any excess by the Landlord as the case may be, for the previous Financial Year.
- (g) Any refund or further payment must be made by the relevant party, within 30 days after the outcome of the review of Outgoings is notified by the Landlord to the Tenant.

3.1.3 Expenses Due to Tenant's Sole Use

- (a) The Tenant must pay to the Landlord and/or relevant Authority any/all expenses incurred as a result of the Tenant's use and/or occupation of the Premises together with any expenses due and payable by the Tenant listed at clause 3.2 herein.

3.2 Light and Power

The Tenant will not use any form of light power or heat other than electric current or gas supplied through meters. This covenant does not prevent the use of auxiliary power or lighting (other than an exposed flame) during any period of power failure or power restrictions. The Tenant further covenants that:

(a) *Charges for Electricity*

All charges for electricity imposed or charged in respect of electric current consumed on the Premises during the term of this Lease will be paid by the Tenant to the relevant assessing Authority on or before the **due date** if assessed directly against the Tenant but otherwise to the Landlord within fifteen (15) days of the Tenant being billed by the Landlord at the tariff rates which would have been chargeable by the relevant assessing Authority to the Tenant had the electricity been supplied direct to the Tenant in the first place.

(b) *Charges for Gas*

All charges for gas imposed or charged in respect of gas consumed on the Premises during the term of this Lease will be paid by the Tenant to the relevant assessing Authority on or before the due date if assessed directly against the Tenant but otherwise to the Landlord within fifteen (15) days of being billed by the Landlord at the standard rates which would have been chargeable by the relevant assessing Authority had the gas been supplied direct to the Tenant in the first place.

(c) *Charges for Water*

If a separate water meter is at any *time* at the option of the Landlord installed in respect of water consumed on the Premises the Tenant will pay the meter rental (if any) and all charges and assessments for water consumed on the Premises to the relevant assessing Authority on or before the due date if assessed directly against the Tenant but otherwise to the Landlord within fifteen (15) days of being billed by the Landlord.

(d) *Charges for Waste Water and Grease Trap*

The Tenant will pay all charges associated with the waste water and grease trap at the Premises (if applicable) to the relevant assessing Authority on or before the due date if assessed directly against the Tenant but otherwise to the Landlord within fifteen (15) days of being billed by the Landlord. The Tenant must service the grease trap not less than two (2) times annually or as required by the relevant rules, regulations and legislation and will provide a copy of the service/maintenance certificate from the contractor to the Landlord within fourteen (14) days of the service being completed. The Tenant is responsible for any/all costs associated with the grease trap during the term and extended term of the Lease, the Tenant must maintain the grease trap in good repair and the Tenant must attend to final servicing/maintenance of the grease trap upon expiry, termination and/or earlier determination of the

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Lease and will provide a copy of the service/maintenance certificate from the contractor to the Landlord within fourteen (14) days of the service being completed.

**3.3 Future Taxes on Premises**

The Tenant will pay and discharge without exception all rates taxes charges assessments outgoings and impositions (whether parliamentary municipal or otherwise and whether assessed charged or imposed by or under Federal or State law or by Federal State or Local Authorities and whether on a capital or revenue basis or any other basis and even though of a novel character, but excluding any amounts that are of a capital gains or income tax nature) which may at any time during the term of this Lease be assessed charged or imposed upon or in respect of the Premises or the use and occupation of the Premises and whether assessed against the Landlord or directly against the Tenant will be paid to the relevant assessing Authority not later than the due date for the payment and if assessed against the Landlord will be paid by the Tenant to the Landlord upon demand.

**3.4 Goods and Services Tax**

The Tenant agrees to accept responsibility for payment of GST and any goods and services tax or value added tax or similar tax as anticipated as at the date of execution hereof being imposed by the Commonwealth of Australia on the Landlord, the effect of which will be to calculate additional tax payable by reference to the current rental payable from time to time. The Landlord will be at liberty to invoice the Tenant for the amount of such tax and the Tenant shall make payment of that sum in addition to and at the same time as the rental is payable hereunder.

- (a) **'GST'** means GST within the meaning of the GST Act.
- (b) **'GST Act'** means *A New Tax System (Goods and Services Tax) Act 1999* (as amended). Expressions used in this clause 3.4 have the meaning given to them in the GST Act.
- (c) An amount payable by a party under this Lease in respect of a taxable supply by the other party, unless expressed to represent the price of supply, represents the value of the supply and the recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the GST payable in respect of the supply.
- (d) If this Lease requires the Tenant to pay, reimburse or contribute to an amount paid or payable by the Landlord in respect of a creditable acquisition from a third party, the amount for payment, reimbursement or contribution will be the value of the acquisition by the Landlord plus, if the Landlord's recovery from the Tenant is a taxable supply, the GST payable in respect of that supply.
- (e) A party is not obliged, under clause 3.4 to pay the GST on a taxable supply to it under this Lease, until that party is given a valid tax invoice for the supply.

**3.5 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 any alterations repairs or maintenance to the Premises or to the appurtenances in the Premises effected outside the normal working hours of the tradesmen concerned or in providing any special additional or unusual services for the Tenant.

**3.6 Cleansing Dues**

If the relevant Local or other Authority provides any cleansing or refuse service for the Premises (whether at the request of the Tenant or by direction of any officer of that Authority) the Tenant will pay the cost of the service to the relevant assessing Authority on or before the due date if assessed directly against the Tenant but otherwise to the Landlord within seven (7) days of being billed by the Landlord.

**3.7 Air Conditioning Maintenance**

The Tenant will be responsible to maintain and service the air conditioning equipment (if any) during the term of the Lease. The Landlord will engage a qualified air conditioning contractor, at the Tenant's expense, for proper servicing of the whole of the air conditioning equipment at regular intervals as recommended by the manufacturer (but not less than once every four (4) months). The Tenant is required to pay all service repair

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costs (excluding costs and expenses of a capital nature which are at the Landlord's cost) which will be charged to the Tenant as an outgoing.

**3.8 Fire Equipment Maintenance**

If required due to the Tenant's use of the Premises, the Tenant must install additional Fire Equipment at the Premises during the term of the Lease. The Tenant will be responsible to maintain and service the Fire Equipment during the term of the Lease. The Landlord will engage a qualified fire equipment contractor, at the Tenant's expense, for proper servicing and testing of the whole of the Fire Equipment at regular intervals in accordance with local authority rules and regulations. The Tenant is required to pay all service repair costs (excluding costs and expenses of a capital nature which are at the Landlord's cost) which will be charged to the Tenant as an outgoing.

**3.9 Roller Door & Gate Maintenance**

The Tenant will be responsible to maintain and service the roller doors & gates (if applicable) at the Premises during the term of the lease, subject to fair wear and tear and Insured Risks. The Landlord will engage a qualified technician, at the tenant's expense, for proper servicing of the roller doors and gates at regular intervals as recommended by the manufacturer (but not less than once annually). The Tenant is required to pay all service repair costs (excluding costs and expenses of a capital nature which are at the Landlord's cost) which will be charged to the Tenant as an outgoing.

**3.10 Garden Maintenance**

The Tenant must maintain the gardens and lawns at the Premises (if applicable), at its own cost, during the term and any extended term of the Lease. The Landlord will engage a qualified Gardner, at the tenant's expense, for proper garden and lawn maintenance. The Tenant is required to pay all garden and lawn maintenance costs which will be charged to the Tenant as an outgoing.

**4. USE**

**4.1 Use of the Premises**

The Tenant will not use or permit the Premises to be used for any purpose other than the purpose specified in **Item 3** of the Appendix. The Tenant acknowledges that:

- (a) it is the responsibility of the Tenant to obtain the consent of any planning or other authority which may be required for the Tenant to carry on its business in the Premises and the failure of the Tenant to obtain that consent does not relieve the Tenant of its obligation to pay Rent and otherwise to perform its obligations under this Lease; and
- (b) no promise, representation, warranty or undertaking has been given by or on behalf of the Landlord:
  - (i) in respect to the suitability or adequacy of the Premises or the Building for any use or business to be carried on in them or to the fixtures fittings furnishings finish plant machinery and equipment of or in the Premises or the Building; or
  - (ii) intentionally deleted; and
- (c) all warranties (if any) as to the suitability fitness and adequacy of the Premises implied by law are negated.

**4.2 Tenant to Carry on Business**

The Tenant will conduct its business in the Premises only in a reputable manner benefitting the Building. A business practice by the Tenant whether through advertising, selling procedures or otherwise which may harm the business or reputation of the Landlord or reflect unfavourably on the Building or the Landlord, or which may confuse, mislead or deceive the public, will immediately be discontinued by the Tenant at the request of the Landlord.

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**4.3 Other Tenancies**

Intentionally deleted.

**4.4 Lighting of Display Windows and Premises**

Intentionally deleted.

**4.5 Compliance with Statutes Regulations etc.**

The Tenant will duly and punctually comply with and observe all statutes and all orders, ordinances, regulations and by-laws relating to the Premises or to the Tenant's use or occupation of the Premises and all requirements and orders lawfully given or made by any public body or authority relating to the Premises within the time required by the notice or order. The Tenant will not knowingly do or omit to do any act or thing whereby the Landlord will become liable to pay any penalty imposed or to bear the whole or any part of any expenses incurred under any statute ordinance regulation by-law order requirement or notice. The Tenant is not required by this clause to make any structural or capital improvements or structural or capital alterations unless they are required or made necessary by reason of any neglect or default by the Tenant or any person claiming under the Tenant or by reason of the business carried on in the Premises or the number or sex of the employees or persons at the Premises.

**4.6 Annoying or Injurious Conduct**

The Tenant will not:

- (a) carry on in any part of the Premises any annoying noxious offensive or illegal business occupation or practice; and
- (b) do any act or thing or use any plant or machinery which through noise, odours, vibrations or otherwise may be or grow to the annoyance nuisance grievance damage or disturbance of the occupiers of neighbouring premises.

**4.7 Tenant's Public Address Systems**

Intentionally deleted.

**4.8 Use of Appurtenances**

The Tenant will not use the water closets drains and other water apparatus and other appurtenances in the Premises and the Building for any purposes other than those for which they were constructed and will not place in them any sweepings rubbish rags ashes or other deleterious substances.

**4.9 Drains and Waste**

All blockages which may occur in any Pipes originating within the Premises between their points of origin and their entry into any trunk drain will be cleared by licensed tradesmen employed by the Landlord. All costs of clearing blockages incurred by the Landlord will be paid by the Tenant to the Landlord upon demand.

**4.10 Interference with Services**

Except as otherwise provided in this Lease the Tenant will not interfere with any appurtenances Pipes water supply gas electrical plumbing or other services contained in or about the Premises or the Air Conditioning Equipment or the Fire Equipment without first obtaining the consent in writing of the Landlord.

**4.11 Erection of Signs**

The Tenant will not cause any advertising or other sign or advertisement or hoarding to be painted or erected or otherwise placed on or in the exterior of the Building or Land without the prior consent of the Landlord. The Landlord's consent will not be withheld unreasonably to the using or exhibiting of any advertisement or

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sign customary and/or incidental to the Tenant's class of business if the advertisement or sign strictly complies with the by-laws of the local or other authorities.

**4.12 Prohibition on Erection of Blinds and Shop Fittings**

Intentionally deleted.

**4.13 Prohibition on Marking or Holing of Walls**

The Tenant will not cut make holes in mark deface drill damage or suffer to be cut holed marked defaced drilled or damaged any of the walls ceilings or other parts of the Premises except so far as may reasonably be necessary for the erection of approved signs blinds or awnings. On the removal of signs blinds or awnings the Tenant will reinstate repair and make good any damage or unsightliness caused in or about the erection or removal of them even if the Landlord has consented to them.

**4.14 Refuse**

Where the Landlord does not provide refuse services the Tenant will at its own cost and expense cause all wet refuse to be removed from the Building daily and will also at its own cost and expense cause to be removed from time to time all packing materials cartons containers and other waste materials of every description which do not form part of the normal refuse removed by the relevant Local Authority and which are not required for the Permitted Use. Refuse removed by the relevant Local Authority must be properly wrapped and placed in bins on the Land.

**4.15 Rodents and Vermin**

The Tenant will at its own cost and expense keep the Premises free and clear of rodents termites cockroaches and other vermin.

**4.16 Overloading of Floors**

The Tenant will observe the maximum floor loading weights nominated by the Landlord (acting reasonably) and will not permit the floors of the Premises to be broken strained or damaged by overloading them. In particular the Tenant will not install any safes or other heavy equipment except in positions and subject to conditions approved in writing by the Landlord. The Landlord must promptly notify the Tenant of the maximum floor loading weights, upon receipt of a request from the Tenant.

**4.17 Infectious Diseases**

If any infectious disease happens upon the Premises which may require notification by virtue of any statute regulation or ordinance the Tenant will:

- (a) give all the necessary notices and any other information which may be required to the proper authorities; and
- (b) will give a copy of the notification to the Landlord; and
- (c) will at its own expense thoroughly fumigate and disinfect the Premises.

**4.18 Inflammable Substances**

The Tenant will not use any chemical burning fluids oil acetylene or alcohol in lighting the Premises or, except in the ordinary course of the Tenant's business, for any business or other purpose.

**4.19 Not to Make Voidable Insurance Policies**

The Tenant will not knowingly do or permit anything to be done in the Premises or bring or keep anything in the Premises that may in any way make void or voidable any policy or policies of insurance applicable to the Premises or conflict with any laws or regulations or with any insurance policy applicable to the Premises or whereby the amount of premium payable in respect of any insurance policy may be liable to be increased. Without prejudice to the rights of the Landlord to determine this Lease the Tenant will pay to the Landlord on demand any increase of premium which may be occasioned by a breach of this clause.

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**4.20 To Observe Fire Law**

The Tenant will at all times in its use of the Premises comply with the requirements of the applicable fire authority and the laws and regulations for the time being in force relating to fires and the provisions of every relevant Statute regulation and ordinance.

**4.21 Fire Drills and Evacuation Procedures**

The Landlord may require the Tenant to perform from time to time reasonable fire drills and to observe all necessary and proper emergency evacuation procedures and the Tenant and all persons under its control will co-operate with the Landlord in performing those drills and procedures.

**4.22 Auction Sales**

The Tenant will not in any circumstances hold or permit to be held any auction sale in or about the Premises.

**4.23 Security**

The Tenant will cause all exterior doors and windows in the Premises to be locked securely at all times when the Premises are not being used.

**4.24 Overloading of Electricity**

The Tenant will not without the written consent of the Landlord install any electrical equipment on the Premises that overloads the cables switchboards or sub-boards through which electricity is conveyed to the Premises. If the Landlord grants that consent any alterations which may be necessary to comply with the requirements of the insurance underwriters of the Building or any Statutes regulations ordinances or by-laws will be effected by the Landlord at the expense of the Tenant and the entire cost of the alterations will be paid by the Tenant to the Landlord upon demand. The Landlord may require the Tenant to deposit with the Landlord the estimated cost of the alterations before they are commenced.

**4.25 Use of External Areas**

The Tenant must not use the Premises or the Common Property for parking or storage of motor vehicles, caravans, boats, demountable buildings, or containers of any kind other than as required for the purposes of the Permitted Use (which, to avoid doubt, will include storing herbicides and pesticides in lockable sheds).

**4.26 Body Corporate**

Intentionally deleted.

**4.27 Common Property**

Intentionally deleted.

**5. MAINTENANCE AND REPAIR**

**5.1 Notice of Damage**

The Tenant will advise the Landlord promptly in writing upon becoming aware of any damage sustained to the Premises or the defective operation of any of the appurtenances in the Premises.

**5.2 Maintenance of Premises**

The Tenant will repair the Premises and keep them in good repair except damage caused by:

- (a) fair wear and tear; or
- (b) an Insured Risk other than where the insurance money is irrecoverable because of any act or default of the Tenant or anyone at the Premises expressly or by implication with the Tenant's consent.

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Where the policy of insurance for the Insured Risks requires payment of excess or deductible by the Landlord the Tenant will pay the excess or deductible to the Landlord on demand, except to the extent that the damage was caused or contributed to by the Landlord.

**5.3 Tenant's Further Repair and Maintenance Obligation**

The Tenant shall at the Tenant's expense:-

- (a) Ensure that all waste is placed weekly in suitable receptacles;
- (b) Promptly make good any damage to any part of the Building (including the common areas) or to the premises caused by the Tenant or persons under its control or by any workman or subcontractor performing any work on the premises;
- (c) Promptly replace all glass broken by the Tenant or persons under its control;
- (d) Replace all non-operative light globes and tubes within the Premises;
- (e) Notwithstanding anything to the contrary contained herein, the Tenant will also be responsible for the maintenance and repair (including capital repairs and replacement costs) of the high bay lights (if installed) and existing lights at the Premises during the term of the lease;
- (f) Take any steps necessary to control any pest infestation occurring within the Premises and if required by the Landlord engage a pest exterminator approved by the Landlord, provided that the landlord must engage a pest exterminator to treat any pest infestation existing on the Premises on or before the Commencement Date;
- (g) Repair or where appropriate replace damaged heating lighting electrical or plumbing fittings installed in the Premises;
- (h) Comply with all statutes ordinances proclamations orders and regulations affecting the Premises or any fixtures or fittings installed by the Tenant; and
- (i) Comply with any notices or orders which may be given by any competent authority for the Premises or their use by the Tenant and will keep the Landlord indemnified for all such matters.

provided that the Tenant shall be under no liability for any structural or capital alteration or repair unless that liability arises out of the Tenant's use of the Premises.

**5.4 Tenant's Further Cleaning Obligations**

Notwithstanding anything contained herein to the contrary, the Tenant shall keep the Premises clean at its own expense. However, if the Tenant fails to do so, the Tenant shall be liable to reimburse the Landlord on demand for the Landlord's expenses in cleaning the Premises including all windows and refuse from the Building.

**5.5 Inspection by Landlord**

The Tenant will permit the Landlord or the agents or agent of the Landlord with or without workmen and others at all reasonable times to enter upon and view the condition of the Premises and immediately upon notice being given to the Tenant by the Landlord will execute all repairs and work agreed to be done by the Tenant. The Tenant will also permit the Landlord or the agents or agent of the Landlord with or without workmen and others at all reasonable times to enter upon the Premises for the purpose of effecting any alterations re-modelling or repairs (if any) which the Landlord may wish to carry out.

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**5.6 Landlord's Right to Repair**

If the Tenant at any time makes default in the performance or observance of any express or implied covenants in this Lease relating to the repair of the Premises, the Landlord may (but without prejudice to the Landlord's right of re-entry) enter upon the Premises and repair them at the expense of the Tenant.

**5.7 Tenant to Redecorate**

The Tenant will at least once during every five (5) years of the term of this Lease and in any case during the last three (3) months of the term of this Lease Redecorate the Premises to the satisfaction of the Landlord. If the Tenant fails to Redecorate the Premises the Landlord may Redecorate the Premises at the Tenant's expense. Any works carried out under this clause must be approved by the relevant local authority in accordance with the provisions of the Integrated Planning Act 1997. Provided always that if the Tenant takes up either the First Option or Second Option and the property in the Landlord's reasonable opinion is clean, presentable and maintained the Tenant shall not be required to Redecorate, however the Tenant shall not be relieved of the obligations set out at clause 22.5 herein.

**5.8 Glass**

The Tenant will replace all glass in the Premises or forming part of the boundary walls of the Premises that is broken during the term of this Lease, except where the glass is broken by the Landlord, its servants, agents or contractors.

**6. ALTERATIONS**

**6.1 No Alterations Without Consent**

The Tenant will not make or cause to be made any structural or other alterations or additions to the Premises or appurtenances in the Premises or the Air Conditioning Equipment or the Fire Equipment without first submitting full detailed drawings and other specifications of the proposed works and particulars of the materials proposed to be used and obtaining the Landlord's consent in writing which consent must not be unreasonably withheld or imposed subject to unreasonable conditions. If the Landlord grants its consent it will be a condition of that consent that the works are carried out under the supervision of the Landlord's architect. The Tenant will pay to the Landlord immediately on demand all reasonable costs and expenses incurred by the Landlord including architect's and other consultants' fees payable by the Landlord whether consent is granted or not.

**6.2 Alterations Required for Tenant's Business**

Any alterations which may be required to the Premises or to the Air Conditioning Equipment the Fire Equipment or the water gas electrical plumbing or other services to make or keep the Premises suitable for use by the Tenant in its business or required by reason of the number or sex of the persons employed in the Premises will be effected by and at the expense of the Tenant. The Tenant must first submit full detailed drawings and other specifications of the proposed work and class of materials proposed to be used and obtain the Landlord's consent in writing (which consent will not be unreasonably refused). The Tenant indemnifies the Landlord against all injury or damage to the Premises or the Building caused in or about the erection or construction of the alterations or additions or in the removal of the alterations and additions and notwithstanding that the Landlord may have consented to them.

**6.3 Internal Partitions**

The Tenant will not install any internal partitions in the Premises or make any alterations or modifications to any internal partitions without the written consent of the Landlord which consent will not be unreasonably withheld if the following conditions are complied with:

- (a) The Tenant is to submit to the Landlord full detailed drawings and specifications of the proposed works and the drawings and specifications that meet with the approval of the Landlord's architect (such approval not to be unreasonably withheld);
- (b) The materials to be used in carrying out the works are to be of a standard as to type quality colour and size as the Landlord determines;

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- (c) The works are to be carried out by a builder Approved by the Landlord (acting reasonably);
- (d) The works are to be carried out under the supervision of the Landlord's architect; and
- (e) The Tenant is to pay to the Landlord immediately upon demand all reasonable costs and expenses incurred by the Landlord including architects and other consultants fees payable by the Landlord whether any Approval is granted or not.

Any partitions erected by the Tenant remain the property of the Tenant who is responsible for their maintenance and insurance.

**6.4 Costs of Internal Works**

Any works Approved under cl. 6.3 will be effected by and at the expense of the Tenant including the costs of all additional lights and power outlets switches telephone outlets and alterations or any other services which may be required by reason of the position of partitions. The Tenant indemnifies the Landlord against all injury or damage to the Premises or to the Building caused in or about the execution of those works.

**6.5 Tenant's Fixtures**

Any fixtures and things which with the consent of the Landlord have been installed by the Tenant on the Premises may at the expiration of the term of this Lease be taken down and removed from the Premises for the Tenant's own benefit but always only upon the condition that the removal can be carried out without danger to the stability of the structure of the Premises or of the Building. The Tenant will make good to the reasonable satisfaction of the Landlord or the architect of the Landlord any damage done or unsightliness occasioned to the Premises by or as a result of the installation or removal of any of these fixtures and things. After 14 days have elapsed from the end of this Lease (except where the Tenant is on holdover or has exercised an option to renew), any fixtures and things not removed by the Tenant and all other goods of the Tenant left on the Premises will be deemed abandoned by the Tenant and become the property of the Landlord. The Landlord may in its discretion sell or otherwise dispose of abandoned fixtures things and goods in any manner the Landlord thinks fit.

**6.6 Landlord's Fittings and Fixtures**

The Tenant acknowledges and agrees that all fixtures and fittings supplied or owned by the Landlord for the use or benefit of the Tenant by way of Tenant fit-out or otherwise create in favour of the Landlord by virtue of this Lease a registrable security interest registrable in the Personal Property Security Register pursuant to the provisions of the *Personal Property Securities Act (Cth) 2009* ("the Act") and the *Personal Properties Securities Regulations 2010* as amended and consents to the registration of this Lease instrument as a security interest under the Act.

**6.7 Alterations or Additions to Premises by Landlord**

If after the commencement of this Lease the Landlord carries out or effects any alterations or additions to the Premises at the request of the Tenant or by reason or as a result of any requisition direction or order of any licensing inspector health inspector municipal or other authority having jurisdiction over the Premises or the owner or occupier of the Premises (where the requisition order or direction was received after the commencement of this Lease) then the Tenant will as from the date of completion of those alterations or additions pay to the Landlord as and by way of further rental an amount per annum equal to twenty per centum (20%) of the cost (including architects' fees) as certified by the Landlord's architects of carrying out those alterations or additions to the Premises, such payments not to exceed 100% of that cost in aggregate. The further rental is to be paid monthly in advance on the same days as the Rent. Any works carried out under this clause must be approved by the relevant local authority in accordance with the provisions of the *Planning Act 2016* (Qld).

**7. INDEMNITY, RISK, INSURANCE, LIABILITY**

**7.1 Indemnities**

The Tenant indemnifies the Landlord against all actions claims demands losses damages costs and expenses which the Landlord may sustain or incur or for which the Landlord may become liable whether during or after the term of this Lease in respect of or arising from:

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- (a) Loss damage or injury from any cause to property or person inside or outside the Building occasioned or contributed to by the neglect or default of the Tenant or any servant agent licensee invitee subtenant or other person claiming through or under the Tenant to observe or perform any of the covenants conditions regulations and restrictions on the part of the Tenant in this Lease whether positive or negative expressed or implied;
- (b) The negligent use misuse waste or abuse by the Tenant or any servant agent licensee invitee subtenant or other person claiming through or under the Tenant of any water gas or electricity or other services to the Premises or to the Building;
- (c) The overflow leakage or escape of water fire gas electricity or any other harmful agent in or from the Premises caused or contributed to by any act or omission on the part of the Tenant its servants agents licensees invitees subtenants or other persons claiming through or under the Tenant;
- (d) The failure of the Tenant to notify the Landlord of any defect in any of the Air Conditioning Equipment the Fire Equipment or other appurtenances in the Premises of which the Tenant is aware or ought reasonably to be aware;
- (e) Loss damage or injury from any cause to property or person to the extent caused or contributed to by the use of the Premises by the Tenant or any servant agent licensee invitee or subtenant and arising out of the neglect or default of the Tenant or any servant agent licensee invitee or subtenant;
- (f) The improper or faulty erection or construction of facilities trade fixtures or equipment, where installed on or in the Premises by the Tenant;
- (g) Any personal injury sustained by any person in or about the Premises however caused other than by the willful or negligent act or omission of the Landlord its servants contractors or agents.

7.2 Insurances

- (a) The Tenant will during the term of this Lease at its sole cost and expense obtain and keep in full force and effect in the name of the Tenant (noting the interest of the Landlord and all mortgagees of the Premises) the following insurances;
  - (i) Insurance on the Tenant's Property for an amount not less than the full insurable and replacement value of it with coverage against at least fire with standard extended coverage.
  - (ii) Contractors' all risk policy in respect of any tenant's fitout works or other works to the Premises to their full value.
  - (iii) Public Risk Liability insurance applying to all operations of the Tenant and which will include bodily injury liability and property damage liability personal injury liability products liability contractual liability contingent liability and tenant's legal liability with respect to the occupancy by the Tenant of the Premises. The policy will be written on a comprehensive basis with limits of not less than twenty million dollars (\$20,000,000.00) per occurrence or any higher limits the Landlord or its mortgagee reasonably requires from time to time.
  - (iv) Insurance of all plate glass in the Premises or forming part of the boundary walls of the Premises for reinstatement following breakage or damage from any cause.
  - (v) any other insurance that the Landlord or its mortgagee may reasonably require.
- (b) All insurance policies required by this clause will be taken out with insurers who have operations in Australia and who have a Standard & Poor's (or similar rating) of no less than A-. Certificates of insurance will be delivered to the Landlord as soon as practicable after they are taken out.
- (c) The Tenant must deliver all relevant certificates of insurance whenever reasonably required by the Landlord.

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- (d) The Tenant must pay to the Landlord:-
- (i) any insurance excess, deductible or shortfall payable by the Landlord for any insurance claim made concerning the Premises, if the claim arises because of any act, omission, neglect or default of the Tenant; and
  - (ii) all extra insurance costs for any extra risk caused by any use or occupation of the Premises.
- (e) If the Tenant fails to take out or to keep in force any insurance required by this clause, or if the insurance is not reasonably approved by either the Landlord or its mortgagee, the Landlord may effect the insurance at the sole cost of the Tenant and all outlays by the Landlord will be payable by the Tenant to the Landlord as additional rent on demand without prejudice to any other rights and remedies of the Landlord under this Lease.

**7.3 Assumption of Risk by Tenant**

The Tenant agrees to occupy and use the Premises at the risk of the Tenant. The Landlord will not in any circumstances be liable to the Tenant for any damage to the plant equipment fixtures fittings merchandise stock-in-trade or any other property of any description of or in the possession of the Tenant and contained in or about the Premises occasioned by:

- (a) water heat fire electricity vermin explosion tempest riot, civil commotion, bursting pipes or by the entry of water from any source; or
- (b) by the operation non-operation or malfunction of the Air Conditioning Equipment or the Fire Equipment or
- (c) by any other cause,

The Landlord will not be liable for any loss of profits resulting from the damage even if the damage occurs by reason of:

- (d) any defect in the construction of the Building or of any of the appurtenances in the Building; or
- (e) by reason of any act or omission by any contractor of the Landlord or any other tenant of the Building and their respective employees or any member of the public.

**7.4 Interruption of Services**

The Tenant will be entitled to a proportionate abatement of Rent and other payments under this Lease to the extent that the Tenant's use of the Premises is impaired by any malfunction failure to function or interruption of or to the water gas or electricity services the Air Conditioning Equipment the Fire Equipment the lifts escalators and travelators (if any) in the Building or any of the appurtenances contained in the Premises or the Building or for the blockage of any sewers wastes drains gutters downpipes or storm water drains from any cause, upon any impairment extending beyond two successive Business Days. If there is a failure of or interruption to any of the services and things described in this clause the Landlord will take all reasonable steps to restore them.

**7.5 Condition Precedent**

Notwithstanding anything contained in this Lease or any implication or rule of law to the contrary, the Landlord will not be liable for any damage or loss the Tenant may suffer by reason of the neglect or omission of the Landlord to do any act or thing to or in respect of the Premises or the Building of which the Tenant is or ought reasonably to be aware and which (as between the Landlord and the Tenant) the Landlord might be legally liable to do unless the Tenant gives to the Landlord notice in writing of that act or omission and the Landlord without reasonable cause fails within a reasonable time to take proper steps to rectify the act or omission. This proviso is of no effect if the Landlord is aware or ought reasonably to be aware of its neglect or omission.

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**7.6 Landlord's insurance**

The Landlord must insure the Building against:

- (a) fire;
- (b) lightning;
- (c) impact by aircraft;
- (d) earthquake; explosion;
- (e) impact by vehicles and animals;
- (f) malicious damage other than by persons in or about the Building with the actual or implied consent of the Tenant any subtenant or licensee;
- (g) rainwater and flood (both natural and artificial);
- (h) storm and/or tempest,  
in broad cover form with repair and replacement terms on terms and conditions reasonable in the market at the time the insurance is effected.

**8. ASSIGNMENT**

**8.1 Covenant Against Assignment, Subletting and Franchising**

The Tenant will not:

- (a) mortgage or otherwise charge the Tenant's interest in this Lease; or
- (b) assign underlet grant any license over or part with the possession of the Premises; or
- (c) share with any person the occupancy of the Premises,

without first obtaining the written consent of the Landlord which shall not be unreasonably withheld. Provided that the Tenant is not in default such consent will not be unreasonably withheld in the case of the proposed assignment or subletting of the whole of the Premises to a respectable and financially responsible assignee or subtenant. As a condition precedent to the Landlord's consent to any assignment or subletting and prior to the execution of any consent the Landlord may require the assignee or subtenant:

- (d) to enter into a covenant with the Landlord that the assignee or subtenant will observe perform fulfil and keep all covenants conditions and restrictions contained in this Lease and on the part of the Tenant to be observed performed fulfilled and kept, and
- (e) to execute and deliver to the Landlord a power of attorney duly stamped in favour of the Landlord in the same terms with necessary alterations as those contained in Part 19 of this Lease.

the covenant and Power of Attorney to be prepared by the Landlord's solicitors at the cost and expense of the Tenant and the Tenant will pay all other reasonable costs and expenses of the Landlord arising out of or in relation to the assignment or subletting. If the intended assignee is a limited liability company then, to the extent that the assignee is of inferior financial responsibility to the Tenant, the Landlord may require an additional two months' Rent plus GST to be added to the amount in Item 9.

The onus of proving the respectability and financial responsibility of any proposed assignee subtenant or surety is upon the Tenant at its expense.

Upon assignment of the Lease with the Landlord's consent, the Tenant and the Guarantor are discharged from all future liability.

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**8.2 Subleases**

Every permitted sublease of the whole or part of the Premises may be granted at a rent lower than the then open market rental value of the underlet premises if the Tenant provides the Landlord with a written acknowledgement that the rent is below the open market rental value, and agreeing that the sublease rent will be disregarded for the purposes of any market rent review. The sublease will contain covenants:

- (a) prohibiting the subtenant from doing or allowing any act or thing in relation to the underlet premises inconsistent with or in breach of the provisions of this Lease; and
- (b) by the subtenant with the Landlord not to assign or sublet the underlet premises without the consent in writing of the Landlord.

**8.3 Concessions, Licences, Etc.**

Without in any way limiting the generality of cl. 8.1 and cl. 8.2 the Tenant will not permit any business to be operated in or from the Premises by any concessionaire franchisee licensee or others without the written consent of the Landlord in each instance which consent may, notwithstanding any statutory provision or provisions to the contrary, not be unreasonably withheld. The consent by the Landlord to any concession franchise or licence will not constitute a waiver of the necessity for the consent to any subsequent concession franchise or licence. If the Landlord agrees to grant its consent to any concession franchise or licence each concession franchise or licence will only be granted upon and subject to the following conditions that:

- (a) the concession franchise or licence will be subject to the terms covenants and conditions contained in this Lease;
- (b) the aggregate area of all concessions, franchises or licences will not at any one time exceed such percentage of the area of the Premises as the Landlord, in its sole discretion, considers advisable;
- (c) each concessionaire, franchisee or licensee will carry on business under the trade name and style of the Tenant and in a manner so that to all intents and purposes, the business will appear as an integral part of the Tenant's business operations;
- (d) the Tenant will provide the Landlord with an executed copy of each concession franchise and licence agreement and the Landlord will have the right to Approve the terms of the agreement or to request changes to the agreement which the Tenant covenants to make or have made prior to its grant; and
- (e) at the option of the Tenant, the Tenant and any concessionaire franchisee or licensee will execute any document or instrument which the Landlord requires including, without limitation, a sublease of the Premises substantially in the form of this Lease.

**8.4 Corporate Tenant**

Where any person who holds a substantial interest in the Tenant (the Tenant being a corporation) at the time of the execution of this Lease ceases to hold a substantial interest the Tenant will immediately give notice in writing of that fact to the Landlord. The Landlord may at its discretion within ninety (90) days of receipt of that notice terminate this Lease by giving to the Tenant thirty (30) days prior notice in writing. Upon expiration of the notice this Lease expires. For the purposes of this Clause a substantial interest in the Tenant is a holding of not less than thirty per centum (30%) of the issued share capital of the Tenant or a holding of shares in the Tenant which entitle the holder to not less than thirty per centum (30%) of the voting power of all shares represented at any meeting of members of the Tenant.

**8.5 Change of Corporate Ownership - Deemed Assignment**

Where the Tenant is a corporation not being a company whose shares are listed on any Stock Exchange in Australia or elsewhere the following circumstances will constitute or be deemed to constitute an assignment of this Lease (requiring the prior Consent of the Landlord under cl. 8.1):

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- (a) if at any time during the term of this Lease any corporation or any related corporation (as defined by the legislation regulating corporations as at the Date of Commencement) not holding or holding between them less than fifty percent (50%) of the issued capital or voting rights of the Tenant, acquires or acquire between them so much of the issued capital or voting rights of the Tenant as when added to the issued capital or voting rights (if any) previously held by that corporation or related corporations represent in the aggregate more than fifty per cent (50%) of the issued capital or voting rights of the Landlord; or
- (b) if at any time during the term of this Lease any person or any persons and his relatives (as defined in the Income Tax Assessment Act 1936 as at the Date of Commencement) not holding or holding between them less than fifty percent (50%) of the issued capital or the voting rights of the Tenant acquires or acquire between them so much of the issued capital or voting rights of the Tenant as when added to the issued capital or voting rights (if any) previously held by that person or those persons represent in the aggregate more than fifty per cent (50%) of the issued capital or voting rights of the Tenant; or
- (c) if at any time during the term of this Lease, the changes referred to in sub-cl. (a) or sub-cl. (b) of this clause occur to any holding company (as defined in the legislation regulating corporations as at the Date of Commencement) of the Tenant or in any holding company of any holding company of the Tenant.

**9. COSTS**

**9.1 Costs of Litigation**

If without fault on its part either Party is made a party to any litigation commenced by or against the other (other than litigation between the Landlord and the Tenant) and arising directly or indirectly out of the acts or omissions of the other in relation to the Premises or the Building the Party not at fault will be paid by the other Party on demand all legal fees *and* disbursements (as between solicitor and own client) incurred in connection with the litigation.

**9.2 Costs to be Borne by Tenant**

The Tenant will pay the costs of and incidental to:

- (a) the negotiation, preparation, execution, stamping and registration of this Lease including any/all legal and other costs associated with obtaining mortgagee's consent to registration of the Lease (if applicable) plus mortgagee's consent fee; and
- (b) obtaining any necessary consent to this Lease from the local authority.

The Tenant will also pay:

- (c) all registration fees payable in respect of this Lease; and
- (d) all reasonable costs charges and expenses (including for example, legal costs and fees payable to a surveyor or architect) incurred by the Landlord for the purpose of or incidental to the preparation and service of any notice under s. 127 or s. 124 of the *Property Law Act 1974* notwithstanding forfeiture is avoided otherwise than by relief granted by the Court; and
- (e) all reasonable costs of and incidental to the grant or refusal of any consent or authority of the Landlord which may be requested by the Tenant under the terms of this Lease; and
- (f) all reasonable monies the Landlord may expend or be put to in consequence of any default by the Tenant in the performance and observance of any covenant or agreement contained or implied in this Lease or which is authorised or entered into or made by the Tenant.

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**10. MORTGAGEE OF FREEHOLD**

**10.1 Mortgagee's Consent**

In consideration of the Landlord granting this lease to the Tenant the Tenant covenants and agrees with the Landlord for the benefit of all present or future mortgagees of the whole or any part of the Building (the Mortgagee) that the consent of the Mortgagee to this Lease is subject to the following conditions and provisions:

- (a) the consent is without prejudice to the rights powers and remedies of the Mortgagee and its assigns under the relevant bill of mortgage which remains in full force and effect as if the consent had not been given except that the Mortgagee will in the event of the exercise of the power of sale or other power or remedy of the Mortgagee or its assigns on default under the relevant bill of mortgage exercise the power subject to the then subsisting rights of the Tenant its successors and permitted assigns under this Lease;
- (b) that so long as the Mortgagee is registered as Mortgagee of the Building the Landlord will obtain the consent or approval of the Mortgagee or its assigns in addition to the consent or Approval of the Landlord in all cases where the consent or Approval of the Landlord is required
- (c) that upon the Mortgagee or its assigns giving notice to the Tenant demanding to enter into receipt of the rents and profits of the Building or any part of them the covenants on the part of the Tenant expressed or implied in this Lease will be deemed to have been entered into by the Tenant with the Mortgagee and its assigns and all the rights powers and remedies of the Landlord under this Lease will vest in and be exercisable by the Mortgagee and its assigns until the notice is withdrawn or the relevant mortgage is discharged.
- (d) the Mortgagee is in no way bound to perform and will not incur any liability in respect of the covenants and agreements expressed or implied in this Lease and on the part of the Landlord to be performed and observed, except during such period when the Mortgagee demands to enter into receipt of the rents and profits of the Building or any part of them; and
- (e) the consent will at the option of the Mortgagee be void and of no effect if the Landlord or the Tenant fails to observe and perform all or any of the conditions contained in this clause.

**11. LANDLORD'S ASSURANCES**

**11.1 Quiet Enjoyment**

If the Tenant promptly pays the Rent and observes and performs the covenants and agreements in this Lease the Landlord covenants that the Tenant may peaceably hold and enjoy the Premises during the term of this Lease without any interruption by the Landlord or any persons lawfully claiming under or in trust for the Landlord.

**11.2 Landlord to Pay Rates**

The Landlord will pay all municipal rates payable in respect of the Building except those rates and taxes (if any) which the Tenant has covenanted to pay in whole or in part.

**11.3 Tenant to Have Access**

The Landlord will permit the Tenant its servants agents licensees and invitees at all times during the term of this Lease to have full and free access to and from the Premises at all times.

**11.4 Tenant to Have Access to Toilets**

The Tenant will use its best endeavours to keep the toilet facilities in the Building in a clean and proper condition throughout the term of this Lease, subject to fair wear and tear and Insured Risks.

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11.5 Landlord to Repair Exterior

The Landlord will keep repair and maintain the exterior of the Building in good repair and condition except to the extent the Tenant is obliged so to do.

12. DEFAULT

12.1 Default by Tenant

(a) *Events of Default - Right to Re-Enter*

- (i) The Rent or any part of it is unpaid for seven (7) days after it has become due whether any formal or legal demand is made for it or not; or
- (ii) The Tenant does not comply within a reasonable time with any notice requiring the Tenant to make strict and prompt fulfillment or observance of any of the covenants or agreements (whether expressed or implied) in this Lease and on the part of the Tenant to be performed or observed (including covenants and agreements of a negative character); or
- (iii) The repairs required by any notice given under cl. 5.3 are not completed within the reasonable time specified in the notice; or
- (iv) Judgment for an amount exceeding Fifty thousand dollars (\$50,000.00) is obtained or entered up against the Tenant in any court of competent jurisdiction and is not satisfied within twenty-one (21) days; or
- (v) The Tenant does or suffers to be done any act whereby the estate or effects of the Tenant are taken in execution; or
- (vi) The Tenant, being a corporation enters into provisional liquidation or liquidation whether voluntary or otherwise (except for the purpose of reconstruction or amalgamation) or has a receiver and/or manager appointed.

THEN subject to the Landlord giving notice under s. 124 of *the Property Law Act 1974* the Landlord or any person duly authorised by the Landlord may at any time on one (1) day's written notice or without notice re-enter the whole or part of the Premises in the name of the whole and determine this Lease but without prejudice to the right of action or other remedy of the Landlord in respect of any antecedent breach of the Tenant's covenants stipulations or agreements contained or implied in this Lease.

(b) *Damages*

If the Landlord determines this Lease under cl. 12.1(a) the Landlord may recover from the Tenant in addition to damages and amounts recoverable apart from this clause:

- (i) any Rent and Outgoings due but unpaid at the date of the determination;
- (ii) the amount by which the Rent and Outgoings between the date of determination and the date of expiry of this Lease by effluxion of time exceeds the rent and outgoings received from any other tenant to whom the Premises are relet during that period;
- (iii) any other amount reasonably necessary to compensate the Landlord as a result directly of the Tenant's default and the Landlord's determination of the Lease including, for example:
  - A. costs and expenses incurred in maintaining the Premises;
  - B. costs of recovering possession of the Premises;
  - C. expenses of re-letting;
  - D. legal costs;
  - E. real estate commissions charges and fees.

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For the purpose of calculating the Rent and Outgoings that would have been payable after the determination of this Lease and to the extent that the Rent and Outgoings that would have been payable cannot be established certainly, it will be assumed that the Rent and Outgoings would have increased annually by five per centum cumulative on each anniversary of the Date of Commencement.

(c) *Landlord's Right when Tenant Abandons Premises*

If the Tenant vacates or abandons the Premises or otherwise repudiates this Lease without lawful excuse prior to the expiration of the term the Landlord may without being under any obligation so to do seek to find another tenant for the Premises. For that purpose the Landlord may from time to time enter upon the Premises and permit prospective tenants to view them and may otherwise do all acts and things necessary in the opinion of the Landlord to restore clean and secure the Premises without accepting or being deemed to have accepted a surrender of this Lease it being the intention of the Parties that this Lease and the obligations of the Tenant under this Lease subsist until another person enters into occupation of *the* Premises as tenant or the Landlord expressly accepts a surrender of this Lease. For the purpose of this clause the Tenant is deemed to have vacated the Premises if it ceases to carry on its permitted use for a period of seven (7) consecutive days without being in default in respect of Rent and contributions to Outgoings.

(d) *Reservation of Rights*

The rights and powers conferred on the Landlord by this *cl.* 12.1 are in addition to any other right or power which may be conferred upon the Landlord at law or in equity.

**12.2 Non Waiver**

No delay or omission to exercise any right power or remedy accruing to the Landlord upon any continuing breach or default under this Lease impairs any right power or remedy of the Landlord and it will not be construed to be a waiver of or acquiescence in any continuing breach or default or of or in any similar breach or default occurring subsequently; and no waiver of any single breach or default will be deemed a waiver of any earlier or later breach or default. Any waiver permit consent or approval of any kind or character of any breach or default under this Lease or any waiver of any provision or condition of this Lease must *be* in writing and will be effective only to the extent set out in the written waiver. All remedies either under this Lease or by law or otherwise afforded to the Landlord are cumulative and not alternative.

**12.3 Accord and Satisfaction**

No payment by the Tenant or receipt by the Landlord of a lesser amount than the Rent stipulated in this Lease will be considered to be other than on account of the stipulated Rent, and an endorsement or statement on a cheque or in a letter accompanying a cheque or payment as Rent will not be considered to be an accord or satisfaction, and the Landlord may accept a cheque or payment without prejudice to the Landlord's right to recover the balance of the Rent or pursue any other remedy.

**12.4 Performance of Tenant's Covenants by Landlord**

If the Tenant makes default in payment of any moneys covenanted by the Tenant to be paid or in the observance or performance of any of the covenants contained or implied in this Lease and on the part of the Tenant to be observed and performed the Landlord may pay that money and observe and perform those covenants and the Tenant will pay to the Landlord promptly upon demand all moneys which the Landlord expends in that behalf with interest calculated at the Stipulated Rate from the time of those moneys having been so expended to the date of payment.

**12.5 Interest on Arrears**

The Tenant will pay to the Landlord interest on any Rent or other moneys which are in arrears calculated at the Stipulated Rate from the time of the Rent or other moneys respectively falling due to the date of payment.

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### 13. DAMAGE OR DESTRUCTION

#### 13.1 Substantially Unfit or Substantially Inaccessible

If the Premises or the Building is damaged by an event beyond the control of the Tenant or by an Insured Risk so as to render the Premises substantially unfit for the occupation and use of the Tenant or (having regard to the nature and location of the Premises and the normal means of access) substantially inaccessible, then:

- (a) except where the damage has been caused by the negligent act or omission of the Tenant or of any servant agent licensee invitee customer or visitor of the Tenant or of any sub-Tenant licensee or other occupier claiming by through or under the Tenant:
  - (i) A proportionate part of the Rent and other moneys payable under this Lease according to the nature and extent of the damage sustained; abates and all or any remedies for recovery of that proportionate part of the Rent and other moneys falling due after the damage are suspended until the Premises have been restored or made fit for the occupation and use of the Tenant or accessible to the Tenant as the case may be;
  - (ii) Within fourteen (14) days of the Premises being rendered unfit or inaccessible, the Tenant may serve on the Landlord written notice that the Premises have been rendered unfit or inaccessible (a **Damage Notice**) and unless within the period of thirty-one (31) days after being served with a Damage Notice, the Landlord serves written notice on the Tenant that the Landlord will restore the Premises or make them fit for the occupation and use of or render them accessible to the Tenant (a **Restoration Notice**), the Tenant may (not before the expiration of the period of thirty-one (31) days and not after the expiration of the period of seventy-five (75) days from the date of service of the Damage Notice on the Landlord) terminate this Lease by notice in writing to the Landlord;
  - (iii) If the Landlord gives a Restoration Notice to the Tenant and does not within a reasonable time substantially commence and diligently proceed to restore the Premises or make them fit for the occupation and use of or render them accessible to the Tenant, the Tenant may serve on the Landlord notice of intention to terminate this Lease and unless the Landlord upon receipt of that notice proceeds with reasonable expedition and diligence to restore the Premises or make them fit for the occupation and use of or render them accessible to the Tenant as the case may require, the Tenant may terminate this Lease by giving not less than one (1) month's notice in writing to the Landlord and at the expiration of the last mentioned notice this Lease terminates;
- (b) if in the Landlord's sole opinion the damage to the Premises or the Building is such that it is impractical or undesirable to restore the Premises or make them fit for the occupation and use of the Tenant or render them accessible to the Tenant, the Landlord may terminate this Lease by giving not less than one (1) month's notice in writing to the Tenant and at the expiration of that notice this Lease terminates;
- (c) liability attaches to the Landlord by reason of termination of this Lease under para. (a) or (b) of this clause, and otherwise any termination is without prejudice to the rights of either party in respect of any antecedent breach or non-observance of any covenant or provisions of this Lease.

#### 13.2 Wholly Unfit or Totally Inaccessible

If the Building or the Premises are taken for any public purpose or are destroyed or so damaged that the Premises are rendered **wholly** unfit for the occupation and use of the Tenant or totally inaccessible:

- (a) The Landlord may notwithstanding anything contained or implied in this Lease terminate this Lease by giving not less than one (1) month's notice in writing to the Tenant and at the expiration of that notice this Lease terminates and no liability attaches to the Landlord by reason of the termination;
- (b) Except where the destruction or damage has been caused or contributed to by the negligent act or omission of the Tenant or of any servant agent licensee invitee customer or visitor of the Tenant or

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of any sub-Tenant licensee or other occupier claiming by through or under the Tenant, the Tenant may terminate this Lease by giving not less than one (1) month's notice in writing to the Landlord and at the expiration of that notice this Lease terminates;

- (c) Any termination under para. (a) or (b) of this clause is without prejudice to the rights of either party in respect of any antecedent breach or non-observance of any covenant or provision of this Lease.

**13.3 Resolution of Disputes**

Any dispute arising under cl. 13.1 or 13.2 will be determined by a member of the Australian Property Institute (QLD Division) or its successor appointed by the President for the time being of that institute on the application of the Landlord or the Tenant. The person so appointed will in making his determination act as an expert and not as an arbitrator and his determination will be final and binding on both Parties. The cost of the determination will be borne by either or both of the Parties (and if by both of the Parties in the proportion between them) as the person making the determination decides.

**14. BUILDING**

**14.1 Repairs to Building**

The Landlord may whenever the Landlord deems fit alter add to or increase the height or elevation of the Building or effect repairs to it or to any part of it (including the Premises) for any purpose but in particular for further stages of any development that includes the Building in any manner the Landlord may think fit the alterations additions or repairs to be carried out in a reasonable manner. The Landlord or any person or persons authorised by the Landlord may at any time enter upon the Premises for the purpose of making alterations or additions or repair.

**14.2 Use of Pipes**

The Landlord is entitled to the free and uninterrupted passage and running of water sewerage gas electricity telephone and other services and supplies from and to any adjoining property owned by the Landlord in and through the Pipes which now are or may during the term of this Lease be in under or over the Premises AND is entitled at reasonable times and upon reasonable notice of no less than 2 Business Days (except in cases of emergency) to enter (or in cases of emergency to break and enter) the Premises to construct and to maintain in or under or over the Premises any Pipes for the benefit of any adjoining property owned by the Landlord.

**14.3 Grant of Easements**

The Landlord expressly reserves the right for the purpose of providing reasonable public or private access to or egress from the Building or any other land adjacent or near to the Building (the **Adjacent Land**) or the support of structures erected or to be erected on the Adjacent Land or provision of services (including water drainage gas electricity telephonic and electronic communications) to the Building or to the Adjacent Land to enter into any arrangements or agreements with any of the owners tenants or occupiers of the Adjacent Land or with any public or other authority and for those purposes may dedicate transfer grant or create easements over the Building in favour of those persons and/or authorities and upon whatever terms and conditions the Landlord thinks fit. The estate or interest of the Tenant under this Lease is deemed to be subject to these arrangements or agreements but the Landlord in exercising the rights reserved by this clause will not enter into any arrangement or agreement or dedicate transfer grant or create any easement right or privilege in favour of any person which substantially and permanently derogates from the enjoyment of the rights conferred on the Tenant by this Lease.

**15. BUILDING MANAGEMENT**

**15.1 Managing Agent**

The Landlord may from time to time appoint a managing agent to manage the Building and any managing agent so appointed will represent the Landlord in all matters relating to this Lease except in so far as the Landlord otherwise in writing directs but any communication from the Landlord to the Tenant will to the extent of any inconsistency supersede any communication from the managing agent.

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**16. GENERAL**

**16.1 Time to be of the Essence**

Time is essential for all obligations of the Tenant in this Lease. The Tenant indemnifies the Landlord against all losses costs and expenses which the Landlord may sustain or incur as a consequence of any failure by the Tenant to perform and observe on the due date any obligations on its part contained or implied in this Lease.

**16.2 Entire Agreement**

The terms and conditions set out in this Lease contain the entire agreement as concluded between the Parties notwithstanding any negotiations or discussions prior to the execution of this Lease and notwithstanding anything contained in any brochure report or other document prepared by the Landlord for submission to potential tenants of the Building. The Tenant also acknowledges that it has not been induced to enter into this Lease by any representation verbal or otherwise made by or on behalf of the Landlord which is not set out in this Lease.

**16.3 Negating of Moratorium**

To the fullest possible extent the provisions of all statutes now existing and subsequently to come into force and operating directly or indirectly to lessen or otherwise modify or vary or affect in favour of the Tenant the obligations of the Tenant or to stay postpone or otherwise prevent or prejudicially affect the exercise by the Landlord of all or any of the rights powers and remedies conferred on the Landlord by this Lease are hereby expressly negated and excluded from this Lease.

**16.4 New Guarantor**

Within fourteen (14) days of the death of any Guarantor during the term of this Lease or of any Guarantor becoming bankrupt or having a receiving order made against him or becoming insane or being a company passing a resolution to wind up or entering into liquidation or having a receiver appointed, the Tenant will give notice of this to the Landlord and if so required by the Landlord at the expense of the Tenant within twenty eight (28) days procure some other person acceptable to the Landlord to execute a guarantee in respect of the Tenants obligations contained in this Lease in the form of the Guarantor's covenants which are contained in this Lease or in any guarantee separate from this Lease.

**16.5 Inspection by Purchaser or Tenant**

The Tenant will:

- (a) Allow the Landlord to exhibit on the Premises notices advertising the Building for sale, in locations to be agreed by the Parties (each acting reasonably);
- (b) At all reasonable times permit the Landlord to show the Premises to prospective purchasers; and
- (c) Within the six (6) month period immediately preceding the expiration of the term granted by this Lease, where the Tenant has not exercised an option to renew for a further term commencing on the expiration of the then current term, permit the Landlord to show the Premises to prospective tenants at all reasonable times and allow the Landlord to affix and exhibit on the Premises where the Landlord thinks fit the usual 'To Let' notices. In each case the notices may display the name and address of the Landlord and its agents.

The Tenant will not remove any notice without the prior written consent of the Landlord.

**16.6 Modification of Implied Covenants**

The obligations and powers implied in leases by ss. 105 and 107 of the *Property Law Act 1974* are negated. All other covenants on the part of the Tenant implied by the *Property Law Act 1974* are not negated but are modified to the extent of any inconsistency with the provisions of this Lease.

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16.7 Notices

Unless otherwise stated any notice given by the Landlord is deemed to be duly given and served on the Tenant if signed by the Landlord or the solicitors for the Landlord or if the Landlord is a corporation then by any officer of or the solicitors for the Landlord and delivered to the Tenant (or if more persons than one are Tenants under this Lease then to any one or more of them) via prepaid post to **49 Chetwynd Street, Loganholme QLD 4129**, with a copy to be emailed to **jeff@civforce.com.au**. Any notice by the Tenant to the Landlord must be signed by the Tenant and must be given or served in the manner prescribed by s.347 of the *Property Law Act 1974*.

16.8 Holding Over

If the Tenant with the consent of the Landlord remains in occupation of the Premises after the expiration of the term of this Lease then:

- (a) the Tenant will be tenant from month to month from the Landlord of the Premises on the terms of this Lease so far as they are applicable to a monthly tenancy;
- (b) the monthly tenancy may be determined by either party on one month's notice to the other Party, such notice expiring at any time; and
- (c) the rent payable in respect of the monthly tenancy will be the amount of Rent payable monthly under this Lease immediately prior to the expiration of the term and will be payable in advance.

16.9 Severability

If it is held by a Court of competent jurisdiction that:

- (a) any part of this Lease is void voidable illegal or unenforceable; or
- (b) this Lease would be void voidable illegal or unenforceable unless any part of this Lease was severed;

that part will be severable from and will not affect the continued operation of the rest of this Lease.

17. TRUSTS

17.1 Trusts

If the Tenant at any time upon or subsequent to 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 (the **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, and 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) Notwithstanding anything in any deed of trust or settlement or other document contained, the Tenant will be and **at all** times remain personally liable to the Landlord for the due performance fulfilment and observance of the obligations in this Lease;
- (d) During the currency of this Lease the Tenant will not without the consent in writing 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;

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- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust;
- (iv) any resettlement of the trust property.

The Tenant further covenants with the Landlord that it will be an event of default 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.

**18. OPTION**

**18.1 First Option to Renew**

If the Tenant:

- (a) between six (6) and three (3) months prior to the expiration of this Lease gives written notice to the Landlord that it wishes to renew this Lease; and
- (b) is not at the time of notice in breach of any obligation under this Lease, such breach having been notified by the Landlord to the Tenant;

then the Landlord will grant to the Tenant a further lease of the Premises on the following conditions:

- (c) the term of the further lease will be the period referred to in **Item 5** of the Appendix;
- (d) the rent for the first year of the further term will be determined in accordance with cl. 2.2(b) as if that year were a continuation of the term of this Lease and the date of commencement of the further term were a Review Date;
- (e) the terms and conditions will be the same as the terms and conditions of this Lease except for the changes specified in the Modification Schedule at the end of this clause; and
- (f) the Tenant will pay all costs of the Landlord including the legal costs of the Landlord calculated on a solicitor and own client basis of and incidental to the grant of the new lease.

**Modification Schedule**

- A. This cl. 18.1 will be deleted.

**18.2 New Guarantee**

If at the date of exercise of the option contained in cl. 18.1 the obligations of the Tenant under this Lease are the subject of guarantee or indemnity the Tenant must:

- (a) procure the persons who provided the guarantee or indemnity to provide another in respect of the lease for the option period on the same terms apart from necessary changes; and
- (b) produce the properly executed valid and enforceable guarantee or indemnity to the Landlord within thirty (30) days after the Landlord provides to the Tenant the documentation for the new guarantee or indemnity for the option period.

The time limit referred to in cl 18.1(a) is essential. If the Tenant fails to comply with the time limit the Landlord may terminate the new lease for the option period by notice in writing to the Tenant

**18.3 Second Option to Renew**

If the Tenant:

- (a) between six (6) and three (3) months prior to the expiration of this Lease gives written notice to the Landlord that it wishes to renew this Lease; and

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- (b) is not at the time of notice in breach of any obligation under this Lease, such breach having been notified by the Landlord to the Tenant;

then the Landlord will grant to the Tenant a further lease of the Premises on the following conditions:

- (c) the term of the further lease will be the period referred to in **Item 6** of the Appendix;
- (d) the rent for the first year of the further term will be determined in accordance with cl. 2.2(b) as if that year were a continuation of the term of this Lease and the date of commencement of the further term were a Review Date;
- (e) the terms and conditions will be the same as the terms and conditions of this Lease except for the changes specified in the Modification Schedule at the end of this clause; and
- (f) the Tenant will pay all costs of the Landlord including the legal costs of the Landlord calculated on a solicitor *and* own client basis of and incidental to the grant of the new lease.

**Modification Schedule**

A. This cl. 18.3 will be deleted.

**18.4 New Guarantee**

If at the date of exercise of the option contained in cl. 18.3 the obligations of the Tenant under this Lease are the subject of guarantee or indemnity the Tenant must:

- (a) procure the persons who provided the guarantee or indemnity to provide another in respect of the lease for the option period on the same terms apart from necessary changes; and
- (b) produce the properly executed valid and enforceable guarantee or indemnity to the Landlord within thirty (30) days after the Landlord provides to the Tenant the documentation for the new guarantee or indemnity for the option period.

The time limit referred to in cl 18.3(a) is essential. If the Tenant fails to comply with the time limit the Landlord may terminate the new lease for the option period by notice in writing to the Tenant.

**19. POWER OF ATTORNEY**

Intentionally deleted.

**20. TERMINATION OF LEASE**

**20.1 Yield Up**

The Tenant will at the expiration or sooner determination of the term of this Lease yield up the Premises in the order and condition described in Clause 5. The Landlord and the Tenant agree that the condition of the demised premises at the date of this Lease is as described in **Item 8** of the Reference Schedule.

**20.2 Remove Fittings**

If the Tenant does not do so as of right under the provisions of cl. 6.5 the Tenant will if so required by the Landlord remove from the Premises within fourteen (14) days from the expiration or sooner determination of the term of this Lease all fixtures fittings floor coverings signs and notices or contents of every description erected or installed by the Tenant and requested to be removed by the Landlord and will make good any damage caused to the Building by the removal (fair wear and tear excepted) and if required by the Landlord will re-alter any alterations made by the Tenant so that the Premises are converted back to their original layout. If the Tenant fails to do so, the Landlord may at its option itself cause the fixtures fittings floor coverings signs and notices or contents to be removed and to be stored in a public warehouse or elsewhere at the risk of the Tenant and any damage to be made good (fair wear and tear excepted) and any alterations to be re-altered and may recover the reasonable costs of removal storage making good and/or re-alterations from the Tenant as a liquidated debt payable on demand. The Landlord and the Tenant must use reasonable

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endeavours to meet at the Premises prior to the expiry of this Lease, or within fourteen (14) days from the sooner determination of the term of this Lease, for the purpose of agreeing the scope of removal of property from the Premises.

**20.3 Abandoned Fittings**

Any fittings or fixtures not removed by the Tenant under cl. 6.5 and cl. 20.2 will be deemed abandoned by the Tenant and will be and become the property of the Landlord. Nothing contained in this clause relieves the Tenant from, and except where the Landlord agrees in writing to the contrary the Tenant will be liable to the Landlord for, the reasonable cost and expense of and associated with any removal by the Landlord of fittings and fixtures not removed by the Tenant from the Premises and the cost and expense of and associated with the making good of any damage to the Premises caused by that removal by the Landlord (fair wear and tear excepted).

**20.4 Stock-in-Trade**

The Tenant will remove from the Premises all stock-in-trade and other movable chattels prior to the expiration of the term of this Lease except that if this Lease is determined prior to the due date of expiry by effluxion of time the Landlord will if requested so to do by the Tenant allow the Tenant its servants and contractors access to the Premises for the 14 days next following the date of determination between the hours of 9.00am and 5.00pm for the purpose of removing stock-in-trade and movable chattels from the Premises. If the Tenant fails to remove stock-in-trade or chattels as mentioned in this clause the Landlord may at its option:

- (a) cause the stock-in-trade or chattels to be removed and stored in a public warehouse or elsewhere at the risk and at the reasonable cost of the Tenant; or
- (b) treat the stock-in-trade or chattels as if the Tenant had abandoned its interest in them and deal with them in any manner the Landlord thinks fit.

The Tenant indemnifies the Landlord in respect of any damage done to the Premises or to the Building in or about the removal of stock-in-trade or chattels by the Tenant its servants or contractors (other than fair wear and tear) and also in respect of any costs incurred by the Landlord in the removal and storage of them and also in respect of all claims demands actions costs judgments and expenses which the Landlord may suffer or incur at the suit of any person (other than the Tenant) claiming an interest in the stock-in-trade or chattels by reason of the Landlord acting in accordance with this clause.

**20.5 Removal of Signs**

At the expiration or earlier determination of this Lease the Tenant will remove or clean off any advertising or other sign advertisement or hoarding painted erected or placed on or in the Premises by the Tenant and restore the Premises to the condition they were in immediately before the advertisement sign or hoarding was painted, erected or set up by the Tenant, fair wear and tear excepted.

**21. SECURITY**

**21.1 Bond**

- (a) Prior to entering possession of the Premises, the Tenant will pay to the Landlord the sum set out in **Item 9** of the Appendix as a cash bond for the due observance and performance by the Tenant of all the covenants and provisions contained in this Lease.
- (b) If at any time the Tenant fails to observe and perform any of the Tenant's covenants and provisions in this lease, the Landlord may, in its discretion at any time, appropriate to itself absolutely all or any part of the cash bond or bonds or call up any guarantee or guarantees as may be necessary in the reasonable opinion of the Landlord to compensate the Landlord for any loss or damage suffered by the Landlord by reason of that failure. Any appropriation or calling up by the Landlord will not constitute a waiver of that failure and will not prejudice any other right or remedy of the Landlord in respect of it.

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- (c) If the whole or any part of the cash bond or bonds are appropriated or any guarantee or guarantees are called up by the Landlord and this Lease remains on foot, the Tenant will promptly upon demand by the Landlord pay to the Landlord the amount so appropriated or called up to be held as a cash bond in accordance with this clause.
- (d) If the Landlord's interest in the Premises is assigned or transferred, the Landlord may pay or transfer the bond or bonds less all sums appropriated by it in accordance with this clause to the assignee or transferee, provided that the assignee or transferee enters into a covenant with the Tenant in which the assignee or transferee agrees to comply with all of the Landlord's obligations under this Lease. Upon payment or transfer, the Landlord will be discharged from all liability to the Tenant or to any other person in respect of the bond or bonds.

21.2 Bank Guarantee

- (a) If the Tenant wishes to pay the bond by bank guarantee then the Tenant shall lodge with the Landlord prior to the date of commencement of this Lease an unconditional and irrevocable bank guarantee hereinafter called "the Bank Guarantee" for the amount set out in **Item 9** of the Appendix as security against any loss or damage which the Landlord may sustain by reason of the failure on the part of the Tenant to observe and perform any of the terms, covenants and conditions of this Lease including those of the negative kind.
- (b) The Landlord shall be entitled to but not obliged to draw against the bank guarantee to satisfy any such damage or loss from time to time. The Landlord's other rights shall not be affected by any such drawing.
- (c) If the Landlord does draw against the bank guarantee it may notify the Tenant that it has done so in which case within a reasonable time of such notification the Tenant must reinstate the guarantee to its original value.
- (d) Upon the Tenant vacating the premises and the Tenant not being indebted to or otherwise liable to the Landlord for breach of this Lease then the Landlord will deliver up and consent to the discharge of the bank guarantee.
- (e) If the Landlord transfers its interest in the demised premises, then provided that the assignee or transferee enters into a covenant with the Tenant in which the assignee or transferee agrees to comply with all of the Landlord's obligations under this Lease, it may:-
  - (i) either assign to the Transferee the benefit of the bank guarantee in which case after doing so and notifying the Tenant of the fact the Landlord will be discharged from all further liability to the Tenant or any other person with respect to the bank guarantee; or
  - (ii) if the Bank Guarantee is not capable of assignment the Landlord may in exchange for release by the Landlord of the existing Bank Guarantee require the Tenant to provide a replacement Bank Guarantee in favour of the Transferee (as Landlord) within a reasonable time from the request by the Landlord, at the Landlord's cost.

22. SPECIAL CONDITIONS

22.1 Lessor's Property/Fixtures

The Tenant shall keep the interior of the premises and all fixtures and fittings provided by the Landlord (which fixtures and fittings are described in **Item 11** of the Appendix herein) in good repair (subject to fair wear and tear and Insured Risks) and at the expiration or sooner determination of the Lease shall yield up the Premises and the fixtures and fittings of the Landlord in the repair required by this Lease. Nothing in this clause shall require the Tenant to maintain and repair the premises to a better condition than they were in at the commencement of the Lease.

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**22.2 Building Structure**

During the term of the Lease, the Landlord must use reasonable endeavours to maintain the structure of the Premises or of the Building and all building services and structures of a capital nature while using its best endeavours to ensure the Premises is weatherproof and watertight at all times.

**22.3 Condition Precedent**

Intentionally deleted

**22.4 Tenant's Fitout / Access Period**

- (v) The provisions of clauses 4.11, 4.16, 4.24 and 6.1 of this Lease specifically apply to any works carried out by the Tenant or the Tenants contractors prior to the commencement of the term of this Lease.
- (vi) Irrespective of the commencement date of the Lease noted in the Form 7 the parties specifically covenant and agree that the provisions of this lease, with the exception of the obligation to pay rent (excluding the first month's rent) apply from the date of occupation and the Tenant shall be responsible for outgoings on and from the date of access under this clause and the licence hereby created.
- (vii) The Tenant and the Tenant's approved contractors shall be licensed to enter upon and the demised premises with all necessary materials and appliances for the purpose of erecting and installing approved works as from the date set out in **Item 10** of the Appendix or such earlier date as the Landlord and Tenant may mutually agree upon in writing.
- (viii) If the Tenant or his contractors require access to the demised premises outside of normal working hours it shall be the responsibility of the Tenant or his contractors to obtain the consent of the Landlord and to pay to the Landlord any additional expenses which the Landlord may thereby incur.
- (ix) The Tenant shall at the option of the Landlord either repair and make good any damage which may be caused to the Centre either directly or indirectly as a result of the erection and installation of the works to the satisfaction of the Landlord or alternatively shall reimburse the Landlord as the case may require upon demand the costs incurred by the Landlord in having such damage made good by the Landlord's own contractors.
- (x) The Tenant shall indemnify and at all times hold indemnified the Landlord from and against all claims demands actions suits judgements orders decrees damages costs losses (including loss of rents) and expenses of every description which the Landlord may suffer or incur in connection with or arising directly or indirectly from the erection and installation of works by the Tenant or the Tenants contractors and to that end the Tenant shall insure in the name of the Landlord and Tenant against fire and all extraneous risks and public risk in an amount of not less than FIVE MILLION DOLLARS (\$5,000,000.00) during the course of construction of such works.
- (xi) Unless the Landlord shall otherwise consent in writing all shelving display counters show cases furniture and furnishings installed by the Tenant or the Tenants contractors shall be newly constructed by qualified tradesmen of high quality materials and shall not have been previously used in any other location.
- (xii) If the Tenant or any contractor or workman employed by the Tenant shall commit any breach of any of the provisions of this Lease the Landlord may revoke the licence to enter hereby granted or alternatively at his option revoke the licence to enter in respect of any particular person who may have acted in breach of any of such provisions.

**22.5 Make good**

The Tenant must, prior to the expiration or sooner determination of the Lease, make good the Premises to the satisfaction of the Landlord (acting reasonably), including but not limited to repainting and re-carpeting of the Premises, servicing of all air-conditioning machinery and roller doors and clean and maintain all floors

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(making good any floor penetrations), gardens, yard and hardstand, to a standard no less than as provided in the Condition Report as noted at the Commencement Date of the Lease.

**22.6 Local Authority Approval**

22.6.1 Notwithstanding anything to the contrary contained herein, the Landlord makes no warranty in relation to the Tenant's Permitted Use of the Premises.

**22.7 Rent in advance/Rent Deposit**

The Tenant must pay to the Landlord either prior to the Commencement Date or upon execution of the Lease one (1) month's Rent plus GST which shall be applied toward the first months' Rent, being \$5,500.00.

**22.8 Landlord's Works**

Intentionally deleted.

**22.9 Tenant's Works**

The Lessee must obtain the prior written approval of the Lessor for any works, alterations and additions proposed to be undertaken at the property. All works must be undertaken by certified tradespersons and if appropriate, be approved building work under the Building Act.

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**CONDITION REPORT**

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**. SURVEY PLAN**

Not Applicable

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DEED OF GUARANTEE AND INDEMNITY

In consideration of **DOUGLAS NEARY, MAVIS JOAN NEARY, MARK ADAM NEARY AND DEBRA FAYE NEARY AS TRUSTEE UNDER INSTRUMENT 712466927** (hereinafter called "the Lessor") entering into a Lease dated the ..... day of ....., 2019 in respect of the Premises described as **33 DULWICH STREET, LOGANHOLME QLD 4129** (hereinafter called "the Lease") with **CIVFORCE TRAFFIC MANAGEMENT PTY LTD A.C.N. 141 899 952** (hereinafter and in the Lease called "the Lessee") at the request of **JEFFREY WALTER TRIM** (hereinafter called "the Guarantor") which expression shall extend to and include his, her or their executors, administrators, successors and assigns which request is evidenced by the execution by the Guarantor of these presents the Guarantor hereby undertakes and agrees with the Lessor as follows:

1. The Lessee shall at all times punctually discharge all its obligations under the Lease or arising as a result of the Lessee remaining in possession of the Premises said pursuant to the Lease after expiry or termination of the Lease whether with or without the consent of the Lessor including (without limiting the generality of the foregoing) its obligations to pay Rent and other money to the Lessor and any obligation to indemnify the Lessor.
2. The Guarantor will indemnify the Lessor on demand against and in respect of:
  - (a) any loss, damages, costs or expenses sustained or incurred by the Lessor in consequence of any failure on the part of the Lessee punctually to discharge any obligation mentioned in clause 1 hereof;
  - (b) any liability of the Lessor arising directly or otherwise from such a failure on the part of the Lessee and any costs and expenses incurred by the Lessor in respect of such liability whether in proceedings to establish the same or otherwise.
3. Without in any way limiting or otherwise affecting the liability under clause 2 hereof the Guarantor undertakes to pay to the Lessor on demand in the event of a failure on the part of the Lessee punctually to discharge any obligation mentioned in clause 1 hereof the sum (whether Rent or otherwise) necessary to discharge such obligation.
4. If any moneys paid by the Guarantor to the Lessor pursuant to the provisions hereinbefore contained are subsequently recovered by the Lessor from any other person then the Lessor shall as soon as is reasonably practicable following the receipt by it of such moneys provided there shall not then be any debt or damages due by the Guarantor to the Lessor refund to the Guarantor the moneys so recovered after deducting therefrom all costs paid or payable by the Lessor in connection with the collection of such moneys.
5. Notwithstanding that as between the Guarantor and the Lessee the Guarantor may be a surety only nevertheless in any proceedings in which the liability of the Guarantor to the Lessor is in issue:
  - (a) the Guarantor shall be deemed to be principal debtor and contractor jointly and severally liable with the Lessee to discharge the obligations mentioned in clause 1 hereof;
  - (b) the Guarantor shall not be entitled to raise any defence based upon an allegation (express or implicit) that its position as against the Lessor is that of a guarantor or surety.
6. The obligations of the Guarantor under these presents shall remain in full force and effect until the obligations of the Lessee under the said Lease (including the obligation to pay money and to indemnify the Lessor) have been fully discharged and satisfied and (without limiting the generality of the foregoing) shall not be abated, suspended, abrogated, varied or affected by:
  - (a) the re-entry or determination by the Lessor of the said Lease;
  - (b) the granting to the Lessee of any time or other indulgence or the granting of any concession or the waiver of the Lessors rights with respect to any failure by the Lessee to observe or perform any of

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its obligations under the said Lease or the postponing for any time or from time to time of the exercise of any power or remedy conferred upon the Lessor by the said Lease;

- (c) any variation in the respective obligations and liabilities of the parties to the said Lease (including any variation in the Rent payable thereunder) whether made with or without the knowledge or consent of the Guarantor;
  - (d) any change in the positions inter se of the Lessee and the Guarantor whether or not notice of such change is given to the Lessor or any assignment or purported assignment of its interest by the Lessee;
  - (e) the Lessee entering into liquidation or suffering a winding up order to be made or an official manager or provisional liquidator to be appointed or being subjected to any other order or statutory provision having the effect of restricting or deferring claims by its creditors.
  - (f) any disclaimer of the said Lease purporting to be effected in the course of liquidation of the Lessee;
7. The obligation of the Guarantor under these presents shall not be affected by any negligence or laches on the part of the Lessor in enforcing its rights or by the release or loss of any security held by the Lessor or by the Lessor's discharging or releasing any other guarantor.
8. The Guarantor hereby waives all or any of its rights as surety (legal, equitable, statutory or otherwise) which may at any time be inconsistent with any of the provisions of these presents.
9. Should any obligation on the part of the Lessee mentioned in clause 1 hereof be for any reason wholly or partly invalid, illegal or unenforceable as against the Lessee those circumstances shall not affect the obligations of the Guarantor hereunder and the Guarantor undertakes to pay such sums to the Lessor as would be payable were there no such invalidity, illegality or unenforceability.
10. If the Guarantor consists of more than one person these presents shall be and remain of full force and effect as against such of the guarantors as have executed these presents notwithstanding that these presents shall not have been executed by any one or more of them nor by any person other than the Guarantor.
11. The obligations of the Guarantor hereunder shall not merge or be deemed to have merged in any judgment or order obtained by the Lessor against the Lessee and the Guarantor shall remain liable to the Lessor in terms of these presents notwithstanding that the Lessor may in the meantime obtain any judgment against the Lessee.
12. In the event of the Lessee entering into any assignment for the benefit of its creditors or into liquidation or official management or any other situation in which its creditors are entitled or required to lodge a proof of their claims the following provisions shall apply until such time as the Lessor has received payment in full of all moneys which are or may become due to the Lessor under these presents:
- (a) the Guarantor shall not (nor if more than one shall any of them) without the prior consent in writing of the Lessor lodge any proof of debt or similar claim whether in respect of its obligations under these presents or any other liability contingent or otherwise;
  - (b) the Guarantor shall not (nor if more than one shall any of them) without the prior consent in writing of the Lessor enforce or attempt to enforce any security held by the Guarantor (or if more than one any of them) in respect of the obligations of the Lessee but shall hold in trust for the Lessor any rights or benefits arising from any such security;
  - (c) the Guarantor (and if more than one each of them) shall if so required by the Lessor lodge a proof of debt or enforce any such security and do all such acts and things as the Lessor may require to obtain the benefits of any such proof claim or security for the Lessor;

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- (d) the Guarantor shall not (nor if more than one shall any of them) claim the benefit or seek to require the transfer of any guarantee or security which may be held by the Lessor in respect of the moneys or obligations which are guaranteed by these presents;
  - (e) the Guarantor shall pay to the Lessor all moneys received by the Guarantor for the credit of the Lessee and which the Lessor may be obliged to remit to any trustee official manager, liquidator or any other person.
13. Any payment made by the Lessee to the Lessor in pursuance of the said Lease which is void or avoided by any statutory provision shall be deemed not to have discharged the Guarantor's liability in respect thereof and in any such event the parties shall be restored to the rights which each of them respectively would have had if the payment had not been made.
  14. The Guarantor warrants that the Guarantor has full and unrestricted power to enter into this Guarantee and Indemnity and to execute these presents and that it is not necessary to obtain the prior licence or authority of any other person to execute these presents.
  15. If any provision of these presents be or be held to be invalid, void or unenforceable from any cause whatsoever the same shall not in any way prejudice or affect the validity or enforceability of the remaining provisions of these presents.
  16. Any moneys payable by the Guarantor to the Lessor pursuant to the provisions of these presents shall be paid to the Lessor at Southport or at such other place in Queensland as the Lessor may from time to time direct.
  17. Any proceeding in respect of any cause of action arising under these presents shall be instituted and determined before a Court of competent jurisdiction selected by the Lessor and the Guarantor shall submit to the jurisdiction of such Court and these presents shall be construed according to the laws of the State of Queensland.
  18. A certificate signed by a Member, Manager or the Secretary for the time being of the Lessor as to any sum payable to the Lessor pursuant to these presents as at the date set out in such certificate with or without particulars thereof shall for all purposes be accepted as prima facie evidence of the amount due to the Lessor.
  19. Any notice or demand in writing requiring to be given by the Lessor to the Guarantor may be signed on behalf of the Lessor by any of its officers described in the last preceding clause or by its solicitors or by any person authorised in writing by the Lessor for that purpose and may without prejudice to any other mode of delivery be served upon the Guarantor by delivering it to his residential address or to his principal place of business (or if there be more than one Guarantor to their respective residential addresses or to their respective principal places of business) last known to the Lessor or by posting the same by pre-paid registered or certified mail service addressed to the Guarantor or Guarantors at such residential address or addresses or principal place or places of business and any notice or demand posted as aforesaid shall be deemed to have been given on the day (other than a Saturday, Sunday or Public Holiday) next following the day upon which the same was posted.
  20. The Guarantor shall pay to the Lessor upon demand its costs of and incidental to the preparation execution and stamping of these presents together with all stamp duties paid or payable by the Lessor on these presents or arising from the transaction evidenced by these presents together with its costs of and incidental to the enforcement or attempted enforcement by the Lessor of any of its rights under these presents.
  21. In the event of any assignment or transfer of the rights and obligations of the Lessor under the reversion of the said Lease the rights of the Lessor hereunder shall (whether or not there is any express assignment of the same) be deemed to be assigned to the assignee and the Guarantor shall execute all such documents and do all such acts as may be reasonably required of them to perfect such assignment.
  22. The Guarantor agrees that in the event that the Lessee enters into a further Lease in relation to the Premises said under the Lease whether as a result of the exercise of any option contained in the Lease

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or otherwise then the Guarantor at the request of the Lessor whether in conjunction with or subsequent to the execution of such further Lease shall execute and deliver a Guarantee and Indemnity in relation to such further Lease in the same terms and conditions contained herein.

- 23. If the Guarantor consists of more than one person the obligations of each such person are joint and several.
- 24. Whenever the singular number is used herein it shall wherever necessary mean and include the plural number and words importing one gender shall wherever necessary mean and include any of the other genders.
- 25. The expression "the Lease" wherever it is used in this Deed includes:-
  - (a) any Lease granted in substitution for the Lease first described in this Deed and;
  - (b) any Agreement or Deed extending the term of the Lease first described in this Deed and;
  - (c) any Lease granted as a result of the exercise of any option contained in the Lease first described in this Deed.
- 26. Notwithstanding anything to the contrary contained in this Deed of Guarantee and Indemnity, the Guarantor's liability shall be limited to the monetary amount equivalent to the Rent and Outgoings due and payable for the balance of the term following the date the Lease is determined and/or terminated and/or repudiated (without deduction whatsoever). For clarity, this clause 26 does not limit the form/type of damages recoverable from the Guarantor, rather it limits the monetary amount recoverable from the Guarantor.

IN WITNESS WHEREOF the Guarantor has hereunto executed these presents the 26<sup>th</sup> day of SEPTEMBER 2019.

Executed by JEFFREY WALTER TRIM in the )  
presence of: )  
)

  
Signature of Witness  
MINHO PARK  
Name of Witness (please print)

  
JEFFREY WALTER TRIM