

IMPORTANT INFORMATION

Registering your lease in Victoria

There is no obligation to register a Lease in Victoria. This is because a tenant's interests in the land is protected by s. 42(2)(e) of *Transfer of Land Act* in the event the property is sold. If you do wish to register the Lease, you can do so by lodging the following documents with the Victorian Department of Lands:-

1. The signed Lease;
2. Certificate of Title; and
3. Lease Form L. This form can be downloaded from the Victorian Department of Lands here:

http://www.dse.vic.gov.au/__data/assets/pdf_file/0005/103865/Lease_Form_L.pdf

This is not a definitive guide to registering your Lease. You can obtain more information about registering your Lease in Victoria by calling the Department of Lands in Victoria on 136 186.

This page is for informational purposes only and should not form part of your Lease.

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This Commercial Lease is suitable for use with Business premises that are used primarily for **wholesaling, manufacturing or storage**, are not “retail premises” and are not covered by the *Retail Leases Act 2003 (Vic) (the Act)*.

If the premises are “*retail premises*” the Act applies; if premises are not “retail premises” the Act does not apply.

If you are not sure whether the business premises are *Retail* premises, Section 4 of the Act defines “retail premises” as premises used or to be used wholly or predominantly for “the sale or hire of goods by retail or the retail provision of services”.

Recent case law in Victoria has widened the scope of the Retail Leases Act and now it seems that most tenants, who provide any sort of service, engage in the “retail provision of services” come under the Act.

Some examples of retail premises are:

- retail shops that sell merchandise;
- bars, nightclubs, cafes and restaurants;
- service stations, mechanical repair workshops and hire car outlets;
- fitness centres and gymnasiums;
- equipment hire shops;
- credit unions, banks and post offices;
- hotels, motels and other accommodation;
- beauty and nail salons, hairdressers;
- alternative health and massage therapists;
- medical centres, law firms;
- accounting and financial service providers; and
- architects and surveyors offices.

We could expand on this list but the basic understanding is that retailing requires that an item or service is provided ‘to an ultimate consumer for a fee or reward’.

We’ll leave it up to you to decide whether you need a retail or commercial lease.

You can still use this lease agreement in a retail situation but the landlord will also need to provide the tenant with a [Landlords Disclosure Statement](#).

Still not sure or need some guidance - give us a call on 0266725904 anytime.

COMMERCIAL PROPERTY LEASE AGREEMENT

Between

[..My Penguin SMSF.....]

LANDLORD

And

[..Always Full Throttle...]

TENANT

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COMMERCIAL LEASE AGREEMENT

With guarantee and indemnity

This Agreement is made on the 1st day of June, 2020.

The Landlord leases to the Tenant the Premises for the Term of the Lease and at the rent and on the conditions set out in this Agreement, together with necessary access over any Common Areas.

The Guarantor, if any, agrees to be bound by his or her obligations set out in this Agreement.

SCHEDULE

Item 1	Landlord	My Penguin SMSF 5/1a Somme Parade, Edithvale ACN – 67 104 278 721 Phone No – N/A E-mail craig@mypenguin.net.au. The Landlord is registered for Goods and Services Tax (GST)
Item 1A	Landlord's Agent	N/A N/A ABN – 0 Phone No – E-mail [email address].
Item 2	Tenant	Always Full Throttle 1/2 Malibu Circuit, Carrum Downs ABN – 37981318340 Phone No – E-mail craig@alwaysfullthrottle.com.au.
Item 3 (cl35)	Guarantor	N/A [insert guarantor's current address] ABN – 12345678910 Phone No – E-mail [email address].
Item 4 (cl2)	Premises	1/2 Malibu Circuit, Carrum Downs
Item 5 (cl6)	Term of the Lease	The Lease starts on 1st of July 202 and remains in force until 30th of June 2021
Item 6 (cl5)	Rent	A Monthly rental of \$633.00, plus GST (\$80/sqm per year), is payable in advance and in monthly instalments starting the 1 st of June.
Item 7 (cl5.1)	How is Rent paid?	The Rent must be paid: monthly to the Landlord, or the Landlord's agent, at 5/1a Somme Parade, Edithvale or at any other reasonable place the Landlord names in writing; or into the following account 033-152 485482 or any other account nominated by the Landlord.
Item 8 (cl4)	Security Deposit Amount	N/A
Item 9	Rent review dates	First: 1/6/2025

(cl8)		Second: 1/6/2030 Third: 1/6/2035
Item 10 (cl7)	Further term or terms	First : 5 years Second: 5 years Third: 5 years
Item 10A (cl7.3)	The earliest date for exercising the option	First: 1/6/2025 Second: 1/6/2030 Third: 1/6/2035
Item 10B (cl7.3)	The latest date for exercising the option.	First: 1/6/2025 Second: 1/6/2030 Third: 1/6/2035
Item 11 (cl14)	Tenant's Proportion of Outgoings	The total lettable area of the Building is 95 square metres of which the Premises constitutes 95 square metres, or 100% ("the Tenant's Proportion").
Item 12 (18.1 (e))	Building Rules	N/A
Item 13 (cl2.1)	Designated Car Spaces	1
Item 14 (cl3)	Permitted Use	Means [Storage / "Tradie" related businesses]. Or for an open description of the permitted use, select the following:- Means any lawful use subject to the relevant permits or licenses being held which are consistent with local planning schemes, other than the following uses, which are not permitted:- [as per council restrictions for industrial zone].

TERMS OF AGREEMENT

The parties agree as follows:-

1. INTERPRETATION

1.1. Definitions

Agreement means this document including any schedules or annexures to it.

Building means the property of which the Premises are a part.

Building Rules means the rules mentioned in Item 12 or any substitute rules that the Landlord or body corporate puts in place for the Building from time to time.

Common Areas means the areas in the Building we control, or controlled by the Owner's Corporation, intended for use by either the public or multiple Tenants of the Building.

Designated Car Spaces are the car spaces described at Item 13.

Further term of terms means the further term/s that are described at Item 10.

Guarantor means the person named in Item 3.

Independent qualified valuer means an independent qualified valuer agreed on by the parties, or if agreement cannot be reached, an independent qualified valuer appointed by the Real Estate Institute in the state in which the Premises is located.

Index Number means the Consumer Price Index All Groups number in respect of Melbourne published from time to time by the Australian Bureau of Statistics.

Item means an item in the schedule to this Agreement.

Land means the land on which the Premises are situated.

Land Tax means land taxes or taxes or charges in the nature of a tax on land calculated as if the Land is the only Land owned by the Landlord in Victoria and is not subject to a trust.

Landlord means the person named in Item 1 who has granted the Tenant the right to occupy the Premises under this Commercial Lease Agreement, and includes the person's heirs, executors, administrators and assigns.

Landlord's agent means the person named in Item 1A who acts as the agent of the Landlord and who (whether or not the person carries on any other business) carries on the business as an agent for:-

- (a) the letting of commercial premises, or
- (b) the collection of rents payable for any tenancy of commercial premises.

Landlord's Property means all fittings, furniture, appliances, plant, machinery and equipment owned or supplied by the Landlord either fixed or movable specified in Annexure "B", if applicable.

Month shall mean a calendar month.

Outgoings means all stamp duties, taxes and rates and any similar charges levied by a government, a council or an authority in respect of this Agreement, or the Land or any part of it, as well as insurance premiums for damage and public risk and any other Outgoings specified in Annexure "A".

Permitted Use means the permitted use specified at Item 14.

Premises means the premises described at Item 4 together with fixed improvement and the Landlord's Property.

Rent means the rent stipulated at Item 6.

Security Deposit Amount means the amount detailed at Item 8.

Start date means the date stated at Item 5 as the start date.

Term of the Lease means the period stated in Item 5.

Tenant means the person named in Item 2 who has the right to occupy the Premises pursuant to this Agreement, and includes the person's heirs, executors, administrators and assigns.

Tenant's Proportion means the proportion detailed at Item 11 as the Tenant's proportion of Outgoings.

- 1.2. Where the context permits, words expressed in the singular include the plural and vice versa, and words expressed in the masculine gender include the feminine, and words referring to a person include a company.
- 1.3. Where two or more persons are parties hereto either as agent, Guarantor, Landlord or Tenant, each of them shall be bound by the conditions of the Agreement, both jointly and individually.

- 1.4. When this Agreement is signed by both parties and witnessed it is a deed at law from that time.
- 1.5. By signing this Agreement, the Tenant (for itself, its employees or any person who the Tenant permits to be on the Premises, or for whom the Tenant is legally responsible) agrees that use and occupancy of the Premises will be at the Tenant's own risk.

2. PREMISES

- 2.1. The Landlord gives the Tenant the right to occupy the Premises described in Item 4 ("the Premises"), including the Landlord's Property and use of the Designated Car Spaces (if applicable) specified in Item 13.

3. PERMITTED USE OF PREMISES

- 3.1. The Premises shall only be used for the Permitted Use specified in Item 14.

4. SECURITY DEPOSIT OR BANK GUARANTEE

- 4.1. This clause 4 applies if a Security Deposit Amount is inserted in Item 8 of the Schedule.
- 4.2. The Tenant must give security against breach of this Lease to the Landlord or the Landlord's agent on or before the date of signing this Agreement by:-
 - 4.2.1 depositing with the Landlord the amount set out in Item 8; or
 - 4.2.2 giving an unconditional banker's order or bank guarantee drawn to the Landlord for the amount set out in Item 8,
either of which will be called the 'Security Deposit'.
- 4.3. The Landlord must maintain any deposit in a separate interest-bearing account with a respectable financial institution. Interest earned on the account will become part of the deposit.
- 4.4. If the Tenant fails to pay Rent or other money payable under the lease, or if the Landlord suffers loss or damage because of any other breach of the lease by the Tenant, the Landlord may apply the security deposit or the amount payable under the Bank Guarantee towards the arrears of Rent or other money, or towards the loss or damage. In doing so, the Landlord does not waive the Tenant's breach and does not waive any other right or remedy arising from the breach.
- 4.5. If the Landlord does use the security deposit or the amount payable under the bank Guarantee as described in this clause 4., the Landlord may notify the

Tenant that it has done so. Within 14 days of the notification date, the Tenant must reinstate the deposit by paying to the Landlord the amount applied or extend or renew the Bank Guarantee for the amount applied.

- 4.6. At the end of the lease, if the Tenant is not indebted to, or otherwise liable to the Landlord for breach of the lease, the Landlord will refund the deposit or the balance of the deposit then held to the Tenant or will consent to the discharge of the Bank Guarantee.

5. RENT

- 5.1. The Tenant must pay the Rent specified in Item 6 which is to be paid in the manner specified at Item 7, even if the Landlord has not asked for it, without deducting any amount.
- 5.2. The Landlord can change the method of payment at any time by notifying the Tenant of the change in writing.
- 5.3. The first instalment of Rent is to be paid by the start date described at Item 5. Each later month's instalment of Rent is to be paid in advance.

6. TERM

- 6.1. The initial Term of this Agreement is the term stated at Item 5.

7. OPTION TO RENEW

- 7.1. Subject to the Tenant's compliance with all of the terms and conditions of this Agreement, the Landlord offers the Tenant a renewal for the Further term or terms stated at Item 10.
- 7.2. In the event that the Tenant does not exercise their option to renew this Agreement in accordance with this provision, the Tenant agrees, at all times, to be bound by all of the remaining terms and conditions of this Agreement.
- 7.3. Where the Tenant intends to renew this Agreement under any option or additional term offered by the Landlord or this Agreement, the Tenant must give the Landlord notice in writing not more than 6 months nor less than 3 months before the end of the current Term. The earliest date for exercising the option is the date stated in Item 10A. The latest date for exercising the option is stated in Item 10B.
- 7.4. Provided that the Tenant has paid all Rent punctually and complied with all of the terms and conditions contained within this Agreement until the Agreement expiration date, the Landlord will grant to the Tenant a Further term.

- 7.5. The starting Rent for each Further term will be an amount as agreed between the Landlord and the Tenant, and failing such agreement 3 months before the current term expires, shall be the market rent for the Premises as determined by an independent qualified valuer. The costs of such rental determination shall be borne in equal shares by the parties unless otherwise agreed.
- 7.6. The renewed Agreement:-
- 7.6.1 starts on the date after this Agreement ends;
- 7.6.2 contains the same terms as this Agreement but with no option for renewal after the last option for a Further term stated in Item 10 has been exercised.
- 7.7. If you are a corporation and you have provided directors' guarantees for this Agreement, then you must provide guarantees of your obligations under the renewed Agreement by your directors, in the terms of clause 35..

8. RENT REVIEW

8.1. Application

- 8.1.1 This clause 8 applies if Review Dates are inserted in Item 9 of the Schedule.

8.2. Review

- 8.2.1 The Rent must be reviewed on each Review Date to an amount represented by A where:

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

Where B = The Index Number for the quarter ending immediately before the review date;

Where C = The Index Number for the quarter 1 year before the quarter in B; and

Where D = The Rent payable immediately before the Review date.

9. VACANT POSSESSION

9.1. The Landlord agrees:-

- 9.1.1 to ensure the Premises are vacant so that the Tenant can occupy the Premises on the date agreed;

- 9.1.2 that there is no legal reason the Landlord knows, or should know about when signing this Agreement, why the Tenant cannot take occupancy of the Premises;
- 9.1.3 to ensure the Premises are reasonably clean at the beginning of the tenancy Term;
- 9.1.4 provided that no damage is the result of the Tenant or the Tenant's employees or guests, to keep the Premises in reasonable repair, and to execute without delay all reasonable repairs necessary for the Tenant's ordinary use and occupation of the Premises, taking into account:-
 - (a) the age of the Premises;
 - (b) the amount of Rent paid; and
 - (c) the expected life of the Premises.

10. COPY OF AGREEMENT

10.1. The Landlord agrees:-

- 10.1.1 to give the Tenant a copy of this Agreement duly signed by both parties as soon as practicable.

11. LOCKS AND SECURITY DEVICES

11.1. The Landlord agrees to provide and maintain locks or other security devices necessary to keep the Premises reasonably secure.

12. TAX INVOICES & RECEIPTS

12.1. The Landlord agrees to provide a receipt or tax invoice where applicable for any Rent paid to the Landlord or the Landlord's agent. Where the Rent is not paid in person, the Landlord will post a receipt or tax invoice to the Tenant. Any receipt or tax invoice posted to the Tenant shall be deemed as received by the Tenant on posting.

13. CONTINUATION

13.1. If, at the end of the Term, the Tenant does not exercise their option to renew this Agreement, the Tenant can continue to utilise the Premises and the terms and conditions of this Agreement shall remain in full force and effect and this Agreement shall continue as a periodic Agreement from month to month unless the Landlord has objected before the end of any such period.

14. OUTGOINGS

- 14.1. The Tenant agrees to pay to the Landlord the **Tenants proportion** of any **Outgoings** after notification by the Landlord, and to pay the amount within 14 days of production to the Tenant of a copy of the Landlord's assessment notice or account.
- 14.2. The Landlord may notify the Tenant that it is required to pay the proportion of any particular rate, tax or other outgoing after the Landlord has been notified by the relevant body that it is due for payment. The Tenant is to pay its proportion whether or not the rate, tax or outgoing is payable by the Landlord immediately or at some time in the future, and whether or not the Landlord has paid it.
- 14.3. If the period for which any particular rate, tax or other outgoing is payable does not coincide with the lease year, the amount the Tenant must pay will be adjusted proportionally.

15. UTILITIES

15.1. The Tenant agrees:-

- 15.1.1 to be responsible for all charges associated with the consumption of services supplied to the Premises including; electricity, telephone, gas, internet and including any deposits that may be payable thereon; and
- 15.1.2 to pay for the connection of all services that will be supplied in his or her name.

16. APPROVALS AND USE

16.1. The Tenant agrees:-

- 16.1.1 to comply with and obtain all approvals, licenses and consents required by and from the proper authorities to carry on the proposed business. The Tenant also agrees to bear all costs incurred in obtaining such approvals consistent with the specified use;
- 16.1.2 not to cause or allow the Premises to be used for any illegal purpose;
- 16.1.3 not to use the Premises as a place of residence; and
- 16.1.4 unless otherwise agreed to in writing by the Landlord, the Landlord is not under any duty or obligation to assist the Tenant in his or her obtaining any approvals, licenses and consents required to carry on the proposed business on the Premises.

17. PROHIBITED USES

17.1. The Tenant agrees not to use the Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device.

18. TENANTS CARE AND USE OF THE PREMISES

18.1. The Tenant agrees:-

- 18.1.1 to keep the Premises reasonably clean;
- 18.1.2 to notify the Landlord as soon as practicable, orally or in writing, of any damage to the Premises or the need for any repairs or maintenance, other than repair or maintenance of a negligible kind;
- 18.1.3 not to intentionally or negligently cause or permit any damage to the Premises, any part of the Premises or common property;
- 18.1.4 where the Tenant causes damage to the Premises, the Tenant shall notify the Landlord, at whose option the Tenant will repair or compensate the Landlord for any reasonable expense incurred by the Landlord in repairing the damage;
- 18.1.5 that, when this Agreement expires, the Tenant shall leave the Premises in substantially the same state of cleanliness and state of repair (fair wear and tear excepted), as the Premises were in on the date the Tenant took occupancy of the Premises;
- 18.1.6 not to put anything harmful down any sink, toilet or drain or do anything likely to cause a blockage or damage to the plumbing. The Tenant further agrees to pay the cost of repairs for any damage or blockage caused by the Tenant in this regard;
- 18.1.7 not to allow trade refuse or garbage to accumulate around the Premises and ensure such refuse is removed from the Premises regularly;
- 18.1.8 to do nothing that is likely to prejudice, render void or increase premiums payable under any policy of insurance held by the Landlord in relation to the Premises;
- 18.1.9 not to use any product on the Premises that would constitute toxic, harmful, pollutant or dangerous materials under any local, state or federal laws; and

18.1.10 to comply with the Building Rules contained in Item 12. The Landlord may institute or change the Building Rules from time to time and the Tenant agrees to be bound by a change when the Tenant receives written notice of it. The Landlord must not adopt a Building rule or change the Building Rules in a way that is inconsistent with this Agreement. To the extent that a Building rule is inconsistent with this Agreement, this Agreement prevails.

19. RESPONSIBLE FOR THE ACTIONS OF OTHERS

19.1. The Tenant agrees to be responsible to the Landlord for any act or omission by any employees, agents, or persons the Tenant allows on the Premises, including ensuring that such persons do nothing which would contravene any of the terms and conditions of this Agreement.

20. INSURANCE

20.1. Throughout the term of this Agreement, the Tenant must:-

20.1.1 obtain and maintain Grade 'A' insurance policies required to cover all stock, furnishings and plant and equipment for the full insurable value against all reasonable risks as required by the Tenant. For the avoidance of doubt, the term "Grade 'A'" insurance shall be any insurance provider agreed to by the Landlord.

20.1.2 maintain legal/public liability insurance cover for a minimum of 10 million dollars.

20.1.3 obtain plate glass insurance against all risks specified by the Landlord.

20.1.4 ensure that all current insurance policies or those required by the Tenant under this Agreement have been approved by the Landlord and are taken out in the joint names of the Landlord and the Tenant for their respective rights and interests.

20.1.5 upon request, provide copies and provide certificates annually for each insurance policy confirming the currency of such policies to the Landlord.

20.1.6 obtain any additional insurance reasonably requested by the Landlord from time to time to ensure the Premises and its contents are sufficiently insured or which may be required under then applicable law.

21. ALTERATIONS AND ADDITIONS

21.1. The Tenant agrees:-

- 21.1.1 not to attach any fixture or renovate, make alterations or additions to the Premises (or the property, as the case may be) without the Landlord's prior written permission;
- 21.1.2 not to erect, paint, write or attach any sign upon any part of the Premises (or the property, as the case may be) without first having written approval from the Landlord and where necessary, the relevant authorities;
- 21.1.3 not to remove, without the Landlord's prior written permission, any fixture attached by the Tenant if its removal would cause damage to the Premises or common property;
- 21.1.4 to notify the Landlord of any damage caused by removing any fixture attached by the Tenant; and
- 21.1.5 at the option of the Landlord, have the damage repaired or compensate the Landlord for the reasonable cost of repairing the damage.

22. INDEMNITY

22.1. The Tenant agrees to indemnify the Landlord against all claims, demands, losses, damages and expenses including legal actions the Landlord may sustain or become liable for during or after this Agreement arising from:-

- 22.1.1 neglect or default by the Tenant or Tenant's employees or any person who the Tenant permits to be on the Premises or for whom the Tenant is legally responsible;
- 22.1.2 the Tenant's failure to give notice of service defects;
- 22.1.3 damage to person or property caused or contributed to by the Tenant, or Tenant's employees, or any person who the Tenant permits to be on the Premises or for whom the Tenant is legally responsible; or
- 22.1.4 any liability the Landlord incurs resulting from anything the Tenant is permitted or required to do under this Agreement, unless the claim results from the gross negligence of the Landlord or its employees or contractors.

23. RELEASE

23.1. The Tenant releases the Landlord from all cost, liability, loss or damage

suffered directly or indirectly in connection with all claims, demands, losses, damages and expenses including legal actions the Landlord may sustain or become liable for during or after this Agreement arising from:-

- 23.1.1 neglect or default by the Tenant or Tenant's employees or any person who the Tenant permits to be on the Premises, or for whom the Tenant is legally responsible;
- 23.1.2 the Tenant's failure to give notice of service defects;
- 23.1.3 damage to person or property caused or contributed to by the Tenant, or Tenant's employees, or any person who the Tenant permits to be on the Premises or for whom the Tenant is legally responsible;
- 23.1.4 any liability the Landlord incurs resulting from anything the Tenant is permitted or required to do under this Agreement, unless the claim results from the gross negligence of the Landlord or its employees or contractors.

24. ASSIGNMENT AND SUBLETTING

24.1. The Tenant agrees not to assign any part of the Tenant's interest in the Premises or to sublet the Premises without the Landlord's prior written consent.

24.2. The Landlord may at its discretion, consent to the proposed assignment if:-

- 24.2.1 it is satisfied that the proposed new Tenant has the financial standing and experience necessary to carry out the Tenant's obligations under this Lease Agreement;
- 24.2.2 the proposed new Tenant signs any Agreement reasonably required by the Landlord in the form approved by the Landlord and gives any security which the Landlord reasonably requires;
- 24.2.3 the Tenant complies with any other reasonable requirements of the Landlord;
- 24.2.4 the Tenant is not in breach of the tenancy; and
- 24.2.5 the Tenant pays the Landlord's reasonable costs of giving its consent.

25. LANDLORD'S ACCESS

25.1. Both parties agree, unless an emergency situation dictates otherwise in which case the Landlord or Landlord's agent shall have immediate access right, the

Tenant shall allow the Landlord or the Landlord's agent unfettered access to the Premises at all reasonable times on reasonable notice to the Tenant:-

25.1.1 to inspect and view the state of repair of the Premises and to carry out necessary repairs.

25.1.2 to show the Premises to prospective Tenants or purchasers after receiving notice from the Tenant of the Tenant's intention to terminate this Agreement.

25.1.3 after receiving notice from the Landlord of the Landlord's intention to sell the Premises (or the property as the case may be), for the purpose of erecting "for sale" signs.

25.1.4 for any other reasonable purpose the Landlord deems fit and proper.

26. UNEXPECTED EVENTS

26.1. Where the Premises becomes wholly or partially unfit for the Tenant to occupy due to damage or destruction, not caused by the Tenant or the Tenant's employees:-

26.1.1 the Landlord will adjust the Rent and other amounts payable by the Tenant in accordance with the degree of damage or destruction until the Premises are restored and made fit for the Tenant to occupy, or

26.1.2 where the damage or destruction is a continuing event without likelihood of repair, either party may terminate this Agreement provided written notice is given within sixty (60) days of the event.

26.2. Should the damage or destruction have been caused or contributed to by the Tenant, or its employees, or any person who the Tenant permits to be on the Premises, or for whom the Tenant is legally responsible, or should the Tenant or Tenant's employees' actions result in any insurer refusing to indemnify for such damage or destruction, this clause will no longer apply, insofar as they relate to the Tenant.

27. TENANTS RIGHT TO PRIVACY

27.1. Provided that the Tenant is, at all times, in compliance with this Agreement, the Tenant has the right to quiet enjoyment of the Premises and the Landlord will respect the Tenant's privacy at all times.

28. COSTS

28.1. The Tenant agrees to bear all reasonable costs incurred by the Landlord in preparation of this Agreement, including stamp duty where applicable.

29. GST

29.1. The Tenant acknowledges that any amount payable by the Tenant under this Agreement is, unless stated otherwise, exclusive of Goods and Services Tax ("GST"). The Tenant must pay to the Landlord any additional amount equal to GST which may apply to any payment required to be made by the Tenant to the Landlord under this Agreement or which may apply in consideration of any taxable supply made by the Landlord under this Agreement.

30. STATUTES

30.1. The Tenant and Landlord each shall comply with all by laws, statutory regulations, statutes and other public requirements now or hereafter affecting the Premises.

31. CLEANING

31.1. If the Tenant is unable or unwilling to maintain the Premises in a clean and tidy condition, the Tenant hereby authorises the Landlord to arrange for such cleaning to be undertaken at the Tenant's expense.

32. MITIGATION

32.1. The parties hereby acknowledge that any rules relating to the law of contract about mitigation of loss or damage on breach of a contract, apply to a breach of a lease agreement.

33. DISPUTE RESOLUTION

33.1. All disputes from the implementation of this Agreement or related to this Agreement shall, in the first instance, be resolved through friendly consultation between both parties. If negotiation fails to settle the dispute, either party has the right to make an arbitration application to the Australian Commercial Disputes Centre. The arbitration shall be the final verdict and have binding force on both parties.

34. TERMINATION

34.1. If, at the end of the term, the Tenant does not exercise their option to renew this Agreement, and for so long as the Tenant continues to lawfully occupy the Premises after the term expires in accordance with clause 13., the parties will be deemed to have entered into a month to month periodic Agreement.

- 34.2. Where this Agreement has become a month to month periodic Agreement, either party, giving a minimum one (1) month's written notice, may terminate this Agreement.
- 34.3. The Landlord may terminate this Agreement, by re-entry or notice of termination, if:-
- 34.3.1 the rent is unpaid for 14 days after becoming due for payment;
 - 34.3.2 the Tenant or any other relevant person has seriously or persistently breached any of the conditions of this Agreement;
 - 34.3.3 the Tenant as an individual or corporation suffers, or any guarantor, suffers a material adverse change in financial position including but not limited to a default on any debt to any person valued at more than three months' rental under this Agreement;
 - 34.3.4 the Tenant is a corporation and without our written consent, the person in effective control of the Tenant corporation is not the same person as was in effective control when this agreement was signed, as a result of changes in ownership of or membership of the company or its holding company, or of shares in either of these.
- 34.4. Before terminating this Agreement for repudiation (including repudiation consisting of the non-payment of rent), the Landlord must first give the Tenant written notice of the breach and a period of 14 days in which to remedy it and to pay reasonable compensation for it. A notice given in respect of a breach amounting to repudiation is not an affirmation of the Agreement.
- 34.5. Breach by the Tenant of any of the Tenant's obligations under clause 3, 4, 5, 7, 8, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25, 28, 29, 30, 31, 37 of this agreement (whether positive or negative) is a breach of an essential term of this Agreement and constitutes repudiation. If the Tenant transfers or attempts to transfer this Agreement or the Tenant's rights and obligations under it or sublet the premises without our written consent the Tenant also commits a breach of an essential term of this Agreement and that breach also constitutes repudiation. Other of the Tenant's obligations under this Agreement may also be essential.
- 34.6. The Landlord must give the Tenant, before terminating this agreement for non-payment of rent, the same notice that it would be required to give under section 146(1) of the *Property Law Act 1958 (Vic)* for a breach other than the non-payment of rent.

- 34.7. For the purpose of section 146(1) of the *Property Law Act 1958 (Vic)*, 14 days is fixed as the period within which the Tenant must remedy a breach capable of remedy and pay reasonable compensation for the breach.
- 34.8. Termination by the Landlord ends this Agreement, but the Landlord retains the right to sue the Tenant for unpaid money or for damages (including damages for the loss of the benefits that the Landlord would have received if this Agreement had not been terminated early) for breaches of your obligations under this Agreement.
- 34.9. Even though we do not exercise our rights under this Agreement on one occasion, we may do so on any later occasion.
- 34.10. The Landlord may enter the Premises if he has reasonable grounds to believe the Premises have been abandoned.
- 34.11. The Tenant shall have the right to terminate this Agreement if the Landlord has seriously or repeatedly breached any of its obligations. The Tenant shall give the Landlord fourteen (14) days' notice at the same time indicating the nature of the breach. The Landlord shall have fourteen (14) days to rectify any such breach and if the Landlord fails to rectify such breach within such period, the Tenant shall have the right to terminate this Agreement on the giving of an additional fourteen (14) days' notice of the Tenant's intention to do so.
- 34.12. Any action by the Landlord or the Tenant in accordance with this clause shall not affect any claim for damages in respect to a breach of a condition of this Agreement.
- 34.13. Upon termination of this Agreement for any cause, the Tenant shall vacate the Premises:-
- 34.13.1 in substantially the same state of repair and cleanliness, removing all the Tenant's belongings and any other goods brought onto the Premises during the term of this Agreement.
- 34.13.2 in substantially the same condition as the Premises were in at the commencement of this Agreement, fair wear and tear excepted.
- 34.13.3 to deliver vacant possession of the Premises in a peaceful and prompt manner, by securely locking the Premises and handing over all keys to the Landlord or the Landlord's agent, including any copies of keys the Tenant made during the period the Tenant occupied the Premises.

35. GUARANTORS LIABILITY

35.1. In consideration of the Landlord leasing the Premises to the Tenant in accordance with this Agreement, the Guarantors for themselves and each of them, and each of their executors, unconditionally agree that they and each of them will be (with the Tenant) jointly and severally liable to the Landlord for the payment of the Rent and all other monies payable by the Tenant, and also for the due performance and observance of all the terms and conditions on the part of the Tenant contained or implied. It is hereby further expressly agreed and declared that the Landlord may grant to the Tenant time or any other indulgence and may compound or compromise or release the Tenant without affecting the liability of the Guarantors.

36. NOTICES

36.1. Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognised overnight delivery services at addresses already specified in the Schedule to this Agreement.

36.2. The Tenant and Landlord may agree to give notice to each other by means of email correspondence, provided that, unless otherwise notified in writing, any such email shall be sent to the email address of the relevant party first set out above.

37. RULES AND REGULATIONS

37.1. Except as approved in writing by the Landlord, no signage or advertisements may be affixed or painted on any part of the interior or exterior Building. Where the Landlord's consent is forthcoming he shall reserve the right to stipulate the location colour and style of any advertisement.

37.2. The Landlord, at the Tenant's expense, will provide interior signs on glass doors or directory tablets at such time as requested by the Tenant.

37.3. The obstruction of passageways, staircases, fire escapes or the entrance of the Premises is strictly prohibited. The Tenant shall not use them for any other purpose than entering or exiting the Building.

37.4. The Tenant will not cause or permit the Premises to be used in such a manner as to cause a nuisance or interference with the reasonable peace, comfort and privacy of other Tenants.

37.5. The Tenant will not breach the terms and conditions of any policy of insurance relating to the Building and its contents.

- 37.6. The Tenant will not conflict with the regulations of any public authority.
- 37.7. Except as approved in writing by the Landlord, no heavy equipment may be installed on any part of the Premises. Where the Landlord's consent is forthcoming he shall reserve the right to stipulate the location where such heavy equipment must be placed. Should the Building be damaged in anyway during the installation or removal of any heavy articles, all damage shall be repaired at the Tenant's expense.
- 37.8. In the event of any emergency or other eventuality whereby the toilets or washrooms on any floor are not available for use, the Landlord may temporarily withdraw the right of exclusive use of all or any of the toilets or washroom areas and services not affected to ensure availability of these facilities to all occupants of the Building and no rental adjustment will be made during such temporary arrangements.
- 37.9. When moving furniture or goods in and out of the Building passenger lift, traffic shall have priority at all times.
- 37.10. When the Premises are left unoccupied, the Tenant will ensure all doors and windows of the Premises are securely fastened. The Landlord reserves the right to enter the Premises to ensure the security of the Building is not compromised if windows or doors are left unfastened.

38. SPECIAL CONDITIONS

- 38.1. Special conditions forming part of this Agreement may be inserted here.
- 38.2. [special conditions]

[SIGNATURE PAGE IMMEDIATELY FOLLOWS THIS PAGE]

Executed as a deed on 1/7/20

EXECUTED BY THE LANDLORD

EXECUTED BY THE LANDLORD The Trustee for My Penguin SMSF ACN 67 104 278 721 in accordance with s127 Corporations Act 2001

X.....
Sole Director & Secretary / Director

X.....
Director / Secretary

Name: **Craig Theodore**
(Block letters)

Name:
(Block letters)

Or if the Landlord is an individual:

SIGNED SEALED AND DELIVERED by the Landlord Craig Theodore
in the presence of:

X.....
Name:
(Block letters)

X.....
[insert name of Landlord]

EXECUTED BY THE TENANT Always Full Throttle ACN 37 981 318 340 in accordance with s127 Corporations Act 2001

X.....
Sole Director & Secretary / Director

X.....
Director / Secretary

Name: **Craig Theodore**
(Block letters)

Name:
(Block letters)

Or if the Tenant is an individual:-

SIGNED SEALED and DELIVERED by the Tenant [insert name of Tenant]

in the presence of:

X.....

X.....

[insert name of Tenant]

Name:

(Block letters)

SIGNED SEALED AND DELIVERED by the Guarantor [insert name of Guarantor]

in the presence of:

X.....

X.....

[insert name of Guarantor]

Name:

(Block letters)

SIGNED SEALED AND DELIVERED by the Guarantor [insert name of Guarantor]

in the presence of:

X.....

X.....

[insert name of Guarantor]

Name:

(Block letters)

MORTGAGEE CONSENT

enter the mortgagees name in this spot the mortgagee named in mortgage number
insert mortgage identifier number consents to this Lease.

Signed for and on behalf of the mortgagee

Date date x.....N/A.....
name for Mortgagee

Annexure "A" - Outgoings

Estimate of Outgoings/operating expenses for the period beginning [1/5/20] to [1/5/21]

(State which of the following are payable by the Tenant.)

Estimate (including GST) per annum for the Building:

Description of outgoing	Amount/y
Rates and other charges levied by any law	\$1,121.15
Water, garbage and sewerage rates	\$104.52
Waste disposal costs	\$N/A
Land Tax	\$0.00
BodyCorporate (including building insurance premiums payable by the Landlord)	\$1,380.30
The cost of cleaning any Common Areas that are used by the Tenant	\$INC
Garden and maintenance	\$N/A
Car Park Levies	\$N/A

Total Outgoings for the Building/Premises:

\$2,605.97

Formula for determining Tenant's Proportion of the total Outgoings for the Building/Premises as set out at Item 11 of the Schedule:

Estimated Tenant contribution to Outgoings:

\$1,225.67+GST/y

Signed by the Landlord:

Signed by the Tenant:

Annexure "B" Landlord's Property

Item	Description	Identifier
Item 1	[Insert any fixtures, fittings and equipment of the Landlord which will remain on the Premises otherwise delete.]	[Insert an identifier such as a serial number]

Signed by the Landlord:

Signed by the Tenant:

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