

E & C YEATES PTY LTD
ACN 620 866 284
(Landlord)

and

JAMES YEATES & SONS PTY LTD
ACN 004 145 288

LEASE: 15 KYLE STREET, BAIRNSDALE VIC 3875

LEASE DETAILS

ITEM 1 LAND

The whole of the land known as # and being more particularly Described as Certificates of Title Volume 8959 Folio 152.

ITEM 2 PREMISES

15 Kyle Street, Bairnsdale Victoria 3875.

ITEM 3 LANDLORD

E & C Yeates Pty Ltd
ACN 620 866 284
Address for service: 22 Pyke Street, Vic 3875

ITEM 4 TENANT

James Yeates & Sons Pty Ltd
ACN 004 145 288
Address for service: The premises

ITEM 5 LANDLORD'S INSTALLATIONS

Lights upgraded to LED
Upgraded Roller Door
Air Compressor 30

ITEM 6 COMMENCEMENT DATE

21st February 2018

ITEM 7 EXPIRY DATE

21st February 2021 (being a term of 3 years)

ITEM 8 RENT

Base rent

\$19,500 (plus GST) per annum as from the **commencement date**, and varied in accordance with Special Condition 1.

ITEM 9

RENT REVIEW DATES

(a) **CPI Adjustment Dates**

21/02/2019

(b) **Market Review Dates**

21/02/2021

(c) **Percentage Adjustment Dates**

N/A

ITEM 10

SECURED SUM (BANK GUARANTEE)
(General Condition 3.4)

N/A

ITEM 11

PERMITTED USE
(General Condition 4.1)

Manufacturing

ITEM 12

OUTGOINGS
(General Condition 3.2)

The proportion that the **premises** bears to the total lettable area of the **building** is approximately 100%

ITEM 13

PUBLIC LIABILITY INSURANCE
(General Condition 6.1)

\$20,000,000.00

ITEM 14

GUARANTOR
(General Condition 12)

Mr Robert Yeates of 65 Macleod Street, Bairnsdale

ITEM 15

FURTHER TERMS
(Special Condition 2)

First Further Term

Period:	3 year(s)
CPI Adjustment Dates:	21/02/2022
Market Review Dates:	21/02/2024
Percentage Adjustment Dates:	N/A

Second Further Term

Period:	3 year(s)
CPI Adjustment Dates:	21/02/2025
Market Review Dates:	21/02/2027
Percentage Adjustment Dates:	N/A

ITEM 16

LATEST DATE FOR EXERCISING OPTION
(Special Condition 2)

That date being no earlier than 6 months and no later than 3 months before the **expiry date**.

EXECUTED ON

21/ 02 / 2018

EXECUTED by E & C Yeates Pty Ltd ACN 620 866 284
in accordance with Section 127(1) of the Corporations Act 2001:



.....
Director/Sole Director and Sole Company Secretary* -
Sign here*



.....
Director/Secretary* - Sign here*

ELLIOTT YEATES

.....
Full Name (Print)

CHANTAL YEATES

.....
Full Name (Print)

* delete whichever does not apply

EXECUTED by James Yeates & Sons Pty Ltd ACN 004 145 288
In accordance with Section 127(1) of the Corporations Act 2001:



.....
Director/Sole Director and Sole Company Secretary* -
Sign here*



.....
Director/Sole Director and Sole Company
Secretary - Sign here*

LORRAINE YEATES

.....
Full Name (Print)

Pascale Budge

.....
Full Name (Print)

* delete whichever does not apply

Signature: 

Name: BRYCE YEATES
.....
PLEASE PRINT

Witness

PLAN REFERRED TO IN LEASE DETAILS

N/A

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1. DEFINITIONS

In this lease:

- Items** are in the items in the lease details.
- accounting year** means each year during the term of the lease which ends on 30 June or other date the **Landlord** chooses and includes any broken periods at the start and end of the Term.
- Act** means any building in which the **Premises** are located, including
- **Landlord's installations**
 - common area,
- on the land in Item 1 and on other adjoining land which the Landlord uses in conjunction with the **building**.
- commencement date** means the commencement date of this lease which is set out in Item 6;
- common area** means areas in the **building** or on the **land** that are under the control of the **Landlord** and are used or intended for use:
- by the public; or
 - in common by tenants of premises in the **building** in relation to the carrying on of businesses on those premises, other than areas which are let or licensed, or intended to be let or licensed, other than on a casual basis.
- Insolvency** means:
- for a natural person:
- the committing of an act of bankruptcy
 - being made bankrupt or
 - being subject to an arrangement under part IV of the Bankruptcy Act 1966
- for a corporation:
- being wound up
 - having an official manager appointed
 - being subject to an order for winding up or reconstruction or
 - having a receiver, a receiver and manager, an agent in possession, a trustee or guardian appointed to the property of the corporation
- Guarantor** is a reference to the person in Item 12.

land	means the land described in Item 1 on which the premises is situated.
Landlord	is a reference to the person in Item 3.
Landlord's Installations	the installations of the Landlord in the premises or the building or on the land and those installed by the Landlord after the lease starts and including the installations listed in Item 5 .
Outgoings	<p>means the following expenses incurred in respect of the land, the building, the premises or any premises I the building which include the premises –</p> <ul style="list-style-type: none"> • rates, levies and assessments imposed by any relevant authorities; • taxes other than land tax; • the costs of maintaining and repairing the building and the Landlord's installations (but excluding any amount recovered in respect of that maintenance or repair by the Landlord from its insurer); • premiums and charges for the following insurance policies taken out by the Landlord- <ul style="list-style-type: none"> - damage to and destruction of the premises for their replacement value, - remove of debris, - breakdown of Landlord's Installations, - breakage of glass, - public risk of any single event for the amount stated in Item 13 (if none stated, \$10 million) or other amount reasonably specified from time to time by the Landlord, and - loss of rent and outgoings for a period of not less than 24 months, <p>and excesses paid or payable on claims,</p> <ul style="list-style-type: none"> • costs incurred in providing services to the building and the land including – <ul style="list-style-type: none"> - heating - cooling - air conditioning - cleaning - pest control - waste collection - lighting - landscaping and garden maintenance - security, and - fire prevention, detection and control; • accountancy and audit fees; and

- costs of whatever description, reasonably incurred by the **Landlord** in the administration, management or operation of the **building** and the **Land**,

whether incurred by the **Landlord** directly or as owners corporation levies, at cost to the **Landlord** on the basis that an expense is deemed to have been paid at the time it fell due to payment but, if the **Act** applies, only to the extent permitted by the **Act** and, in any event, excluding capital expenditure.

Owners corporation

shall mean 'owners corporation' as defined in the *Owners Corporation Act 2006*.

Parent

of the **Tenant** means the person directly or indirectly exercising the decision making power of or controlling the **Tenant** including, without limitation:

- (a) if the **Tenant** is a body corporate, a person who controls:
 - i. the composition of its board of directors; or
 - ii. more than half the votes at a general meeting of the **Tenant**; or
 - iii. more than half the issued share capital of the **Tenant**; or

- (b) if the **Tenant** holds this lease as trustee, a person who:
 - i. is beneficiary of the trust entitled directly or indirectly to more than half the corpus or profits of the trust; or
 - ii. is entitled to or whose consent is required to:
 - A. appoint, change or give directions to the trustee; or
 - B. vary the terms of the trust; or
 - C. appoint or remove beneficiaries; or
 - D. determine the recipient or amount of any distribution; or
 - iii. if the trust is a unit trust:
 - A. controls more than half the votes at a meeting of unitholders of the trust; or
 - B. controls the right to vote attached to or the disposal of more than half the issued units of the trust.

A person is the **Tenants' Parent** if the person is a **Parent** of a **Parent** of the **Tenant** including, with limitation, a **Parent** of a person who is the **Tenant's Parent** by another or other application of this definition.

permitted use	means the use described in Item 11.
prescribed rate	means the maximum annual rate of interest from time to time prescribed under the <i>Penalty Interest Rates Act 1983 (Vic)</i> .
premises	means the use described in Item 2 including fixed improvements and the Landlord's Installations within the premises .
Rent	means the amount payable as set out in Item 8
rules	means any rules adopted from time to time for the building , including the rules of any owners corporation affecting the premises .
Secured sum	means the amount referred to in Item 10.
Tenant	is a reference to the person in Item 4.
Tenant's fixtures	the installations of the Tenant in the premises or the building or on the land and those installed by the Tenant with the consent of the Landlord or any other property brought onto the premises by the Tenant or at the direction of the Tenant after the lease starts.

2. **Term**

2.1 **Term**

The lease commences on the commencement date in Item 6 and expires at midnight on the expiry date in Item 7.

2.2 **Monthly Tenancy when Lease Expires**

If the **Tenant** occupies the **premises** after the expiry date with the consent of the **Landlord**, it does so as a monthly tenant.

2.2.1 **Terms**

The terms of the tenancy are the terms in this lease which apply on the expiry date.

2.2.2. Notice

The **Landlord** or the **Tenant** may terminate the monthly tenancy on any day by giving one month's written notice to the other.

2.2.2.1 Termination

The tenancy terminates at midnight on the same day of the next month as the day on which the termination notice is served.

2.3 Lease Ends

The **Landlord** hereby notifies the **Tenant** that the lease ends on the expiry date.

3. TENANT'S PAYMENTS

3.1 Base Rent

The **Tenant** must pay the base rent in Item 8 without demand by monthly instalments in advance.

3.1.1. Payment

Each instalment, except the first, must be paid on the first day of each month during the lease.

3.1.2. Periods Covered by Instalments

Each instalment, except the first and last, is for a period of one month commencing on the first day of each month.

The first instalment is for the period beginning on the commencement date and ending on the expiry date.

3.1.3. Amount of Instalment

The amount of an instalment for one month is one-twelfth of the base rent. An instalment for less than one month is proportionate.

3.2 Outgoing and Services

The **Tenant** must pay a share of the **outgoings** related to the **building** and the **land**. That share is to be calculated as the proportion the area of the **Tenant's premises** bears to the total lettable area of the **building** as specified in **Item 12**.

3.2.2. **Payment of Outgoings**

In relation to **outgoings**, the parties agree

- the **Landlord** must pay the **outgoings** when they fall due for payment but may require the **Tenant** to pay when due an **outgoing** for which the **Tenant** receives notice directly and to reimburse the **Landlord** within 7 days of a request all **outgoings** for which notices are received by the **Landlord**
- the **Tenant** must pay or reimburse the **Landlord** the proportion specified in **Item 12**.
- at least 1 month before the start of an **accounting year**, the **Tenant**, if the **Landlord** required it, must pay its share of the estimated **outgoings** by equal monthly instalments during the **accounting year** on days on which **Rent** is payable (after allowing for **outgoings** paid directly or separately reimbursed by the **Tenant**).
- if the **Act** applies, the **Landlord** must make a statement of **outgoings** available during each **accounting year** as required by the **Act**).
- the **Tenant** must pay the amount short paid or the **Landlord** must repay the amount over paid for **outgoings**, as the case may be, within 1 month after a statement is provided or within 4 months after the end of the **accounting year**, whichever is earlier.
- an appropriate adjustment must be made in relation to an **outgoing** incurred in respect of a period beginning before the start of the **Term** or extending beyond the end of the **Term**.

3.2.3 **Services**

The **Tenant** must pay on time for all services supplied to the **premises**, including water, electricity, gas and telephone, as well as the **Landlord's** assessment for trade waste, water by measure and other costs incurred, or reasonably determined by the **Landlord** to have been incurred, in respect to the **premises** as a result of a particular use by the **Tenant** of the **premises**.

3.3 **Stamp Duties, Costs and Charges**

The **Tenant** must pay costs incurred by the **Landlord** and stamp duties in association with this lease (but if the **Act** applies, only to the extent to which the **Act** permits recovery).

3.3.1. Stamp Duties

Stamp duties include duties payable on the lease, on an assignment of lease (including a deed of consent), a sub-letting (including a deed of consent) and on the surrender or termination of the lease other than at the expiry date.

3.3.2 Costs and Charges

Costs include, but are not limited to, the **Landlord's** reasonable legal and other costs, charges and expenses incidental to:

- compliances with the **Landlord's** disclosure obligations under section 17 of the **Act** (if applicable)
- negotiation, preparation, settling, execution and stamping of the lease
- an application for consent to the granting of a mortgage, even if consent is not given
- an assignment, sub-letting or dealing with the lease, even if the dealing does not proceed
- the amounts referred to in section 23(3) of the **Act**
- any breach of the lease by the **Tenant**
- a surrender or termination of the lease other than at the expiry date.

3.4 Bank Guarantee

3.4.1 Giving of Bank Guarantee

The **Tenant** must give to the **Landlord** on or before the commencement date a bank guarantee which:

- is unconditional and irrevocable
- is for an amount not less than the **Secured sum** in Item 10
- is unlimited in time, and
- is assignable

3.4.2 Use of Guarantee

The **Landlord** may use the guarantee to recover its loss if the **Tenant** does not comply with an obligation under the lease. The **Landlord** may, without notice to the **Tenant**, demand payment by the bank of an amount equal to its loss.

3.4.3 Replacement

The **Tenant** must either replace or provide a further guarantee for any amount drawn down on the guarantee within 7 days of receiving notice from the **Landlord**.

3.4.4 End of Lease

The **Landlord** must return the guarantee (or the part of the guarantee which the **Landlord** is not entitled to draw down) as soon as practicable after the expiry date.

3.4.5 Sale by Landlord

If the **Landlord** sells the **premises**:

- the **Landlord** has no personal liability to the **Tenant** for handing over the guarantee
- the **Landlord** may assign the guarantee to the purchaser
- the **Tenant** must, at the **Landlord's** expense and at the **Landlord's** request either:
 - * enter into any document required by the purchaser to effect the assignment, or
 - * provide a replacement guarantee in a form acceptable to the **Landlord** in favour of the purchaser.

3.4.6 Cash or Bank Cheque

If the **Landlord** consents, the **Tenant** may provide cash or a bank cheque for the amount of the secured sum in Item 10 instead of the bank guarantee. Such payment will otherwise be held by the **Landlord** on the same terms as the guarantee under this general condition 3.4 (noting that the fund will be held by the **Landlord** in an interest bearing account). All interest accruing on it will be treated as a supplementary payment of the **Secured sum**. The **Tenant** must provide the **Landlord** with the **Tenant's** tax file number if required.

3.5 Interest

The **Tenant** must pay interest on any overdue amount to the **Landlord**.

3.5.1 When and How Interest is Calculated

The **Landlord** must calculate interest on the first business day of each month:

- on each daily balance due but not paid by the **Tenant** to the **Landlord** in any account
- from the due date of the payment until payment in full is received.

3.5.2 Rate

The rate of interest is equivalent to the **prescribed rate** plus 2%.

3.5.3 Capitalisation

Unpaid interest is capitalised on the last day of each month.

4. USE OF PREMISES

4.1 Permitted Use

The **Tenant** must use the **premises** only for the purpose in Item 11.

4.2 Carrying on Business

The **Tenant** must:

- 4.2.1 conduct its business in accordance with the **permitted use** in a competent manner, and
- 4.2.2 must keep the **premises** open during the business hours which are normal for the **permitted use** and not during the term of the lease suspend or discontinue the operation of the business.

4.3 Compliance

The **Tenant** must comply with laws and requirements of authorities in connection with the **premises**, the **Tenant's** business, the **Landlord's** property and the use and occupation of the **premises** and comply with all notices affecting the **premises** which are issued during the term.

4.4 Comply with Rules

The **Tenant** must comply with the **rules** for the **building and common area**, including, without limitation, cleanliness of the **premises**, control of vermin, any emergency drills and procedures, use of elevators (if applicable) and installation of equipment.

4.5 Proper Use of Facilities

The **Tenant** must make good any damage it causes promptly at its cost and to the reasonable satisfaction of the **Landlord**.

The **Tenant** must prepare or cook food for retail consumption only in an area installed for those purposes and in accordance with the permitted use and relevant legislation.

4.6 Noxious Use

The **Tenant** must not do anything in the **building** which is:

- unlawful
- immoral
- noxious
- offensive
- hazardous; or
- likely to cause nuisance, injury or unreasonable disturbance to the **Landlord** or an occupant.

4.7 Signs

4.7.1 Display of Signs

The **Tenant** must not:

- display any signs on the exterior, or on the interior face of a shop front of the **premises**;

- use any picture or likeness of the **building** or the **premises** for any advertisement other than as the address or place of business of the **Tenant** without the prior written consent of the **Landlord**.

4.7.2. Consent

The **Landlord** will consent to signs which are in the **Landlord's** opinion of a standard and quality in keeping with the **building** or **premises** and which state the **Tenant's** trading name.

4.8 Use of Outside of the Premises

4.8.1 Landlord's Consent

The **Tenant** must not

- install anything on the outside of the **premises**
- use, or allow to be used, audio or visual equipment which can be heard or seen from outside the **premises**

without the prior written consent of the **Landlord**

4.8.2 Withdrawal of Consent

The **Landlord** may withdraw a consent, if it determines on reasonable grounds that the action is not in the interest of the **building** or interferes with the rights or interests of other occupiers.

4.9 Cleaning

The **Tenant** must:

- clean the **premises** thoroughly each day, including the shopfront
- remove any useless property from the **premises**
- remove all wet refuse daily and all other refuse periodically from the **premises** store
- store all refuse in proper receptacles until removal and, upon removal place all refuse in bins located in the **building** or **premises** and nominated by the **Landlord**.

4.10 Air Conditioning

- If the **Landlord** provides air conditioning to the **building**:
- the **Landlord** must reasonably endeavour to keep the plant available for use of the **Tenant** at least during normal business hours
- the **Tenant** must comply with the reasonable requirements of the **Landlord** in relation to the plant and must not do anything which might interfere with or impair its efficient operation;
- the **Tenant** must allow the **Landlord** to enter the **premises** at any time to install, remove, examine or repair the plant, but the **Landlord** must not cause any undue interference to the **Tenant's** conduct of its business

4.11 Security

The **Tenant** must take reasonable precautions to secure the **premises** and their contents from theft, keep all doors and windows locked when the **premises** are not in use and comply with the **Landlord's** directions for the use and return of keys or key cards.

5. REPAIRS AND ALTERATIONS

5.1 Good Repair

The **Tenant** must keep the **premises**, the shopfront and the **Landlord's Installations** in the same condition as at the commencement of the lease and in good repair and working order except for:

- reasonable wear and tear, or
- if the **premises** are damaged by fire, lightning, storm, tempest, earthquake, explosion, riot, civil commotion, act of God or war;

and keep the **premises** properly cleaned and free from rubbish and waste.

5.2 Structural Work

The **Tenant** is not obliged to do structural work unless the work is required because of:

- the **Tenant's** act, neglect or default
- the **Tenant's** particular use of the **premises**
- the number and sex of the **Tenant's** employees, or
- an express requirement to do structural work in this lease

5.3 Specific Reasons

The **Tenant** must, promptly and at its expense:

5.3.1. Paint

Restore the finishes of the interior of the **premises** to their original condition in a proper and workmanlike manner to the satisfaction of the **Landlord** so often as the **Landlord** may reasonably require but at intervals of not less than 5 years.

5.3.2. Replace Breakages

repair and replace all:

- broken glass (irrespective of the cause) including exterior show-windows with glass of the same or substantially similar quality
- damaged or broken heating, lighting, electrical equipment (including light globes and fluorescent tubes) and

maintain in working order all plumbing, drainage, gas, electric, solar and sewerage installations.

5.3.3. Pay for Damage

The **Tenant** must pay the **Landlord** for any damage caused by the **Tenant** to the **common area** or to any premises.

5.4. Alterations Equipment and Partitions

The **Tenant** must not:

- make any structural alteration or addition to the premises
- install any equipment or appliance to provide water, gas, electrical wiring, lights, air-conditioning, heating, cooling or ventilating in the **premises**
- damage the **premises**
- install any partitioning.

Unless the **Tenant** complies with the requirements of the **Landlord** and public authorities.

5.5. Landlord's Inspection

The **Landlord** may enter the **premises**:

- at reasonable times after giving the **Tenant** reasonable notice
- in the case of emergencies without notice,

and view their state of repair.

5.6. Notice of Repair

The **Landlord** may serve the **Tenant** with a written notice requiring the **Tenant** to repair a defect within a reasonable time, which the **Tenant** is responsible to repair under the lease.

5.7. Landlord's Repair

5.7.1. The **Landlord** and all those it authorises may enter the **premises** to carry out repairs, renovations, maintenance or alterations to the **premises** which are reasonably necessary:

- at reasonable times after giving the **Tenant** reasonable notice; or
- in the case of emergencies without notice.

The **Landlord** must cause as little inconvenience to the **Tenant** as is practicable in the circumstances.

5.7.2. The **Tenant** will pay, upon demand by the **Landlord**, the costs incurred by the **Landlord** in respect of complying with the **Landlord** in respect of complying with the **Landlord**'s obligations under the Building Act 1993 in connection with the **premises**, including with respect to essential safety measures.

5.8. Repair at the End of the Lease

The **Tenant** must:

- give the **premises** back to the Landlord in good repair and working order having regard to their condition at the commencement of this lease, clean and free from rubbish.
- make good any damage then existing to the **premises** to comply with this general condition to the reasonable satisfaction of the Landlord subject only to reasonable wear and tear.
- remove any signs displayed outside or inside the **premises** and make good any damage caused by the installation of signs or their removal to the reasonable satisfaction of the Landlord.

5.9. Tenant's Fixtures at the End of the Lease

5.9.1. Removal of Property

The **Tenant** must take the **Tenant's fixtures** and property away from the **premises** when the lease ends ("**Expiry Date**"). The **Tenant** remains liable for the payment of **Rent** in accordance with general condition 3.1 up to (but not including) the date on which the **Tenant** removes the **Tenant's fixtures** and property from the **premises**.

5.9.2. Making Good

The **Tenant** must not damage the **premises** or the building by the removal of **Tenant's fixtures**, and must immediately make good any damage to the reasonable satisfaction of the **Landlord** and at the **Tenant's** cost.

5.9.3. Property of the Landlord

Tenant's fixtures which are not removed by the **Expiry Date** shall be the property of the **Landlord** absolutely.

5.9.4. Removal by Landlord

The **Landlord** may, at its discretion and at the expense of the **Tenant**, store, remove, secure or dispose of the **Tenant's fixtures** or sell them if the **Tenant** does not take them away, even if they become the property of the **Landlord** under general condition 5.9.3.

5.9.5. Deduction from Sale Proceeds

The **Tenant** agrees that the **Landlord** may, at the discretion of the **Landlord** and without regard to any claim or right of any other persons, deduct from the proceeds of a sale of the **Tenant's fixtures** under general condition 5.9.4:

- such amount equal to that amount of monies owing to the Landlord whether presently due, contingently owing or that sound in damages, in priority to the claims or rights of any other person (including any costs requested in accordance with special condition 8.9 but which are unpaid); and

- all costs incurred by the **Landlord** in connection with any insuring, removal, securing (including lock replacement), storage or sale of the **Tenant's** fixtures or property.

6. INSURANCE

6.1 Tenant's Insurance

The **Tenant** must, if required by the **Landlord** in writing:

- insure against public liability in relation to the premises for a sum not less than the sum stated in Item 13 for a single claim or for another minimum sum that the **Landlord** may reasonably require (noting the interest of the **Landlord**)
- insure all plate and other glass in the **premises** against breakages for its full replacement value
- damage to the premises from unlawful entry;
- loss or damage for full replacement value for the **Landlords Installations.**
- insure against each other risk required by the **Landlord**
- have other insurances which are required by law or which the **Landlord** thinks a prudent **Tenant** would take out,

at all times during the term. If the **Landlord** elects to take out the insurances referred to above, the **Tenant** shall reimburse the **Landlord** for such expenses within 7 days of request by the **Landlord.**

6.2 Policy

Subject to general condition 6.1, the **Tenant** must:

- effect each policy with an insurer of good repute and apparently sound financial backing
- give the **Landlord** a certificate of currency issued by the insurer before the commencement date and before each renewal date of the policy or at any other time the **Landlord** gives written notice to the **Tenant.**

6.3 Additional Premiums

The **Tenant** must pay any extra premiums for any extra risk caused by the use of the **premises** by the **Tenant.**

6.4 Prejudice of Insurance

The **Tenant** must not do, or omit to do, anything in the **premises** or **building**:

- which may increase the insurance premium; or
- which may allow the insurer to refuse a claim,

under an insurance policy taken out by the **Landlord**

6.5 Inflammable Substances

The **Tenant** must not store or use chemicals, inflammable liquids, acetylene gas, alcohol or volatile or explosive substances on the **premises** unless required in the use of the **premises** and in the normal course of the **Tenant's** business.

6.6 Fire Regulations

The **Tenant** must:

- comply with insurance, sprinkler and fire alarm regulations
- pay to the **Landlord** the cost of any alterations to the sprinklers or fire alarm installation which may become necessary by reason of the non-compliance by the **Tenant** with regulations of a local authority, the requirements of the Insurance Council of Australia or of the **Landlord's** insurer.

7. RELEASE, INDEMNITY AND TRUSTEES LIABILITY

7.1 Release

The **Tenant** occupies the **premises** at its own risk.

The **Tenant** releases the **Landlord** and its agents, contractors and employees, in the absence of any negligence on their part, from all actions or demands due to any loss, death, damage or injury occurring in the **premises** or the **building**.

7.2 Landlord's Responsibility

The **Landlord** is not responsible and has no liability for any death or injury to a person or any loss of or damage to the **Tenant's fixtures** or personal property of the **Tenant** in the absence of that negligence.

7.3. Indemnity

The **Tenant** indemnifies and will keep indemnified the **Landlord** from and against all actions or demands due to the use by the **Tenant** of the **premises** or the **building**, unless the action or demand arises because of action of the **Landlord** or its agents.

8. ASSIGNMENT AND SUB-LETTING

8.1 Consent

8.1.1. The **Tenant** must not:

- assign the lease;
- give a sub-lease, licence or concession; or
- part with possession or the whole or part of the **premises**,

without written consent of the **Landlord**.

8.1.2. To obtain the **Landlord's** consent to an assignment or sub-lease the **Tenant** must:

- ask the **Landlord** in writing to consent to the assignment or sublease;
- give the **Landlord**:
 - a) in relation to each proposed assignee or sub-lessee such information as the **Landlord** reasonably requires about its financial resources and

business experience and if the **Act** does not apply, any additional information reasonably required by the **Landlord** to enable it to make a decision, and

b) a copy of the proposed document of transfer or sublease, and

- remedy any breach of the lease which has been remedied and of which the **Tenant** has been given written notice.

8.1.3. The **Landlord's** consent to a proposed assignment of sub-lease will be given if:

- the **Tenant** is not in default under this lease;
- the **Tenant** has complied with general condition 8.1.2; and
- the proposed assignee or sub-lessee satisfies the **Landlord** that it is a respectable and financially sound person with business skills and experience to that of the **Tenant**

8.2 Assignee or Sub-Lessee

The **Tenant** must enter and must ensure that the assignee or sub-lessee enters into a deed with the **Landlord** (within 14 days of its submission and before the assignment or sub-lease, is applicable) in the form required by the **Landlord** containing:

- a covenant that the assignee or sub-lessee, as applicable, will comply with the **Tenant's** covenants in the lease;
- in the case of an assignment, a release by the **Tenant** and the **Guarantor** of any claim they may then or subsequently have against the **Landlord**; and
- any other provision required by the **Landlord**

8.3 Formalities in relation to Assignment

The **Tenant** must ensure that, before the assignment, the assignee gives to the **Landlord**:

- the indemnities and bank and personal guarantees that the **Landlord** reasonably requires; and
- The executed and stamped transfer of lease or deed of assignment of lease, as appropriate, under which the lease is assigned.

8.4 Fees

The **Tenant** must pay to the **Landlord** within 7 days after delivery of written demand a non-refundable reasonable fee to cover administrative expenses and also its costs and disbursements covering the matters referred to in this general condition.

8.5 Consent

If the **Act** applies, the **Landlord** must advise the **Tenant** whether or not it consents to the proposed assignment within 28 days after receipt of the notice of intention to assign the lease and the provision by the **Tenant** of all materials reasonably required by the **Landlord** and where the **Act** applies all additional material required under the **Act**.

8.6 Change in Effective Control

If the **Tenant** is a corporation (other than a corporation, or a subsidiary of a corporation, whose shares are listed on the official list of the Australian Stock Exchange Limited ACN 008 629 691), a change in the effective control of the **Tenant** is deemed to be an assignment of this lease.

If the **Tenant** is a trustee of a trust, a change of trustee or a change in the controlling interests in the trust is deemed to be an assignment of this lease.

8.7 Mortgage of Lease

The **Tenant** must not use the lease or the **Tenant's fixtures** as security or permit any sub-tenant or licensee to do the same in respect of:

- Any sub-lease or licence, or
- Any interest of the sub-tenant or licensee in the sub-lease or licence or in any part of the **premises**,

without the consent of the **Landlord**.

9. MANAGEMENT AND OPERATION OF THE BUILDING

9.1. Quiet Enjoyment

9.1.1 Subject to general condition 9.1.2, the **Tenant** may peacefully occupy the **premises** for the **Term** without interruption or disturbance from the **Landlord** or any other person lawfully claiming under the **Landlord** if the **Tenant** pays the rent and other money payable and punctually complies with the **Tenant's** obligations under the lease, except as the lease provides otherwise.

9.1.2 The **Tenant** acknowledges that the **Landlord** may add to, vary, modify, alter, redesign, reconstruct, redevelop, demolish, subdivide or extend the **land** or any part of it (including the **buildings**) in which the **premises** are situated and in those circumstances there may be interruption or disruption to the **Tenant's** occupation of the **premises** from the **Landlord** or any other person lawfully claiming under the **Landlord**. The **Landlord** will endeavour to ensure that (to the extent that is reasonably practicable) any interruption or disturbance to the **Tenant's** occupation of the **premises** is kept to a minimum.

9.2 Management

Subject to the operation of general condition 9.3 the **Landlord** must:

- maintain, repair and keep the **building** and the **Landlord's Installations** in a condition consistent with their condition at the start of the lease but will not be responsible for those repairs which are otherwise the responsibility of the **Tenant** under this lease.
- if applicable, maintain, repair and keep tidy the **common area**
- pay operating expenses which are not payable by the **Tenant** or any other occupant of the **building**
- take out and keep current during the term such policies of insurance as may be required from time to time under applicable legislation.

9.3 Owners corporation Manager

In the event that the **premises** form part of a **building** over which there is an **owners corporation** in operation the **Landlord** shall use reasonable endeavours to ensure that the **owners corporation**:

- takes out and keeps current during the term such policies of insurance as may be required from time to time under applicable legislation
- keeps the structure (including the external faces and roof) of the **building** in a condition consistent with their condition at the start of the lease, but is not responsible for repairs which are the responsibility of the **Tenant**
- maintains, repairs and keeps tidy the **common area**

9.4 Landlord's Rights

The **Landlord** reserves the right:

- to use the exterior walls of the **premises** (other than shopfronts and doors) and the roof,
- to install, maintain, use, repair, alter and replace pipes, ducts, conduits and wires leading through the **premises** and to pass and run water, air, electricity, drainage, gas and other services through the pipes, ducts, conduits and wires, and
- to enter onto the **premises** to exercise these rights

The **Landlord** must cause as little inconvenience to the **Tenant** as is practicable in the circumstances when exercising these rights

9.5 Improvements

9.5.1 Improvements to Building

Where the **Landlord** has the right to do so, the **Landlord** may improve, extend, vary or reduce the whole or any part of the **building** (other than the **premises**) and, without limitation, may:

- construct improvements on the **common area**; and
- move or change the directions, areas, levels or location of any part of the **building** in any way which the **Landlord** thinks appropriate,

PROVIDED THAT such changes, other than changes made:

- (i) in order to comply with any law; or
- (ii) in compliance with a requirement of any government or responsible authority;

do not adversely affect the **premises** (including ingress and egress), car parking, or the **Tenant's** rights under this lease.

9.5.2 Release by Tenant

The **Tenant** may not make any claim against the **Landlord** in relation to (and releases the **Landlord** from any liability resulting from) these improvements to the **building** if they were disclosed to the **Tenant** before the commencement date and comply with the requirements of general condition 9.5.1.

9.5.3 Landlord's Obligations

The **Landlord** must cause as little inconvenience to the **Tenant** as is practicable in the circumstances making these improvements.

Subject to any other provision to the contrary, the **Landlord** must ensure that it does not interfere with the **Tenant's** quiet enjoyment of the **premises** when the **Landlord** makes improvements to the **building**.

9.6 Use of Common Area

The **Tenant** may use the **common area** in common with other persons

The **Tenant** must not use or permit to be used any part of the **common area** for a business or commercial purpose or the display or advertisement of any goods or services except with the **Landlord's** consent and in accordance with the **Landlord's** conditions.

10. DEFAULT

10.1 Essential Terms

The obligations of the **Tenant** under the general conditions Rent 3.1, Services and Outgoings 3.2, Stamp duty and costs and charges 3.3, Bank guarantee/secured sum 3.4, Use of **premises** 4, Repair 5.1, Specific repair obligations 5.3, **Tenant's** insurance 6.1, Assignment 8.1, and change in effective control 8.7 are essential terms. Other obligations under the lease may also be essential terms.

10.2 Landlord's Right to Terminate

10.2.1 The **Tenant** shall be deemed to be in default if it:

- is insolvent; or
- repudiates its obligations under the lease; or
- does not comply with an essential term of the lease; or
- does not comply with an obligation under the lease (which is not an essential term) and, in the **Landlord's** reasonable opinion;
 - (i) the non-compliance can be remedied but the **Tenant** does not remedy it within a reasonable time after the **Landlord** gives the **Tenant** notice to remedy it;

- (ii) the non-compliance cannot be remedied or compensated for, or
- (iii) the non-compliance cannot be remedied but the **Landlord** can be compensated and the **Tenant** does not pay the **Landlord** compensation for the breach within a reasonable time after the **Landlord** gives the **Tenant** notice to pay it.

10.2.2 The **Landlord** may terminate this lease if the **Tenant** is in default under general condition 10.2.1 and:

- the default can be rectified but the **Tenant** does not rectify the default within 14 days of receiving written notice from the **Landlord**; or
- the default cannot be rectified or compensated for, or
- the default cannot be rectified but the **Landlord** can be compensated and the **Tenant** does not pay the **Landlord** compensation for the default within a reasonable time after the **Landlord** gives the **Tenant** notice to pay it.

10.3 Damages

If the lease is terminated by the **Landlord** under general condition 10.2.2, the **Tenant** indemnifies the **Landlord** against any liability or loss arising and any cost incurred (whether before or after termination), in connection with:

- the **Tenant**'s breach of the lease, or
- the termination of the lease

including the **Landlord**'s loss of the benefit of the **Tenant** performing its obligations under the lease from the date of termination until the expiry date.

The **Landlord** must take reasonable steps to mitigate its loss if the lease is terminated.

10.4 Landlord's Rights Against Tenant's Property

10.4.1. Removal of Property

If the **Landlord** becomes entitled to re-enter the **premises** under this lease, the **Tenant** must, within 7 days after receiving written notice from the **Landlord** to do so, immediately remove all the **Tenant**'s **fixtures** and property from the **premises**.

10.4.2 Right of Landlord to Remove Property

If the **Tenant** fails to remove the **Tenants fixtures** and property within the 7 day period, the **Landlord** may remove them at any time and:

- store them;
- secure them;
- sell them; or
- enforce its rights in relation to any security interest granted to the **Landlord** under special condition 8;

at the cost of the **Tenant**

10.4.3 Deduction from Sale Proceeds

The **Tenant** agrees that the **Landlord** may, at the discretion of the **Landlord** and without regard to any claim or right of any other person, deduct from the proceeds of the sale.

- the proportion of rent and other money which would otherwise have been payable from the day on which the **Landlord** becomes entitled to re-enter the **premises** until the day on which all of the **Tenant's fixtures** and property have been removed;
- such amount equal to that amount of monies owing to the **Landlord** whether presently due, contingently owing or that sound in damages, in priority to the claims or rights of any other person (including any costs requested in accordance with special condition 8.9 but which are unpaid); and
- all costs incurred the **Landlord** in connection with any insuring, removal, securing (including lock replacement), storage or sale of the **Tenant's fixtures** or property.

11. RESUMPTION, DESTRUCTION OR DAMAGE TO THE BUILDING OR PREMISES

11.1 Resumption

The **Landlord** or the **Tenant** may terminate the lease by written notice to the other if the **building** or **premises** is taken for public purposes by a competent authority so as to render them substantially unfit for occupation by the **Tenant** or substantially inaccessible.

11.2 Destruction or Damage

If the whole or any part of the **building** or **premises** is destroyed or damaged and as a result the **premises** are unusable or inaccessible then the **Tenant** may request the **Landlord** to rebuild the **premises** by notice in writing to the **Landlord**.

11.3 No Re-building

If the **Landlord** (if applicable, the co-owners of the other parts of the **building**) decides that it is impractical or undesirable to rebuild the **premises**, it must notify the **Tenant** of that decision within 7 days of making it. The **Landlord** or the **Tenant** may terminate the lease by 7 days' notice in writing to the other if the **Landlord**:

- does not rebuild the **premises** within a reasonable time after receiving the **Tenant's** request to rebuild, or
- notifies the **Tenant** of its decision not to rebuild the **premises**.

11.4 Tenant's Damage

The **Tenant** cannot terminate the lease under this general condition and must pay rent and other money under the lease if the **Tenant** caused or contributed to (other than in a nominal way) the destruction or damage or if the **Landlord's** insurer refuses to indemnify the **Landlord** for the destruction or damage as a result of the actions or default of the **Tenant**.

11.5 **Effect of Termination**

This termination does not affect either party's rights concerning any previous breach or matter.

11.6 **No Obligation to Rebuild**

The **Landlord** has no obligation to rebuild the **building** or the **premises** or make them fit for occupation.

11.7 **Adjustment for Unusable Premises**

When the **premises** or the **building** is destroyed or damaged and becomes unusable or inaccessible, all rent and other money payable under the lease, or a part of the rent and money proportional to the nature and extent of the damage, abates. The abatement ceases when:

- the **premises** are rebuilt, and
- the **premises** are made accessible and fit for occupation,

unless the lease is terminated under this general condition.

11.8 **Use of Part of the Premises**

The **Tenant** must continue to operate its business in part of the **premises** and pay rent and other money under the lease:

- if that part is useable and safe; and
- the **Tenant** and the **Landlord** are of the reasonable opinion it is practicable to do so.

11.9 **Liability of Tenant**

The **Tenant** remains liable to pay rent and other money under the lease up to the date of destruction or damage, and for any previous breach of the lease.

12. **GUARANTOR**

12.1 If the **Tenant** is a corporation the **Tenant** must cause the **Guarantor** and any other person nominated by the **Landlord** (which may include, without limitation, the **Tenant's** directors, shareholders or **Parent** or a combination of them) to execute a Guarantee and Indemnity in the same form attached to this lease or a bank acceptable to the **Landlord** to execute a guarantee in a form and for an amount approved by the **Landlord** and deliver the document to the **Landlord** on or prior to the **Commencement Date**.

13 **GENERAL**

13.1 **Interpretation**

- Singular includes the plural and vice versa
- A gender includes other genders
- Person includes companies
- A person includes the person's executors, administrators, successors, assigns, substitutes and persons who take by novation

- Where a party is more one person, each person is bound as an individual and they are all bound together
- Headings have been inserted for guidance only and do not affect the interpretation of this lease
- Statute includes its amendments and replacements and regulations under it.
- If there is an inconsistency between the general conditions and the special conditions in this lease, the special conditions will prevail.

13.2 Notices

13.2.1 Requirements for Notice

A notice or approval must be:

- in writing; and
- left at or posted to the address or sent to the facsimile number of the party set out in Item 3, 4 or 14.

13.2.2 Service of Notice

A notice or approval is taken to be given:

- if sent by post, on the fourth day after posting; and
- if sent by facsimile, on the next business day after it is sent unless the sender is aware that the transmission is impaired.

13.3 Rules of the Building

The **Landlord** may make **rules** and vary them whenever it reasonably deems the variation is necessary or desirable.

- The variation may not be inconsistent with the rights of the **Tenant** under the lease.
- The **Landlord** must give a copy of the **rules** and all variations to the **Tenant**. The variation takes effect when a copy is given to the **Tenant**.
- The **Tenant** must comply with the **rules** and use its best endeavours to have its employees comply with the **rules**. Failure to comply with the **rules** is a breach of the lease.

13.4 Consent or Approval of Landlord

The **Landlord** must not unreasonably withhold consent or approval required for the **Tenant** doing or executing an act or thing under the lease or the **rules**.

13.5 Tenant not to Prejudice Head Lease

The **Tenant** must not prejudice or cause to be determined the **Landlord's** rights under any agreement for lease or head lease relating to or including the **premises**.

13.6 Saturdays, Sundays and Public Holidays

Excluding the **Tenant's** obligation to keep the premises open for trade during business hours which are normal to the permitted use, anything to be done on Saturday or a Sunday or a public holiday in Victoria may be done on the next day which is not a Saturday, Sunday or public holiday.

13.7 Law

This lease is governed by the laws of Victoria.

13.8 Notice Before Landlord Liable

The **Landlord** is not in default of a remediable breach under this lease unless:

- the **Tenant** has given written notice to the **Landlord** of the breach, and
- the **Landlord** has failed within a reasonable time after receipt of the notice to remedy the breach

despite anything in the lease to the contrary.

13.9 Whole Agreement

This lease is the whole of the agreement between the **Landlord** and the **Tenant**.

13.10 Implied Obligations or Powers

The obligations or powers implied by the *Transfer of Land Act 1958* and the **Tenant**.

13.11 GST

13.11.1. GST Definitions

For the purpose of this general condition 13.11:

- 1) "GST means GST within the meaning of the GST Act.
- 2) "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (as amended).

Expressions set out in italics in this general condition bear the same meaning as those expressions in the GST Act.

13.11.2 Amounts otherwise payable do not include GST

Except where express provision is made to the contrary, and subject to this general condition 13.11, the *consideration* payable by any party under this Lease represents the *value* of any *taxable supply* for which payment is to be made.

13.11.3 Liability to pay any GST

Subject to general condition 13.11.5, if a party makes a *taxable supply* in connection with this lease for a *consideration*, which, under general condition 13.11.2 or general condition 13.11.4, represents its *value*, then the party liable to pay for the *taxable supply* must also pay, at the same time and in the same manner as the *value* is otherwise payable, the amount of any GST payable in respect of the *taxable supply*.

13.11.4 Reimbursements

If the lease requires the **Tenant** to pay, reimburse or contribute to an amount paid or payable by the **Landlord** in respect of an *acquisition* from a third party for which the **Landlord** is entitled to claim an *input tax credit*, the amount required to be paid, reimbursed or contributed by the **Tenant** will be the *value* of the *acquisition* by the **Landlord** plus, if the **Landlord**'s recovery

from the **Tenant** is on account of a *taxable supply*, any GST payable under general condition 13.11.3.

13.11.5 **Tax Invoice**

A party's right to payment under general condition 13.11.3 is subject to a valid *tax invoice* being delivered to the party liable to pay for the *taxable supply*.

13.12 **Disclosure**

If the **Act** applies, the **Tenant** acknowledges that at least 7 days before entering into the lease the **Landlord** provided the tenant with:

- a disclosure statement;
- a copy of the proposed lease; and
- a copy of the information brochure (if any) about retail premises published by the Small Business Commissioner

in accordance with the requirements of the **Act**.

13.13 **No Warranties**

The **Landlord** does not warrant that:

- the **premises** or the **building** are suitable for the use proposed by the **Tenant**; and
- the **Tenant's** business conducted from the **premises** will be successful.

13.14 **No Representations**

The **Tenant** agrees that (other than as disclosed under general condition 13.12 or as expressly contained in the lease), no promise, representation, undertaking or warranty given by the **Landlord** or on its behalf has been relied on by the **Tenant** entering into the lease, or has in any material way induced the **Tenant** to enter into the lease.

13.15 **Disclosure of Promises**

The **Tenant** must disclose to the **Landlord** in writing before the **Tenant** executes the lease any promise (other than those expressly contained in the lease) that the **Tenant** has relied on in entering into the lease or which has in any material way induced the **Tenant** to enter into the lease.

SPECIAL CONDITIONS

1. ADJUSTMENTS OF BASE RENT

1.1 CPI Reviews

The base rent will be adjusted on each CPI adjustment date specified in Item 9(a).

1.1.1 Formula

Each adjustment will be determined using the following formula:

New base rent *equals* existing rent *multiplied by* x/y

Where:

- **x** is the CPI last published before the relevant base rent CPI adjustment date specified in Item 9(a)
- **y** is the CPI last published before the most recent previous base rent CPI adjustment date or market review date, or where there is not such previous date, before the commencement date.

CPI means the consumer price index for Melbourne (all groups) published by the Australian Bureau of Statistics. If the CPI no longer exists it means an index that the President of the Law Institute of Victoria decided reflects changes in the cost of living in Australia.

1.1.2 Effective Date

The **Tenant** must pay the new base rent from the relevant base rent CPI adjustment date.

1.2 Market Reviews

The base rent must be adjusted on each market review date specified in Item 9(b).

1.2.1 Method

Each adjustment will be determined as follows:

- the **Landlord** may advise the **Tenant** in writing any time within 12 months of the relevant market review date of the new base rent the **Landlord** wants to charge
- the **Tenant** has 10 days after receiving that notice to accept or reject the new base rent. If the **Tenant** does not notify the **Landlord** it rejects the new base rent then the new base rent will be rent which the **Landlord** nominated
- if there is disagreement, the **Landlord** and the **Tenant** must negotiate any new base rent. They have 8 weeks from the **Tenant** giving notice of rejection to do this

- if the **Landlord** and **Tenant** cannot agree then the new base rent is to be determined by the process in special conditions 1.2.2.-1.2.4 (inclusive) provided that, if the **Act** applies, the new base rent determined in accordance with special conditions 1.2.2-1.2.4 (inclusive) must be less than the Rent payable by the **Tenant** immediately before the relevant market review date specified in Item 15
- if the new base rent determined by the process in special conditions 1.2.2-1.2.4 (inclusive) is less than the **Rent** payable by the **Tenant** immediately before the relevant market review date specified in Item 15, the parties agree that the new base rent is to be the **Rent** payable by the **Tenant** immediately before the relevant market review date specified in Item 15 increase by 4% (four percent).

1.2.2 **Expert Valuer**

Either the **Landlord** or the **Tenant** may ask the President of the Australian Institute of Valuers (Victorian Division) to appoint an expert to decide the new base rent.

The expert must have at least 5 years' experience as a registered valuer.

Where the expert dies, or does not complete the determination under this special condition, either the **Landlord** or the **Tenant** may request the President to appoint a substitute expert.

The expert must determine the new base rent as an expert and not an arbitrator:

- on the basis of the market rent at that time
- on the basis of the area of the **premises** (in square metres)
- assuming the **premises** are vacant and the **Landlord** and **Tenant** are willing to enter into a lease
- on the basis of the terms of this lease
- disregarding any incentives and the value of any works done by the **Tenant**
- taking into account any submissions the **Landlord** and **Tenant** wish to make

and must give a written decision no later than 30 days after the appointment.

1.2.3 **Valuer's Fees**

The **Landlord** and the **Tenant** will each pay half the expert's fees.

1.2.4 **Effective Date**

The **Tenant** must pay the existing base rent until the new base rent is determined. The **Tenant** must then pay the new base rent from the relevant market review date.

1.3 Percentage Reviews

The base rent will be adjusted on each percentage adjustment date specified in Item 9(c).

1.3.1 Formula

Each adjustment will be determined using the following formula:

new base rent *equals* existing rent *multiplied* by $Z/100$

where:

Z equals the figure contained in Item 9(c) of the Lease Details.

1.3.2 Effective Date

The **Tenant** must pay the new base rent from the relevant base rent percentage adjustment date.

2. OPTION TO RENEW

2.1 Exercise of Option

The **Landlord** grants the **Tenant** an option to renew this lease for the further term or terms stated in Item 15 as follows:

- the **Tenant** must give written advice to the **Landlord** that it wishes to take up the option for the first of the further terms not sooner than 6 months nor later than 3 months before the expiry date (the latest date for exercising the option is stated in Item 16)
- the renewed term will commence on the day after the expiry date
- the new lease will be on the same terms as this lease except that:

2.1.1 commencing base rent

The new base rent for the first lease year of the new lease will be determined under special condition 1 with the commencement date of the new lease being a market review date;

2.1.2 base rent reviews

Item 9 will be adjusted such that the base rent for the remainder of the new lease term will be reviewed in accordance with those relevant CPI adjustment dates, market review dates and/or percentage adjustment dates set out in Item 15;

2.1.3 secured sum

The **Landlord** may increase the secured sum in Item 10;

2.1.4 option

Item 15 will be adjusted, noting there will not be any further option to renew after the last option for a further term stated in Item 15 has been exercised; and

2.1.5 dates

Any dates will be adjusted.

2.2 Forfeiture of Option

If the **Tenant** has not observed its obligations under the lease in a material way on more than two occasions before the expiry date and/or there is an unremedied breach of the lease by the **Tenant** of which the **Landlord** has given the **Tenant** written notice, the **Tenant** will not have the right to renew this lease.

3. REQUIREMENTS BEFORE LEASE BINDS PARTIES

The parties acknowledge and agree that the lease is not binding on either party until each of the following conditions are satisfied:

- the **Landlord** and the **Tenant** have signed this lease;
- the **Guarantor** has signed the attached Guarantee & Indemnity; and
- the **Tenant** has paid to the **Landlord** or the **Landlord's agent** the first rent instalment payable under this lease and any security deposit required under this lease.

If the **Tenant** has been given possession of the **premises** before each of the above conditions are satisfied, then the **Landlord** may at its option regard the **Tenant** as a tenant at will.

4. ADDITIONAL INSURANCES

If required by the **Landlord** the **Tenant** must take out insurance against the following (noting the interest of the **Landlord**):

- damage/breakage of glass in the premises for its full replacement value;
- damage to the premises from unlawful entry;
- loss or damage for full replacement value for the **Landlord's Installations**.

If the **Landlord** elects to take out the insurances referred to above, the **Tenant** shall reimburse **Landlord** for such expenses with 7 days of request by the **Landlord**.

5. TENANT'S WORKS

5.1 Prior to the conduct of any fit-out or improvements to the **premises** ("**Tenant's Works**") the **Tenant** must:

- 5.1.1 provide to the **Landlord** a full set of plans and specifications of the proposed **Tenant's Works** for approval prior to obtaining the consent of the relevant authorities;
- 5.1.2 pay all reasonable costs incurred by the **Landlord** in approving the plans;

- 5.1.3 at its own expense obtain all necessary permits, insurances and authorizations and comply with all town planning and building requirements;
- 5.1.4 ensure that the **Tenant's Works** are performed in a professional and workmanlike manner and to a professional standard.
- 5.1.5 Unless otherwise agreed by the **Landlord**, at its own cost, at the end of the **Term**, restore the **premises** to its original condition immediately prior to the **Commencement** of this Lease.
- 5.1.6 This special condition 5 is an essential term for the purposes of general condition 10.

6. DEVELOPMENT AND/OR RELOCATION

- 6.1 Despite any other provision contained in this lease, the **Landlord** and the **Tenant** agree that if at any time during the continuance of this lease the **Landlord** wishes to add to, vary, modify, alter, redesign, reconstruct, redevelop, demolish, subdivide or extend the **land** or any part of it (including the **building**) in which the **premises** are situated then the **Landlord** may give the **Tenant** not less than six (6) month's notice in writing ("**Landlord's Notice**") confirming that:
 - a) the **Landlord** requires the **Tenant** to vacate the **premises** by no later than the date of expiry of the **Landlord's Notice**;
 - b) the **Landlord** offers to grant to the **Tenant** a lease ("**New Lease**") of other premises within the **Land** identified by plans and specifications given to the **Tenant** with the **Landlord's Notice** ("**New Premises**"); and
 - c) the base rent payable by the **Tenant** under the **New Lease**.
- 6.2 The **New Lease** will commence on the day immediately following the day of expiry of the **Landlord's Notice** and will be on the same terms and conditions as contained in this lease provided that:
 - a) the **Term** of the **New Lease** will be the remainder of the **Term** of this lease or such other term as the **Landlord** and the **Tenant** may agree upon in writing;
 - b) the minimum rent payable by the **Tenant** under the **New Lease** will be that amount as agreed between the **Landlord** and the **Tenant**. If the **Landlord** and **Tenant** cannot agree then the minimum rent payable by the **Tenant** under the **New Lease** is to be determined by the process in special conditions 1.2.2-1.2.4 (inclusive) provided that, if the **Act** does not apply, the minimum rent under the **New Lease** on a per square metre basis must not be less than that amount equal to the **Rent** payable by the **Tenant** immediately before the commencement of the **New Lease** (on a per square metre basis) multiplied by the lettable area (in square metres) of the **New Premises**; and
 - c) the lettable area of the **New Premises** will be as specified in the **Landlord's Notice**,
- 6.3 If the **Tenant** does not want to relocate its business to the **New Premises**, the **Tenant** may terminate this lease by giving written notice of termination ("**Tenant's Notice**") to the **Landlord** within one (1) month after the

Landlord's Notice is given in which case this lease will terminate on the date of expiry of the **Landlord's Notice** and the **Tenant** must by that date:

- a) vacate the **premises**; and
- b) execute the form of surrender of this lease reasonably requested by the **Landlord** and deliver same to the **Landlord**.

6.4 If the **Tenant** does not give the **Tenant's notice** pursuant to special condition 6.3 then:

- a) the **Tenant** must vacate the **premises** no later than the date of expiry of the **Landlord's Notice**.
- b) the **Tenant** must execute the form of surrender of this lease reasonably required by the **Landlord** and deliver same to the **Landlord** before the **New Lease** commences:
- c) the **Landlord** will grant and the **Tenant** will accept the **New Lease** of the **New Premises**. The **Tenant** must execute (and must procure the **Guarantor** to execute) the **New Lease** and any associated documents reasonably required by the **Landlord** and deliver same to the **Landlord** before the **New Lease** commences; and
- d) the **Tenant** must pay all stamp duty (if any and registration fees (if any) payable in respect of the **New Lease**.

6.5 The termination of this lease pursuant to this special condition 6 will be without prejudice to the rights of either party in respect of any antecedent breach matter or thing.

6.6 The **Tenant** will be entitled to payment by the **Landlord** of the **Tenant's** reasonable costs of the relocation of its business to the **New Premises**. The parties agree that the costs will consist of and be limited to the written down value (calculated by the straight line method of depreciation and certified by a certified practicing accountant) of the **Tenant's fixtures** which the **Tenant** cannot (acting reasonably) relocate to the **New Premises** up to a maximum amount equal to one-sixth of the **Rent**.

6.7 Subject to the provisions of special condition 6.6, the **Landlord** is not responsible for any loss, injury or damages (including loss of profits and/or economic loss) sustained or which may be sustained by the **Tenant** arising out of or in connection with the operation of this special condition 6.

6.8 The **Tenant** acknowledges and agrees that during the period in which the **Landlord** elects to add to, vary, modify, alter, redesign, reconstruct, redevelop, demolish, subdivide or extend the **land** or any part of it:

6.8.1 there may be interruption or disruption to:

- a) the ingress to and egress from the **premises** and;
- b) access to car parking by the **Tenant** and its members.

6.8.2 the **Landlord** reserves the right to change:

- a) the ingress to and egress from the **premises**, in which case the **Landlord** will provide alternative ingress to and egress from the **premises** within the **land** but not necessarily in the same location as at the **Commencement Date**; or
- b) access to car parking by the **Tenant** and its members, in which case the **Landlord** will provide alternative access to car parking to the **Tenant** and its members within the **land** but not necessarily in the same location as at the **Commencement Date**.

7. NO RIGHT TO SET-OFF

The **Tenant** must pay all money due to the **Landlord** under this lease without deduction, set-off, withholding or counterclaim. This is an essential term for the purposes of general condition 10 of this lease.

8. SECURITY

8.1 Without limiting any other general condition in this lease, the **Tenant** and/or **Guarantor**:

- must if required by the **Landlord**, grant a **Security Interest** to the **Landlord**; and/or
- may, by entering into this lease or any other agreement, arrangement or transaction with the **Landlord**, be considered under the **PPSA** to have granted a **Security Interest** to the **Landlord**.

To secure the payment of money by the **Tenant** and/or **Guarantor** and performance of obligations by the **Tenant** and/or **Guarantor** under this lease and/or any other agreement between the **Landlord** and the **Tenant** and/or the **Guarantor**, in which case special conditions 8.2 to 8.5 will apply.

8.2 The **Grantor** must, within the timeframe notified by the **Secured Party**, sign all documents, including the **Security Agreement**, and do all things necessary, as notified by the **Secured Party** to:

- 8.2.1 enable **Registration** with respect to the **Security Interest** and for that **Registration** to continue until such time as all of the **Grantor's** obligations under the **Security Agreement** and this lease have been satisfied, including providing the **Grantor's** details and any serial numbers required for **Registration**;
- 8.2.2 if the **PPSA** applies, enable the **Security Interest** to be perfected and continue to be perfected until such time as all of the **Grantor's** obligations under the **Security Agreement** and this lease have been satisfied;
- 8.2.3 ensure that the **Security Interest** has priority over all other security interests in the **Personal Property**, whether registered, perfected or otherwise and whether created or arising before or after the creation of the **Security Interest**, except those security interests which the **Secured Party** agrees will have priority over the **Security Interest** or which by law have priority over the **Security Interest**;

- 8.2.4 ensure that the **Secured Party** is able to **Enforce the Security Interest** until such time as all of the **Grantor's** obligations under the **Security Agreement** and this lease have been satisfied and the **Grantor** must not do anything which affects the **Enforceability** of the **Security Interest**; and
- 8.2.5 make any changes to the **Registration** relating to the **Security Interest** as the **Secured Party** may require from time to time, including to enable correction of any defects in the **Registration**.
- 8.3 The **Grantor** must keep **Security Related Confidential Information** confidential at all times and must not, except with the **Secured Party's** prior consent, disclose the **Security Related Confidential Information** at any time (unless required by law or if the information is already public knowledge) except with the **Secured Party's** prior consent.
- 8.4 If the **Grantor** is required, or anticipates or has cause to anticipate that it may be required, by law or court order, to disclose the **Security Related Confidential Information**, the **Grantor** must;
- 8.4.1 immediately notify the **Secured Party** of the actual or anticipated requirement and use its best endeavours (without breach of the applicable law) to delay and withhold disclosure until the **Secured Party** has had a reasonable opportunity to oppose disclosure by lawful means; and
- 8.4.2 if after the **Secured Party** has exhausted all lawful means of opposing disclosure, the **Security Related Confidential Information** needs to be disclosed, only disclose so much of the **Security Related Confidential Information** as is required to be disclosed by law and is approved by the **Secured Party**.
- 8.4.3 The **Grantor** must use its best endeavours to ensure that all of its nominees, employees, contractors and agents comply with this special condition.
- 8.5 The **Secured Party** may exercise its rights in relation to the **Security Interest** any time after the **Grantor** fails to comply with its obligations under the **Security Agreement** and/or this lease.
- 8.6 To the extent permitted by legislation relating to the **Security Interest**, the **Grantor** waives its rights to receive any notices required to be issued or which would ordinarily be issued, whether by the **Secured Party** or any other person, to the **Grantor** under any such legislation.
- 8.7 The **Tenant** will be entitled to a release of the **Security Interest** when all its obligations under the **Security Agreement** and this lease have been satisfied.
- 8.8 The **Grantor** will be responsible for its own costs in relation to:
- the **Security Agreement** and the grant of the **Security Interest, Registration** with respect to the **Security Interest** and, if the **PPSA** applies, perfection of the **Security Interest**; and
 - complying with its obligations under this special condition.

- 8.9 The **Grantor** must pay to the **Secured Party** on request, all the **Secured Party's Expenses** in connection with the **Security Agreement** and the grant of the **Security Interest, Registration** with respect to the **Security Interest** and, if the **PPSA** applies, perfection of the **Security Interest**.
- 8.10 The **Tenant** and **Guarantor** agree to sign any documents varying this lease and/or the **Security Agreement** and do anything which the **Landlord** considers necessary as a result of changes made to the **PPSA**.
- 8.11 Where permitted under the **PPSA**, the provisions contained in this lease will prevail over the **PPSA**, to the extent of any inconsistency.
- 8.12 In this special condition 8:

Enforce means exercise all of the **Secured Party's** rights, under the **Security Agreement** or otherwise, in relation to the **Security Interest**.

Enforceability means the **Secured Party's** ability to exercise all of its rights, under the **Security Agreement** or otherwise, in relation to the **Security Interest**.

Grantor means those of the **Tenant** and/or **Guarantor** granting the **Security Interest** under special condition 8.1 and if the **PPSA** applies, includes the meaning given to that word in the **PPSA**.

Personal Property means the **Tenant's Fixtures** to which the **PPSA** applies and, where applicable, includes the proceeds from the sale of any of the **Tenant's Fixtures**;

PPSA means the *Personal Properties Securities Act 2009 (Cth)* and the *Personal Property Securities Regulations 2010 (Cth)*.

Registration

- if the **PPSA** applies, has the same meaning as in the **PPSA**; and
- in all other circumstances, means registration of the **Security Interest** on the relevant register to enable the **Security Interest** to have priority as set out in this special condition 8.

Secured Party means the **Landlord** and if the **PPSA** applies, includes the meaning given to those words in the **PPSA**.

Security Agreement means:

- any agreement, arrangement or transaction between the **Grantor** and the **Secured Party** that creates or evidences the **Security Interest**, in the form prepared by the **Secured Party** at the cost of the **Grantor** and, where applicable, in accordance with any relevant legislation; and
- in relation to a **Security Interest** granted by the **Tenant** and/or **Guarantor** to the **Landlord** includes any agreement between the **Landlord** and the **Tenant** and/or the **Guarantor** which creates or evidences the **Security Interest**, which may include this lease.

Security Interest

- if the **PPSA** applies, means a security interest (as defined in the **PPSA**); and
- in all other circumstances, means any mortgage, charge, pledge, lien, hypothecation, trust, power, title retention or conditional sales agreement, hire or hire purchase agreement, option, subordination or other security interest,

granted by the **Grantor** in the **Personal Property** to the **Secured Party** under the **Security Agreement** to secure payment of all money by the **Grantor** and performance of all the **Grantor's** obligations under the **Security Agreement** and, if the **PPSA** applies, includes a purchase money security interest.

Security Related Confidential Information means the **Security Agreement** and the terms of the grant of the **Security Interest** and any information and/or documents relating to these.

- 8.13 If the **PPSA** applies, words and phrases not defined in this special condition 8 will have the meaning given to them in the **PPSA**.
- 8.14 This special condition 8 is an essential term for the purposes of general condition 10.

GUARANTEE AND INDEMNITY

TO: **E & C YEATES PTY LTD**
ACN 620 866 284

1. In consideration of the **Landlord** having entered into the attached **Lease** (the "**Lease**") with the **Tenant** named in the **Lease** (the "**Tenant**") at the request of # (the "**Guarantor**") in respect of the **premises** described in the **Lease** (the "**Premises**") the **Guarantor**:
 - a) guarantees punctual payment of all money which the **Tenant** must pay the **Landlord** under the **Lease**, including any costs which the **Tenant** must pay because of any default; and
 - b) guarantees the observance and performance of any term or condition of the **Lease** by the **Tenant**; and
 - c) indemnifies the **Landlord** and will keep the **Landlord** indemnified against all losses, damages, costs, charges and expenses which the **Landlord** may incur or suffer because of a default by the **Tenant** in payment of any money or observance or performance of any of the terms of the **Lease**.
2. Any money payable under the **Lease** which may not be recoverable from the **Tenant** must be paid by the **Guarantor** to the **Landlord** upon demand. The **Guarantor** must pay that money to the **Landlord** even if the **Landlord** knows or should have known that the money cannot be recovered from the **Tenant**.
3. The **Guarantor's** liability will not be affected by any of the following:
 - a) the granting of any concession to the **Tenant** or to any other party;
 - b) any compounding of the obligations of the **Tenant** or any other party;
 - c) any release or discharge of the obligations of the **Tenant** or any other party from liability under the **Lease**;
 - d) any change to or renewal of any securities or any of the **Landlord's** rights;
 - e) anything done or not done by the **Landlord** in exercising its rights under the **Lease**;
 - f) anything which might affect this Guarantee and Indemnity but for this sub clause;
 - g) the **Landlord** obtaining a judgement against the **Tenant** in any court for payment of any money owing by the **Tenant**.
 - h) the **Landlord** agreeing to the **Tenant** making an assignment for the benefit of the **Tenant's** creditor or any arrangement with creditors under the insolvency laws;
 - i) any other person giving or failing to give the **Landlord** an indemnity or to guarantee the **Tenant's** obligation under the **Lease**;
 - j) the **Tenant's** liability ending for any reason;
 - k) the invalidity of any indemnity, guarantee or security held by the **Landlord** for the **Tenant's** or the **Guarantor's** obligations;
 - l) the **Tenant** assigning its interest under the **Lease** to another person (subject to any provision of the **Lease** to the contrary); or
 - m) any arrangement made between the **Landlord** and the **Tenant** with or without the consent of the **Guarantor**.
4. The **Guarantor's** liability extends to any money which the **Tenant** has paid the **Landlord** and which the **Landlord** has repaid or been required by law to repay for any reason.
5. This Guarantee and Indemnity will remain in force until the **Guarantor** has paid the **Landlord** the full amount for which the **Guarantor** or **Tenant** is liable.

6. This Guarantee and Indemnity continues beyond termination of the **Lease** and does not expire at that time.

Joint and several liability

7. Where the **Guarantor** consists of more than one person, the obligations on the **Guarantor** in this Guarantee and Indemnity binds all of those persons jointly and each of them severally.
8. The **Landlord** may enforce its rights under this Guarantee and Indemnity and proceed against any one or more of the persons names as **Guarantor** in the manner, order and at the times the **Landlord** determines in its discretion. The **Landlord** is not required to enforce its rights or proceed against all of the persons named as **Guarantor**.
9. A notice given by the **Landlord** if any one **Guarantor** is to be considered to have been given to all of the persons named as **Guarantor**.
10. A reference to the **Guarantor** is a reference to all of the persons named as **Guarantor** together and each of them separately.
11. The **Lease** binds each of the persons who execute the **Lease** as a **Guarantor** even if:
 - a) any one or more of the other persons named as **Guarantor** do not execute the **Lease**; or
 - b) execution by one or more of those other persons is or becomes void, voidable, illegal or unenforceable.

Enforceability of Guarantee and Indemnity

12. The **Landlord** can enforce this Guarantee and Indemnity without first taking any action against the **Tenant**.
13. This Guarantee and Indemnity is enforceable despite:
 - a) any delays, acts or omissions by the **Landlord**; or
 - b) the **Landlord's** loss of any indemnity, guarantee or security
14. The **Landlord** may determine when it will enforce the Guarantee and Indemnity.

Bankruptcy or liquidation of Tenant

15. If the **Tenant** is declared bankrupt or goes into liquidation, the **Guarantor** must not prove in any bankruptcy or liquidation in competition with the **Landlord**.
16. The **Guarantor** allows the **Landlord**:
 - a) to prove for all money which the **Tenant** owes the **Landlord**; and
 - b) to hold a suspense account and appropriate any money received from the bankruptcy or liquidation until the **Landlord** has received all the money which the **Tenant** owes it.
17. The Guarantor waives all its rights against the **Landlord**, the **Tenant** and any other person or thing as far as this is necessary to give effect to this Guarantee and Indemnity.
18. This Guarantee and Indemnity does not affect and is not affected by any other security held or which may be held by the **Landlord** for any money due under the **Lease**.

- 19. Any other security held for the obligations under the **Lease** is deemed to be collateral with this Guarantee and Indemnity.
- 20. The **Guarantor** will not claim the benefit of any security against the **Landlord** in any proceedings or seek the transfer of any security against the **Landlord**.

Benefit to Guarantor

- 21. The **Guarantor** agrees that it is benefited by the **Landlord** entering into the **Lease** with the **Tenant**.

Demands under Guarantee and Indemnity

- 22. A demand made by the **Landlord** under this Guarantee and Indemnity may be signed by the **Landlord's** solicitors or agents on its behalf.

EXECUTED by JAMES YEATES & SONS ACN 004 145 288
 In accordance with Section 127(1) of the Corporations Act 2001:

.....
 Director*/Sole Director and Sole Company Secretary* -
 Sign here

.....
 Director*/Secretary* - Sign here

.....
 Full Name (Print)

.....
 Full Name (Print)

* delete whichever does not apply

Signature:

Name:
 Please print

Witness