

# Retail Shop Tenancy Agreement

Fourth Edition

Adopted by The Real Estate Institute of Queensland Limited for the lease of retail shops for a term (including options) of not more than three (3) years

## WARNING - DO NOT USE THIS AGREEMENT:

- (a) for residential tenancies;
- (b) if the premises are not a "retail shop" under the *Retail Shop Leases Act 1994 (Qld)*;
- (c) if the term (including options) is greater than three (3) years;
- (d) if either party requires the lease to be registered under the *Land Titles Act 1994 (Qld)*; or
- (e) if the tenant is a "major Lessee" as defined in the *Retail Shop Leases Act 1994 (Qld)*.

## INSTRUCTIONS TO COMPLETE

- 1 This Agreement comprises the following four parts, all of which should be stapled or bound as a single document:
  - (a) Reference Schedule;
  - (b) Special Conditions;
  - (c) Standard Conditions; and
  - (d) Plan of Premises in Annexure A (unless Premises comprises the whole of the Land, including the whole of a lot in a Community Title Scheme).
- 2 The names of the parties must be inserted in full in the Reference Schedule. Ensure the full legal entity (and trust, if applicable) is inserted, not just a trading or business name. Trusts should be recorded as "[name of trust] as Trustee for the [name of trust]".
- 3 Each Item of the Reference Schedule must be completed in full or the words "Not Applicable" inserted.
- 4 Special Conditions must be inserted in the space provided or the words "see Annexure B" inserted if required. Special Conditions are needed to change or modify the printed Standard Conditions. Note that licensees under *Property Occupations Act 2014 (Qld)* should ensure Special Conditions are not drafted or inserted by them in contravention of Section 24 *Legal Profession Act 2007 (Qld)*.
- 5 The Lessor must give a completed and signed Lessor Disclosure Statement and draft of this proposed Agreement to the Tenant at least seven (7) days before the Tenant enters into this Agreement (refer section 11 of the Act to determine when a lease is entered into), failing which the Tenant may terminate this Agreement within six (6) months after the Agreement is entered into. The Tenant may waive the provision of the Lessor Disclosure Statement within the seven (7) day timeframe if the conditions in section 21B(2) of the Act are met.
- 6 If this Agreement is entered into pursuant to an option to renew contained in a previous agreement, the Lessor must give the Tenant a Lessor Disclosure Statement within 7 days after the date the Lessor receives the Tenant's renewal notice (section 21E of the Act).
- 7 The Tenant must give the Lessor a Lessee Disclosure Statement, Financial Advice Report and Legal Advice Report under Sections 22A and 22D of the Act.
- 8 Ensure all entities, including guarantors, execute the Agreement and that individual signatures are witnessed by an independent adult witness.
- 9 The Lessor, their Agent or Solicitor must give the Tenant a certified copy of this Agreement within thirty (30) days of it being signed by both parties. The following words are suggested:

## SAMPLE ONLY AND NOT TO BE COMPLETED

"The Lessor [or the Lessor's Agent] certifies this copy of the Lease to be a true and correct copy of the Lease dated ..... between ..... [Lessor] and ..... [Tenant] for the premises at ..... [insert premises address]"

Signed by or on behalf of the Lessor: ..... [Signature] ..... [Full Name]

Dated: .....

DATED\* \_\_\_\_\_ \*Contract to be dated on the date the last party signs.

**REFERENCE SCHEDULE**

**ITEM 1 LESSOR**

NAME: JOHN PATRICK KEARNEY & GLENYS PETA KEARNEY ATF JOHN KEARNEY SUPERANNUATION ACN/ABN:  
FUND

ADDRESS: 108 MUSGRAVE STREET

SUBURB: NORTH ROCKHAMPTON STATE: QLD POSTCODE: 4701

Address for service of notices: (If different from above) ← Refer to Clause 22

ADDRESS: AS ABOVE

SUBURB: \_\_\_\_\_ STATE: \_\_\_\_\_ POSTCODE: \_\_\_\_\_

PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_ CONTACT PERSON: \_\_\_\_\_  
(07) 49 210880 JOHN KEARNEY

**ITEM 2 LESSOR'S SOLICITOR**

FIRM: BRESSINGTON & PARTNERS SOLICITORS

ADDRESS: PO BOX 1611

SUBURB: ROCKHAMPTON STATE: QLD POSTCODE: 4700

PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_ CONTACT PERSON: \_\_\_\_\_  
(07) 49 277344 (07) 49222993 jharney@bresso.com.au JAMES HARNEY

**ITEM 3 TENANT**

NAME: JOHN PATRICK KEARNEY ACN/ABN: \_\_\_\_\_

ADDRESS: 108 MUSGRAVE STREET

SUBURB: ROCKHAMPTON STATE: QLD POSTCODE: 4700

Address for service of notices: (If different from above) ← Refer to Clause 22

ADDRESS: AS ABOVE

SUBURB: \_\_\_\_\_ STATE: \_\_\_\_\_ POSTCODE: \_\_\_\_\_

PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_ CONTACT PERSON: \_\_\_\_\_  
(07) 49 210880 JOHN KEARNEY

**ITEM 4 TENANT'S SOLICITOR**

FIRM: BRESSINGTON & PARTNERS SOLICITORS

ADDRESS: PO BOX 1611

SUBURB: ROCKHAMPTON STATE: QLD POSTCODE: 4700

PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_ CONTACT PERSON: \_\_\_\_\_  
(07) 49277344 (07) 49222933 kpb@bresso.com.au KEN BRESSINGTON

**ITEM 5 GUARANTOR(S)**

NAME: NOT APPLICABLE

ADDRESS: \_\_\_\_\_

SUBURB: \_\_\_\_\_ STATE: \_\_\_\_\_ POSTCODE: \_\_\_\_\_

PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

SUBURB: \_\_\_\_\_ STATE: \_\_\_\_\_ POSTCODE: \_\_\_\_\_

PHONE: \_\_\_\_\_ FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_

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**ITEM 6 LESSOR'S AGENT**

NAME: Bressington & Partners ACN/ABN: LICENCE NO.  
70647928217

ADDRESS: 79 Bolsover Street

SUBURB: Rockhampton STATE: QLD POSTCODE: 4700

PHONE: 0749277344 FAX: EMAIL: jharney@bresso.com.au CONTACT PERSON: James Harney

**ITEM 7 PREMISES**

Shop Number: \_\_\_\_\_  
 Name of Centre: \_\_\_\_\_  
 ADDRESS: 108A MUSGRAVE STREET

SUBURB: NORTH ROCKHAMPTON STATE: QLD POSTCODE: 4701

Real Property Description:  [Whole /  Part of] Lot: Lot 1 & 2  
 on: RP609056 & 606405 ← (insert plan reference)

Title Reference: 30340219 & 30265124

Area of Premises: \_\_\_\_\_ m<sup>2</sup> (more or less, if not surveyed)

Premises plan attached showing leased area:  Yes  No ← Select which is applicable

Carpark: No. of spaces: 0 Licence fee: \$ 0 per annum/space (exclusive of GST)

**ITEM 8 TERM**

Commencement Date: 1 Sep 2019  
 Expiry Date: 31 Aug 2022

**ITEM 9 OPTION(S)**

Option (1): Term of first option period: 0 years and 0 months  
 Option (2): Term of second option period: \_\_\_\_\_ years and \_\_\_\_\_ months

**ITEM 10 RENT**

Base Rent: \$ 550.00 P/W per annum (exclusive of GST)

**ITEM 11 RENT REVIEW**

Note: Only one type of review may apply each year (unless Tenant is a "major Lessee" under the Act) except in the first lease year when two reviews are permitted.

Review type:	↓ Select whichever is applicable	Relevant date(s)
Market Review	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	_____
Based on movement in CPI	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<u>31 Aug 2020</u> <u>31 Aug 2021</u>
Fixed at _____	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	_____
Fixed* at \$ _____	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	_____
*insert amount of increase, not new Rent figure		
Other	<input type="checkbox"/> Yes* <input checked="" type="checkbox"/> No	_____
c.g. combination of two bases of review such as CPI + [x]%	*If yes, insert details below	
Note: "combination" does not include the higher of two methods or a minimum rent	Details:	
	<u>NOT APPLICABLE</u>	

**ITEM 12 TURNOVER RENT**

← Select whichever one applies

- Formula (1) the amount by which \_\_\_\_\_ % of Gross Sales exceeds the Base Rent payable for that Lease Year.
- Formula (2) \_\_\_\_\_ % of Gross Sales for that Lease Year.
- Formula (3) \_\_\_\_\_ % of Gross Sales over \$ \_\_\_\_\_ for that Lease Year.
- Turnover Rent not applicable.

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**ITEM 13 OUTGOINGS**

← Select whichever one applies

Formula (1) Net Lease – the Tenant's Share of Outgoings for the Centre is 100 %

Note: Definition of "Tenant's Share" in Clause 1.1.51 and Clause 38 of the Act – apportionable Outgoings must only be shared amongst Tenants who (or lettable areas whose Tenants, if occupied would) enjoy or share the benefit of a particular Outgoing

Formula (2) Semi-gross lease – increases in Outgoings over the Base Year of 20 \_\_\_\_\_ (insert year)

Formula (3) Gross lease – outgoings included in Base Rent – nil Outgoings.

**ITEM 14 USE**

Permitted Use: SALE OF BREWING AND BEER-MAKING SUPPLIES AND BAR ACCESSORIES

Exclusivity:  Yes  No ← Select whichever is applicable

If Yes, detail: \_\_\_\_\_

**ITEM 15 TRADING HOURS**

Required Trading Hours:

Monday: NOT APPLICABLE

Tuesday: \_\_\_\_\_

Wednesday: \_\_\_\_\_

Thursday: \_\_\_\_\_

Friday: \_\_\_\_\_

Saturday: \_\_\_\_\_

Sunday: \_\_\_\_\_

Public Holidays: \_\_\_\_\_

**ITEM 16 SECURITY BOND**

← Select whichever one applies

Bank Guarantee or Cash  \$ NOT APPLICABLE [insert fixed sum]

Or

Security Deposit for:  an amount equal to \_\_\_\_\_ Month's Rent, Outgoings and GST

**ITEM 17 DEFAULT INTEREST RATE**

← Select whichever one applies

10 % per annum

Or

2% per annum over the rate of interest charged by Westpac Banking Corporation (or its successor) at the date of default on overdraft facilities in excess of \$100,000.

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[Empty box for Special Conditions]

The adoption by The Real Estate Institute of Queensland Limited does not extend to any alterations to the printed text of the Standard Conditions of the Agreement or to any Special Conditions of this Agreement. The Standard Conditions of the Agreement may need to be added to or varied by inserting specifically prepared Special Conditions in this Agreement. If the printed text of the Standard Conditions of the Agreement is altered or Special Conditions are included, it is recommended that the Lessor and the Tenant consult their respective legal advisors prior to signing this Agreement.

**EXECUTION**

Executed by Lessor (company):

Signature of Director: \_\_\_\_\_ Signature of Director/Secretary: \_\_\_\_\_  
Full name of Director Full name of Director/Secretary

**OR**

Signed by Lessor: \_\_\_\_\_ Signed by Lessor: \_\_\_\_\_  
Signature of Lessor Signature of Lessor

In the presence of: \_\_\_\_\_ In the presence of: \_\_\_\_\_  
Signature of Witness Signature of Witness

Executed by Tenant (company):

Signature of Director: \_\_\_\_\_ Signature of Director/Secretary: \_\_\_\_\_  
Full name of Director Full name of Director/Secretary

**OR**

Signed by Tenant: \_\_\_\_\_ Signed by Tenant: \_\_\_\_\_  
Signature of Tenant Signature of Tenant

In the presence of: \_\_\_\_\_ In the presence of: \_\_\_\_\_  
Signature of Witness Signature of Witness

Executed by Guarantor: \_\_\_\_\_ Executed by Guarantor: \_\_\_\_\_  
Signature of Guarantor Signature of Guarantor

In the presence of: \_\_\_\_\_ In the presence of: \_\_\_\_\_  
Signature of Witness Signature of Witness

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**STANDARD CONDITIONS**  
for  
**RETAIL SHOP TENANCY AGREEMENT**  
(FOURTH EDITION)

Adopted by the Real Estate Institute of Queensland Limited for the lease of retail shops for a term of not more than three (3) years.  
(ALTERATIONS OF AND ADDITIONS TO THE PRINTED TEXT ARE FORBIDDEN – ANY AMENDING SPECIAL CONDITIONS  
MUST BE INSERTED AT THE END OF THE REFERENCE SCHEDULE OR BY ANNEXURE IF INSUFFICIENT SPACE)

**1. DEFINITIONS AND INTERPRETATION**

1.1 Definitions

In these Standard Conditions:

1.1.1 "Act" means the *Retail Shop Leases Act 1994* (Qld).

1.1.2 "Annual Estimate of Outgoings" means prescribed form of outgoings estimate to be given by the Lessor to the Tenant under Section 38A of the Act.

1.1.3 "Apportionable Outgoings" means an Outgoing which is not a Specific Outgoing.

1.1.4 "Approved Auditor" means:

(a) an entity registered as an Auditor under the

*Corporations Act 2001* (Cth); or

(b) a person who is a member of, and holds a practicing certificate issued by, CPA Australia or the Institute of Chartered Accountants in Australia.

1.1.5 "APRA" means the Australian Prudential Regulation Authority.

1.1.6 "Audited Statement of Outgoings" means the prescribed form of outgoings statement form produced by the Department prepared by a registered Auditor in accordance with Section 38(D) of the Act.

1.1.7 "Bank Guarantee" means an unconditional written guarantee to pay a specified sum of money, by a bank carrying on business in Australia, in favour of the Lessor and which has no expiry date.

1.1.8 "Base Rent" means the amount specified in Item 10.

1.1.9 "Business Day" means any day on which licensed banks open for business in Queensland.

1.1.10 "Carpark" means the part of the Common Area of the Centre or Land intended and designated by the Lessor for the parking of motor vehicles.

1.1.11 "Centre" means, where the context permits, the building or retail shopping centre (including the Common Area and all Lessor's Property) in which the Premises are situated as described in Item 7 or where the Premises comprises the whole of the Land then Centre also means the whole of the Land including all buildings, structures and Lessors' Property on it.

1.1.12 "Commencement Date" means the date so called in Item 8

1.1.13 "Common Area" means, where the context permits, the non-lettable areas in or adjacent to the Centre that are intended for use by the public or in common by tenants of the Centre in conducting their businesses from premises in the Centre.

1.1.14 "CPI" means the Consumer Price Index (Brisbane All Groups) published by the Australian Bureau of Statistics (or its successor) or any index published as its substitute by the Bureau.

1.1.15 "Current Market Rent" means the Rent for the Premises determined under Clause 4.2.1 or 4.2.2.

1.1.16 "Department" means the Department of Justice and Attorney-General.

1.1.17 "Draft Lease" means a draft of this Agreement given by the Lessor to the Tenant under Section 21B of the Act.

1.1.18 "Estimated Turnover Rent" for a Lease Year means a nominal dollar amount equivalent to the Turnover Rent for the previous Lease Year.

1.1.19 "Event of Default" means any event described in Clause 19.

1.1.20 "Expiry Date" means the date so called in Item 8.

1.1.21 "Extension Notice" means a written notice given by the Tenant to the Lessor which extends this Agreement in accordance with Section 46AA(4A) of the Act for a period which expires on the date which is six (6) months after the Lessor gives its required notice under Clause 2.3.1.

1.1.22 "Fixed Increase Percentage" means the percentage specified in Item 11 for fixed percentage rent increases.

1.1.23 "Fixed Increase Sum" means the dollar amount specified in Item 11 for fixed sum increases.

1.1.24 "Gross Sales" means all payments (exclusive of GST) which the Tenant receives from the sale of goods or charges for services in the ordinary course of conducting its business from the Premises but excluding all amounts listed in Section 9(2) of the Act.

1.1.25 "GST" means the Goods and Services Tax under the GST Act.

1.1.26 "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

1.1.27 "Guarantor" means the person or persons described in Item 5.

1.1.28 "Land" means the real property described in Item 7 on which the Centre or the Premises is located.

1.1.29 "Lessor" means the person described in Item 1.

1.1.30 "Lessor's Agent" means the person described in Item 6 or any other person appointed by the Lessor in place of that person and notified to the Tenant.

1.1.31 "Lessor's Property" means all plant, equipment, fixtures, fittings and chattels owned by the Lessor and used in the Premises or Centre.

1.1.32 "Lease Year" means each successive period of twelve (12) months from the Commencement Date.

1.1.33 "Lessor Disclosure Statement" means the prescribed form of disclosure given or required to be given by the Lessor to the Tenant under Section 21B and 21E of the Act.

1.1.34 "Month" means a calendar month.

1.1.35 "Outgoings" means the Lessor's reasonable costs and expenses directly attributable to the ownership, occupation, operation, maintenance or repair of the Premises or Centre and areas used in association with the Centre including, but not limited to:

(a) all charges, levies, premiums, rates or taxes payable by the Lessor because it is the owner or occupier of the Land;

(b) the Lessor's costs of operating (including provision of customer services and facilities), maintaining (including repainting, gardening and landscaping), cleaning (including garbage removal and hygiene services), lighting, servicing and repairing the Centre;

(c) wages, salaries, entitlements and all employment related expenses (including any taxes of any nature or description) payable to any employee of the Lessor associated with the management and operation of the Centre;

(d) the Lessor's costs of acquiring services provided by any public or private service provider for the operation, protection, maintenance or repair of the Centre (including legal, accounting, valuation, management and other professional services);

(e) amounts payable to promote the Centre in the electronic or print media or in any other form of communications;

(f) any payment for any goods or services which the Tenant specifically requests the Lessor to incur in connection with the Premises;

(g) premiums for Centre insurance reasonably required by the Lessor including public liability, building reinstatement, plate glass, workers compensation and damage or breakdown of Lessor's Property;

- (h) Centre pest control; and
  - (i) Centre signage (directory, directional and traffic control);
- but excluding any expenses excluded from the definition of outgoings under the Act such as land tax and expenditure of a capital nature.
- 1.1.36 "**Permitted Use**" means the permitted use specified in Item 14.
  - 1.1.37 "**Plan**" means the plan of the Premises (if any) in Annexure A.
  - 1.1.38 "**Premises**" means the demised Premises described in Item 7.
  - 1.1.39 "**Redecorate**" means rejuvenation of the Premises appearance by:
    - (a) repainting (dual coat) or re-treating all previously painted or treated surfaces;
    - (b) laying new floor coverings;
    - (c) restoring or replacing plasterwork and decorative features if worn or chipped;
    - (d) refurbishing the fitout, fixtures, fittings and shopfront to the satisfaction of the Lessor, acting reasonably.
  - 1.1.40 "**Reference Schedule**" means the Schedule of Items headed Reference Schedule to which these Standard Conditions are annexed.
  - 1.1.41 "**Rent**" means:
    - (a) for the first Lease Year, the Base Rent specified in Item 10;
    - (b) for each subsequent Lease Year the Base Rent determined in accordance with Clause 4.
  - 1.1.42 "**Rent Review**" means the Rent Review process described in Clause 4.
  - 1.1.43 "**Rent Review Date**" means any date inserted in Item 11.
  - 1.1.44 "**Security Amount**" means the dollar amount which is either specified as a lump sum in Item 16 or calculated as an amount equal to the number of Months' Rent Outgoings and GST specified in Item 13.
  - 1.1.45 "**Security Bond**" means the cash deposit or bank guarantee referred to in Clause 14.
  - 1.1.46 "**Special Condition**" means any written condition adding to, varying or deleting any part of the Standard Conditions which are endorsed on or incorporated by reference into this Agreement.
  - 1.1.47 "**Specific Outgoing**" means any Outgoing which is attributable to a particular Tenant because of that Tenant's direct request and use of the services or facilities incurring the Outgoing.
  - 1.1.48 "**Standard Conditions**" means these Standard Conditions for the Retail Shop Tenancy Agreement adopted by The Real Estate Institute of Queensland Limited (Fourth Edition).
  - 1.1.49 "**Tenant**" means the person described in Item 3.
  - 1.1.50 "**Tenant's Associates**" means the Tenant's employees, agents, invitees and consultants.
  - 1.1.51 "**Tenant's Share**" means, for any Outgoing which is an Apportionable Outgoing, the percentage calculated by using the following formula:
 
$$\frac{\text{Area of the Premises} \times 100}{\text{Total area of the Centre}}$$

where the Total area of the Centre does not include areas of premises that, if the areas were not leased or licensed, would be areas within a common area of the Centre but only if the areas are used for a prescribed purpose (defined in the Act).
  - 1.1.52 "**Term**" means the period of this Tenancy Agreement beginning on the Commencement Date and ending at midnight on the Expiry Date.
  - 1.1.53 "**Turnover**" means the Gross Sales of the Tenant's business for any stated period.
  - 1.1.54 "**Turnover Percentage**" means the relevant percentage specified in Formula (1), (2) or (3) of Item 12.

1.1.55 "**Turnover Threshold**" means the dollar amount specified in Formula (3) of Item 12.

## 1.2 Interpretation

### 1.2.1 This Agreement comprises

- (a) the Reference Schedule;
- (b) the Standard Conditions;
- (c) the Special Conditions; and
- (d) any Schedules and annexures to this Agreement including a Plan of the Premises.

1.2.2 If there is any inconsistency between a part of this Agreement and any other part, then the parts will take precedence in descending order as follows:

- (a) the Special Conditions;
- (b) the Reference Schedule; and
- (c) the Standard Conditions.

### 1.2.3 In this Agreement:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other gender;
- (c) a reference to:
  - (i) a Clause is a reference to a Clause of the Standard Conditions;
  - (ii) an Item is a reference to an Item in the Reference Schedule;
  - (iii) a Special Condition is a reference to a condition in the Special Conditions; and
  - (iv) a Schedule, annexure or party is a reference to a Schedule, Annexure or party to this Agreement and references to this Agreement include any Schedule and Annexures.
- (d) a reference to a party to this Agreement or any other document or Agreement includes the party's successors, permitted substitutes and permitted assigns;
- (e) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (f) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) a reference to a document or Agreement (including a reference to this Agreement) is to that document or Agreement as amended, supplemented, varied or replaced;
- (h) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (i) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- (j) a reference to something having to be done on a given day means by 5.00pm on that day;
- (k) a reference to a period of time means that period of time calculated exclusive of the day on which that event or thing relates to;
- (l) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (m) where the Lessor's consent or approval is required:
  - (i) it may, in the Lessor's discretion (and whether or not acting reasonably), be withheld or given subject to terms or conditions which must be strictly complied with; and
  - (ii) it is not valid unless expressly given in writing by or on behalf of the Lessor;
- (n) if a provision requires anything not to be done, this includes not allowing or permitting the thing to be done; and
- (o) the Tenant agrees that time is of the essence in the performance of its obligations.
- (p) where a term is not defined in this Agreement but is defined in the Act, that term shall have the same meaning as defined in the Act.



## 2. GRANT AND TERM

- 2.1 The Lessor grants and the Tenant accepts a right to occupy the Premises for the Term for the purpose of conducting a business for the Permitted Use on the terms and conditions of this Agreement.
- 2.2 The Tenant may exercise an option to renew this Agreement for a further term if Clause 11 applies.
- 2.3 If Clause 11 does not apply or where all options which were granted have either lapsed or previously been exercised then:
- 2.3.1 the Lessor must, in accordance with Section 46 of the Act, give a written notice to the Tenant during the notice period which either:
- (a) gives the Tenant an offer which is irrevocable for one Month from the date it is given to renew its tenancy of the Premises on the terms contained in that notice; or
  - (b) informs the Tenant that the Lessor does not intend to offer a renewal or extension of its tenancy of the Premises to the Tenant;
- 2.3.2 if the Lessor fails to give a notice as required under Clause 2.3.1 then the Tenant may, before the Term expires, give an Extension Notice to the Lessor to extend subject at all times to the Tenant's continuing right to terminate the Agreement during the extended period on one Month's written notice to the Lessor.

## 3. RENT

- 3.1 The Tenant must pay to the Lessor the Rent for each Lease Year in equal Monthly instalments, in advance, and on or before the first day of each month (except the first and last payments which, if necessary, must be proportionate based on the number of days for payment over the number of days in the relevant Lease Year).
- 3.2 If Formula (1), (2) or (3) in Item 12 is completed, Turnover Rent applies to this Agreement and is payable by the Tenant in addition to Rent in accordance with Clause 5.
- 3.3 Rent must be paid without any deduction, set off or claim by the Tenant for any amount which is or may be payable by the Lessor to the Tenant.

## 4. RENT REVIEW

- 4.1 For each Rent Review Date to which a market review is stated to apply the Rent must be reviewed so that it is equal to the then current market Rent for the Premises.
- 4.2 For the purposes of Clause 4.1 and subject to any early determination under Section 27A of the Act the current market Rent for the Premises is to be determined as follows:
- 4.2.1 the Lessor must give written notice to the Tenant no earlier than six (6) months before the relevant Review Date stating the Rent it considers should be paid by the Tenant for the relevant Lease Year. The Lessor must endeavour to give the notice prior to the relevant Review Date but may give the notice up to one (1) month after the relevant Review Date.
- 4.2.2 if, after one Month of giving the notice under Clause 4.2.1, the parties cannot agree then the current market Rent for the Premises is to be determined by a specialist retail valuer appointed in accordance with and acting under the Act.
- 4.3 For each Rent Review Date to which a review based on movement in CPI is stated to apply the Rent must be reviewed so that it is equal to A in the following Formula:
- $$A = \frac{B \times C}{D}$$
- where:
- B is the Rent payable just prior to the relevant Rent Review Date;
  - C is the CPI published for the quarter ending closest to but not after the relevant Rent Review Date;
  - D is the CPI published for the same quarter twelve (12) Months prior to the quarter applicable to 'C' in this Clause 4.3
- 4.4 For each Rent Review Date to which a fixed percentage increase is stated to apply the Rent must be reviewed so that it is equal to the Rent payable just prior to the relevant Rent Review Date increased by the Fixed Increase Percentage.
- 4.5 For each Rent Review Date to which a fixed sum increase is stated to apply the Rent must be reviewed so that it is equal to the Rent payable just prior to the relevant Rent Review Date increased by adding to it the amount of the Fixed Increase Sum.

- 4.6 Until the reviewed Rent has been calculated or determined under this Clause 4, the Tenant must pay Rent at the rate applying just prior to the relevant Rent Review Date.
- 4.7 Once the reviewed Rent has been calculated or determined, the Tenant must promptly make any necessary adjustment to make up any deficit between the old Rent and the reviewed Rent. If necessary, the Lessor must:
- 4.7.1 refund any overpayment of Rent to the Tenant; or
  - 4.7.2 deal with the amount of any overpayment of Rent by either:
    - (a) crediting it to the account of the Tenant with the Lessor; or
    - (b) allowing it against any other sum due to the Lessor by the Tenant.
- 4.8 The Lessor and Tenant agree that Default Interest does not accrue on any deficit of Rent following a Rent Review Date unless it has been calculated or determined under this Clause 4 and the Lessor has given the Tenant a written notice setting out the amount of the deficit and the parties agree that interest only runs from the date of that notice.

## 5. TURNOVER RENT

- 5.1 If Formula (1) in Item 12 is selected then the Turnover Rent payable for each Lease Year is calculated as the amount by which the Turnover Percentage of Gross Sales for that Lease Year exceeds the Rent payable for that Lease Year.
- 5.2 If Formula (2) in Item 12 is selected then the Turnover Rent payable for each Lease Year is calculated as the Turnover Percentage of Gross Sales for that Lease Year.
- 5.3 If Formula (3) in Item 12 is selected then the Turnover Rent payable for each Lease Year is calculated as the amount by which the Turnover Percentage of Gross Sales for that Lease Year exceeds the Turnover Threshold.
- 5.4 Turnover Rent must be paid by the Tenant as follows:
- 5.4.1 for the first Lease Year, in full within one Month from the end of the first Lease Year; and
  - 5.4.2 for the second and each subsequent Lease Year of the Term, the Estimated Turnover Rent must be paid by equal Monthly instalments in advance on the first day of each Month with a final accounting and adjustment (if required) between the parties once the actual Gross Sales for the relevant Lease Year is known.
- 5.5 The Tenant must during the Term give the Lessor:
- 5.5.1 within seven (7) days after the end of each Month a certificate specifying with reasonable accuracy the Gross Sales for that Month; and
  - 5.5.2 within six (6) weeks after the end of each Lease Year a statement of the Gross Sales for that Lease Year prepared by an Approved Auditor.
- 5.6 The Tenant must make its financial records available for inspection by the Lessor (or its consultant) and cooperate with any reasonable requests to verify the Gross Sales on receipt of five (5) Business Days notice by the Lessor. The Lessor must comply with Section 26 of the Act in relation to information disclosed.

## 6. OUTGOINGS

- 6.1 The Tenant must pay to the Lessor the Tenant's Share of Outgoings from time to time in equal Monthly instalments, in advance, on or before the first day of each Month of the Term (except the first and last payments which, if necessary must be proportionate based on the number of days in the period for payment over the number of days in the relevant Lease Year).
- 6.2 The Lessor must give the Tenant a completed and signed Annual Estimate of Outgoings on the earlier of these events:
- 6.2.1 at least one month before the start of the period to which the estimate relates for periods after the first Outgoings period;
  - 6.2.2 if the Tenant enters into this Agreement during or within the Month before the start of the period covered by the estimate, when the Tenant enters the Agreement.
- 6.3 The Lessor must give the Tenant a completed and signed audited statement of outgoings within three (3) Months after the end of the period to which the Outgoings relate.

## 7. GST

- 7.1 If GST is imposed on any supply made to the Tenant under or in accordance with this Agreement, the amount the Tenant must pay for that supply is increased by the amount of that GST.
- 7.2 In determining the amount of any Outgoings recoverable from the Tenant under Clause 7, the amount of any GST included in the price payable by the Lessor for the supply to which the Outgoings relate must be excluded, to the extent that the supply by the Lessor is a taxable supply.

## 8. INTEREST ON ARREARS

- 8.1 If the Tenant is late in paying any money to the Lessor under this Agreement, then the Tenant is liable to pay the Lessor daily interest at the rate specified in Item 17 on the amount of any unpaid monies.

## 9. PAYMENT FOR SERVICES

- 9.1 The Tenant must pay to any service provider by the due date for payment the cost invoiced or charged to the Tenant for all services supplied to the Tenant, the Tenant's business or the Premises:
- 9.1.1 which the Tenant has procured under any contract or arrangement; or
- 9.1.2 for which the Lessor is not responsible.
- 9.2 If at any time the Lessor permits the Tenant to trade outside the required trading hours specified in Item 15 then the Tenant must pay to the Lessor any additional costs of services including air conditioning costs incurred by the Lessor for that time at a rate determined by the Lessor, acting reasonably.

## 10. FURTHER TENANT'S PAYMENTS

- 10.1 The Tenant must also pay to the Lessor on demand and the Lessor may recover from the Tenant:
- 10.1.1 the Lessor's costs reasonably incurred in investigating a proposed assignee of the Tenant's interest under this Agreement;
- 10.1.2 the Lessor's reasonable expenses of and incidental to any assignment of this Agreement and of any necessary consents required to that assignment;
- 10.1.3 any Security Bond required under Clause 14;
- 10.1.4 the amount spent by the Lessor fitting out the Premises for the Tenant;
- 10.1.5 costs of preparation of a Survey Plan of the Premises;
- 10.1.6 the Lessor's reasonable legal or other expenses for preparation of the final Agreement in accordance with section 48(3) of the Act;
- 10.1.7 the cost of preparation of this Agreement in registrable form and any registration fees (if required) by the Tenant.
- 10.2 For the purposes of Clause 10.1, the Lessor must give written notice to the Tenant of the amount of any costs, expenses or other payments. Once notified to the Tenant, the Tenant must pay the amount within three (3) Business Days to the Lessor.

## 11. OPTION FOR RENEWAL

- 11.1 This Clause 11 applies if Item 9 is completed.
- 11.2 If the Tenant:
- 11.2.1 has paid Rent, Outgoings and Turnover Rent (as required) regularly during the Term;
- 11.2.2 has observed and performed its obligations under this Agreement during the Term;
- 11.2.3 notifies the Lessor in accordance with Clause 11.3; and
- 11.2.4 between the time of notification and the end of the Term, duly and punctually performs its obligations,
- then subject to Clause 11.5, at the end of this Agreement, the Lessor must grant and the Tenant must take a further tenancy (**New Tenancy**) of the Premises on the terms and conditions set out in Clause 11.5.
- 11.3 A notice of exercise of option must:
- 11.3.1 state clearly that the Tenant wishes to take a further tenancy of the Premises in accordance with the option contained in this Agreement; and
- 11.3.2 must be served not earlier than six (6) months and not later than three (3) months before the end of the Term.

- 11.4 Notwithstanding Clause 11.3.2 or any statute or rule of law relating to the service of notices, the notice of exercise of option will be received by the Lessor or the Lessor's Agent, when it is deemed to be received by the Lessor under Clause 22.
- 11.5 The terms and conditions of the New Tenancy will be the same as those of this Agreement except:
- 11.5.1 the Rent for the first Lease Year of the New Tenancy will be the current market rent as determined in accordance with Clauses 4.1 and 4.2;
- 11.5.2 the Commencement Date of the New Tenancy is the first day after the Term expires; and
- 11.5.3 the New Tenancy will not contain this Clause 11 except where there is more than one option of renewal set out in Item 9, in which case the last New Tenancy does not contain this Clause 11.
- 11.6 If there is a Guarantor of this Agreement, the Lessor need not grant a New Tenancy unless the Tenant obtains a further guarantee of the due and punctual performance of the Tenant's Obligations, either by the Guarantor or by other Guarantors acceptable to the Lessor on terms similar to the Guarantee in this Agreement.

## 12. TENANT'S DUTIES

- 12.1 During the Term the Tenant must:
- 12.1.1 punctually and fully perform all terms and conditions of this Agreement;
- 12.1.2 punctually and fully perform any rules for the Centre notified to the Tenant from time to time;
- 12.1.3 ensure the Tenant's Associates comply with Clauses 12.1.1 and 12.1.2;
- 12.1.4 only use the Premises for the Permitted Use and for no other lawful or unlawful purpose;
- 12.1.5 only use the Centre or the Common Area in a manner consistent with the rights of other lawful users of the Centre or the Common Area, including other tenants and their employees, agents, invitees and contractors;
- 12.1.6 not create or cause any nuisance;
- 12.1.7 promptly abate any nuisance it creates or causes, whether or not any demand is made by or on behalf of the Lessor;
- 12.1.8 keep the Premises, the exterior facade and the exterior and interior of all windows and doors in a neat and clean condition;
- 12.1.9 keep the Premises in good repair (having regard to its condition on the earlier of the Commencement Date or the date the Tenant took possession of the Premises whichever is earlier) excluding:
- (a) any structural works not caused by the Tenant or the Tenant's Associates;
- (b) repairs due to fair wear and tear; and
- (c) repairs due to events beyond the reasonable control of the Tenant or the Lessor;
- 12.1.10 keep the Premises free from pests and vermin;
- 12.1.11 keep the Premises open during the required trading hours stated in Item 15 or, if none are stated, the usual trading hours of the Centre;
- 12.1.12 enter into and maintain insurance policies with a reputable insurer covering the following risks:
- (a) public liability for a minimum cover for each casualty event or claim of \$20,000,000;
- (b) glass (including plate-glass); and
- (c) fixtures, fittings and stock contained in or about the Premises or associated with the Tenant's business in the Premises for their full replacement value.
- 12.1.13 in relation to the insurance policies referred to in Clause 12.1.12 give to the Lessor:
- (a) a copy of the policy on or before taking possession of the Premises;
- (b) satisfactory proof of the currency of the policy on demand; and
- (c) satisfactory proof of the renewal of the policy within two (2) Business Days of it being effected, and the Tenant must not do anything which:
- (d) might result in any policy (as well as a policy taken out by the Lessor or the Centre) becoming void or voidable; or
- (e) entitles any insurer to modify the cover available or reduce the amount of money paid or payable in relation to a claim under a policy;

- 12.1.14 comply with all laws including without limitation zoning, land use and public health laws affecting the Premises or the Business carried on by the Tenant from the Premises;
- 12.1.15 not use the Premises for residential or sleeping purposes;
- 12.1.16 only use any fittings and fixtures in the Premises, Centre or the Common Area for the purpose for which they were constructed or installed;
- 12.1.17 keep current, maintain and comply with the terms of any licences or approvals for the Tenant's Business on the Premises required by law or by any competent authority;
- 12.1.18 not erect signage visible from the exterior of the Premises without the prior consent of the Lessor and with the approval of any local authority required;
- 12.1.19 not use any business name or advertising material incorporating the name of the Centre or building in which the Premises are located (or any part of that name) without the consent of the Lessor (which consent will cease on termination or expiry of this Agreement);
- 12.1.20 not park, nor permit its employees to park, in the customer carpark associated with the Premises without the grant of a licence by the Lessor and the Lessor may designate, from time to time, portions of the carpark for use by specified persons during specified hours;
- 12.1.21 execute and deliver to the Lessor any documents required by any mortgagee of the Land or any other person claiming a concurrent or superior interest to the interest of the Lessor under this Agreement.
- 12.2 On or just prior to the Termination Date the Tenant must:
- 12.2.1 cause any pests or vermin in or about the Premises to be exterminated by a lawfully qualified pest controller in accordance with best industry and environmental practices;
- 12.2.2 reinstate the Premises to the state and condition required in Clauses 12.1.8 and 12.1.9;
- 12.2.3 repair any damage to the Premises caused by removal of the Tenant's property from the Premises; and
- 12.2.4 Redecorate the Premises to the reasonable satisfaction of the Lessor,  
and the Premises must be delivered up on the Termination Date in the state specified in this Clause 12.2.
- 12.3 The Tenant must indemnify the Lessor on demand against any direct or consequential loss, damage or expense suffered by the Lessor as a result of:
- 12.3.1 any breach of this Lease by the Tenant or the Tenant's Associates;
- 12.3.2 the escape of any harmful substance or destructive force including fire, gas, electricity or water from the Premises; or
- 12.3.3 death, personal injury or property damage sustained by any person in or about the Premises regardless of cause, but except where it results from a negligent or intentional act of the Lessor or its servants, agents or contractors, and whether arising before or after the Termination Date.
- 12.4 The Tenant releases the Lessor from liability for any loss or damage suffered by the Tenant for property damage, personal injury or death which arises out of or is associated with the Tenant's occupation of the Premises except where it results from a negligent or intentional act or omission of the Lessor, or its servants, agents or contractors.
- 13. LESSOR'S RIGHTS AND DUTIES**
- 13.1 During the Term, the Lessor must:
- 13.1.1 subject to performance and observance by the Tenant of its covenants in this Agreement (including payment of all Rent, Outgoings and Turnover Rent) and any rights reserved to the Lessor in this Agreement, allow the Tenant exclusive possession and quiet enjoyment of the Premises;
- 13.1.2 if this Agreement is for part of the Land or Centre, use reasonable endeavours to maintain the supply of services to the Centre and the Premises which:
- (a) are essential to the proper operation of the Centre and the comfort of the Tenant and the Tenant's Associates in the Premises;
- (b) are not supplied to the Tenant or the Premises alone under any separate contract to which the Lessor is not a party; and
- (c) are not services for which the Tenant is responsible under this Agreement, but the Lessor is not liable to the Tenant for the failure of services to operate or perform to any standard during any period and to avoid doubt the Lessor is not required to supply air-conditioning to the Premises outside the Centre's core trading hours;
- 13.1.3 maintain building insurance for the Centre for all normal risks that any prudent Lessor of real property comparable to the Centre would maintain;
- 13.2 During the Term the Lessor may:
- 13.2.1 do any act or thing by the Lessor's Agent or any other employee, agent or contractor;
- 13.2.2 on giving reasonable notice, enter the Premises to inspect them and to monitor compliance by the Tenant with this Agreement;
- 13.2.3 make rules for the Centre and Common Areas not inconsistent with this Agreement which bind the Tenant when notified to the Tenant;
- 13.2.4 without any prior notice, enter the Premises in any emergency to safeguard any people in or save any property in the Premises;
- 13.2.5 on giving reasonable notice, enter the Premises:
- (a) to do anything the Tenant fails to do under Clause 12.1;
- (b) to repair or install any fixture or fitting in the Centre or Common Area for which access through or on to the Premises would be convenient;
- (c) to carry out any structural or other works or to install any services required by law or by any competent authority or which the Lessor considers would be beneficial for the Centre or the Land;
- (d) to take inventories of any fittings, fixtures and chattels.
- 13.3 The Lessor may assign or deal with its interest in the Land, Centre or Premises either absolutely or by way of security.
- 13.4 The Lessor does not warrant the suitability of the Premises or their fitness for any purpose including the Permitted Use.
- 14. SECURITY BOND**
- 14.1 If Item 16 is completed, then on executing this Agreement, the Tenant must provide security against breach of this Agreement by either depositing with the Lessor the Security Amount or by providing an unconditional Bank Guarantee for the Security Amount.
- 14.2 The Lessor must hold any cash Security Bond provided to it under Clause 14.1 as a deposit for the Term.
- 14.3 If the Tenant fails to pay Rent, Outgoings, Turnover Rent or other monies payable under this Agreement or if the Lessor suffers loss or damage because of any other breach of this Agreement by the Tenant the Lessor may apply the Security Bond towards the arrears of Rent, Outgoings, Turnover Rent and other monies or towards the loss or damage suffered by the Lessor as a result with no prior notice to the Tenant. In doing so the Lessor will not waive the Tenant's breach and will not waive any other right or remedy arising from the breach.
- 14.4 If the Lessor does apply the Security Bond, or part of it, it may notify the Tenant that it has done so. Within seven (7) Business Days of the date of notification, the Tenant must reinstate the full amount of the Security Bond by paying to the Lessor the amount applied from the cash deposit or extending or renewing the Bank Guarantee for the amount applied.
- 14.5 At the end of the Term, if there are no actual or contingent liabilities and the Tenant is not indebted to the Lessor or otherwise liable to the Lessor for breach of the Lease, the Lessor must refund to the Tenant the balance of the deposit then held or will consent to the discharge of the Bank Guarantee.
- 14.6 If the Lessor transfers its interest in the Land or the Premises, it may assign the benefit of the Security Bond to the transferee. After doing so and notifying the Tenant of that fact, it will be discharged from all further liability to the Tenant or any other person with respect to the Security Bond. The Lessor may require the Tenant to provide a replacement Bank Guarantee in favour of any new Lessor and the Tenant must do so within ten (10) Business Days.

## 15. DEALINGS WITH THIS AGREEMENT OR THE BUSINESS

- 15.1 For the purposes of:
- 15.1.1 this Agreement, the Lessor and the Tenant both agree and declare that Section 45 of the Act does not apply;
  - 15.1.2 this Clause 15 'dealing' means any transaction or event by which the Tenant confers on or grants to any person a present or future, defeasible or absolute, right or interest:
    - (a) to occupy or be in sole or shared possession of any part or the whole of the Premises;
    - (b) by way of security over:
      - (i) any asset of the Tenant's Business, whether that asset is tangible or intangible, moveable or immovable; or
      - (ii) its interest under this Agreement.
    - (c) as a result of which a person is substituted for the Tenant as Tenant under this Agreement;
    - (d) by means of a settlement or declaration of trust of the Tenant's interest under this Agreement; or
    - (e) as a result of which the legal or beneficial ownership of the shares of any corporation not listed on any stock exchange which is the Tenant are disposed by a shareholder.
- 15.2 The Tenant must not, without the Lessor's prior written consent:
- 15.2.1 enter into any dealing; or
  - 15.2.2 take the benefit of or assume any burden relating to any dealing.
- 15.3 If the Tenant seeks the Lessor's consent to any proposed dealing under Clause 15.2, the Tenant must:
- 15.3.1 give sufficient notice to the Lessor disclosing in writing all material facts relating to the dealing; and
  - 15.3.2 comply with any conditions or requirements set down by the Lessor which attach to any consent that is given by the Lessor.
- 15.4 Nothing in this Clause 15 affects the operation of Section 50 of the Act to the extent that it applies to this Agreement.

## 16. ABATEMENT OF RENT ON DAMAGE TO PREMISES

- 16.1 If at any time during the Term some natural disaster or other serious event occurs which is beyond the reasonable control of the Tenant and as a result:
- 16.1.1 the Premises are destroyed or damaged, wholly or in part; and
  - 16.1.2 the Tenant is not able to conduct its business on the Premises in a reasonable manner because of that destruction or damage,
- the Tenant's Obligations to pay Rent, Outgoings and Turnover Rent will abate proportionally to the extent of the effect on the Tenant's business until the Premises are reconstructed or restored to a condition in which the Tenant is able to conduct its business on the Premises in a reasonable manner.
- 16.2 If an event referred to in Clause 16.1 occurs and after two (2) months the Premises have not been substantially reconstructed or restored to a condition in which the Tenant is able to conduct its business in a reasonable manner, either the Lessor or the Tenant may notify the other of its intention to terminate this Agreement and this Agreement will terminate one (1) Month after the date of notification.

## 17. RELOCATION

- 17.1 The Lessor may relocate the Tenant's business from the Premises to another location during the Term if:
- 17.1.1 the Lessor proposes to refurbish, redevelop or extend the building in which the Premises are located and the Premises must be vacated for this to practically occur;
  - 17.1.2 the Lessor gives the Tenant three (3) Months' notice and the notice complies with Section 46D of the Act; and
  - 17.1.3 the new location is reasonably comparable to the Premises.
- 17.2 After giving a notice under Clause 17.1.2 the Lessor must grant and the Tenant must (subject to the provisions of the Act) accept a new tenancy agreement for the new location in accordance with Section 46F of the Act.

- 17.3 If a new Tenancy Agreement is to be signed under Clause 17.2, the Tenant and the Guarantors must sign the new Agreement (and if required a surrender of this Agreement) within thirty (30) days of receipt for signing.
- 17.4 The Lessor must, if the Tenant is relocated under this Clause 17, pay reasonable costs or compensation to the Tenant in accordance with Section 46G of the Act, but subject to section 43AD of the Act.

## 18. DEMOLITION

- 18.1 The Lessor may demolish the Centre or the building in which the Premises are located if:
- 18.1.1 the building in which the Premises are situated is to be demolished requiring vacant possession of the Premises;
  - 18.1.2 the Lessor gives the Tenant at least six (6) Months' notice of its intention to do so; and
  - 18.1.3 the Lessor's notice under Clause 18.1.1 complies with Section 46I of the Act.
- 18.2 If a notice is given under Clause 18.1 then this Agreement will terminate on the date specified in the notice (or such earlier date nominated in writing to the Lessor at least seven (7) days prior) as if it had expired by effluxion of time but subject, at all times, to any antecedent rights or obligations of the parties under this Agreement.
- 18.3 The Lessor must pay the Tenant reasonable compensation for loss or damage suffered by the Tenant if it exercises its rights under this clause 18 pursuant to section 46K of the Act but subject to section 43AD of the Act.

## 19. DEFAULT

- 19.1 An Event of Default occurs under this Lease:
- 19.1.1 where the Tenant is a corporation and:
    - (a) any demand served on the Tenant under Section 459E of the *Corporations Act 2001* (Cth) is not set aside by a Court or any application relating to that demand is not dismissed;
    - (b) a Court makes an order under Section 459A of the *Corporations Act 2001* (Cth) that the Tenant be wound up in insolvency; or
    - (c) an administrator, a liquidator, a manager or a managing controller (as each is defined in the *Corporations Act 2001* (Cth)) is appointed to the Tenant.
  - 19.1.2 where the Tenant is a partnership and:
    - (a) that partnership is dissolved by agreement or by operation of law;
    - (b) an application is made for the appointment of a receiver to or for the dissolution of the partnership; or
    - (c) more than 20% of the members retire in any six (6) Month period.
  - 19.1.3 where the Tenant is a natural person and:
    - (a) commits an act of bankruptcy within the *Bankruptcy Act 1966* (Cth);
    - (b) becomes incapable of managing his or her own affairs by reason of any medical or mental condition; or
    - (c) dies;
  - 19.1.4 where the Tenant:
    - (a) is in arrears of any payment for five (5) or more Business Days;
    - (b) breaches any covenant of this Agreement (excluding one requiring the payment of money) and that breach continues unremedied for ten (10) or more Business Days;
    - (c) has its interest under this Agreement taken in execution;
    - (d) breaches Clause 15 or any Lessor's consent given under Clause 15;
    - (e) without lawful excuse, impedes the exercise by the Lessor of any of its rights under this Agreement;
    - (f) stops payment of its debts or ceases or threatens to cease to carry on its business;
    - (g) breaches any term or condition of any contract in force between the Tenant and any bank or non-bank financial institution; or

- (h) breaches any provision of any other contract in force between the Lessor and the Tenant.
- 19.2 Where an Event of Default occurs, the Lessor may, subject to any notice requirements under the *Property Law Act 1974 (QLD)*:
- 19.2.1 terminate this Agreement by:
- (a) notice in writing to the Tenant; or
- (b) re-entering the Premises (with force if necessary), ejecting the Tenant and all other persons from the Premises and repossessing the Premises; or
- 19.2.2 exercise any of its rights or remedies under this Agreement; and
- 19.2.3 do any act or thing referred to in Clause 19.2.1 or 19.2.2 (or both).
- 19.3 If the Lessor terminates this Agreement, it may:
- 19.3.1 remove any fixture, fitting or goods belonging to the Tenant remaining on the Premises on the date this Agreement is terminated (which articles are deemed abandoned by the Tenant) and:
- (a) dispose of any of those articles for value by auction or private treaty or for no value; or
- (b) store any of those articles in a warehouse or storage facility at the Tenant's expense and liability, without being liable in any way and for any reason (whether as bailee or not) to the Tenant or any person claiming through the Tenant;
- 19.3.2 call on any Security Bond;
- 19.3.3 enforce any Guarantee; or
- 19.3.4 do any combination of acts or things contained in Clauses 19.3.1, 19.3.2 and 19.3.3.
- 20. CARPARK**
- 20.1 If the carpark details in Item 7 are completed then the Lessor grants to the Tenant a licence to park motor vehicles in the number of spaces in the Carpark specified in Item 7 during the trading hours specified in Item 15 and one hour either side of those trading hours during the Term.
- 20.2 The Lessor may designate and change the spaces to be used by the Tenant from time to time during the Term so long as the total number remains the same.
- 20.3 The Lessor may secure the Carpark and provide access devices or security codes to the Tenant.
- 20.4 The Tenant uses the Carpark at its own risk and the provisions of Clauses 12.3 and 12.4 apply equally to the licence of the carpark spaces under this Clause 20.
- 20.5 The Tenant must pay the licence fee per annum per space specified in Item 7 at the same time and in the same manner as payment of rent.
- 20.6 The licence fee specified in Item 7 will increase in the same proportion and at the same rate as increases in the Rent during the Term.
- 20.7 The Tenant acknowledges that although a carpark space may be signed as belonging to the Tenant the Tenant is not entitled to exclusive possession of the space and the Lessor will not be obliged to ensure other persons do not park in the space.
- 20.8 The carpark licence in this Clause 20 must not be sublet and must not be assigned except to an assignee of this Agreement on the Terms of Clause 15.
- 20.9 The licence under this Clause will terminate automatically on expiry or termination of this Agreement for any reason.
- 21. GUARANTEE AND INDEMNITY**
- 21.1 Where Item 5 is completed with the name or names of any person or persons, this Clause 21 applies to this Agreement.
- 21.2 In this Clause 21, unless the context requires otherwise:
- 21.2.1 'Agreement' means this Agreement;
- 21.2.2 'Guarantor' means the person or persons named in Item 5;
- 21.2.3 'Guarantor's Obligations' means the obligations of the Guarantor set out in Clause 21.3 or in any provision of this Agreement to which Clause 21.3 relates;
- 21.2.4 'Tenant's Obligations' means the due and punctual observance and performance by the Tenant of all liabilities, obligations and agreements (whether contingent, prospective or actual) to or with the Lessor under or in connection with this Agreement;
- 21.2.5 'Insolvency' includes administration, bankruptcy, compromise, arrangement, amalgamation, receivership, reconstruction, winding up, liquidation, dissolution and assignment for or compromise with creditors, and 'Insolvent' will be construed accordingly; and
- 21.2.6 'Security' means any mortgage, pledge, lien, charge or other security, whether consensual or arising by operation of law, and any guarantee, suretyship or other obligation whereby a responsibility is assumed for any obligation or indebtedness or the Insolvency or financial condition of any other person.
- 21.3 In consideration of the Lessor, at the request of the Guarantor, entering into this Agreement, the Guarantor unconditionally (and jointly and severally where there is more than one Guarantor):
- 21.3.1 guarantees the Tenant's Obligations; and
- 21.3.2 indemnifies the Lessor against any loss or liability the Lessor incurs which arises from or is connected with the Tenant's Obligations.
- 21.4 Each of the Guarantor's Obligations:
- 21.4.1 is a principal obligation and will not be treated as ancillary or collateral to any other right or obligation however created or arising;
- 21.4.2 may be enforced against the Guarantor without the Lessor first being required to exhaust any remedy it may have against the Tenant or to enforce any security it may hold with respect to the Tenant's Obligations;
- 21.4.3 is a continuing guarantee and indemnity for the whole of the Tenant's Obligations and will be irrevocable and will remain in full force and effect until discharged; and
- 21.4.4 will not be considered as wholly or partially discharged by the performance at any time of any of the Tenant's Obligations or by any settlement of account or by any other matter or thing whatever and will apply to the present and future scope of the Tenant's Obligations.
- 21.5 The liability of the Guarantor is absolute and will not be affected by any act, omission, matter or thing which but for this provision might operate to release or otherwise exonerate the Guarantor from the Guarantor's Obligations in whole or in part including without limitation:
- 21.5.1 the grant to the Tenant or any other person of any time, waiver or other indulgence or concession, or the discharge or release of any other security held by the Lessor in respect of the Tenant's Obligations;
- 21.5.2 any transaction or arrangement that may take place between the Lessor and the Tenant, the Guarantor or any other person;
- 21.5.3 the Insolvency of the Tenant;
- 21.5.4 the Lessor exercising or refraining from exercising any other security or any of the rights, powers or remedies conferred on it by law or by this Agreement or any other agreement with any person, or taking or failing to take any other security;
- 21.5.5 the variation (including a variation which increases the Tenant's Obligations), extinguishment, unenforceability, failure, loss release, discharge, abandonment or transfer either in whole or in part of this Agreement, or any security now or in the future held by the Lessor from the Tenant, the Guarantor or any other person;
- 21.5.6 the Tenant's Obligations or any part of them being or becoming wholly or partially illegal, void, voidable, or unenforceable;
- 21.5.7 the failure by the Lessor to give notice to the Guarantor of any default by the Tenant under this Agreement;
- 21.5.8 any legal limitation, disability, incapacity or other circumstances related to the Tenant; or
- 21.5.9 the failure of any Guarantor to execute this Guarantee or the granting of this Guarantee by any Guarantor being or becoming void or voidable.

- 21.6 This Guarantee extends to cover this Agreement as amended, varied or replaced, either with or without the consent of the Guarantor.
- 21.7 If the Tenant becomes Insolvent, the Guarantor authorises the Lessor to prove for all moneys which the Tenant or any other person will have paid under this Agreement and to retain and to carry into a suspense account and to appropriate at the discretion of the Lessor any dividends received in the Insolvency of the Tenant and all other moneys received in respect of the Tenant's Obligations until the Lessor has been paid in full in respect of the Tenant's Obligations.

## 22. NOTICES

- 22.1 Any notice, demand, direction, permission, control, authorisation, or other communication (each a "Notice") required or permitted, whether expressly, or by necessary implication, to be given under this Agreement must:
- 22.1.1 be in writing addressed to the address of the intended recipient shown in this Agreement or to such other address as has been most recently notified by the intended recipient to the party giving the notice;
- 22.1.2 be signed by a person duly authorised by the sender and for the purposes of this Agreement may be given by or to the Solicitor for the party giving and receiving the notice; and
- 22.1.3 be deemed to have been given and served:
- (a) where delivered by hand at the time of delivery;
- (b) where sent by ordinary mail, 48 hours after the time of posting;
- (c) where despatched by security post, on the seventh day after the date on which the notice is accepted for posting by the relevant postal authority;
- (d) where despatched by fax, at the time recorded on the transmitting machine;
- (e) where delivered by email, when it is capable of being retrieved by the addressee at the email address in accordance with section 24 of the *Electronic Transactions (Queensland) Act 2001*.
- but if such delivery or receipt is later than 5.00pm (local time) on a Business Day, the notice is deemed to have been given and served on the next Business Day.
- 22.2 Any notice given or received by a solicitor for a party to this Agreement as shown in the Reference Schedule, or such alternative solicitor as notified in writing to the other party from time to time, is deemed to be given or received with the actual or ostensible authority of that solicitor.

## 23. GOVERNING LAW

- 23.1 This Agreement is governed by the laws of Queensland.
- 23.2 The parties submit to the non-exclusive jurisdiction of the courts and tribunals of Queensland.
- 23.3 Nothing in this Agreement is intended to oust the jurisdiction of any lawfully constituted person or tribunal acting in accordance with its powers under the Act.

## 24. ACKNOWLEDGEMENTS

- 24.1 The Tenant acknowledges having received from the Lessor a copy of both a draft of this Agreement and a Lessor Disclosure Statement at least seven (7) days prior to entering into this Agreement.
- 24.2 The Lessor and Tenant each acknowledge receiving and having the opportunity to read this Agreement including a copy of the Standard Conditions before signing this Agreement.

## IMPORTANT NOTICE TO USERS OF THIS CONTRACT

- 1 This Agreement has been adopted by The Real Estate Institute of Queensland Limited. This Agreement constitutes information only and not advice.
- 2 Each of The Real Estate Institute of Queensland Limited, its officers, employees, agents, or its advisers (collectively the "REIQ") do not accept any legal or equitable responsibility arising from or connected with the use of this Agreement by any person or that person's advisers (whether or not that person is a member of the REIQ).
- 3 Without limiting Item 2 above, the REIQ does not accept any liability in contract, tort, equity, restitution or at law for any direct or consequential loss or damage (or both) arising from or connected with the use of this Agreement by that person or that person's advisers.
- 4 Any person using this Agreement uses it at his, her or its own risk. The REIQ does not assume any risk or responsibility arising from or connected with the use of this Agreement. Any user of this Agreement must be satisfied that this Agreement is appropriate to his, her or its requirements.
- 5 If the REIQ incurs any liability or is said to assume any risk or responsibility (despite Item 4 above) arising from or connected with the use of this Agreement, then that person agrees:
  - (a) to indemnify and keep indemnified the REIQ on demand on a full indemnity basis against all actions, liabilities, proceedings, claims, costs and expenses incurred or to be incurred by the REIQ to or against any person (including any user of this Agreement) for any reason;
  - (b) that the indemnity contained in Item 5(a) above extends to any act or omission which causes wholly or partially direct or consequential loss or damage (or both) to the user of this Agreement or to any other person (or both).

**Annexure A**  
**Premises Plan**

[Note: Not required for a lease of the whole of the land].

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