
Commercial Lease (non-retail)

between

SAPOTE MALENY PTY LTD
(ACN 135 642 018)

acting as the trustee of

the SAPOTE MALENY CUSTODIAN TRUST (ABN 61 266 782 946)

FOR THE VEDORY SUPERANNUATION FUND

and

Little Tree Bake and Brew House Pty Ltd
(ACN 629 034 546)

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Reference Schedule

Item 1:	LESSOR'S NAME AND ADDRESS SAPOTE MALENY PTY LTD (ACN 135 642 018) acting as the trustee of the SAPOTE MALENY CUSTODIAN TRUST (ABN 61 266 782 946) Address: 52 Main Street, Samford QLD 4520
Item 2:	LESSEE'S NAME AND ADDRESS Little Tree Bake and Brew House Pty Ltd (ACN 629 034 546) Address: 52 Main Street, Samford QLD 4520
Item 3:	LAND LOT 1 REGISTERED PLAN 86874 TITLE REFERENCE 13067127
Item 4:	PREMISES The whole of the Land known as 52 Main Street, Samford QLD 4520
Item 5:	LESSEE'S FIT-OUT PERIOD 4 weeks commencing on and including 1 January 2019 and terminating on and including 29 January 2019
Item 6:	TERM 3 years commencing on and including 1 January 2019 and terminating on and including 31 December 2021
Item 7:	OPTIONS TO RENEW <u>First Option:</u> A first option for a further term of 3 years commencing on and including 1 January 2022 and terminating on and including 31 December 2024 <u>Second Option:</u> A second option for a further term of 3 years commencing on and including 1 January 2025 and terminating on and including 31 December 2027
Item 8:	RENT IN THE FIRST YEAR OF THE TERM \$104,000.00 excluding GST, payable in weekly instalments of \$2,000.00 excluding GST
Item 8A:	RENT- REDUCED/ FREE PERIOD 4 weeks @ \$1,000 per week plus GST

Item 9:	RENT REVIEW DATES <u>Review Date:</u> <u>Method:</u> 1 January 2020 No review 1 January 2021 CPI
Item 9A:	RENT REVIEWS FOR AND DURING FURTHER TERMS <u>Review Date:</u> <u>Method:</u> 1 January 2022 Market 1 January 2023 CPI 1 January 2024 CPI 1 January 2025 Market 1 January 2026 CPI 1 January 2027 CPI
Item 9B:	RENT REVIEWS FOR AND DURING ANY HOLDING OVER N/A
Item 10:	OUTGOINGS All Outgoings specified in clause 3.9 including all associated Costs For the purposes of clause 3.7(a) and Item 12, the Lessor's estimate of the expected Outgoings for the first year of the Term is \$12,000.00 incl. GST.
Item 10A:	LESSEE'S PROPORTION OF OUTGOINGS 100.00%
Item 10B:	PROPORTION OF LAND/BUILDING 100.00%
Item 11:	INTEREST RATE ON OVERDUE AMOUNTS 6.00% per annum
Item 12:	SECURITY DEPOSIT 1 months' Rent, Outgoings and GST totalling \$8,800.00 to be provided in cash
Item 13:	PERMITTED USE Cafe, Bake house and Restaurant
Item 14:	PUBLIC RISK INSURANCE REQUIRED \$20,000,000.00

DateJANUARY 2019...

Recitals

- A The Lessor is the registered proprietor of the Premises.
- B The Lessor leases to the Lessee, and the Lessee accepts the lease of, the Premises for the Term subject to the terms of this lease.
- C This lease is intended to be legally binding and the parties agree to give effect to the arrangements contemplated by it.

Operative provisions

1. Definitions and interpretation

Definitions

- 1.1 The following definitions apply in this lease unless the context requires otherwise:

Abatement means the abatement of the Lessee's financial obligations as provided under clause 14.1.

Accounting Period means any period, not exceeding 12 months, from time to time selected by the Lessor for the purpose of calculating Outgoings.

Adjusted Rent means the Rent payable on and from a Review Date as a result of an adjustment of the Rent pursuant to clauses 4.1 and 4.

Advertising Media means any advertisement, sign, placard, neon sign or other notice.

Agent means, in respect of a party, any:

- (a) officers or employees;
- (b) architects, engineers, legal advisors or other professionals;
- (c) builders, contractors or handymen; and
- (d) property managers or estate agents,

employed or engaged by that party and, in respect of the Lessee, includes the Lessee's sublessees, assignees and invitees.

Air-conditioning Systems means all air-conditioning systems installed at, or exclusively servicing, the Premises.

Appurtenance means an item attached to the Premises including any drain, basin, sink, toilet or urinal.

Australian Property Institute means the division of the Australian Property Institute for the state in which the Premises are located.

Authority means:

- (a) any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local;
- (b) any provider of public utility services, whether statutory or not; or
- (c) any other person, authority, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities over the Premises or any part of them or anything in relation to them.

Broadcast Media means any loudspeaker, radio or other broadcast media.

Building means all buildings, improvements and other structures for the time being erected on the Land and includes any part thereof.

Business Day means a day other than a Saturday, Sunday or public holiday when banks in Brisbane, Queensland are open for business.

Change of Control means, in respect of a particular entity, a person who Controls that entity ceasing to do so or another person acquiring Control of it.

Charge means an Encumbrance over this lease or the Lessee's interest in the Premises or goods within the Premises.

Claims means any claims including actions, complaints, debts, demands, dues, proceedings, suits or other legal recourse (whether in contract or tort, at law or in equity or under statute) and including any causes of action or rights to bring or make any such claim.

Commencement Date means the commencement date of the initial term of this lease specified in Item 6.

Common Areas means the entrances, passages, corridors, paths, stairways, landings, escalators, lifts, driveways, car parking spaces, toilets, washrooms, rest rooms, tea rooms, storage areas and other areas in or associated with the Building from time to time available for general use.

Contamination means the presence in, on or under the Premises or the Land of a substance at a concentration above that at which the substance is normally present in the same locality, being a presence that poses, or is likely to pose, a risk of harm to human health or any other aspect of the environment.

Control has the meaning given in Section 50AA of the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Cost means any loss, damage, debt, cost, charge, expense, fine, outgoing, penalty, imposition, assessment, diminution in value, deficiency or other liability of any kind or character (including any direct, indirect, special or consequential losses, loss of profit and/or loss of reputation) that a party pays, suffers or incurs or is liable for (whether paid or accrued), including all:

- (a) liabilities on account of Tax;
- (b) interest, penalties and other amounts payable to third parties;
- (c) legal and other professional fees and expenses (on a full indemnity basis) and other costs incurred in connection with investigating, defending or settling any Claim, whether or not resulting in any liability; and

(d) all amounts paid in settlement of any Claim.

Damaging Event means any damage caused by fire, lightning, storm, flood, earthquake, explosion or war and any malicious damage.

Default Rate means the interest rate set out in Item 11.

Defect Notice means a notice in writing of any defect requiring the Lessee to repair the same in accordance with any obligation of the Lessee under this lease.

Event of Default means any breach of this lease by the Lessee, including any Material Breach.

Encumbrance means any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, howsoever created or arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect.

Facilities means:

- (a) Services;
- (b) the Lessor's Fixtures;
- (c) any parts of the Premises, Building or Land; and/or
- (d) easements or rights of way that benefit the Land.

First Further Term means the term of the First Option Lease as specified in Item 7.

First Option has the meaning given in clause 2.5(a).

First Option Lease has the meaning given in clause 2.5(a).

First Option Lease Commencement Date means the commencement date of the First Further Term as specified in Item 7.

First Option Lease Termination Date means the termination date of the First Further Term as specified in Item 7.

Fit-Out means the works to be undertaken by the Lessee during the Fit-Out Period to fit out the Premises for the Lessee's use, details of which have been approved in writing by the Lessor and signed by the Lessor for the purposes of identification.

Fit-Out Period means the period specified in Item 5.

Further Term means the First Further Term and/or the Second Further Term.

GST has the same meaning given to that expression in the GST Law.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.

GST Law has the same meaning given to that expression in the GST Act.

Holding Over Term has the meaning given in clause 2.4(d).

Index Number means:

- (a) the Consumer Price Index All Groups number for the city of Brisbane, Queensland published from time to time by the Australian Bureau of Statistics; or

- (b) if the relevant Consumer Price Index is suspended or discontinued the Average Weekly Earnings of All Employees published from time to time by the Australian Bureau of Statistics for the city of Brisbane, Queensland; or
- (c) if both the relevant Consumer Price Index is suspended and the publication of the determination of the Average Weekly Earnings of All Employees ceases, the index published by the Australian Bureau of Statistics which reflects changes in the cost of living in the city of Brisbane, Queensland at the time this lease commenced and at the time any variation of Rent or other amount payable under this lease is to be determined.

Insolvency Event means, in respect of a particular person, the occurrence of any one or more of the following events in relation to that person:

- (a) for a person that is a body corporate:
 - (i) except for the purpose of a solvent reconstruction or amalgamation:
 - (A) process is filed in a court seeking an order that it be wound up or that a Controller be appointed to it or any of its assets, unless the application is withdrawn, struck out or dismissed within 7 days of it being filed;
 - (B) an order is made that it be wound up or that a Controller be appointed to it or any of its assets; or
 - (C) a resolution that it be wound up is passed or proposed;
 - (ii) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertakings;
 - (iii) an administrator is appointed to it, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to it;
 - (iv) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
 - (v) a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors is proposed or effected;
 - (vi) any action is taken by the Australian Securities and Investments Commission with a view to its deregistration or its dissolution, or an application is made to the Australian Securities and Investments Commission that any such action be taken;
 - (vii) it is insolvent within the meaning of section 95A of the Corporations Act, states that it is unable to pay its debts or it is presumed to be insolvent under any applicable law;
 - (viii) as a result of the operation of section 459F(1) of the Corporations Act, it is taken to have failed to comply with a statutory demand;

- (ix) it stops or suspends or threatens to stop or suspend the payment of all or a class of its debts;
 - (x) any event or circumstance set out in section 461 of the Corporations Act occurs in relation to it; or
 - (xi) anything having a substantially similar effect to any of the events specified in paragraphs (a)(i) to (a)(x) of this definition happens to it under the law of any jurisdiction; and
- (b) for a person that is a natural person:
- (i) a bankruptcy notice is issued against the person;
 - (ii) a receiver or a trustee for creditors or in bankruptcy is appointed to any of the person's property;
 - (iii) the person proposes or enters into an arrangement or composition with, or an assignment for the benefit of, any of the person's creditors;
 - (iv) the person proposes or effects a moratorium involving any of the person's creditors;
 - (v) the person stops or suspends, or threatens to stop or suspend, the payment of all or a class of its debts;
 - (vi) the person is unable to pay all of the person's debts as they fall due or is presumed to be insolvent under any applicable law;
 - (vii) the person becomes an "insolvent under administration" as defined in section 9 of the Corporations Act; or
 - (viii) anything having a substantially similar effect to any of the events specified in paragraphs (b)(i) to (b)(vii) of this definition happens to the person under the law of any jurisdiction.

Land means the land specified in Item 3.

Law means any law, legislation, regulation, rule, proclamation, ordinance or by-law (whether present or future, whether state, federal or otherwise and whether statutory or common law) including:

- (a) any law concerning environmental matters (eg, laws concerning land use, development, pollution, Contamination, waste disposal, toxic and hazardous substances, climate change, greenhouse gases, energy use or efficiency, water use or access, conservation of natural or cultural resources or resource allocation, including any law relating to exploration for, or development or exploitation of, any natural resource); and
- (b) any law and/or code of practice relating to occupational health and safety that applies to the Premises and/or the use of them, including the Work Health and Safety Legislation.

Lease Year means each consecutive 12-month period during the Term with the first such 12-month period commencing on and including the Commencement Date.

Lessee means the party named in Item 2 and a reference to the Lessee includes:

- (a) its successors in title and permitted assigns; and

(b) where the context permits, the Lessee's Agents.

Lessee's Objection Notice has the meaning given in clause 4.6.

Lessor means the party named in Item 1 and a reference to the Lessor includes its successors in title and assigns.

Lessor's Assets means:

- (a) the Lessor's Fixtures and any improvements or alterations thereto; and
- (b) any other Personal Property provided by the Lessor to the Lessee under this lease at any time.

Lessor's Fixtures means all:

- (a) plant and equipment (whether mechanical or otherwise), Appurtenances, fittings, fixtures, furniture or furnishings of any kind (including window coverings, blinds and light fittings); and
- (b) valves, taps, fire hoses, hydrants, other fire prevention aids and fire-fighting systems, that are owned or supplied by the Lessor and from time to time are located on, comprise part of, or exclusively service the Premises or any part of them.

Lessor's Review Notice has the meaning given in clause 4.5.

Material Breach means any material breach of this lease by the Lessee, including the events of breach listed in clause 15.1.

Method means a method for the review of the Rent that corresponds with a Review Date as specified in the Reference Schedule.

Option means the First Option and/or the Second Option.

Option Lease means the First Option Lease and/or the Second Option Lease.

Outgoings means the total of all Rates and other amounts arising from the Lessor's ownership, management, operation and maintenance of the whole or any part of the Premises for which the Lessor pays or may be or become liable acting reasonably, whether by direct assessment or otherwise, including:

- (a) such amounts relating to land or buildings not forming part of the Premises but for which the Lessee is proportionately liable under the terms of this lease; and
- (b) the amounts listed in clause 3.9.

Personal Property has the meaning given to the term "personal property" in the PPSA.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Premises means the Building and the Land that is the subject of this lease as described in Item 4, including the Lessor's Fixtures and improvements located therein.

Proposed Amount has the meaning given in clause 4.5.

Rates means rates, taxes, levies, charges and outgoings payable to any Authority, or under any Law, relating to all or part of the Premises or the Land or their use or occupation, including for:

- (a) any Service of a type that is from time to time provided by an Authority for the locality in which the Premises are situated;
- (b) waste and general garbage removal from the Premises or the Land (including any excess use thereof); and
- (c) the provision, reticulation or discharge of water, sewerage and/or drainage (including water and sewerage usage charges and meter rents).

Reasonable Wear and Tear means, in relation to any Facilities, reasonable wear and tear having regard to their condition at the Commencement Date and subject to:

- (a) the express obligations of the Lessee under this lease; and
- (b) the Lessee having taken all reasonable measures to ensure that any damage attributed to reasonable wear and tear will not contribute to any further damage to any Facilities.

Reference Schedule means the table of key information that starts on page 3 of this lease.

Register means the register as defined in the PPSA.

Relevant Trust means, in respect of any Trustee, the trust in respect of which the Trustee is expressed to have entered into this lease as trustee.

Rent means the annual rent specified in Item 8 as adjusted pursuant to the terms of this lease and, where the context requires, any instalments thereof.

Requirement includes any requirement, notice, order, direction, recommendation, consent, stipulation or similar notification received from, or given by, any Authority or under any Law, whether in writing or otherwise.

Review Date means a date on which the Rent will be reviewed as specified, described or referred to in Item 9, Item 9A or Item 9B.

Second Further Term means the term of the Second Option Lease as specified in Item 7.

Second Option has the meaning given in clause 2.5(b).

Second Option Lease has the meaning given in clause 2.5(b).

Second Option Lease Commencement Date means the commencement date of the Second Further Term as specified in Item 7.

Second Option Lease Termination Date means the termination date of the Second Further Term as specified in Item 7.

Security means the Security Deposit as provided for in clause 5.1 and as adjusted or amended from time to time pursuant to the terms of this lease.

Security Deposit means the cash amount set out in Item 12 as amended from time to time pursuant to the terms of this lease.

Security Interest has the meaning given in clause 19.2(d).

Services means all services or systems of any nature from time to time provided to, or available for use by, the Premises, the Building or the Land including any:

- (a) electronic medium, electricity, energy source, lighting, gas, fuel or power (including any carbon or greenhouse gas emissions or similar mandatory charges), water, sewerage, drainage, loading docks, plant rooms, storage areas, fire services, sprinkler

systems or devices, lifts, escalators, air-conditioning, garbage collection, cleaning or other sanitation, telephone or internet services, including any excess use thereof;

- (b) plant and equipment, fittings, fixtures and appliances utilised for any of such services or systems; and
- (c) any services or systems from time to time utilised for accessing the Premises.

Stamp Duty means any stamp, transaction or registration duty or similar charge imposed by any Authority and includes any interest, fine, penalty, charge or other amount in respect of the above.

Subdivision means a subdivision of one or more of the titles to the Land or Building and includes a strata subdivision.

Tax or Taxation means:

- (a) any tax, levy, impost, deduction, charge, rate, compulsory loan, withholding or duty by whatever name called, levied, imposed or assessed under the Tax Acts or any other statute, ordinance or law by any Authority (including profits tax, property tax, interest tax, income tax, tax related to capital gains, tax related to the franking of dividends, bank account debits tax, fringe benefits tax, sales tax, payroll tax, superannuation guarantee charge, group or Pay as You Go withholding tax and land tax);
- (b) unless the context otherwise requires, Stamp Duty and GST; and
- (c) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of the above.

Tax Acts means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

Term means the duration of this lease, including any Further Term and any Holding Over Term (if applicable).

Termination Date means the termination date of the initial term of this lease specified in Item 6.

Top-Up Amount means the higher of the amount stated in Item 12 and the amount calculated under clause 5.2(b).

Trustee means any party to this lease that is expressed to have entered into this lease in its capacity as a trustee of any trust.

Unfit means the Premises being wholly or substantially unfit for the Lessee's use and occupation or inaccessible for a period exceeding 7 days.

Valuer has the meaning given in clause 4.8.

Work Health and Safety Legislation means the *Work Health and Safety Act 2011* (QLD) and the *Work Health and Safety Regulation 2011* (QLD).

Interpretation

1.2 The following rules of interpretation apply in this lease unless the context requires otherwise:

- (a) headings in this lease are for convenience only and do not affect its interpretation or construction;

- (b) no rule of construction applies to the disadvantage of a party because this lease is prepared by (or on behalf of) that party;
- (c) reference to any body (including any institute, association, authority or government agency) which ceases to exist or whose powers or functions are transferred to any other body also includes the body which replaces it or which substantially takes over its powers and functions.
- (d) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (e) a reference to a document (including this lease) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced, and the parties acknowledge and agree that the Reference Schedule forms part of this lease and is binding upon the parties;
- (f) a reference to this lease includes any Option Lease;
- (g) references to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this lease;
- (h) in each schedule to this lease, a reference to a paragraph is a reference to a paragraph in that schedule;
- (i) a reference to an “*Item*” of a particular number is a reference to the item of that number in the Reference Schedule;
- (j) a reference to a statute includes all regulations thereunder;
- (k) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- (l) an expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Governmental Agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators;
- (m) a reference to writing includes any communication sent by post, facsimile or email;
- (n) a reference to time refers to time in Brisbane, Queensland and time is of the essence;
- (o) all monetary amounts are in Australian currency;
- (p) a reference to a liability includes a present, prospective, future or contingent liability;
- (q) the word “*month*” means calendar month and the word “*year*” means 12 calendar months;
- (r) the meaning of general words is not limited by specific examples introduced by “*include*”, “*includes*”, “*including*”, “*for example*”, “*in particular*”, “*such as*” or similar expressions;
- (s) a reference to a “*party*” is a reference to a party to this lease (including any person that executes a deed of adherence to this lease), and a reference to a “*third party*” is a reference to a person that is not a party to this lease;
- (t) a reference to any thing is a reference to the whole and each part of it;

- (u) a reference to a group of persons is a reference to all of them collectively and to each of them individually;
- (v) words in the singular include the plural and vice versa; and
- (w) a reference to one gender includes a reference to the other genders.

Exclusion of implied powers & covenants

- 1.3 No obligation or power is implied in this lease by virtue of sections 105 and 107 of the *Property Law Act 1974* (QLD).

2. Lease

- 2.1 The Lessor leases the Premises to the Lessee, and the Lessee accepts the lease of the Premises from the Lessor, in accordance with the terms of this lease.

Term

- 2.2 This lease will remain on foot for the Term, unless it is terminated earlier in accordance with clauses 14 or 15.

Notice to vacate upon expiry

- 2.3 Subject to clause 2.4(g), the Lessee must, not less than 3 months before:
- (a) the Termination Date;
 - (b) if only the First Option is exercised, the First Option Lease Termination Date; or
 - (c) if the Second Option is exercised, the Second Option Lease Termination Date,
- give written notice to the Lessor of the Lessee's intention (if any) to vacate the Premises upon or after that date. If the Lessee fails to give such notice, then this lease will remain on foot, and the Lessee will continue to be liable to pay Rent:
- (d) for the 3-month period after such notice is received by the Lessor; or
 - (e) if no such notice is given, for 3 months after the Lessee has vacated the Premises and completed all reinstatement requirements under this lease.

Holding over

- 2.4 Where the Lessee continues to occupy the Premises beyond:
- (a) the Termination Date;
 - (b) if only the First Option is exercised, the First Option Lease Termination Date; or
 - (c) if the Second Option is exercised, the Second Option Lease Termination Date,
- with the Lessor's consent, then:
- (d) the Lessee will so occupy on a month-by-month basis, such period of occupation (the ***Holding Over Term***) to form an extension of the term of this lease;
 - (e) during the Holding Over Term, the Lessee must pay Rent monthly in advance and continue to adhere to the covenants and terms of this lease;

- (f) the amount of Security will not be reduced, notwithstanding that the holding over is a month-by-month tenancy, and will be increased during the Holding Over Term proportionately in line with the increases in Rent;
- (g) clause 2.3 will not apply, and the Holding Over Term may be terminated by:
 - (i) the Lessor upon 1 month's notice in writing; and/or
 - (ii) the Lessee upon 3 months' notice in writing; and
- (h) if the Lessee fails to give such notice under clause 2.4(g):
 - (i) the Lessee will continue to remain liable to pay Rent for the 3-month period after such notice is given; or
 - (ii) if no such notice is given, for 3 months after the Lessee has vacated the Premises and completed all reinstatement requirements under this lease.

Options to renew

- 2.5 Provided that there is no subsisting Event of Default, the Lessee has the option:
- (a) by notice in writing to the Lessor no later than 3 months prior to the Termination Date, to elect to enter into a further lease (the **First Option Lease**) for the First Further Term (the **First Option**); and
 - (b) if the First Option is exercised, by notice in writing to the Lessor no later than 3 months prior to the First Option Lease Termination Date, to elect to enter into a second further lease (the **Second Option Lease**) for the Second Further Term (the **Second Option**),
- and thereby extend the Term.
- 2.6 An Option Lease granted under clause 2.5 will be on the same terms and covenants as those applicable to the initial term of this lease *mutatis mutandis*, except that:
- (a) the First Option Lease will commence on and from the First Option Lease Commencement Date;
 - (b) the duration of the First Option Lease will be the First Further Term;
 - (c) the Second Option Lease will commence on and from the Second Option Lease Commencement Date;
 - (d) the duration of the Second Option Lease will be the Second Further Term;
 - (e) the Lessee will have no option to renew this lease for any additional further term after the expiry or termination of the Second Option Lease;
 - (f) the Rent and Review Dates for the Option Lease will be as specified in Item 9A; and
 - (g) the amount of Security in Item 12 will be increased proportionately in line with the increases in Rent.
- 2.7 If required by the Lessor, the Lessee must execute a fresh lease for each Option Lease as the Lessor considers appropriate, which is to be prepared and registered by the Lessor at the expense of the Lessee.

3. Lessee's financial obligations

Rent

- 3.1 Subject to clause 3.2, the Lessee will pay the Rent to the Lessor in equal monthly instalments on the Commencement Date and:
- (a) for every month thereafter during the Term, on the same day of that month as the Commencement Date; or
 - (b) at the Lessor's option, on the first day of every calendar month thereafter during the Term, with the amount payable in the first and last calendar month of the Term to be adjusted in proportion to so much of each such calendar month as falls within the Term.

Rent-free period

- 3.2 The Lessee is entitled to the period free of rent specified in Item 8A commencing on and from the Commencement Date. For the avoidance of doubt, this clause 3.2 will not be contained in any Option Lease.

Manner of payment

- 3.3 Subject to clause 3.4, the Lessee will pay:
- (a) the Rent; and
 - (b) any Outgoings payable monthly under clause 3.7(a),
- to the Lessor by periodic direct credit or direct deposit into the bank account notified to the Lessee by the Lessor.
- 3.4 From time to time, upon reasonable notice to the Lessee, the Lessor may nominate a different bank account or otherwise amend the manner of payment under clause 3.3 and the Lessee must do all things necessary to give effect to such nominations or amendments.

Costs of Services

- 3.5 The Lessee must promptly pay all Costs for all Services separately supplied, metered, consumed or connected (as appropriate) to, in or on the Premises.
- 3.6 Upon or before taking occupation of the Premises, the Lessee must arrange for all Services separately metered to the Premises to be connected in the Lessee's name from the Commencement Date.

Outgoings

- 3.7 The Lessee must pay to the Lessor that percentage of the Outgoings specified in Item 10A:
- (a) in advance in equal monthly instalments based on the Lessor's estimates according to clause 3.8; or
 - (b) if the Lessor so elects, within 10 Business Days of written demand by the Lessor.
- 3.8 Unless the Lessor elects for the Lessee to pay Outgoings on demand in accordance with clause 3.7(b):
- (a) prior to the commencement of each Accounting Period, the Lessor will provide the Lessee with an estimate of the Outgoings payable by Lessee for that Accounting Period;

- (b) the equal monthly instalments of Outgoings will be calculated on the basis of such estimates and, immediately thereafter, become payable in accordance with clause 3.3(b) at the same time and in the same manner as the Lessee pays Rent;
- (c) following each Accounting Period, the Lessor will furnish to the Lessee a statement giving details of the actual Outgoings incurred for that Accounting Period; and
- (d) within 14 days after the date on which such statement is received by the Lessee, the Lessee must pay to the Lessor any shortfall between the sum of the Outgoings paid by the Lessee and the actual Outgoings payable by the Lessee, or the Lessor will refund to the Lessee any amount overpaid by the Lessee, as the case may be,

and, except in the case of manifest error notified by either the Lessee to the Lessor or vice versa within 14 days after the date on which such statement is received by the Lessee, such statement will be prima facie evidence of the actual Outgoings incurred for that Accounting Period.

3.9 Subject to clauses 3.10, 3.11 and 3.12, Outgoings include:

- (a) all insurance premiums and amounts payable (including deductibles in related insurance claims) for all the following insurances:
 - (i) building insurance in respect of the Building and all Appurtenances for their full reinstatement value against all usual risks;
 - (ii) public and products liability;
 - (iii) workers' compensation insurance for all persons engaged by the Lessor to work on the Land, in proportion to the extent to which such engagement is connected with the Land; and
 - (iv) such other insurable risks as the Lessor reasonably considers appropriate from time to time;
- (b) all broker, valuation and risk assessment fees (including those for valuation and risk management reports) payable in connection with the provision and/or renewal of any insurances referred to in clause 3.9(a);
- (c) all Rates relating to the use and occupation of the Premises;
- (d) all Rates for waste and general garbage removal from the Premises or the Land (including any related excess charges);
- (e) all Rates for the provision, reticulation or discharge of water, sewage and/or drainage including excess water charges, consumption charges, service charges and meter rents;
- (f) all Costs for the supply, operation, repair or maintenance of the Lessor's Fixtures, subject to Reasonable Wear and Tear;
- (g) all Costs incurred in the supply, operation, repair or maintenance of any Services, subject to Reasonable Wear and Tear;
- (h) all Costs for the removal of waste, sullage and other general garbage from the Land, Building or Premises;
- (i) all Costs of statutory inspections and reports;

- (j) all Costs of purchasing, hiring, maintaining and servicing any outdoor gardens, lawns, potted shrubs, planted areas, landscaped areas and artificial water courses on the Land, subject to Reasonable Wear and Tear;
 - (k) all Costs of cleaning and lighting the Common Areas and the Land (excluding any amount that is otherwise payable by the Lessee under this lease);
 - (l) all Costs in relation to the control of pests, vermin, insects or other similar infestations on the Land;
 - (m) all Costs for the repair or maintenance of the Building or the Premises, or any easements or rights of way that benefit the Land, where such repair or maintenance arises from the Lessee's use, subject to Reasonable Wear and Tear;
 - (n) all Costs of repairs and/or replacement of emergency and exit light fittings; and
 - (o) all Costs in connection with compliance with all relevant Laws relating to fire regulation monitoring (including hydrant testing, obtaining an annual fire safety statement and fire compliance auditing).
- 3.10 In respect of any repairs or maintenance to which clause 3.9 applies, if the Cost of replacing or renewing any part or item is less than the Cost of repairing or maintaining that part or item and the Lessor therefore elects to replace or renew that part or item, then Outgoings include the Cost of replacing or renewing that part or item.
- 3.11 Outgoings exclude any:
- (a) liability or expenditure of a structural or capital nature other than the replacement of component parts (but not the whole) of the Lessor's Fixtures;
 - (b) Costs that the Lessor determines, acting reasonably, are wholly attributable to any other lessee or occupier of the Building or Land; and
 - (c) Costs incurred in respect of any undeveloped part of the Land.
- 3.12 If any Outgoings set out in clause 3.9 are not separately payable in relation to the Premises, then the Outgoings payable by the Lessee hereunder include that proportion of the Outgoings as is reasonably attributable to the Premises and, in this regard, the percentage proportion set out in Item 10B is prima facie evidence as to the applicable proportion for the purpose of this clause 3.12.
- 3.13 In the event of any Subdivision during the Term, any necessary adjustments will be made to the calculation of the Outgoings payable by the Lessee under this lease to reasonably maintain the intent of this lease in relation to the payment of Outgoings.

Lessor's costs and expenses

- 3.14 Each party will pay its own costs incurred in connection with the negotiation, preparation and execution of this lease and any new lease documents relating to any Option Lease.
- 3.15 Without limiting any other rights of the Lessor, the Lessee must pay to the Lessor on demand:
- (a) all Stamp Duties (including penalties and fines other than those incurred due to the breach of the Lessor) and registration fees on this lease, and indemnify and keep fully indemnified the Lessor on demand from and against any liability for such Stamp Duties or fees;
 - (b) all Costs of the Lessor in relation to:

- (i) the stamping and registration of this lease and any certified copy of it that may be required by the Lessor;
 - (ii) the actual or contemplated enforcement, exercise, preservation or consideration of any rights, powers, privileges, authorities or remedies under this lease;
 - (iii) any Event of Default; and
 - (iv) any attendances by the Lessor and/or its Agents in relation to any Event of Default (for the avoidance of doubt, including attendances with the Lessor's legal advisers, whether in court or otherwise); and
- (c) all Costs of the Lessor that are incurred reasonably, properly and in good faith, including legal costs as between solicitor and client, in relation to:
- (i) any consent, required under or in relation to this lease or requested by the Lessee, including all Costs incurred:
 - (A) in respect of the Lessor's consideration of any application for such consent;
 - (B) in respect of the negotiation and preparation of all documents relating to any such consent;
 - (C) by any other person whose consent is required, whether that other person's consent is given or refused or the application for that consent is withdrawn; and
 - (D) in respect of obtaining any consent from the Lessor or any head- lessor, mortgagee or other person;
 - (ii) any actual or proposed assignment, subletting or transfer of this lease;
 - (iii) any surrender or termination of this lease otherwise than by the effluxion of time;
 - (iv) the conduct and administration of this lease, including:
 - (A) calculation and notification of Rent reviews;
 - (B) any notice given to the Lessee; and
 - (C) any advice obtained by the Lessor, whether legal or otherwise, in relation to any matter arising out of this lease; and
 - (v) the fees of professional consultants.

3.16 The Lessor is entitled to render to the Lessee an itemised statement of Stamp Duties or other Costs for which the Lessee is liable under clause 3.15 at any time after they have been incurred. In respect of any such statement, the Lessee will pay the amount claimed by way of addition to the next instalment of Rent payable after receipt of the statement by the Lessee and such statement is deemed to be correct in the absence of any documentary evidence proving to the contrary.

Remedy by Lessor of breaches by Lessee

- 3.17 After giving reasonable notice to the Lessee, the Lessor may, at its sole discretion, remedy any Event of Default and the Lessee must pay on demand any and all Costs that the Lessor incurs in doing so.

Interest

- 3.18 If the Lessee fails to pay to the Lessor any monies due under this lease (including amounts that are expressed to be payable or reimbursable to the Lessor on demand) for 7 days, the Lessee must pay to the Lessor interest accruing daily at the Default Rate:
- (a) on the money owing from the due date for payment until the money is paid; and
 - (b) upon any judgment obtained by the Lessor against the Lessee, from the date of the judgment until the debt is satisfied.
- 3.19 Interest under clause 3.18 will be capitalised on the last day of each month, payable on the first day of the next month and recoverable in the same manner as unpaid Rent.
- 3.20 Without prejudice to any other remedy, the Lessor may commence legal proceedings against the Lessee for any money owing by the Lessee under this lease. Neither the institution of legal proceedings nor the entering of judgment by a court will bar the Lessor from bringing any subsequent legal proceedings against the Lessee for any other money owing by the Lessee to the Lessor under this lease.

4. Rent reviews

Review Dates and Methods

- 4.1 The Rent will be adjusted on each Review Date by applying the corresponding Method in accordance with this clause 4. The Rent so adjusted will be the Rent payable on and from that Review Date.

CPI-based rent reviews

- 4.2 Subject to clause 4.3, where a Method is "CPI", then the Adjusted Rent will be an amount ascertained by multiplying the Rent payable immediately prior to that Review Date by a fraction of which:
- (a) the numerator will be the Index Number last published prior to that Review Date ("CPI 2"); and
 - (b) the denominator will be the Index Number last published prior to the later of the immediately preceding Review Date and the Commencement Date ("CPI 1"),
- as per the following formula:

$$\text{Adjusted Rent} = \text{Previous Rent} \times \text{CPI 2} / \text{CPI 1}$$

- 4.3 Where the Rent determined pursuant to clause 4.2 is less than the Rent payable immediately preceding that Review Date, then the Adjusted Rent will (subject to any Law to the contrary) be the same as the Rent payable immediately preceding that Review Date.

Market-based rent reviews

- 4.4 Where a Method is "Market", then the Adjusted Rent will be determined according to clauses 4.5 to 4.10.

- 4.5 At any time within the period from 6 months prior to the Review Date until 3 months after the Review Date, the Lessor may at its discretion propose the amount that the Lessor (having regard to the market conditions and the Lessee's liability for Outgoings pursuant to this lease) believes to be an appropriate Adjusted Rent (*Proposed Amount*) by notice in writing to the Lessee (the *Lessor's Review Notice*).
- 4.6 If the Lessee disputes the Proposed Amount, the Lessee must, within 14 days of receiving the Lessor's Review Notice, provide the Lessor with written notice stating that it disputes the Proposed Amount (*Lessee's Objection Notice*).
- 4.7 If the Lessee does not provide a Lessee's Objection Notice in accordance with clause 4.6, the Lessee is deemed to agree with the Proposed Amount and the Proposed Amount will be the Adjusted Rent.
- 4.8 If the parties are unable to reach agreement on the Proposed Amount in accordance with clauses 4.5 to 4.7, any party may request the president of the Australian Property Institute (*President*) to appoint a valuer (*Valuer*) to determine the Adjusted Rent and the Lessor and Lessee will bear the costs of the Valuer in equal shares. The parties agree to be bound by the determination of the Valuer provided that:
- (a) the parties must request the Valuer to determine, and notify the parties of, the Adjusted Rent within 30 days of being appointed;
 - (b) if the Valuer fails to provide such determination, either the Lessor or the Lessee may apply to the President for a replacement valuer;
 - (c) upon the appointment of a replacement valuer, the replacement valuer will take the place of the Valuer to determine the Adjusted Rent according to this clause 4.8;
 - (d) in determining the Adjusted Rent, the Valuer will:
 - (i) be deemed to act as an expert and not as an arbitrator;
 - (ii) value the Premises as being fit for occupation and in full leasable repair (even if works or repairs are being carried out to the Premises) and exclude any deleterious condition of the Premises that has resulted from an Event of Default;
 - (iii) value the Premises as being available to be leased immediately to a willing lessee without a premium, subject to the terms and conditions of this lease (other than any rental concession given to secure a lessee) and on the assumption that that Lessee will perform all of its obligations under this lease;
 - (iv) consider the market rental of comparable premises in the vicinity of the Premises; and
 - (v) if the Premises comprise multiple offices, value each office separately;
 - (e) where the Adjusted Rent as determined by the Valuer is less than the Rent payable immediately preceding the Review Date, the Adjusted Rent will (subject to any Law to the contrary) be the Rent immediately payable preceding the Review Date; and
 - (f) where the Adjusted Rent as determined by the Valuer equals or is within a 5.00% variance from the Proposed Amount, the Lessee must pay the costs of the Valuer.
- 4.9 Pending any determination of the Adjusted Rent pursuant to clauses 4.5 to 4.8, the Lessee will pay Rent on the basis of the Proposed Amount and:

- (a) the Lessor must refund any overpayments to the Lessee; or
 - (b) the Lessee must pay the total amount of any underpayments to the Lessor,
(as applicable) within one month after receipt by the parties of the Valuer's determination.
- 4.10 If the Lessor does not serve a Lessor's Review Notice on the Lessee pursuant to clause 4.5, the Adjusted Rent will remain the same as the Rent payable immediately preceding the Review Date.

5. Security for the Lessee's obligations

Delivery

- 5.1 On the execution of this lease, the Lessee must deliver to the Lessor the Security Deposit as the Lessor's security for the performance of the Lessee's obligations under this lease.

Topping up the Security

- 5.2 If, for any reason, the Security held by the Lessor at a particular time is, or will within 10 Business Days of that time be, less than:
- (a) the amount stated in Item 12; or
 - (b) the amount equal to 1 months of Rent, Outgoings and GST using the figures for Rent and Outgoings that are payable at that time,

the Lessee must, within 10 Business Days of written notice from the Lessor, provide to the Lessor additional Security in such amount as is necessary to ensure that the Lessor holds Security for not less than the Top-Up Amount.

Security Deposit

- 5.3 The Lessor is entitled to claim under the Security Deposit an amount equal to any monies due and payable but unpaid by the Lessee to the Lessor under this lease.
- 5.4 If the Lessor suffers or incurs any Cost as a result of any Event of Default or other action or omission of the Lessee, the Lessor may apply all or part of the Security Deposit towards remedying, or compensating the Lessor for, that Cost. In doing so, the Lessor will not waive the Lessee's liability for that Cost and will not waive any other rights or remedies that the Lessor may have in respect of that Cost.
- 5.5 If the Lessor applies all or part of the Security Deposit in accordance with clause 5.3 or 5.4 or any other provision of this lease, the Lessor may notify the Lessee and the Lessee must promptly thereafter reinstate the Security Deposit to the Top-Up Amount.
- 5.6 The amount of the Security Deposit is to be adjusted upwards to the Top-Up Amount on each Review Date and the increase will take effect on the Review Date without notice from the Lessor.
- 5.7 The Lessor will deliver the Security Deposit (or so much of it as is then held by the Lessor) to the Lessee following the expiry or termination of this lease on the date on which the Lessee has no further obligations to the Lessor under this lease or at Law, and the Lessor has no Claim or potential Claim against the Lessee for:
- (a) any Cost suffered or incurred by the Lessor as a direct or indirect result of any Event of Default; or
 - (b) any other action or omission of the Lessee or its Agents.

6. Lessee's Fit-Out

- 6.1 The Lessee may carry out the Fit-Out at the Premises in accordance with the terms of this lease.
- 6.2 Prior to commencing the Fit-Out, the Lessee must submit to the Lessor:
- (a) if the Fit-Out requires the approval of any Authority, copies of all such approvals and all applications, plans and other documents submitted to, and/or received from, each relevant Authority in relation to the Fit-Out;
 - (b) a certificate of currency, or other evidence reasonably satisfactory to the Lessor, of the contract works insurance policy obtained by the Lessee in accordance with clause 9.1(a); and
 - (c) all other documents relating to the Fit-Out as may be reasonably required by the Lessor.
- 6.3 The Fit-Out must be carried out:
- (a) at the Lessee's cost and expense;
 - (b) only during the Fit-Out Period, unless otherwise consented to by the Lessor in writing;
 - (c) in a proper and workmanlike manner;
 - (d) in the manner approved and specified by, and subject to the conditions required by, the Lessor and the relevant Authorities; and
 - (e) in compliance with all relevant Laws and Requirements.
- 6.4 Without limitation to clause 6.3(d), the Lessor may give reasonable directions to the Lessee and its Agents in respect of their activities relating to the Fit-Out. The Lessee must comply with any such directions and must procure that its Agents comply with any such directions. Any conflict in relation to the Fit-Out between any persons and the Lessor or the Lessor's Agents must be resolved according to the reasonable directions of the Lessor.
- 6.5 For the avoidance of doubt, this clause 6 will not be contained in any Option Lease.

7. Use of the Premises

Permitted use

- 7.1 The Lessee must use the Premises only for the purposes stated in Item 13.
- 7.2 The Lessee acknowledges and agrees that no undertaking (whether by way of promise, representation, warranty or otherwise) has been given to the Lessee in relation to the suitability of the Premises for any business, enterprise or other activity conducted by the Lessee.

By-laws

- 7.3 The Lessee must, at all times, abide in full with any by-laws of the Building and the Land as in force from time to time.

Licences and permits

- 7.4 The Lessee must obtain and keep in force at all times all necessary licences and permits in relation to the Lessee's occupation of the Premises for the purpose of conducting the Lessee's

business, enterprise or other activities as required by Law and must, at all times during the continuation of this lease, adhere to all such Laws and all conditions applying to such licences and permits.

Prohibited activities

7.5 During the Lessee's period of occupancy of the Premises, the Lessee must not, on or near the Premises, without the Lessor's prior written consent:

- (a) conduct, or permit to be conducted, any illegal acts;
- (b) conduct, or permit to be conducted, any gambling, wagering or betting;
- (c) do anything that is, or may become, an annoyance to occupiers of neighbouring premises;
- (d) conduct, or permit to be conducted, any noxious, noisome or offensive activity;
- (e) keep any animals; or
- (f) conduct any retail activities.

Conduct of business

7.6 The Lessee must at all times conduct the Lessee's business, enterprise and activities at a standard that preserves the status of the Premises.

Services

7.7 The Lessee must not commit any act or omission that may lead to the disconnection or termination of any Services, whether during the continuance of this lease or upon its expiry or sooner termination, and the Lessee must not prejudice any future user of any Services.

No overloading of floors

7.8 The Lessee must:

- (a) not overload the floors of the Premises, or allow them to become overloaded, by placing heavy articles the individual or combined weight of which exceeds the limits permitted by the design of the Premises; and
- (b) comply with the permitted weights and locations for heavy articles, such as safes, as prescribed by the Lessor.

Use of Common Areas

7.9 Where the Lessee shares any Common Areas with the Lessor or any other owners or occupiers of any adjoining premises, the Lessee must not in any way adversely affect the rights of the Lessor or such other owners or occupiers in respect of such Common Areas, whether by hindering or inconveniencing the ingress into, egress from, or use of, such Common Areas.

7.10 The Lessee must not erect any partition, gate or other dividing object that would obstruct, whether permanently or temporarily, the use of any Common Areas.

7.11 The Lessee must use all reasonable endeavours to keep the Common Areas safe and well maintained and must not commit any action or omission that may endanger the safety of any invitees to the Common Areas.

7.12 Where any Common Area is to be used by, or on behalf of, the Lessee for the purpose of loading, unloading or carting of deliveries or other goods, the Lessee must obtain the Lessor's

prior approval for such use and abide by any conditions of such approval, including any restrictions as to the time, day or duration of such use.

Risk of theft or damage to property

7.13 The Lessee acknowledges and agrees that:

- (a) any motor vehicle or other property taken onto, or kept on, the Land is there at the risk of the Lessee; and
- (b) the Lessor is not responsible for any theft of, or damage to, any such property (including property left or contained in any motor vehicle) howsoever arising.

Advertising Media and Broadcast Media

7.14 The Lessee must not, without the prior written consent of the Lessor and all relevant Authorities, install, affix, paint or otherwise place any Advertising Media on any part of the Premises or any adjoining premises and must ensure that such Advertising Media is installed and operated in a manner that accords with any specifications and conditions required by the Lessor and the relevant Authorities.

7.15 The Lessee must not, without the prior written consent of the Lessor and all relevant Authorities, use any Broadcast Media that may be heard outside of the Premises.

Alterations

7.16 Subject only to carrying out the Fit-Out in accordance with clause 6, the Lessee must not, without obtaining the prior written consent of the Lessor (which the Lessor may withhold or delay at its absolute discretion) and all relevant Authorities:

- (a) deface any part of the Premises in any way (including by driving any screw or nail into any surface or by painting, affixing or inscribing any sign, fitting or fixture) and clause 13.1(c) will apply in respect of any such defacement; or
- (b) make, or contract to be made, any alterations or additions to any part of the Premises and clause 13.1(d) will apply in respect of any such alterations or additions,

and any such defacement, alteration or addition must be made in the manner approved and specified by, and subject to the conditions required by, the Lessor and all relevant Authorities.

7.17 If any proposed defacement, alteration or addition under clause 7.16 requires the approval of any Authority, prior to commencing the proposed defacement, alteration or addition, the Lessee must submit to the Lessor:

- (a) copies of all such approvals and all applications, plans and other documents submitted to, and/or received from, each relevant Authority in relation to the proposed defacement, alteration or addition; and
- (b) all other documents relating to the proposed defacement, alteration or addition as may be reasonably required by the Lessor.

Cleaning, health and safety

7.18 The Lessee must, at all times:

- (a) maintain the Premises and their surrounds in a clean and tidy state and not cause or permit any rubbish, trade waste or other refuse to accumulate on or around the Premises; and

- (b) comply with all Laws and Requirements relating to cleanliness, health and safety at the Premises and ensure that the health and safety of all persons in, or in the vicinity of, the Premises is not affected, or likely to be affected, by any breach of such Laws or Requirements.

7.19 If any pests or vermin are detected on or around the Premises, the Lessee must:

- (a) immediately, at the Lessee's expense, fumigate and disinfect the Premises to meet the requirements of local health standards;
- (b) give to the Lessor prompt notice as to the occurrence of such infections, pests or vermin; and
- (c) satisfy the Lessor of their eradication.

Notice of accidents

7.20 The Lessee must, as soon as possible, notify the Lessor, both verbally and in writing, of the occurrence in or about the Premises of any accident, serious breakage of glass, theft or explosion or any other event that causes, or is likely to cause, any material:

- (a) damage to the Premises or any adjoining premises; or
- (b) danger to any persons in, or in the vicinity of, all such premises.

8. Maintenance and repairs

8.1 The Lessee must:

- (a) maintain the Premises and Services in good and substantial repair in every respect; and
- (b) make good any structural damage to the Premises that is caused by the Lessee or any of its Agents,

except for:

- (c) Reasonable Wear and Tear; and
- (d) damage caused by fire, lightning, storm, flood, earthquake or war.

8.2 Without limiting the generality of clause 8.1, the Lessee must:

- (a) attend to the replacement of burnt-out light bulbs and fluorescent tubes with new ones as and when necessary;
- (b) arrange for the Air-conditioning Systems to be serviced at least every 6 months by a duly qualified technician and obtain a written report of each such service;
- (c) within 14 days of receiving a written request from the Lessor, provide a copy of the most recent report on the service of the Air-conditioning Systems to the Lessor;
- (d) clean the filters on the inlets of the Air-conditioning Systems at least every 3 months; and
- (e) maintain the exterior parts of the Premises in good order and condition (including weeding the gardens and mowing the lawns, if any).

Notice to repair

- 8.3 The Lessor may at any time serve upon the Lessee a Defect Notice. The Lessee must comply with all Defect Notices, whether such Defect Notices are served:
- (a) by or on behalf of the Lessor or any Authority; or
 - (b) pursuant to the terms of this lease or any Law,
- except where such repairs are structural in nature and not related to any conduct of the Lessee or its Agents.
- 8.4 If a Defect Notice is served upon the Lessee and the Lessee fails to effect any repair as required by the Defect Notice within 14 days of the Lessee's receipt of such notice:
- (a) the Lessor will be entitled to have such repair carried out by itself or its Agents; and
 - (b) the Lessee must, within 14 days of receipt of an invoice for any such repair, pay the invoiced amount to the Lessor.

Costs of repairs

- 8.5 The Lessee will bear the Costs of all maintenance, repairs and replacements undertaken pursuant to clauses 8.1 to 8.4.

9. Insurance

- 9.1 The Lessee must effect and keep in force, in respect of the Premises, all of the following types of insurance:
- (a) contract works insurance for the full value of the Fit-Out, which the Lessee must keep current throughout the Fit-Out Period;
 - (b) public risk insurance for at least the sum specified in Item 14, extended to cover the Lessee's liability under this lease;
 - (c) plate glass insurance in respect of all plate glass windows and doors within, or forming part of, the Premises for their full replacement value;
 - (d) workers' compensation insurance (including common law liability) in a reasonably appropriate amount for all persons employed by the Lessee in relation to whom Claims related to death or bodily injury may be made against the Lessor; and
 - (e) insurance for the Lessee's fixtures, fittings and stock in or on the Premises for their full insurable value.
- 9.2 In respect of the policies of insurance that the Lessee must effect under clause 9.1, the Lessee must:
- (a) effect such policies on and from the Commencement Date and, subject only to clause 9.1(a), keep such policies current throughout the Term;
 - (b) take them out in the Lessee's name with the Lessor's interest noted, provided that nothing in this clause 9.2(b) obliges the Lessor to make any financial contribution to such insurance policies;
 - (c) place those policies with insurers approved by the Lessor upon such terms (including amounts, risks covered, conditions, endorsements and exclusions) as are reasonably acceptable to, or required by, the Lessor from time to time;

- (d) not make any exclusions, endorsements or alterations to the policies, nor allow any to be made, without the prior written consent of the Lessor;
 - (e) ensure that the policies expressly provide that the insurer will not cancel, nor materially amend, the policies without first giving to the Lessee at least 14 days' written notice of such cancellation or amendment. Upon receipt by the Lessee of any such notice, the Lessee must immediately notify the Lessor of the cancellation or amendment;
 - (f) use all reasonable endeavours to cause the insurer to waive any Claim that the insurer may have against the Lessor. If the insurer does not waive any such Claim, the Lessee must indemnify the Lessor unconditionally on demand from and against any such Claim;
 - (g) lodge with the Lessor a duplicate, certified copy or certificate of currency of every policy, renewal certificate and endorsement slip immediately upon receipt of the corresponding original by the Lessee;
 - (h) punctually pay all premiums in respect of those policies and the renewal of them; and
 - (i) give to the Lessor a copy of the receipt, or other proof of payment satisfactory to the Lessor, for all such premiums paid.
- 9.3 The Lessee must not commit, nor permit any Agent of the Lessee to commit, any act or omission that will or may render void, or voidable, any of the insurance policies listed in clause 9.1.
- 9.4 In respect of the Lessor's insurance of the Premises, Building and Land:
- (a) the Lessee must not commit, nor permit any Agent of the Lessee to commit, any act or omission that will or may:
 - (i) render such insurance void or voidable; or
 - (ii) result in any increase of the insurance premium payable by the Lessor; and
 - (b) if the Lessee causes, directly or indirectly, any increase in the Lessor's insurance premium, the Lessee must pay such increase to the Lessor within 14 days of demand by the Lessor.

10. Indemnity

The Lessee hereby unconditionally indemnifies and must forever keep fully indemnified the Lessor on demand at all times from and against any and all Costs that are:

- (a) suffered or incurred by the Lessor; and
- (b) caused by, or arise as a result of, whether directly or indirectly, any:
 - (i) breach of this lease by the Lessee (for the avoidance of doubt, including any breach by the Lessee of its obligations under clause 11.4 to ensure that its Agents comply with the obligations in this lease as if they were parties to this lease in the place of the Lessee);
 - (ii) negligence or other tortious conduct on the part of the Lessee or any of its Agents;

- (iii) Claim brought by any third party against the Lessee and/or the Lessor in respect of any Costs that are suffered or incurred by any third party in relation to the Premises, or any structure, fixture or fitting on the Premises, including as a result of the state thereof, where such Claim is caused by, or otherwise referable to, any:
 - (A) action, omission or obligation of the Lessee, or any of its Agents, in relation to the Premises; or
 - (B) matter or circumstance existing, or other conduct of any person occurring, during the Term;
- (iv) conduct of the Lessee or any of its Agents in respect of the Fit-Out, including in the furtherance of any directions given by Lessor under clause 6.4; or
- (v) defacement, alternation or addition in relation to any part of the Premises, whether or not any consent thereto has been given by the Lessor and/or any Authority.

11. Assignment and sub-letting

11.1 Subject to clauses 11.2 and 11.3, the Lessee must not:

- (a) cause or allow any Change of Control to occur in respect of the Lessee after the Commencement Date and any such Change of Control will be a deemed assignment of this lease for the purposes of clause 11.1(b);
- (b) assign, transfer, demise or create any Encumbrance over this lease or any interest in this lease; or
- (c) sublet, licence or part with possession of all or any part of the Premises, or attempt, purport or agree to do so.

11.2 The Lessee will not breach clause 11.1 in respect of a proposed assignment or sublease if all of the following apply:

- (a) the Lessee makes a written request for the Lessor's consent to the assignment or the sublease at least 1 month prior to the date on which the proposed assignment or sublease would take effect;
- (b) the Lessor, at the Lessor's discretion, consents to the proposed assignment or sublease in writing prior to the assignment or sublease taking effect;
- (c) there is no subsisting Event of Default at any time on and from the date on which the Lessee makes the written request under clause 11.2(a) to and including the date on which the proposed assignment or sublease would take effect;
- (d) the Lessee pays to the Lessor all reasonable Costs incurred by the Lessor (whether or not the proposed assignment or sublease ever takes effect) for, or incidental to, the proposed assignment or sublease;
- (e) in the case of an assignment:
 - (i) the Lessee proves to the reasonable satisfaction of the Lessor that the proposed assignee is respectable, responsible, solvent and capable of complying with the Lessee's obligations under this lease;

- (ii) the Lessee provides the Lessor with such information as the Lessor may reasonably require concerning the financial standing and business experience of the proposed assignee;
 - (iii) the Lessee and the proposed assignee enter into a deed with the Lessor, in a form reasonably acceptable to the Lessor, which provides that the proposed assignee must comply with all of the Lessee's obligations under this lease on and from the date of assignment;
 - (iv) the Lessee and the proposed assignee comply with the Lessor's reasonable requirements in relation to the documentation, stamping and registration of the proposed assignment;
 - (v) the proposed assignee provides a guarantee, in a form reasonably acceptable to the Lessor, in respect of the obligations of the assignee during the remainder of the Term; and
 - (vi) the Security amount is increased to equal the sum of 3 months' Rent and the Lessee's liability for Outgoings (plus GST on those amounts) as at the date of the assignment, Item 12 is amended to reflect this increase, and the assignee provides Security, as increased pursuant to this clause 11.2(e)(vi), to the Lessor as security for the performance of the assignee's obligations under this lease; and
- (f) in the case of a proposed sublease:
- (i) the Lessee and the proposed sublessee enter into a deed with the Lessor, in a form reasonably acceptable to the Lessor, which provides that the sublessee:
 - (A) must not cause or contribute to a breach of this lease;
 - (B) must comply with the terms of this lease insofar as they affect the subleased premises; and
 - (C) the sublessee acknowledges that the sublease will end automatically, without any liability to the Lessor, if this lease terminates for any reason; and
 - (ii) the Lessee and the proposed sublessee comply with the Lessor's reasonable requirements in relation to the documentation, stamping and registration of the proposed sublease.

11.3 Notwithstanding any other provision of this lease or any Law, the Lessee acknowledges and agrees that it will not be unreasonable for the Lessor to withhold or delay any consent or approval under clause 11.2, and the Lessor may withhold or delay any such consent or approval at its absolute discretion, if:

- (a) the proposed assignee or sublessee proposes to change the use to which the Premises are put;
- (b) the proposed assignee or sublessee has financial resources or business skills that, in the reasonable opinion of the Lessor, are or may be inferior to those of the Lessee;
- (c) the Lessee has not fully complied with the procedure for obtaining consent to the proposed assignment or sublease as set out in clause 11.2;
- (d) there is any subsisting Event of Default at a time when such consent or approval is being considered by the Lessor; or

- (e) any of the requirements of clause 11.2 are not fully satisfied.

Lessee responsible for conduct of Agents

11.4 The Lessee must ensure that any sub-lessee or other Agent of the Lessee:

- (a) complies with the obligations in this lease as if it was a party to this lease in the place of the Lessee; and
- (b) does not do, or omit to do, anything which, if done or omitted to be done by the Lessee, would constitute a breach of this lease by the Lessee,

and the Lessee will be responsible for, and liable to the Lessor in respect of, the actions and omissions of any of its sub-lessees or other Agents as if they were the actions or omissions of the Lessee.

Charging the Lessee's interest

11.5 The Lessee must not create, or allow to come into existence, any Charge.

Sale of the Premises

11.6 In the event that the Lessor sells its interest in the Premises, the Lessor will ensure that a deed is executed between the Lessor and the incoming purchaser, in a form approved by the Lessor, which includes provisions that:

- (a) the Lessor assigns all its rights and obligations under this lease to the purchaser with effect from the date of the sale; and
- (b) the purchaser is bound, in place of the Lessor, by the terms of this lease including the Lessor's obligations in respect of each Option Lease.

12. Lessor's covenants and rights

Quiet enjoyment

12.1 If the Lessee observes and performs all of its obligations under this lease, the Lessee may occupy and enjoy the Premises, subject to the terms of this lease, without interruption by the Lessor.

Registration of Lease

12.2 Where a registration of this lease is achievable at Law, at the Lessee's request, the Lessor will use all reasonable endeavours to effect the registration of this lease on the title to the Premises and obtain any mortgagee's consent to the registration (if applicable). Upon an effective registration of this lease, at the Lessee's request, the Lessor must provide to the Lessee documentary evidence of such registration.

12.3 Where this lease, or any caveat relating to this lease, has been registered in favour of the Lessee on the title to the Premises, the Lessee must:

- (a) remove, or procure the removal of, all such registrations on or before the expiry or termination of this lease; and
- (b) unconditionally indemnify and forever keep fully indemnified the Lessor on demand from and against any and all Costs that are suffered or incurred, directly or indirectly, by the Lessor in respect of such removal.

Removal of Lessee's fixtures

12.4 The Lessee may remove its fixtures during the Term, provided that:

- (a) in so removing its fixtures, no damage is caused to the Premises; and
- (b) if any such damage occurs, the Lessee must promptly pay all reasonable Costs incurred in restoring the Premises to their condition as at the Commencement Date.

Lessor's right to inspect and do works

12.5 The Lessor may, itself or by its Agents, upon having given to the Lessee reasonable notice of the Lessor's intention to do so (except that no such notice need be given in emergencies), enter upon the Premises at any time during the Term to:

- (a) review the state of repair of the Premises;
- (b) conduct alterations or repairs to the Premises;
- (c) install, maintain or repair any gas, water or other service pipes, conduits, ducts, electricity or telephone wires or cables or to pass any such pipes, conduits, ducts, wires or cables through any part of the Premises; or
- (d) do any other works that the Lessor considers necessary to the operation, use or maintenance of any part of the Land, Building or Premises,

and the Lessee hereby irrevocably grants to the Lessor and its Agents a licence to enter the Premises to do so.

"For Lease" signs and inspection by prospective lessees

12.6 The Lessor and its Agents may, during the final 3 months of the Term:

- (a) exhibit any number of "For Lease" signs at the Premises, which the Lessee must not remove or obstruct; and
- (b) at all reasonable times and upon reasonable notice being given to the Lessee, enter the Premises with prospective lessees so that the prospective lessees may inspect the Premises.

"For Sale" signs and inspection by prospective purchasers

12.7 The Lessor and its Agents may, during the continuance of this lease:

- (a) exhibit any number of "For Sale" sign at the Premises, which the Lessee must not remove or obstruct; and
- (b) at all reasonable times and upon reasonable notice being given to the Lessee, enter the Premises with prospective purchasers so that the prospective purchasers may inspect the Premises.

13. Make-good obligations

13.1 Upon the expiry or sooner termination of this lease, the Lessee must promptly:

- (a) peaceably surrender and yield up the Premises to the Lessor in the condition required by clauses 8 and 13.2;
- (b) return to the Lessor all keys, passcodes and security devices relating to the Premises;

- (c) reinstate the Premises to the condition they were in prior to any defacement contemplated by clause 7.16(a), even if such defacement was undertaken with the consent of the Lessor under clause 7.16(a); and
- (d) reinstate the Premises to the condition they were in prior to any alteration or addition contemplated by clause 7.16(b), even if such alteration or addition was undertaken with the consent of the Lessor under clause 7.16(b).

Cleaning and redecoration

13.2 Immediately prior to vacating the Premises, the Lessee must, at its expense:

- (a) clear all refuse and rubbish from, and thoroughly clean, the Premises;
- (b) professionally paint with two coats of quality paint, and/or paper, the interior of the Premises in a colour and style approved by the Lessor and in a proper and workmanlike manner;
- (c) have all other painted and/or varnished surfaces professionally repainted and revarnished in the colours, quality and manner as reasonably approved by the Lessor; and
- (d) remove all of its property from the Premises and clauses 15.14 to 15.18 will apply in respect of such removal.

14. Damage, destruction and resumption

Abatement of rent and financial obligations

14.1 If, during the Term and as a result of any Damaging Event or any other event beyond the Lessee's control, the Premises are rendered Unfit due to damage to, or destruction of, all or part of the Premises, provided that the Lessee has taken all reasonable measures to prevent and minimise such damage or destruction, the Lessee's financial obligations (calculated on a daily basis) will abate, subject to clauses 14.2 and 14.3 and the following:

- (a) the Abatement extends to all of the Lessee's financial obligations to the Lessor under this lease, including Rent, Outgoings and GST;
- (b) the period of the Abatement commences on and from the date on which the Premises are rendered Unfit until and including the date on which the Premises cease to be Unfit; and
- (c) the Lessee is not entitled to any Abatement if:
 - (i) the event resulting in the Premises becoming Unfit is caused, or contributed to, by any act or omission on the part of the Lessee or any of its Agents; or
 - (ii) the Lessor fails to recover the benefit of any insurance for loss or damage to the Building or the Premises because of any act or omission on the part of the Lessee or any of its Agents.

Partial use

14.2 If the extent of the Premises being Unfit enables partial use of the Premises for the Lessee's business:

- (a) the Lessee may continue to use the Premises and conduct its business whilst the Premises are being repaired, unless:

- (i) the Lessor reasonably requires such use to cease during the whole or part of the repairs; or
 - (ii) any Authority prohibits occupation of the Premises in their damaged condition;
- (b) such use by the Lessee will be taken into account in determining the partial abatement of the Lessee's financial obligations under this lease; and
- (c) having regard to the nature and extent of the damage to, and available use of, the Premises, the parties will endeavour to agree upon:
 - (i) the commencement and period of the Abatement; and
 - (ii) the proportion of the Abatement.

Disputes regarding Abatement

- 14.3 If the parties have any dispute regarding the Lessee's entitlement to any Abatement or the period or amount of any Abatement:
- (a) the dispute is to be determined by a loss assessor who must be:
 - (i) a member of the Insurance Council of Australia Limited (ACN 005 617 318) (*Insurance Council*);
 - (ii) experienced in assessing premises of the nature of the Premises; and
 - (iii) nominated by the president for the time being, or a senior officer, of the Insurance Council on the application of either the Lessor or the Lessee; and
 - (b) in making such determination:
 - (i) the loss assessor must act as an independent expert;
 - (ii) the loss assessor will be entitled to accept written submissions and expert reports from any of the parties;
 - (iii) the fees of the loss assessor will be borne equally by the Lessor and the Lessee; and
 - (iv) the decision of the loss assessor will be final and binding on the parties.

Damaging Event – termination by the Lessor

- 14.4 The Lessor may terminate this lease by giving 1 month's written notice to the Lessee if, as a result of any damage or destruction caused by any Damaging Event or by any action or omission of the Lessee or its Agents:
- (a) more than fifty percent (50%) of the Building is damaged or destroyed or required to demolished or replaced;
 - (b) the Building cannot be repaired or reinstated by the Lessor, acting reasonably and promptly, within a reasonable time after the damage or destruction occurs; or
 - (c) the Premises are incapable of being used and occupied due to the damage or destruction and this lease is due to expire, with no option for renewal, within 2 years after the date on which such damage or destruction occurs,

and the Lessee will have no right to bring any Claim against the Lessor in respect of any and all Costs that may be suffered or incurred, directly or indirectly, by the Lessee in respect of any such termination.

Damaging Event – termination by the Lessee

14.5 The Lessee may terminate this lease by giving 1 month's written notice to the Lessor if, as a result of any Damaging Event:

- (a) more than fifty percent (50%) of the Building is damaged or destroyed or required to demolished or replaced;
- (b) the Premises are rendered incapable of being used and occupied as a consequence of the Damaging Event; and
- (c) the Lessor takes no action to repair or reinstate the Premises for a consecutive period of 6 months after the date on which the Damaging Event occurs,

and the Lessee will have no right to bring any Claim against the Lessor in respect of any and all Costs that may be suffered or incurred, directly or indirectly, by the Lessee in respect of any such termination.

No obligation to rebuild

14.6 Nothing contained or implied in this lease imposes any obligation upon the Lessor to rebuild or reinstate all or any part of the Building or the Premises after any damage or destruction contemplated by this clause 14.

Resumption

14.7 The Lessee acknowledges and agrees that, if all or any part of the Premises are resumed or taken for any public purpose during the Term, the Lessor may, at its absolute discretion, give immediate written notice of termination of this lease to the Lessee and the Lessee will have no right to bring any Claim against the Lessor in respect of any and all Costs that may be suffered or incurred, directly or indirectly, by the Lessee in respect of such termination.

15. Material Breach, termination and damages

Material Breach

15.1 Without limitation, each of the following constitutes a material breach of this lease by the Lessee:

- (a) **(unpaid amounts)** any failure to pay to the Lessor, in whole or in part, any Rent, Outgoings, GST or other amount as required by this lease for a period in excess of 14 days after the due date for payment, whether or not the Lessor has made a formal demand to the Lessee for payment;
- (b) **(essential terms)** any failure to comply with any of the following provisions, which the Lessee acknowledges and agrees are essential terms of this lease:
 - (i) clause 5 ("Security for the Lessee's obligations");
 - (ii) clause 7 ("Use of the Premises");
 - (iii) clause 9 ("Insurance");
 - (iv) clause 11 ("Assignment and sub-letting"); and

- (v) clause 16 ("Special conditions");
- (c) **(serious or persistent breach)** any serious, or persistent and continuing, breach of the Lessee's obligations under this lease;
- (d) **(sub-lessees and other Agents)** any conduct of any sub-lessee or other Agent of the Lessee which, if done or omitted to be done by the Lessee, would constitute a material breach of this lease by the Lessee under any of clauses 15.1(a) to (c); and
- (e) **(Insolvency Event)** an Insolvency Event occurring in respect of the Lessee or any sub-lessee of the Lessee or Guarantor.

Termination for Material Breach

- 15.2 The Lessor may terminate this lease any time after a Material Breach by:
- (a) re-entering and taking possession of the Premises, using reasonable force to secure possession;
 - (b) serving on the Lessee a written notice terminating this lease; and/or
 - (c) instituting proceedings for possession against the Lessee.
- 15.3 The Lessor's right of termination under clause 15.2 will arise without the Lessor making any demand for:
- (a) payment by the Lessee of any Rent in arrears;
 - (b) compliance with any other obligation of the Lessee under this lease; or
 - (c) remedy by the Lessee of any breach of its obligations under this lease.
- 15.4 All provisions of this lease relating to the Lessee's obligations upon the expiry or earlier termination of this lease will immediately come into effect upon any termination pursuant to clause 15.2.

Accrued rights

- 15.5 Termination of this lease by any party for any reason will not affect or prejudice any rights or liabilities that the parties have accrued under or in respect of this lease prior to such termination.
- 15.6 Without limitation to clause 15.5, any termination of this lease by the Lessor, including by re-entering and taking possession of the Premises, will not release the Lessee from liability in respect of its breach of any covenant, obligation, condition, or stipulation, whether express or implied, that the Lessee is required to perform or observe under this lease or any Law.

Damages

- 15.7 In the event that the Lessee's conduct constitutes:
- (a) a repudiation of this lease or its obligations under this lease; or
 - (b) an Event of Default,
- the Lessee must compensate the Lessor for any and all Costs suffered or incurred by the Lessor as a direct or indirect consequence of the repudiation or Event of Default, subject to, but not conditional on, the Lessor taking reasonable steps to mitigate its Costs.

- 15.8 Any conduct of the Lessor taken in pursuance of any duty to mitigate its Costs does not by itself constitute any acceptance of the Lessee's breach or repudiation or any surrender of this lease by operation of Law.
- 15.9 The Lessor's entitlement to compensation pursuant to clause 15.7:
- (a) includes compensation for:
 - (i) the Lessor's reasonable legal costs arising out of the Lessee's conduct; and
 - (ii) Costs suffered or incurred by the Lessor as a direct or indirect result of any consequential termination of this lease;
 - (b) is in addition to Lessor's entitlements under this lease to:
 - (i) recover Rent and Outgoings until the date of expiry or termination of this lease;
 - (ii) interest on any late payments; and
 - (iii) any other remedy or entitlement, including termination of this lease; and
 - (c) is not affected or limited by:
 - (i) the Lessee abandoning or vacating the Premises;
 - (ii) the Lessor electing, or exercising its right, to re-enter the Premises or terminate this lease;
 - (iii) the acceptance by the Lessor of the Lessee's repudiation; or
 - (iv) a surrender of this lease occurring by operation of Law.
- 15.10 In the event that the Lessor claims damages pursuant to clauses 15.7, the Lessor is entitled to institute legal proceedings in respect of the entire Term, including any periods before or after the repudiation or Event of Default (as applicable), and regardless of whether the proceedings are instituted before or after:
- (a) the Lessee vacates the Premises; and/or
 - (b) any abandonment, termination, repudiation, acceptance of repudiation or surrender by operation of Law.

Lessee vacating during the Term

- 15.11 If the Lessee vacates or abandons the Premises during the Term in breach of the Lessee's obligations under this lease:
- (a) the Lessor's duty to mitigate Costs includes endeavouring to lease the Premises at a reasonable rent and on reasonable terms, provided that the Lessor is not obliged to take any action to lease the Premises if:
 - (i) the Lessee vacates the Premises during the last year of the initial term of this lease or the last year of any Further Term; or
 - (ii) the Lessor intends to reconstruct, renovate or demolish the Premises, or to occupy the Premises, within 6 months after the Lessee has vacated the Premises; and
 - (b) the Lessor may:

- (i) accept the keys to the Premises from the Lessee;
 - (ii) renovate, restore and clean the Premises;
 - (iii) change the locks and secure the Premises; and/or
 - (iv) permit prospective lessees to inspect the Premises,
- and may take any such actions without the Lessee's consent, regardless of whether such actions constitute a re-entry of the Premises or a termination, or acceptance of a surrender, of this lease.

15.12 The Lessee's obligations under this lease to pay Rent and Outgoings and to comply with its other obligations under this lease continue until the termination or expiry of this lease, regardless of whether or when the Lessee vacates or abandons the Premises.

Power of attorney

- 15.13 The Lessee hereby irrevocably appoints the Lessor to be the Lessee's true and lawful agent and attorney with full power at any time to, at the Lessee's cost and either in the Lessee's name or the Lessor's name:
- (a) take all actions, including instituting any proceedings and executing any documents, as required for the purposes of:
 - (i) securing compliance by the Lessee with its obligations under this lease;
 - (ii) dealing with the Lessor's Assets in accordance with the enforcement provisions of this lease, the PPSA or otherwise; or
 - (iii) recovering, from the issuer of any policy of insurance required by this lease, any money payable to Lessor provided that the Lessor may not exercise its powers as attorney for such recovery of insurance money unless:
 - (A) in the reasonable opinion of the Lessor, the Lessee is not diligently pursuing its rights to recover the insurance money; or
 - (B) there is a subsisting Event of Default; and
 - (b) appoint and remove any substitute attorneys from time to time for such purposes.

Removal of Lessee's property

- 15.14 The Lessee must remove all of its property (including furniture, plant, equipment and stock-in-trade) from the Premises before the expiry or termination of this lease or, if this lease is terminated by the Lessor, within 14 days after this lease is terminated.
- 15.15 If the Lessor terminates this lease, the Lessee and its Agents may have access to the Premises, whilst the Lessor have possession and control over the Premises, for the 14 days immediately after such termination, between 9:00 am and 5:30 pm, for the purposes of removing the Lessee's property and cleaning, repairing or restoring the Premises, provided that, for such access to the Premises:
- (a) the Lessee obtains written consent from the Lessor; and
 - (b) the Lessee pays the Lessor, in advance, Rent, Outgoings and GST for 14 days at the rates applicable immediately before the termination of this lease.

- 15.16 The Lessee must not cause, or permit to be caused, any damage to the Building or the Premises whilst removing its property and must leave the Premises clean and tidy after such removal.
- 15.17 In respect of any of the Lessee's property that the Lessee fails to remove from the Premises in accordance with the terms of this lease:
- (a) the Lessee is deemed to have abandoned the property and title to the property; and
 - (b) the Lessor may, at the Lessor's option and discretion:
 - (i) acquires title to that property through the Lessee's abandonment of it, in which case the Lessor will not be obliged to account to the Lessee for the value of that property;
 - (ii) have that property removed from the Premises and stored (without liability for any loss of, or damage to, any of that property); and/or
 - (iii) sell or otherwise dispose of the property, with or without removing it from the Premises, in the name of, and as agent for, the Lessee.
- 15.18 The Lessee is responsible for, and hereby indemnifies the Lessor from any against, any and all Costs suffered or incurred, directly or indirectly, by the Lessor in respect of the removal of any of the Lessee's property from the Premises under clauses 15.14 and/or 15.17, including the Costs of removal, storage and sale of any such property.

16. Special conditions

The parties must abide by the special conditions set out in Schedule 1, which will prevail to the extent of any inconsistency between them and any provisions contained elsewhere in this lease.

17. GST

Definitions regarding GST

- 17.1 In this clause 17:
- (a) expressions that are not defined, but which have a defined meaning in the GST Law, have the same meaning as in the GST Law;
 - (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 17; and
 - (c) any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 17.

Consideration is exclusive of GST

- 17.2 Unless expressly stated otherwise, any sum payable, or amount used in the calculation of a sum payable, under this lease has been determined without regard to GST and must be increased on account of any GST payable under this clause 17.

Receiving Party to pay additional amount

- 17.3 If GST is imposed on any supply made under or in accordance with this lease, the recipient of the supply (*Receiving Party*) must pay to the supplier (*Supplier*) an additional amount equal to the GST payable on the supply, subject to the Receiving Party receiving a valid tax invoice, or a document that the Commissioner will treat as a tax invoice, in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time and in the same manner as payment for the supply is required to be made in accordance with this lease.

Fines, penalties and interest

- 17.4 The amount recoverable on account of GST under this clause 17 by the Supplier will include any fines, penalties, interest and other charges incurred as a consequence of any late payment or other breach by the Receiving Party under this clause 17.

Reimbursement

- 17.5 If any party is required to pay, reimburse or indemnify another party for the whole or any part of any Cost, loss, liability or other amount that the other party has incurred or will incur in connection with this lease, the amount must be reduced by the amount for which the other party can claim an input tax credit, partial input tax credit or other similar offset.

Adjustment events

- 17.6 If, at any time, an adjustment event arises in respect of any supply made by a party under this lease, a corresponding adjustment must be made between the parties in respect of any amount paid to the Supplier by the Receiving Party pursuant to clause 17.3 and payments to give effect to the adjustment must be made and the Supplier must issue an adjustment note.

18. Trustees

- 18.1 Each Trustee enters into this lease only in its capacity as trustee of the Relevant Trust and in no other capacity.
- 18.2 A liability arising under or in connection with this lease can be enforced against a Trustee only to the extent to which it can be satisfied out of property of the Relevant Trust out of which the applicable Trustee is actually indemnified for the liability.
- 18.3 This limitation of each Trustee's liability applies despite any other provision of this lease and extends to all liabilities and obligations of each Trustee in any way connected with this lease, including any representation, warranty, conduct, omission, agreement or transaction related to this lease.
- 18.4 No party may sue a Trustee in any capacity other than as trustee of the Relevant Trust, including seeking the appointment of a receiver (except in relation to property of the Relevant Trust), a liquidator, an administrator or any similar person to the applicable Trustee or to prove in any liquidation, administration or arrangement of or affecting the applicable Trustee (except in relation to property of the Relevant Trust).
- 18.5 Clauses 18.1 to 18.4 will not apply to any obligation or liability of a Trustee to the extent that it is not satisfied because, under the trust deed establishing the Relevant Trust or by operation of law, there is a reduction in the extent of the Trustee's indemnification out of the assets of the Relevant Trust, as a result of the Trustee's fraud, negligence or breach of trust.

- 18.6 No Trustee is obliged to do, or refrain from doing, anything under this lease (including incurring any liability) unless its liability is limited in the same manner as set out in clauses 18.1 to 18.4.

Trustee warranties

- 18.7 Each Trustee (both in its own right and as trustee of the Relevant Trust) represents and warrants to each other party that:
- (a) **(status of the Relevant Trust)** the Relevant Trust is validly constituted and has not been terminated, nor has any action been taken to wind up, terminate or resettle it, nor has any event occurred for the vesting of its assets;
 - (b) **(status as trustee)** it is a trustee of the Relevant Trust and it has not given any notice of resignation and no action has been taken to remove it;
 - (c) **(trust power)** it has power under the constituent documents of the Relevant Trust to enter into, and perform its obligations under, this lease;
 - (d) **(trust authority)** all action has been taken that is necessary or desirable under the constituent documents of the Relevant Trust or at law to authorise its entry into this lease and its performance of its obligations hereunder;
 - (e) **(benefit of beneficiaries)** it is entering into this lease as part of the proper administration of the Relevant Trust for the commercial benefit of the Relevant Trust and for the benefit of the beneficiaries of the Relevant Trust;
 - (f) **(right of indemnity)** it has the right to be indemnified out of the assets of the Relevant Trust in relation to any liability arising under or in connection with the proper performance of its obligations under this lease. The assets of the Relevant Trust are sufficient to satisfy that right in full and it has not released or disposed of its equitable lien over those assets; and
 - (g) **(no breach)** it is not in breach of any material obligations imposed on it in its capacity as trustee of the Relevant Trust, whether under the constituent documents of the Relevant Trust or otherwise.

19. PPSA

- 19.1 In this clause 19, words and expressions that are not defined in this lease but that have a defined meaning in the PPSA have the same meaning as in the PPSA.
- 19.2 Notwithstanding anything to the contrary expressed in, or implied by, this lease, the Lessee acknowledges and agrees that:
- (a) **(Lessor retains full title)** the Lessor retains full title to the Lessor's Assets and no title to any of the Lessor's Assets will at any time pass to the Lessee;
 - (b) **(mere bailee)** the Lessee has the right to possess the Lessor's Assets as mere bailee only and the Lessee must deal with the Lessor's Assets in a manner that enables them to be clearly identified as belonging to the Lessor;
 - (c) **(PPSA applies)** the PPSA applies to the provision of the Lessor's Assets by the Lessor to the Lessee;
 - (d) **(grant of security interest)** by entering into this lease, the Lessee grants to the Lessor a security interest in the Lessor's Assets (the *Security Interest*) to secure:

- (i) the Lessor's interest in the Lessor's Assets; and
- (ii) all monies payable by the Lessee to the Lessor from time to time under this lease or otherwise on any account whatsoever;
- (e) **(registration of Security Interest)** the Security Interest may be registered on the Register and the Lessee must without delay do all things required to effect such registration and give the Security Interest the best priority possible;
- (f) **(Lessee received value)** the Lessee received value for the Security Interest at the time at which the Lessee first took possession of the Lessor's Assets and the parties have not agreed to postpone the time for attachment of the Security Interest;
- (g) **(assets located in Australia)** the Lessor's Assets were located in Australia at the time at which the Lessee first took possession of the Lessor's Assets and the Lessee must ensure that the Lessor's Assets remain located in Australia throughout the Term;
- (h) **(book debts and accounts receivable)** the Security Interest extends to all present and after-acquired property and proceeds including book debts and accounts receivable arising from any of the Lessee's dealings with the Lessor's Assets;
- (i) **(breach of other security interest)** in respect of any other security interest that has been granted to any third party in respect of the Lessor's Assets, any conduct of any person (whether of the Lessee or any third party) that results in any exercise of rights under the PPSA is deemed to be a breach of this lease; and
- (j) **(additional assets)** any property that is added to Lessor's Assets during the Term and that is not specifically set out in this lease is deemed to form part of this lease and is subject to the terms of this lease.

Lessee's covenants in relation to the Lessor's Assets

19.3 The Lessee must:

- (a) not grant any security interest or other Encumbrance over any of the Lessor's Assets (whether under the PPSA or any other Law) to any third party unless the Lessee has obtained the prior written consent of the Lessor (which the Lessor may withhold or delay at its absolute discretion). The Lessee must provide any information that the Lessor reasonably requires in order to consider whether to grant any such consent;
- (b) not sell, assign, let, sub-let, lend, pledge, mortgage, hire or otherwise part with possession of, deal with or create any Encumbrance over, the Lessor's Assets (or agree, attempt, offer or purport to do so) without the prior written consent of the Lessor (which the Lessor may withhold or delay at its absolute discretion);
- (c) deliver up the Lessor's Assets at the end of the Term;
- (d) give to the Lessor and its Agents and authorised representatives the right to:
 - (i) enter any premises occupied by the Lessee and any premises where the Lessor reasonably believes any of the Lessor's Assets may be stored (without liability for trespass or any resulting damage); and
 - (ii) use the name of the Lessee and act on its behalf, if necessary, to recover possession of the Lessor's Assets;
- (e) unconditionally indemnify and keep fully indemnified the Lessor and its Agents and authorised representatives on demand from and against any and all Costs that may be

suffered or incurred by any of them as a direct or indirect result of any such recovery or attempted recovery of the Lessor's Assets from the Lessee's possession or control (and the Lessor holds the benefit of this clause 19.3(e) for its and as agent and trustee for and on behalf of its Agents and authorised representatives); and

- (f) hold the proceeds, book debts and accounts receivable arising from any selling or hiring of the Lessor's Assets on trust for, and as agent of, the Lessor immediately when they are receivable or are received.

Information provided by the Lessee

- 19.4 The Lessee represents and warrants that all information provided by or on behalf of the Lessee to the Lessor or the Lessor's Agents or authorised representatives (including the Lessee's details, entity name, ACN/ABN and address as set out in this lease) is correct in all respects. The Lessee must not change any such information without providing the Lessor with at least 1 month's prior written notice of the change.

Waiver of PPSA rights

- 19.5 The Lessee hereby waives its rights under the PPSA to:
- (a) receive a copy of any notice under the PPSA (including any verification statement or financing change statement and any notice that the Lessor intends to sell the Lessor's Assets or retain the Lessor's Assets on enforcement of the Security Interest) unless the notice is required to be given by the PPSA and contracting out of the giving of the notice is prohibited by Law;
 - (b) object to a proposal by the Lessor to dispose of, purchase or retain any of the Lessor's Assets in satisfaction of any obligation owed by the Lessee to the Lessor;
 - (c) receive a statement of account following the sale of any of the Lessor's Assets; or
 - (d) redeem any of the Lessor's Assets.
- 19.6 In respect of the Lessor's Assets, the Lessee must not:
- (a) give, or allow any person to give, to the Lessor:
 - (i) a written demand requiring the Lessor to register a financing change statement under the PPSA; or
 - (ii) an amendment demand; or
 - (b) enter into, or allow any other person to enter into, the Register a financing change statement under the PPSA.
- 19.7 The Lessor is not required to respond to any request made under section 275 of the PPSA and neither the Lessee nor the Lessor will disclose:
- (a) any information of the kind set out in section 275(1) of the PPSA to any person whatsoever; or
 - (b) any other information relating to Lessor's Assets or the Security Interest to any interested person unless required to do so under the PPSA.

Enforcement

- 19.8 The enforcement provisions contained in this lease are in addition to any rights available to the Lessor under the PPSA and apply to the maximum extent permitted by Law.

- 19.9 Without limitation to clause 19.8 or any other provision of this lease, the parties hereby contract out of sections 125, 129(2), 142 and 143 of the PPSA.

20. Notices

- 20.1 A notice given to a party under this lease must be:
- (a) in writing in English;
 - (b) sent to the address, fax number or email address of the relevant party as set out in the list of parties in the Reference Schedule (or such other address, fax number or email address as the relevant party may notify to the other parties from time to time); and
 - (c) delivered/sent either:
 - (i) personally;
 - (ii) by commercial courier;
 - (iii) by pre-paid post;
 - (iv) if the notice is to be served by post outside the country from which it is sent, by airmail;
 - (v) by fax; or
 - (vi) by e-mail.
- 20.2 A notice is deemed to have been received:
- (a) if delivered personally, at the time of delivery;
 - (b) if delivered by commercial courier, at the time of signature of the courier's receipt;
 - (c) if sent by pre-paid post, 48 hours from the date of posting;
 - (d) if sent by airmail, five days after the date of posting;
 - (e) if sent by fax, at the time shown in the transmission report generated by the machine from which the fax was sent; or
 - (f) if sent by e-mail, 4 hours after the sent time (as recorded on the sender's e-mail server), unless the sender receives a notice from the party's email server or internet service provider that the message has not been delivered to the relevant party,
- except that, if such deemed receipt is not within business hours (meaning 9:00 am to 5:30 pm on a Business Day), the notice will be deemed to have been received at the next commencement of business hours in the place of deemed receipt.
- 20.3 To prove service, it is sufficient to prove that:
- (a) in the case of post – that the envelope containing the notice was properly addressed and posted;
 - (b) in the case of fax – the notice was transmitted to the fax number of the party; and
 - (c) in the case of email – the email was transmitted to the party's email server or internet service provider.

21. General

Payments generally

- 21.1 If the due date for any payment to be made under this lease is not a Business Day, then the due date for that payment will be deemed to be the last preceding Business Day.
- 21.2 Unless otherwise required by Law, all amounts payable by the Lessee under this lease are to be paid without set-off, counterclaim, withholding, deduction or claim to a lien whatsoever (whether or not any such set-off, counterclaim, withholding, deduction or lien arises under this lease). If the Lessee is required by Law to make a deduction or withholding in respect of any sum payable under this lease, it must, at the same time as the sum that is the subject of the deduction or withholding is payable, make a payment to the Lessor of such additional amount as is required to ensure that the net amount received by the Lessor will equal the full amount that would have been received by the Lessor had no such deduction or withholding been required to be made.
- 21.3 At its sole discretion, the Lessor may apply, without notice, any funds held by it on account of the Lessee towards the satisfaction of any amount then payable by the Lessee to the Lessor under this lease or any Law.

Further assurances

- 21.4 Each party must (at its own expense, unless otherwise provided in this lease) promptly execute and deliver all such documents, and do all such things, as any other party may from time to time reasonably require for the purpose of giving full effect to the provisions of this lease.

Third parties

- 21.5 This lease is made for the benefit of the parties to it and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

Entire agreement

- 21.6 This lease contains the entire understanding between the parties in relation to its subject matter and supersedes any previous arrangement, understanding or agreement relating to its subject matter. There are no express or implied conditions, warranties, promises, representations or obligations, written or oral, in relation to this lease other than those expressly stated in it or necessarily implied by statute, subject to clause 1.3.

Severability

- 21.7 If a provision of this lease is invalid or unenforceable in a jurisdiction:
- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
 - (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions.

No waiver

- 21.8 No failure, delay, relaxation or indulgence by a party in exercising any power or right conferred upon it under this lease will operate as a waiver of that power or right. No single or partial exercise of any power or right precludes any other or future exercise of it, or the exercise of any other power or right under this lease.

Ipsso facto legislation

- 21.9 If any provision of this lease is otherwise unenforceable by virtue of the operation of the *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth), upon the occurrence of an Insolvency Event in respect of a particular party, notwithstanding any other provision of this lease, to the maximum extent permitted by law:
- (a) time is of the essence in respect of all obligations of that party under this lease (whether falling due for performance before, upon or after the occurrence of that Insolvency Event); and
 - (b) any breach of this lease by that party (whether occurring before, upon or after the occurrence of that Insolvency Event), however minor, will (alone or, severally, in combination with the occurrence of that Insolvency Event) be deemed to be a material breach of this lease,

and, if any such material breach has occurred or occurs, the parties acknowledge and agree that such provision will instead be enforceable by virtue of the occurrence of that material breach.

Amendment

- 21.10 This lease may not be varied except by written instrument executed by all of the parties.

Counterparts

- 21.11 This lease may be executed in any number of counterparts, each of which is an original and which together will have the same effect as if each party had signed the same document.

Electronic exchange

- 21.12 Delivery of an executed counterpart of this lease by facsimile, or by email in PDF or other image format, will be equally effective as delivery of an original signed hard copy of that counterpart.
- 21.13 If a party delivers an executed counterpart of this lease under clause 21.12:
- (a) it must also deliver an original signed hard copy of that counterpart, but failure to do so will not affect the validity, enforceability or binding effect of this lease; and
 - (b) in any legal proceedings relating to this lease, each party waives the right to raise any defence based upon any such failure.

Instrument a deed and covenants immediately binding

- 21.14 The parties acknowledge and agree that this document is a deed and that each obligation of a party hereunder is a covenant that binds that party in respect of each other party immediately upon its execution and delivery of this deed to that other party and accordingly that other party may enforce such obligations against the covenanting party notwithstanding that any parties, including that other party, have not executed and/or delivered this deed.

Governing law and jurisdiction

- 21.15 This lease and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by, and shall be construed in accordance with, the laws of Queensland, Australia.


- 21.16 The parties irrevocably agree that the courts of Queensland, Australia have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this lease or its subject matter or formation (including non-contractual disputes or claims).

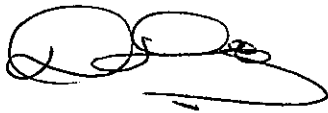
Schedule 1 | Special conditions

1. For the First 4 weeks of the Lease, the Lessee will be permitted to complete the fitout, and will only need to pay \$1,000 per week rent plus GST and the Lessee will be permitted to apply for a liquor licence, and the rent payable will be reviewed based on grant to the Lessee of such a licence. In the event a Licence is granted, the rent shall be \$2,000 per week, commencing on 29 January 2019.
2. The Lessor holds the premises as Custodian for the Vedory Superannuation Fund ABN 47 226 448 280, and the Trustee of that Fund, Vedory Pty Ltd ACN 627 130 205. The Trustee of the fund may direct where payments are to be made by giving directions to the Lessor in writing, which will then be binding on the Lessee.

Execution

EXECUTED as a deed.

Executed for and on behalf of SAPOTE MALENY PTY LTD (ACN 135 642 018) acting as the trustee of the SAPOTE MALENY CUSTODIAN TRUST (ABN 61 266 782 946) in accordance with section 127 of the Corporations Act by:		
Full Name	Capacity (circle)	Signature
Venerando Grasso	Director Secretary	
	Director Secretary	

Executed for and on behalf of Little Tree Bake and Brew House Pty Ltd (ACN 629 034 546) in accordance with section 127 of the Corporations Act by:		
Full Name	Capacity (circle)	Signature
David Doery	Director Secretary	
Brooke Bemy.	Director Secretary Witness	