

Dealing Number



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<b>1. Lessor</b> NUCIFORA SUPER FUND (QLD) PTY LTD ACN 606 197 737 AS TRUSTEE UNDER INSTRUMENT NO 720325789	<b>Lodger</b> (Name, address, E-mail & phone number) SMITH & STANTON LAWYERS PO Box 41 Aspley QLD 4034 Ph. 3263 4244 E: msmith@smithstanton.com.au	<b>Lodger Code</b> BE291A
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<b>2. Lot on Plan Description</b> LOT 4 ON SP283363	<b>Title Reference</b> 51083113
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<b>3. Lessee</b>	Given names	Surname/Company name and number	(include tenancy if more than one)
		DOLPHIN MOTORS PTY LTD ACN 624 160 827	

**4. Interest being leased**  
FEE SIMPLE

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

**6. Term of lease**  
Commencement date/event: 15/10/2020  
Expiry date: 14/10/2022 and/or Event:  
#Options: 1 x 1 Year  
#Insert nil if no option or insert option period (eg 3 years or 2 x 3 years)

**7. Rental/Consideration**  
See Reference Schedule

**8. Grant/Execution**

The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in: - \*the attached schedule; \*~~the attached schedule and document no. \_\_\_\_\_~~; \*document no. \_\_\_\_\_; \*Option in registered Lease no. \_\_\_\_\_ has not been exercised.

\* delete if not applicable

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

..... Signature  
..... full name  
..... qualification

NUCIFORA SUPER FUND (QLD) PTY LTD  
ACN 606 197 737

Director.....

Director.....   
Lessor's Signature

**Witnessing Officer**

15/10/20

Execution Date

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

**9. Acceptance**

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

..... signature  
..... full name  
..... qualification

DOLPHIN MOTORS PTY LTD ACN 624  
160 827

Sole Director.....   
Lessee's Signature

**Witnessing Officer**

15/10/2020

Execution Date

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

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This page and the following pages comprise the schedule referred to in Item 8 of the Form 7 Lease between the Landlord and the Tenant named below.

Item 1	<b>Landlord</b> Address Email	NUCIFORA SUPER FUND (QLD) PTY LTD ACN 606 197 737 PO Box 244, Albany Creek, 4035 j.nucifora@optusnet.com.au
Item 2	<b>Tenant</b> Address Email	DOLPHIN MOTORS PTY LTD ACN 624 160 827 27 / 344 Bilsen Road, Geebung QLD 4034 garydolphin73@gmail.com
Item 3	<b>Leased Premises</b> [clause 1.2]	Unit 4 344 Bilsen Road, Geebung
Item 4	<b>Term</b> [clause 3]	2 Years
Item 5	<b>Option to Renew</b> [clause 16]	1 years commencing 14/10/2022 and expiring 13/10/2023
Item 6	<b>Rent</b> [clause 4.1(1)]	\$ 27,000.00 per annum plus GST plus for the first year of the Lease
Item 7	<b>Rent Review Dates</b> [clause 4.2]	Each anniversary of the Commencement Date except for any Market Review Date
Item 8	<b>Method of Review</b> [clauses 4.2 – 4.4]	4% or CPI whichever is greater
Item 9	<b>Market Review Dates</b> [clause 4.5]	The first day of any renewed term
Item 10	<b>Proportion of Outgoings</b> [clause 5.1(2)]	100%
Item 11	<b>Use of Premises</b> [clause 6.1]	Business, workshop and motorcycle repair and build
Item 12	<b>Cash Bond / Bank Guarantee</b> [clause 17.1]	\$4,950.00
Item 13	<b>Guarantor</b> [clause 18]	GARY ROBERT DOLPHIN of Unit 4, 1422 Sandgate Road, Nundah QLD 4012

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1. DICTIONARY

1.1 Words in the Reference Schedule have the meaning opposite them.

1.2 The following words have the following meaning, unless they are inconsistent with the context –

- (1) **"Air Conditioning Equipment"** means the plant, cooling towers, compressors, electrical installation, duct work, diffusers and other associated equipment used for the manufacture and reticulation of conditioned air throughout the Premises and includes all mechanical ventilation.
- (2) **"Automatic Door Equipment"** means any pneumatic, sliding, roller or motorised door and includes all electric motors used for lifting and closing doors and any other lifting gear installed for this purpose.
- (3) **"Bank Guarantee"** means an unconditional undertaking by a bank given in support of the Tenant or any related body corporate (as defined in the *Corporations Act 2001*), to pay on demand the amount specified in Item 12 of the Reference Schedule. The Bank Guarantee includes any replacement or addition to the Bank Guarantee, and must remain current until 3 months after the Expiry Date.
- (4) **"Body Corporate"** means the Body Corporate of the Community Titles Scheme of which the Premises forms part.
- (5) **"Cash Bond"** means the cash deposit described in Item 12 of the Reference Schedule.
- (6) **"Claim"** or **"Claims"** means claim, liability, loss, damage, litigation, accident, injury costs, and expenses.
- (7) **"Commencement Date"** means the commencement date referred to in Item 6 of the Form 7 or if the Commencement Date is amended, the amended Commencement Date.
- (8) **"Common Property"** has the same meaning as that term is defined in the *Body Corporate & Community Management Act 1997*.
- (9) **"Confidential Information"** means all information about this Lease including the Term, Rent, Outgoings, incentives, any special conditions, securities and bonds and the subject matter and contents of any negotiations between the Landlord and the Tenant prior to the Commencement Date.
- (10) **"Default Rate"** means 10 percent per annum.
- (11) **"Expiry Date"** means the expiry date referred to in Item 6 of the Form 7 or, if the Lease is renewed, the last day of any renewed term.
- (12) **"Financial Year"** means in any year from 1 July to 30 June.
- (13) **"Form 7"** is the first page of this document.
- (14) **"Insolvent"** means the Tenant or any Guarantor enters into liquidation, or if a natural person, becomes bankrupt or being made the subject of an arrangement under Part IX or Part X of the *Bankruptcy Act 1966*.
- (15) **"Invitee"** means any person who enters the Lot to use, enjoy or supply the goods, services and facilities provided by the Tenant. The expression includes any contractor to, or person under the control or supervision, of the Tenant.
- (16) **"Landlord"** includes in the case of a natural person, his or her personal representatives and permitted assigns, and in the case of a company, its successors and assigns.
- (17) **"Landlord's Fixtures"** means the property owned by the Landlord and installed in the Lot, including –
  - (a) Air Conditioning Equipment;
  - (b) partitions;
  - (c) ceilings;
  - (d) electrical fittings and equipment;
  - (e) water mains and tanks;
  - (f) fire service mains and sprinklers;
  - (g) floor coverings;
  - (h) Automatic Door Equipment;
  - (i) fencing and gates, car stops and barriers;
  - (j) any equipment, fixtures or fittings which the Landlord has agreed to install for the Tenant and for which the Landlord has not been paid;
  - (k) generally, all hydrants, stop cocks, fire hoses, security and alarm systems, fire prevention and extinguishing equipment, toilets, showers, grease traps, water apparatus, wash basins and hot water systems.

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- (18) "**Lease**" means the Form 7 signed by the Landlord and the Tenant and includes the Reference Schedule and the Form 20 Schedule and any renewal of this Lease and any holding over under this Lease.
- (19) "**Lot**" means the Lot described in Item 2 of the Form 7 and includes the Landlord's Fixtures.
- (20) "**Method of Review**" means the method used to determine the new Rent following a Rent Review Date in accordance with clause 4.2(1).
- (21) "**Outgoings**" means the Landlord's reasonable expenses directly attributable to the operation, maintenance or repair of the Lot and the Landlord's Fixtures and charges, levies, premiums, rates or taxes payable by the Landlord as owner of the Lot, including—
- (a) rates, charges, land tax, environmental or other taxes (excluding capital gains tax and income tax); assessments and fees paid to any Statutory Authority;
  - (b) utilities, such as the supply of sewerage and water and garbage and waste removal services;
  - (c) water consumption charges;
  - (d) the provision of insurance cover for the Lot, including strata title cover and loss of Rent;
  - (e) repairing and maintaining the Lot and the Landlord's Fixtures, but not structural and major repairs or renovations of a capital nature;
  - (f) Body Corporate levies
  - (g) Pest control in the event of infestation of rodents, ants, birds, vermin or insects;
  - (h) lighting and securing the Lot;
  - (i) Any professional fees incurred in providing statements of Outgoings;
  - (j) generally any costs incurred by the Landlord in managing and maintaining the Lot and the Landlord's Fixtures, excluding capital expenses.
- (22) "**Permitted Use**" means the use described in Item 11 of the Reference Schedule.
- (23) "**PPSA**" means Personal Property Securities Act 2009 (Cwlth).
- (24) "**Premises**" or "**Leased Premises**" means the Lot.
- (25) "**Reference Schedule**" is the page immediately following the Form 7.
- (26) "**Rent**" means the rent specified in Item 6 of the Reference Schedule as reviewed from time to time.
- (27) "**Rent Review Date**" means the dates shown in Item 7 of the Reference Schedule on which the Rent will be reviewed in accordance with the Method of Review shown in Item 8 of the Reference Schedule.
- (28) "**Rules**" means processes or procedures which are imposed by the Landlord to regulate —
- (a) the use, safety, care and cleanliness of the Common Property or the Lot and the Landlord's Fixtures;
  - (b) the comfort and health of persons using the Common Property or the Lot and the Landlord's Fixtures, or persons in the vicinity;
  - (c) the appearance of the Common Property or the Lot and the Landlord's Fixtures;
  - (d) the operating hours of the Lot;
  - (e) security; and
  - (f) car parking and access to the Lot.
- (29) "**Security Interest**" means a security interest registered under the PPSA.
- (30) "**Services**" means all utilities and services connected to and servicing the Premises.
- (31) "**Statutory Authority**" means a Government or semi-Government body which is established or empowered by Statute.
- (32) "**Tenant**" includes in the case of a natural person, his or her personal representatives and assigns, and in the case of a company, its successors and assigns.
- (33) "**Tenant's Property**" means all of the Tenant's fixtures, fittings, plant, equipment, stock, chattels and other property which is in the Premises and which is not owned by the Landlord.
- (34) "**Tenant's Operating Expenses**" means all of the expenses (irrespective of whether they are charged to the Landlord or Tenant) which are incurred as a result of the Tenant carrying on its business including but not limited to telephone and internet data, electricity, gas, water consumption, garbage and waste removal, costs of running the Air Conditioning Equipment, pest control, security services and fire prevention charges.

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- (35) "Term" means the period of time specified in Item 4 of the Reference Schedule.
- (36) "Valuation Criteria" means –
- (a) Having regard to –
    - (i) the current market rent at the relevant Review Date in respect of any new lettings of any comparable premises in the vicinity, even if owned by the Landlord;
    - (ii) the Term of the new Lease and whether or not there are any further market reviews during the Term;
    - (iii) the rent paid under any Sub Lease of the Premises;
    - (iv) the Permitted Use;
    - (v) the terms of this Lease;
    - (vi) any fixed improvements made by the Landlord or Tenant during the Term; and
    - (vii) any other matter which may be relevant to the determination, unless excluded below
  - (b) but disregarding –
    - (i) any period of rent abatement or reduction or other incentive commonly in use or actually used in comparable leases or actually used in this Lease or generally offered;
    - (ii) any breach by the Tenant which may adversely affect the condition or rental value of the Premises;
    - (iii) any alterations made to the Premises by the Tenant which may adversely affect the condition or rental value of the Premises;
    - (iv) the fact that part of the Term has elapsed;
    - (v) any commission or fee payable to any person;
    - (vi) the value of any goodwill attributable to the Tenant's business or any Tenant's Property, except to the extent that the Landlord may have contributed to them.
- (37) "Valuer" means a fellow or an associate of the Australian Property Institute (Inc) Queensland Division who has at least five years' experience as a Valuer in valuing property similar to the Premises and who is active in the relevant market at the time of the appointment.

**2. HOW TO INTERPRET THIS LEASE**

- 2.1 A Table of Contents and paragraph headings have been included for ease of reference. They are intended only as a guide.
- 2.2 Reference to the Premises includes any part of the Premises.
- 2.3 References to single number and to any gender include the plural number and other genders.
- 2.4 References to any Act, Statute or Law include amendments or replacements of them and Proclamations, Rules, Regulations, Orders and Notices issued under them.
- 2.5 If there is more than one Tenant, any liabilities are joint and several.
- 2.6 If any area of the Premises is to be measured, the method of measurement shall be that used by the Building Owners and Managers Association of Australia Limited at the time of measurement.
- 2.7 If any clause in this Lease requires the Landlord to give its consent or approval, that consent or approval must not be unreasonably withheld.
- 2.8 Any notice or direction required to be given by one party to another must be in writing.
- 2.9 The following subclauses refer to the calculation of Outgoings (if applicable) and other payments under this Lease –
- (1) where any Outgoing is not separately assessed on the Lot, or is assessed on the Lot and other property owned by the Landlord, the Outgoing charged to the Premises shall be calculated in accordance with the following formula-  
$$\frac{UV \times \text{Total Assessment}}{TUV}$$

where

UV is the relevant Statutory Authority's unimproved value of the Lot; and

TUV is the Statutory Authority's total unimproved value of all land owned by the Landlord.
  - (2) if the method of calculation of any Outgoing is found to be void or unenforceable for any reason, then the Outgoing will be calculated and charged by any other method which has not been found to be void or unenforceable;
  - (3) if any clause in this Lease, or method of calculation of any payment under this Lease is found to be void or

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unenforceable for any reason, that clause will be struck from the Lease or that method of calculation will no longer be used, and the remaining clauses of this Lease will continue to apply.

- 2.10 Where this Lease refers to payment of Rent and the Landlord's tax invoices include Outgoings, the Tenant's obligation to pay Rent includes the obligation to pay Outgoings at the same time.

**3. TERM OF LEASE AND HOLDING OVER AT END OF LEASE**

**3.1 Lease of Premises**

The Landlord leases the Premises to the Tenant for the Term, subject to the provisions of this Lease.

**3.2 Use of Landlord's Fixtures**

The Landlord grants the Tenant a licence to use the Landlord's Fixtures whilst the Tenant occupies the Premises with the Landlord's consent. For the avoidance of doubt, nothing in this document grants the Tenant a lease over the Landlord's Fixtures and the Tenant is prohibited from giving any Security Interest over the Landlord's Fixtures.

**3.3 Holding Over**

If, after the Term has ended, the Tenant continues to occupy the Premises with the Landlord's consent –

- (1) the Tenant occupies the Premises on a month to month basis;
- (2) the commencing monthly Rent is to be agreed upon by the Landlord and Tenant, but must be no less than that which applies at the end of the Lease increased by 4%;
- (3) Rent, Outgoings (if applicable) and other moneys payable must be paid in the same manner as under the Lease;
- (4) as far as possible, the terms of the Lease apply to the monthly tenancy;
- (5) the tenancy may be terminated by either party giving the other 1 month's notice expiring on any day;
- (6) any term in this Lease requiring the lodgement of a Cash Bond or Bank Guarantee or the provision of a personal guarantee shall continue to apply.

**4. RENT**

**4.1 Rent**

- (1) The Tenant must pay the Rent without any deduction or set-off for each year of the Term.
- (2) Rent must be paid by equal monthly instalments in advance on the first day of each month in the manner stipulated by the Landlord.
- (3) If the Lease commences or ends on a day other than the first day of a month, Rent must be apportioned.

**4.2 Rent Reviews**

- (1) This clause applies if Item 7 of the Reference Schedule has been completed.
- (2) On the dates shown in Item 7 of the Reference Schedule, the Rent will be reviewed in accordance with the Method of Review shown in Item 8 of the Reference Schedule.
- (3) For the avoidance of doubt, where a combination of more than one Method of Review is shown at Item 8 of the Reference Schedule, the Rent will be reviewed to the greater of the methods unless stated otherwise at Item 8.

**4.3 CPI Review**

- (1) This clause applies if Item 8 of the Reference Schedule makes reference to "CPI".
- (2) In this clause, the following words have the following meanings –
  - (a) "CPI" means Consumer Price Index All Groups Brisbane;
  - (b) "Index Number" means the CPI published by the Australian Statistician.



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- (3) The Rent must be reviewed on each Rent Review Date in accordance with the following formula –

$$R = \frac{A \times PR}{B}$$

Where

- R = the new Rent;  
A = the Index Number for the quarter ending immediately prior to the relevant Rent Review Date;  
PR = the Rent payable prior to the Rent Review Date; and  
B = the Index Number one year prior to the quarter referred to in A.

- (4) If the CPI is discontinued, and the parties cannot agree upon a substitute Index or formula, Rent must be reviewed as if it was a Market Rent Review.

**4.4 Percentage Review**

- (1) This clause applies if Item 8 of the Reference Schedule makes reference to a percentage.  
(2) The Rent must be reviewed on each Rent Review Date by increasing the Rent payable immediately prior to the Rent Review Date by the percentage amount shown in Item 8.

**4.5 Market Rent Review**

- (1) This clause applies if Item 9 of the Reference Schedule has been completed.  
(2) The Rent must be determined not later than each Market Review Date in accordance with the following procedure –  
(a) the Landlord and the Tenant, and their representatives must have made contact and attempted to reach agreement upon the market rent which will apply to the Premises at least 2 months prior to the Market Review Date, or such extended date as the Landlord may allow.  
(b) if the parties have been unable to reach agreement upon the market rent by the Market Review Date, or extended Market Review Date, the matter will be referred for determination to a Valuer agreed upon by Landlord and Tenant, or failing agreement, nominated by the President of the Australian Property Institute (Inc) Queensland Division.  
(c) the appointed Valuer must ascertain the market rent within 1 month of the appointment and must do so as an expert, and not an arbitrator.  
(d) the Valuer's determination will be final and binding upon the Landlord and the Tenant.  
(e) the Landlord and the Tenant must equally share the Valuer's costs.  
(f) the Landlord and the Tenant may both make written submissions to the Valuer provided a copy of any submissions are given to the other party.  
(3) In assessing the market rent, the Valuer shall take into account the Valuation Criteria.

**4.6 Payment of Rent Pending Review**

Until the new Rent has been fixed, the Tenant must continue paying the Rent for the previous year. Any variation of the Rent as a result of a rent review must take effect from the relevant Review Date. Any refund, credit or further payment must be made by the relevant party.

**4.7 Rent Not to Decrease**

Regardless of any other provision of this Lease, the Rent following any review under clauses 4.1 to 4.5 inclusive will never be less than the Rent payable immediately prior to the date on which the Rent is reviewed.

**4.8 Tenant's Operating Expenses**

The Tenant must pay the Tenant's Operating Expenses from the earlier of the Commencement Date or the date on which the Tenant takes possession of the Premises.

**4.9 Goods and Services Tax**

**(1) Dictionary**

In this clause the following words have the following meaning –

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- (a) **"Act"** means *A New Tax System (Goods and Services Tax) Act 1999* and includes other GST related legislation;
- (b) **"GST"** means any tax imposed by or through the Act on a taxable supply (without regard to any input tax credit);
- (c) **"Taxable Supply"** means a taxable supply under the Act.

Except where the contrary intention appears, expressions used in this clause have the same meanings as those given to them in the Act.

**(2) Amounts Exclusive of GST**

Unless expressly indicated otherwise, all amounts referred to in this Lease are exclusive of GST.

**(3) Increase of Consideration**

If GST is imposed on a Taxable Supply under this Lease, then the amount or other consideration payable for that Taxable Supply shall be increased by an amount equal to the GST imposed on that Taxable Supply, and that amount shall be payable at the same time and in the same manner as the consideration for that Taxable Supply.

**(4) Reimbursement of Input Taxed Expense**

Despite clause 4.9(3), if any payment due under this Lease is a reimbursement or indemnification of an expense or liability incurred by the Landlord, the payment must exclude any amount for which the Landlord can claim an input tax credit as defined in the Act.

**(5) Tax invoice**

A party is not obliged to pay any Rent or other regular payment under this Lease unless that party receives a tax invoice.

**5. OUTGOINGS**

**5.1 Payment of Outgoings**

- (1) The Landlord must pay all Outgoings except those which the Tenant is obliged to pay under any other provision of this Lease.
- (2) The Tenant must contribute to the Outgoings by paying to the Landlord the proportion of the Outgoings specified in Item 10 of the Reference Schedule.
- (3) The Landlord may (at the Landlord's sole discretion and acting honestly and reasonably) determine that in calculating the Tenant's contribution to the Outgoings –
  - (a) some Outgoings shall be shared only between some tenants or groups of tenants, because the other tenants and the premises leased by them derive no benefit from the particular expense, service or facility, or between all tenants with the exclusion of one or more specified tenants who derive no benefit from the particular expense, service or facility; and
  - (b) some items of Outgoings shall be shared on a basis other than the percentage specified in Item 10 of the Reference Schedule (for example equally) where such other basis achieves on balance a fairer division of the Outgoing item among the tenants.
- (4) The Landlord may choose to either –
  - (a) notify the Tenant of the Landlord's estimate of Outgoings payable by the Tenant for each period not exceeding 1 year in advance of the estimate; or
  - (b) notify the Tenant from time to time during the Term of the issue of any account for Outgoings.
- (5) The Tenant must pay Outgoings in the manner required by the Landlord by either –
  - (a) equal monthly instalments in advance on the same day and in the same manner as the Tenant pays Rent; or
  - (b) payment of a lump sum to the Landlord covering the invoice, statement or account for the Outgoings.

**5.2 Accounting for Outgoings**

- (1) If the Landlord requires the Tenant to pay Outgoings by equal monthly instalments, the Landlord must if requested by the Tenant, at the end of each Financial Year, give the Tenant an itemised statement of all Outgoings actually paid during the period and the amounts paid by the Tenant on account of the estimated Outgoings.

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- (2) Any adjustment between the estimated and the actual Outgoings paid by the Tenant must be made within 1 month after the date of the Landlord producing the itemised statement.
- (3) Any refund, credit or further payment must be made by the relevant party.

**5.3 Future Tax on Premises**

If any Statutory Authority makes or imposes any future tax, charge, imposition or assessment ("future tax") upon or in respect of the Common Property, the Premises, or the Lot, or the Tenant's use of the Premises, of a kind not existing at the Commencement Date, the Landlord may include the future tax as an Outgoing under this Lease.

**6. USE OF PREMISES**

**6.1 Permitted Use**

The Tenant must only use the Premises for the Permitted Use.

**6.2 Things the Tenant Must Not Do**

The Tenant must not –

- (1) annoy, disturb or cause any damage or injury to any occupiers of adjacent premises, or passers by;
- (2) act offensively in the Premises;
- (3) overload any Services which are supplied in or to the Premises;
- (4) make any alterations to or modify any part of the Premises, including partitions and Services within the Premises, nor install any heavy equipment without the Landlord's consent;
- (5) drill into or paint any part of the Premises without the Landlord's consent;
- (6) do anything which may jeopardise the Landlord's insurance, or cause the Landlord's insurance premiums to increase;
- (7) store any chemicals or inflammable substances upon the Premises unless they are normally used in the Tenant's business;
- (8) use any of the Landlord's Fixtures improperly;
- (9) use the toilets, drains or other water facilities ("services") for any purpose other than the purpose for which they were constructed and not throw into or place in the services anything which may clog the pipes feeding into or out of the Premises;
- (10) use any areas external to the Premises for selling, storage or warehousing;
- (11) allow derelict vehicles, plant or equipment or disused or discarded pallets, packaging, containers or stock to be stored or kept in the Common Property unless permitted by the Body Corporate;
- (12) block access to any entry or exit to the Premises, or any fire or other emergency equipment in or near the Premises, and not use any fire hoses for cleaning purposes; and
- (13) use any chairs on carpeted surfaces in the Premises unless protective chair mats are used underneath such chairs to prevent premature wear of the carpet.

**6.3 Compliance with Body Corporate By-Laws**

- (1) The Tenant must comply with all Body Corporate By-laws which govern an occupant's use of the Premises and the Common Property.
- (2) The Tenant indemnifies and protects the Landlord against any Claims which may be made against the Landlord as a consequence of the Tenant's non-compliance with the Body Corporate By-laws.

**6.4 Signage**

- (1) Provided the Tenant first obtains the Landlord's consent and complies with the Landlord's directions, the Tenant may install or paint such signage on the exterior of the Premises as is reasonably necessary to identify the Tenant's business.
- (2) If any signs are installed or painted on the Premises without the Landlord's consent or do not comply with the

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Landlord's directions, the Landlord may use any means to remove them and the Tenant must pay for the removal.

- (3) The Tenant must keep the signage well maintained and in good repair and condition during the Term.
- (4) The Tenant must pay all costs of signage, including installation, electrical and maintenance costs and any fees imposed by Statutory Authorities and the Body Corporate.

**6.5 Requirements of Authorities**

- (1) The Tenant must comply and is responsible for the costs involved with the requirements of all Statutory Authorities which have jurisdiction over –
  - (a) the Tenant's business;
  - (b) the Premises;
  - (c) the Tenant's use of the Premises;
  - (d) occupational health and safety issues in the Tenant's business;
  - (e) disability discrimination within the Premises; and
  - (f) environmental and contamination issues arising in connection with the Tenant's business;
  - (g) the Tenant's property; and
  - (h) the number or sex of persons employed in, or who frequent the Premises.
- (2) If any oil sump or grease trap or other waste disposal service is installed in the Premises, or if not installed in the Premises, is used by the Tenant, the Tenant must obtain the requisite license and keep it current and otherwise comply with all requirements of any Statutory Authority including, but not limited to, compliance with all legislation and best business practices. The Tenant is responsible for all costs involved with the disposal of waste.
- (3) The Tenant acknowledges that no promise, representation or warranty was given by or on behalf of the Landlord regarding the present or future suitability of the Premises for the Tenant's intended use and that –
  - (a) the Landlord makes no warranty; and
  - (b) any warranties implied under the general law or by statute are excluded and negated to the extent permitted by law.
- (4) The Tenant has satisfied itself before entering into the Lease that all relevant approvals, consents and licenses required to use the Premises for the Tenant's business have been obtained.
- (5) The Tenant is responsible at its expense to ensure that all approvals, consents and licenses required for the conduct of the Tenant's business and for the use of the Premises are maintained throughout the Term. The failure of the Tenant to do so does not release the Tenant from this Lease, nor relieve the Tenant of its obligation to pay Rent and observe the Tenant's covenants.

**6.6 Security**

- (1) When the Premises are not in use, the Tenant must securely lock any gates and doors to any areas external to the Premises and keep them secured to prevent burglary, break ins and theft.
- (2) If any key or access or security device/code provided to the Tenant by the Landlord is stolen or lost or misused, the Tenant must immediately notify the Landlord. The Landlord may, at the Tenant's expense, replace the locks, keys and codes to the Premises.

**6.7 Tenant to Carry on Business Properly**

- (1) If the Landlord does not specify the hours during which the Premises shall be open for business, the Tenant must keep the Premises open for business and conduct its business throughout the Term during normal trading hours for that type of business, except during public holidays and normal Christmas closure periods.
- (2) The Tenant must carry on its business in a professional and competent manner and in accordance with best industry practices.
- (3) The Tenant must not allow the Premises to appear to be permanently closed, nor abandon or permanently leave the Premises during the Term.

**6.8 Vending Machines**

No vending machine shall be installed without the Landlord's consent.

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**6.9 Rules**

The Tenant must comply with any Rules made by the Landlord under clause 11.5(1). The Rules shall bind the Tenant as if they were covenants under this Lease.

**6.10 Tenant to Indemnify and Compensate Landlord**

If, as a consequence of the Tenant's breach of any of its obligations in this clause 6, a Claim is made against the Landlord, or the Landlord suffers any loss or incurs any expense, the Tenant indemnifies the Landlord against any such Claim and must compensate the Landlord for any such Claim upon demand.

**6.11 Alterations to Premises**

If the Landlord consents to any alterations or modifications to the Premises under this clause ("Tenant's works"), the Tenant must, at the Tenant's cost –

- (a) provide the Landlord with drawings and specifications in reasonable detail outlining the nature and scope of the Tenant's works;
- (b) before commencing the Tenant's works, and if required by any Statutory Authority, obtain all necessary approvals and permits to allow the Tenant's works to be lawfully carried out;
- (c) complete the Tenant's works in a good and workmanlike manner by a registered builder having appropriate insurance
- (d) use only high quality materials;
- (e) comply with all reasonable requirements of the Landlord concerning the Tenant's works;
- (f) when the Lease ends, if required by the Landlord, reinstate the Tenant's works to the condition specified in this Lease.

**7. MAINTENANCE AND REPAIR**

**7.1 Good Repair and Condition**

- (1) The Tenant must keep the Premises and any Landlord's Fixtures in good repair and condition and properly maintained throughout the Term. This obligation extends to the interior paintwork which must be touched up or repainted when reasonably necessary or the Landlord reasonably requires.
- (2) Despite clause 7.1(1), the Tenant is not obliged to keep the Premises and Landlord's Fixtures in good repair if they fall into disrepair because of fair wear and tear, inevitable accident, act of God or as a result of structural defect. However, the Tenant is not excused from the obligations in clause 7.1(1) if the Premises and Landlord's Fixtures fall into disrepair as a consequence of any act, omission, neglect, default or misconduct of the Tenant or the Tenant's employees or Invitees.
- (3) The Tenant must keep all fencing and gates securing the Premises in good order and repair.
- (4) If insurance moneys which would normally have been paid to repair any damage to the Premises are not paid because of some act, omission, neglect, default or misconduct of the Tenant or the Tenant's employees or Invitees, the Tenant is responsible for repairing that damage.
- (5) Where any damage is caused to the surface of the Lot or the Common Property whether concrete, bitumen or otherwise (eg. pot holing or grooving) or to the exterior of the Lot's paintwork, panels, roof or windows (eg. denting, holing, scraping or breaking) by the Tenant or its employees or Invitees' activities, including the use of heavy plant or other equipment, the Tenant must repair, or if the repair does not effectively return the damaged part to its condition before the damage occurred, reinstate the damaged part to its original condition.
- (6) The Tenant must promptly repair any damage caused to the Landlord's Fixtures, the Premises or the Common Property, or the property of any other person as a result of the Tenant's activities. If the repair does not effectively return the damaged part to its condition before the damage occurred, the Tenant must replace the damaged part.

**7.2 Cleaning, Maintenance and Breakages**

The Tenant must –

- (1) keep all drains, grates and pipes on the Premises in good order and repair, and clear blockages between the Premises and any trunk drain;
- (2) keep the Premises clean and of good appearance;
- (3) place all rubbish, trade waste, material for recycling, shop refuse and garbage in the proper receptacles and arrange for its regular removal from the Premises;

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- (4) keep the Landlord's Fixtures and the Tenant's Property clean and properly maintained;
- (5) replace and/or repair –
  - (a) all broken glass in the Premises;
  - (b) broken light bulbs, globes or tubes and electrical fittings; and
  - (c) Landlord's Fixtures which are broken or damaged by the Tenant or the Tenant's employees or Invitees;
- (6) keep the Premises and its surrounds free and clear of rodents, cockroaches and vermin;
- (7) carry out regular maintenance and servicing (except to the extent that the Landlord agrees to service and maintain) of all Landlord's Fixtures which ordinarily require regular maintenance, such as fire prevention, extinguishing and detection equipment and, if installed, Automatic Door Equipment which is in, on or services the Premises by engaging Landlord recommended service contractors (or if no service contractor is recommended, a reputable service contractor) and upon request by the Landlord, provide a written report from the service contractors to confirm compliance with this condition;
- (8) mow, water, weed and properly tend to any lawns, hedges, trees and garden beds which are not maintained by the Landlord or Body Corporate which the Tenant has exclusive use of;
- (9) regularly pump out the oil and grease sump and keep the surrounds clean if an oil or grease sump is installed in the Premises or on the Lot which is used by the Tenant;
- (10) keep any external door installed in the Premises in good condition and if damaged, immediately repair it;
- (11) regularly clean and maintain any shower and toilets and pay for any blockages and any repairs other than those caused by fair wear and tear; and
- (12) keep the floor of the Premises clean at all times and ensure that any excess oil or other fluids are removed immediately.

**7.3 Air Conditioning Equipment**

- (1) This clause applies if Air Conditioning Equipment is installed in any part of the Premises.
- (2) Unless the Landlord notifies the Tenant otherwise, the Tenant must maintain the Air Conditioning Equipment in good working order and condition having regard to its condition at the commencement of this Lease and, if required by the Landlord, must enter into a contract with a properly qualified and reputable service contractor to service and maintain the Air Conditioning Equipment in accordance with any reasonable recommendation of the Landlord or service contractor.
- (3) Upon request by the Landlord, the Tenant must provide written evidence from the service contractor of compliance with this clause 7.3.
- (4) The Tenant acknowledges that the Air Conditioning Equipment or any replacement of it is a Landlord's Fixture and will remain the property of the Landlord upon expiration or termination of this Lease.
- (5) Despite anything to the contrary in this Lease, the Tenant agrees that the Premises are leased with Air Conditioning Equipment in an "as is" condition, and the Landlord may decide not to replace it.

**7.4 Contamination**

- (1) The Tenant must not allow the Premises to become contaminated during the Term.
- (2) If, as a consequence of the Tenant's use of the Premises, the Land or the Premises becomes contaminated, the Tenant must remediate the contamination to the satisfaction of the Landlord and any relevant Statutory Authority.
- (3) If remediation has not been completed by the Expiry Date, the Tenant must continue to remediate and pay the Landlord an occupation fee equivalent to the Rent and Outgoings until the remediation is complete. During this period of occupation, the Tenant must not conduct its business from the Premises.

**7.5 Tenant's Notice of Defect**

The Tenant must promptly notify the Landlord of any damage or defect to the Services in the Premises, or to the Landlord's Fixtures. If the Tenant fails to promptly notify the Landlord of any such damage or defect, the Landlord will not be responsible for any delay in repairing the damage or defect, nor for the consequences.

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**7.6 Production of Tax Invoices**

If the Landlord requires it, the Tenant must produce a copy of paid tax invoices for any maintenance and repair work carried out to the Premises or the Landlord's Fixtures.

**8. ASSIGNMENT AND SUBLETTING**

**8.1 No Transfer or Other Dealings with Lease**

The Tenant must not assign, transfer, mortgage or otherwise deal with its interest in this Lease, nor sublet or vacate the Premises, nor grant a license to any other person to use the Premises or any part of them, without first obtaining the Landlord's consent.

**8.2 Landlord's Consent**

The Landlord must consider any application for consent under clause 8.1 upon its merits and will ordinarily consent if the following pre-requisites are met –

- (1) the Tenant has not committed a breach of this Lease, although a breach which has been rectified shall not be considered a breach;
- (2) the Tenant can demonstrate and satisfy the Landlord that the incoming Tenant is respectable, and has sufficient financial capacity to comply with the Tenant's obligations under this Lease and is capable of continuing the business carried on at the Premises or if a new business, has at least the same amount of business experience as the Tenant;
- (3) the Tenant provides such evidence and information as the Landlord reasonably requires to satisfy the requirements of clause 8.2(2);
- (4) the use to which the Premises will be put is the same as the Permitted Use;
- (5) if the incoming Tenant is a company, other than a company whose shares are listed on the Australian Stock Exchange, its obligations are guaranteed by its Directors and/or such other persons as may be acceptable to the Landlord;
- (6) the Tenant and the incoming Tenant and its Guarantors sign such deeds or agreements as may reasonably be required by the Landlord, including covenants that the Landlord be released from its obligations to the Tenant under this Lease, and that the Tenant and Guarantors (if any) continue to be bound to the terms of this Lease;
- (7) the Tenant pays the Landlord's reasonable expenses of vetting the incoming Tenant, giving its consent, and preparing and processing any deed or agreement required under clause 8.2(6);
- (8) if a Cash Bond or Bank Guarantee is held by the Landlord to cover the Tenant's performance of its obligations under this Lease, the incoming Tenant substitutes for that Cash Bond or Bank Guarantee another Cash Bond or Bank Guarantee satisfactory to the Landlord;
- (9) if the Landlord requires lodgement of a Bank Guarantee or Cash Bond to cover the incoming Tenant's performance of its obligations under this Lease, the incoming Tenant provides a Cash Bond or Bank Guarantee satisfactory to the Landlord;
- (10) by consenting to the proposed assignment, the Landlord would not be breaching a covenant to any other tenant or occupier of the building of which the Premises forms part.

**8.3 Change of Shareholding in Tenant**

If the Tenant is a company (other than a company listed on the Australian Stock Exchange), any change of ownership of the majority shareholding shall be considered an assignment of the Lease which will trigger the operation of clause 8.2.

**8.4 Security over Tenant's Property**

- (1) The Tenant may secure the Tenant's Property by mortgage or creating a Security Interest provided it obtains the consent of the Landlord.
- (2) Provided the Landlord can reach agreement with the security taker on the terms of a waiver or right of entry agreement, the Landlord's consent will be given. Any legal or other expenses incurred by the Landlord must be paid by the Tenant.
- (3) The Tenant acknowledges that the Landlord may register a Security Interest over –

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- (a) any Cash Bond paid under this Lease;
- (b) the Tenant's Property if it is considered abandoned under clause 13.8; and
- (c) any fitout which the Landlord has contributed payment towards or has constructed for the Tenant.

**8.5 Make Good**

For the avoidance of doubt, if this Lease is assigned, any incoming Tenant who is in occupation of the Premises at the Expiry Date will be bound to the Tenant's Obligations specified in clause 14.2 as if the incoming Tenant was the original Tenant named in this Lease.

**9. INSURANCES AND INDEMNITIES**

**9.1 Tenant's Insurances**

- (1) Throughout the Term, the Tenant must keep current insurance policies covering the Premises for –
  - (a) public risk covering the Tenant's occupation of the Premises in an amount specified by the Landlord, and if not specified, not less than \$20 million arising out of a single incident; and
  - (b) the breakage of any glass in the Premises; and
  - (c) comprehensive coverage of the Tenant's Property.
- (2) Any insurance policy or policies taken out by the Tenant to cover the risks in clause 9.1(1)(a) and (b) must –
  - (a) cover the risks and the amounts and contain conditions which are acceptable to the Landlord; and
  - (b) be taken out in the name of the Tenant and note the Landlord's interests as owner of the Premises.
- (3) The Tenant must promptly pay all insurance premiums.
- (4) Upon request, the Tenant must deliver a copy of a certificate of currency to the Landlord.

**9.2 Tenant's Indemnity**

The Tenant indemnifies and protects the Landlord from all Claims whether during or after the Term which arise from the Tenant's, the Tenant's employees or invitees –

- (1) negligence; or
- (2) failure to observe any duty of care owed to any other person; or
- (3) default under this Lease; or
- (4) use or misuse of the Premises, Services, Landlord's Fixtures and Tenant's Property;
- (5) failure to give notice of any defects in the Premises or the Services; or
- (6) failure to take out or maintain the service contracts required under this Lease

**unless**

the Claim arises from the negligence of the Landlord, its employees, contractors or invitees.

**9.3 Increase in Landlord's Insurance Premiums**

- (1) If any insurance premium paid or payable by the Landlord increases as a result of the Tenant's occupation or use of the Premises, the Tenant must pay that increase to the Landlord.
- (2) If the Landlord claims on any of the Landlord's insurance policies with respect to the Premises during the Term, the Tenant must promptly reimburse the Landlord for any excess paid by the Landlord.
- (3) For the removal of doubt, clauses 9.3(1) and (2) apply whether or not the Tenant is responsible for paying Outgoings under this Lease.

**10. LANDLORD NOT LIABLE FOR DAMAGE**

**10.1 Tenant's Risk**

- (1) The Landlord does not warrant that the Premises and the Landlord's Fixtures are suitable for the purposes for which



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the Tenant may wish to use them.

- (2) The Tenant occupies and uses the Premises and the Landlord's Fixtures at the Tenant's risk.
- (3) The Landlord is not liable for any Claim by the Tenant, the Tenant's employees or Invitees which may arise from –
  - (a) any fault in the construction or state of repair of the Premises or the Building or the Landlord's Fixtures; or
  - (b) any defect in the Services or the Landlord's Fixtures;
  - (c) the leakage or flow of any fluid, substance, radiation or electricity into or from any part of the Premises; or
  - (d) the failure to obtain any Statutory Authority approval, consent or licence for the Premises

**except**

where the Landlord or its employees, contractors or invitees have been negligent.

**10.2 Release**

The Tenant releases the Landlord from all Claims arising in respect of the Tenant's activities in the Premises, the Lot or on the Common Property except where that Claim arises from the negligence of the Landlord, its employees or Invitees.

**11. LANDLORD'S OBLIGATIONS AND RIGHTS**

**11.1 Quiet Enjoyment**

If the Tenant complies with all of its obligations under this Lease, the Landlord must not interrupt or disturb the Tenant's enjoyment of the Premises.

**11.2 Sale or Lease of Lot**

- (1) If this Lease is not registered under the *Land Title Act* and the Landlord sells the Lot during the Term, the Landlord must obtain an agreement from the purchaser that the purchaser will be bound by this Lease and will recognise any options for renewal contained in this Lease.
- (2) Upon being given 1 working day's notice, the Tenant must allow the Landlord and the Landlord's agent to have access to the Premises at all times to enable them to present the Premises to prospective purchasers or new tenants.

**11.3 "For Sale" Signage**

If the Landlord wants to sell the Lot, the Landlord may place For Sale signs or such other signage upon or near the Premises as the Landlord thinks fit provided such signs do not interfere with access to the Premises.

**11.4 "For Lease" Signage**

If the Tenant decides not to renew this Lease, the Landlord may place such "For Lease" signs on or near the Premises as the Landlord thinks fit provided such signs do not interfere with access to the Premises.

**11.5 Reservations**

- (1) The Landlord reserves the right to –
  - (a) make, amend, repeal and add Rules;
  - (b) use the roof of the Premises;
  - (c) use the Premises for the passage of Services and to repair, alter or replace the Services after giving reasonable notice;
  - (d) grant or transfer to others any rights of access or Services over the Lot provided that the Tenant's use of the Premises is not thereby hindered.
- (2) Nothing done by the Landlord under clause 11.5(1) will be inconsistent with the Tenant's rights under this Lease.

**11.6 Inspection and Landlord's Repairs**

- (1) After giving at least 1 working day's notice to the Tenant, the Landlord may enter and inspect the Premises.
- (2) In an emergency, the Landlord may enter and inspect the Premises without giving notice.
- (3) After inspecting the Premises, the Landlord may serve a notice to repair upon the Tenant requiring any defect, or want of repair, to be rectified within a reasonable time.

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- (4) If the repairs referred to in the notice to repair are not carried out within a reasonable time, the Landlord may carry out the repairs and the Tenant must reimburse the Landlord.

**11.7 Landlord may Enter to Satisfy Statutory Authority's Requirements**

- (1) After giving at least 1 working day's notice to the Tenant, the Landlord and the Landlord's workmen may enter the Premises to carry out any works which may be required by any Statutory Authority.
- (2) In carrying out such works, the Landlord must cause as little disruption to the Tenant's business as possible.

**12. DAMAGE TO PREMISES AND COMPULSORY ACQUISITION**

**12.1 Exceptions**

Clauses 12.2(1) and (2) will not apply where –

- (1) the damage is caused or contributed to by any negligence or wilful act of the Tenant or the Tenant's employees or Invitees; or
- (2) an insurer under the Landlord's policy refuses indemnity or reduces the sum payable under the policy because of any act or default of the Tenant or the Tenant's employees or Invitees.

**12.2 Abatement**

If the Premises are damaged –

- (1) The Tenant's obligation to pay Rent and any other moneys payable under this Lease shall be suspended for the period during which the Premises cannot be used.
- (2) If the Premises are still usable, but the usability is diminished due to the damage, the Tenant's obligation to pay Rent and other moneys payable under this Lease shall be reduced in proportion to the reduction in usability.
- (3) If the Landlord notifies the Tenant that the damage is such as to make its repair impractical or undesirable, either the Landlord or the Tenant may terminate this Lease by giving the other not less than 7 days written notice and no compensation is payable in respect of that termination.
- (4) If the Landlord fails to repair the damage within 3 months, or within such further time as the Landlord reasonably requires, taking into account the extent of damage, difficulty of repair and availability of materials and labour, the Tenant may terminate this Lease by giving not less than 30 days' written notice to the Landlord.

**12.3 Reinstatement**

- (1) Nothing in this Lease obliges the Landlord to repair or reinstate the Premises if they are damaged.
- (2) If the Landlord decides to repair or reinstate the Premises, the Landlord may remodel them or fit them out differently.

**12.4 Compulsory Acquisition**

If at any time the whole or any part of the Premises is compulsorily acquired or lawfully resumed by any Statutory Authority then –

- (1) the Tenant will have exclusive rights to any compensation payable for the Tenant's business;
- (2) the Landlord will have exclusive rights to any compensation payable for the Premises;
- (3) if as a result, the Premises are unfit for use by the Tenant, or substantially unfit, then either the Landlord or Tenant may terminate this Lease;
- (4) upon gazettal of the resumption, or such earlier date as the Landlord and the Tenant may agree, the Rent and any other money payable under this Lease will be wholly suspended or proportionately reduced in accordance with the portion of the floor area of the Premises affected;

and any dispute between the Landlord and the Tenant over any matter in clause 12.4(3) and (4) will be resolved by expert determination of a Valuer appointed by either the Landlord or the Tenant, with the Valuer's fees to be borne equally.

**13. TENANT'S DEFAULT**

**13.1 Events of Default**

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The Tenant is in default if -

- (1) the Tenant breaches any of the covenants in this Lease including an Essential Term as specified in clause 13.10;
- (2) the Tenant is Insolvent.

**13.2 Landlord's Action Upon Default**

If the Tenant defaults, the Landlord may, after first giving any notice required by law, exercise any one or more of the following rights -

- (1) terminate the Lease by re-entering and taking possession of the Premises (by force if necessary) and ejecting the Tenant and all other persons from the Premises; or
- (2) terminate the Lease by written notice to the Tenant; or
- (3) terminate the Lease by accepting the Tenant's repudiation; or
- (4) forfeit the Lease; or
- (5) claim damages for the breach; or
- (6) convert the Lease to a month to month tenancy, in which case the terms of clause 3.3 apply.

**13.3 Entitlement to Damages upon Default**

- (1) Any loss suffered by the Landlord as a result of the Tenant's default may be recovered as damages.
- (2) The damages which may be recovered include -
  - (a) the loss of the benefit of the balance of the Term; and
  - (b) all expenses associated with the Tenant's default, including but not limited to lawyers, agents, advertising, cleaning, renovation and locksmith expenses.
- (3) The Landlord's entitlement to damages is in addition to any other remedy or entitlement, including termination of this Lease and includes the periods before and after termination of this Lease.
- (4) For the avoidance of doubt the Landlord's entitlement to recover damages is not affected or limited by any of the following-
  - (a) if the Tenant abandons or vacates the Premises; or
  - (b) if the Landlord elects to re-enter or terminate the Lease; or
  - (c) if the Landlord accepts the Tenant's repudiation.

**13.4 No Obligation to Terminate for Breach**

Despite a default event occurring, the Landlord may decide not to terminate the Lease.

**13.5 Abandonment**

If the Landlord forms the reasonable view that the Tenant has permanently left or abandoned the Premises, the Landlord may do any of the following without affecting a re-entry, accepting a repudiation, terminating, surrendering or in any other way ending the Lease -

- (a) accept keys;
- (b) show prospective tenants the Premises;
- (c) inspect the Premises;
- (d) clean, refurbish, alter or re-design the Premises;
- (e) erect "For Lease" signs; and
- (f) change the locks.

**13.6 No Waiver**

- (1) The Landlord's failure to take advantage of any default by the Tenant will not be a waiver of that default.
- (2) If the Landlord rightly demands Rent or other moneys from the Tenant, which the Tenant initially refused to pay, but later does pay, the Landlord's acceptance of that payment will not waive the earlier default of the Tenant.

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**13.7 Moneys Paid After Termination**

Any money which is paid to the Landlord after termination of this Lease must be applied –

- (1) firstly, towards payment of Rent and other moneys due under this Lease; and
- (2) secondly, on account of the Landlord's expenses of dealing with the Tenant's default.

**13.8 Removal and Disposal of Tenant's Property**

- (1) Upon re-entry and termination of this Lease, the Landlord may remove the Tenant's Fittings and store them at any secure place without being liable at law to the Tenant.
- (2) Regardless of the fact that the Tenant's Property may be affixed to the Lot or Common Property and regardless of the manner or duration of affixation, the Landlord will not treat any part of the Tenant's Property as a fixture.
- (3) Any removal and storage expenses must be paid by the Tenant.
- (4) After storing the Tenant's Property for 7 days, during which time the Tenant must be afforded every opportunity to pay moneys due to the Landlord and recover the Tenant's Property, the Landlord may consider the Tenant's Fittings abandoned and dispose of the Tenant's Property by auction, private sale or otherwise.
- (5) Any proceeds of sale must be applied in the manner referred to in clause 13.7.
- (6) The Landlord may register a Security Interest over the Tenant's Property to protect the Landlord's rights in this clause.

**13.9 Interest**

Any Rent or other moneys owing to the Landlord and unpaid after falling due shall attract interest at the Default Rate. Interest will accrue on a daily basis and be capitalised at the end of each month from the date on which payment of Rent and other moneys should have been made to the date that they are paid.

**13.10 Essential Terms**

The following covenants are essential terms of this Lease, the breach of which may be considered by the Landlord to be repudiation –

- (1) payment of Rent [clause 4]
- (2) payment of GST [clause 4.9]
- (3) payment of Outgoings [clause 5] (if applicable)
- (4) use of the Premises [clause 6]
- (5) abandonment of the Premises [clause 6.7(3)]
- (6) compliance with Laws [clause 6.5]
- (7) the repeated failure by the Tenant to comply with any Rules [clause 6.9]
- (8) maintenance and repair [clause 7]
- (9) assignment, mortgage or subletting without consent [Clause 8]
- (10) insuring [Clause 9]
- (11) the provision of a Bank Guarantee or Cash Bond [Clause 17.1] (if applicable).

**14. END OF LEASE**

**14.1 Notice to End Lease**

If the Tenant wishes to end this Lease on the Expiry Date without –

- (1) exercising any option for renewal; or
- (2) negotiating a new Lease;

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the Tenant must notify the Landlord in writing not less than 3 months before the Expiry Date.

**14.2 Tenant's Obligations**

- (1) At the end of this Lease, the Tenant (or the Tenant's successors or assigns) must –
  - (a) deliver all keys and security codes for the Premises to the Landlord;
  - (b) deliver the Premises and the Landlord's Fixtures in good order and repair, properly cleaned and with all pre-painted surfaces freshly painted by a professional painter;
  - (c) if any external walls have been painted in corporate colours by the Tenant, repaint those walls so that they are the same colour as at the Commencement Date;
  - (d) remove all the Tenant's Property from the Premises;
  - (e) repair any damage to the Premises caused when removing the Tenant's Property;
  - (f) remove the Tenant's signage from the Premises and from any pylon sign on the Common Property and make good, unless directed not to do so by the Landlord;
  - (g) if required by the Landlord (even if the Landlord has consented to the alteration), reinstate any alteration to the Premises made by the Tenant during its occupancy and convert them to the original layout;
  - (h) steam clean or replace any soiled or damaged carpet installed in the Premises to the same or similar condition to that at the Commencement Date of the first Term (before any renewal) of this Lease;
  - (i) remediate any contamination to the standard specified in clause 7.4.
- (2) Without limiting clause 14.2(1), and for avoidance of doubt, at the end of this Lease, the Tenant must –
  - (a) carry out repairs and reinstatement so that the Premises are returned to the condition at the commencement of the first Term (before any renewal) of this Lease which may be shown in any photographs annexed to this Lease or provided by the Landlord or in any condition report obtained or approved by the Landlord;
  - (b) repair or replace ceiling tiles which have been holed or stained, fill in holes in floors, walls and ceilings, remove data and other cabling, cut off or drill out any anchor bolts as the Landlord reasonably requires taking into account the original condition of the particular surface, repair all cracks in floor slabs caused by the Tenant's activities and remove any venting installed by the Tenant; and
  - (c) carry out any repairs or reinstatement in a good and workmanlike manner.
- (3) If a financier of the Tenant has registered a Security Interest over any of the Landlord's Fixtures, the Tenant must, at the Tenant's expense, obtain a release of the Security Interest from that financier.

**14.3 Failure to Remove Tenant's Property**

Any Tenant's Property or other property not removed from the Premises at the end of the Lease may be considered to be abandoned and may be removed by the Landlord and the Premises made good. The Landlord may register a Security Interest over the Tenant's Property to protect the Landlord's rights in this clause.

**14.4 Abandoned Property**

Any property removed by the Landlord under clause 14.3 will be considered to be owned by the Landlord with full legal and beneficial ownership, free of encumbrance and any other interest.

**14.5 Tenant to Indemnify and Pay Landlord's Expenses**

The Tenant –

- (1) indemnifies and protects the Landlord from any Claims made against the Landlord by any person who claims an interest in the Tenant's Property where the Tenant's Property is considered to be abandoned; and
- (2) must pay the Landlord any expenses incurred by the Landlord in removing, storing and disposing of the Tenant's Property.

**15. MISCELLANEOUS PROVISIONS**

**15.1 Costs**

The Tenant must pay the Landlord –

- (1) All Statutory Authority fees, assessments and charges (including Titles Office registration fees) incurred on this Lease or any transfer or Sub Lease of this Lease.
- (2) Surveyor's fees for preparing any plan required to define the area of this Lease.

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- (3) The Landlord's reasonable legal expenses incurred as a result of –
- (a) preparing and negotiating this Lease;
  - (b) registering this Lease;
  - (c) preparing and registering any renewal or amendment of this Lease;
  - (d) giving any consent required under this Lease;
  - (e) obtaining the mortgagee's or Security Interest holder's consent to this Lease;
  - (f) registering or releasing any Security Interest given or taken under this Lease;
  - (g) any proposed or actual assignment or subletting or mortgage of this Lease;
  - (h) any proposed or actual surrender or termination of this Lease;
  - (i) action taken as a result of any default by the Tenant or the Tenant's employees or Invitees in complying with the provisions of this Lease;
  - (j) any Claim with which the Landlord becomes involved arising from the Tenant's occupancy of the Premises.
- (4) The Landlord's reasonable administrative expenses or legal fees incurred in considering and responding to any requests which are prompted by enquiries or correspondence from the Tenant.

**15.2 Notices**

- (1) The Landlord and the Tenant consent to the giving of notice by electronic communication in accordance with Section 11(2)(b) of the *Electronic Transactions (Queensland) Act 2001*.
- (2) Notices will be considered served on the Landlord or the Tenant if they are –
- (a) served personally; or
  - (b) mailed to the last notified business or residential address; or
  - (c) sent by facsimile or email.
- (3) The Landlord's and the Tenant's postal addresses and facsimiles and email addresses are set out in Items 1 and 2 of the Reference Schedule unless notified of a change of address during the Term.

**15.3 Time of Service**

Any notice sent by –

- (1) post – shall be considered served 2 business days after being posted; or
- (2) facsimile or email – will be considered served at the time the notice is transmitted to the specified number or email address.

**15.4 Power of Attorney**

- (1) The Tenant appoints the Landlord or its nominee to be the Attorney of the Tenant for the purposes of this clause.
- (2) At any time after the power to re-enter the Premises has arisen, the Attorney may –
- (a) sign and register a Transfer or a Surrender of this Lease; and
  - (b) dispose of any of Tenant's Property in the manner described in clause 13.8.
- (3) The Tenant ratifies and confirms any lawful act of the Attorney.
- (4) The Statutory Authority responsible for Land Titles is authorised to accept a Statutory Declaration by the Landlord as sufficient evidence that the power to re-enter has arisen.

**15.5 Tenant as Trustee**

- (1) If the Tenant has entered into this Lease as Trustee of a Trust, the Trustee, and any successor as Trustee of the Trust, will be liable under this Lease as Tenant and the Tenant states that all of the assets of the Trust, both present and future, will be available to satisfy the Tenant's obligations under this Lease.
- (2) The Tenant warrants that at the date of this Lease –
- (a) the Trust is a valid and existing Trust;
  - (b) the Tenant is the sole Trustee of the Trust and has full power to enter into and be bound by the terms of this Lease; and
  - (c) there is no restriction on the Trustee's right of indemnity out of the Trust assets.

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- (3) The Tenant covenants with the Landlord that, upon any Claim being made by the Landlord under this Lease, the Tenant will exercise all rights of indemnity which it has against the Trust assets to the extent that if the rights of indemnity do not cover the Claim, then the Tenant is personally liable to the Landlord.
- (4) A change of Trustee will be considered an assignment of this Lease which will trigger the operation of clause 8.2.

**15.6 Confidentiality**

The Tenant must not disclose the Confidential Information to any person at any time whether before, during or after the Term, other than in the course of seeking and obtaining legal or financial advice relating to the Lease.

**15.7 Property Law Act**

Any inconsistency between the terms of this Lease and the *Property Law Act 1974* will be resolved in the Landlord's favour.

**15.8 Applicable Law**

Queensland law will apply to this Lease and the Landlord and Tenant will submit to the jurisdiction of the Queensland Courts.

**15.9 Entire Agreement**

This Lease and any Mortgagee's or Security Interest holder's consent document to which the Tenant is a party contains the entire agreement between the Landlord and Tenant relating to the Tenant's occupancy of the Premises from the Commencement Date.

**15.10 Mortgagee's Consent**

If, in the normal course of its commercial dealings with the Landlord, and to ensure compliance with any financial arrangement between the Landlord and its financier, the Landlord's Mortgagee or Security Interest holder require a consent or other document to be signed by the Tenant, the Tenant must sign such document without delay.

**16. OPTION FOR RENEWAL**

**16.1 Exercise of Option**

If Item 5 of the Reference Schedule is completed, and the Tenant –

- (1) is not in breach of an essential term of this Lease or in continuing breach of any other term; and
- (2) notifies the Landlord not less than 3 months before the Expiry Date that the Tenant wants to renew the Lease; and
- (3) between the time of notification and the Expiry Date, is not in breach of any term of the Lease

then the Landlord must grant and the Tenant must take a further lease of the Premises upon the same terms and conditions as this Lease, except for the amendments in clause 16.2.

**16.2 Amendments to Lease Upon Renewal**

If the Lease is renewed, the following amendments will be made to the Lease –

- (1) Items 4, 5 and 6 of the Reference Schedule will be updated so that –
- (a) The term of the option period will be inserted at Item 4;
- (b) Any expired terms will be deleted from Item 5;
- (c) The Rent for the new term will be inserted into Item 6; and
- (2) Clauses 17.2 and 17.3 will be deleted.

Otherwise the Lease will remain the same.

**16.3 Renewed Lease to be Signed**

The Landlord, the Tenant and the Guarantors (if any), must sign an amendment of this Lease or a new Lease document, as the Landlord decides not later than 30 days after the delivery of the amendment or Lease document to the Tenant or the Tenant's Lawyer. The Landlord and Tenant agree that time is of the essence with respect to this clause.

**16.4 When Option may not be Exercised**

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For the avoidance of doubt, the Tenant may not exercise the option in clause 16.1 if –

- (1) the prerequisites in clause 16.1(1), (2) and (3) are not satisfied; and
- (2) in the case of the Tenant being in breach, the Landlord gives notice required by Section 128 of the *Property Law Act*.

**17. SPECIAL CONDITIONS**

**17.1 Cash Bond/Bank Guarantee**

- (1) On or before the Commencement Date, the Tenant must deliver the Cash Bond or Bank Guarantee to the Landlord.
- (2) If the Tenant does not comply with any of its obligations under this Lease, then the Landlord may call upon the Cash Bond or Bank Guarantee.
- (3) If Landlord calls on the Cash Bond or Bank Guarantee, or the Rent is reviewed, then no later than 30 days after the Landlord has called on the Cash Bond or the Bank Guarantee or the date the Rent is reviewed, the Tenant must deliver to the Landlord a replacement or additional Cash Bond or Bank Guarantee so that the amount guaranteed is the amount specified in Item 12 of the Reference Schedule.
- (4) At the end of the Term, provided the Tenant has fully complied with all of its obligations under this Lease, the Landlord must promptly return the Cash Bond or Bank Guarantee to the Tenant. If the Landlord has registered a Security Interest over the Cash Bond, the Security Interest will be released upon the Tenant's request, but not before the Cash Bond has been returned.
- (5) If the Landlord's interest in the Premises is assigned or transferred, the Tenant must, within 30 days of the Landlord requesting it, provide to the Landlord a replacement Bank Guarantee in favour of the Transferee or Assignee failing which the Landlord may call upon the Bank Guarantee and pay the proceeds, less all sums appropriated by the Landlord in accordance with this clause, to the Assignee or Transferee, on condition that such sum is held as a deposit on the same terms and conditions as the Bank Guarantee is held. Upon payment or transfer, the Landlord will be discharged from all liability to the Tenant or to any other person in respect of the Bank Guarantee.

**17.2 Rent Deposit**

The Tenant must pay a rent deposit of \$4,950.00 (inclusive of GST) to Raine & Horne Commercial Brisbane North Trust Account at the time of agreeing to the terms of this Lease. The rent deposit must be applied towards the Rent payable under this Lease.

**17.3 Rent Free Period**

- (1) Provided the Tenant enters into this Lease and performs all of the Tenant's obligations under the Lease, the Tenant will not be required to pay Rent for the period from 15 October, 2020 up to and including 14 November 2020.
- (2) This incentive will not extend to the payment of Outgoings, which must be paid in accordance with this Lease.
- (3) When calculating Rent for each subsequent year of the Term of this Lease or for any extension of it, the incentive in this clause will not be taken into account.
- (4) If the Tenant is in default under this Lease, the Landlord will be entitled to recover from the Tenant upon demand as a liquidated debt, the Rent relinquished by the Landlord under this clause (in addition to any other remedies the Landlord may have).

**18. GUARANTEES**

**18.1 Application**

This clause 18 applies if Item 13 of the Reference Schedule has been completed.

**18.2 Guarantee and Indemnity**

The consideration for this Guarantee is the Landlord entering into this Lease at the Guarantor's request. As a consequence, the Guarantor –

- (1) guarantees as a principal debtor payment by the Tenant of the Rent, and any other moneys payable under this Lease, including during any period of holding over or while the Tenant occupies or is entitled to occupy the Premises under any other legal or equitable right or tenancy or as a trespasser and including any part of the Premises;



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- (2) guarantees prompt and punctual observance and performance of any of the Tenant's covenants and obligations expressed in or implied by this Lease;
- (3) guarantees payment of damages for breach or non-performance of the Tenant's covenants and obligations expressed or implied in this Lease;
- (4) indemnifies the Landlord against all Claims incurred or suffered by the Landlord as a consequence of any breach or default by the Tenant;
- (5) indemnifies the Landlord against all Claims incurred or suffered by the Landlord as a consequence of the disclaimer of this Lease as a result of the Tenant becoming Insolvent.

**18.3 Duration of Guarantee**

- (1) If this Lease is renewed, the Guarantor's liabilities under clause 18.2 will extend until the end of the further Term or Terms and the Guarantor must sign an amendment of this Lease or a new Lease document, as the Landlord decides not later than 30 days after the delivery of the amendment or Lease document to the Tenant or the Tenant's Lawyer.
- (2) If this Lease is held over under clause 3.3, the Guarantor's liabilities under clause 18.2 will extend until the holding over period ends.
- (3) For the avoidance of doubt, the guarantee and indemnity in clause 18.2 continues in full force and effect while the Tenant occupies or is entitled to occupy the Premises under this Lease, or any form of tenancy or right of occupation, or as a trespasser or other unauthorised occupier or holds an equitable interest in the Premises under an agreement for lease, or as a periodic tenant, or is holding over under this Lease.

**18.4 Guarantor's Liability not Reduced**

The Guarantor's liability continues and will not be discharged or reduced by –

- (1) the Landlord granting any time concession or indulgence to the Tenant;
- (2) the Landlord entering into any composition or scheme of arrangement with the Tenant;
- (3) the Landlord waiving any breach or default by the Tenant;
- (4) the Landlord's failure to enforce the terms of the Lease against the Tenant;
- (5) the disclaimer of the Lease on the insolvency of the Tenant;
- (6) any payment by the Tenant that is avoided or set aside under any law relating to insolvency or under any other law;
- (7) any assignment of this Lease, or Sub Lease;
- (8) any amendment, renewal or holding over of this Lease;
- (9) the terms of this Lease not being enforceable against the Tenant for any reason;
- (10) the death or incapacity of the Guarantor;
- (11) the sale of the Land (the Guarantor acknowledging that its obligations under clause 18.2 are also given in favour of the Landlord's successors and assigns); or
- (12) this Lease not being registered on the Title of the Land.

**18.5 Irrevocable**

The guarantee and indemnity in clause 18.2 is irrevocable and will remain in force until the Tenant has performed and observed all of its obligations contained in or implied by the Lease.

**18.6 Guarantor not to Prove in Liquidation**

- (1) The Guarantor must not prove or claim in any liquidation or arrangement for the benefit of creditors until the Landlord has received all moneys owing to it by the Tenant.
- (2) The Guarantor must hold any proof, claim or dividend received by it in trust for the Landlord.

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**18.7 Joint and Several Liability**

If the Guarantor is more than one person –

- (1) each is liable even if the others do not sign the Guarantee or do not sign it properly;
- (2) their liability is joint and several;
- (3) each remaining Guarantor continues to be liable even if one of the other Guarantors is released from liability or stops being liable for any reason.

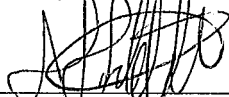
**18.8 Death of Guarantor**

If the Guarantor dies, and –

- (1) the Landlord acting reasonably is not satisfied with the financial standing of the Guarantor's estate; or
- (2) the personal representatives of the Guarantor requests a release from the Guarantee;

the Landlord may require, and the Tenant must provide, a new Guarantor as a substitute for the deceased Guarantor, but nothing in this clause will oblige the Landlord to accept a substitute Guarantor of lesser financial standing than the deceased Guarantor.


**SIGNED SEALED AND DELIVERED** by  
**GARY ROBERT DOLPHIN** as Guarantor in  
the presence of



Signature of Witness

ALLAN DAVID HIBBETT

Name of Witness in full

  
\_\_\_\_\_  
Signature of Gary Robert Dolphin  
15/10/2020  
\_\_\_\_\_  
Date

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**PHOTOGRAPHS/CONDITION REPORT**  
[Clause 14.2(2)(a)]