

## COMMERCIAL LEASE AGREEMENT

This Agreement is made on the 1<sup>st</sup> day of June, 2012.

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

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

### SCHEDULE

Item 1	Landlord	<b>JONATHAN CHARLES SPENCE</b> as trustee for and on behalf of the <b>SPENCE SUPERANNUATION FUND</b> ; and <b>RODNEY SCOTT DIX</b> and <b>CATHERINE JANE DIX</b> as trustees for and on behalf of the <b>RS &amp; CJ DIX SUPER FUND</b> 27 Hender Street, Keith SA 5267 Phone No – 0429 818 490      email <a href="mailto:rodney@spencedixandco.com.au">rodney@spencedixandco.com.au</a> The Landlord is registered for Goods and Services Tax (GST)
Item 1A	Landlord's Agent	Not Applicable
Item 2	Tenant	<b>SPENCE DIX &amp; CO PTY LTD (ACN 134 924 904)</b> of PO Box 71, Naracoorte SA 5271 Phone No – 0429 818 490      email <a href="mailto:rodney@spencedixandco.com.au">rodney@spencedixandco.com.au</a>
Item 3 (cl35)	Guarantor	Not Applicable
Item 4 (cl2)	Premises	27 Hender Street, Keith SA 5267 being whole of the land in Certificate of Title Volume 5302 Folio 830
Item 5 (cl6)	Term of the Lease	The Lease starts on 1 <sup>st</sup> day of June, 2012 and remains in force until 31 <sup>st</sup> day of May 2023, with a further right of renewal of Five (5) years to 31 <sup>st</sup> May 2027.
Item 6 (cl5)	Rent	A monthly rental of <b>EIGHT HUNDRED AND SIXTY SIX DOLLARS AND SIXTY SEVEN CENTS (\$866.67)</b> is payable in advance and in equal monthly instalments on the 1 <sup>st</sup> day of each month (Rent).
Item 7 (cl5.1)	How is Rent paid?	The Rent must be paid: monthly to the Landlord in an account nominated by the Landlord.
Item 8 (cl4)	Security Deposit Amount	Not Applicable
Item 9 (cl8)	Rent review dates	CPI adjustment, annually
Item 10 (cl7)	Further term or terms	Five (5) years to 31 <sup>st</sup> May 2027
Item 10A (cl7.3)	The earliest date for exercising the option	At any time on or prior to 31 <sup>st</sup> May 2016

Item 10B (cl7.3)	The latest date for exercising the option.	At any time on or prior to 31 <sup>st</sup> May 2016.
Item 11 (cl14)	Tenant's Proportion of Outgoings	Tenant to pay Council rates, Emergency Services Levy and SA Water rates and usage
Item 12 (18.1.10)	Building Rules	Not Applicable
Item 13 (cl2.1)	Designated Car Spaces	Not Applicable
Item 14 (cl3)	Permitted Use	Livestock business/office

## TERMS OF AGREEMENT

The parties agree as follows:-

### 1. INTERPRETATION

#### 1.1. Definitions

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

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

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

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

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

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

**Guarantor** means the person named in Item 3.

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

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

**Item** means an Item in the schedule to this Agreement.

**Land** means the land on which the Premises are situated.

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

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

(a) the letting of commercial premises, or

(b) the collection of rents payable for any tenancy of commercial premises.

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

**Month** shall mean a calendar month.

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

**Permitted Use** means the permitted use specified at Item 14.

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

**Rent** means the rent stipulated at Item 6.

**Security Deposit Amount** means the amount detailed at Item 8.

**Start Date** means the date stated at Item 5 as the date the lease starts.

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

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

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

- 1.2. Where the context permits, words expressed in the singular include the plural and vice versa, and words expressed in the masculine gender include the feminine, and words referring to a person include a company.
- 1.3. Where two or more persons are parties hereto either as agent, Guarantor, Landlord or Tenant, each of them shall be bound by the conditions of the Agreement, both jointly and individually.
- 1.4. When this Agreement is signed by both parties and witnessed it is a deed at law from that time.
- 1.5. By signing this Agreement, the Tenant (for itself, its employees or any person who the Tenant permits to be on the Premises, or for whom the Tenant is legally responsible) agrees that use and occupancy of the Premises will be at the Tenant's own risk.

## **2. PREMISES**

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

## **3. PERMITTED USE OF PREMISES**

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

## **4. SECURITY DEPOSIT OR BANK GUARANTEE**

- 4.1. This clause 4 applies if a Security Deposit Amount is inserted in Item 8 of the Schedule.
- 4.2. The Tenant must give security against breach of this Agreement to the Landlord or the Landlord's agent on or before the date of signing this Agreement by:-
  - 4.2.1. depositing with the Landlord the amount set out in Item 8; or
  - 4.2.2. giving an unconditional banker's order or bank guarantee drawn to the Landlord for the amount set out in Item 8;

either of which will be called the 'Security Deposit'.

- 4.3. The security amount must not exceed four weeks rent. If the Landlord suffers loss or damage because of any breach of the Agreement by the Tenant the Landlord can draw on the security deposit to remedy the breach, after giving the Tenant 7 days' written notice.

- 4.4. If the landlord does draw on the security deposit the Tenant must add to the security amount within 14 days of the Landlord's written request to return it back to the required level.
- 4.5. The Landlord must pay any Security Deposit received to the Commissioner within seven days of the date of receiving it from Tenant (or if we are a registered agent, within 28 days of the date we receive it from you).
- 4.6. Within 7 days of receiving a Security Deposit the Landlord will give the Tenant a receipt stating: the date payment was received, the name of the person from whom the payment was received, the amount paid, and the address of the premises to which the payment relates.
- 4.7. If rent rises in accordance with this Agreement and the security amount is less than 4 weeks rent at the new figure, the tenant must top up the Security Deposit so that it is equal to 4 weeks rent at the new figure. In this case, the landlord must give the Tenant at least 60 days written notice requiring the Tenant to pay an increase in the security amount.
- 4.8. As soon as practicable after this Agreement has ended and the Tenant has vacated the premises and performed all of its obligations under this Agreement, the landlord must refund the unused part of the Security Deposit. If this Agreement is assigned the landlord must transfer any Security Deposit held under this Agreement to the assignee.

## **5. RENT**

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

## **6. TERM**

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

## **7. OPTION TO RENEW**

- 7.1. Subject to the Tenant's compliance with all of the terms and conditions of this Agreement, the Landlord offers the Tenant a renewal for the Further term or terms stated at Item 10.

- 7.2. In the event that the Tenant does not exercise their option to renew this Agreement in accordance with this provision, the Tenant agrees, at all times, to be bound by all of the remaining terms and conditions of this Agreement.
- 7.3. Where the Tenant intends to renew this Agreement under any option or additional term offered by the Landlord or this Agreement, the Tenant must give the Landlord notice in writing prior to the end of the current term. The earliest date for exercising the option is the date stated in Item 10A. The latest date for exercising the option is stated in Item 10B.
- 7.4. Provided that the Tenant has paid all Rent punctually and complied with all of the terms and conditions contained within this Agreement until the Agreement expiration date, the Landlord will grant to the Tenant a Further term.
- 7.5. The starting Rent for each Further term will be an amount as agreed between the Landlord and the Tenant, and failing such agreement 3 months before the current term expires, shall be the market rent for the Premises as determined by an independent qualified valuer. The costs of such rental determination shall be borne in equal shares by the parties unless otherwise agreed.
- 7.6. The renewed Agreement:-
- (a) starts on the date after this Agreement ends;
  - (b) contains the same terms as this Agreement but with no option for renewal after the last option for a Further term stated in Item 10 has been exercised.
- 7.7. If you are a corporation and you have provided directors' guarantees for this Agreement, then you must provide guarantees of your obligations under the renewed Agreement by your directors in the terms of clause 35.

## **8. RENT REVIEW**

### **8.1. Application**

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

### **8.2. Review**

8.2.1. The Rent can be reviewed by the Landlord on each Review Date to an amount represented by A where:

- B

$$A = \frac{\text{-----}}{C} \times D$$

Where B = *The All Groups Adelaide CPI for the quarter ending immediately before the review date;*

Where C = *The All Groups Adelaide CPI for the quarter 1 year before the quarter in B;  
and*

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

## **9. VACANT POSSESSION**

9.1. The Landlord agrees:-

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

## **10. COPY OF AGREEMENT**

10.1. The Landlord agrees to give the Tenant a copy of this Agreement duly signed by both parties as soon as practicable.



## 11. LOCKS AND SECURITY DEVICES

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

## 12. TAX INVOICES & RECEIPTS

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

## 13. CONTINUATION

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

## 14. OUTGOINGS

14.1. The Tenant agrees to pay to the Landlord the **Tenant's Proportion** of any **Outgoings** after notification by the Landlord, and to pay the amount within 14 days of production to the Tenant of a copy of the Landlord's assessment notice or account.

14.2. The Landlord may notify the Tenant that it is required to pay the proportion of any particular rate, tax or other outgoing after the Landlord has been notified by the relevant body that it is due for payment. The Tenant is to pay its proportion whether or not the rate, tax or outgoing is payable by the Landlord immediately or at some time in the future and whether or not the Landlord has paid it.

14.3. If the period for which any particular rate, tax or other outgoing is payable does not coincide with the lease year, the amount the Tenant must pay will be adjusted proportionally.

## 15. UTILITIES

15.1. The Tenant agrees:-

15.1.1. to be responsible for all charges associated with the consumption of services supplied to the Premises including; electricity, telephone, gas, internet and including any deposits that may be payable thereon; and

15.1.2. to pay for the connection of all services that will be supplied in his or her name.

## **16. APPROVALS AND USE**

16.1. The Tenant agrees:-

16.1.1. to comply with and obtain all approvals, licenses and consents required by and from the proper authorities to carry on the proposed business. The Tenant also agrees to bear all costs incurred in obtaining such approvals consistent with the specified use;

16.1.2. not to cause or allow the Premises to be used for any illegal purpose;

16.1.3. not to use the Premises as a place of residence; and

16.1.4. unless otherwise agreed to in writing by the Landlord, the Landlord is not under any duty or obligation to assist the Tenant in his or her obtaining any approvals, licenses and consents required to carry on the proposed business on the Premises.

## **17. PROHIBITED USES**

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

## **18. TENANTS CARE AND USE OF THE PREMISES**

18.1. The Tenant agrees:-

18.1.1. to keep the Premises reasonably clean;

18.1.2. to notify the Landlord as soon as practicable, orally or in writing, of any damage to the Premises or the need for any repairs or maintenance, other than repair or maintenance of a negligible kind;

18.1.3. not to intentionally or negligently cause or permit any damage to the Premises, any part of the Premises or common property;

18.1.4. where the Tenant causes damage to the Premises, the Tenant shall notify the Landlord, at whose option the Tenant will repair or compensate the Landlord for any reasonable expense incurred by the Landlord in repairing the damage;

- 18.1.5. that, when this Agreement expires, the Tenant shall leave the Premises in substantially the same state of cleanliness and state of repair (fair wear and tear excepted), as the Premises were in on the date the Tenant took occupancy of the Premises;
- 18.1.6. not to put anything harmful down any sink, toilet or drain or do anything likely to cause a blockage or damage to the plumbing. The Tenant further agrees to pay the cost of repairs for any damage or blockage caused by the Tenant in this regard;
- 18.1.7. not to allow trade refuse or garbage to accumulate around the Premises and ensure such refuse is removed from the Premises regularly;
- 18.1.8. to do nothing that is likely to prejudice, render void or increase premiums payable under any policy of insurance held by the Landlord in relation to the Premises;
- 18.1.9. not to use any product on the Premises that would constitute toxic, harmful, pollutant or dangerous materials under any local, state or federal laws; and
- 18.1.10. to comply with the Building Rules contained in Item 12. The Landlord may institute or change the Building Rules from time to time and the Tenant agrees to be bound by a change when the Tenant receives written notice of it. The Landlord must not adopt a Building rule or change the Building Rules in a way that is inconsistent with this Agreement. To the extent that a Building rule is inconsistent with this Agreement, this Agreement prevails.

## **19. RESPONSIBLE FOR THE ACTIONS OF OTHERS**

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

## **20. INSURANCE**

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

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

- 20.1.2. maintain legal/public liability insurance cover for a minimum of TEN (10) MILLION

DOLLARS.

- 20.1.3. obtain plate glass insurance against all risks specified by the Landlord.
- 20.1.4. ensure that all current insurance policies or those required by the Tenant under this Agreement have been approved by the Landlord and are taken out in the joint names of the Landlord and the Tenant for their respective rights and interests.
- 20.1.5. upon request, provide copies and provide certificates annually for each insurance policy confirming the currency of such policies to the Landlord.
- 20.1.6. obtain any additional insurance reasonably requested by the Landlord from time to time to ensure the Premises and its contents are sufficiently insured or which may be required under then applicable law.

## **21. ALTERATIONS AND ADDITIONS**

21.1. The Tenant agrees:-

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

## **22. INDEMNITY**

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

22.1.1. neglect or default by the Tenant or Tenant's employees or any person who the Tenant permits to be on the Premises or for whom the Tenant is legally responsible;

22.1.2. Tenant's failure to give notice of service defects;

22.1.3. damage to person or property caused or contributed to by the Tenant, or Tenant's employees, or any person who the Tenant permits to be on the Premises or for whom the Tenant is legally responsible; or

22.1.4. any liability the Landlord incurs resulting from anything the Tenant is permitted or required to do under this Agreement, unless the claim results from the gross negligence of the Landlord or its employees or contractors.

## **23. RELEASE**

23.1. The Tenant releases the Landlord from all cost, liability, loss or damage suffered directly or indirectly in connection with all claims, demands, losses, damages and expenses including legal actions the Landlord may sustain or become liable for during or after this Agreement arising from:-

23.1.1. neglect or default by the Tenant or Tenant's employees or any person who the Tenant permits to be on the Premises, or for whom the Tenant is legally responsible;

23.1.2. tenant's failure to give notice of service defects;

23.1.3. damage to person or property caused or contributed to by the Tenant, or Tenant's employees, or any person who the Tenant permits to be on the Premises or for whom the Tenant is legally responsible;

23.1.4. any liability the Landlord incurs resulting from anything the Tenant is permitted or required to do under this Agreement, unless the claim results from the gross negligence of the Landlord or its employees or contractors.

## **24. ASSIGNMENT AND SUBLETTING**

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

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

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

## **25. LANDLORD'S ACCESS**

25.1. Both parties agree, unless an emergency situation dictates otherwise in which case the Landlord or Landlord's agent shall have immediate access right, the Tenant shall allow the Landlord or the Landlord's agent unfettered access to the Premises at all reasonable times on reasonable notice to the Tenant:-

- 25.1.1. to inspect and view the state of repair of the Premises and to carry out necessary repairs.
- 25.1.2. to show the Premises to prospective Tenants or purchasers after receiving notice from the Tenant of the Tenant's intention to terminate this Agreement.
- 25.1.3. after receiving notice from the Landlord of the Landlord's intention to sell the Premises (or the property as the case may be), for the purpose of erecting "for sale" signs.
- 25.1.4. for any other reasonable purpose the Landlord deems fit and proper.

## **26. UNEXPECTED EVENTS**

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

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

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

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

## **27. TENANTS RIGHT TO PRIVACY**

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

## **28. COSTS**

28.1. The Landlord agrees to bear all reasonable costs for preparation of this Agreement.

## **29. GST**

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

## **30. STATUTES**

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

## **31. CLEANING**

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

## **32. MITIGATION**

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

### **33. DISPUTE RESOLUTION**

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

### **34. TERMINATION**

34.1. The Lease may be terminated:

34.1.1. by re-entry or by **14 days written notice of termination**, subject to clause 13.4, if:-

- (a) the rent is unpaid for 14 days after becoming due for payment;
- (b) the Tenant does not meet the Tenant's other obligations under this Agreement;
- (c) the Tenant as an individual or corporation suffers, or any guarantor, suffers a material adverse change in financial position including but not limited to a default on any debt to any person valued at more than three months' rent under this Agreement;
- (d) the Tenant is a corporation and without the Landlord's written consent, the person in effective control of the Tenant is not the same person as was in effective control when this Agreement was signed as a result of changes in ownership of or membership of the company or its holding company, or of shares in either of these;  
or

34.2. by written agreement between the Landlord and the Tenant at any time before the expiry of the Lease;

34.3. if any fixed term of the Lease has expired, and the Lease is a periodic lease, then:-

34.3.1. by us giving you 60 days written notice; or

34.3.2. by you giving us 30 days written notice.



- 34.4. Before terminating this Agreement for a breach by the Tenant (including repudiation consisting of the non-payment of rent), the Landlord must first give the Tenant **written notice of the breach** and a period of 14 days in which to remedy it and to pay reasonable compensation for it. A notice given in respect of a breach amounting to repudiation is not an affirmation of the Agreement.
- 34.5. Fourteen (14) days is fixed as the period within which the Tenant must remedy a breach capable of remedy and pay reasonable compensation for the breach.
- 34.6. Breach by the Tenant of any of the Tenant's obligations under clause 3, 4, 5, 7, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25, 28, 29, 30, 31 or 37 of this Agreement (whether positive or negative) is a breach of an essential term of this Agreement and constitutes repudiation. If the Tenant transfers or attempts to transfer this Agreement or the Tenant's rights and obligations under it or sublet the shop without our written consent the Tenant also commits a breach of an essential term of this Agreement and that breach also constitutes repudiation. Other of your obligations under this Agreement may also be essential.
- 34.7. Termination by the Landlord ends this Agreement, but the Landlord retains the right to sue the Tenant for unpaid money or for damages (including damages for the loss of the benefits that the Landlord would have received if this Agreement had not been terminated early) for breaches of the Tenant's obligations under this Agreement.
- 34.8. Even though the Landlord may not exercise the Landlord's rights under this Agreement on one occasion, it may do so on any later occasion.
- 34.9. The Landlord may enter the Premises if he has reasonable grounds to believe the Premises have been abandoned.
- 34.10. The Tenant shall have the right to terminate this Agreement if the Landlord has seriously or repeatedly breached any of its conditions. The Tenant shall give the Landlord fourteen (14) days' notice at the same time indicating the nature of the breach. The Landlord shall have fourteen (14) days to rectify any such breach and if the Landlord fails to rectify such breach within such period, the Tenant shall have the right to terminate this Agreement on the giving of an additional fourteen (14) days' notice of his intention to do so.
- 34.11. Any action by the Landlord or the Tenant in accordance with this clause shall not affect any claim for damages in respect to a breach of a condition of this Agreement.
- 34.12. Upon termination of this Agreement for any cause, the Tenant shall vacate the Premises:-

34.12.1.in substantially the same state of repair and cleanliness, removing all the Tenant's belongings and any other goods brought onto the Premises during the term of this Agreement.

34.12.2.in substantially the same condition as the Premises were in at the commencement of this Agreement, fair wear and tear excepted.

34.12.3.to deliver vacant possession of the Premises in a peaceful and prompt manner, by securely locking the Premises and handing over all keys to the Landlord or the Landlord's agent, including any copies of keys the Tenant made during the period the Tenant occupied the Premises.

### **35. GUARANTORS LIABILITY**

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

### **36. NOTICES**

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

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

### **37. RULES AND REGULATIONS**

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

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

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

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

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

37.6. The Tenant will not conflict with the regulations of any public authority.

37.7. Except as approved in writing by the Landlord, no heavy equipment may be installed on any part of the Premises. Where the Landlord's consent is forthcoming he shall reserve the right to stipulate the location where such heavy equipment must be placed. Should the Building be damaged in anyway during the installation or removal of any heavy articles, all damage shall be repaired at the Tenant's expense.

37.8. In the event of any emergency or other eventuality whereby the toilets or washrooms on any floor are not available for use, the Landlord may temporarily withdraw the right of exclusive use of all or any of the toilets or washroom areas and services not affected to ensure availability of these facilities to all occupants of the Building and no rental adjustment will be made during such temporary arrangements.

37.9. When moving furniture or goods in and out of the Building passenger lift, traffic shall have priority at all times.

37.10. When the Premises are left unoccupied, the Tenant will ensure all doors and windows of the Premises are securely fastened. The Landlord reserves the right to enter the Premises to ensure the security of the Building is not compromised if windows or doors are left unfastened.

## **38. SPECIAL CONDITIONS**

38.1. Special conditions forming part of this Agreement may be inserted here.

Should the Landlord wish to sell the land described in Item 4 of the Schedule during the term of this Lease then the Landlord will provide the Tenant with the first right of refusal. The Tenant will have thirty (30) days to accept the offer presented to them by the Landlord.

Executed as a deed on 15<sup>th</sup> day of March 2020.

**SIGNED SEALED AND DELIVERED** by the Landlord **JONATHAN CHARLES SPENCE**

in the presence of:

.....  
Signature of Witness

.....  
JONATHAN CHARLES SPENCE

**SIGNED SEALED AND DELIVERED** by the Landlord **RODNEY SCOTT DIX** and **CATHERINE JANE DIX**

in the presence of:

.....  
Signature of Witness

.....  
RODNEY SCOTT DIX

.....  
CATHERINE JANE DIX

**EXECUTED BY THE TENANT SPENCE DIX & CO PTY LTD (ACN 134 924 904)** in accordance with Section 127 of the Corporations Act 2001

.....

Director  
Name: RODNEY SCOTT DIX

.....

Director/Secretary  
Name: JONATHAN CHARLES SPENCE