

COMMERCIAL LEASE

NEW SOUTH WALES

(NON LICENSED)

LEASE

Form: 07L
Release: 4-1

Leave this space clear. Affix additional pages to the top left-hand corner.

New South Wales Real Property Act 1900

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) TORRENS TITLE

Property leased

Folio Identifier **The Art of Joinery** being premises known as **Unit 4 105 Mulgrave Road, Mulgrave NSW 2756**

(B) LODGED BY

Document
Collection
Box

Name, Address or DX, Telephone, and Customer
Account Number if any

Reference:

CODE

L

(C) LESSOR

Custodian deed

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) LESSEE

The Art of Joinery Pty Ltd

(F)

TENANCY:

- (G) 1. **TERM: 7 YEARS**
2. **COMMENCING DATE: 1st August 2016**
3. **TERMINATING DATE: 1st August 2023**
4. With an **OPTION TO RENEW** for a period of **5 YEARS** set out in Clause 20 of ANNEXURE "A".
5. With an **OPTION TO PURCHASE** set out in clause N.A. of N.A.
6. Together with and reserving the **RIGHTS** set out in Clause 18.5 of ANNEXURE "A".
7. Incorporates the provisions or additional material set out in **ANNEXURE "A"** hereto.
8. Incorporates the provisions set out in N/A
9. The **RENT** is set out in Clause No. 4 of ANNEXURE "A".

ALL HANDWRITING MUST BE IN BLOCK CAPITALS.

DATE 1/8/16

(H) Certified correct for the purposes of the Real Property Act 1900 by the corporation named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appear(s) below.

Corporation: NFP & CKB Super Fund Pty Ltd
Authority: Nestor Polley & Graham Bridges

Signature of authorised person:



Name of authorised person:
Office held:

Director Nestor Polley

Signature of authorised person



Name of authorised person:
Office held:

Director Graham Bridges

(I) STATUTORY DECLARATION *

I _____ solemnly and sincerely declare that—

- 1. The time for the exercise of option to _____ in expired lease No. _____ has ended; and
- 2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at _____ in the State of New South Wales on _____ in the presence of _____ of,

Justice of the Peace (J.P. Number:) Practising Solicitor Other qualified witness [specify] _____, # who certifies the following matters concerning the making of this statutory declaration by the person who made it:

- 1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
- 2. I have known the person for at least 12 months OR I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was

Signature of witness: _____ Signature of applicant: _____

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. # If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

** s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.
ALL HANDWRITING MUST BE IN BLOCK CAPITALS.

THIS IS THE ANNEXURE A REFERRED TO IN THE LEASE BETWEEN **NFP & GKB Super Pty Ltd** (AS LANDLORD) AND **The Art of Joinery Pty Ltd** (AS TENANT)

EXECUTED ON 1st August 2016

1. Definitions and interpretation

1.1 Definitions

In this Lease unless the context otherwise requires:

- (1) **Air-Conditioning Equipment** means the plant, chilled water piping, electrical installations, duct work and diffusers used to heat, cool, circulate and extract air throughout the Building;
- (2) **Australian Institute** means the Australian Property Institute Inc. (NSW Division);
- (3) **Building** means all improvements erected on the Land including any modifications, extensions or alterations to those improvements and, where appropriate, includes the Land and the Landlord's Fixtures;
- (4) **Claim** includes any claim or legal action;
- (5) **Commencement Date** means the date of commencement of this Lease stated in **Item 4** of the Reference Schedule and on the Form 07L as the commencing date;
- (6) **Cost** means any cost, charge, expenses, outgoing, payment or other expenditure of any nature and, where appropriate, includes reasonable fees and disbursements payable to contractors, consultants and lawyers;
- (7) **Default Rate** means any rate stated in **Item 12** of the Reference Schedule or if no rate is stated then a rate of 2% per annum above the rate of interest which would be charged to the Landlord by the Landlord's bank for borrowing the same amount as that due from the Tenant to the Landlord on unsecured overdraft as certified by the Landlords bank manager from time to time;
- (8) **Form 07L** means the land and Property Information NSW Form 07L to which this Annexure A is annexed;
- (9) **GST** has the same meaning as Goods and Services Tax as defined by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or similar or replacement tax applicable.
- (10) **Guarantor** means the person (if any) named in **Item 15** of the Reference Schedule;
- (11) **Land** means the Land stated in Item (A) of the Form 07L and extends to and includes any other land which is acquired and used by the Landlord in conjunction with the Building;

- (12) **Landlord** means the person named in **Item 1** of the Reference Schedule and includes:
- (a) In the case of a company; its successors and assigns; and
 - (b) In the case of an individual, his or her executors, administrators and assigns;
- (13) **Landlord's Fixtures** includes:
- (a) the Landlord's plant, equipment, fittings, fixtures, partitions, furniture, furnishings, window coverings, blinds, floor coverings and light fitting in any part of the Premises;
 - (b) stopcocks, fire hoses, hydrants, fire prevention aids and other fire fighting equipment located in the Premises or servicing the Premises; and
 - (c) drains, basins, sinks, showers, toilets and urinals in the Building;
- (14) **Law** includes the provisions of any statute, rule, regulation, proclamation ordinance or by-law present or future, whether state, federal or otherwise;
- (15) **Lease** means and includes this Annexure A, the form 07L, Schedule 1, Schedule 2 and any other annexures and exhibits to this Lease;
- (16) **Maintain** in respect of the Equipment, includes maintaining, cleaning, upgrading, renewing, replacing (either in whole or part) adding to or removing such equipment;
- (17) **Managing Agent** means any agent appointed by the Landlord to manage the Building;
- (18) **Market Review Date** means the date(s) referred to in **Item 8** of the Reference Schedule (if applicable);
- (19) **Outgoings** has the meaning ascribed to it in clause 5.3;
- (20) **Permitted Use** means the use referred to in clause 7.1 and as stated in **Item 10** of the Reference Schedule;
- (21) **Premises** means the whole of the Land and the Building more particularly described in **Item 3** of the Reference Schedule and includes the Landlord's fixtures;
- (22) **Reference Schedule** means the Reference Schedule to this Lease;
- (23) **Rent** means the amount stated in **Item 7** of the Reference Schedule as varied
Rent Commencement Date means the date (if any) stated in **Item 7** of the Reference Schedule;
- (24) **Requirement** means any requirement, notice, order or direction received from or given by any statutory, public or other competent authority, present or future;
- (25) **Rules** means the rules and regulations made by the Landlord in respect of the Building and the Land as set out in Schedule 1 as amended from time to time;
- (26) **Services** means all gas, electricity, telephone, water, sewerage, fire prevention, ventilation, air conditioning, hydraulic, elevator and security services, toilet and

washroom facilities, fire services, fire sprinkler systems, gardening, caretaking, landscaping, signage, pest control, compactor or other units for garbage, air conditioning heating or ventilation services, public address systems and plant room and all other services or systems provided in the Building or the Land or available for the Tenant's use;

- (27) **Tenant** means the person named in **Item 2** of the Reference Schedule and includes:
- (a) in the case of a company, its successors and permitted assigns; and
 - (b) in the case of an individual, his or her executors, administrators and permitted assigns;
- (28) **Tenant's Employees** means each of the Tenant's officers, employees, contractors, agents, customers, clients, visitors, subtenants, licensees or others who may be in the Premises, in the Building or on the Land;
- (29) **Tenant's Fittings** includes all fixtures, fittings, furniture, plant, equipment, partitions or other articles and chattels which are in the Premises and are not owned by the Landlord;
- (30) **Tenants Proportion of Outgoing** means the percentage (if any) stated in **Item 9** of the Reference Schedule;
- (31) **Term** means the term of this Lease stated in **Item 6** of the Reference Schedule;
- (32) **Termination Date** means the date of termination of this Lease stated in **Item 5** of the Reference Schedule and on the Form 07L as the termination date; and
- (33) **Valuer** means a person who is:
- (a) a fellow or an associate, of not less than 5 years standing, of the Australian Institute and active in the relevant market at the time of his appointment; and
 - (b) has at least 3 years' experience in valuing the kind of premises lease by this Lease.

1.2 Construction

Reference to:

- (1) A person includes:
- (a) a corporation and government body; and
 - (b) the legal representative, successors and assigns of that person;
- (2) month or monthly means calendar month or calendar monthly; and
- (3) a right includes a remedy, authority of power.

1.3 Plurals and genders

A word importing:

- (1) The singular includes the plural and the plural includes the singular; and
- (2) Any gender includes each other gender.

1.4 Parties bound jointly and separately

If 2 or more persons are named as Tenant or Guarantor, any covenant or agreement made by or on behalf of the Tenant or the Guarantor binds them jointly and individually.

1.5 Statutes and regulations

References to statutes, regulations, ordinances or by-laws include all statutes, regulations, ordinances or by-laws amending, consolidating or replacing them.

1.6 Covenants

Every obligation undertaken by a party to this Lease is deemed to be and shall be construed as a covenant by that person.

1.7 Severability

- (1) As far as possible all provisions of this Lease must be construed so as not to be invalid, illegal or unenforceable in any respect.
- (2) If any provision on its true interpretation is illegal, invalid or unenforceable, that provision must, as far as possible, be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable and so as to give it a valid operation of a partial character.
- (3) If any provision or part of it cannot be read down, that provision or part is deemed to be void and severable and the remaining provisions of this Lease are not affected or impaired.

1.8 Whole agreement

- (1) The terms contained in this Lease comprise of the whole agreement between the Landlord and the Tenant.
- (2) No further terms will be implied or arise between the Landlord and the Tenant under any collateral or other agreement made on or prior to execution of this Lease.

1.9 Headings

- (1) Headings and any table of contents to this Lease have been inserted for guidance only and do not affect the constructions of this Lease.
- (2) References to clauses, schedules and annexures must be construed as references to clauses of and schedules and annexures to this Lease.

1.10 Organisations

- (1) If any organisation has ceased to exist, reference to that organisation is deemed to be reference to an organisation having substantially the same objects as the original organisation.
- (2) Reference to the president of an organisation must, in the absence of a president, be read as reference to the senior officer for the time being of the organisation or any other person fulfilling the duties of the president.

1.11 Areas and measurement

- (1) Unless the context otherwise requires, where any area of the Premises or the Building is to be calculated or measured for the purposes of this Lease, those

calculations and measurements must be in accordance with the Method of Measurement.

(2) In this clause 1.11 **Method of Measurement** means:

- (a) the relevant method for the measurement of buildings of the same type as the Building utilised by the Property Council of Australia Limited at the time of calculation or measurement; or
- (b) if there is no relevant method, the method or criteria which the Landlord, acting reasonably, selects as the most appropriate.

1.12 Landlord's consent

Unless otherwise stated, if the Landlord's consent or approval is required it:

- (1) may be granted or withheld at the Landlord's discretion; and
- (2) is not effective unless in writing.

1.13 Written notices

If a provision of this Lease requires a notice to be given to a party, it must be in writing unless the provision states that it may be given orally.

1.14 Lease to operate as a deed

This Lease will operate as a deed on execution by the Landlord and the Tenant.

2. Exclusion of statutory provisions

2.1 Statutory provisions excluded

To the extent permitted by law:

- (1) the covenants, powers and provisions (if any) implied in the leases by virtue of any law are negated; and
- (2) the application to this Lease of any Law having the effect of extending the Term, reducing or postponing the payment of Rent or otherwise affecting the operation of any of the covenants, terms and conditions of this Lease is exclusive and negated.

3. Term and holding over

3.1 Term

The Landlord leases to the Tenant and the Tenant take a lease of the Premises for the Term commencing on the Commencement Date and terminating on the Termination Date subject to the provision of this Lease.

3.2 Holding over

If the Tenant continues to occupy the Premises beyond the Termination Date with the Landlord's consent except under a lease arising from the valid exercise of an option to renew the following provisions apply:

(1) Monthly tenancy

The tenant occupies the Premises as a monthly tenant a total rent payable monthly in advance being an amount equal to one-twelfth of the aggregate of the Rent and any other money payable by the Tenant to the Landlord under this

Lease as the Termination Date, the first of the monthly payments to be made on the day following the Termination Date.

(2) Provisions of Lease to apply

As far as applicable, the monthly tenancy otherwise continues on the terms and conditions of this Lease.

(3) Rent review

The Rent or any part of it for the monthly tenancy may be reviewed whenever the Landlord determines it appropriate and any provisions in this Lease relating to calculation of, limitation on or right of review of the Rent or any part of it will not apply.

(4) Termination

- (a) The monthly tenancy is terminable at the time by either the Landlord or the Tenant giving the other one (1) months' notice expiring on any date.
- (b) If the Tenant defaults in the performance of its obligations under the monthly tenancy, the Landlord may terminate the monthly tenancy by giving the Tenant 24 hours' notice.

4. Rent and Rent review

4.1 Rent

- (1) The Tenant must pay the Rent to the Landlord without demand, deduction or right of set-off at the rate stated in **Item 7** of the Reference Schedule by equal monthly instalments in advance on the first day of each month.
- (2) If necessary, the first and last instalments must be apportioned on a daily basis.
- (3) The first instalment must be paid on the Commencement Date.
- (4) All instalments must be paid as the Landlord directs.
- (5) Notwithstanding clause 4.1 (1), where the Rent Commencement Date is stated in **Item 7** of the Reference Schedule, the parties agree that the Tenant has a rent free period calculated from the Commencement Date to the Rent Commencement Date. Accordingly the first instalment of Rent payable under this Lease is due on the Rent Commencement Date. The Tenant must however, pay to the Landlord, on the date of execution of this Lease by the Tenant, by cash or bank cheque the first instalment of Rent. Such amount is to be banked by the Landlord and a receipt issued to the Tenant for the amount being the first instalment of Rent for the month commencing on the Rent Commencement Date.

4.2 Definitions

In this clause 4:

- (1) **Index Number** means the Consumer Price Index (All Groups) for Sydney published from time to time by the Australian Statistician; If the Australian Statistician updates the reference base of the Index Number, the Index Number will

be appropriately adjusted so as to preserve the intended continuity of calculation by using the appropriate arithmetical factor determined by the Australian Statistician;

- (2) **Index Review Date** means each of the dates (if any) stated in **Item 8(a)** of the Reference Schedule;
- (3) **Market Review Date** means each of the dates (if any) stated in **Item 8(b)** of the Reference Schedule;
- (4) **Quarter** means a 3 month period;
- (5) **Review Date** means an Index Review Date or a Market Review Date as the context requires.

4.3 Rent review: Consumer Price Index

If **Item 8(a)** of the Reference Schedule has been completed by inserting Index Review Dates, the following provisions will apply to the review of Rent.

(1) Review

The Rent will be reviewed on each Index Review Date to an amount represented by A in the following formula:

$$A = \begin{array}{l} \text{the greater of:} \\ \frac{B \times D}{C} \\ \text{and} \\ 103.5\% \times D \end{array}$$

Where

- B = the Index Number released for the Quarter ending immediately prior to the relevant Index Review Date;
- C = the Index Number released for the Quarter ending immediately prior to the later of the Commencement Date or the date that the Rent was last reviewed; and
- D = the Rent payable immediately prior to the Index Review Date.

(2) Suspension of Consumer Price Index etc.

- (a) If the Consumer Price Index (All Groups) for Sydney is suspended or discontinued, the words Index Number will mean the price index substituted by the Australian Statistician.
- (b) If no price index is substituted, the words Index Number will mean an Index which the parties agree most closely reflects changes in the cost of living.
- (c) If the parties cannot agree on a substitute index, the President of the Australian Institute, at the request of either party, may appoint an expert to

determine a substitute index which most closely reflects changes in the cost of living and the words "Index Number" will mean that Index.

(3) Alternative method of review

If the Consumer Price Index (All Groups) for Sydney is suspended or discontinued and the expert appointed under clause 4.3(2) is unable to determine a substitute index within 40 days of being appointed, the method of adjustment of Rent in relation to an Index Number will cease and the Rent will be increased by 3.5% per annum on each Index Review Date.

4.4 Market Rent Review

If **Item 8(b)** of the Reference Schedule has been completed by inserting Market Review Dates, the Rent will be reviewed on each Market Review Date to an amount determined in accordance with the following procedure:

(1) Landlord's notice

The Landlord may vary Rent to an amount which it considers to be the market rent for the Premises by notice to the Tenant (Landlord's Notice) at any time within 3 months before or after a Market Review Date.

(2) Tenants Notice

- (a) Within 21 days after service of the Landlord's Notice, the tenant may serve on the Landlord a notice (Tenant's Notice) disputing the amount stated in the Landlord's Notice, stating the amount which the Tenant considers to be the market rent for the Premises and requiring the market rent to be determined under clauses 4.3(3) to 4.4(8).
- (b) If the Tenant fails to give the Tenant's Notice within 21 days, the Rent payable until the next review date will be the amount set out in the Landlord's Notice.

(3) Negotiations

Within 14 days of service of the Tenant's Notice, the Landlord and the Tenant or their representatives will meet and attempt to resolve their dispute as to the market rent payable for the Premises at the Market Review Date.

(4) Valuer to settle if dispute

- (a) If the Landlord and the Tenant have not agreed on the market rent for the Premises within 21 days after service of the Tenant's Notice, the dispute must be referred for determination by a Valuer to be nominated by the president of the Australian Institute at the request of either the Landlord or the Tenant.
- (b) The appointed Valuer will make a determination of the market rent as at the particular Market Review Date acting as an expert and not as an arbitrator.

- (c) The Valuer must make a written determination containing reasons within 60 days of his appointment.
- (d) The Valuer's determination will be final and binding on the Landlord and the Tenant.
- (e) The Valuer's costs must be paid by the Landlord and the Tenant equally. Either party may pay the Valuer's Costs and recover one half of the amount from the other party.

(5) Valuer to give notice of acceptance of appointment

A Valuer is not to act as an expert under this clause 4.4 until he or she has been given notice of acceptance of his or her appointment to the Landlord and the Tenant.

(6) Landlord's and Tenant's submissions

- (a) A Valuer who accepts appointment under this clause 4.4 may confer with the Landlord or the Tenant and may require either party to supply information which the Valuer considers relevant to the determination.
- (b) Any request for information must be complied with promptly in writing by the party to whom it is directed, who will make a copy of that information available to the other party.
- (c) Either party may supply the Valuer with other information which is considers relevant and, if it does so, must make a copy of that information available to the other party.
- (d) Information may be provided on a confidential basis and, if so, the party receiving it and the Valuer must treat the information as confidential and must not use the information other than for the purposes of this clause 4.4.

(7) Written submissions

- (a) The Landlord and the Tenant may make written submissions to the Valuer in relation to the market rent within 30 days after receipt of written notice of the Valuer's acceptance of his appointment. A party making a written submission must at the same time make a copy of it available to the other party.
- (b) The Valuer must not determine the market rent until the expiration of that period of 30 days.

(8) Valuer's criteria

- (a) In determining the market rent as at a Market Review Date, the Valuer may take into account any matters he or she considers relevant including taking into account or disregarding any written submissions received from the Landlord or the Tenant but, in making his or her determination the Valuer must:

- (i) disregard:
 - (A) any goodwill attributable to the Premises by reason of trade, business or activity carried on by the Tenant and the value of the Tenant's fittings;
 - (B) any state of disrepair of the Premises if that condition results from any work carried out or not carried out on the Premises by the Tenant or from the Tenant's breach of any provision of this Lease;
 - (C) any money received under any sublease, subtenancy agreement or occupations arrangement in respect of the Premises which has not been approved by the Landlord;
 - (D) any inducement provided or to be provided to the Tenant in connection with the granting of this Lease;
 - (E) any inducement then being provided or to be provided to any other tenant in relation to the taking of a lease of any other premises; and
 - (F) anything (including part of a submission received from the Landlord or the Tenant) which is not consistent with the matters to be disregarded or taken into account under clause 4.4(8); and
- (ii) take into account the following matters or, where the context requires, make the following assumptions:
 - (A) the provisions of this Lease;
 - (B) the Term and any option for renewal (disregarding the elapsed part of the Term);
 - (C) the rent and outgoings paid or payable in respect of other premises of a quality, nature, size and location similar to the Premises;
 - (D) the use permitted by the relevant Laws and the provisions of this Lease;
 - (E) assume that the Tenant has observed and performed all of the provisions of this Lease; and
 - (F) assume that it is the Landlord's and Tenant's express requirement that no reduction or adjustment will be made to the market rent on account of any inducement provided or to be provided to the Tenant to secure it as a tenant of the Premises or to any other tenant in relation to the taking of a lease of any other premises whether or not those premises are comparable with the Premises.
- (b) The term inducement means any inducement or incentive provided by the Landlord in respect of the Tenant's entry into this Lease and includes any payment, transfer of property, fit-out of premises or

provisions of services, assumption of obligation, rent moratorium or reduction, loan or gift.

4.5 Payment of Rent pending review

Until the determination of rent has been made:

- (1) the tenant must continue to pay Rent at the same rate as immediately before the Review Date;
- (2) any variation in Rent as the result of review under clauses 4.3 or 4.4 takes effect on the Review Date; and
- (3) within 14 days after the determination, the Landlord must refund any overpaid Rent or the Tenant must pay any shortfall.

4.6 Minimum rent

Intentionally Omitted.

5. Outgoings

5.1 Clause applies

This clause 5 applies if a percentage or proportion is stated in **Item 9** of the Reference Schedule.

5.2 Tenant to pay outgoing

In addition to the Rent the Tenant must pay or reimburse to the Landlord in respect of each year ending 30 June or part of a year, the Tenant's Proportion of Outgoing.

5.3 Definition

Outgoing means the total sum of all Costs and expenses of the Landlord assessed or assessable or paid or payable in respect of the Building or the Land in relation to the control, management and maintenance of the Building or the Land and includes but is not limited to:

- (1) charges including council rates and water rates, which include any water and sewerage usage charges (excluding income tax but including land tax calculated on a single holding basis or taxes and GST in the nature of a tax on land or improvements at the rate payable by the Landlord) at any time or from time to time payable in respect of the Building and/or Land or the ownership or occupation of them;
- (2) the cost of all services supplies to the Land and/or the Building including but not limited to charges for electricity, gas, water, usage, oil, telephone, the reticulation or discharge of water or sewerage or drainage and cleaning servicing and lighting the Land or the Building;
- (3) all amounts payable (including statutory charges) In respect of insurance for:
 - (a) public and products liability for the amount of \$20 million or such other amount the Landlord may from time to time require;
 - (b) plate glass insurance;

- (4) all costs for or in connection with the maintenance, operation and upkeep of the Land or the Building excluding the cost of any structural renovation save where the necessity for such renovation is the negligent or wilful act or omission of the Lessee its servant or agents and the cost of any work the payment for which is the responsibility of a particular tenant or occupier of the Building;
- (5) all reasonable costs of purchasing, hiring, maintaining and servicing all outdoor gardens, lawns, potted shrubs and planted and landscaped areas on the Land;
- (6) any reasonable costs properly incurred in the management, operation and maintenance of the Premises; and
- (7) the reasonable cost of providing, certifying, operating, supplying and repairing all Services or amenities from time to time provided by the Landlord for tenants and occupiers of the Building including any plant and equipment for any such Services.

5.4 Statement of Outgoings

As soon as practicable in each year during the Term or during any period in which the Tenant is holding over, after 30 June in each year, the Landlord will furnish to the Tenant a statement giving reasonable details of the Outgoings recoverable by the Landlord under this clause 5 (but excluding any amount to be paid directly by the Tenant under clause 7.19) (Statement). Except in the case of manifest error notified by either party to the other within 14 days of the service of the Statement on the Tenant, the Statement shall be conclusive evidence of the matters contained in the Statement.

5.5 Payment of Outgoing

Within 14 days of receipt by the Tenant from the Landlord of the Statement, the Tenant shall pay the Tenant's Proportion of Outgoings to the Landlord. It is hereby agreed and declared:

- (1) That the subject to clause 5.5(2), the liability of the Tenant to pay the Tenant's Proportion of the Outgoings shall not be determined or otherwise prejudiced by the prior expiry of the Term or other determination of the Lease;
- (2) That if the Term of the Lease expires or if the Lease is otherwise determined before 30 June in any year, or if at such date less than 1 year of the Term of the Lease has expired then the Outgoings shall be deemed to accrue from day to day and the Tenant's Proportion of Outgoings shall be calculated accordingly.

5.6 Estimate of Outgoings

- (1) Despite clause 5.4, the Landlord may from the time to time notify the Tenant of the Landlord's reasonable estimate of the Tenant's Proportion of the Outgoings for any period not exceeding 1 year in advance of the estimate.

- (2) The Tenant must then immediately pay to the Landlord during such period such estimated proportion by equal monthly instalments in advance on the days fixed for payment of Rent in this Lease.
- (3) Upon computation of the Outgoings at the end of the then current year as previously indicated any necessary adjustment between the estimated and actual Tenant's Proportion of Outgoings shall be made, and any refund to or further payment by the Tenant shall be allowed or made by or to the Landlord accordingly.

6. Damage and destructions

6.1 Definitions

- (1) **Reinstatement Notice** means a notice given by the Landlord to the Tenant of the Landlord's intention to carry out the Reinstatement Works; and
- (2) **Reinstatement Works** means the work necessary to:
 - (a) reinstate the Premises; or
 - (b) make the Premises fit for occupation and use or accessible by the Tenant.

6.2 Abatement

- (1) If in the Landlord's opinion, or in the written opinion of a statutory authority, the Building or the Premises are damaged or destroyed so as to render any part of the Premises wholly or substantially:
 - (a) unfit for occupation and use by the Tenant; or
 - (b) inaccessible having regard to the nature and location of the Premises and the normal means of access to them;then from the date that the Landlord notifies the Tenant of the damage or destructions (Damage Notice):
 - (c) the Rent;
 - (d) any other money payable by the Tenant; and
 - (e) the covenant to repair and maintain;will abate according to the nature and extent of the damage or destructions sustained.
- (2) If clause 6.2(1) applies, the remedies for:
 - (a) recovery of the Rent and any other money or proportionate part falling due after the damage or destruction; or
 - (b) enforcement of the covenant to repair and maintain;will be suspended (or partially suspended as the circumstances require) from the date of the Damage Notice until the Premises are:
 - (c) restored;
 - (d) made fit for the Tenant's occupation and use; or
 - (e) made accessible.

6.3 Either party may terminate

Where the Building or Premises are damaged or destroyed as set out in clause 6.2(1) either party may terminate this Lease by notice to the other unless the Landlord within 3 months after serving the Damage Notice, gives the Tenant a Reinstatement Notice

6.4 Tenant may terminate

- (1) if the Landlord gives a Reinstatement Notice to the Tenant and the Landlord fails to commence the Reinstatement Works within a reasonable time, the Tenant may give the Landlord notice of the Tenant's intention to terminate this Lease (**Termination Notice**).
- (2) If the Landlord does not complete the Reinstatement Works within a reasonable time after receipt of the Termination notice, the Tenant may terminate this Lease by giving not less than 1 months' notice to the Landlord and, at the expiration of that period, this Lease will terminate.

6.5 Exceptions

Clauses 6.2, 6.3 and 6.4 will not apply where;

- (1) the damage or destruction was caused by or contributed to, or arises from any wilful act of the Tenant or the Tenant's Employees; or
- (2) an insurer under any policy effected by the Landlord under this Lease refuses indemnity or reduces the sum payable under the policy because of any act or default of the Tenant or the Tenant's Employees.

6.6 Landlord may terminate

If the Landlord considers the damage to the Premises renders it impractical or undesirable to carry out the Reinstatement Works, the Landlord may terminate this Lease by giving the Tenant not less than 1 months' notice ending on any day of the month and, at the expiration of that notice, this Lease will terminate.

6.7 Antecedent rights

No liability will attach to either part because of termination of this Lease under clause 6.4 but that termination will be without prejudice to the rights of either party for an antecedent breach or non-observance of any provision of this Lease.

6.8 Dispute resolution

- (1) Any dispute under this clause 6 will be determined by a member of the Australian Institute appointed by the president of the Australia institute at the request of either the Landlord or the Tenant.
- (2) In making his or her determination, the appointed member will act as an expert and not as an arbitrator and his or her determination will be final and binding on both parties.
- (3) The cost of the determination must be paid by both parties equally unless otherwise decided by the member.

6.9 Landlord not obliged to reinstate

- (1) Nothing in this Lease obliges the Landlord to reinstate the Building or the Premises or the means of access to them.
- (2) When reinstating the Building or the Premises, the Landlord is entitled to make such changes to their design, fabric, character or dimensions as are necessary due to any law requirement.

6.10 Proceeds of insurance

If the Premises are damaged or destroyed and the Lease is terminated under this clause 6, the Tenant will have no interest in the insurance proceeds.

7. Use of the Premises

7.1 Permitted Use

The Tenant must not use, occupy or permit the Premises to be used or occupied for any purpose other than as stated in **Item 10** of the Reference Schedule.

7.2 Restrictions on use

The Tenant must:

- (1) conduct the Tenants business in the Premises as permitted under this Lease;
- (2) not use the Premises as a residence;
- (3) not keep any animals or birds in the Premises however the Tenant may during the Term engage a security firm to walk security dogs through the Premises;
- (4) at its cost, keep the Premises free and clean of pests, insects and vermin and in default the Landlord will be entitled to employ pest exterminators to carry out any pest extermination at the Tenant's cost;
- (5) not carry on or permit any noxious or offensive act, trade, business, occupation or calling to be carried on in the Premises;
- (6) not cause any annoyance, nuisance, grievance, damage or disturbance to other Tenant's or occupiers of the Building or adjacent Premises;
- (7) not hold or permit any bankrupt, auction or fire sale to be held on the Premises;
- (8) not make any disturbing or irritating noises or install or use any appliance, engine or machine which causes or may be likely to cause noise or vibration in the Building provided that this sub clause shall not limit the Tenant's right to quiet enjoyment of the use of the Premises in accordance with this Lease; and not prepare or cook food except in areas provided and approved by the Landlord for that purpose.

7.3 No warranty as to use

- (1) The Landlord gives no warranty as to the suitability of the Premises for any purpose or the use to which the Premises may be put.
- (2) The Tenant acknowledges and agrees that the Landlord and its servants and agents have not in any way warranted or represented that the Premises are or will remain suitable adequate for any purposes of the Tenant and the Tenant

will be deemed to have satisfied itself in that regard prior to entering into this Lease.

- (3) To the fullest extent permitted by Law all warranties and all representations howsoever made as to suitability and as to adequacy otherwise applicable to the Lease or the Premises are expressly negated.
- (4) The Tenant:
 - (a) is deemed to have accepted this Lease with full knowledge of and subject to any prohibitions or restrictions on the use of the Premises under any Law or Requirement;
 - (b) at its cost, and prior to entering into this Lease must obtain and comply with all the Laws and Requirements and obtain and comply with the consents or approvals of any authority which may be necessary or appropriate for the Tenant's business (including, without limitation, development approval from the local council for the Tenant to occupy and use the Premises for the Permitted Use). During the Term the Tenant must at its cost, maintain and comply with the requirements of any such consent or approval of any such authority;
 - (c) must not by any act or omission cause or permit any consent to approval referred to in clause 7.3(4)(b) to lapse or be revoked; and
 - (d) must provide a copy of any consent or approval to the Landlord prior to occupation of the Premises.

7.4 Compliance with Laws and Requirements

- (1) At its cost, the Tenant must comply with and observe any Law or Requirement concerning:
 - (a) the Premises or any of the Tenant's Fittings; and
 - (b) the use or occupation of the Premises including any which arise as a result of the sex, number, health or safety of persons in the Premises;whether or not the Law or Requirement is addressed to, or required to be complied with by either the Landlord or the Tenant or both or by any other person.
- (2) If any Law or Requirement is notified to or served upon the Tenant, it must promptly provide a complete copy to the Landlord.
- (3) If it is lawful to do so, before complying with any Law or Requirement under clause 7.4(1), the Tenant must obtain the Landlord's consent.

7.5 Landlord's right if Tenant fails to comply

The Landlord may:

- (1) without prejudice to any of its other rights in respect of non-compliance, elect to comply (wholly or partially) with and Law or Requirement under clause 7.4 at the Tenant's cost; and

- (2) if it exercises any rights under clauses 7.5(1), elect to have the balance of any Law or Requirement complied with by the Tenant.

7.6 Structural Alterations

- (1) The Tenant will not be required under clauses 7.3, 7.4 and 7.5 to effect or pay for structural alterations or additions except those caused by, contributed to or arising from:
 - (a) the nature of the business;
 - (b) the number or sex of the persons comprising the Tenant or the Tenant's Employees; or
 - (c) any deliberate or negligent act or omission by the Tenant or the Tenant's Employees.
- (2) Subject to clause 7.6(1), upon demand the Tenant must pay to the Landlord all reasonable Costs incurred by the Landlord in complying with any Law or Requirement under clauses 7.3, 7.4 and 7.5.

7.7 Exterior signs

- (1) The Tenant must not erect, paint, write or attach any sign upon any part of the Premises, the Building or the Land without the Landlord's prior consent which must not be unreasonably withheld or delayed.
- (2) Any sign erected, painted, written or attached upon any part of the Premises, the Building or the Land without the Landlord's prior consent may be taken away by the Landlord without notice and at the Tenant's cost.
- (3) If any sign is erected, painted written or attached upon any part of the Premises, the Building or the Land on termination it must be removed and taken away by the Tenant and the Premises, the Building or the Land returned to their original condition at the Tenant's cost.

7.8 Overloading

- (1) The Landlord may prescribe the maximum weight and position of any heavy article in the Premises and the safe floor loading of the Premises.
- (2) Damage to any part of the Land, the Building or the Premises caused by movement or placement of any heavy article will be repaired by the Tenant or, if the Landlord elects, the Landlord at the Tenant's cost.
- (3) Within seven (7) days after the Landlord notifying the Tenant of the amount expended by the Landlord, the Tenant will pay that sum to the Landlord.
- (4) The Tenant must not install any equipment in the Premises that may overload any Services.
- (5) If the Landlord upgrades the Services to accommodate any equipment which the Tenant wishes to install, the Tenant will pay to the Landlord the Costs of any alterations.

- (6) The Landlord may require the Tenant to pay the estimated Costs of the alteration to the Landlord before the alterations are commenced.

7.9 Drains and waste pipes

- (1) The Tenant must not use any Landlord's fixtures other than for their intended purpose nor place in them any substance which it was not designed to receive.
- (2) The Tenant must pay to the Landlord the Costs of repairing any damage to the Landlord's Fixtures arising from misuse by the Tenant or the Tenant's Employees.

7.10 Antennae, radios etc

The Tenant must not:

- (1) affix any television or radio mast, antennae, satellite dish or similar device to any part of the Building or the Premises; or
- (2) use or operate any sound or picture producing equipment in the Premises which may cause irritation to other persons.

7.11 Rubbish accumulation

The Tenant must not:

- (1) throw anything out of the Premises, down any lift shafts or into any passages, deposit waste paper, unwanted or useless articles or rubbish anywhere except in proper receptacles; or
- (2) place anything on any external windowsill or ledge.

7.12 For sale signs etc.

- (1) The Landlord may:
 - (a) place advertisements and signs on any part of the Premises it reasonably considers appropriate if the Premises are for sale or lease; and
 - (b) show any interested persons through the Premises after giving the Tenant reasonable prior notice.
- (2) If the Premises are for lease, the advertisements and signs may only be placed on the Premises within the last three (3) months of the Term.

7.13 Emergency evacuation procedure and drills

The Tenant must:

- (1) comply with all the Landlord's requirements in relation to participation in emergency evacuation procedures and drills and ensure that the Tenant's Employees also participate in the procedures and drills; and
- (2) not make or permit any of the Tenant's Employees to make any Claim against the Landlord in connection with anything covered by this clause 7.13 and the Tenant indemnifies that Landlord against any claim arising from the emergency evacuation procedure or drills.

7.14 Thermal or fire detectors

If any thermal or fire detectors are required to be installed in the Premises by any Law or Requirement because of the Tenant's use of the Premises, they will be installed at the Tenant's cost.

7.15 Doors and windows

The Tenant must lock all doors and fasten all windows in the Premises when the Premises are not occupied. The Landlord reserves the right for the Landlord, its Managing Agent, caretaker or other duly authorised persons to enter the Premises and fasten the same if left insecurely fastened.

7.16 Fire Precautions and maintenance

- (1) In this clause Fire Services means and includes all stopcocks, fire hoses, sprinklers, hydrants, emergency lighting, fire prevention aids and other fire fighting equipment located in the Premises or servicing the Premises.
- (2) The Tenant shall be responsible for all costs of repairing, maintaining, servicing and running the Fire Services and shall in connection with its obligations under this clause enter into a maintenance contract on terms and conditions acceptable to the Landlord with a company approved of by the Landlord in respect of such maintenance (Fire Services Maintenance Contract).
- (3) The Tenant will keep the Fire Services Maintenance Contract current throughout the term of this Lease or any extension or renewal.
- (4) A copy of the Fire Services Maintenance Contract will be furnished promptly by the Tenant to the Landlord and will be deemed to have been approved by the Landlord unless the Landlord shall notify the Tenant to the contrary within 21 days of receipt of the Fire Services Maintenance Contract.
- (5) The Tenant must also take such precautions against fire on or in respect of the Premises as are or may from time to time be required under any Law or Requirement and also at the Tenant's own cost to do all things in relation to fire safety as are or may from time to time be directed or required to be done (whether by the owner or occupier of the Premises) by any authority including:
 - (a) the Insurance Council of Australia;
 - (b) the Landlord's and its own insurer;
 - (c) the Fire Brigade of New South Wales;
 - (d) the local Council.

7.11 Environmental obligations

- (1) In this clause:
 - (a) **Environmental Laws** means any Law relating to the Environment including but not without limitation to a law relating to planning, environmental assessment, cultural or natural heritage, water and water catchments, pollution of air, soil, ground or surface water, chemicals, pesticides of dangerous or hazardous goods, building, public health or safety, occupational health or safety,

environmental hazard or any common law relating to any aspect of protection of the Environment.

- (b) Environment has the same meaning as in the *Protection of the Environment Administration Act 1991* (NSW).
- (2) The Tenant must ensure that the occupation and use of the Premises complies with all Environmental Laws from time to time and ensures that all authorisations and approvals required under any Environmental Laws are obtained prior to commencing any activity for which such authorisations and approvals are required.
- (3) The Tenant must ensure that if any contaminant is discovered on the Premises (unless that contaminant is safely and lawfully stored) or, without lawful authority escapes or is released from the Premises into the Environment or is released into or upon the Premises:
 - (a) the impact on the Premises and the environment is immediately minimised; and
 - (b) steps are taken as quickly as possible to safely contain the contaminant and to remove the contaminant from the Environment or the Premises to reduce the levels of the contaminant to a level required or recommended by the relevant authority and in either case to eliminate or reduce any danger arising from the contaminant and do all thing necessary to fully and properly restore the Premises and the Environment.

7.18 Air conditioning equipment

- (1) For the purpose of this clause Maintenance Contract means a contract of maintenance of the Air conditioning Equipment and all accessories servicing the Premises at the date of commencement of this Lease.
- (2) The Tenant shall be responsible for all costs of repairing, maintaining and servicing and running the Air Conditioning Equipment and shall in connection with its obligation under this clause enter into a Maintenance Contract on terms and conditions acceptable to the Landlord with a company approved of by the Landlord (such consent not to be unreasonably withheld). The Lessee shall not be responsible for the costs of replacement of major components or of the entire system or units within the system unless the necessity for such replacement/s is the negligent or wilful act of the Lessee its servants or agents.
- (3) The Tenant will keep such Maintenance Contract current throughout the term of this Lease or any extension or renewal.
- (4) A copy of the Maintenance Contract will be furnished promptly by the Tenant to the Landlord and will be deemed to have been approved by the Landlord

unless the Landlord shall notify the Tenant to the contrary within 21 days of receipt of the Maintenance Contract.

- (5) The Tenant shall, at its Cost, arrange for the company maintaining the Air Conditioning Equipment to provide a report in a format approved by the Landlord on an annual basis which will report the current status of the Air Conditioning Equipment.
- (6) If the Tenant fails to obtain and renew the Maintenance Contract or does not arrange for the regular maintenance of the Air conditioning Equipment then the Landlord may:
 - (a) enter the Premises with workmen and other authorised persons and materials to carry out maintenance on the Air Conditioning Equipment;
or
 - (b) enter into a Maintenance Contract;and any Costs incurred by the Landlord may be treated as a liquidated debt payable by the Tenant.

7.19 Tenant's additional obligations

Despite the definitions of Landlord's Fixtures and Tenant's Fittings and any other obligations imposed on either the Landlord or the Tenant under this Lease, the Tenant must, at its cost be responsible for the:

- (1) cost of operating and maintaining all security and fire alarm systems in the Premises; and
- (2) maintenance and re-charge of fire equipment, fire hoses, fire signs and notices in the Premises; and
- (3) maintenance of all roller doors and closets in the Premises; and
- (4) maintenance and replacement of all tap washers, toilet seats, cisterns and seats, fluorescent tubes and starters, and globes in the Premises; and
- (5) pest control treatments in the Premises on a regular basis or as required, ensuring that a pest control treatment is carried out at least once a year during the Term.

7.20 Loading/unloading at Premises and trade waste

During the Term of this Lease the Tenant must at all times:

- (1) ensure that any vehicle delivering any goods or materials for the Tenant or any vehicle delivering a container with goods or materials for the Tenant are unloaded wholly within the Premises and all goods and materials delivered remain within the Premises and;
- (2) ensure that any vehicle that is to dispatch goods or materials of the Tenant's from the Premises is loaded wholly within the Premises; and
- (3) keep all bins for trade waste and any other receptacle for waste wholly within the Premises; and

- (4) ensure that all wastes and rubbish are promptly and properly removed from the Premises.

7.21 No Parking

Subject to clause 22, the Tenant and the Tenant's Employees must not park any vehicles on any part of the Land.

8. Assignments and Subletting

8.1 No Assignment etc.

Subject to clause 8.2, the Tenant must not assign, transfer, mortgage, charge or otherwise deal with its interest in the Premises or demise, sublet, part with possession of or grant any licence affecting the Premises.

8.2 Assignment permitted

- (1) The Landlord may consent to the assignment or the sub-letting of the Premises if the Tenant first makes an application to the Landlord for consent and the following provisions have been observed by the Tenant:
- (a) the Tenant is not in default under this Lease other than a default which has been waived by the Landlord;
 - (b) the Tenant proves to the Landlord's reasonable satisfaction that the incoming Tenant is a respectable, responsible and solvent person capable of adequately carrying on the business permitted under this Lease;
 - (c) if the incoming Tenant is a company other than a company whose shares are listed in an Australian Stock Exchange, the incoming Tenant's obligations are guaranteed in a form acceptable to the Landlord;
 - (d) the Tenant obtains, at its cost, from the incoming Tenant and any incoming guarantor an executed deed, in a form reasonably required by the Landlord required the incoming Tenant and incoming guarantor to perform and observe the Tenant's obligations under this Lease;
 - (e) the Tenant pays the Landlord's reasonable Costs of giving its consent, whether or not the proposed assignment proceeds to completion; and
 - (f) in the case of an assignment, the incoming Tenant pays or gives to the Landlord a security deposit or bank guarantee of an amount determined by the Landlord as security for the observance and performance of the Tenant's obligations.

8.3 Change in ownership of shares in company

- (1) if the Tenant is a company, any change in the persons who beneficially own or control a majority of the company's voting shares at the date of this Lease will constitute an assignment of this Lease.

- (2) The Tenant will be in breach of clause 8.1 unless the Tenant obtains the Landlord's prior written consent to the change in shareholding.
- (3) The consent must not be withheld in the following circumstances:
 - (a) the Tenant is not in default under this Lease other than a default which has been waived by the Landlord;
 - (b) the Tenant proves to the Landlord's reasonable satisfaction that any shareholder or director of the Tenant who was not a shareholder or director prior to the change in shareholding is a respectable, responsible and solvent person capable of adequately carrying on the business permitted under this Lease;
 - (c) the Tenant obtains, at its cost, a guarantee from any new shareholder or director, in a form acceptable to the Landlord, guaranteeing the Tenant's obligations; and
 - (d) the Tenant pays the Landlord's reasonable costs of giving consent whether or not the proposed change in shareholding proceeds to completion.
- (4) This clause 8.3 will not apply if the Tenant is a corporation whose voting shares are listed on an Australian stock exchange or if at least 80% of its voting shares are owned by another company whose voting shares are so listed.

8.4 Charges over Tenant's Fittings

- (1) Without the Landlord's prior consent, the Tenant will not mortgage, charge, lease for deal with any Tenant's Fittings if that requires or may require the Landlord to sign a waiver or similar document.
- (2) The consent must not be unreasonably withheld if:
 - (a) the Tenant wishes to enter into a mortgage, charge or lease in good faith as a means of financing the Tenant's Fittings; and
 - (b) the waiver is in a form acceptable to the Landlord and the Tenant pays the Landlord's reasonable costs in relation to it.

9. Utilities

9.1 Source of light and power

The Tenant must only use light, power or heat generated by electrical current or gas supplied through meters except in the case of failure of supply when the Tenant may use other sources of energy except naked flame.

9.2 No alterations to electrical installations

- (1) The Tenant must not make any alterations or additions to the electrical installations or wiring on the Premises without the Landlord's prior consent.
- (2) The Tenant must not install any electrical equipment which overloads the cables, switchboards or cub-boards through which electricity is conveyed to the Premises.

9.3 Charges for utilities

By the due date the Tenant must pay:

- (1) charges for electricity, gas and excess water consumed in the Premises;
- (2) charges for telephone service connected to the Premises; and
- (3) other charges and impositions imposed by any public authority for the supply of any other Service to the Premises not including council and water rates.

9.4 Heating or cooling devices

The Tenant must not use or install any heating or cooling device or machine which in the Landlord's opinion may interfere with the efficient running of the Air Conditioning Equipment or increase its running costs.

9.5 Access to equipment

The Tenant must not interfere with or obstruct access to the Air Conditioning Equipment or fire alarm or prevention system installed in the Premises.

10. Maintenance and Repair

10.1 Repair of Premises

- (1) The Tenant must keep the Premises, the Tenant's fitting and the Landlord's Fixtures in good repair and condition except for:
 - (a) fair wear and tear; and
 - (b) damage covered by insurance taken out by the Landlord in respect of the Premises.
- (2) The exception in clause 10.1(1)(b) will not apply if insurance money is irrecoverable through the act, default, neglect, omission or misconduct of the Tenant or the Tenant's employees.
- (3) Nothing in clause 10.1(1) imposes any obligation on the Tenant in respect of any major structural maintenance, replacement, renovation or repair unless required because of:
 - (a) the act or omission, neglect, default or misconduct of the Tenant or the Tenant's Employees;
 - (b) the Tenant's use of the Premises; or
 - (c) other provisions of this Lease.

10.2 Cleaning, maintenance and breakages

The Tenant must at the Tenant's cost during the Term:

- (1) keep the Premises clean and tidy;
- (2) keep the Premises free from dirt and rubbish, store all trade waste, shop refuse and garbage in proper receptacles and arrange for its regular removal from the Premises;
- (3) keep the Tenant's Fittings clean and maintained in good order and condition; and
- (4) immediately repair or replace:

- (a) broken glass with glass of the same quality;
- (b) damaged or inoperative electrical light bulbs, globes, tubes and other means of illumination and light switches and power points which may become damaged or fail to operate; and
- (c) Landlord's Fixtures which are broken or damaged by the Tenant or the Tenant's Employees.

Nothing herein contained shall impose on the Lessee an obligation to effect work of a structural nature save where the necessity for such work is the negligent or wilful act of the Lessee its servants or agents.

10.3 Landlord's Right to inspect and repair

- (1) Except in the case of emergency (when no notice will be required) after giving the Tenant prior reasonable notice, the Landlord and its agents may enter the Premises and view their condition.
- (2) The Landlord may serve a notice on the Tenant requiring it to repair any defect, the repair of which is the Tenant's obligation, within a reasonable time.
- (3) If the Tenant does not make the repairs to the Landlord's satisfaction the Landlord and its agents may enter any part of the Premises and make the repairs at the Tenants cost.
- (4) In exercising its powers under this clause 10.3, the Landlord will endeavour to cause as little inconvenience to the Tenant as is practicable in the circumstances.

10.4 Landlord may enter

- (1) The Landlord may enter the Premises with workmen and other authorized persons and necessary materials and appliances to:
 - (a) comply with any Law or Requirement involving the destruction of noxious animals, rodents or other pests;
 - (b) carry out any repairs, alterations, renovations, extensions or works;
 - (c) provide any Services to the Tenant; or
 - (d) otherwise exercise the Landlord's rights.
- (2) In carrying out work under this clause 10.4 the Landlord will endeavour to cause as little inconvenience to the Tenant as is practicable in the circumstances.

10.5 Notice of damage or defect in services

The Tenant must promptly give the Landlord notice of:

- (1) any damage to, defect or disrepair in the Services or the Landlord's Fixtures; and
- (2) any circumstances likely to cause any danger risk or hazard to the Premises or any person.

11. Occupational Health and Safety Act

- 11.1 The Tenant acknowledges and agrees that for the purpose of the *Occupational Health and Safety Act 2000* (NSW) (**Act**) the Tenant has the control of the Premises and all plant and substances within the Premises.
- 11.2 The Tenant releases and indemnifies the Landlord from and against any obligation or liability of the Landlord under any occupational health and safety legislation as defined in the Act.

12. Alterations

12.1 Alteration and additions

- (1) The Tenant must not make any alterations or additions to the Premises, install or alter any partitions or install any heavy article likely to disturb the efficient operation of the Services, including any air conditioning or other system serving the Premises, without the Landlord's prior consent and written approval; and
- (a) in seeking the Landlord's approval to any proposed alteration or addition or installation the Tenant must submit plans and specifications of the proposed work (Works); and
- (b) the Landlord may require as a condition of its approval that:
- (i) the Works be supervised by a person or consultant nominated by the Landlord;
 - (ii) the Works be executed by contractors or tradesmen as are approved by the Landlord (which approval will not be unreasonably withheld);
 - (iii) the Tenant pay on demand all Costs incurred by the Landlord in considering the Works (whether or not the Tenant proceeds with the works), and in the supervision of the Works including the fees of architects or other consultants employed by the Landlord;
 - (iv) the Tenant obtain at its cost from any competent Authority all necessary approvals or permits necessary to enable the Works to be lawfully executed and on request by the Landlord produce for inspection to the Landlord copies of all such approvals and permits from any such competent Authority;
 - (v) upon completion of the Works the Tenant must produce to the Landlord in regard to the Works or if so required in regard to the Premises a building certificate or occupancy certificate from the relevant local council and/or such other evidence or certificate from the council or any other relevant authority as the Landlord may stipulate as a condition of its consent; and
 - (vi) the Tenant reimburse the Landlord any Cost incurred by the Landlord as a result of the installation operation or removal of any such equipment, fixture, fittings or machinery.

- (2) the Tenant must promptly provide the Landlord with a complete set of "as built" drawings and commissioning data for the Works carried out under this clause 12.

12.2 Installation of equipment etc

Without the Landlord's prior consent, the Tenant must not:

- (1) install any water, gas or electrical fixtures, equipment or appliances or any apparatus for air conditioning, heating, cooling, ventilation or illuminating the Premises; or
- (2) mark, paint, drill, deface or damage any part of the Premises.

12.3 Partitions

- (1) Prior to the Tenant installing or using any partitions in the Premises, the Tenant must submit to the Landlord for its consent:
 - (a) a copy of the plans and specifications for the proposed work which must comply with Laws and Requirements and be previously approved by the relevant authorities; and
 - (b) details of the type, quality, colour and size of the partitions.
- (2) The partitions must be installed:
 - (a) by a contractor approved by the Landlord under the supervision of the Landlord or its agent; and
 - (b) at the Tenant's cost including the Costs of alterations or additions to the Services or the Premises.
- (3) The partitions remain the Tenant's property and the Tenant will maintain and insure them.

12.4 Reinstatement

- (1) if the Tenant breaches clauses 12.1, 12.2 or 12.3, the Landlord may give the Tenant notice requiring it to reinstate the Premises to their former condition.
- (2) If the Tenant fails to comply with the notice, the Landlord may undertake the necessary work and the Landlord's Costs of doing the work will be recoverable from the Tenant.

13. Insurances and indemnities

13.1 Public Risk and plate glass insurance

The Tenant must keep current:

- (1) an adequate public risk insurance policy for the sum stated in **Item 11** of the Reference Schedule or a greater sum it nominated by the Landlord; and
- (2) an adequate insurance policy covering the Tenant's Fittings and any windows, doors and plate glass forming part of or in the Premises for the full insurable reinstatement cost.

13.2 Workers' compensation insurance

The Tenant must maintain workers' compensation insurance (including cover for unlimited common law liability) for the Tenant's Employees and persons who could assert a Claim for death or bodily injury against the Landlord.

13.3 Landlord may insure

- (1) If the Tenant fails to maintain the insurances required by this clause 13, the Landlord may effect and maintain those insurances.
- (2) The Landlord's cost in doing so must be paid by the Tenant.

13.4 Tenant's insurances

The Tenant must ensure that all policies of insurance effected or required to be effected by the Tenant under this clause 13:

- (1) are taken out with an insurer approved by the Landlord;
- (2) are for an amount, cover risks and contain conditions which are acceptable to the Landlord and its insurer;
- (3) have no exclusions, endorsements or alterations unless first approved by the Landlord; and
- (4) are taken out in the joint names of the Landlord and the Tenant for their respective rights and interests.

13.5 Payment and production of insurance policies

- (1) The Tenant must promptly pay all premiums and other money payable in respect of its insurances.
- (2) If requested by the Landlord, the Tenant must produce policies of insurance which the Tenant is required to effect under this clause 13 and the receipt for the latest premium payable.

13.6 Effect on the Landlord's insurance

- (1) Without the Landlord's prior consent, the Tenant must not do or omit to do anything to or upon the Land, in the Building or the Premises which may:
 - (a) increase the rate of any insurance on the Premises, the Building or the property in them;
 - (b) vitiate or render void or voidable any insurance on the Premises, the Building or any property in them; or
 - (c) conflict with any Law or Requirement, the requirements of the Landlord's insurer relating to fire, fire safety or fire prevention or any insurance policy in respect of the Premises, the Building or any property in them.
- (2) The Tenant must pay to the Landlord all extra insurance Costs on the Premises, the Building or the Landlord's fixtures on account of the extra risk caused by the Tenants use or occupation of the Premises.
- (3) The Landlord's acceptance of any extra insurance costs will not constitute a waiver of any breach of this clause 13.6 by the Tenant.

13.7 Dispute resolution

- (1) Any dispute under this clause 13 will be determined by a member of the Insurance Council of Australia having at least 5 years' experience, such member being appointed by the Chief Executive of the Insurance council of Australia at the request of either the Landlord or the Tenant.
- (2) In making his or her determination, the appointed member will act as an expert and not as an arbitrator and his or her determination will be final and binding on both parties.
- (3) The cost of the determination must be paid by both parties equally unless otherwise decided by the member.

Inflammable substances

- (1) The Tenant must not store chemicals, inflammable liquids, acetylene, gas, alcohol, volatile or explosive oils, compounds or substances on the Premises except if necessary and proper for the Tenant's business permitted under this Lease.
- (2) Only reasonably appropriate quantities may be kept.

Exclusions of Landlord's liability

(1) Tenant's risk

- (a) All property in the Premises will be at the Tenant's sole risk.
- (b) The Landlord and its agents will not be liable for any claim by the Tenant, the Tenant's employees or any other person which may arise from:
 - (i) any fault in the construction or state of repair of the Building, the Landlord's fixtures or the Premises;
 - (ii) any defect in the Services or the Landlord's fixtures; or
 - (iii) the flow, overflow, leakage, condensation or breakdown of any water, air conditioning, gas, oil or other source of energy of fuel from or in any part of the Building or the Premises;or from any other cause except and to the extent that it results from the negligence of the Landlord, its employees, contractors or agents.

(2) Release

- (a) The Tenant will occupy and use the Premises at the Tenant's risk.
- (b) To the full extent permitted by law, the Tenant releases the Landlord and its agents from liability for any claim in respect of or arising from:
 - (i) any property in the Premises;
 - (ii) damage or injury -to any person or property on the Premises; or
 - (iii) any circumstances set out in clause 13.10;

except to the extent the claim results from negligence of the Landlord, its employees, contractors or agents.

13.10 Indemnities

The Tenant indemnifies the Landlord and its agents against all claims arising during or after the term from:

- (1) any cause to the Premises, any property or any person inside or outside the Premises occasioned or contributed to by any act, omission, neglect or default of the Tenant or the Tenant's employees;
- (2) the negligent use or neglect of the Services and facilities in the Premises or the Landlord's Fixtures by the Tenant, the Tenant's Employees, any other person claiming by, through or under the Tenant or any trespasser while in the Premises;
- (3) the overflow or leakage of water from any source including the Services or the Landlord's Fixtures occasioned or contributed to by any act, neglect or default of the Tenant or the Tenant's Employee's;
- (4) the Tenant's failure to give notice to the Landlord of any defect in the Services;
- (5) any person's accidental death or damage to property caused or contributed to by the use of the Premises by the Tenant or the Tenant's Employees;
- (6) damage to plate and other glass caused or contributed to by any act or omission by the Tenant or the Tenant's Employees;
- (7) loss or damage caused or arising out of any act or omission relating to non-enforcement of the Rules;

except to the extent the Claim arises from the negligence of the Landlord, its employees, contractors or agents.

14. Landlord's covenants

14.1 Quiet enjoyment

If the Tenant performs and observes all its obligations under this Lease, it may use the Premises without interruption or disturbance from the Landlord or any person claiming by, through or under the Landlord.

14.2 Person other than the Landlord becoming entitled to rents etc.

- (1) If any person other than the Landlord becomes entitled to receive the Rent, that person will have the benefit of all covenants by the Tenant under this Lease.
- (2) If required by and at the expense of the Landlord, the Tenant will enter into reasonable covenants with that other person.

14.3 Services to be provided by Landlord

Subject to clauses 7.17 and 7.19, the Landlord will use reasonable endeavours to ensure that the Services are operational and functioning during normal business hours.

14.4 Failure of Services

The Tenant will have no Claim against the Landlord and its agents or be entitled to terminate this Lease solely because:

- (1) the Services fail to operate; or

- (2) the Landlord shuts down or removes any Services to repair, maintain or replace them or because of the provisions of any Law or Requirement, provided that the Landlord provides (except in the case of unforeseen emergency) reasonable notice to the Tenant and where at all reasonably possible provides alternate Services whilst the repair maintenance or shutdown is carried out or is applicable.

14.5 Lessor's Maintenance and Repair

The Lessor shall during the term but without derogating from the Lessee's obligations of maintenance and repair under this Lease, ensure that the Building is maintained in good structural repair and condition water and wind tight.

14.6 Lessor's Insurances

The Lessor shall during the term and at its expense effect and maintain insurance over Building and over the Lessor's fittings and fixtures plant and equipment for the full insurable value thereof.

15. Default and termination

15.1 Default

The Tenant will be in default if:

- (1) the Rent or any money payable by the Tenant is unpaid for 14 days;
- (2) repairs required by any notice are not carried out by the Tenant within the time specified in the notice;
- (3) the Tenant fails to perform or observe any of its covenants or obligations under this Lease;
- (4) the Tenant assigns its property for the benefit of creditors; or
- (5) the Tenant enters into any form of bankruptcy, liquidation, administration, is wound up or dissolved, enters into a scheme of arrangement for creditors, is placed under official management or a receiver and/or manager of any of its assets is appointed.

15.2 Forfeiture of Lease

Subject to giving any prior demand or notice required by any Law and without prejudice to any other Claim which the Landlord has or may have against the Tenant or any other person in respect of default, if the Tenant defaults as specified in clause 15.1 the Landlord may:

- (1) re-enter and take possession of the Premises (by force if necessary) and eject the Tenant and all other persons and this Lease will terminate;
- (2) by notice to the Tenant, terminate this Lease from the date of giving the notice; and/or
- (3) by notice to the Tenant, convert the unexpired portion of the Term into a tenancy from month to month and, after the notice and until the tenancy is

terminated, the Tenant will occupy the Premises as tenant from month to month.

15.3 Landlord may rectify

Without notice to the Tenant, any Costs incurred by the Landlord in remedying a default may be treated by the Landlord as a liquidated debt payable by the Tenant.

15.4 Waiver

(1) Waiver must be in writing

No waiver by the Landlord will be effective unless it is in writing.

(2) No Waiver

(a) The Landlord's failure to take advantage of any default by the Tenant will not be construed as waiving the default.

(b) No custom or practice which evolves between the parties will constitute a waiver or lessen the Landlord's right to insist upon the Tenants strict performance or observance of any provision of this Lease or to exercise any of the Landlord's other rights.

(3) Acceptance or demand for Rent not waiver

Regardless of the Landlord's knowledge at the time, a demand by it for Rent or other money payable under this Lease or the subsequent acceptance of Rent or other money will not constitute a waiver of any earlier default by the Tenant.

15.5 Tender after termination

In the absence of any election by the Landlord, any money tendered by the Tenant after termination and accepted by the Landlord will be applied:

- (1) firstly, on account of any unpaid Rent and other money due under this Lease at the date of termination; and
- (2) secondly, on account of the Landlords Costs of re-entry.

15.6 Interest on overdue money

The Landlord may charge daily interest to the Tenant on any late payment by the Tenant at the Default Rate.

15.7 Damages for breach

(1) Repudiation

(a) if the Tenant's conduct constitutes breach of an essential provision of this Lease and the Landlord elects to treat that breach as repudiation or the conduct otherwise constitutes repudiation, the Tenant will compensate the Landlord for all loss or damage suffered by reason of or arising from the repudiation.

(b) The following covenants are deemed to be essential:

- (i) to pay Rent [clause 4.1];

- (ii) to pay the Tenant's Proportion of Outgoings [clause 5];
- (iii) to use the Premises for the use stated in Item 10 of the Reference Schedule [clause 7.1];
- (iv) to provide the Landlord with a copy of all relevant development consents or approvals [clause 7.3(4)(d)];
- (v) to comply with the Laws and Requirements [clause 7.4];
- (vi) not to assign, sublet or charge without consent [clause 8.1];
- (vii) to repair [clause 10.1];
- (viii) not to make alterations [clause 12];
- (ix) to insure [clause 13];
- (x) to provide the bank guarantee [clause 19.2];
- (xi) to provide the security deposit [clause 19.4];
- (xii) to pay GST [clause 21];

(2) **Damages for repudiation**

Any loss or damage for the unexpired residue of the Term suffered by the Landlord as a result of the Tenant's repudiation may be recovered as damages at any time.

(3) **Landlord's entitlement to damages**

The Landlord's entitlement to recover damages from the Tenant or any other person will not be limited or affected by any of the following:

- (a) if the Tenant abandons or vacates the Premises;
- (b) if the Landlord elects to re-enter the Premises or terminates this Lease;
- (c) if the Landlord accepts the Tenants repudiation; or
- (d) if the parties' conduct (or that of any of their servants or agents) constitutes or may constitute a surrender by operation of Law.

15.8 Landlord to mitigate damages

- (1) If the Tenant vacates the Premises or if the Landlord accepts the Tenant's repudiation and terminates this Lease, the Landlord must take reasonable steps to mitigate its loss and endeavour to re-lease the Premises on reasonable terms.
- (2) The Landlord's entitlement to damages will be assessed on the basis that the Landlord has observed the obligation to mitigate damages.
- (3) The Landlord's conduct in mitigating its damages will not of itself constitute acceptance of the breach or repudiation or a surrender by operation of Law.

15.9 Calculation of damages

Following repudiation by the Tenant if the Landlord terminates this Lease then, without prejudice to any other right or remedy, the Landlord may recover the difference between the aggregate of Rent and other money payable by the Tenant for the

unexpired residue of the Term less any amount the Landlord obtains, or could in the Landlord's opinion reasonably be expected to obtain, by observing clause 15.8.

16. Termination of Term

16.1 Tenant to yield up

On termination the Tenant must deliver the Premises to the Landlord in good repair, order and condition subject to clause 10.1.

16.2 Removal of Tenant's Fittings

At or before termination, the Tenant must remove all the Tenant's Fittings from the Premises.

16.3 Tenant not to cause damage

- (1) The Tenant must not damage the Premises in the removal of the Tenants Fittings.
- (2) If the Tenant does so, it must repair any damage and leave the Premises clean;
- (3) If the Tenant fails to do so, the Landlord may repair and clean the Premises and recover the Costs of doing so from the Tenant.

16.4 Failure by Tenant to remove Tenant's Fittings

If the Tenant fails to remove the Tenant's fittings as required by clause 16.2, the Landlord may;

- (1) remove and store the Tenant's Fittings at the Tenant's risk and cost; or
- (2) treat the Tenants Fittings as if the Tenant had abandoned its interest in them and they had become the Landlord's property and deal with them as it thinks fit without being liable to account to the Tenant.

16.5 Tenant indemnity and pay Landlord's Costs

The Tenant:

- (1) indemnifies the Landlord and its agent against the removal and storage of the Tenant's Fittings and against all Claims by any person claiming an interest in the Tenant's Fittings by reason of the Landlord's actions under clause 16.4; and
- (2) will pay the Landlord, as a liquidated debt payable on demand, any Costs incurred by the Landlord in exercising its rights under clause 16.4 less any money received on disposal of the Tenant's Fittings.

16.6 Damages

Until completion of the removal and make good repair by clauses 16 and so as to permit the re-letting of the Premises by the Landlord the Tenant must pay to the Landlord by way of liquidated damages in relation to any such default a sum equivalent to the Rent payable by the Tenant immediately prior to the expiration or determination of the Term of this Lease for the period until the Premises are made fit for re-letting.

16.7 Earlier breaches

Termination of this Lease will not prejudice or affect any of the Landlord's rights or remedies against the Tenant for an earlier default by the Tenant.

17. Restoration of Premises

17.1 Specific works

Without limiting the obligation of the Tenant under clause 16 to remove the Tenant's Fittings the Tenant must in addition on or before termination, or sooner determination of this Lease, carry out the following works (**Tenant's Works**):

- (1) return all altered surfaces to their original condition;
- (2) to replace the carpet to the landlord's reasonable satisfaction (where the carpet requires replacement as a consequence of the negligent or wilful act of the Lessee its servants or agents), prior to vacating the Premises and clean the carpet to the Landlord's reasonable satisfaction subject to fair wear and tear;
- (3) where requested by the Landlord, remove all wiring installed by the Tenant and reinstate the wiring to the standard pattern;
- (4) clean lighting boxes and diffusers and replace tubes and diffusers as necessary;
- (5) restore air-conditioning ducting to the standard patterns and balance the air-conditioning;
- (6) restore the fire services to standard pattern for open plan occupation of the Premises at the time the Tenant vacates the Premises;
- (7) remove the window furnishings and clean all glass and sills;
- (8) wash down the interior of the Premises; and
- (9) where repainting is required by reason of the negligent or wilful acts of the Lessee its servants or agents, prepare all previously painted surfaces and apply two (2) coats of good quality paint in colours and tints approved by the Landlord prior to vacating the Premises.

17.2 Tenant's costs

The Tenant must carry out the Tenant's Works at its cost to reasonable trade standards approved by the Landlord's consultants.

17.3 Failure to do Tenant's Works

- (1) If the Tenant does not carry out the Tenant's Works, the Landlord will be entitled to complete them at the Tenant's cost.
- (2) A certificate signed by the Landlord's agent giving reasonable details of the Tenant's Works completed by the Landlord and the Landlord's Costs will be conclusive evidence of the Landlord's Costs.
- (3) The Tenant must pay the Landlord's Costs within 14 days of service on the Tenant of the certificate referred to in clause 17.3(2).

17.4 Dispute resolution

- (1) If any dispute arises under this clause 17, the Landlord may refer it to an architect appointed by the president of the Royal Australian Institute of Architects (New South Wales Division) at the Landlord's request.

- (2) The appointed architect will decide the dispute or matter acting as an expert and not an arbitrator.
- (3) His or her decision will be final and binding on the parties.
- (4) if the appointed architect determines that the Tenant is at fault then the Tenant will pay the Costs of the appointed architect otherwise the costs of the architect will be shared equally by the parties.

18. Notices

18.1 (1) Execution of Landlord's notice

Any notice by the Landlord under this Lease will be valid if signed by an officer or solicitor of the Landlord, the Managing Agent or any other person nominated by the Landlord in writing.

(2) Notice of Tenant's address

The Tenant must promptly notify the Landlord of the address and facsimile number of the Tenant and any Guarantor and update the notice if any changes occur.

(3) Service of notice on Tenant

Any notice which the Landlord elects to serve on the Tenant will be sufficiently served if:

- (a) served personally or addressed to the Tenant and left at the Premises;
- (b) sent to the Tenant's facsimile number; or
- (c) forwarded by prepaid security post to the Tenant's last known registered office, place of business or residence.

(4) Service of notice on Landlord

Any notice to the Landlord will be sufficiently served if:

- (a) served personally;
- (b) sent to the Landlord's facsimile number; or
- (c) forwarded by prepaid security post addressed to the Landlord.

All notices must be addressed to the Landlord at the address stated in this Lease or, if another address is later nominated by the Landlord, then at that address.

(5) Time of service

Any notice sent by:

- (a) post will be deemed to be served on the second business day after the day it was posted; or
- (b) facsimile will be deemed to have served at the time that the notice was transmitted unless the sender's facsimile machine indicates a malfunction in the transmission; or
- (c) by email on the day it is forwarded.

18.2 Costs

The Tenant must pay the Landlord on demand:

- (1) stamp duty on this Lease including any fines and penalties except those due to the Landlord's default; and
- (2) the Landlord's reasonable legal fees and disbursements in connection with:
 - (a) registration of this Lease;
 - (b) any consent required under this Lease;
 - (c) obtaining any further consent of any mortgagee of the Land;
 - (d) any assignment or subletting;
 - (e) any surrender or termination of this Lease except through its expiry;
 - (f) any default by the Tenant or the Tenant's Employees in observing or performing the provisions of this Lease.

18.3 Costs of litigation

The Tenant will pay the Landlord's Costs of litigation arising from the Tenant's occupation of the Premises.

18.4 Compliance with Rules

The Tenant will observe and perform and cause the Tenant's Employees to observe and perform the Tenant's obligations under this Lease and the Rules.

18.5 Reservations

The Landlord reserves the following rights:

- (1) after reasonable notice (except in the case of an emergency when no notice will be necessary) the right to install, maintain, use repair alter, service and replace any Services; and
- (2) by reasonable prior notice to the Tenant, the right to name or create a logo or change the name or logo of the Building and the Tenant will not make any Claim in relation to any name or logo,

18.6 Easements

- (1) For the purpose of:
 - (a) provision of access to the Building or the Premises;
 - (b) the support of structures erected on the Land or adjoining Land; or
 - (c) any Service;the Landlord may dedicate, grant, transfer or otherwise enter into any arrangement in relation to the Land, Building or the Premises provided it does not prejudice the Tenant's rights under this Lease.
- (2) This Lease will be deemed to be subject to any right granted by the Landlord under this clause 18.6.

18.7 Power of Attorney

- (1) From the Commencement Date the Tenant irrevocably nominates and appoints individually the Landlord, its officers and any nominee appointed in writing for the purposes of this clause 18.7 to be the attorney of the Tenant.

- (2) At any time after the power to re-enter contained in this Lease has arisen (proof of which will be a statutory declaration of the Landlord or an officer of the Landlord) the attorney may execute and register a transfer or a surrender of this lease or withdrawal of caveat.
- (3) In doing so, the attorney may use the tenant's name and do anything relating to the Premises which the Tenant could do.
- (4) The Tenant will ratify and confirm any lawful act of the Attorney.
- (5) The director of the Land and Property Information of New South Wales is authorised to act upon the statutory declaration and to accept it as sufficient evidence of the termination of this Lease.

19. Guarantees

19.1 Bank guarantee

Clause 19.2 applies if **Item 13** of the Reference Schedule has been completed by inserting the amount of a bank guarantee.

19.2 Issue and review if bank guarantee

The Tenant must:

- (1) on or before executing this Lease, arrange for the issue of an irrevocable and unconditional bank guarantee by a financial organisation approved by and in favour of the Landlord for the amount stated in **Item 13** of the Reference Schedule;
- (2) at each Review Date under clause 4 or at the later determination of each Rent review, provide a replacement or additional bank guarantee so that the total amount guaranteed bears to the Rent payable from each Review Date the same proportion as the amount stated in **Item 13** of the Reference Schedule bears to the Rent as at the Commencement Date;
- (3) ensure that any bank guarantee is kept current and enforceable and does not contain an expiry date; and
- (4) if the Landlord makes demand on any bank guarantee, provide a replacement bank guarantee for the amount demanded by the Landlord.

19.3 Regardless of anything contained in this clause 19, the Landlord will be entitled from time to time to make a claim on the bank guarantee for any amount in satisfaction of an amount that is payable to the Landlord as a result of any breach of any of the covenants, terms and conditions of this Lease by the Tenant or the Tenant's Employees and any deduction so made will not be deemed to waive the Tenant's or the Tenant's Employees' breach.

19.4 Security deposit

Clause 19.5 applies if **Item 14** of the Reference Schedule has been completed by inserting the amount of a security deposit (Security Deposit).

19.5 Details of the Security Deposit

(1) **Amount**

The Tenant must on the signing of this Lease pay to the Landlord (in addition to any other monies payable under this Lease) as a security, by way of a bank cheque in favour of the Landlord, the sum specified in **Item 14** of the Reference Schedule.

(2) **Landlord holds**

The Security Deposit will be held by the Landlord during the Term and any holding over period as security for the performance and observance by the Tenant of all the covenants terms and conditions of this Lease including the payment of Rent.

(3) **Refund**

If the Tenant duly and punctually performs or causes to be performed and observed all the covenants terms and conditions in this Lease including the payment of Rent then the Security will be refunded to the Tenant within fourteen (14) days of the expiry of the Term.

(4) **Deduction**

Despite this clause 19.5 the Landlord will be entitled from time to time to deduct from the Security any amount in satisfaction of an amount that is payable to the Landlord as a result of any breach of any of the covenants, terms and conditions of this Lease and any deduction made will not be deemed to waive the Tenant's breach. On each occasion that the Landlord makes a deduction the Tenant will immediately arrange to replace the amount deducted, by making a cash payment to the Landlord.

(5) **Failure to pay**

If the Tenant fails to pay the Security or fails at any time to increase the Security as required under this clause 19.5 than the Tenant will be deemed to be in default under this Lease and the Landlord will thereafter be entitled to exercise all its powers rights and remedies pursuant to this Lease.

19.6 Personal guarantee

Clauses 19.7 to 19.14 apply if **Item 15** of the Reference Schedule has been completed by inserting details of Guarantor.

19.7 Guarantee and indemnity

In consideration of the Landlord granting this Lease to the Tenant at the Guarantors' request, the Guarantor guarantees to the Landlord:

- (1) the payment by the Tenant of the Rent and other money agreed to be paid; prompt performance and observance of all of the Tenant's covenants and obligations contained or implied in this Lease.

19.8 Indemnity

The Guarantor indemnifies the Landlord and its agents against all Claims which the Landlord may suffer or incur in connection with any breach or default by the Tenant under this Lease or any extension or renewal of the Term.

19.9 Liability of Guarantor

The Landlord's rights and the Guarantor's liability under clauses 19.7 and 19.8 will not be prejudiced or affected by:

- (1) the granting of any time, credit, forbearance, indulgence or concession by the Landlord to the Tenant or any Guarantor;
- (2) any absolute or partial release of the Tenant or any Guarantor or any compromise with the Tenant or any Guarantor;
- (3) any variation of this Lease, extension or renewal of the Term, holding over or continued occupation of the Premises by the Tenant;
- (4) any composition, compromise, release, discharge, arrangement, abandonment, waiver, variation, relinquishment or renewal of any security or right by the Landlord;
- (5) any assignment of this Lease or sublease of any part of the Premises;
- (6) the termination of this Lease;
- (7) the fact that the Rent or any other money may not be recoverable, may cease to be recoverable or may never have been recoverable or that any transaction affecting the Rent or the obligations contained in this Lease is or was wholly or partially void, voidable or unenforceable;
- (8) any failure to sue or agreement not to sue or any dealing, act or omission (whether constituting a waiver, election, estoppel or otherwise) by the Landlord with respect of the Rent, other money payable or the obligations under this Lease;
- (9) any fact, circumstance, legal disability or incapacity which would otherwise release the Tenant or any Guarantor from its obligations;
- (10) non-execution of this Lease by one or more of the persons named as Guarantor or the unenforceability of this guarantee and indemnity against one or more of the Guarantors; or
- (11) the exercise or purported exercise by the Landlord of its right of re-entry.

19.10 Irrevocable

This guarantee and indemnity is irrevocable and will remain in force until the Tenant has performed and observed all its obligations under this Lease.

19.11 Guarantor liable regardless of any Law

- (1) The Guarantor's liability will not be discharged by any payment to the Landlord which is later avoidable by any Law.
- (2) If that happens the Landlord, the Tenant and the Guarantor will be restored to their respective rights as if the payment had not been made.

19.12 Indemnity on disclaimer

If a liquidator disclaims this Lease, the Guarantor indemnifies the Landlord against any resulting Claim by the Landlord for the residue of the Term.

19.13 Guarantor not prove in liquidation

- (1) The Guarantor will not prove or claim in any liquidation, composition, arrangement or assignment for the benefit of creditors until the Landlord has received 100 cents in the dollar of all money payable to it by the Tenant.
- (2) The Guarantor will hold any proof, claim or dividend received by it on trust for the Landlord.

19.14 Guarantee to continue

- (1) If this Lease is transferred or assigned, the benefit of this guarantee and indemnity will extend to the transferee or assignee and continue concurrently for the benefit of the Landlord regardless of the transfer or assignment unless the Landlord releases the Guarantor in writing.
- (2) This guarantee and indemnity covers the period while the Tenant occupies or is entitled to occupy the Premises as tenant or holds an equitable interest over the Premises under an agreement for lease or as a periodical tenant.
- (3) Without limiting clause 19.14(2) if registration of this Lease is required to legally create a leasehold estate, then until this Lease is registered it will operate from the Commencement Date as an agreement for lease.
- (4) This guarantee and indemnity will apply whether this Lease is construed as an agreement for lease, periodical tenancy or otherwise.
- (5) This guarantee and indemnity will extend to the lease, agreement for lease or periodical tenancy created by the Tenant's exercise of any option for renewal.

20. Option of renewal

20.1 Option

If the Tenant:

- (1) wishes to lease the Premises for the further term stated in **Item 16** of the Reference Schedule;
- (2) gives written notice to that effect to the Landlord not less than 3 months and not more than six (6) months before the Termination Date; and
- (3) at the date of giving notice and at the Termination Date is not in default under this Lease;

the Landlord must grant a further lease of the Premises and the Tenant must accept the further lease of the Premises (Further Lease) to the Tenant upon the same terms and conditions as this Lease but subject to variations which are necessary in the Landlord's reasonable and bona fide opinion to accommodate variations in any Law or Requirement.

20.2 Further Lease

The Further Lease will contain:

- (1) a term as stated in **Item 16** of the Reference Schedule;
- (2) at commencement date being the day after the Termination Date;
- (3) a termination date being the last day of the further term in **Item 16** of the Reference Schedule; and
- (4) the amount to be inserted in **Item 7** of the Reference Schedule shall be an amount to be agreed between the Landlord and the Tenant within one (1) month of service on the Landlord of a notice under clause 20.1(2) and failing agreement within that one (1) month period the amount will be determined by following the procedure set out in clause 4.4 as if the Termination Date was a Market Review Date but in any event the Rent will not be less than the Rent payable in the last year of the Term increased in accordance with clause 4.3.

20.3 Omissions

Clause 4.1(5) and this clause 20 will be omitted from the Further Lease.

20.4 Parties to sign Further Lease

The Landlord, the Tenant and the Guarantor must sign the Further Lease within a reasonable time after service on the Landlord of a notice under clause 20.1(2). The Landlord, the Tenant and the Guarantor (if any) acknowledge and agree that they are bound by the terms of the Further Lease from the commencing date of the Further Lease even if the Further Lease has not been signed by them.

21. Goods and Services Tax

21.1 Definitions

In this clause 21:

- (1) GST means the goods and services tax as imposed by the GST Act including where relevant, any related interest, penalties, fines or other charges to the extent that they arise from the Tenants failure to pay GST when due.
- (2) GST Act means the legislation *A New Tax System (Goods and Services Tax) Act 1999* or if that legislation is not valid or does not exist for any reason, means any legislation imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation under that legislation.

21.2 Payment of GST

- (1) The parties agree that all payments under this Lease have been set or determined without regard to the impact of GST.
- (2) Regardless of any provision of this Lease, if GST is imposed on any supply made to the Tenant under or in accordance with this Lease by or pursuant to the GST Act, the amount the Tenant must pay for that supply is increased by the amount of that GST.

- (3) In determining the amount of any Outgoing recoverable from the Tenant under clause 5 the amount of any GST included in the price payable by the Landlord for the supply to which the Outgoing relates must be excluded.

21.3 Tax invoice

The Landlord must provide the Tenant with a tax invoice prior to or upon the Tenant's obligations to pay GST.

22. Car parking and access

22.1 Definitions

- (1) Car Park means any car park on the Land; and
- (2) Tenant's Vehicles means any vehicles belonging to the Tenant or the Tenant's Employees which may at any time be on the Land.

22.2 Tenant Covenants

The Tenant agrees with the Landlord that it will:

- (1) not clean, grease, oil, repair or wash any Tenant's Vehicles in any Car Park or access roads;
- (2) not do any act, matter or thing which might in any way endanger the Land or any part of it, including the access roads and the Car Park or any person, equipment, chattels or goods whether the property of the Landlord or not which may be on, in or near the Land;
- (3) will at all times, when within or using the Car Park and the access roads observe and conform to all the rules made by the Landlord or its agent in connection with the Car Park and the access roads;
- (4) use his best endeavours not to permit any rubbish to be placed, thrown or dropped in or about the Car Park or the access roads; and
- (5) ensure the Tenant's Employees comply with this clause 22.2.

22.3 Removal of Tenant's Vehicles

- (1) On termination of this Lease the Tenant will promptly remove all the Tenant's Vehicles from the Car Park and the access roads and any parts of the Land.
- (2) If the Tenant fails to comply with clause 22.3(1), the Landlord and any person authorised by the Landlord shall be entitled and authorised to remove any Tenants Vehicles from any part of the Land and the access roads at the sole risk and cost of the Tenant.

22.4 Release and indemnity

The Tenant hereby agrees and covenants as follows:

- (1) the Landlord shall not be responsible for any damage that the Tenant's Vehicles or any of them may sustain while upon or entering or leaving the Car Park or the access roads, and the Tenant's Vehicles whether parked or mobile in the Car Park or the access roads shall be at the sole risk of the Tenant, and the Landlord shall not be liable in respect of the death of or injury to persons using

- any of the Tenant's Vehicles as driver or otherwise except to the extent that such damage or death is caused by the Landlord's negligence; and
- (2) the Tenant indemnifies and will keep the Landlord indemnified against all liability for death or injury to persons or loss of or damage to property arising directly or indirectly through the use of the Car Park of the access roads by the Tenant or the Tenant's Employees otherwise arising out of the exercise of the rights conferred by this Licence.

23. Tenant's consent to Consolidation or Subdivision

If the Landlord wishes to carry out a consolidation or a subdivision of the Land (or any part of it) as a result of which the Premises will then comprise the whole or part of a consolidated or subdivided lot, then despite any other terms of this Lease, the Landlord must obtain the Tenants consent and the following provisions will apply:

- (1) the Tenant consents to the consolidation or subdivision (as the case may be) provided there will be no substantial interference to the Tenant's use of the Premises;
- (2) if a strata subdivision, this Lease will be subject in all respects to all rights, reservations, terms and powers referred to in the relevant strata legislation; and
- (3) if required, the Tenant must promptly sign such other documents as may be necessary to enable the Landlord to effect the consolidation or subdivision.

REFERENCE SCHEDULE

- Item 1 **LANDLORD** (clause 1.1(11))
NFP & GKB Super Fund Pty Ltd ABN 52 311 513 908 of C/O Corporation One
PO Box 6132 Coffs Harbour Plaza NSW 2450
- Item 2 **TENANT** (clause 1.1(25))
The Art of Joinery Pty Ltd ACN 114 805 846 of C/O Nestor Porley 56 Fernadell
Drive Pitt Town NSW 2756 & Graham Bridges 13 Chaplin Cres Quakers Hill NSW 2763
- Item 3 **PREMISES DESCRIPTION** (clause 1.1(18))
Folio Identifier: Strata Management NSW Strata Plan No 71135
Unit 4 105 Mulgrave Road Mulgrave NSW 2756
- Item 4 **COMMENCEMENT DATE** (clause 1.1(5))
1st August 2016
- Item 5 **TERMINATION DATE** (CLAUSE 1.1(30))
1st August 2023
- Item 6 **TERM** (clause 1.1(29))
7 years
- Item 7 **RENT** (clauses 1.1(21) and 4.1)
\$2640.00 per month incl GST
RENT COMMENCEMENT DATE (clauses 4.1(5))
12th August 2016
- Item 8 **RENT REVIEW DATES** (clause 4.2)
(a) Index review dates: 1st June 2017
(d) Market review dates: 1st June 2017
- Item 9 **TENANT'S PROPORTION OF OUTGOINGS** (clause 5)
100%
- Item 10 **USE OF PREMISES** (clauses 1.1(17) and 7.1)
Commercial usage
- Item 11 **AMOUNT OF PUBLIC RISK INSURANCE** (clause 13.1(1))
\$20,000,000.00.

- Item 12 **DEFAULT RATE** (clause 1.11(7))
10% per annum calculate and compounded daily

- Item 13 **BANK GUARANTEE AMOUNT** (clause 19.2)
N/A

- Item 14 **SECURITY DEPOSIT AMOUNT** (clause 19.5)
N/A

- Item 15 **GUARANTOR** (clauses 1.11(9) and 19.6)
N/A

- Item 16 **OPTION** (clause 20)
Term: **5 years**
Commencement Date: **21st August 2023**
Termination Date: **21st August 2028**

EXECUTED as a deed.

We certify this dealing correct for the purposes of the *Real Property Act 1990*.

Corporation without Seal Execution Clause — Landlord


Certified correct for the purposes of the Real Property Act 1990 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation: **NFP and GKB Super PTY LTD ACN 607 259 594**

corporate trustee of the custodian

Authority: Section 127 of the Corporations Act 2001

Signature of authorised person:



.....

Name of authorised person:

Office held: Director

Nestor Polley

Signature of authorised person:


.....

Name of authorised person:

Office held: Director

Graham Bridges

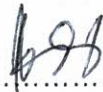
Corporation without Seal Execution Clause - Tenant

Certified correct for the purposes of the Real Property Act 1990 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation: **The Art of Joinery Pty Ltd ACN 114 805 846- tenant**

Authority: Section 127 of the Corporations Act 2001

Signature of authorised person:

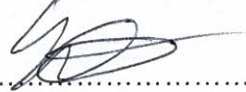

.....

Name of authorised person:

Office held: Director

Nestor Parley

Signature of authorised person:


.....

Name of authorised person:

Office held: Director

Graham Bridge

.....

In the presence of **Mandy Buckett 5 Cox Cres Richmond NSW**

witness 
.....

If Item 15 of the Reference Schedule has been completed please complete this page

I certify that the persons signing opposite, with whom
I am personally acquainted or as to whose identity I am
otherwise satisfied, signed this instrument in my presence:

.....
Signature of Witness

1]ignore

.....
[INSERT NAME OF GUARANTOR

.....
Name of Witness

.....
Address of witness

I certify that the persons signing opposite, with whom
I am personally acquainted or as to whose identity I am
otherwise satisfied, signed this instrument in my presence:

.....
Signature of Witness

.....
[INSERT NAME OF GUARANTOR 2]

.....
Name of Witness

.....
Address of witness

TABLE OF CONTENTS

1. Definitions and interpretation
 2. Exclusion of statutory provisions
 3. Term and holding over
 4. Rent and Rent reviews
 5. Outgoings
 6. Damage and destruction
 7. Use of the Premises
 8. Assignment and subletting
 9. Utilities
 10. Maintenance and repair
 11. Occupational Health and Safety Act
 12. Alterations
 13. Insurances and Indemnities
 14. Landlord's covenants
 15. Default and termination
 16. Termination of Term
 - 17 Restoration of Premises
 18. Notices
 19. Guarantees
 20. Option of renewal
 21. Goods and Services Tax
 22. Car parking and access
 23. Tenant's consent to Consolidation or Subdivision
- REFERENCE SCHEDULE