



Elizabeth Meiklejohn

Expires 2 July 2021  
A new lease is in place

Clyde Muller  
Active Medical Supplies Pty Ltd  
PO Box 3392  
TINGALPA QLD 4173

2 January 2018

The Landlord  
GM & JJ Muller Superannuation Fund &  
The Muller Family Superannuation Fund  
PO Box 3392  
TINGALPA QLD 4173

Dear Sir/Madam

**RE: LEASE OF PREMISES AT 23 MILLENIUM PLACE, TINGALPA**

Please be advised that we wish to renew the lease of 23 Millenium Place, Tingalpa which we understand expires on 2 July 2018.

We believe there is an option to renew for a further 3 years per clause 8 of the Lease.

We understand that the rent may be increased.

Please let us know your decision as soon as possible.

Kind regards



Clyde Muller  
Director

The Landlord  
GM & JJ Muller Superannuation Fund &  
The Muller Family Superannuation Fund  
PO Box 3392  
TINGALPA QLD 4173

2 January 2018

Clyde Muller  
Active Medical Supplies Pty Ltd  
PO Box 3392  
TINGALPA QLD 4173

Dear Clyde

Thank you for your letter.

We have considered your request and have decided to approve your request to exercise the option to extend the lease for a further 3 years.

The rent amount effective 2 July 2018 will remain at \$210,00 + GST. This amount is based on a recent rental valuation that was obtained.

Kind regards



Mark Muller

Subsequently increased to CPI per the lease



Clyde Muller

Dealing Number



OFFICE USE ONLY

S3b

Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in NR&W see the department's website.

23 Millenium Lease

1. Lessor

MARJAN INTERNATIONAL PTY LTD  
ACN 010 728 728 TRUSTEE UNDER  
INSTRUMENT 716616138  
CLYDE JAMES MULLER  
AMANDA LOUISE MULLER  
ROWENA MULLER  
LISA MULLER TRUSTEE UNDER  
INSTRUMENT 716616138

Lodger (Name, address, E-mail & phone number)

COURTICE LEGAL PTY LTD  
GPO BOX 8073  
WOOLLOONGABBA QLD 4102  
TEL: 07 3088 7066

Lodger  
Code  
#

2. Lot on Plan Description

LOT 5 ON SP 127957

County

STANLEY

Parish

TINGALPA

Title Reference

50311333

3. Lessee

Given names

Surname/Company name and number

(include tenancy if more than one)

ACTIVE MEDICAL SUPPLIES PTY LTD  
ACN 119 826 765 AS TRUSTEE

4. Interest being leased

FEE SIMPLE

5. Description of premises being leased

THE WHOLE OF THE LAND

6. Term of lease

Commencement date/event: 3/7/2015

Expiry date: 2/7/2018 and/or Event:

#Options: 1 x 3 years

#Insert nil if no option or insert option period (eg 3 years or 2 x 3 years)

7. Rental/Consideration

RENTAL OF \$210,000.00 PER ANNUM  
(PLUS GST) AS VARIED IN  
ACCORDANCE WITH THE  
ATTACHED SCHEDULE

8. Grant/Execution

The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in the attached schedule.

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

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

Witnessing Officer

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

24/9/2015  
Execution Date

Marjan International Pty Ltd  
*[Signature]*

Lessor's Signature

9. Acceptance

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

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

Witnessing Officer

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

24/9/2015  
Execution Date

Active Medical Supplies Pty Ltd  
*[Signature]*

Lessee's Signature

Title Reference 16375240


8. Grant/Execution

The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in the attached schedule.

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

Witnessing Officer (signature, full name & qualification)

Execution Date

  
Brian Andrew Courtue  
(Solicitor)

24/9/2015

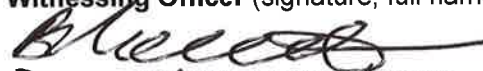


Lessor's Signature

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

Witnessing Officer (signature, full name & qualification)

Execution Date

  
Brian Andrew Courtue  
(Solicitor)

24/9/2015

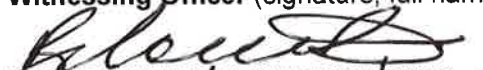


Lessor's Signature

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

Witnessing Officer (signature, full name & qualification)

Execution Date

  
Brian Andrew Courtue  
(Solicitor)

24/9/2015

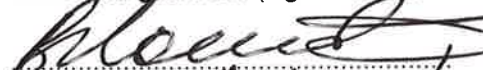


Lessor's Signature

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

Witnessing Officer (signature, full name & qualification)

Execution Date

  
Brian Andrew Courtue  
(Solicitor)

24/9/2015



Lessor's Signature

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

Title Reference 50311333

This is the Schedule referred to in the FORM 7 LEASE dated the 24 day of April 2015.

1. REFERENCE DATA

- ITEM 1: PARTIES:**  
Landlord: Marjan International Pty Ltd ACN 010 728 728 trustee under instrument 716616138  
Clyde James Muller, Amanda Louise Muller, Rowena Muller, Lisa Muller trustee under instrument 716616138  
Address for Notices: 23 Millenium Place, Tingalpa QLD 4173  
Tenant: Active Medical Supplies Pty Ltd ACN 119 826 765 as trustee for the M & J Muller Family Trust  
Address for Notices: 23 Millenium Place, Tingalpa QLD 4173
- ITEM 2: TERM:**  
Date of Commencement: 3 years  
Expiration Date: 03/07/2015  
02/07/2018
- ITEM 3: BUILDING AND LEASED PREMISES:**  
Address of Building: 23 Millenium Place, Tingalpa QLD 4173
- ITEM 4: RENT:**  
(a) Commencement date of rental payment: 03/07/2015  
(b) Rent:  
(i) Annual Rent: \$210,000.00 plus GST  
(ii) Monthly Rent: \$17,500.00 plus GST  
(c) Rent due date: the first day of each Month  
(d) Interest on arrears: at the Stipulated Rate as defined in Part 2
- ITEM 5: MARKET REVIEW DATE/S:** None during the Term only at Market Review Date
- ITEM 6: USE OF PREMISES:** Any use permitted by local authority zoning
- ITEM 7: INSURANCE REQUIREMENTS:** As set out in cl. 8.2
- ITEM 8: RIGHT OF RENEWAL:**  
Term: 1 option of 3 years  
Date must be exercised in writing: Six (6) months before expiry of current term  
Commencement Date of Renewal Term: 03/07/2018
- ITEM 9: MARKET REVIEW DATES FOR RENEWAL TERM:** There are no Market Review Dates during the Renewal Term
- ITEM 10: AMOUNT OF BOND/ GUARANTEE:** Not applicable.
- ITEM 11: GUARANTORS:**  
(name and address) Not applicable.

Each reference in this Lease to any of the titles contained in this Part is to be construed to incorporate the data stated and the terms provided under that title.

Title Reference 50311333

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

Unless otherwise provided or unless there is something inconsistent in the subject matter the expressions following (whether appearing with or without capital letters) have the meanings assigned to them in this clause:

- 2.1.1 **Air Conditioning Equipment** means the plant, electrical installations, ductwork, and diffusers used for the manufacture and reticulation of conditioned air throughout the offices which form part of the Building and includes all mechanical ventilation.
- 2.1.2 **Building** means the building or buildings of the Landlord erected or to be erected on the Land.
- 2.1.2(a) **Body Corporate** means any body corporate constituted under the Body Corporate and Community Management Act 1997 for the Scheme.
- 2.1.2(b) **Common Property** means the common property for the Scheme.
- 2.1.3 **Date of Commencement** means the date referred to in **Item 2** of the **Reference Data** as the Date of Commencement.
- 2.1.4 **Fire Equipment** includes all stopcocks, hydrants, fire hoses, fire alarms, fire sprinklers, and other fire prevention extinguishing and detection equipment in the Building.
- 2.1.5 **Form 7** means the lease in **Form 7** to the *Land Title Act 1994* to which this Schedule is attached.
- 2.1.6 **Guarantor** means the guarantor or collectively the guarantors referred to in **Item 11** of the **Reference Data** and also any person who enters into covenants with the Landlord as a guarantor under **cl. 9.1**. If the Guarantor is one person the expression includes that person, his executors, and administrators. If the Guarantor is more than one person, the guarantor includes those persons and their respective executors and administrators jointly and severally. If the guarantor is a corporation, the guarantor includes that corporation and its successors or, if more than one corporation, the guarantor includes those corporations and their respective successors.
- 2.1.7 **Index Number** means the Consumer Price Index (All Groups) for the city of Brisbane as published by the Australian Bureau of Statistics. If that index is suspended, discontinued, or modified so that it does not reflect on a consistent basis changes which have occurred in the cost of living in the city of Brisbane during any Lease Year, the expression will mean an index which in the opinion of the Australian Statistician (whether published or advised at the request of either party) does reflect on a consistent basis changes which have occurred in the cost of living in the City of Brisbane during any Lease Year. If the Australian Statistician has not published and will not advise an appropriate index, the expression will mean an index or method of measuring increases in the cost of living agreed in writing by the parties and in default of agreement within a period of fourteen (14) days, an index or method determined at the request of either party by the President or Acting President of the Australian Institute of Valuers & Land Economists (Qld Division) or their nominee.
- 2.1.8 **Insured Risks** means the risks against which the Landlord is required by this Lease to effect insurance and any additional risks against which the Landlord effects insurance relating to the Building.
- 2.1.9 **Land** means the land described in **Item 2** of the **Form 7**.
- 2.1.10 **Landlord** means the lessor referred to in **Item 1** of the **Form 7** its successors and assigns and unless inconsistent with the subject matter or context includes all persons for the time being authorised by the Landlord.

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- 2.1.11 **Lease** means this Lease including the **Form 7** together with any annexures and schedules and any covenant or agreement expressed to be supplemental to this Lease and all amendments to those documents.
- 2.1.12 **Lease Year** means each separate year of the term of this Lease the first Lease Year commencing on the Date of Commencement and each subsequent Lease Year commencing on the corresponding day of each succeeding year; the expression includes any broken period between the end of the last complete Lease Year and the date of termination.
- 2.1.13 **Market Review Dates** are the dates specified in **Item 5** of the **Reference Data**.
- 2.1.14 **Month** means a calendar month.
- 2.1.15 **Outgoings** means all amounts paid or payable by the Landlord in connection with the Premises (other than the costs of structural works) including amounts paid or payable in connection with the ownership, operation, maintenance and repair and management of the Premises including but not limited to the following:
- (a) Rates, charges, and other levies payable to the local authority in whose area the Premises are located.
  - (b) Rates and charges payable to any local or other authority responsible for the provision or reticulation of water and/or sewerage and/or drainage services.
  - (c) Body Corporate levies paid or payable by the Landlord including administrative fund, sinking fund, special levies and insurance premiums.
  - (d) Levies, contributions and/or other amounts payable to any local or other authority for or on account of fire protection services.
  - (e) All rates, taxes, charges, assessments, outgoings, and impositions (whether parliamentary, municipal, or otherwise and whether assessed, charged, or imposed by or under Federal or State law or by Federal State or Local authorities and whether on a capital, revenue value, or any other basis and even though of a novel character) which are assessed, charged, or imposed in respect of the Premises or any part of them including land tax (on a single parcel basis) but excluding income tax and capital gains tax.
  - (f) All charges for electricity, gas, oil, or other fuel incurred in the operation of the Air Conditioning Equipment and other plant and equipment in the Premises.
  - (g) Insurance premiums and other charges (including stamp duties) for insurance of the Premises against Insured Risks and other risks reasonably determined by the Landlord which are effected pursuant to **cl.8.6**.
  - (h) Public risk liability insurance against third party liability hazards including exposure to personal injury, bodily injury, and property damage on an occurrence basis; including insurance for all contractual obligations and covering also actions of all employees, other persons, subcontractors, and agents while working on behalf of the Landlord. The policy will be written on a comprehensive basis with limits of not less than \$5 million per occurrence or higher amounts reasonably required by the Landlord from time to time.
- 2.1.16 **Pipes** means all pipes, sewers, drains, mains, conduits, ducts, gutters, water courses, wires, cables, channels, flues, and all other conducting media and including any fixings, louvres, cowls, and any ancillary apparatus.
- 2.1.17 **Premises** means the Land, the Building and all improvements on the Land.

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2.1.18 **Redecorate** includes:

- (a) washing down the interior of the Building, including all partitions and additions made to the Building;
- (b) treating by painting those parts of the interior and exterior walls which have previously been painted and which have been stained or scratched other than by fair wear and tear and which cannot be restored to a reasonably acceptable condition by scrubbing or other remedial work;
- (c) replacing all carpet and/or floor tiles in the offices forming part of the Building, which are worn or damaged or in need of replacement;
- (d) putting all electrical circuits, wiring and switchboards in the Building or on the Premises in good and safe order and condition;
- (e) making all light fittings operational.

2.1.19 **the Reference Data** means the data set out in **Part 1** of this **Schedule**.

2.1.20 **the Scheme** means any community titles scheme which includes the Land.

2.1.21 **Rent** has the meaning given to that expression in **cl. 3.2**.

2.1.22 **the Stipulated Rate** means a percentage interest rate of 10% per annum.

2.1.22(a) **the Roller Door** means any roller door affixed to the Building.

2.1.23 **the Tenant** means the lessee referred to in **Item 3** of the **Form 7** and if this Lease is taken by one person, the tenant includes that person his executors, administrators, and permitted assigns. If this Lease is taken by more persons than one, the tenant includes those persons and each of their respective executors, administrators, and permitted assigns jointly and severally. If a corporation is a Tenant, the tenant includes that corporation, its successors, and permitted assigns.

2.1.24 **Valuers' Institute** means the Australian Institute of Valuers and Land Economists Inc (Queensland Division).

2.1.25 **writing** includes printing, typing, lithography, and other modes of reproducing words in a visible form and **written** has a corresponding meaning.

2.2 Interpretation

2.2.1 Every covenant agreement or obligation expressed or implied in this Lease by which two or more persons covenant, agree, or are bound, binds those persons jointly and each of them severally. Every provision expressed or implied in this Lease which applies to two or more persons applies to those persons jointly and each of them severally.

2.2.2 References to the Valuers' Institute and any other authorities, associations, and bodies whether statutory or otherwise will, if any of those authorities, associations, or bodies ceases to exist, or is reconstituted, renamed, or replaced or if its powers or functions are transferred to any other authority, association, or body be deemed to refer to the authority, association, or body established or constituted in its place and/or as nearly as may be succeeding to its powers or functions.

2.2.3 References to any right of the Landlord to have access to the Premises extend to all persons authorised by the Landlord including agents, professional advisers, contractors, workmen and others.

2.2.4 References to the Premises, in the absence of any provision to the contrary, include any part of the Premises.



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- 2.2.5 Any covenant by the Tenant not to do any act or thing is deemed to include an obligation not to permit that act or thing to be done, and to use its best endeavours to prevent that act or thing being done by a third party.
- 2.2.6 Any provision in this Lease requiring the consent or approval of the Landlord also requires the consent or approval of any mortgagee of the Premises and any superior landlord where that consent is required. This Lease does not restrict the right of any mortgagee or superior landlord to refuse any consent or approval.
- 2.2.7 References to the **Consent of the Landlord** or words to similar effect mean a consent in writing signed by or on behalf of the Landlord and references to **Approved** and **Authorised** or words to similar effect mean approved or authorised in writing by or on behalf of the Landlord.
- 2.2.8 The terms **the Parties** or **Party** mean the Landlord and/or the Tenant but except where there is an express indication to the contrary, exclude the Guarantor.
- 2.2.9 Words in the singular include the plural and vice versa. A reference to any gender includes every other gender. Words denoting individuals include corporations.
- 2.2.10 A reference in this Lease to an Act of Parliament or any section of an Act are to be read as though the words **or any statutory modification or re-enactment of it or any statutory provision substituted for it** were added to the reference. Any general reference to **Statute** or **Statutes** includes any regulations or orders made under the Statute or Statutes.
- 2.2.11 Every obligation or covenant (whether positive or negative) undertaken by any Party (including the Guarantor) will, despite the wording, be deemed to be and will be construed as if each obligation or covenant is a separate and independent covenant made by the Party undertaking the obligation and continuing (unless the context otherwise requires) throughout the term of this Lease and subsequently so long as it remains to be performed.
- 2.2.12 References in this Lease to any clause, subclause, paragraph, or Schedule without further designation will be construed as a reference to the clause, subclause, paragraph, or Schedule of this Lease so numbered.
- 2.2.13 The headings or marginal notes in this Lease are included for convenience only and do not affect the construction of this Lease.

3. RENT

3.1 Payment of Rent

The Tenant will pay to the Landlord (by way of a direct debit facility on an account of the Tenant in favour of an account nominated by the Landlord from time to time) in each Lease Year the Rent without any formal or other demand by equal monthly instalments in advance on the first day of each month. In the case of any broken period of less than one month by an instalment on the first day of the broken period of an amount ascertained by multiplying the number of days in that broken period by the Rent for the Lease Year of which it forms part and dividing the result by 365.

3.2 Rental Reviews

3.2.1 **Rent and Annual Reviews**

The expression **Rent** means an annual sum calculated as follows:

- (a) for the first (1st) Lease Year:

the sum specified in **Item 4(b)(i)** of the **Reference Data**;

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- (b) for the second (2nd) and each subsequent Lease Year shall be the Rent reserved and payable during the Lease Year last concluded increased by the amount derived annually by the multiplying of the Rent for the Lease Year last concluded by a fraction obtained by dividing the Index Number for the last quarter immediately preceding the first day of the Lease Year under review by the Index Number for the last quarter immediately preceding the first day of the Lease Year last concluded.

3.2.2 **Reviews to Market**

The Rent will be further reviewed so that the Rent for the Lease Years commencing on the Market Review Dates will be the market rent for that Lease Year calculated in accordance with **cl. 3.3**, and the Rent so determined will be reviewed annually in accordance with **cl. 3.2.1**.

3.3 Market Rent

- 3.3.1 The Landlord may at any time up to 6 months after a Market Review Date give written notice to the Tenant of the amount of rent the Landlord believes will be the market rent for the Premises as at the Market Review Date.
- 3.3.2 If the Landlord does not give written notice in accordance with **cl. 3.3.1** the rent payable for the Lease Year commencing from the Market Review Date will be the same rent as was payable in the preceding Lease Year increased by 3%.
- 3.3.3 If the Landlord gives written notice in accordance with **cl. 3.3.1**, the Tenant may give written notice to the Landlord within twenty-one (21) days of receipt of the Landlord's notice disputing the Landlord's assessment of the market rent.
- 3.3.4 If the Tenant does not give notice in accordance with **cl. 3.3.3** the amount set out in the Landlord's notice will be the Rent payable from the Market Review Date.
- 3.3.5 If the Tenant gives notice in accordance with **cl. 3.3.3** the market rent will be determined as follows:
- (a) the market rent will be determined by a person (**the Expert**) who has been a member of the Valuers' Institute for at least five (5) years nominated by the President for the time being of the Valuers' Institute on the application of the Landlord or Tenant;
  - (b) the Expert will act as an expert and not an arbitrator; and
  - (c) the Expert will determine the market rent of the Premises assuming:
    - (i) a term equivalent to the original term of this Lease;
    - (ii) that the Tenant has complied with all obligations of repair and decoration imposed by this Lease;
    - (iii) that the covenants of the lease are the same as the covenants of this Lease other than for quantum of rent and any other differences required by these assumptions; and
    - (iv) that any improvements made to the Premises by the Tenant have not been made.

3.4 Obligation to Pay Pending Determination

Pending determination of the Rent for any Lease Year, rent will be paid at the rate payable during the Lease Year last concluded and will be adjusted retrospectively to the beginning of the Lease Year under review.

3.5 Net Lease

This Lease is a net lease and the Tenant's obligation to pay all Rent and the rights of the Landlord to the Rent are absolute and unconditional and are not subject to any abatement, reduction, set-off, defence, counterclaim,

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or recoupment. Except as may otherwise be expressly provided in this Lease and despite any law to the contrary, this Lease will not terminate and the respective obligations of the Landlord or the Tenant will not otherwise be affected, by reason of:

- 3.5.1 the invalidity or unenforceability or lack of due authorisation or other defect of this Lease;
- 3.5.2 the lack of any right, power, or authority of the Tenant to enter into this Lease or any prohibition or interruption of or other restriction against the Tenant's use, operation, or possession of the Premises for any reason;
- 3.5.3 the interference with the use, operation, or possession by any person or entity;
- 3.5.4 any other indebtedness or liability whenever arising of the Landlord or the Tenant to any other person, firm, or corporation or to any governmental authority;
- 3.5.5 any insolvency, bankruptcy, or similar proceedings by or against the Landlord or the Tenant; or
- 3.5.6 any other cause.

The Rent will continue to be payable in all events and in the manner and at the times provided in this Lease unless the obligation to pay it is terminated under the express provisions of this Lease.

3.6 Rent Free Period (Intentionally deleted)

**4. OUTGOINGS**

4.1 Outgoings

The Tenant will pay all Outgoings immediately upon request of the Landlord and in any event no later than 7 days after production to the Tenant by the Landlord of a tax invoice for those Outgoings paid by the Landlord. Any Outgoings assessed at intervals or for periods that do not fall wholly within the term of this Lease will be apportioned as necessary. Where any Outgoings relate to areas other than the Premises the Tenant will pay the Tenant's share of the Outgoings based on the percentage that the area of the Premises bears to the total area to which the Outgoings relate it being the intention that the Tenant pay all Outgoings which relate to the Premises whether assessed solely on the Premises or assessed on the Premises and other areas.

4.2 Light and Power

The Tenant will not use any form of light, power, or heat other than electric current or gas supplied through meters. This covenant does not prevent the use of auxiliary power or lighting (other than an exposed flame) during any period of power failure or power restrictions.

4.3 Electricity, Gas, and Water and Other Services

The Tenant will pay all assessments for electricity, gas, water, sewerage, telecommunications, fire protection and other services relating to the Premises by their due dates for payment.

4.4 Future Taxes on Premises

The Tenant will pay and discharge without exception all rates, taxes (not including land tax), charges, assessments, outgoings, and impositions (whether parliamentary municipal or otherwise and whether assessed, charged, or imposed by or under Federal or State law or by Federal State or Local Authorities and whether on a capital or revenue basis or any other basis and even though of a novel character) which may at any time during the term of this Lease be assessed, charged, or imposed upon or in respect of the Premises or the use and occupation of the Premises and whether assessed against the Landlord or directly against the Tenant will be paid to the relevant assessing Authority not later than the due date for the payment and if assessed against the Landlord will be paid by the Tenant to the Landlord upon demand.

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4.5 Special Services

The Tenant will pay to the Landlord upon demand the amount of any additional or unusual costs, charges, and expenses incurred by the Landlord at the request of the Tenant in having any alterations, repairs, or maintenance to the Premises or to the appurtenances in the Premises effected outside the normal working hours of the tradesmen concerned or in providing any special, additional, or unusual services for the Tenant.

4.6 Cleansing Dues

If the relevant Local or other Authority provides any cleansing or refuse service for the Premises (whether at the request of the Tenant or by direction of any officer of that Authority), the Tenant will pay the cost of the service to the relevant assessing Authority on or before the due date if assessed directly against the Tenant but otherwise to the Landlord within seven (7) days of being billed by the Landlord.

5. **USE**

5.1 Use of the Premises

The Tenant will not use or permit the Premises to be used for any purpose other than the purpose specified in **Item 6** of the **Reference Data**. The Tenant acknowledges that:

- 5.1.1 it is the responsibility of the Tenant to obtain the consent of any planning or other authority which may be required for the Tenant to carry on its business on the Premises and the failure of the Tenant to obtain that consent does not relieve the Tenant of its obligation to pay Rent and otherwise to perform its obligations under this Lease;
- 5.1.2 no promise, representation, warranty, or undertaking has been given by or on behalf of the Landlord in respect to the suitability or adequacy of the Premises for any use or business or to the fixtures, fittings, furnishings, finish, plant machinery, and equipment of or in the Premises; and
- 5.1.3 any warranties as to the suitability, fitness, and adequacy of the Premises implied by law are negated.

5.2 Compliance with Statutes, Regulations, etc.

- 5.2.1 The Tenant will duly and punctually comply with and observe all Statutes and all orders, ordinances, regulations, and by-laws (including Body Corporate by-laws contained in the community management statement annexed hereto and marked "A") relating to the Premises or to the Tenant's use or occupation of the Premises and all requirements and orders lawfully given or made by any public body or authority relating to the Premises within the time required by the notice or order.
- 5.2.2 The Tenant will not do or omit to do any act or thing whereby the Landlord may become liable to pay any penalty imposed or to bear the whole or any part of any expenses incurred under any statute, ordinance, regulation, by-law, order, requirement, or notice.
- 5.2.3 The Tenant is not required by this clause to make any structural improvements or structural alterations unless they are required or made necessary by reason of any neglect or default by the Tenant or any person claiming under the Tenant or by reason of the business carried on in the Premises or the number or sex of the employees or persons at the Premises.

5.3 Annoying or Injurious Conduct

The Tenant will not:

- 5.3.1 carry on in any part of the Premises any annoying, noxious, offensive, or illegal business, occupation, or practice; and
- 5.3.2 do any act or thing or use any plant or machinery which through noise, odours, vibrations, or otherwise may be or grow to the annoyance, nuisance, grievance, damage, or disturbance of the Landlord or of the occupiers of neighbouring premises.

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**5.4**     **Use of Appurtenances**

The Tenant will not use the water closets, drains, and other water apparatus and other appurtenances in the Premises and the Building for any purposes other than those for which they were constructed and will not place in them any sweepings, rubbish, rags, ashes, or other deleterious substances.

**5.5**     **Drains and Waste**

All blockages which may occur in any Pipes originating within the Premises will be cleared by licensed tradesmen employed by the Tenant.

**5.6**     **Interference with Services**

Except as otherwise provided in this Lease the Tenant will not interfere with any appurtenances, Pipes, water supply, gas, electrical, plumbing, or other services contained in or about the Premises or the Air Conditioning Equipment or the Fire Equipment without first obtaining the consent in writing of the Landlord.

**5.7**     **Erection of Signs**

The Tenant will not cause any advertising or other sign or advertisement or hoarding to be painted or erected or otherwise placed on the Premises without the consent of the Landlord. The Landlord's consent will not be withheld unreasonably to the using or exhibiting of any advertisement or sign customary to the Tenant's class of business if the advertisement or sign strictly complies with the by-laws of the Body Corporate and local or other authorities.

**5.8**     **Prohibition on Erection of Blinds and Shop Fittings**

The Tenant will not erect or affix any blinds or awnings to the outside of the Premises or any blinds (venetian or otherwise) to the interior of the windows, display windows, or doors or affix any fittings to the exterior walls or ceilings of the Building without the written consent of the Landlord which may be granted or refused or granted subject to conditions in the absolute discretion of the Landlord. Where required by by-law the Tenant will obtain the consent of the Body Corporate.

**5.9**     **Prohibition on Marking or Damaging Walls**

The Tenant will not cut, make holes in, mark, deface, drill, or damage any of the walls, ceilings, or other parts of the Premises except so far as may reasonably be necessary for the erection of approved signs, blinds, or awnings. On the removal of signs, blinds, or awnings, the Tenant will reinstate, repair, and make good any damage or unsightliness caused in or about the erection or removal of them even if the Landlord has consented to them.

**5.10**    **Rodents and Vermin**

The Tenant will at its own cost and expense keep the Premises free and clear of rodents, termites, cockroaches, and other vermin.

**5.11**    **Overloading of Floors**

The Tenant:

- 5.11.1    will observe the maximum floor loading weights reasonably nominated by the Landlord and will not permit the floors of the Building to be broken, strained, or damaged by overloading them;
- 5.11.2    will observe the maximum loading weights reasonably nominated by the Landlord for the hardstand areas on the Land;
- 5.11.3    will not install any safes or other heavy equipment except in positions and subject to conditions approved in writing by the Landlord; and
- 5.11.4    will not use any tracked vehicles on the hardstand areas of the Land without first obtaining the written consent of the Landlord.

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**5.12**     Infectious Diseases

If any infectious disease happens upon the Premises which may require notification by virtue of any statute, regulation, or ordinance, the Tenant will:

5.12.1     give all the necessary notices and any other information which may be required to the proper authorities;

5.12.2     give a copy of the notification to the Landlord; and

5.12.3     at its own expense thoroughly fumigate and disinfect the Premises.

**5.13**     Inflammable Substances

The Tenant will not use any chemical, burning fluids, oil, acetylene, or alcohol in lighting the Premises or, except in the ordinary course of the Tenant's business, for any business or other purpose.

**5.14**     Not to Make Voidable Insurance Policies

The Tenant will not do or permit anything to be done on the Premises or bring or keep anything in the Premises that may in any way make void or voidable any policy or policies of insurance applicable to the Premises or conflict with any laws or regulations or with any insurance policy applicable to the Premises or whereby the amount of premium payable in respect of any insurance policy may be liable to be increased. Without prejudice to the rights of the Landlord to determine this Lease, the Tenant will pay to the Landlord on demand any increase of premium which may be occasioned by a breach of this clause.

**5.15**     To Observe Fire Laws

The Tenant will at all times in its use of the Premises comply with the requirements of the Insurance Council of Australia and The Metropolitan Fire Brigades Board and the laws and regulations for the time being in force relating to fires and the provisions of every relevant Statute, regulation, and ordinance.

**5.16**     Fire Drills and Evacuation Procedures

The Landlord may require the Tenant to perform from time to time fire drills and to observe all necessary and proper emergency evacuation procedures and the Tenant and all persons under its control will co-operate with the Landlord and the Body Corporate in performing those drills and procedures.

**5.17**     Auction Sales

The Tenant will not in any circumstances hold or permit to be held any auction sale in or about the Premises without first obtaining the written consent of the Landlord which consent shall not be unreasonably withheld.

**5.18**     Security

The Tenant will cause all exterior doors and windows in the Building to be locked securely at all times when the Premises are not being used. The Landlord's representatives are authorised from time to time to enter the Premises for the purpose of locking any doors or windows left unlocked or unfastened or checking the general security of the Building and the Premises.

**5.19**     Overloading of Electricity

The Tenant will not without the written consent of the Landlord install any electrical equipment on the Premises that overloads the cables, switchboards, or sub-boards through which electricity is conveyed to the Premises. If the Landlord grants that consent any alterations which may be necessary to comply with the requirements of the insurance underwriters of the Building or any Statutes, regulations, ordinances, or by-laws will be effected by the Landlord at the expense of the Tenant and the entire cost of the alterations will be paid by the Tenant to the Landlord upon demand. The Landlord may require the Tenant to deposit with the Landlord the estimated cost of the alterations before they are commenced.

**5.20**     Use of External Areas

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The Tenant must not use areas external to the Building or the Common Property for parking or storage of motor vehicles, caravans, boats, demountable buildings, or containers of any kind other than in the day to day use of the Premises authorised by this Lease.

**6. MAINTENANCE AND REPAIR**

**6.1 Notice of Damage**

The Tenant will advise the Landlord promptly in writing of any damage sustained to the Premises or the defective operation of any of the appurtenances in the Premises.

**6.2 Maintenance of Premises**

The Tenant will repair the Premises and keep them in good repair to the Landlord's reasonable satisfaction. This excludes:

- 6.2.1 fair wear and tear;
- 6.2.2 structural damage not caused by the Tenant or the Tenant's employees, agents, contractors or invitees;
- 6.2.3 any repairs of a capital nature not caused by the Tenant or the Tenant's employees, agents, contractors or invitees.

The Tenant must replace light bulbs, tubes, starters and power points.

**6.3 Inspection by Landlord**

The Tenant will permit the Landlord at all reasonable times to enter upon and view the condition of the Premises and immediately upon notice being given to the Tenant by the Landlord will execute all repairs and work agreed to be done by the Tenant. The Tenant will also permit the Landlord at all reasonable times to enter upon the Premises for the purpose of effecting any alterations, remodelling, or repairs which the Landlord may wish to carry out.

**6.4 Landlord's Right to Repair**

If the Tenant at any time makes default in the performance or observance of any express or implied covenants in this Lease relating to the repair of the Premises, the Landlord may (but without prejudice to the Landlord's right of re-entry) enter upon the Premises and repair them at the expense of the Tenant.

**6.5 Tenant to Redecorate**

The Tenant will, during the last three (3) months of the term of this Lease or any extended term if the option is exercised by the Tenant, Redecorate the Premises to the satisfaction of the Landlord. If the Tenant fails to Redecorate the Premises, the Landlord may Redecorate them at the Tenant's expense. For the sake of clarity the Landlord acknowledges that this obligation to Redecorate applies only once even if the Tenant exercises the option referred to in **cl. 17.1**.

**6.6 Glass**

The Tenant will replace or repair all glass in the Premises that is broken during the term of this Lease or which is already broken at the Commencement Date.

**6.7 Cleaning**

The Tenant will:

- 6.7.1 keep the Premises (including the whole of the interior of the Building and the internal and external surfaces of the windows and glass) in a thorough state of cleanliness;
- 6.7.2 not allow any accumulation of useless property or rubbish; and

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- 6.7.3 at its own expense employ staff for the regular cleaning of the interior of the Building and the interior and exterior surfaces of windows and glass.

**6.8 External Areas**

The Tenant will maintain all areas outside the Building in good order and condition. The Tenant will:

- 6.8.1 weed all gardens and landscaped areas;
- 6.8.2 mow all lawns and keep them neat and tidy; and
- 6.8.3 generally maintain the grounds neat and free from rubbish.

**6.9 Air Conditioning Equipment**

The Tenant will maintain the Air Conditioning Equipment and any Roller Door in good working order and condition in accordance with the relevant manufacturer's specifications and in compliance with all Governmental requirements in relation to the use, operation and maintenance of the same and with all workplace health and safety regulations throughout the term of the Lease. The Tenant will at the Tenant's cost enter into a service contract approved by the Landlord in respect to the Air Conditioning Equipment and any Roller Door. The risk in relation to the maintenance, use and operation of the Air Conditioning Equipment and Roller Door will be borne by the Tenant with the exception that the Landlord will be responsible for the matters referred to in **cl. 6.2.2** and **cl. 6.2.3**.

**7. ALTERATIONS**

**7.1 No Alterations Without Consent**

The Tenant will not make any structural or other alterations or additions to the Premises or appurtenances in the Premises or the Air Conditioning Equipment or the Fire Equipment without first submitting full detailed drawings and other specifications of the proposed works and particulars of the materials proposed to be used and obtaining the Landlord's consent in writing. The Landlord's consent may be granted upon whatever terms and conditions the Landlord in its absolute discretion thinks fit. If the Landlord grants its consent it will be a condition of that consent that the works are carried out under the supervision of the Landlord's architect. The Tenant will pay to the Landlord immediately on demand all costs and expenses incurred by the Landlord including architect's and other consultants fees payable by the Landlord whether consent is granted or not.

**7.2 Alterations Required for Tenant's Business**

Any alterations which may be required to the Premises or to the Air Conditioning Equipment, the Fire Equipment, or the water, gas, electrical, plumbing, or other services to make or keep the Premises suitable for use by the Tenant in its business or required by reason of the number or sex of the persons employed in the Premises will be effected by and at the expense of the Tenant. The Tenant must first submit full detailed drawings and other specifications of the proposed work and class of materials proposed to be used and obtain the Landlord's consent in writing (which consent will not be unreasonably refused having regard only to the interests of the Landlord if the alterations are required by law). The Tenant indemnifies the Landlord against all injury or damage to the Premises caused in or about the erection or construction of the alterations or additions or in the removal of the alterations and additions even though the Landlord may have consented to them.

**7.3 Internal Partitions**

The Tenant will not install any internal partitions in the Building or make any alterations or modifications to any internal partitions without the written consent of the Landlord. The Landlord's consent will not be unreasonably withheld if the following conditions are complied with:

- 7.3.1 the Tenant is to submit to the Landlord full detailed drawings and specifications of the proposed works;
- 7.3.2 the drawings and specifications are to meet with the approval of the Landlord's architect;



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- 7.3.3 the materials to be used in carrying out the works are to be of a standard as to type, quality, colour, and size as the Landlord determines;
- 7.3.4 the works are to be carried out by a builder Approved by the Landlord;
- 7.3.5 the works are to be carried out under the supervision of the Landlord's architect; and
- 7.3.6 the Tenant is to pay to the Landlord immediately upon demand all reasonable costs and expenses incurred by the Landlord including architect's and other consultants' fees payable by the Landlord whether any Approval is granted or not.

Any partitions erected by the Tenant remain the property of the Tenant who is responsible for their maintenance and insurance.

**7.4** Costs of Internal Works

Any works Approved under **cl. 7.3** will be effected by and at the expense of the Tenant including the costs of all additional lights and power outlets, switches, telephone outlets, and alterations or any other services which may be required by reason of the position of partitions. The Tenant indemnifies the Landlord against all injury or damage to the Premises caused in or about the execution of those works.

**7.5** Tenant's Fixtures

If the Tenant has paid all Rent and observed and performed all the covenants, agreements, and provisions contained in this Lease for which the Tenant is responsible, any fixtures and things which with the consent of the Landlord have been installed by the Tenant on the Premises may at the expiration of the term of this Lease be taken down and removed from the Premises for the Tenant's own benefit but always only upon the condition that the removal can be carried out without danger to the stability of the structure of the Premises. The Tenant will make good to the satisfaction of the Landlord or the architect of the Landlord any damage done or unsightliness occasioned to the Premises by or as a result of the installation or removal of any of these fixtures and things. Any fixtures and things not removed by the Tenant and all other goods of the Tenant left on the Premises will be deemed abandoned by the Tenant and become the property of the Landlord. The Landlord may in its discretion sell or otherwise dispose of abandoned fixtures, things, and goods in any manner the Landlord thinks fit.

**7.6** Alterations or Additions to Premises by Landlord

If after the commencement of this Lease the Landlord carries out or effects any alterations or additions to the Premises at the request of the Tenant or by reason or as a result of any requisition, direction, or order of any licensing inspector, health inspector, municipal, or other authority having jurisdiction over the Premises or the owner or occupier of the Premises (and whether the requisition order or direction was received before or after the commencement of this Lease) then the Tenant will as from the date of completion of those alterations or additions pay to the Landlord as further rental an amount per annum equal to twenty per centum (20%) of the cost (including architects' fees) as certified by the Landlord's architects of carrying out those alterations or additions to the Premises. The further rental is to be paid monthly in advance on the same days as the Rent.

**8. INDEMNITY, RISK, INSURANCE, LIABILITY**

**8.1** Indemnities

The Tenant indemnifies the Landlord against all actions, claims, demands, losses, damages, costs, and expenses which the Landlord may sustain or incur or for which the Landlord may become liable whether during or after the term of this Lease in respect of or arising from:

- 8.1.1 loss, damage, or injury from any cause to property or person inside or outside the Building occasioned or contributed to by the neglect or default of the Tenant or any servant, agent, licensee, invitee, subtenant, or other person claiming through or under the Tenant to observe or perform any of the covenants, conditions, regulations, and restrictions on the part of the Tenant in this Lease whether positive or negative, expressed or implied;

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- 8.1.2 the negligent use, misuse, waste, or abuse by the Tenant or any servant, agent, licensee, invitee, subtenant, or other person claiming through or under the Tenant of any water, gas, or electricity, or other services to the Premises or to the Building;
- 8.1.3 the overflow, leakage, or escape of water, fire, gas, electricity, or any other harmful agent in or from the Premises caused or contributed to by any act or omission on the part of the Tenant, its servants, agents, licensees, invitees, subtenants, or other persons claiming through or under the Tenant;
- 8.1.4 the failure of the Tenant to notify the Landlord of any defect in any of the Air Conditioning Equipment, the Fire Equipment, or other appurtenances in the Premises of which the Tenant is aware or ought to be aware;
- 8.1.5 loss, damage, or injury from any cause to property or person caused or contributed to by the use of the Premises by the Tenant, or any servant, agent, licensee, invitee, or subtenant, and arising out of the neglect or default of the Tenant or any servant, agent, licensee, invitee, or subtenant;
- 8.1.6 the improper or faulty erection or construction of facilities, trade fixtures, or equipment installed on or in the Premises by the Tenant; and
- 8.1.7 any personal injury sustained by any person in or about the Premises however caused other than by the wilful or negligent act of the Landlord, its servants, or agents.

**8.2** **Insurances**

- 8.2.1 The Tenant will during the term of this Lease at its sole cost and expense obtain and keep in full effect in the names of the Tenant, the Landlord, and all mortgagees of the Premises (as their interests may appear) the following insurances:
  - (a) **Property**

Insurance upon all property situated in the Premises owned by the Tenant or for which the Tenant is legally liable and on all fixtures and improvements installed in the Premises by the Tenant. The policies must be for an amount not less than ninety per centum (90%) of the full replacement cost with coverage against at least fire with standard extended coverage.
  - (b) **Business Interruption Insurance**

Business Interruption insurance in an amount sufficient to reimburse the Tenant for direct or indirect loss of earnings attributable to perils commonly insured against by prudent tenants or attributable to prevention of access to the Premises.
  - (c) **Public Risk**

Public Risk Liability insurance applying to all operations of the Tenant and which will include bodily injury liability and property damage liability, personal injury liability, products liability, contractual liability, contingent liability, and tenant's legal liability with respect to the occupancy by the Tenant of the Premises. The policy will be written on a comprehensive basis with limits of not less than ten million dollars (\$10,000 000.00) per occurrence or any higher limits the Landlord or its mortgagee reasonably requires from time to time.
  - (d) **Plate Glass**

Insurance of all plate glass in the Premises or forming part of the boundary walls of the Premises for reinstatement following breakage or damage from any cause.
  - (e) **General**

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Any other form or forms of insurance as the Tenant or the Landlord's mortgagee reasonably requires from time to time in amounts and for perils against which a prudent lessee would protect itself in similar circumstances.

- 8.2.2 All insurance policies required by this clause will contain a waiver of any subrogation rights which the Tenant's insurers may have against the Landlord and against those for whom the Landlord is in law responsible whether damage is caused by the act, omission, or negligence of the Landlord or by those for whom the Landlord is in law responsible. The Tenant releases and agrees to hold harmless the Landlord from and against all liability for any loss or damage to the Tenant, its property, or improvements, by oversight, fault, or any other cause.
- 8.2.3 All insurance policies required by this clause will be taken out with insurers acceptable to the Landlord and on policies and in forms satisfactory from time to time to the Landlord. Certificates of insurance, or if required by the Landlord or its mortgagee certified copies of each insurance policy, will be delivered to the Landlord as soon as practicable after they are taken out. All policies will contain an undertaking by the insurer to notify the Landlord and its mortgagee in writing not less than thirty (30) days prior to any material change in terms, cancellation, or other termination of the policies.
- 8.2.4 If the Tenant fails to take out or to keep in force any insurance required by this clause, or if the insurance is not reasonably approved by either the Landlord or its mortgagee, the Landlord may effect the insurance at the sole cost of the Tenant and all outlays by the Landlord will be payable by the Tenant to the Landlord as additional rent on demand without prejudice to any other rights and remedies of the Landlord under this Lease.

**8.3 Assumption of Risk by Tenant**

The Tenant agrees to occupy and use the Premises at the risk of the Tenant. The Landlord will not in any circumstances be liable to the Tenant for any damage to the plant, equipment, fixtures, fittings, merchandise, stock-in-trade, or any other property of any description in the possession of the Tenant and contained in or about the Premises occasioned by:

- 8.3.1 water, heat, fire, electricity, vermin, explosion, tempest, riot, civil commotion, bursting pipes, or by the entry of water from any source;
- 8.3.2 the operation, non-operation, or malfunction of the Air Conditioning Equipment or the Fire Equipment; or
- 8.3.3 any other cause.

The Landlord will not be liable for any loss of profits resulting from the damage even if the damage occurs by reason of:

- 8.3.4 any defect in the construction of the Premises or of any of the appurtenances in the Premises; or
- 8.3.5 any act or omission by any contractor of the Landlord or any other tenant of the Premises and their respective employees or any member of the public.

**8.4 Interruption of Services**

Despite any implication or rule of law to the contrary, the Landlord will not in any circumstances be liable to the Tenant for any loss or damage suffered by the Tenant for any malfunction, failure to function, or interruption of or to the water, gas, or electricity services, the Air Conditioning Equipment, or the Fire Equipment, or any of the appurtenances contained in the Premises, or for the blockage of any sewers, wastes, drains, gutters, downpipes, or storm water drains from any cause.

**8.5 Condition Precedent**

Despite anything contained in this Lease or any implication or rule of law to the contrary, the Landlord will not be liable for any damage or loss the Tenant may suffer by reason of the neglect or omission of the Landlord to do

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any act or thing to or in respect of the Premises of which the Tenant is or ought to be aware and which (as between the Landlord and the Tenant) the Landlord might be legally liable to do unless the Tenant gives to the Landlord notice in writing of that act or omission and the Landlord without reasonable cause fails within a reasonable time to take proper steps to rectify the act or omission.

8.6 Landlord's Insurance

The Landlord may insure the Premises (in addition to any insurance taken out by the Body Corporate) against damage by:

- 8.6.1 fire;
- 8.6.2 lightning;
- 8.6.3 impact by aircraft;
- 8.6.4 earthquake;
- 8.6.5 explosion;
- 8.6.6 impact by vehicles and animals;
- 8.6.7 malicious damage other than by persons in or about the Building with the actual or implied consent of the Tenant, any subtenant, or licensee;
- 8.6.8 rainwater; and
- 8.6.9 storm and/or tempest,

in broad cover form with repair and replacement terms on terms and conditions reasonable in the market at the time the insurance is effected. The obligation to insure against any risk is conditional upon insurance for that risk being available from reputable insurers at reasonable rates in the absolute discretion of the Landlord. The Tenant acknowledges that any insurance premiums payable by the Landlord pursuant to insurance effected under this clause 8.6 shall form part of the Outgoings.

9. **ASSIGNMENT**

9.1 Covenant Against Assignment, Subletting and Franchising

The Tenant will not:

- 9.1.1 mortgage or otherwise charge the Tenant's interest in this Lease; or
- 9.1.2 assign, underlet, grant any license over or part with the possession of the Premises; or
- 9.1.3 share with any person the occupancy of the Premises,

without first obtaining the written consent of the Landlord. The consent will not be unreasonably withheld, in the case of the proposed assignment or subletting of the whole of the Premises, to a respectable and financially responsible assignee or subtenant. As a condition precedent to the Landlord's consent to any assignment or subletting and prior to the execution of any consent, the Landlord may require the assignee or subtenant:

- 9.1.4 to enter into a covenant with the Landlord that the assignee or subtenant will observe, perform, fulfil, and keep all covenants, conditions, and restrictions contained in this Lease and on the part of the Tenant to be observed, performed, fulfilled, and kept; and
- 9.1.5 to execute and deliver to the Landlord a power of attorney in favour of the Landlord in the same terms with necessary alterations as those contained in **Part 18** of this Lease,

the covenant and Power of Attorney to be prepared by the Landlord's solicitors at the cost and expense of the Tenant. The Tenant will pay all other costs and expenses of the Landlord arising out of or in relation to the

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assignment or subletting. If the intended assignee is a limited liability company then upon the Landlord's demand at least two (2) (or more if the Landlord so requires) of its directors or shareholders of satisfactory standing will join in the deed as sureties for the company in order jointly and severally to covenant with the Landlord as sureties that:

- 9.1.6 the company will pay the Rent and perform and observe the covenants by the Tenant and conditions contained in this Lease;
- 9.1.7 that they indemnify the Landlord against all loss, damages, costs, and expenses arising by reason of any default by the company;
- 9.1.8 any neglect or forbearance of the Landlord will not release or exonerate the sureties; and
- 9.1.9 the sureties will accept a new lease of the Premises upon disclaimer of this lease by the company or on its behalf or on dissolution of the company the new lease to be for the residue then unexpired of the term of this Lease and at the Rent payable under this Lease and subject to the same Tenant's and Landlord's covenants respectively and the same provisos and conditions in all respects as are contained in this Lease. The onus of proving the respectability and financial responsibility of any proposed assignee, subtenant, or surety is upon the Tenant at its expense.

The liability of the Tenant under the covenants, provisions, and conditions contained in this Lease will not be impaired or discharged by reason of any time or other indulgence now or at any time after, granted by the Landlord to any assignee or subtenant. The liability of the Tenant to assure the performance of this Lease will not be affected by any further assignments or subletting of this Lease.

9.2 Subleases

The Landlord's consent to a subletting of part only of the Premises may be granted or refused in the absolute discretion of the Landlord and every permitted sublease of the whole or part of the Premises may be granted at a rent equal to the then open market rental value of the underlet premises and will contain covenants:

- 9.2.1 for the upwards only review of the rent reserved on the basis on which the Rent is to be reviewed in this Lease;
- 9.2.2 prohibiting the sublessee from doing or allowing any act or thing in relation to the underlet premises inconsistent with or in breach of the provisions of this Lease; and
- 9.2.3 by the sublessee with the Landlord not to assign or sublet the underlet premises without the consent in writing of the Landlord.

9.3 Concessions, Licences, etc.

Without in any way limiting the generality of **cl. 9.1** and **cl. 9.2**, the Tenant will not permit any business to be operated in or from the Premises by any concessionaire, franchisee, licensee, or others without the written consent of the Landlord in each instance. The Landlord's consent may, despite any statutory provision or provisions to the contrary, be arbitrarily withheld. The consent by the Landlord to any concession, franchise, or licence will not constitute a waiver of the necessity for the consent to any subsequent concession, franchise, or licence. If the Landlord agrees to grant its consent to any concession, franchise, or licence each concession, franchise, or licence will only be granted upon and subject to the following conditions that:

- 9.3.1 the concession, franchise, or licence will be subject to the terms, covenants, and conditions contained in this Lease;
- 9.3.2 the aggregate area of all concessions, franchises, or licences will not at any one time exceed a percentage of the area of the Premises as the Landlord, in its sole discretion, considers advisable;
- 9.3.3 each concessionaire, franchisee, or licensee will carry on business under the trade name and style of the Tenant and in a manner so that to all intents and purposes, the business will appear as an integral part of the Tenant's business operations;

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- 9.3.4 the Tenant will provide the Landlord with an executed copy of each concession, franchise, and licence agreement and the Landlord will have the right to approve the terms of the agreement or to request changes to the agreement which the Tenant covenants to make or have made prior to its grant; and
- 9.3.5 at the option of the Tenant, the Tenant and any concessionaire, franchisee, or licensee will execute any document or instrument which the Landlord requires including, without limitation, a sublease of the Premises substantially in the form of this Lease.

**9.4 Corporate Tenant**

Where any person who holds a substantial interest in the Tenant (the Tenant being a corporation) at the time of the execution of this Lease ceases to hold a substantial interest, the Tenant will immediately give notice in writing of that fact to the Landlord. The Landlord may at its discretion within ninety (90) days of receipt of that notice terminate this Lease by giving to the Tenant thirty (30) days prior notice in writing. This Lease expires on the expiration of the notice. For the purposes of this clause, a substantial interest in the Tenant is a holding of not less than thirty per centum (30%) of the issued share capital of the Tenant or a holding of shares in the Tenant which entitle the holder to not less than thirty per centum (30%) of the voting power of all shares represented at any meeting of members of the Tenant.

**9.5 Change of Corporate Ownership – Deemed Assignment**

Where the Tenant is a corporation not being a company whose shares are listed on any Stock Exchange in Australia, the following circumstances will constitute or be deemed to constitute an assignment of this Lease (requiring the prior consent of the Landlord under **cl. 9.1**):

- 9.5.1 if at any time during the term of this Lease any corporation or any related corporation (as defined by the legislation regulating corporations as at the Date of Commencement) not holding or holding between them more than fifty percent (50%) of the issued capital or voting rights of the Tenant, acquires or acquire between them so much of the issued capital or voting rights of the Tenant as when added to the issued capital or voting rights (if any) previously held by that corporation or related corporations represent in the aggregate more than fifty per cent (50%) of the issued capital or voting rights of the Landlord;
- 9.5.2 if at any time during the term of this Lease any person or any persons and their relatives (as defined in the *Income Tax Assessment Act 1936* as at the Date of Commencement) not holding or holding between them more than fifty percent (50%) of the issued capital or the voting rights of the Tenant acquires or acquire between them so much of the issued capital or voting rights of the Tenant as when added to the issued capital or voting rights (if any) previously held by that person or those persons represent in the aggregate more than fifty per cent (50%) of the issued capital or voting rights of the Tenant; or
- 9.5.3 if at any time during the term of this Lease, the changes referred to in **cl. 9.5.1** or **cl. 9.5.2** of this clause occur to any holding company (as defined in the legislation regulating corporations as at the Date of Commencement) of the Tenant or in any holding company of any holding company of the Tenant.

**10. COSTS**

**10.1 Costs of Litigation**

If without fault on its part, either Party is made a party to any litigation commenced by or against the other (other than litigation between the Landlord and the Tenant) and arising directly or indirectly out of the acts or omissions of the other in relation to the Premises, the Party not at fault will be paid by the other Party on demand all legal fees and disbursements (as between solicitor and own client) incurred in connection with the litigation.

**10.2 Costs to be Borne by Tenant**

The Tenant will pay:

- 10.2.1 all reasonable legal costs incurred by the Landlord for preparation, negotiation, execution and registration of this Lease;

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- 10.2.2 the costs of stamping, and registration of this Lease (excluding the cost of survey required to register this Lease) and the cost of obtaining the Landlord's mortgagee's consent to this Lease;
- 10.2.3 all stamp duty and registration fees payable in respect of this Lease;
- 10.2.4 all costs, charges, and expenses (including for example, legal costs and fees payable to a surveyor or architect) incurred by the Landlord for the purpose of or incidental to the preparation and service of any notice under **s. 124** or **s. 127** of the *Property Law Act* 1974 even if forfeiture is avoided otherwise than by relief granted by the Court;
- 10.2.5 all costs of and incidental to the grant or refusal of any consent or authority of the Landlord which may be requested by the Tenant under the terms of this Lease; and
- 10.2.6 all monies the Landlord may expend or be put to in consequence of any default by the Tenant in the performance and observance of any covenant or agreement contained or implied in this Lease or which is authorised or entered into or made by the Tenant.

10.3 Upstamping Lease

- 10.3.1 If the legislation requiring the payment of stamp duty on leases requires this Lease to be produced to the collector of duty for further stamping by a date determined by or in accordance with the legislation, the Tenant must ensure that this Lease is produced by that date with all information required by the collector to reassess duty.
- 10.3.2 The Tenant will inform the Landlord in writing of all details relevant to the further stamping of the Lease by the date determined for its production.
- 10.3.3 If the Tenant does not comply with **cl. 10.3.1** of this clause the Landlord may cause the Lease to be produced for further stamping and all duty, penalties, and costs (including for example, legal costs calculated on a solicitor and own client basis) incurred by the Landlord will be paid to the Landlord by the Tenant immediately on demand.

11. MORTGAGEE OF FREEHOLD

11.1 Mortgagee's Consent

In consideration of the Landlord granting this lease to the Tenant, the Tenant covenants and agrees with the Landlord, for the benefit of all present or future mortgagees of the whole or any part of the Land (**the Mortgagee**) that the consent of the Mortgagee to this Lease is subject to the following conditions and provisions:

- 11.1.1 if the Rent is paid strictly in accordance with the terms contained in this Lease and the covenants, conditions, and provisions in this Lease are fully observed and performed, the Mortgagee will, in the event of the exercise of the power of sale or other power or remedy of the Mortgagee or its assigns on default under the relevant instrument of mortgage, exercise the power subject to the then subsisting rights of the Tenant its successors and permitted assigns under this Lease;
- 11.1.2 that so long as the Mortgagee is registered as Mortgagee of the Land, the Tenant will obtain the consent or approval of the Mortgagee or its assigns in addition to the consent or approval of the Landlord in all cases where the consent or approval of the Landlord is required;
- 11.1.3 that upon the Mortgagee or its assigns giving notice to the Tenant demanding to enter into receipt of the rents and profits of the Land or any part of them, the covenants on the part of the Tenant expressed or implied in this Lease will be deemed to have been entered into by the Tenant with the Mortgagee and its assigns and all the rights, powers, and remedies of the Landlord under this Lease will vest in and be exercisable by the Mortgagee and its assigns until the notice is withdrawn or the relevant mortgage is discharged;

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11.1.4 the Mortgagee is in no way bound to perform and will not incur any liability in respect of the covenants and agreements expressed or implied in this Lease and on the part of the Landlord to be performed and observed; and

11.1.5 the consent will, at the option of the Mortgagee, be void and of no effect if the Landlord or the Tenant fails to observe and perform all or any of the conditions contained in this clause.

**12. LANDLORD'S ASSURANCES**

**12.1 Quiet Enjoyment**

If the Tenant promptly pays the Rent and observes and performs the covenants and agreements in this Lease, the Tenant may peaceably hold and enjoy the Premises during the term of this Lease without any interruption by the Landlord or any persons lawfully claiming under or in trust for the Landlord.

**12.2 Landlord to Pay Rates**

The Landlord will pay all municipal rates and land tax payable in respect of the Land except those rates and taxes (if any) which the Tenant has covenanted to pay in whole or in part.

**12.3 Covenants by Landlord**

The Landlord covenants with the Tenant:

12.3.1 to keep the Building and Leased Premises in good and substantial repair and in a weatherproof and sound condition and to replace major items of plant and equipment owned by the Landlord servicing the same when necessary by reason of fair wear and tear or other cause unless the item of plant and equipment is the subject of a specific clause in this Lease in which case the terms of the specific clause shall apply;

12.3.2 not to charge or to otherwise attempt to recover whether as Outgoings or otherwise costs or expenses incurred by the Landlord of a structural or capital nature, and

12.3.3 to cause the Building and Leased Premises to continue to comply during the Tenant's occupation with all mandatory legislative or Authority requirements,

save where the requirement for the same arises from a wrongful act or default of the Tenant under this lease.

**13. DEFAULT**

**13.1 Default by Tenant**

**13.1.1 Events of Default – Right to Re-Enter**

If:

- (a) the Rent or any part of it is unpaid for seven (7) days after it has become due whether any formal or legal demand is made for it or not;
- (b) the Tenant breaches any of the covenants or agreements (whether expressed or implied) in this Lease and on the part of the Tenant to be performed or observed (including covenants and agreements of a negative character);
- (c) the repairs required by any notice given under **cl. 6.3** are not completed within the time specified in the notice;
- (d) judgment for an amount exceeding five thousand dollars (\$5 000.00) is obtained or entered up against the Tenant in any court of competent jurisdiction and is not satisfied within twenty-one (21) days;



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- (e) the Tenant does or suffers to be done any act whereby the estate or effects of the Tenant may become liable to be taken in execution; or
- (f) the Tenant, being a corporation, enters into provisional liquidation or liquidation whether voluntary or otherwise (except for the purpose of reconstruction or amalgamation) or has a receiver and/or manager appointed,

**THEN** subject to the Landlord giving notice under **s. 124** of the *Property Law Act 1974*, the Landlord or any person duly authorised by the Landlord may, at any time on one (1) days written notice or without notice, re-enter the whole or part of the Premises in the name of the whole and determine this Lease but without prejudice to the right of action or other remedy of the Landlord in respect of any antecedent breach of the Tenant's covenants, stipulations, or agreements contained or implied in this Lease.

13.1.2 **Damages**

If the Landlord determines this Lease under **cl. 13.1.1** the Landlord may recover from the Tenant in addition to damages and amounts recoverable apart from this clause:

- (a) any Rent and Outgoings due but unpaid at the date of the determination;
- (b) the amount by which the Rent and Outgoings between the date of determination and the date of expiry of this Lease by effluxion of time exceeds the rent and outgoings received or likely to be received from any other tenant to whom the Premises are relet or may be relet during that period; and
- (c) any other amount necessary to compensate the Landlord as a result directly or indirectly of the Tenant's default and the Landlord's determination of the Lease including, for example:
  - (i) costs and expenses incurred in maintaining the Premises;
  - (ii) costs of recovering possession of the Premises;
  - (iii) expenses of reletting including necessary renovation or alteration of the Premises;
  - (iv) legal costs; and
  - (v) real estate commissions charges and fees.

For the purposes of **cl. 13.1.2(b)**, the onus of proving that the Premises are likely to be relet and the amount of the rent likely to be received is upon the Tenant. For the purpose of calculating the rent and Outgoings that would have been payable after the determination of this Lease and to the extent that the Rent and Outgoings that would have been payable cannot be established certainly, it will be assumed that the Rent and Outgoings would have increased annually by five per centum (5%) cumulative on each anniversary of the Date of Commencement.

13.1.3 **Landlord's Right when Tenant Abandons Premises**

If the Tenant vacates or abandons the Premises or otherwise repudiates this Lease without lawful excuse prior to the expiration of the term, the Landlord may without being under any obligation so to do seek to find another tenant for the Premises. For that purpose the Landlord may from time to time enter upon the Premises and permit prospective tenants to view them and may otherwise do all acts and things necessary in the opinion of the Landlord to renovate, restore, clean, and secure the Premises without accepting or being deemed to have accepted a surrender of this Lease. It is the intention of the parties that this Lease and the obligations of the Tenant under this Lease subsist until another person enters into occupation of the Premises as tenant or the Landlord expressly accepts a surrender of this Lease. For the purpose of this clause the Tenant is deemed to have vacated the Premises if it ceases to carry on its permitted use for a period of seven (7) consecutive days without having paid in advance the instalments payable on account of Rent and contributions to Outgoings in respect of that period of seven (7) days.

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13.1.4 **Reservation of Rights**

The rights and powers conferred on the Landlord by this **cl. 13.1** are in addition to any other right or power which may be conferred upon the Landlord at law or in equity.

13.2 Non-Waiver

No delay or omission to exercise any right power or remedy accruing to the Landlord upon any continuing breach or default under this Lease impairs any right, power, or remedy of the Landlord and it will not be construed to be a waiver of or acquiescence in any continuing breach or default or of or in any similar breach or default occurring subsequently; and no waiver of any single breach or default will be deemed a waiver of any earlier or later breach or default. Any waiver, permit, consent, or approval of any kind or character of any breach or default under this Lease or any waiver of any provision or condition of this Lease must be in writing and will be effective only to the extent set out in the written waiver. All remedies either under this Lease or by law or otherwise afforded to the Landlord are cumulative and not alternative.

13.3 Accord and Satisfaction

No payment by the Tenant or receipt by the Landlord of a lesser amount than the Rent stipulated in this Lease will be considered to be other than on account of the stipulated Rent. An endorsement or statement on a cheque or in a letter accompanying a cheque or payment as Rent will not be considered to be an accord or satisfaction. The Landlord may accept a cheque or payment without prejudice to the Landlord's right to recover the balance of the Rent or pursue any other remedy.

13.4 Performance of Tenant's Covenants by Landlord

If the Tenant makes default in payment of any moneys covenanted by the Tenant to be paid or in the observance or performance of any of the covenants contained or implied in this Lease and on the part of the Tenant to be observed and performed, the Landlord may pay that money and observe and perform those covenants and the Tenant will pay to the Landlord immediately upon demand all moneys which the Landlord expends in that behalf with interest calculated at the Stipulated Rate from the time of those moneys having been so expended to the date of payment.

13.5 Interest on Arrears

The Tenant will pay to the Landlord interest on any Rent or other moneys which are in arrears calculated at the Stipulated Rate from the time of the Rent, or other moneys respectively falling due, to the date of payment.

**14. DAMAGE OR DESTRUCTION**

14.1 Substantially Unfit or Substantially Inaccessible

If the Premises are damaged by an event beyond the control of the Tenant or by an Insured Risk so as to render the Premises substantially unfit for the occupation and use of the Tenant or (having regard to the nature and location of the Premises and the normal means of access) substantially inaccessible, then:

14.1.1 **EXCEPT** where the damage has been caused by the negligent act or omission of the Tenant or of any servant, agent, licensee, invitee, customer, or visitor of the Tenant, or of any sublessee, licensee, or other occupier claiming by, through, or under the Tenant:

- (a) a proportionate part of the Rent and other moneys payable under this Lease according to the nature and extent of the damage sustained, abates and all or any remedies, for recovery of that proportionate part of the Rent and other moneys falling due after the damage, are suspended until the Premises have been restored or made fit for the occupation and use of the Tenant or accessible to the Tenant as the case may be;
- (b) within fourteen (14) days of the Premises being rendered unfit or inaccessible, the Tenant may serve on the Landlord written notice that the Premises have been rendered unfit or inaccessible (a **Damage Notice**). Unless within the period of thirty-one (31) days after being

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served with a Damage Notice, the Landlord serves written notice on the Tenant that the Landlord will restore the Premises or make them fit for the occupation and use of or render them accessible to the Tenant (a **Restoration Notice**), the Tenant may (not before the expiration of the period of thirty-one (31) days and not after the expiration of the period of seventy-five (75) days from the date of service of the Damage Notice on the Landlord) terminate this Lease by notice in writing to the Landlord;

- (c) if the Landlord gives a Restoration Notice to the Tenant and does not within a reasonable time substantially commence and diligently proceed to restore the Premises or make them fit for the occupation and use of or render them accessible to the Tenant, the Tenant may serve on the Landlord notice of intention to terminate this Lease. Unless the Landlord upon receipt of that notice proceeds with reasonable expedition and diligence to restore the Premises or make them fit for the occupation and use of or render them accessible to the Tenant as the case may require, the Tenant may terminate this Lease by giving not less than one (1) month's notice in writing to the Landlord and at the expiration of the last mentioned notice this Lease terminates.

14.1.2 If in the Landlord's sole opinion the damage to the Premises or the Building is such that it is impractical or undesirable to restore the Premises or make them fit for the occupation and use of the Tenant or render them accessible to the Tenant or if the damage to the Premises occurs less than two and one half (2½) years prior to the expiration of the term of this Lease, the Landlord may terminate this Lease by giving not less than one (1) month's notice in writing to the Tenant and at the expiration of that notice this Lease terminates.

14.1.3 No liability attaches to the Landlord by reason of termination of this Lease under **cl. 14.1.1** or **cl. 14.1.2**, and otherwise any termination is without prejudice to the rights of either party in respect of any antecedent breach or non-observance of any covenant or provisions of this Lease.

14.2 Wholly Unfit or Totally Inaccessible

If the Premises are taken for any public purpose or are destroyed or so damaged that the Premises are rendered wholly unfit for the occupation and use of the Tenant or totally inaccessible:

14.2.1 The Landlord may, despite anything contained or implied in this Lease, terminate this Lease by giving not less than one (1) month's notice in writing to the Tenant and at the expiration of that notice this Lease terminates and no liability attaches to the Landlord by reason of the termination.

14.2.2 Except where the destruction or damage has been caused or contributed to by the negligent act or omission of the Tenant or of any servant, agent, licensee, invitee, customer, or visitor of the Tenant or of any sublessee, licensee, or other occupier claiming by through or under the Tenant, the Tenant may terminate this Lease by giving not less than one (1) month's notice in writing to the Landlord and at the expiration of that notice this Lease terminates.

14.2.3 Any termination under **cl. 14.2.1** or **cl. 14.2.2** is without prejudice to the rights of either party in respect of any antecedent breach or non-observance of any covenant or provision of this Lease.

14.3 Resolution of Disputes

Any dispute arising under **cl. 14.1** or **cl. 14.2** will be determined by a member of the Valuers' Institute appointed by the President for the time being of that Institute on the application of the Landlord or the Tenant. The person so appointed will in making their determination act as an expert and not as an arbitrator and their determination will be final and binding on both parties. The cost of the determination will be borne by either or both of the Parties (and if by both of the Parties in the proportion between them) as the person making the determination decides.

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15. GENERAL

15.1 Time to be of the Essence

Time is essential for all obligations of the Tenant in this Lease. The Tenant indemnifies the Landlord against all losses, costs, and expenses which the Landlord may sustain or incur as a consequence of any failure by the Tenant to perform and observe on the due date any obligations on its part contained or implied in this Lease.

15.2 Entire Agreement

The terms and conditions set out in this Lease contain the entire agreement as concluded between the Parties despite any negotiations or discussions prior to the execution of this Lease and despite anything contained in any brochure, report, or other document prepared by the Landlord for submission to potential tenants of the Premises. The Tenant also acknowledges that it has not been induced to enter into this Lease by any representation verbal or otherwise made by or on behalf of the Landlord which is not set out in this Lease.

15.3 Negating of Moratorium

To the fullest possible extent, the provisions of all statutes now existing and subsequently to come into force and operating directly or indirectly to lessen or otherwise modify or vary or affect in favour of the Tenant the obligations of the Tenant or to stay, postpone, or otherwise prevent or prejudicially affect the exercise by the Landlord of all or any of the rights, powers, and remedies conferred on the Landlord by this Lease are expressly negated and excluded from this Lease.

15.4 New Guarantor

Within fourteen (14) days of the death of any Guarantor during the term of this Lease, or of any Guarantor becoming bankrupt, or having a receiving order made against them, or becoming insane, or being a company passing a resolution to wind up, or entering into liquidation, or having a receiver appointed, the Tenant will give notice of this to the Landlord. If required by the Landlord, the Tenant at their own expense must, within twenty-eight (28) days, procure some other person acceptable to the Landlord to execute a guarantee in respect of the Tenant's obligations contained in this Lease in the form of the Guarantor's covenants which are contained in this Lease or in any guarantee separate from this Lease.

15.5 Inspection by Purchaser or Tenant

The Tenant will:

- 15.5.1 allow the Landlord to exhibit on the Premises notices advertising the Premises for sale;
- 15.5.2 at all reasonable times upon prior reasonable notice permit the Landlord to show the Premises to prospective purchasers; and
- 15.5.3 within the six (6) month period immediately preceding the expiration of the term granted by this Lease, permit the Landlord to show the Premises to prospective tenants at all reasonable times, on prior reasonable notice, and allow the Landlord to affix and exhibit on the Premises where the Landlord thinks fit the usual "For Sale" and/or "To Let" notices. In each case the notices may display the name and address of the Landlord and its agents.

The Tenant will not remove any notice without the prior written consent of the Landlord.

15.6 GST

- 15.6.1 In this clause, the expressions "consideration", "GST", "input tax credit", "supply", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999*.
- 15.6.2 Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Lease are exclusive of GST.

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15.6.3 If GST is imposed on any supply made under or in accordance with this Lease, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this Lease.

15.6.4 If this Lease requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (**reimbursable expense**) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the sum of:

- (i) the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense (**net amount**); and
- (ii) if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply,

such that after the other party meets the GST liability, it retains the net amount.

15.7 (Intentionally deleted)

15.8 Modification of Implied Covenants

The obligations and powers implied in leases by **ss. 105 and 107** of the *Property Law Act 1974* are negated. All other covenants on the part of the Tenant implied by the *Property Law Act 1974* are not negated but are modified to the extent of any inconsistency with the provisions of this Lease.

15.9 Notices

Unless otherwise stated, any notice given by the Landlord is deemed to be duly given and served on the Tenant if signed by the Landlord or the solicitors for the Landlord or if the Landlord is a corporation then by any officer of or the solicitors for the Landlord and delivered to the Tenant (or if more persons than one are tenants under this Lease then to any one or more of them) personally or if the Tenant is a corporation then to any person at its registered office or principal place of business in this State or if left at the Premises or sent to the Tenant through the post in an envelope addressed to the Premises and in the latter case service is deemed to have been effected on the day following posting. Any notice by the Tenant to the Landlord must be signed by the Tenant and must be given or served in the manner prescribed by **s. 257** of the *Property Law Act 1974*.

15.10 Holding Over

If the Tenant with the consent of the Landlord remains in occupation of the Premises after the expiration of the term of this Lease then:

- 15.10.1 the Tenant will be a tenant from month to month of the Landlord of the Premises on the terms of this Lease so far as they are applicable to a monthly tenancy;
- 15.10.2 the monthly tenancy may be determined by either party in the manner prescribed by **Div. 4 of Part VIII** of the *Property Law Act 1974*; and
- 15.10.3 the rent payable in respect of the monthly tenancy will be the amount of Rent payable monthly under this Lease immediately prior to the expiration of the term and will be payable in advance.

15.11 Severability

If it is held by a Court of competent jurisdiction that:

15.11.1 any part of this Lease is void, voidable, illegal, or unenforceable; or

15.11.2 this Lease would be void, voidable, illegal, or unenforceable unless any part of this Lease were severed, that part will be severable from and will not affect the continued operation of the rest of this Lease.

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16. **TRUSTS**

16.1 **Trusts**

If the Tenant at any time upon or subsequent to entering into this Lease or entering into or incurring the obligations contained in this Lease is acting in the capacity of trustee of any trust (**the Trust**) then whether or not the Landlord may have notice of the Trust, the Tenant covenants with the Landlord as follows:

- 16.1.1 This Lease extends to all rights of indemnity which the Tenant now or subsequently may have against the Trust and the trust fund.
- 16.1.2 The Tenant has full and complete power and authority under the Trust to enter into this Lease and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Tenant against the Trust or the trust fund. The Tenant will not release that right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- 16.1.3 Despite the terms of any deed of trust or settlement or other document, the Tenant will be and at all times remain personally liable to the Landlord for the due performance fulfilment and observance of the obligations in this Lease.
- 16.1.4 During the currency of this Lease the Tenant will not without the consent in writing of the Landlord cause, permit, or suffer to happen any of the following events:
  - (a) the removal replacement or retirement of the Tenant as sole trustee of the Trust;
  - (b) any alteration to or variation of the terms of the Trust;
  - (c) any advancement or distribution of capital of the Trust; or
  - (d) any resettlement of the trust property.

The Tenant further covenants with the Landlord that it will be an event of default under this Lease if the Tenant is guilty of any breach of trust in respect of the Trust or ceases to be the sole trustee of the Trust or otherwise suffers removal, replacement, or retirement as trustee of the Trust.

17. **OPTION**

17.1 **Option to Renew**

If the Tenant:

- 17.1.1 not less than six (6) months prior to the expiration of this Lease gives written notice to the Landlord that it wishes to renew this Lease; and
- 17.1.2 has at all times up to the date of expiration of the term of this Lease complied punctually with its obligations under this Lease,

then the Landlord will grant to the Tenant a further lease of the Premises on the following conditions:

- 17.1.3 the term of the further lease will be the period referred to in **Item 8** of the **Reference Data**;
- 17.1.4 the rent for the first year of the first further term will be determined in accordance with **cl. 3.2.1** as if that year were a continuation of the term of the Lease;
- 17.1.5 the terms and conditions will be the same as the terms and conditions of this Lease except for the changes specified in the Modification Schedule at the end of this clause; and
- 17.1.6 the Tenant will pay all costs of the Landlord including the legal costs of the Landlord calculated on a solicitor and own client basis of and incidental to the grant of the new lease.

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**Modification Schedule**

- A. **Item 2** of the **Reference Data** will be varied to reflect the duration of the further lease;
- B. **Item 4(b)** of the **Reference Data** will be varied to reflect the rent for the first year of the further Lease calculated in accordance with **cl. 17.1.4**.
- C. This **cl. 17.1** and **Item 8** of the **Reference Data** shall be omitted.

17.2 New Guarantee

If at the date of exercise of the option contained in **cl. 17.1** the obligations of the Tenant under this Lease are the subject of guarantee or indemnity, the Tenant must:

- 17.2.1 procure from the persons who provided the guarantee or indemnity another guarantee or indemnity in respect of the lease for the renewal term on the same terms apart from necessary changes; and
- 17.2.2 produce the properly executed, valid, and enforceable guarantee or indemnity to the Landlord within thirty (30) days after the Landlord provides to the Tenant the documentation for the new guarantee or indemnity for the renewal term.

The time limit referred to in **cl. 17.2.2** is essential. If the Tenant fails to comply with the time limit, the Landlord may terminate the new lease for the renewal term by notice in writing to the Tenant.

**18. POWER OF ATTORNEY**

- 18.1 The Tenant irrevocably appoints the Landlord and (if the Landlord is a corporation) the Directors, the General Manager, and the Secretary for the time being of the Landlord jointly and each of them severally to be the attorneys of the Tenant at any time after the power contained in this Lease to re-enter has been exercised to:

- 18.1.1 execute and sign a transfer or a surrender of this Lease;
- 18.1.2 procure the transfer or surrender to be registered;
- 18.1.3 appoint, from time to time, a substitute or substitutes and revoke those appointments; and
- 18.1.4 do, execute, and perform any act, deed, matter, or thing in accordance with this clause as fully and effectually as the Tenant could do. The Tenant will ratify and confirm everything the attorneys or any substitute or substitutes lawfully do or cause to be done in accordance with this clause.

A statutory declaration by an attorney that the power of re-entry contained in this Lease has been exercised will be sufficient proof of that fact.

**19. TERMINATION OF LEASE**

19.1 Yield Up

The Tenant will at the expiration or sooner determination of the term of this Lease yield up the Premises in the order and condition described in **Part 6**.

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19.2 Remove Fittings

If the Tenant does not do so as of right under the provisions of **cl. 7.5**, the Tenant will, if so required by the Landlord, remove from the Premises within fourteen (14) days from the expiration or sooner determination of the term of this Lease all fixtures, fittings, floor coverings, signs, and notices or contents of every description erected or installed by the Tenant and requested to be removed by the Landlord. The Tenant will make good any damage caused to the Premises by the removal and if required by the Landlord will re-alter any alterations made by the Tenant so that the Premises are converted back to their original layout. The Landlord may at its option cause the fixtures, fittings, floor coverings, signs, and notices or contents to be removed and to be stored in a public warehouse or elsewhere at the risk of the Tenant and any damage to be made good and any alterations to be re-altered. The Landlord may recover the costs of removal, storage, making good, and/or re-alterations from the Tenant as a liquidated debt payable on demand.

19.3 Abandoned Fittings

Any fittings or fixtures not removed by the Tenant under **cl. 7.5** and **cl. 19.2** will be deemed abandoned by the Tenant and will be and become the property of the Landlord. Nothing contained in this clause relieves the Tenant from, and except where the Landlord agrees in writing to the contrary the Tenant will be liable to the Landlord for, the cost and expense of and associated with any removal by the Landlord of fittings and fixtures not removed by the Tenant from the Premises and the cost and expense of and associated with the making good of any damage to the Premises caused by that removal by the Landlord.

19.4 Stock-in-Trade

The Tenant will remove from the Premises all stock-in-trade and other movable chattels prior to the expiration of the term of this Lease except that if this Lease is determined prior to the due date of expiry by effluxion of time the Landlord will if requested so to do by the Tenant allow the Tenant, its servants, and contractors access to the Premises during any one (1) of three (3) days (excluding Saturdays, Sundays, and public holidays) next following the date of determination between the hours of 9.00 am and 5.00 pm for the purpose of removing stock-in-trade and movable chattels from the Premises. If the Tenant fails to remove stock-in-trade or chattels as mentioned in this clause, the Landlord may at its option:

- 19.4.1 cause the stock-in-trade or chattels to be removed and stored in a public warehouse or elsewhere at the risk and at the cost of the Tenant; or
- 19.4.2 treat the stock-in-trade or chattels as if the Tenant had abandoned its interest in them and deal with them in any manner the Landlord thinks fit.

The Tenant indemnifies the Landlord in respect of any damage done to the Premises in or about the removal of stock-in-trade or chattels by the Tenant, its servants, or contractors and also in respect of any costs incurred by the Landlord in the removal and storage of them. The tenant also indemnifies in respect of all claims, demands, actions, costs, judgments, and expenses which the Landlord may suffer or incur at the suit of any person (other than the Tenant) claiming an interest in the stock-in-trade or chattels by reason of the Landlord acting in accordance with this clause.

19.5 Removal of Signs

At the expiration or earlier determination of this Lease, the Tenant will remove or clean off any advertising or other sign, advertisement, or hoarding painted, erected, or placed on or in the Premises and restore the Premises to the condition they were in immediately before the advertisement, sign, or hoarding was painted, erected, or set up.



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**20. BOND/BANK GUARANTEE**

- 20.1 The Tenant shall contemporaneously with the execution of this Lease by the Tenant deliver to the Landlord an unconditional bank guarantee in favour of the Landlord and his successors in title under this Lease in such form as the Landlord may require duly executed for the sum referred to in **Item 10** of the **Reference Data** (the **Bank Guarantee**) by way of security for the performance by the Tenant of all the covenants and obligations (whether of a positive or negative nature) of the Tenant under this Lease.
- 20.2 The Landlord may at any time during the Lease Term or any extension or renewal of the Lease Term resort to and apply the Bank Guarantee or any part or parts thereof towards the whole or partial satisfaction of any obligation of the Tenant under this Lease which the Tenant has failed to discharge or perform including but not limited to the payment to the Landlord of rental and any other moneys owing by the Tenant to the Landlord under this Lease.
- 20.3 In the event that the Landlord resorts to and deducts the whole or any part of the moneys secured by the Bank Guarantee as aforesaid the same shall be without prejudice to any other rights of the Landlord against the Tenant hereunder and this shall not be deemed to be a waiver or satisfaction of any such rights as aforesaid.
- 20.4 In the event that the Tenant assigns this Lease with the consent of the Landlord it shall be a condition of the Landlord's consent to any such assignment that such assignee deliver to the Landlord a bank guarantee in favour of the Landlord in such form as the Landlord may require duly executed for the amount referred to in **paragraph 1** of this clause (the **New Bank Guarantee**) whereupon the New Bank Guarantee shall serve as security and substitution of the Bank Guarantee previously given by the first mentioned Tenant and upon delivery of the New Bank Guarantee the Landlord shall subject to the performance by the Tenant of all the covenants and obligations of the Tenant under this Lease as aforesaid either return the Bank Guarantee to the Tenant. The New Bank Guarantee shall serve as security in lieu of the original Bank Guarantee and may be resorted to and applied by the Landlord in the same manner and for the same purposes referred to above.
- 20.5 The benefit of the Bank Guarantee and all rights conferred upon the Landlord hereby may be assigned to and enforced by any assignee and proceeded on in the same manner to all intents and purposes as if such assignee had been named therein instead of the Landlord.
- 20.6 The Bank Guarantee is to remain in force during the term of the Lease (and any renewal thereof) and shall be returned to the Tenant upon the expiration of the term of the Lease (or any renewal thereof) except in circumstances where the Tenant is in default under the terms of this Lease or has not complied with its obligations in relation to inter alia the reinstatement of the Premises upon the expiration of this Lease or any moneys payable by the Tenant under this Lease remain unpaid.
- 20.7 The Tenant may provide in lieu of the Bank Guarantee a cash deposit for the amount referred to in **Item 10** of the **Reference Data** which shall be held by the Landlord on the same terms as are set out in this **Clause 20**.

**21. SPECIAL CONDITIONS**

- 21.1 The Landlord and the Tenant acknowledge that this Lease records the terms and conditions between them and amends the commercial tenancy agreement between them dated 4 June 2015 which was in effect as at the Commencement Date.

**22. GUARANTEE AND INDEMNITY**

**IN CONSIDERATION** of the Landlord at the request of the Guarantor entering into this Lease with the Tenant the Guarantor covenants and agrees with the Landlord the following:

- (a) The Guarantor will be liable jointly and severally with the Tenant for the due and punctual payment of all Rent and other moneys to be paid by the Tenant under this Lease and for the due performance and observance by the Tenant of all the covenants, terms, and conditions of this Lease on the part of the Tenant to be performed and observed PROVIDED THAT it is not intended that the guarantee and indemnity extend to any further lease or extension of the term if the Lease has been assigned to a third party with the consent of the Landlord.

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- (b) The Guarantor indemnifies the Landlord from and against all losses, damages, costs, and expenses which the Landlord may suffer or incur in consequence of any breach or non-observance of any of the covenants, terms, and conditions of this Lease on the part of the Tenant to be performed or observed. The Guarantor agrees that the Guarantor will remain liable to the Landlord under this indemnity despite the fact that, as a consequence of any breach or non-observance, the Landlord has exercised any of its rights under this Lease including its rights of re-entry and even though the Tenant (being a corporation) may be wound up or dissolved or (being a natural person) may be declared bankrupt and even though the guarantee given by the Guarantor may for any reason be unenforceable either in whole or in part.
- (c) On any default or failure by the Tenant to observe and perform any of the covenants terms and conditions of this Lease, the Guarantor will immediately on demand by the Landlord pay all Rent and other moneys and make good to the Landlord all losses, damages, costs, and expenses sustained or incurred by the Landlord by reason or in consequence of any default in performing or observing any of the covenants, terms, and conditions of this Lease. The Guarantor will also pay to the Landlord interest at the Stipulated Rate from the time of any Rent or other moneys respectively falling due to the date of payment added without the necessity of any prior demand having been made on the Tenant.
- (d) The liability of the Guarantor under this guarantee and indemnity will not be affected by the granting of time or any other indulgence to the Tenant; or by any assignment or purported assignment of the interest of the Tenant under this Lease; or by the compounding, compromise, release, abandonment, waiver, variation, or renewal of any of the rights of the Landlord against the Tenant; or by any variation of this Lease; or by the filling-up of this Lease by the Landlord or its solicitors under the terms of any agreement for lease; or by any neglect or omission to enforce those rights; or by any other thing which under the law relating to sureties would or might but for this provision release the Guarantor in whole or in part from its obligations under this guarantee and indemnity.
- (e) Even though as between the Guarantor and the Tenant the Guarantor may be a surety only, as between the Guarantor and the Landlord the Guarantor is deemed to be a primary debtor and contractor jointly and severally with the Tenant.
- (f) To the fullest extent permitted by law the Guarantor waives its rights as surety or indemnifier (legal equitable statutory or otherwise) as may at any time be inconsistent with any of the provisions of this guarantee and indemnity.
- (g) The covenants and agreements made by the Guarantor are not conditional or contingent in any way or dependent upon the validity or enforceability of the covenants and agreements of any other person and remain binding even though that any other person does not execute this Lease or this guarantee and indemnity.
- (h) The obligations of the Guarantor under this guarantee and indemnity continue until all Rent and other moneys payable under this Lease have been paid and until all other obligations and indemnities have been performed observed and satisfied. Those obligations will not be reduced or affected by any notice to quit given by either Party to this Lease or the death, insolvency, liquidation, or dissolution of the Tenant or the Guarantor or either of them.
- (i) The Guarantor does not execute this guarantee and indemnity as a result of or by reason of any promise, representation, statement, information, or inducement of any nature or kind given or offered to the Guarantor by the Landlord or on the Landlord's behalf whether in answer to any enquiry by or on behalf of the Guarantor or not. Except as provided in this guarantee and indemnity, the Tenant was not prior to the execution of this guarantee and indemnity by the Guarantor and is not subsequently under any duty to disclose to the Guarantor or to do or execute any act matter or thing relating to the affairs of the Tenant or its transactions with the Landlord.

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- (j) In the event of the Tenant during the term of this Lease entering into liquidation (or being a person, entering into bankruptcy) and the liquidator or trustee in bankruptcy disclaiming this Lease, or if the Tenant should be dissolved, the Guarantor will accept from the Landlord a lease of the Premises for a term equal in duration to the residue remaining unexpired of the term of this Lease. The new lease will contain the same lessee's and lessor's covenants respectively and the same provisos and conditions in all respects (including the proviso for re-entry) as are in this Lease contained together with such other covenants, provisos, and conditions as the Landlord may reasonably require. On the execution by the Landlord of the further lease, the Guarantor will pay all costs of the further lease (including all costs of and incidental to the preparation, execution, and stamping of the lease and all stamp duty and registration fees) and will immediately execute and deliver to the Landlord the lease in triplicate.
- (k) In the event of a further lease of the Premises being granted by the Landlord to the Tenant (including to any successors of the Tenant or to its permitted assigns) consequent upon the exercise of any option to renew contained in this Lease or in the event of the Landlord granting to the Tenant any extension of the term of this Lease, then this guarantee and indemnity will be deemed to extend to the further lease or the extension of the term as the case may be. This guarantee and indemnity will be read and construed as if the further lease were this Lease and the Tenant holding under it were the Tenant referred to in this Lease.
- (l) All notices or demands to be given or made to or upon the Guarantor will be deemed to be duly given and served on the Guarantor if signed by the Landlord or the solicitors for the Landlord or if the Landlord is a corporation then by any officer of the corporate Landlord or the solicitors for the corporate Landlord and delivered to the Guarantor (or if there is more than one Guarantor then to any one or more of them) personally, or if the Guarantor is a corporation then to any person at its registered office or principal place of business in this State or if left at the last known place of business or abode of the Guarantor or if left at or sent to the Guarantor through the post in a prepaid envelope addressed to the Guarantor at the address (if any) of the Guarantor set out in **Item 11** of the **Reference Data**. A notice or demand which is posted will be deemed to have been served on the Guarantor on the day following the date of posting.
- (m) In the event of the invalidity of any part or provision of this guarantee and indemnity that invalidity will not affect the validity or the enforceability of any other part or provision of this guarantee.
- (n) Where there is more than one person or corporation which together constitute the Guarantor to this Lease, the obligations and liabilities of each of those persons or corporation are joint and several.
- (o) This guarantee takes effect immediately upon its execution and continues to be of full effect whether or not the Lease is subsequently registered in the Department of Lands. References to this Lease include any equitable lease agreement for lease or periodic tenancy arising upon execution or acceptance by the Tenant of the instrument to which this guarantee is annexed.
- (p) In the event of the Landlord transferring the Land or otherwise assigning the Landlord's rights and obligations as Landlord under this Lease, the Landlord's rights under this guarantee (whether or not there is any express assignment of the rights) will be deemed to be assigned to the owner from time to time of the Land or other assignee of the Landlord's rights and obligations.