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MICHAEL TAIRY

LANDLORD

TO

HEALTHLINX.COM PTY LTD

ACN 092 264 894

TENANT

LEASE

PREMISES: 5 – 7 HORNE STREET, HOPPERS CROSSING

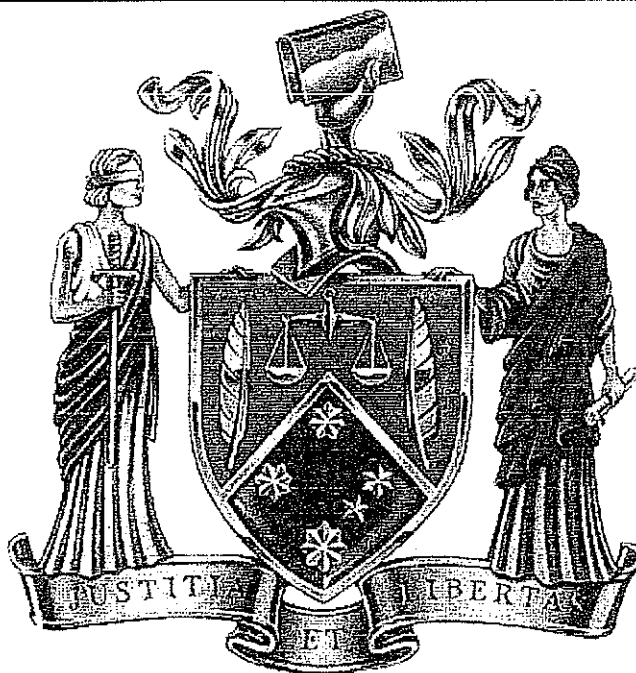
ANDREW PANDELI & CO
SOLICITORS
37 COPPIN STREET
RICHMOND VIC 3121
TEL: 9428 8723
DX 30202 RICHMOND

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LEASE OF REAL ESTATE

PROPERTY AT

5 - 7 HORNE STREET, HOPPERS CROSSING 3029



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May 2009 Revision

- Important Notice To The Person Preparing This Lease -

This lease is in a standard form. You may need to make changes to record the agreement of the landlord, tenant, and any guarantor. You should carefully check the whole document and make appropriate deletions, alterations, and/or additions so it agrees with the instructions you have received. You should note the warranty in clause 21 and record any alterations to the lease conditions in schedule item 22 and not in the lease conditions.

00 SUPERANNUATION
Fund

of 4 Margaret Street, Brighton East 3187

of 4 Margaret Street, Brighton East 3187

(b) **Land:** The land described in Certificate of Title
Volume 9898 Folio 040

Landlord's installations:
See "Appendix 1" attached

Rent: \$132,500.00 plus GST for the first year.

Tenant's Installations:

Term of the lease:
Five (5) years and three (3) months starting on 27 February 2012

- Item 9** **How rent is to be paid:**
 (2.1.1) By equal instalments calendar monthly in advance.
- Item 10** **Building outgoings which the tenant must pay or reimburse:**
 (1.1, 2.1.2,
 2.1.5 & 5.4) **Premises consist of the entire lettable area of the building:-**
 100% of all building outgoings
- Item 11** **Risks which the insurance policies must cover:**
 (1.1 & 6.2) .Fire
 .Lightning
 .Storm and Tempest
 .Explosion
 .Riots and Civil Commotion
 .Strikes
 .Malicious Damage
 .Earthquake
 .Impact by Vehicles
 .Impact by Aircraft and articles dropped from them
 and such other risks as the **landlord** reasonably specifies from
 time to time.
- Item 12** **Amount of public risk insurance cover:**
 (1.1 & 2.3.1) **\$10,000,000.00** or other amount reasonably specified from
 time to time by the **landlord**.
- Item 13** **Period of loss of rent and outgoings insurance:**
 (1.1) Twelve (12) months
- Item 14** **Interest rate on overdue money:**
 (2.1.7) The rate from time to time fixed by the Penalty Interest Rates Act
 1983 (Vic.)
- Item 15** **Permitted use:**
 (2.2.1) Food preparation, bakery, storage distribution and administration
 but not for the sale or hire of goods by retail or the provision of
 retail services.
- (1.13) **Application of Act:** The Act does not apply
 Reason why Act does not apply: Non-retail use

Item 16 **Review date(s):**
(2.1.1,11,18)

Term

- (a) Market review date(s): Not applicable
- (b) CPI review date(s): 27 February 2013, 27 February
2014, 27 February 2015, 27
February 2016 & 27 February 2017
- (c) Fixed review date(s) and percentage or fixed amount increases:
Not applicable

Further term(s)

- (a) Market review date(s): Commencement date of each
further term
- (b) CPI review date(s): Annually from the commencement
date during each further term
- (c) Fixed review date(s) and percentage or fixed amount increases:
Not applicable

Item 17 **Who may initiate reviews:**
(2.1,11,18)

- (a) Market review: Either party
- (b) CPI review: Review is automatic
- (c) Fixed review: Not applicable

Item 18 **Further term(s):**
(12) Four (4) further terms each of three (3) years

Item 19 **Latest date for exercising option for renewal:**
(12) 27 February 2017

Item 20 **Security deposit:**
(13) An amount always equal to six (6) months' rent plus GST

Item 21 **The mediation procedure applies to this lease**
(16.1)

Item 22
(20) **Additional provisions:**

1. The **valuer** appointed pursuant to Clause 11 must return a valuation which is GST exclusive.
2. Notwithstanding anything else herein contained the **rent** for the first year of any further term or terms shall be determined in accordance with Clause 11 and thereafter shall be reviewed annually during the further term in accordance with Clause 18.
3. If the **tenant** is a company, other than a company listed on any Australian Stock Exchange, then a change in control of the **tenant** is taken to be a transfer of this lease and will require the consent of the **landlord** in accordance with the requirements of Clause 4. A change in control of the **tenant** means a change to:
 - (a) the identity of 50% or more of the **tenant's** directors or the directors of any holding company, or
 - (b) the legal or beneficial ownership of 50% or more of the **tenant's** issued capital, or
 - (c) the persons who at the date of this lease have control of the **tenant**.
4. The parties agree to equally share the cost of the preparation of the condition report for the **premises** ("the Condition Report"). This additional provision 4 is not be included in any further or renewed lease of the **premises**
5. The **tenant** agrees that any moneys paid to the **landlord** pursuant to this lease may be applied by the **landlord** in or toward satisfaction of **rent** or other moneys then due and payable under this lease in such order as the **landlord** in its unfettered discretion determines notwithstanding any notice delivered by the **tenant** to the **landlord** with any such payment and a notice by the **landlord** as to the application of any such payment shall be conclusive proof of the order of application of the moneys paid.
6. If the **tenant** fails to execute and return to the **landlord** or its solicitor a lease prepared to record a further lease referred to in Clause 12 within fourteen (14) days of the date that lease is delivered to the **tenant** or its solicitors then the **landlord** may at its option deem the **tenant** to have repudiated the agreement it is deemed to have made to take

a lease in consequence of its exercise of its rights pursuant to Clause 12 and may by notice delivered to the **tenant** accept that repudiation whereupon the **tenant** shall not then be entitled to a further lease pursuant to Clause 12. If the **landlord** accepts the **tenant's** repudiation then without limiting the **landlord's** rights to recover damages against the **tenant** after the termination of this lease the **tenant** will be deemed holding over under Clause 10.

7. The **tenant** must not carry out any alterations to the **premises**, including the fitting out of the **premises**, without first obtaining the **landlord's** written consent.

8. TRUST WARRANTIES

8.1 Generally

Where the **tenant** or the **guarantor** enters into this lease in its capacity as a trustee ("the Trustee") of a trust (the Trust'), the **tenant** and the **guarantor** jointly and severally covenant with and warrant to the **landlord** that the Trustee has full powers pursuant to its constitution (if an owner's corporation) and any document establishing the Trust under which it purports to act when entering into this lease.

8.2 Trust covenants

The **tenant** and the **guarantor** jointly and severally covenant with the **landlord** that:-

- (a) the Trust is lawfully and validly constituted and all deeds and other instruments in respect thereof have been properly executed;
- (b) throughout the duration of this lease, the Trust will remain in force and shall not be varied;
- (c) the assets of the Trust, as well as the personal assets of the **tenant** and the **guarantor** will, at all times, be available to satisfy the obligations of the **tenant** under this lease;
- (d) the Trustee has obtained all consents and approvals necessary to execute this lease so as to bind the property of the Trust and all necessary conditions precedent for that purpose have been met;
- (e) no facts are known to the **tenant** or to the **guarantor** whereby:

- (i) the Trust might be wound-up voluntarily or otherwise;
 - (ii) the Trustee might be changed;
 - (iii) the assets of the Trust might be vested in any other person ; or
 - (iv) the Trust might cease to operated or be deprived of funds.
9. The **tenant** must complete the following works at its own cost and in a proper and workmanlike manner after obtaining any necessary consents and approvals from relevant authorities:
- (a) upgrade or replace any aluminium coving if the **tenant** deems the existing coving to be inadequate;
 - (b) all manholes and doors in processing area to be properly sealed;
 - (c) all external doors to be fitted with adequate weather strips;
 - (d) all cool rooms and freezers to be fitted with internal handles;
 - (e) all piping and conduit work must be bracketed a minimum 20/30mm of the panelled walls;
 - (f) seal floors in the freezer room which is to become the oven room and the smaller freezer room;
 - (g) install drainage in the smaller freezer room if deemed necessary by the **tenant**;
 - (h) upgrade the power supply if the **tenant** deems the current supply insufficient;
 - (i) install a canopy and flue system to the current freezer room to utilize as the baking area (the **tenant** may either remove the freezer condenser fan motors from the wall and reinstate same at the termination or earlier determination of this lease and any further term or terms. Alternatively, the **tenant** may enclose the freezer motors with adequate panelling or industrial grade shrink wrap to protect from the heat and the **tenant** must ensure that the freezer motors

are in proper working order when reinstated at the end of this tenancy). Notwithstanding anything else contained in this additional provision 9(i), the **tenant** will not be required to reinstate the freezer motors to a better condition to that as may be detailed in the Condition Report. All works required by this additional provision must be carried out by an accredited refrigeration technician.

- (j) install further sandwich panelling as dividers to create a dry storage room, bread cool down rooms and packing rooms on the condition that if any damage is caused to existing panelling it must be replaced by new panelling. The new sandwich panelling dividers are to be removed at the end or earlier determination of this lease and any further term or terms and the **tenant** must to make good and reinstate the **premises** to the condition as at the **start of the lease**; and
- (k) install and connect all necessary gas plumbing for large LPG gas cylinder on site with such works to be certified by and carried out by an accredited gas plumber with adequate insurance and safety precautions in accordance with Australian Standards.

This additional provision 9 is not be included in any further or renewed lease of the **premises** except for the **tenant's** obligation in paragraph (i) above to reinstate the freezer condenser fan motors at the end or earlier determination of this lease and any further term or terms and the **tenant's** obligation in paragraph (j) above to remove its sandwich panelling dividers and reinstate the **premises**.

10. This lease is amended by:-

- (a) deleting Clause 7.4;
- (b) adding to Clause 11.1.5 the words "and the **valuer** must determine the current market rent at least equal to the **rent** immediately before the review"; and
- (c) deleting Clause 2.1.8(a).

11. The **tenant** acknowledges that the following **landlord's installations** are not required by the **tenant** but will remain in the **premises**:

- (a) Bitzer compressor type 4H-15.2 (73.7 M3/H);
- (b) Frascold compressor type S15 51 (HP/KW 15/11, M3/H50,43); and
- (c) Two (2) condenser fans associated with the compressors located on the walls of the freezer rooms which are not to be used as freezer rooms by the **tenant**.

Neither **landlord** nor **tenant** is required to maintain or repair the above listed installations throughout the **term** or any further term or terms. However, the **tenant** must reinstate the above listed installations including the condenser fans in the freezer rooms to proper working order as required by the **landlord** at the end or earlier determination of this lease. If the installations are no longer in working order, the **tenant** must replace same with equivalent products which are of proper and functional working order failing which the **tenant** must compensate the **landlord** for all losses associated with repairing or replacing the installations. Notwithstanding anything else contained in this additional provision 11, the **tenant** will not be required to reinstate any of the above listed installations to a better condition to that as may be detailed in the Condition Report. This additional provision 11 must be included in all further and renewed leases of the **premises**.

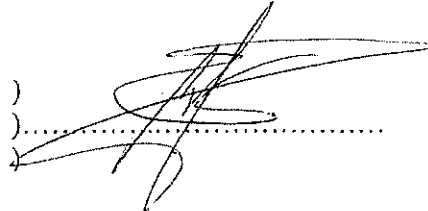
12. If the **tenant** complies with its obligations under this lease including completing the works referred to in additional provision 9 above, the **tenant** will not be required to pay **rent** for the period from 27 February 2012 to 26 May 2012.
13. The **landlord** will repair and seal cracks in the floor within a reasonable period.
14. The **landlord** will carry out any necessary maintenance or repairs to the garden the structure of the **premises** including panels and walls and the electrical installations including roller doors, refrigeration equipment, alarm system and lighting to ensure that they are in a satisfactory condition.

Upon completion of these works the **landlord's** agent (CVA Property Consultants Pty Ltd) will arrange for the Condition Report. This additional provision 14 is not to be included in any further or renewed lease of the premises.

EXECUTED AS A DEED ON DATE:

EXECUTION AND ATTESTATION:

SIGNED SEALED AND DELIVERED by the)
said MICHAEL TAIRY in the presence of:)



J. Twyman
.....

Witness

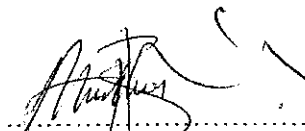
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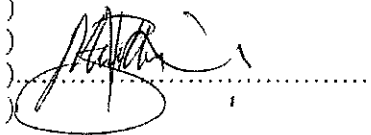
Print usual address

EXECUTED by HEALTHLINX.COM PTY)
LTD ACN 092 264 894 in accordance with)
section 127 of the Corporations Act 2001 (Cth))



..... Sole company Director & Secretary
MITCHELLE MARC BRAJDIC
of 4 MARGARET STREET, BRIGHTON EAST 3187

SIGNED SEALED AND DELIVERED by the)
said MITCHELLE MARC BRAJDIC)
in the presence of:)



[Signature]
.....

Witness

Ruth Savage Brajdic
.....

Print name

4 Margaret St, Brighton
.....

Print usual address

Appendix 1

6 Specified Fixtures are:

- 6.1 Cool rooms including Buffalo Trident Blazer 1x fan cool room motors;
- 6.2 Freezers;
- 6.3 Chillers;
- 6.4 Air conditioning units comprising:
 - 6.4.1 Sanyo wall mounted split system air conditioning units;
 - 6.4.2 Fujitsu ducted air conditioning units.



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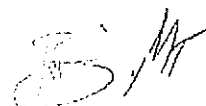
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ELIASH PROJECT

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Appendix 1

- 6.4.3 Contardo Hitec air conditioner (x5);
- 6.5 Compressors comprising:
 - 6.5.1 Frascold x 2 (HP/KW 7,5 / 5,5);
 - 6.5.2 Bitzer, Type 4H – 15.2 Y (73.7 M3 / 11);
 - 6.5.3 Frascold, Type 815 51 (HP/KW 15 / 11.2) (50,45);
 - 6.5.4 Bock, Type H0 x 4 /465-4 (HD (HP) 15 / 11 bar);
 - 6.5.5 And including air compressor line;
- 6.6 All fixed electrical components: power board, three phase power, transformer, power points;
- 6.7 Airport motorised roller doors (x2);
- 6.8 Warehouse floor drainage and triple intercom;
- 6.9 Fixed floor covering;
- 6.10 Gates and fences;
- 6.11 Light fittings in cool room and fridge (x30) including globe globes);
- 6.12 Toilets and showers (all plumbing associated);
- 6.13 Office partitioning;
- 6.14 Stainless steel sinks in warehouse;
- 6.15 Three phase power outlets (x8);
- 6.16 Data points (x10); and
- 6.17 Alarm including surveillance cameras.



LEASE OF REAL ESTATE
(WITH GUARANTEE & INDEMNITY)
(Commercial Property)

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21. **LANDLORD WARRANTY**

The **landlord** leases the **premises** to the **tenant** for the **term** and at the **rent** and on the conditions set out in this lease together with all necessary access over any **common areas**.

The **guarantor**, if any, agrees to be bound by the **guarantor's** obligations set out in this lease.

LEASE CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 The listed expressions in **bold print** have the meaning set out opposite them -

EXPRESSION	MEANING
accounting period	the period of 12 months ending 30 June or other period of 12 months adopted by the landlord in respect of this lease for recovery of building outgoings and includes any broken periods at the start and end of the term
Act	the <i>Retail Leases Act 2003</i> (Vic)
building	any building in which the premises are located, including the landlord's installations
building outgoings	any of the following expenses incurred in respect of the land , the building , the premises or any premises in the building which include the premises - <ul style="list-style-type: none"> (a) rates, levies and assessments imposed by any relevant authorities; (b) taxes including land tax (unless the Act applies), calculated on the basis that the land is the only land of the landlord liable to tax and is not subject to a trust but excluding income tax and capital gains tax; (c) the costs of maintaining and repairing the building and the landlord's installations (but excluding any amount recovered in respect of that maintenance or repair by the landlord from its insurer); (d) premiums and charges for the following insurance policies taken out by the landlord - <ul style="list-style-type: none"> (i) damage to and destruction of the premises for their replacement value for the risks listed in item 11, (ii) removal of debris, (iii) breakdown of landlord's installations, (iv) breakage of glass, (v) public risk for any single event for the amount stated in item 12 (if none is stated, \$10 million) or other amount reasonably specified from time to time by the landlord, and (vi) loss of rent and outgoings for the period stated in item 13 or, if none is stated, 12 months, <p>and excesses paid or payable on claims,</p> <p>and, if the premises occupy only a part of the lettable area of the building, the following further items -</p> <ul style="list-style-type: none"> (e) costs incurred in providing services to the building and the land including - <ul style="list-style-type: none"> (i) heating, (ii) cooling, (iii) air-conditioning,

	(iv) cleaning,
	(v) pest control,
	(vi) waste collection,
	(vii) lighting,
	(viii) landscaping and garden maintenance,
	(ix) security, and
	(x) fire prevention, detection and control;
	(f) accountancy and audit fees; and
	(g) costs of whatever description, reasonably incurred by the landlord in the administration, management or operation of the building and the land ,
	whether incurred by the landlord directly or as owners corporation levies, at cost to the landlord on the basis that an expense is deemed to have been paid at the time it fell due for payment but, if the Act applies, only to the extent permitted by the Act and, in any event, excluding capital expenditure
building rules	any rules adopted from time to time for the building , including the rules of any owners corporation affecting the premises
common areas	areas in the building or on the land that are under the control of the landlord and are used or intended for use - <ul style="list-style-type: none"> (a) by the public; or (b) in common by tenants of premises in the building in relation to the carrying on of businesses on those premises, other than areas which are let or licensed, or intended to be let or licensed, other than on a casual basis
Consumer Price Index	the consumer price index published by the Australian Government Statistician under the heading All Groups, Melbourne
CPI review date	a date specified in item 16(b)
fixed review date	a date specified in item 16(c)
GST	GST within the meaning of the GST Act
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i>
guarantor	the person named in item 3
item	an item in the schedule to this lease
land	the parcel of land on which the building is erected and which is described in item 4(b)
landlord	the person named in item 1, or any other person who will be entitled to possession of the premises when this lease ends
landlord's installations	the installations of the landlord in the premises or the building or on the land and those installed by the landlord after the lease starts and including the installations listed in item 5
lettable area	unless the Act applies and requires otherwise - <ul style="list-style-type: none"> (a) in relation to the premises, the area let; and (b) in relation to the building, the total area of the building that is let or licensed or intended to be let or licensed, other than on a casual basis. When it is necessary to measure the lettable area of the building or any part of the building , the measurement is to be carried out using the most recent revision of the relevant Property Council of Australia method of measurement

market review date a date specified in item 16(a)

permitted use the use specified in item 15

premises the premises described in item 4(a) and fixed improvements and the landlord's installations within the premises

rent the amount in item 6, as varied in accordance with this lease

review date a date specified in item 16

start of the lease the first day of the term but, if this lease is a renewal under an option in an earlier lease (whether or not this lease is on terms that are materially different to those contemplated by the earlier lease), the starting date of the first lease to contain an option for renewal.

tenant the person named in item 2, or any person to whom the lease has been transferred

tenant's agents the tenant's employees, agents, contractors, customers and visitors to the premises

tenant's installations the installations listed in item 7 and those installed by the tenant after the lease starts

term the period stated in item 8

valuer a person holding the qualifications or experience specified under section 13DA(1A) of the *Valuation of Land Act 1960* (Vic) and, if the Act applies, a specialist retail valuer.

- 1.2 References to laws include statutes, regulations, instruments and by-laws and all other subordinate legislation or orders made by any authority with jurisdiction over the premises. Illegal means contrary to a law as defined in this sub-clause.
- 1.3 This lease must be interpreted so that it complies with all laws applicable in Victoria. If any provision of this lease does not comply with any law, then the provision must be read down so as to give it as much effect as possible. If it is not possible to give the provision any effect at all, then it must be severed from the rest of the lease.
- 1.4 The law of Victoria applies to this lease.
- 1.5 Any change to this lease must be in writing and signed by the parties.
- 1.6 An obligation imposed by this lease on or in favour of more than one person binds or benefits them separately, together and in any combination.
- 1.7 The use of one gender includes the others and the singular includes the plural and vice versa.
- 1.8 If the landlord, tenant or guarantor is an individual, this lease binds that person's legal personal representative. If any of them is a corporation, this lease binds its transferees.
- 1.9 This lease, including all guarantees and indemnities, is delivered and operates as a deed.
- 1.10 The tenant is bound by and answerable for the acts and omissions of the tenant's agents.
- 1.11 If there is a conflict between a provision in the schedule and one of these lease conditions then the provision in the schedule is to prevail.
- 1.12 "Include" and every form of that word is to be read as if followed by "(without limitation)".
- 1.13 This lease includes the schedule.
- 1.14 The parties consider that the application of the Act to this lease is as specified in item 15 and, if item 15 states that the Act does not apply, that the reason is as specified in item 15.

2. TENANT'S PAYMENT, USE AND INSURANCE OBLIGATIONS

2.1 The tenant must -

- 2.1.1 pay the rent without any deductions to the landlord on the days and in the way stated in item 9 without the need for a formal demand. The landlord may direct in writing that the rent be paid to another person. The rent is reviewed on each review date specified in item 16 -
 - (a) on a market review date, the rent is reviewed in accordance with clause 11,
 - (b) on a CPI review date, the rent is reviewed in accordance with clause 18, and

- 5.4.4 despite clause 5.4.1, the **tenant**, if the **landlord** requires it, must pay its share of the estimated **building outgoings** by equal monthly instalments during the **accounting period** on the days on which **rent** is payable (after allowing for **building outgoings** paid directly or separately reimbursed by the **tenant**).
- 5.4.5 if the **Act** applies, the **landlord** must make a statement of **building outgoings** available during each **accounting period** as required by the **Act**.
- 5.4.6 within three months after the end of an **accounting period**, the **landlord** must give the **tenant** a statement of the actual **building outgoings** for the **accounting period** (if the **Act** applies and requires that the statement be certified, the statement must be certified as required by the **Act**).
- 5.4.7 the **tenant** must pay the amount short paid or the **landlord** must repay the amount over paid for **building outgoings**, as the case may be, within 1 month after a statement is provided under clause 5.4.6 or within 4 months after the end of the **accounting period**, whichever is earlier.
- 5.4.8 an appropriate adjustment must be made in relation to a **building outgoing** incurred in respect of a period beginning before the start of the term or extending beyond the end of the term.
- 5.5 If the freehold of the **premises** (or the **building**) is transferred, the transferor **landlord** is released from all lease obligations falling due for performance on or after the date of the instrument of transfer.

6. LANDLORD'S OBLIGATIONS

- 6.1 The **landlord** must give the **tenant** quiet possession of the **premises** without any interruption by the **landlord** or anyone connected with the **landlord** as long as the **tenant** does what it must under this lease.
- 6.2 The **landlord** must take out at the start of the term and keep current policies of insurance for the risks listed in item 11 against -
 - 6.2.1 damage to and destruction of the **building**, for its replacement value,
 - 6.2.2 removal of debris,
 - 6.2.3 breakdown of **landlord's installations**, and
 - 6.2.4 breakage of glass, for its replacement value.
- 6.3 The **landlord** must give to the **tenant** the written consent to this lease of each mortgagee whose interest would otherwise have priority over this lease by endorsement on this lease in the terms set out following the 'execution and attestation' section.
- 6.4 The **landlord** must keep the structure (including the external faces and roof) of the **building** and the **landlord's installations** in a condition consistent with their condition at the start of the lease, but is not responsible for repairs which are the responsibility of the **tenant** under clauses 3.1, 3.2 and 3.3.2.

7. EVENTS OF DEFAULT AND LANDLORD'S RIGHTS

- 7.1 The **landlord** may terminate this lease, by re-entry or notice of termination, if -
 - 7.1.1 the **rent** is unpaid for 14 days after becoming due for payment,
 - 7.1.2 the **tenant** does not meet its obligations under this lease,
 - 7.1.3 the **tenant** is a corporation and -
 - (a) an order is made or a resolution is passed to wind it up except for reconstruction or amalgamation,
 - (b) goes into liquidation,
 - (c) is placed under official management,
 - (d) has a receiver, including a provisional receiver, or receiver and manager of any of its assets or an administrator appointed,
 - (e) without the **landlord's** written consent, there is a different person in effective control of the **tenant** as a result of changes in -
 - (i) membership of the company or its holding company,
 - (ii) beneficial ownership of the shares in the company or its holding company, or
 - (iii) beneficial ownership of the business or assets of the company,
- but this paragraph does not apply if the **tenant** is a public company listed on the Australian Stock Exchange, or a subsidiary of one.
- "Effective control" means the ability to control the composition of the board of directors or having more than 50% of the shares giving the right to vote at general meetings,

- 7.1.4 a warrant issued by a court to satisfy a judgement against the **tenant** or a **guarantor** is not satisfied within 30 days of being issued,
- 7.1.5 a **guarantor** is a natural person and -
- (a) becomes bankrupt,
 - (b) takes or tries to take advantage of Part X of the *Bankruptcy Act 1966*,
 - (c) makes an assignment for the benefit of their creditors, or
 - (d) enters into a composition or arrangement with their creditors,
- 7.1.6 a **guarantor** is a corporation and one of the events specified in (a) to (e) of clause 7.1.3 occurs in relation to it, or
- 7.1.7 the **tenant**, without the **landlord's** written consent -
- (a) discontinues its business on the **premises**, or
 - (b) leaves the **premises** unoccupied for 14 days.
- 7.2 Termination by the **landlord** ends this lease, but the **landlord** retains the right to sue the **tenant** for unpaid money or for damages (including damages for the loss of the benefits that the **landlord** would have received if the lease had continued for the full term) for breaches of its obligations under this lease.
- 7.3 For the purpose of section 146(1) of the *Property Law Act 1958* (Vic), 14 days is fixed as the period within which the **tenant** must remedy a breach capable of remedy and pay reasonable compensation for the breach.
- 7.4 The **landlord** must give the **tenant**, before terminating this lease under clause 7.1 for non-payment of rent, the same notice that it would be required to give under section 146(1) of the *Property Law Act 1958* (Vic) for a breach other than the non-payment of rent.
- 7.5 Breach by the **tenant** of any of the following clauses of this lease is a breach of an essential term and constitutes repudiation: 2.1.1, 2.1.5, 2.1.6, 2.1.10, 2.1.11, 2.2.1, 2.2.2, 2.2.7, 2.2.8, 2.2.9, 2.2.11, 2.2.13, 2.3, 3.2.11, 4.1, 4.7, 5.4.2, 5.4.7, 13, and 17. Other **tenant** obligations under this lease may also be essential.
- 7.6 Before terminating this lease for repudiation (including repudiation consisting of the non-payment of rent), the **landlord** must give the **tenant** written notice of the breach and a period of 14 days in which to remedy it and to pay reasonable compensation for it. A notice given in respect of a breach amounting to repudiation is not an affirmation of the lease.
- 7.7 Even though the **landlord** does not exercise its rights under this lease on one occasion, it may do so on any later occasion.
8. **DESTRUCTION OR DAMAGE**
- 8.1 If the **premises** or the **building** are damaged so that the **premises** cannot be used or accessed for the **permitted use** -
- 8.1.1 a fair proportion of the **rent** and **building outgoings** is to be suspended until the **premises** are again wholly fit and accessible for the **permitted use**, and
 - 8.1.2 the suspended proportion of the **rent** and **building outgoings** must be proportionate to the nature and extent of the damage or inaccessibility.
- 8.2 If the **premises** or the **building** are partly destroyed, but not substantially destroyed, the **landlord** must reinstate the **premises** or the **building** as soon as reasonably practicable.
- 8.3 If the **premises** or the **building** are wholly or substantially destroyed -
- 8.3.1 the **landlord** is not obliged to reinstate the **premises** or the **building**, and
 - 8.3.2 if the reinstatement does not start within 3 months, or is not likely to be completed within 9 months, the **landlord** or the **tenant** may end this lease by giving the other written notice.
- 8.4 The **tenant** will not be entitled to suspension of **rent** or **building outgoings** under sub-clause 8.1.1 nor to end the lease under sub-clause 8.3.2 and the **landlord** will not be obliged to reinstate the **premises** or the **building** under clause 8.2 if payment of an insurance claim is properly refused in respect of the damage or destruction because of any act or omission by the **tenant** or the **tenant's** agents.
- 8.5 If the **Act** does not apply and there is a dispute under this clause, either party may request the President of the Australian Property Institute, Victorian Division, to nominate a practising valuer member of that Institute to determine the dispute or the parties may refer the dispute to mediation under clause 16 unless item 21 states that the mediation procedure does not apply to this lease. The valuer acts as an expert and not as an arbitrator and the determination is binding.
9. **CONSENTS AND WARRANTIES BY THE PARTIES**
- 9.1 The **landlord** must not unreasonably withhold its consent or approval to any act by the **tenant** or matter which needs consent or approval unless any other clause provides otherwise, but -

- 9.1.1 the **landlord** may impose reasonable conditions on any consent or approval, and
- 9.1.2 the **tenant** must reimburse the **landlord's** reasonable expenses resulting from an application for its consent or approval, including fees paid to consultants.
- 9.2 This lease, together with the disclosure statement if there is one, contains the whole agreement of the parties. Neither party is entitled to rely on any warranty or statement in relation to -
 - 9.2.1 the conditions on which this lease has been agreed,
 - 9.2.2 the provisions of this lease, or
 - 9.2.3 the **premises**
 which is not contained in those documents.
- 10. **OVERHOLDING AND ABANDONMENT OF THE PREMISES**
 - 10.1 If the **tenant** remains in possession of the **premises** without objection by the **landlord** after the end of the **term** -
 - 10.1.1 the **tenant**, without any need for written notice of any kind, is a monthly tenant on the conditions in this lease, modified so as to apply to a monthly tenancy,
 - 10.1.2 either party may end the tenancy by giving one month's written notice to the other which may expire on any day of the month,
 - 10.1.3 the monthly rent starts at one-twelfth of the annual rent which the **tenant** was paying immediately before the **term** ended unless a different rent has been agreed, and
 - 10.1.4 the **landlord** may increase the monthly rent by giving the **tenant** one month's written notice.
 - 10.2 If the **tenant** vacates the **premises** during the **term**, whether or not it ceases to pay rent -
 - 10.2.1 the **landlord** may -
 - (a) accept the keys,
 - (b) enter the **premises** to inspect, maintain or repair them, or
 - (c) show the **premises** to prospective tenants or purchasers,
 without this being re-entry or an acceptance of repudiation or a waiver of the **landlord's** rights to recover rent or other money under this lease.
 - 10.2.2 this lease continues until a new tenant takes possession of the **premises**, unless the **landlord** -
 - (a) accepts a surrender of the lease, or
 - (b) notifies the **tenant** in writing that the **landlord** accepts the **tenant's** repudiation of the lease, or
 - (c) ends the lease in accordance with clause 7.1.
- 11. **RENT REVIEWS TO MARKET**
 - 11.1 In this clause "review period" means the period following each market review date until the next review date or the end of this lease.
The review procedure on each market review date is -
 - 11.1.1 each review of rent may be initiated by either party unless item 17 states otherwise but, if the **Act** applies, review is compulsory.
 - 11.1.2 a party may initiate a review by giving the other party a written notice stating the current market rent which it proposes as the **rent** for the review period. Unless the **Act** applies, if the party receiving the notice does not object in writing to the proposed rent within 14 days, it becomes the **rent** for the review period.
 - 11.1.3 If -
 - (a) the **Act** does not apply and the party receiving the notice serves an objection to the proposed rent within 14 days and the parties do not agree on the **rent** within 14 days after the objection is served, or
 - (b) the **Act** applies and the parties do not agree on what the **rent** is to be for the review period,
 the parties must appoint a **valuer** to determine the current market rent.
If the **Act** does not apply and if the parties do not agree within 28 days after the objection is served on the name of the **valuer**, the **valuer** must be nominated by the President of the Australian Property Institute, Victorian Division, at the request of either party. If the **Act** applies, the **valuer** is to be appointed by agreement of the parties, or failing agreement, by the Small Business Commissioner.
 - 11.1.4 In determining the current market rent for the **premises** the **valuer** must -
 - (a) consider any written submissions made by the parties within 21 days of their being informed of the **valuer's** appointment, and

- (b) determine the current market rent as an expert and, whether or not the **Act** applies, must make the determination in accordance with the criteria set out in section 37(2) of the **Act**.
 - 11.1.5 The **valuer** must make the determination of the current market rent and inform the parties in writing of the amount of the determination and the reasons for it as soon as possible after the end of the 21 days allowed for submissions by the parties.
 - 11.1.6 if -
 - (a) no determination has been made within 45 days (or such longer period as is agreed by the **landlord** and the **tenant** or, if the **Act** applies, as is determined in writing by the Small Business Commissioner) of the parties
 - (i) appointing the **valuer**, or
 - (ii) being informed of the **valuer's** appointment, or
 - (b) the **valuer** resigns, dies, or becomes unable to complete the valuation, then the parties may immediately appoint a replacement **valuer** in accordance with sub-clause 11.1.3.
 - 11.2 The **valuer's** determination binds both parties.
 - 11.3 The **landlord** and **tenant** must bear equally the **valuer's** fee for making the determination and if either pays more than half the fee, the difference may be recovered from the other.
 - 11.4 Until the determination is made by the **valuer**, the **tenant** must continue to pay the same rent as before the market review date. Within 7 days of being informed of the **valuer's** determination, the parties must make any necessary adjustments.
 - 11.5 If the **Act** does not apply, a delay in starting a market review does not prevent the review from taking place and being effective from the market review date but if the market review is started more than 12 months after the market review date, the review takes effect only from the date on which it is started.
- 12. **FURTHER TERM(S)**
 - 12.1 The **tenant** has an option to renew this lease for the further term or terms stated in item 18 and the **landlord** must renew this lease for that further term or those further terms if -
 - 12.1.1 there is no unremedied breach of this lease by the **tenant** of which the **landlord** has given the **tenant** written notice,
 - 12.1.2 the **tenant** has not persistently committed breaches of this lease of which the **landlord** has given written notice during the term, and
 - 12.1.3 the **tenant** has requested the renewal in writing not more than 6 months nor less than 3 months before the end of the term. The latest date for exercising the option is stated in item 19.
 - 12.2 The renewed lease -
 - 12.2.1 starts on the date after this lease ends,
 - 12.2.2 has a starting rent determined in accordance with clause 11, and
 - 12.2.3 must contain the same terms as this lease but with no option for renewal after the last option for a further term stated in item 18 has been exercised.
 - 12.3 If the **tenant** is a corporation and was required to provide directors' guarantees for this lease, the **tenant** must provide guarantees of its obligations under the renewed lease by its directors in the terms of clause 15.
- 13. **SECURITY DEPOSIT**
 - 13.1 The **tenant** must pay a security deposit to the **landlord** of the amount stated in item 20 and must maintain the deposit at that amount.
 - 13.2 Where the security deposit is invested in an interest bearing deposit, all interest accruing on it is treated as a supplementary payment of security deposit. When the term starts, the **tenant** must provide the **landlord** with the **tenant's** tax file number.
 - 13.3 The **landlord** may use the deposit to make good the cost of remedying breaches of the **tenant's** obligations under this lease (or any of the events specified in clause 7.1) and the **tenant** must pay whatever further amount is required to bring the deposit back to the required level.
 - 13.4 As soon as practicable after this lease has ended and the **tenant** has vacated the premises and performed all of its obligations under the lease, the **landlord** must refund the unused part of the deposit.
 - 13.5 The **tenant** may, and if the **landlord** requires must, provide the security deposit by means of a guarantee by an ADI within the meaning of the *Banking Act 1959* (Cth).
 - 13.6 If the freehold of the premises is transferred:

- 13.6.1 the **tenant** must provide a replacement guarantee in exchange for the existing guarantee if requested by the **landlord** in writing to do so, but the **landlord** must pay the reasonable fees charged by the ADI for the issue of the replacement guarantee, and
- 13.6.2 the **landlord** must transfer any security deposit held under this lease to the transferee.

14. NOTICES

- 14.1 A notice given under this lease may be given -
 - 14.1.1 by post,
 - 14.1.2 by facsimile, or
 - 14.1.3 by delivery
 to the party's last known address, or
 - 14.1.4 registered office, or
 - 14.1.5 if to the **tenant**, at the **premises**.
- 14.2 Posted notices will be taken to have been received 72 hours after posting unless proved otherwise.
- 14.3 Notices delivered or sent by facsimile after 5.00p.m. will be taken to have been received at 9.00a.m. on the next business day at the place where it is received.

15. OBLIGATIONS OF GUARANTOR(S) UNDER GUARANTEE AND INDEMNITY

- 15.1 The **guarantor** in consideration of the **landlord** having entered into this lease at the **guarantor's** request —
 - 15.1.1 guarantees that the **tenant** will perform all its obligations under this lease for the **term** and any renewed term or terms and during any period of overholding after the end of the **term**,
 - 15.1.2 must pay on demand any amount which the **landlord** is entitled to recover from the **tenant** under this lease whether in respect of the **term**, any further term or further terms or any period of overholding, and
 - 15.1.3 indemnifies the **landlord** against all loss resulting from the **landlord's** having entered into this lease whether from the **tenant's** failure to perform its obligations under it or from this lease being or becoming unenforceable against the **tenant** and whether in respect of the **term**, any renewed term or terms or any period of overholding.
- 15.2 The liability of the **guarantor** will not be affected by -
 - 15.2.1 the **landlord** granting the **tenant** or a **guarantor** time or any other indulgence, or agreeing not to sue the **tenant** or another **guarantor**,
 - 15.2.2 failure by any **guarantor** to sign this document,
 - 15.2.3 transfer (except in accordance with the **Act**, if the **Act** applies) or variation of this lease, but if this lease is transferred the **guarantor's** obligations, other than those which have already arisen, end when the **term** ends and do not continue into a term renewed by a new tenant nor a period of overholding by a new tenant,
 - 15.2.4 the fact that this lease is subsequently registered at the Land Registry or not registered, or, for any reason, is incapable of registration, or
 - 15.2.5 transfer of the freehold of the **premises**.
- 15.3 The **guarantor** agrees that —
 - 15.3.1 the **landlord** may retain all money received including dividends from the **tenant's** bankrupt estate, and need allow the **guarantor** a reduction in its liability under this guarantee only to the extent of the amount received,
 - 15.3.2 the **guarantor** must not seek to recover money from the **tenant** to reimburse the **guarantor** for payments made to the **landlord** until the **landlord** has been paid in full,
 - 15.3.3 the **guarantor** must not prove in the bankruptcy or winding up of the **tenant** for any amount which the **landlord** has demanded from the **guarantor**, and
 - 15.3.4 the **guarantor** must pay the **landlord** all money which the **landlord** refunds to the **tenant's** liquidator or trustee in bankruptcy as preferential payments received from the **tenant**.
- 15.4 If any of the **tenant's** obligations are unenforceable against the **tenant**, then this clause is to operate as a separate indemnity and the **guarantor** indemnifies the **landlord** against all loss resulting from the **landlord's** inability to enforce performance of those obligations. The **guarantor** must pay the **landlord** the amount of the loss resulting from the unenforceability.

- 15.5 If there is more than one **guarantor**, this guarantee binds them separately, together and in any combination.

16. DISPUTE RESOLUTION

- 16.1 Unless the **Act** applies, if the words "The mediation procedure applies to this lease" are included in item 21, the mediation procedure applies to this lease. In that event the parties must attempt to resolve any dispute by the mediation procedure, except disputes about -

- 16.1.1 unpaid **rent** and interest charged on it,
- 16.1.2 review of **rent**, and
- 16.1.3 a dispute to be resolved in another way prescribed by any other provision of this lease.

- 16.2 The mediation procedure is -

- 16.2.1 a party may start mediation by serving a mediation notice on the other party.
- 16.2.2 the notice must state that a dispute has arisen and identify what the dispute is.
- 16.2.3 the parties must jointly request appointment of a mediator. If the parties fail to agree on the appointment within 7 days of service of the mediation notice, either party may apply to the President of the Law Institute of Victoria or the nominee of the President to appoint a mediator.
- 16.2.4 once the mediator has accepted the appointment the parties must comply with the mediator's instructions.
- 16.2.5 if the dispute is not resolved within 30 days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases.

- 16.3 The mediator may fix the charges for the mediation which must be paid equally by the parties.

- 16.4 If the dispute is settled, all parties must sign the terms of agreement and these terms are binding on the parties.

- 16.5 The mediation is confidential and -

- 16.5.1 statements made by the mediator or the parties, and
- 16.5.2 discussions between the participants to the mediation, before after or during the mediation,

cannot be used in any legal proceedings.

- 16.6 It must be a term of the engagement of the mediator that the parties release the mediator from any court proceedings relating to this lease or the mediation.

- 16.7 The mediator is not bound by the rules of natural justice and may discuss the dispute with a party in the absence of any other party.

- 16.8 If the **Act** applies, so that a dispute must be referred to the Victorian Civil and Administrative Tribunal, the parties agree that each may be represented by a legal practitioner or legal practitioners of its choice.

17. GST

- 17.1 Expressions used in this clause 17 and in the **GST Act** have the same meanings as when used in the **GST Act**.

- 17.2 Amounts payable and consideration provided under or in respect of this lease (other than under clause 17.3) are **GST** exclusive.

- 17.3 The recipient of a taxable supply made under or in respect of this lease must pay to the supplier, at the time the consideration for the supply is due, the **GST** payable in respect of the supply. This obligation extends to supply consisting of a party's entry into this lease.

- 17.4 An amount payable by the tenant in respect of a creditable acquisition by the **landlord** from a third party must not exceed the sum of the value of the **landlord's** acquisition and the additional amount payable by the **tenant** under clause 17.3 on account of the **landlord's** liability for **GST**.

- 17.5 A party is not obliged, under clause 17.3, to pay the **GST** on a taxable supply to it under this lease, until given a valid tax invoice for the supply.

18. CONSUMER PRICE INDEX

- 18.1 On a **CPI review date**, the **rent** is adjusted by reference to the **Consumer Price Index** using the following formula -

$$AR = R \times \frac{CPIB}{CPIA}$$

Where:

"AR" means adjusted **rent**,

"R" means **rent** before adjustment,

"CPIB" means the **Consumer Price Index** number for the quarter immediately preceding the **CPI review date**, and