

SUMMARY FOR COMMERCIAL LEASE

LANDLORD DETAILS

Landlord Type SMSF
SMSF Name METAL APPAREL SUPERANNUATIONFUND
Company Name KARRADON PTY LTD
ACN ACN 010 361 083
Landlord Address UNIT 1/4 COMBARTON STREET, BRENDAL, QLD 4500 Australia

TENANT DETAILS

TENANT 1

Tenant Type Company
Tenant Name KARRADON PTY LTD T/AS M.A.R.S
Tenant ACN A.B.N 62 010 361 083
Tenant Address UNIT4/4COMBARTON STREET, BRENDAL, QLD 4500 AUSTRALIA

PREMISES DETAILS

Address Lot 1, SP 135158 Parish Warner, 4 COMBARTON STREET, BRENDAL QLD 4500 Australia
Area (Square Meters) 168

LEASE DETAILS

Start Date 1 July 2013
Lease Period Fixed
Finish Date 30/06/2016
Rent \$1,240.00
GST Amount is exclusive of GST
Bond 0.00
Review Market

RENEWAL DETAILS

Renewal of the Lease Yes
Renewal Period 3 YEARS
Renewal Terms One

ALLOCATION TABLE OF RATES AND TAXES; OUTGOINGS AND OPERATING EXPENSES

| RATES, TAXES, OUTGOINGS AND OPERATING EXPENSES | PAID BY | |
|------------------------------------------------|---------|----------|
| | TENANT | LANDLORD |
| Water Drainage and Sewerage Rates | ✓ | |
| Local Authority Rates | ✓ | |
| Land Tax | | ✓ |

| | | |
|-----------------------------------------------------------------------------|---|---|
| Interest Charges on Outstanding Rates and Taxes | ✓ | |
| Water Consumed Beyond Allowance | ✓ | |
| Fire Services | ✓ | |
| Cleaning, Including Window and Rubbish Removal | ✓ | |
| Ground Repairs and Maintenance | | ✓ |
| Building Repairs and Maintenance of a Non-Structural Nature | | ✓ |
| Building Insurance | | ✓ |
| Plate Glass Insurance and Public Liability Insurance (minimum \$10,000,000) | ✓ | |
| Property Management Fees | ✓ | |
| Common Area Lighting and Power | ✓ | |
| Security | ✓ | |
| Toilet Requisites | ✓ | |
| Hot Water Systems Running and Repairs and Maintenance | | ✓ |
| Electricity and Gas and Telephone Services Consumed in the premises | ✓ | |
| Air-conditioning Running and Repairs and Maintenance | ✓ | |
| Lift Running and Repairs and Maintenance | | ✓ |
| Strata Company Levy | | ✓ |

Instructions

Congratulations on building your Commercial Lease.

1. As the Landlord please read the Commercial Lease to ensure it reflects your wishes. When you are satisfied print off 2 copies and hand them to the tenant to sign.
2. The tenant is advised to seek legal advice before they sign the Commercial Lease. Whether they do or not is up to them. (Hand the tenant this cover sheet so that you have evidence that the tenant was afforded the opportunity to seek legal advice.) It is best to get the tenant to sign the Commercial Lease BEFORE they take possession of the premises.
3. The tenant will return to you both signed copies of the Commercial Lease. You now sign the Commercial Lease.
4. State Duty: In some states you need to have the Commercial Lease stamped. Please check with your local office of State Revenue:
 - i. **ACT Revenue Office**
www.revenue.act.gov.au
 - ii. **NSW Office of State Revenue**
www.osr.nsw.gov.au
 - iii. **Territory Revenue Office - Northern Territory Treasury**
www.nt.gov.au/ntt/revenue/index.shtml
www.revenue.nt.gov.au/index.shtml
 - iv. **Queensland Office of State Revenue**
www.osr.qld.gov.au
 - v. **RevenueSA**
www.treasury.sa.gov.au
 - vi. **Tasmanian State Revenue Office**
www.sro.tas.gov.au
 - vii. **Victorian State Revenue Office**
www.sro.vic.gov.au
 - viii. **Western Australia State Revenue - Department of Finance**
www.finance.wa.gov.au

5. Congratulations your Commercial Lease is now complete.

The author of this document is the law practice Civic Legal.



Commercial Lease Agreement

Between

KARRADON PTY LTD (ACN010 361 083)
("LandLord")

and

KARRADON PTY LTD T/AS M.A.R.S (A.B.N 62 010 361 083)
("Tenant")

This **COMMERCIAL LEASE** is made

BETWEEN

KARRADON PTY LTD (ACN010 361 083) as Trustee for METAL APPAREL SUPERANNUATIONFUND of UNIT 1/4 COMBARTON STREET, BRENDAL, QLD 4500 Australia ("**Landlord**")

AND

KARRADON PTY LTD T/AS M.A.R.S (A.B.N 62 010 361 083) of UNIT4/4COMBARTON STREET, BRENDAL, QLD 4500 AUSTRALIA ("**Tenant**")

IT IS AGREED as follows

In consideration of:

- A. the payment of the Rent; and
- B. the covenants on the part of the Tenant; and
- C. the agreements, conditions and provisions in this Lease,

the Landlord, being registered or entitled to be registered as the proprietor of an estate in fee simple in the Land LEASES to the Tenant:

- D. the premises including all of the Landlord's Fixtures, fittings and appurtenances on the premises and the chattels as seen at inspection ("**Leased Premises**"); and
- E. together with the right of the Tenant, its agents, servants, employees and customers in common with the Landlord's other tenants to use the Common Areas (if any),

TO BE HELD by the Tenant at the Rent and for the Term and subject to the following terms, covenants and conditions:

PART A – DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

These definitions apply unless they are inconsistent with the context:

"**Allocation Table**" means the table of Rates and Taxes, Outgoings and Operating Expenses below:

| Allocation Table of Rates and Taxes, Outgoings and Operating Expenses | | |
|-----------------------------------------------------------------------|---------|----------|
| Rates, Taxes, Outgoings and Operating Expenses | Paid by | |
| | Tenant | Landlord |
| Water Drainage and Sewerage Rates | ✓ | |
| Local Authority Rates | ✓ | |
| Land Tax | | ✓ |

| | | |
|-----------------------------------------------------------------------------|---|---|
| Interest Charges on Outstanding Rates and Taxes | ✓ | |
| Water Consumed Beyond Allowance | ✓ | |
| Fire Services | ✓ | |
| Cleaning, Including Window and Rubbish Removal | ✓ | |
| Ground Repairs and Maintenance | | ✓ |
| Building Repairs and Maintenance of a Non-Structural Nature | | ✓ |
| Building Insurance | | ✓ |
| Plate Glass Insurance and Public Liability Insurance (minimum \$10,000,000) | ✓ | |
| Property Management Fees | ✓ | |
| Common Area Lighting and Power | ✓ | |
| Security | ✓ | |
| Toilet Requisites | ✓ | |
| Hot Water Systems Running and Repairs and Maintenance | | ✓ |
| Electricity and Gas and Telephone Services Consumed in the Leased Premises | ✓ | |
| Air-conditioning Running and Repairs and Maintenance | ✓ | |
| Lift Running and Repairs and Maintenance | | ✓ |
| Strata Company Levy | | ✓ |

“Authorised Person” means

- i. an agent, employee, licensee, contractor or invitee of the Tenant;
- ii. any person visiting the Leased Premises with the express or implied consent of any person referred to in paragraph i. of this definition; and
- iii. any person claiming under or through the Tenant;

“Building” is the premises within which the Leased Premises are located. It includes any land and improvements used with them or added to them;

“Business Day” means a day other than a Saturday, Sunday or State public holiday in the relevant Jurisdiction;

“Common Areas” are the entrances, exits, car parks, pathways, foyers, malls, corridors, toilets, lifts, escalators and stairways of the Building and any areas of the Building which the Landlord may designate from time to time;

“Current Market Rental” means the Rent obtainable at the relevant Rent Review Date in a free and open market if the Leased Premises were unoccupied and offered for rent for a use permitted by and on the same terms as are contained in this Lease

determined on the basis that the following are taken into account:

- i. any rent payable under a lease at the time of the Rent Review Date by a sitting tenant of premises in the Building or of comparable premises in a comparable building;
- ii. the highest and best use of the Leased Premises;
- iii. the provisions of this Lease;
- iv. the period which will elapse between the Rent Review Date and the immediately following Rent Review Date or, if there is no following Rent Review Date (whether under the Lease or under any lease for a renewal of the Term), the Finish Date;
- v. the Term and the benefit of any option to renew;
- vi. any refurbishments or improvements to the Building commenced by the Landlord as if those refurbishments or improvements were completed by the Rent Review Date;
- vii. any other criteria that the Landlord stipulates as relevant as notified to the Tenant and the Valuer by the Landlord; and
- viii. any other criteria, not inconsistent with any provision in this Lease, which the Valuer regards as relevant to the determination;

and the following are disregarded:

- ix. any default by the Tenant under this Lease;
- x. any part of the Term which has expired;
- xi. any damage to the Leased Premises or the Building which the Landlord intends to repair;
- xii. the value of the Tenant's fixtures and any goodwill created by the Tenant's business; and
- xiii. any concession, abatement, inducement or reduction (whether in respect of rent, fitout or otherwise) allowed, granted or paid to secure a tenant for the Leased Premises or which is usually allowed, granted or paid to secure a tenant of any premises described in paragraph i. of this definition;

“Event of Default” means the events specified in clause 39.b. of this Lease;

“Finish Date” means the date specified in clause 5.ii.;

“GST Law” has the same meaning as ‘GST law’ in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

“Insolvency Event” means

- i. where the Tenant is a natural person, committing an act of bankruptcy; and
- ii. where the Tenant is a company:
 - A. an application is made to a court for an order or an order is made that the Tenant be wound up;
 - B. an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Tenant;
 - C. except for the purposes of reconstruction or amalgamation, the Tenant enters into a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of the Tenant's creditors;
 - D. the Tenant resolves to wind itself up or otherwise dissolve itself;
 - E. the Tenant states that it is insolvent; or
 - F. the Tenant takes any step to obtain protection or is granted protection from its creditors under any applicable legislation;

"Jurisdiction" means the State or Territory where the Leased Premises are located;

"Landlord's Fixtures" means the fixtures located on the Land at the commencement of the Term, or added to the Land during the Term;

"Land" means all the land on which the Building is situated;

"Landlord" the Landlord described above and its successors and assigns and includes the reversioner for the time being immediately expectant at the end of the Term;

"Lease" means, depending on the context:

- i. this document; or
- ii. the leasehold estate arising on the execution or registration of this document; or
- iii. any other legal or equitable interest such as an agreement for a lease, an equitable lease, a periodical tenancy, a tenancy at will or other tenancy, arising from entry into possession of the Leased Premises and/or the payment or acceptance of money for the right to occupy and use the Leased Premises;

"Leased Premises" means the premises situated at Lot 1, SP 135158 Parish Warner, 4 COMBARTON STREET, BRENDAL, QLD 4500 Australia comprising an area of approximately 168 square metres and includes, with reference to those Leased Premises:

- i. the internal surfaces of external walls and of internal structural walls of the Building;

- ii. the internal surfaces of the ceiling and of concrete or other floors;
- iii. the central line of partitions separating the Leased Premises from other adjoining premises;
- iv. the external surfaces of partitions and doors separating the Leased Premises from Common Areas of the Building or from other premises not intended to be leased;
- v. the internal surfaces of glass contained in external windows;
- vi. all internal partitions, divisions, windows and window frames, doors and door frames, which are fully within the Leased Premises;
- vii. the external surfaces and finishes on walls, floors, ceilings, partitions, doors and windows included in the Leased Premises, including paint, wallpaper and other materials or substances;
- viii. the Landlord's Fixtures, fittings and any chattels provided by the Landlord for the Tenant within the Leased Premises at any time during the lease term; and
- ix. pipes and connections to water, sewerage, electricity, gas, telecommunications, air conditioning and other services and supplies, situated within above or under the Leased Premises which connect those services to the Leased Premises;

“Notify” is to serve a written notice under clause 3;

“Operating expenses” means the costs to the Landlord of:

- i. management of the Building;
- ii. repairs to and maintenance of the Building, including any gardening or landscaping, but excluding structural work and work that is the responsibility of any Tenant or occupant of the Building;
- iii. providing air conditioning to the Building, including the costs of repairs and maintenance;
- iv. providing lifts, escalators, fire detection and extinguishing equipment and security equipment to the Building, including the costs of repairs and maintenance;
- v. cleaning the Building, except premises that are the subject of a Lease from the Landlord, and garbage removal; and
- vi. pest control.

Expenses properly chargeable to a capital account, interest on loans raised for the purpose of capital expenses and rent paid by the Landlord for any land comprising any part of the Building do not form part of Operating Expenses;

“Outgoings” means:

- i. charges for utilities and services supplied to the Building;
- ii. insurance premiums and other costs of any insurance directly or indirectly related to the Building which the Landlord reasonably thinks should be taken out;
- iii. Operating Expenses; and
- iv. Rates and Taxes;

“Party” and **“Parties”** or **“party”** and **“parties”** means respectively a party or parties to this Lease;

“Rates and Taxes” means all rates, taxes, charges, duties and fees of any government or of any governmental, municipal, semi-governmental, statutory or other public authority, corporation or department, assessed, charged or imposed on the Leased Premises or on the Building or on the Landlord in respect of the Leased Premises or the Building. It includes any land tax calculated on a single holding basis, but excludes any income tax payable by the Landlord on income derived from the Leased Premises or the Building and any capital gains tax payable in respect of the Building;

“Rent” does not include the Tenant’s Proportion of Outgoings, as allocated according to the Allocation Table;

“Start Date” means the date specified in clause 5.i.;

“Statute” includes regulations, ordinances, by-laws and any other delegated legislation;

“Tenant” means the person or persons described above and (where more than one) each of them jointly and severally and their and each of their respective personal representatives and permitted transferees and assigns (if natural persons) or successors (if corporations) and their permitted assigns;

“Tenant’s Proportion” means an amount which bears the same proportion to the amount of Outgoings as the floor area of the Leased Premises bears to the lettable area of the Building to which the Outgoings relate . The floor area of the Leased Premises at the beginning of the Lease will be deemed to be 168 square metres ;

“Term” means the period beginning on the Start Date and ending on the Finish Date and includes any extension or renewal, or any time during which the Tenant occupies the Leased Premises from month to month with the consent of the Landlord; and

“Valuer” means a valuer appointed pursuant to the provisions of clause 10.ii.

2. INTERPRETATION

These rules apply unless they are inconsistent with the context.

- i. For ease of reference, paragraph headings have been included, but the Lease

is not to be construed or interpreted by reference to them.

- ii. References to the Leased Premises or the Building include references to part of them.
- iii. References to corporations include natural persons and vice versa.
- iv. References in the singular number include the plural number and vice versa.
- v. References to any gender include any other gender.
- vi. If the Landlord or the Tenant comprises more than one person, their liabilities under this Lease are joint and several.
- vii. References to statutes in general or to any particular statute, shall include:
 - A. amendments, consolidations or replacements of them or it; and
 - B. proclamations, rules, regulations, orders and notices issued under them or it.

3. NOTIFICATION AND SERVICE

- i. Where the Lease provides that one party is to notify the other, any notice may be served by any of the following methods:
 - A. by personal delivery to the person to be served;
 - B. by prepaid post to the person to be served:
 - I. addressed to the Leased Premises, in the case of the Tenant;
 - II. addressed to the person's last known place of business, in any case;
 - III. addressed to the registered office or principal place of business or at least two (2) directors, in the case of a corporation; or
 - C. addressed to the person's last known place of residence, in the case of a natural person;
 - D. by being left with any employee of the person to be served who is apparently over the age of sixteen (16);
 - E. by being left with any member of the family of the person to be served who is apparently over the age of sixteen (16); or
 - F. by any other method authorised by law.

- ii. Anything sent by post will be deemed to have been received in the ordinary course of post, whether or not it is in fact received by the person to be served.
- iii. Where persons having the same interest in respect of the subject matter of this Lease are to notify any other party or are to be notified, notification to or by any one of them is sufficient notification to or by all of them.

4. EXCLUSION OF STATUTORY PROVISIONS

No statutory provisions apply to this Lease, unless the relevant statute provides that certain provisions apply and cannot be excluded by agreement.

PART B - THE SUBJECT MATTER AND TERM OF THIS LEASE

5. LEASE DATE DETAILS

The Term of the Lease shall be for the period stated below:

- i. **Start Date:** 1 July 2013;
- ii. **Finish Date:** 30/06/2016; and
- iii. **Option for renewal:** The Landlord offers a renewal of this Lease to the Tenant on the terms and conditions specified in this clause.

A. *Conditions for exercising the option*

The Tenant may only accept this offer and exercise the option if:

- I. there are no breaches of any Lease covenants by the Tenant at the date of serving notice of exercise of this option or at the Finish Date or the date any further term expires; and
- II. the Tenant serves on the Landlord written notice of exercise of this option no earlier than six (6) months but no later than three (3) months before the Finish Date or the date any further term expires.

B. *Conditions of renewal*

The renewal which the Tenant may accept under this clause is for the renewal of the Lease for one terms(s) of 3 YEARS, from the day after 30/06/2016, containing identical covenants to the covenants of this Lease (except this clause) at a Rent increase, which shall be determined in accordance with the higher of the Valuation Method and the Formula Method (as set out in clause 10) and which is not less than the Rent payable under this Lease immediately before the expiration of the term of this Lease.

6. GRANT OF LEASE AND TERM

The Landlord grants to the Tenant the rights:

- i. to possess and use the Leased Premises;
- ii. to use the Common Areas in common with the Landlord and all persons authorised by them; and
- iii. to possess and use all the Landlord's Fixtures, fittings and chattels located on the Leased Premises, but only in conjunction with the use of the Leased Premises,

for the Term until termination by either party or expiration of the Term in accordance with the provisions of this Lease.

7. HOLDING OVER

If the Tenant remains in occupation of the Leased Premises after the end of the Term with the consent of the Landlord, they do so as a Tenant from month to month. The terms of this Lease will apply to the tenancy as far as they may be applicable. Either the Landlord or the Tenant may terminate the tenancy by thirty one (31) days' written notification to the other.

8. LEASE BINDS SUCCESSORS

This Lease will apply to the Landlord's and the Tenant's executors, administrators and assigns or, in the case of a corporation, to its successors and assigns, as if they were parties to it.

PART C - TENANT'S FINANCIAL OBLIGATIONS

9. RENT DETAILS

- i. In return for the right to possess and use the Leased Premises and the fittings and accessories, the Tenant is to pay to the Landlord the Rent:
 - A. Monthly: the amount of \$1,240.00 (as reviewed from time to time pursuant to Clause 10). The amount is exclusive of GST; and
 - B. this Rent to be paid in advance beginning on 1 July 2013.
- ii. The Tenant is to pay the Rent whether demanded or not, free of exchange and without any deductions whatsoever.

10. INDEXATION AND REVIEW OF RENT

- i. The Rent shall be reviewed and increased on the yearly anniversary of the Start Date ("**Rent Review Date**") to the Current Market Rental ("**Valuation Method**").
- ii. *Valuation Method*

The Current Market Rental for the Leased Premises is as determined by a qualified Valuer of the Australian Property Institute as appointed by the Parties, and if the Parties cannot agree on a Valuer, as selected by the current national president at the request of either party (or should that Institute not exist any body or association that serves substantially the same objects). The Valuer is acting as an expert whose decision is final;

iii. *Formula Method*

The Formula Method is calculated according to the formula:

$\$A/B \times C = \text{Reviewed Rent}$ where

A is the Rent payable by the Tenant immediately before the relevant Rent Review Date;

B is the Consumer Price Index published for the quarter immediately preceding the Start Date or for the quarter immediately preceding the previous Rent Review Date (whichever is the most recent); and

C is the Consumer Price Index published for the quarter immediately preceding the relevant Rent Review Date.

“Consumer Price Index” is the consumer price index compiled by the Australian Bureau of Statistics for the capital city of the State in which the Leased Premises are located (All Groups) or any substitute index accepted by the Government of the Commonwealth of Australia. If the index number base adopted by the Commonwealth Statistician for the index number is updated the index number shall be appropriately adjusted from the same date. If the Consumer Price Index or the index number is discontinued or suspended or (in the opinion of the Landlord) substantially altered, an alternative method of computing changes in the costs of living shall be substituted. This will be the method agreed in writing between the Landlord and the Tenant within fourteen (14) days after written notice by the Landlord to the Tenant.

- iv. The Landlord and the Tenant agree that the reviewed Rent shall not be less than the Rent payable immediately before the Rent Review Date.
- v. All costs incurred in the determination of the reviewed Rent shall be borne in equal shares by the Landlord and the Tenant.
- vi. The reviewed Rent shall be payable from the Rent Review Date. The amount of any difference in Rent for the period from the Rent Review Date to the date upon which the next instalment of Rent is payable shall be paid by the Tenant with that instalment.

RATES, TAXES AND OUTGOINGS

11. PAYMENT OF UTILITIES

- i. The Tenant shall promptly pay for the following utilities if they are payable by the Tenant according to the Allocation Table directly to the supplier concerned (or, if the Landlord so directs, to the Landlord):

- A. all charges for electric light, power or gas used or consumed and rent of electricity and gas meters on the Leased Premises; and
 - B. for all excess water and rent of water meters relating to the Leased Premises and;
 - C. for sewerage, garbage, waste, disposal, telephone and all other utilities and services used in or charged against or in respect of the Leased Premises during the Term including all meter installation costs telephone connection charges and rents.
- ii. In default of any such payments the same may be paid by the Landlord at its option and be recoverable from the Tenant as overdue Rent.

12. PAYMENT OF RATES AND TAXES

- i. The Tenant shall duly and punctually pay the Outgoings according to the Allocation Table including:
- A. municipal, local and other rates and charges payable to a local authority;
 - B. rates and charges for the supply, reticulation or discharge of water (including excess water), sewerage, drainage and removal of waste;
 - C. land tax or any similar tax, at the rate payable if the land on which the Leased Premises is situated was the only land owned by the Landlord,
- levied, assessed or imposed by any competent federal state or local authority separately upon:
- D. the Leased Premises; or
 - E. any part of the Leased Premises; or
 - F. the Land; or
 - G. any business carried on upon the Leased Premises; or
 - H. upon the owner or occupier thereof.
- ii. If the Leased Premises are not separately rated, taxed, charged or assessed in respect of any Outgoings payable by the Tenant pursuant to the Allocation Table, the Tenant shall pay to the Landlord on demand for such period as the Leased Premises are not for the time being separately rated, taxed, charged or assessed the Tenant's Proportion of those Outgoings.

13. COSTS OF THE LEASE

The Tenant must pay the reasonable costs of the Landlord's solicitors (if any) regarding these instructions and preparing, signing and stamping of this Lease in

triplicate and all state duties (if any).

14. INCREASE IN INSURANCE PREMIUMS

If by reason of:

- i. carrying on the trade or business of the Tenant on the Leased Premises; or
- ii. any alteration or addition to the Leased Premises by or at the request of the Tenant,

any premium rate on insurances effected by the Landlord is increased, the Tenant shall pay to the Landlord the amount of the increase.

15. LANDLORD'S COST OF DEFAULT NOTICES

The Tenant shall pay to the Landlord all reasonable costs, charges and expenses (including solicitors' costs and surveyors' fees) for the purpose of, or incidental to, the preparation and service of any notice required to be served under the law of the appropriate Jurisdiction.

16. INTEREST

If payment of Rent or Outgoings or any other sum due to the Landlord is not made on the due date, the Tenant shall pay interest on the sum due at the rate of Commonwealth Bank of Australia Corporate overdraft reference rate for a monthly charging cycle as published from time to time. This interest shall be computed from the date that the amount due became due and payable and will accrue from day to day and be payable on demand. Interest which is due but not paid may be capitalised by the Landlord monthly.

17. BOND

- i. On executing this Lease, the Tenant must provide to the Landlord \$0.00 being the bond amount ("**Bond Amount**").
- ii. The Landlord is to maintain the Bond Amount in a separate interest-bearing account with a respectable financial institution. Interest earned on the account will become part of the Bond Amount.
- iii. If the Tenant fails to pay Rent or other moneys payable under this Lease or if the Landlord suffers loss or damage because of any other breach of the Lease by the Tenant, the Landlord may apply the Bond Amount towards the arrears of Rent or other moneys or towards the loss or damage. In doing so, the Landlord will not waive the Tenant's breach and will not waive any other right or remedy arising from the breach.
- iv. If the Landlord does apply the Bond Amount it may notify the Tenant that it has done so. Within fourteen (14) days of the date of notification, the Tenant must reinstate the Bond Amount by paying to the Landlord the amount applied.

- v. At the end of the Term, if the Tenant is not indebted to or otherwise liable to the Landlord for breach of the Lease, the Landlord will refund the Bond Amount to the Tenant.
- vi. If the Landlord transfers its interest in the Building or the Leased Premises, it may assign to the transferee any Bond Amounts it then holds. After doing so and notifying the Tenant of the fact, the Landlord will be discharged from all further liability to the Tenant or any other person with respect to the Bond Amount.

PART D – REPAIRS, MAINTENANCE AND ALTERATIONS - CARE OF LEASED PREMISES BY THE TENANT

18. REPAIR AND MAINTENANCE BY THE TENANT

- i. The Tenant shall:
 - A. at its own expense;
 - B. throughout the Term and for as long as the Tenant remains in occupation of the Leased Premises;
 - C. when, where and so often as is needed,
maintain, replace, repair and keep:
 - D. the Leased Premises;
 - E. every part of them;
 - F. all additions to them;
 - G. all the Landlord's fixtures and the doors, windows, roof and guttering;
and
 - H. all furnishings, equipment, locks keys and fittings,

in good clean and substantial repair and condition (fair wear and tear and damage by fire, storm, earthquake, tempest and Act of God excepted unless by some act or omission or default on the part of the Tenant or the Tenant's servants, agents or lawful visitors).
- ii. The Tenant shall not do or allow anything which may:
 - A. block or damage sewerage connections drains and fittings; or
 - B. cause loss or damage to the same.

19. REPLACEMENT AND REPAIR

The Tenant shall:

- i. properly maintain any carpet in the Leased Premises during the Term to the reasonable satisfaction of the Landlord;
- ii. from time to time immediately repair and replace all broken glass including exterior windows with glass of the same or some similar quality and all damaged, defective or broken heating, lighting and electrical equipment including any fluorescent tubes installed upon the Leased Premises; and
- iii. pay the costs of repairing and making good any damage to the Leased Premises or to any part of them caused by or through the act, neglect, default or omission of the Tenant or the Tenant's employees, agents, clients, customers, invitees or licensees and indemnify the Landlord against all claims for damage so caused. All repairs will be carried out by the Landlord and (at the Landlord's discretion) under the supervision of an architect nominated by the Landlord.

20. CLEANING OF THE LEASED PREMISES

- i. The Tenant shall, at its own expense, at all times keep:
 - A. the Leased Premises;
 - B. the immediate surroundings;
 - C. all Common Areas and service areas used and enjoyed by the Tenant; and
 - D. any passageway, emergency exit or right of way immediately adjoining the Leased Premises,

properly cleaned and drained in a sanitary condition to the satisfaction of the Health Department (or other competent authority having control of the same) and free of all vermin and cleared and free of any rubbish obstacle or hazard.
- ii. The Tenant shall store all garbage, rubbish and refuse in a proper hygienic manner within the Leased Premises and attend to its safe and expeditious disposal and observe any directions given by the Landlord.
- iii. The Tenant shall take all reasonable precautions to keep the Leased Premises free of rodents, vermin, insects, pests, birds and animals. If the Tenant fails to do so the Landlord will at the cost of the Tenant employ pest exterminators approved by the Landlord.

21. INDEMNITY AND NUISANCE

- i. The Tenant shall:
 - A. indemnify and save harmless the Landlord from all loss and damage to the Leased Premises caused by the negligent use or misuse, waste or abuse of the water, gas or electricity supplied to the Leased Premises or to the Tenant in connection with the Leased Premises or by faulty sanitary, water, gas or electric light fittings or fixtures

fixed or installed by or on behalf of the Tenant;

- B. give to the Landlord prompt written notice of any accident to or defects in or want of repair to the water pipes, electric light wiring or fittings or fixtures and of any circumstances likely to be or to cause any danger or risk or hazard to the Leased Premises or any person in them;
 - C. (except in the case of the Landlord's own wilful or negligent acts or omissions) indemnify and hold harmless the Landlord from and against all losses, damages, costs, actions, claims, demands, writs, summonses, suits, proceedings, judgments, orders, decrees and expenses which the Landlord may suffer in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Leased Premises or the use by the Tenant of the Leased Premises or any part of them or to any person or the property of any person using or entering on or near the Leased Premises;
 - D. not do or allow to be done on the Leased Premises anything which may be or become a nuisance, damage, annoyance or inconvenience to the Landlord or occupiers of any adjoining or neighbouring premises; and
 - E. not do or leave undone or allow to be done or left undone any act matter or thing amounting to a nuisance (or that any local state federal or other public authority, body or person or within the meaning of any statute regulation or by-law for the time being in force may deem to be a nuisance) and immediately to abate any such nuisance.
- ii. The provisions of the previous subclause 21.i. do not oblige the Tenant to indemnify the Landlord in respect of:
- A. claims by an employee of the Landlord in respect of which the Landlord is covered under its policy issued pursuant to the Workers Compensation Act in the relevant Jurisdiction where the injury is not due to the negligence of the Tenant or its servants or agents;
 - B. claims arising from loss or damage attributable to the defective condition of any property of the Landlord unless that defective condition was created by the Tenant or its servants or agents; or
 - C. any accident or injury to or death of any person or damage or injury to or loss of the property of any person resulting from any wilful or negligent act of the Landlord or its officers, servants or agents.

22. FURTHER COVENANTS

The Tenant shall:

- i. not hold any auction, fire or bankruptcy sale in the Leased Premises without the previous written consent of the Landlord;

- ii. not install any sign, awning, canopy, decoration, lettering, advertising material or other thing on the exterior or external surfaces of the Leased Premises except with the Landlord's prior written consent (which is not to be unreasonably withheld), and the Tenant must maintain in good condition and repair any such sign or thing so installed;
- iii. not install any electrical equipment on the Leased Premises that would or might overload the cables, switchboards or sub-boards through which electricity is conveyed to the Leased Premises without obtaining the previous written consent of the Landlord;
- iv. provide and maintain any additional drains and drainage equipment which in the opinion of the relevant authority is necessary for the Leased Premises having regard to the use for which the Leased Premises are put by the Tenant;
- v. at all times comply with and observe the reasonable requirements of the Landlord in regard to any air conditioning plant installed in the Leased Premises and not to do or allow to be done anything which might interfere with or impair the efficient operation of the air conditioning plant;
- vi. not lodge an absolute caveat in respect of its interest in the Leased Premises;
- vii. shall at all times hold and maintain all appropriate licences, permits and authorities as are required under any relevant law for its use of the Leased Premises; and
- viii. not substantially or materially alter its use of the Leased Premises without prior consent from the Landlord.

23. COMPLIANCE WITH REQUISITIONS OF AUTHORITIES

- i. Subject to the next subclause, the Tenant shall:
 - A. construct such works;
 - B. make such amendments and alterations to the Leased Premises; and
 - C. perform and do such acts and things as are at any time or times during the Term required by any order or requisition whether addressed to the Tenant, occupier or owner under or in pursuance of the required legislation in the Jurisdiction.
- ii. The Tenant shall not be liable for structural alterations or additions unless required by reason of the nature of the business conducted by the Tenant in the Leased Premises. If a dispute arises on whether any work is of a structural nature it shall be determined by an architect or structural engineer:
 - A. who shall be nominated by the Landlord;
 - B. who shall act as an expert and not as an arbitrator; and

- C. whose fees shall be paid by the party against whom the decision is made.
- iii. The Tenant shall not be liable to carry out any alteration, modification, coating, sealing or other treatment to the roof of the Leased Premises and/or such other areas of the Leased Premises that contain asbestos and/or asbestos fibres (if any).

24. LANDLORD'S POWER TO VIEW AND REPAIR

- i. The Tenant shall allow the Landlord and the agents of the Landlord (with workmen and equipment where necessary) to enter the Leased Premises at all reasonable times and with reasonable notice except in the case of emergency and without any abatement of Rent or payment of compensation to the Tenant:
 - A. to erect, make, excavate, lay or install in or over or under the Leased Premises any posts, drains, pipes, conduits, cables, wires or other things necessary for any existing or future service to the Leased Premises and to enter the Leased Premises for the purpose of inspecting, removing, maintaining, altering or adding to any such things relating to an existing service to the Leased Premises;
 - B. to examine the state of repair and condition of the Leased Premises and of any want or repair or other defect;
 - C. to give the Tenant or leave for the Tenant at the Leased Premises notice in writing to repair in accordance with the covenants of the Tenant in this Lease and the Tenant shall within one (1) month from the service of such notice (or sooner if reasonably required by the Landlord) repair and make good the same according to such notice;
 - D. if the Tenant fails to comply with any such notice, to enter the Leased Premises and make and effect repairs, amendments and other acts the subject of the notice;
 - E. to execute on the Leased Premises any works which by law the Landlord is bound and has been required to execute or which the Landlord is authorised by this Lease to carry out or do;
 - F. to repair any part of the adjoining property (if any) belonging to the Landlord or any part of the Building;
 - G. to construct, erect, lay down, alter, repair, cleanse or maintain any drain, ventilator, shaft, water pipe, electric wires or gas pipes in connection with or for the accommodation of any adjoining property or any other part of the Building;
 - H. to underpin in connection with or for the accommodation of any adjoining property or any other part of the Building; and
 - I. to carry out any repairs which in the reasonable opinion of the Landlord are of an emergency nature.

- ii. In exercising its rights under this clause 24, the Landlord shall cause as little inconvenience and damage to the Tenant as is practicable in the circumstances.

PART E - INSURANCE

25. TENANT TO INSURE

- i. The Tenant shall at its own expense in all respects effect and keep in force such policies of insurance as may be specified in the Allocation Table:
 - A. in the names of such of the Tenant and the Landlord and any Mortgagee of the Land as may be applicable for their respective rights and interests; but
 - B. does not need to provide the same cover as insurance effected by the Landlord (as it in its absolute discretion may determine).
- ii. The Tenant shall if required by the Landlord produce to the Landlord a copy of any policy of insurance so effected and a current certificate of renewal in respect thereof.
- iii. Without prejudice to the covenants to repair in this Lease, the Tenant shall immediately expend all moneys received by virtue of such insurance in repairing and reinstating damage to or destruction of any plate glass covered by such insurance and shall make up any deficiency out of its own money.
- iv. The Tenant shall pay to the Landlord or as directed by the Landlord from time to time on demand the amount of all premiums paid by the Landlord in respect of any insurances effected by it for the purposes of this Lease.

26. INCREASE IN PREMIUMS

- i. The Tenant shall not, without the written consent of the Landlord, allow any act, matter or thing upon the Leased Premises that increases the rate of premium under any policy of insurance taken out by the Landlord or the Tenant. If the Tenant fails to comply with this obligation, it shall pay the amount of any increased premium to the Landlord upon demand.
- ii. The Tenant shall not be:
 - A. prejudiced;
 - B. affected in any way; or
 - C. suffer any increased liability pursuant to any provision of this Lease involving conditions of insurance taken out by the Landlord,unless such increased liability was directly or indirectly caused by the Tenant's act, omission or negligence or the nature of the Tenant's use of the Leased Premises.

27. AVOIDANCE OF LANDLORD'S POLICY

The Tenant shall at all times in its use of the Leased Premises comply with the requirements of the relevant authorities and all laws and regulations for the time being relating to the use and occupation of the Leased Premises. If the Tenant shall allow any act, matter or thing that invalidates any policy of insurance taken out by or effected for the benefit of the Landlord then the Tenant shall be responsible for any damage or loss which the Landlord may suffer or incur as a result.

28. LOSS OF RENT INSURANCE

The Tenant shall pay to the Landlord on demand the amount of all premiums and other charges payable by the Landlord to effect and maintain a policy of insurance for loss of rentals in respect of the Leased Premises. The Landlord may at its absolute discretion elect to effect and maintain such insurance for such amount of loss of rent cover as it shall reasonably consider appropriate.

29. TENANT'S RISK

The Tenant shall occupy the Leased Premises and use the Leased Premises at the Tenant's own risk.

30. PAYMENT OF PREMIUMS AND PRODUCTION OF POLICIES

The Tenant will pay to the appropriate insurer not less than seven (7) days before the date specified by it for payment, all premiums as and when due on all insurance policies to be taken out by the Tenant pursuant to the provisions of this Lease. If the Tenant fails to make such payments then the Landlord may pay the same and recover all moneys so expended from the Tenant together with interest as provided in this Lease.

PART F - DEALINGS WITH THE TENANT'S INTEREST - ASSIGNMENT AND SUBLETTING

31. ASSIGNMENT AND SUB-LETTING

- i. The Tenant shall not without the previous consent in writing of the Landlord:
 - A. assign, transfer, mortgage, charge or sublet the Leased Premises, or any part of them; or
 - B. by any act or deed procure, allow or permit (either voluntarily or involuntarily) the Leased Premises, or any part of them, to be assigned, transferred, mortgaged, charged or sublet, or the possession of them parted with for all or any part of the Term.
- ii. Subject to the provisions of this clause and any relevant commercial tenancy legislation in any relevant Jurisdiction, if the Tenant wishes to assign the whole of the Leased Premises and the benefit of this Lease or sublet part of the Leased Premises upon terms not inconsistent with any of the terms or conditions of this Lease, to a proposed assignee or sub-tenant who is solvent, responsible and respectable and of high financial standing (the onus of proof

of this being on the Tenant) the Landlord shall not unreasonably withhold its consent to such assignment or subletting if:

- A. the Tenant procures the execution by such assignee of an assignment or transfer of this Lease, or a sub-lease to which the Landlord is a party in such form and upon such terms as the Landlord shall require;
 - B. all Rent and other payments then due or payable by the Tenant pursuant to the Lease shall have been paid;
 - C. there shall not be any existing unremedied breach of the covenants conditions and agreements in this Lease (breaches which have been waived by the Landlord shall not be deemed to have been unremedied breaches for the purpose of this subclause);
 - D. the Tenant at the Tenant's expense shall have withdrawn any subject to claim caveat lodged by the Tenant against the Land or any part thereof;
 - E. such assignment or transfer contains a covenant by the assignee with the Landlord that the assignee will at all times during the continuance of the Term duly pay the Rent and other moneys and perform and observe all the covenants conditions and agreements of the Lease on the part of the Tenant;
 - F. such assignment or sub-lease is approved by the solicitors of the Landlord at the reasonable cost and expense in all respects of the Tenant;
 - G. the Tenant has paid to the Landlord all proper costs, charges and expenses incurred by the Landlord of and incidental to any enquiries which may be made by or on behalf of the Landlord as to the responsibility, solvency, fitness and suitability of any proposed assignee or sub-tenant; and
 - H. the Tenant or the proposed assignee or sub-tenant has paid to the managing agent its fees for arranging the assignment or sub-letting as the case may be. The fees so payable to the managing agent shall not exceed those prescribed by the regulations of the legislation in the relevant Jurisdiction.
- iii. The covenants and agreements on the part of any such assignee or sub-tenant shall be deemed to be supplementary to these presents and shall not in any way relieve or be deemed to relieve the Tenant from its liability.
- iv. Where the proposed assignee or sub-tenant is a proprietary company, the Landlord may as a condition of its consent to the assignment or sublease require that the covenants by the assignee or sub-tenant shall be guaranteed by the directors and/or principal shareholders of such company.
- v. Any change in the principal shareholding altering the effective control of the Tenant (if a proprietary company) shall be deemed an assignment of this

Lease and will require the consent of the Landlord as aforesaid.

PART G – LANDLORD’S COVENANTS, OBLIGATIONS AND RIGHTS

32. LANDLORD'S COVENANTS

The Landlord (so as to bind the Leased Premises and their proprietor for the time being but not make itself personally liable except for its own acts and defaults or the acts of its servants or agents while it is the registered proprietor) agrees with the Tenant that subject to clause 24 and the Landlord's rights set out in clauses 23 to 38:

- i. the Tenant duly paying the Rent and performing and observing the terms, covenants and conditions of this Lease may peaceably and quietly hold and enjoy the Leased Premises during the Term without any interruption by the Landlord or by any person or persons rightfully claiming under or in trust for the Landlord;
- ii. the Landlord shall pay all outgoings not payable by the Tenant pursuant to the terms of this Lease;
- iii. the Landlord shall maintain the Leased Premises and Building of which the Leased Premises form part in a sound structural condition and shall repair all items of damage in respect of the Leased Premises which are not specifically the responsibility of the Tenant to repair under this Lease;
- iv. the Landlord shall at all times during the Term keep the Common Areas in a good and suitable state of repair and shall use its best endeavours to maintain in proper working condition all mechanical installations and services provided by the Landlord or connected by the Landlord to the Leased Premises. The Landlord shall not be responsible or liable to the Tenant for any loss or damage suffered by the Tenant as a result of any breakdown of or defect in any matter or thing beyond the reasonable control of the Landlord; and
- v. the Landlord shall at its own expense promptly comply with and observe all notices and requirements of any statutory public local or other competent authority with respect to the Land and/or the Leased Premises whether involving structural alterations or not except such as arise out of or in the course of the Tenant's occupation and/or use of the Leased Premises.

33. REMOVE CHATTELS

The Landlord may after re-entry remove from the Leased Premises any items belonging to the Tenant and store them at the cost of and for the account of the Tenant without being deemed liable in conversion or becoming liable for any loss or damage occasioned.

34. NEGATION OF WARRANTY

The Landlord does not expressly or impliedly warrant that the Leased Premises are now or will remain suitable or adequate for all or any of the purposes of the Tenant. Any warranties as to suitability and adequateness of the Leased Premises implied by law are expressly negated.

35. ALTERATIONS OR ADDITIONS

The Landlord reserves the right to add on or to alter the Leased Premises. The Tenant agrees that the Landlord shall be at liberty to do so provided that:

- i. such alterations or additions are carried out with reasonable dispatch and with as little inconvenience to the Tenant as reasonably possible; and
- ii. the Leased Premises to be made available to the Tenant for the balance of the Term shall be of comparable size and situation to the Leased Premises.

36. LANDLORD NOT LIABLE FOR DAMAGE TO STOCK

If merchandise, goods or property of any kind which may be in the Leased Premises during the Term shall be injured, destroyed or damaged by water, heat, fire, vermin or in any other way, no part of the loss or damage occasioned shall be borne by the Landlord.

37. LANDLORD NOT LIABLE FOR INTERRUPTION OF SERVICES

- i. Despite any implication or rule of law to the contrary, the Landlord shall not (except for any wilful or negligent acts of the Landlord or its officers servants or agents) be liable to the Tenant for any loss or damage suffered by the Tenant through:
 - A. any malfunction, failure to function or interruption of or to the water, gas or electricity services, the air-conditioning, equipment, fire equipment or any of the appurtenances contained in the Leased Premises; or
 - B. the blockage of any sewers, water, drains, gutters, downpipes or storm water drains from any cause.
- ii. The Tenant shall not be entitled to terminate this Lease for any such reason nor have any right of action or claim for compensation or damages against the Landlord in respect of such failure.

38. LANDLORD MAY MAKE REGULATIONS FOR COMMON AREAS

The Landlord may make reasonable rules and regulations for the control and management of the Common Areas and may alter them from time to time. The Tenant is to comply with any rules and regulations which are currently in force.

PART H – DEFAULT AND TERMINATION

39. DEFAULT

a. Essential Terms

- i. The following obligations of the Tenant are essential terms of this Lease:
 - A. the obligations to pay Rent; and

B. the obligations to pay Outgoings as set out in the Allocation Table.

- ii. This clause does not prevent any other obligation under this Lease from being an essential term.

b. Events of Default

An Event of Default occurs if:

- i. the Tenant repudiates or commits a fundamental breach of this Lease;
- ii. the Rent or Outgoings is at any time unpaid for seven (7) days after becoming due, whether formally demanded or not;
- iii. the Tenant does not comply with any of its other obligations under this Lease, whether or not an essential term;
- iv. a judgment, order or an encumbrance is enforced, or becomes enforceable against the Tenant's interest in this Lease, the Tenant's property or any other property used in connection with the Tenant's business; or
- v. an Insolvency Event occurs in respect of the Tenant.

c. Landlord's Right to Terminate After Default

The Landlord may terminate this Lease, after the occurrence of an Event of Default by the Tenant in accordance with the previous subclause 39.b. and the continuance of the Event of Default, after the Landlord shall have served a legally effective notice of breach of covenant (if required by any law) by:

- i. re-entering and taking possession of the Leased Premises, using reasonable force to secure possession;
- ii. serving on the Tenant written notice terminating this Lease; or
- iii. instituting proceedings for possession against the Tenant.

d. Indemnities

The Tenant indemnifies the Landlord against any loss, liability, costs or expense incurred or suffered by the Landlord arising from or in connection with:

- i. the occurrence of an Event of Default; or
- ii. if this Lease is terminated by the Landlord for any reason or on any ground:
 - A. the Landlord re-entering the Leased Premises;
 - B. the Landlord not receiving the benefit of the Tenant fully and duly performing its obligations under this Lease from the date of that termination until the expiration of the Term; and

- C. anything else relating to that termination, including the Landlord attempting to mitigate its loss,

including in each case, legal costs and expenses relating to any of those matters.

e. Calculation of Benefit of Tenant Performing Obligations

The benefit of the Tenant performing its obligations referred to in subclause 39.d. must be calculated on the assumption that this Lease continues in force until the expiration of the Term and taking into account the provisions in this Lease relating to Rent and the payment of Outgoings.

f. Certain Acts Not To Affect Indemnities

The indemnities under subclause 39.d. are not affected by:

- i. the Landlord re-entering the Leased Premises or otherwise terminating this Lease;
- ii. the Landlord accepting a repudiation of this Lease by the Tenant;
- iii. the Tenant vacating or abandoning the Leased Premises; or
- iv. the conduct of either party constituting a surrender by operation of law.

g. Acceptance of Rent or Mitigation

The acceptance of Rent or other money under this Lease or an attempt by the Landlord to mitigate its loss is not:

- i. a waiver of a preceding breach by the Tenant of its obligations under this Lease;
- ii. an acceptance of a repudiation of this Lease by the Tenant; or
- iii. a surrender by operation of law.

40. TENANT'S OBLIGATION ON TERMINATION

a. Tenant to Vacate

- i. The Tenant must vacate the Leased Premises and remove the Tenant's property on the termination of this Lease except that, when the termination is otherwise than by the expiration of the Term, the Tenant must remove the Tenant's property within three (3) days after the termination.
- ii. Where the Landlord wishes to retain particular leasehold improvements it may do so by written notice to the Tenant prior to the termination of the Lease. The Tenant will be entitled to compensation which will be determined with reference to the market value and written down value of the leasehold improvements at the termination of the lease.

b. Removal of Tenant's Property

- i. If the Tenant does not comply with the previous subclause 40.a., then the Landlord may remove the Tenant's property from the Leased Premises and either store it at the risk and cost of the Tenant or treat the Tenant's property as abandoned and deal with it in any manner the Landlord sees fit.
- ii. The Tenant's property remains at the Tenant's risk at all times before and after the expiration or earlier termination of this Lease.
- iii. The Tenant indemnifies the Landlord against any loss, liability, cost or expense incurred or suffered by the Landlord, or any employee, officer or agent of the Landlord arising from or in connection with the Landlord acting under this clause, or damage caused to the Leased Premises by the removal of the Tenant's property.

c. Make Good

When the Tenant vacates the Leased Premises:

- i. the Tenant must leave the Leased Premises in good repair and condition and in a good state of decoration taking into account the obligations of the Tenant under this Lease; and
- ii. the Tenant must have made good any damage to the Premises caused or contributed to by the Tenant or any of the Tenant's Employees, agents or customers.

d. Reinstatement

If the Tenant makes any alterations or additions to the Leased Premises (whether or not the Landlord has consented to them) and the Landlord so requires, the Tenant must reinstate the Leased Premises before the expiration or earlier termination of this Lease so that the Leased Premises are returned to the condition they were in before the alteration or addition was made.

e. Compensation

If the Tenant does not perform its obligations under this subclauses 40.a. - 40.d., then the Tenant must pay to the Landlord on demand and the Landlord may recover from the Tenant by way of liquidated damages an amount equal to 1/365th of the annual Rent and Outgoings payable by the Tenant for each day from the termination of this Lease to the date on which the Tenant's obligations under this clause 40 are performed. Any action by the Landlord under this clause 40 is without prejudice to any other remedy of the Landlord.

41. DAMAGE, DESTRUCTION OR RESUMPTION

a. Definitions

In this clause 41 :

- i. **Reinstatement Notice** means a notice given by the Landlord to the Tenant of the Landlord's intention to carry out the Reinstatement Works; and
- ii. **Reinstatement Works** means the work necessary to:
 - A. reinstate the Leased Premises; or
 - B. make the Leased Premises fit for occupation and use or accessible by the Tenant.

b. Abatement

- i. If the Leased Premises are damaged or destroyed so as to render any part of the Leased Premises wholly or substantially:
 - A. unfit for occupation and use by the Tenant; or
 - B. inaccessible having regard to the nature and location of the Leased Premises and the normal means of access to them;

then from the date that the Tenant notifies the Landlord of the damage or destruction ("**Damage Notice**"):

- C. the Rent
- D. any other money payable by the Tenant under this Lease; and
- E. the covenant to repair and maintain;

will subject to subclauses 41.b.ii. and 41.b.iii., according to the nature and extent of the damage or destruction sustained, and the extent to which such destruction interferes with the continued operation of the Tenant's business, abate in whole or in part as agreed by the Landlord and the Tenant or in the absence of agreement as determined pursuant to subclause 41.b.iii.

- ii. If subclause 41.b.i. applies, then subject to subclause 41.b.iii. the remedies for:

- A. recovery of the Rent and any other money or a proportionate part falling due after the damage or destruction; or
- B. enforcement of the covenant to repair and maintain;

will be suspended (or partially suspended as the circumstances require) from the date of the Damage Notice until the Leased Premises are:

- C. restored;
- D. made fit for the Tenant's occupation and use; and
- E. made accessible.

- iii. If the parties cannot agree on the proportion of the abatement pursuant to subclause 41.b.i. or the date upon which the abatement should cease pursuant to subclause 41.b.ii.:
 - A. that proportion of the abatement and / or the date upon which the abatement should cease shall be determined by a valuer appointed by the president of the Australian Property Institute (WA Division);
 - B. the costs of a valuer appointed under subclause 41.b.iii.A. shall be borne equally by the Landlord and the Tenant; and
 - C. until any dispute over the proportion of the abatement or the date upon which the abatement should cease has been determined the Tenant will continue to pay all money due pursuant to the Lease less any abatement that the Landlord accepts should be applied.

c. Either party may terminate

If subclause 41.b.i. applies, either party may terminate this Lease by notice to the other unless the Landlord:

- i. within ninety (90) calendar days of receiving the Damage Notice, gives the Tenant a Reinstatement Notice; and
- ii. diligently proceeds within a reasonable time to carry out the Reinstatement Works.

d. Tenant may terminate

If the Landlord gives a Reinstatement Notice to the Tenant and fails to commence the Reinstatement Works within a reasonable time, the Tenant may terminate this Lease by giving not less than thirty (30) days' notice to the Landlord and, at the expiration of that period, this Lease will terminate.

e. Exceptions

Subclauses 41.b., 41.c. and 41.d. will not apply where:

- i. the damage or destruction was caused or contributed to, or arises from any wilful act of the Tenant or an Authorised Person; or
- ii. an insurer under any policy effected by the Landlord under this Lease refuses indemnity or reduces the sum payable under the policy because of any act, omission or default of the Tenant or an Authorised Person.

f. Landlord to terminate

If the Landlord considers the damage to the Leased Premises renders it impractical or undesirable to carry out the Reinstatement Works, the Landlord may terminate this Lease by giving not less than thirty (30) days' notice to the Tenant and, at the expiration of that notice, this Lease will terminate.

g. Antecedent breaches

No liability will attach to either party because of termination of this Lease under this clause 41 but that termination will be without prejudice to the rights of either party for any antecedent breach or non-observance of any provision on this Lease.

h. Dispute Resolution

i. Each valuer appointed under subclause 41.b.iii. shall:

A. act as an expert and not as an arbitrator; and

B. provide his or her determination and the reasons for his or her determination of the extent of an abatement and the period of abatement, in writing within ten (10) Business Days of his or her appointment.

ii. Upon determination of the extent of an abatement and the period of abatement being finally determined then on the date upon which the immediately subsequent instalment of Rent is due and payable under this Lease:

A. the Tenant shall pay to the Landlord; or

B. the Landlord shall refund to the Tenant,

as the case requires, the difference between what the Tenant has actually paid pursuant to the Lease from the date of service of the Damage Notice and what the Tenant is determined to have actually been liable to pay after the abatement.

i. Landlord not obliged to reinstate

Nothing in this Lease obliges the Landlord to reinstate the Leased Premises or the means of access to them.

j. Proceeds of insurance

If the Leased Premises are damaged or destroyed and the Lease is terminated under this clause 41, the Tenant will have no interest in the insurance proceeds.

k. Resumption of Land

If the Land or any part of the Land is resumed by any authority so as to render the Leased Premises inaccessible or substantially unfit for the occupation of the Tenant, this Lease may be terminated without compensation or other liability by either the Landlord or the Tenant by thirty (30) calendar days' notice to the other but without affecting the rights of either party against the other in respect of any previous breaches of the provisions of this Lease.

PART I – TRUST WARRANTIES

42. TENANT'S CAPACITY

Where the Tenant acts as trustee of a trust ("**Trust**"), the Tenant enters into this Lease both as trustee, and in the Tenants' personal capacity and in this Lease each reference to the Tenant is a reference to it in each capacity.

43. TENANT'S WARRANTIES

The Tenant warrants to the Landlord that:

- i. the Tenant is the only trustee of the Trust;
- ii. the Trust is lawfully and validly constituted and the copies of the trust documents and instruments relating to the Trust produced to the Landlord disclose all the terms of the Trust;
- iii. the Trust is and throughout this Lease will remain unrevoked and not varied without the consent of the Landlord;
- iv. the Tenant has power under the trust deed to enter into and observe its obligations under this Lease and the Tenant has entered into this Lease in its capacity as trustee of the Trust and for the benefit of the beneficiaries of the Trust;
- v. it has a right to be fully indemnified out of the trust fund in respect of obligations incurred by it under this Lease;
- vi. the assets of the Trust will at all times be sufficient to satisfy that right of indemnity and all other obligations in respect of which the Tenant has a right to be indemnified out of the assets of the Trust;
- vii. the consents or approvals of all parties necessary to execute this Lease so as to bind the property of the Trust have been obtained and all necessary conditions precedent for that purpose have been met;
- viii. that no one has taken or threatened, nor is the Tenant aware of any one who is likely, to take action to have the Trust wound-up or otherwise administered by action brought in any court of competent jurisdiction or to charge the Tenant or any other person at any time connected with the Tenant or acting on behalf of the Tenant with any breach of trust or misappropriation of trust moneys in connection with the Trust;
- ix. the Landlord's rights under this Lease rank in priority to the interests of the beneficiaries of the Trust;
- x. the Tenant has complied with its obligations in connection with the Trust; and
- xi. that no facts are known to the Tenant where the Trust might be wound-up voluntarily or otherwise or the trustee changed or the assets of the Trust vested in any other person or that the Trust may cease to operate or be deprived of funds prior to expiration of the Term.

PART J - MISCELLANEOUS

44. MISCELLANEOUS

a. Waiver and Variation

A provision of or a right created under this Lease may not be waived except in writing signed by the party to be bound, or varied except in writing signed by the Landlord and the Tenant.

b. Approvals and Consents

The Landlord may, whenever its approval or consent is required under this Lease, give it conditionally or unconditionally or withhold it in the Landlord's absolute discretion, unless this Lease specifies otherwise.

c. Remedies Cumulative

The rights, powers and remedies provided in this Lease are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Lease.

d. Set-Off

At its sole discretion, the Landlord may apply, without notice, any funds held by the Landlord on account of the Tenant towards satisfaction of any amount then payable by the Tenant to the Landlord under this Lease.

e. Further Assurances

If requested by the Landlord, the Tenant must execute and cause its successors to execute documents and do everything else necessary or appropriate to bind the Tenant and its successors under this Lease.

f. Accrued Rights

The expiration or earlier termination of this Lease does not affect the rights of either the Landlord or the Tenant in relation to a breach of this Lease by the other before the expiration or termination.

g. Severance

If any clause in this Lease or its application to any person or circumstance is or becomes invalid or unenforceable, then the remaining clauses of this Lease will not be affected and each remaining clause will be valid and enforceable to the fullest extent permitted by law.

h. Supervening Legislation

Any present or future legislation which operates to vary the obligations of the Tenant in connection with this Lease with the result that the Landlord's rights, powers or remedies are adversely affected (including by way of delay or postponement) is

excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

i. Leased Premises owned by a self-managed superannuation fund

If the Leased Premises are owned by a self-managed superannuation fund then this Lease is to be read down and construed so that the Lease complies with the *Superannuation Industry (Supervision) Act 1993 (Cth)* and related legislation.

j. Mandatory requirement

Subject to the preceding subclause, if there is a mandatory requirement set out in any legislation in relation to this Lease that must be complied with, then this Lease is construed in compliance with this requirement.

k. Payments

With respect to payments to be made under this Lease:

- i. the Tenant must make payments without deduction, set off or counterclaim; and
- ii. the Landlord need not make demand for payment of any amount required to be paid by the Tenant unless a demand is expressly required.

l. Counterparts

This Lease may consist of separate counterparts and the counterparts taken together constitute one and the same instrument.

m. Tax Invoice

In respect of each payment by the Tenant under clauses 9, 11 and 12, the Landlord agrees to deliver to the Tenant, as required under the GST Law, Tax Invoices (as that term is defined in the GST Law) in a form which complies with the GST Law and the regulations, to enable the Tenant to claim input tax credits in respect of the taxable supply.

n. Governing Law / Jurisdiction

- i. This Lease is governed by and construed according to the law for the time being in force in QLD . The Parties by agreeing to enter into this Lease are deemed to have submitted to the non-exclusive jurisdiction of the courts of that State or Territory.
- ii. The Landlord and the Tenant shall do all things necessary to comply with any legislation in force in the Jurisdiction that applies to the Land and Leased Premises and do all things that may be required by any statutory authority in the Jurisdiction referred to in subclause 44.n.i.

45. READING DOWN

- i. This Lease must be interpreted so that it complies with all laws applicable in the Jurisdiction referred to in subclause 44.n.i.
- ii. 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 to the extent required to give the Lease legal effect.
- iii. If any clause or part of a clause of this Lease is determined to be unenforceable, then it will not be considered part of the Lease but that severance will not affect the validity of the remainder of this Lease.

46. GOODS AND SERVICES TAX

- i. In this clause:
 - A. “**GST**” means:
 - I. the same as in the GST Law;
 - II. any other value added tax, goods and services tax, or any tax applying to this Lease in a similar way; and
 - III. any additional tax, penalty tax, fine, interest or other charge under a law of such a tax.
- ii. Words or expressions used in this clause 46 which are defined in the GST Law have the same meaning in this clause, unless the context makes it clear that a different meaning is intended.
- iii. Any consideration to be paid or provided for a supply made under or in connection with this Lease unless specifically described in this Lease as 'inclusive of GST', does not include an amount on account of GST.
- iv. Despite any other provision in this Lease, if a party (“**Supplier**”) makes a supply under or in connection with this Lease on which GST is imposed (not being a supply the consideration for which is specifically described in this Lease as 'inclusive of GST'):
 - A. the consideration payable or to be provided for that supply under this Lease but for the application of this clause (“**GST exclusive consideration**”) is increased by, and the recipient of the supply (“**Recipient**”) must also pay to the Supplier, an amount equal to the GST payable on the supply (“**GST Amount**”); and
 - B. the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- v. If a payment to a party under this Lease is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by

that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of a GST group of which that party is a member, is entitled for that loss, cost or expense.

- vi. The Recipient need not make a payment for a taxable supply made under or in connection with this Lease until the Supplier has given the Recipient a tax invoice for the supply to which the payment relates.
- vii. If an adjustment event occurs in relation to a taxable supply made under or in connection with this Lease then the consideration payable in respect of the supply shall also be adjusted as follows:
 - A. if the adjustment event gives rise to an increase in the GST payable by the Supplier in relation to the supply a payment equal to that increase will be made by the Recipient to the Supplier; and
 - B. if the adjustment event gives rise to a decrease in the GST payable by the Supplier in relation to the supply payment equal to that decrease will be made by the Supplier to the Recipient.
- viii. Any payment that is required under subclause 46.vii. must be made within five (5) days of the issuing of an adjustment note or an amended tax invoice, as the case may be, by the Supplier. If the adjustment event gives rise to an adjustment, the Supplier must issue an adjustment note to the Recipient as soon as it becomes aware of the adjustment event.

THE REST OF THIS PAGE IS LEFT INTENTIONALLY BLANK.

Signed as an Agreement:

Dated on _____ day of _____ 20__

Tenant 1

Executed by KARRADON PTY LTD T/AS
M.A.R.S (A.B.N 62 010 361 083) in accordance
with s127 of the *Corporations Act* 2001 (Cth) or
in accordance with its constitution by



1st Director's signature

2nd Director's / Company Secretary's
signature
(if applicable)

1st Director's name
(please print)

2nd Director's / Company Secretary's
name
(please print)

and if only one person has signed, that person states that he/she is the sole director and sole secretary of the company.

Landlord(s)

Executed by KARRADON PTY LTD (ACN010 361 083) in accordance with s127 of the *Corporations Act* 2001 (Cth) or in accordance with its constitution by



1st Director's signature

2nd Director's / Company Secretary's
signature
(if applicable)

1st Director's name
(please print)

2nd Director's / Company Secretary's
name
(please print)

and if only one person has signed, that person states that he/she is the sole director and sole secretary of the company.



Advice to assist the trustees
of Superannuation Fund
in their investment decisions, in particular in
relation to lease agreements to associates

TRAPS FOR THE UNWARY



The document you have just purchased is composed of the following parts:

- A. An overview of the regulations that a Trustee of a Superannuation Fund must consider when making an investment decision;
- B. A draft of a legally binding commercial lease agreement that will satisfy the Australian Tax Office when it checks whether your Fund is complying with *Superannuation Industry (Supervision) Act 1993*. Subsection 71(1) of *Superannuation Industry (Supervision) Act 1993* restricts regulated superannuation funds from leasing assets to related parties. An exception to the general rule is provided at paragraph 71(1)(g), which allows self-managed superannuation funds to lease real property to related parties without the asset being an in-house asset. The exception will apply provided the property is business real property throughout the term of the lease and the lease arrangement is legally binding between the parties.

For this reason you need a properly documented lease agreement.

WHY IS THIS SO IMPORTANT?

Superannuation Industry (Supervision) Act 1993 (“**SISA**”) restricts the investment practices of a Superannuation Fund (“**Fund**”). This is according to two principles:

- A. Firstly, that the Fund determines its investment choices with a sole purpose. That sole purpose is of providing retirement benefits for members. Consequently, the Fund should not be used as a source of easy finance for the family company or members personally.
- B. Secondly, that the Fund does not over expose itself to the failure of a single asset, such as a family company.

POSSIBLE CONSEQUENCES

Breach of the SISA regulations and these principles could lead to:

- A. your Fund being declared “non-complying”. This can have particularly nasty consequences that range from heavy fines to your Fund losing its beneficial tax status and paying tax at the top marginal tax rate.
- B. A further consequence could be that you as trustee can be exposed to significant civil and criminal penalties. It is vitally important that you as trustee, when you lease the property to a related party satisfy the business real property definition at the relevant time, including a legally enforceable lease agreement.

The regulations that a trustee must consider are contained in SISA.

SUPERANNUATION INVESTMENT SCHEMES

Under SISA, the trustee of a Superannuation Fund is solely responsible and directly accountable for the management of the members’ benefits. Thus, the trustee has a duty to make, carry out and document decisions about investing the assets of the fund and to carefully monitor their performance. This duty involves formulating and implementing an investment strategy for the benefit of all members.

The Superannuation Fund is required by the Australian Tax Office (“**ATO**”) to have an up-to date investment strategy that is compliant with all SISA legislation and regulations. Further, it must set out the desired outcome and a minimum level of performance that the investments of the self-managed superannuation funds

(“**SMSFs** ”) should achieve.

The investment of assets is one of the key areas of responsibility for the trustee of a self managed superannuation fund. This requires the trustee to comply with very stringent duties and obligations when making investment decisions to ensure that assets are properly invested for retirement purposes and member benefits are protected. Trustees of other regulated funds that are not SMSFs are subject to similar, but more onerous, investment rules.

The main investment rules applying to SMSFs cover the following:

- having an investment strategy;
- making investments on an arm's length basis;
- restrictions on borrowings;
- restrictions on lending and providing financial assistance to members;
- restrictions on the acquisition of assets from related parties; and
- restrictions on investments in in-house assets.

The investment rules are some of the most important prudential requirements under the SISA and failure to comply with the rules can result in trustees being fined and/or the fund losing its compliance status. Most of the SISA provisions dealing with fund investments are civil penalty provisions.

The trustee must consider:

- A. the risk involved in making, holding and realising Superannuation Fund investments, and the likely return from these investments, having regard to Superannuation Fund objectives and its expected cash flow requirements;
- B. the composition of Superannuation Fund investments as a whole, including the extent to which the investments are diverse or involve the entity being exposed to risks from insufficient diversification;
- C. the liquidity of the fund's investments having regard to its expected cash flow requirements. Consequently, the trustee must have regard for the payment of tax, superannuation surcharge liability of the members, the lump sum benefits if a member leaves Superannuation Fund, or regular pension payments;
- D. the ability of Superannuation Fund to discharge its existing and prospective liabilities. Accordingly, the trustee should implement a due diligence process that promotes well thought-out and responsible decision making as failure to have a valid and complying “investment strategy” may result in the ATO determining that Superannuation Fund is non-complying.

The following questions and answers provide a basic overview of what you can and can't do in relation to investment decisions with regards to SMSF assets.

CAN A MEMBER OR HIS ASSOCIATE SELL, AT MARKET VALUE, ASSETS INTO HIS SELF MANAGED SUPER FUND?

Subject to certain exceptions, the trustee of a regulated superannuation fund is prohibited from intentionally acquiring assets from related parties of the fund, section 66(1) SISA. Therefore, you cannot sell any asset that

a member or an associate of a member owns into Superannuation Fund. The term asset includes real property and personal property, which may be tangible (e.g. a boat, works of art) or intangible (e.g. copyright ownership).

WHO IS A “RELATED PARTY”?

A “related party” is a member and their Part 8 associates (section 70B to 70E SISA). Associates of members include their relatives, business partners and any companies or trusts that they control (either alone or with their other associates).

The prohibition covers the intentional acquisition of an asset from a related party. Consequently, an inadvertent acquisition will usually not offend section 66 of SISA.

PERMITTED ACQUISITIONS FROM A RELATED PARTY

Exceptions to the prohibition on acquisition of assets from a related party in a SMSF are if:

- A. The asset is a “listed security” (defined in section 66 SISA) acquired at market value;
- B. The asset is “business real property” (defined in section 66 SISA) acquired at market value;
- C. The asset is acquired under a merger between regulated superannuation funds;
- D. The ATO has determined in writing that the asset is of a kind that may be acquired by the fund, or a class of funds of which the fund is included; or
- E. The asset is an in-house asset acquired at market value and the acquisition does not result in the fund breaching the in-house asset rules (section 66(2), (2A) of SISA).

BUSINESS REAL PROPERTY

Real property refers to interests in or over land, including fixtures attached to the land such as buildings. Real property used in one or more primary production businesses can have an area of up to two hectares used for private or domestic purposes, provided the private or domestic use is not the predominant use of the real property (section 66(6) SISA). The test is whether the real property is used wholly and exclusively in one or more businesses.

The ATO has issued a ruling SMSFR 2009/1 which sets out the ATO’s view on what constitutes business real property.

Real property on which an entity conducts business

In general it can be said that real property on which an entity conducts its business falls within the definition of business real property of the SISA, provided the property is wholly and exclusively used for the business.

What will not qualify as business real property?

Residential Property

The mere renting out of a property is not considered to constitute the carrying on of a business (*Miscellaneous Taxation Ruling* MT 2000/1, *Draft Miscellaneous Taxation Ruling* MT 2004/D3 and SMSFR 2009/1). Therefore, residential property will not generally satisfy the business use requirement and will therefore not qualify as business real property for SISA.

Although there are some exceptions to this rule, this has to be decided on a case by case basis and is beyond the overview.

Vacant Land

It is difficult to see a factual situation in which vacant land could be business real property.

Shares in a property owning company

Shares in a property owning company are seen as personal, and not real property. Further, they do not represent a freehold and leasehold proprietary interest in real property.

Demountable structures

Similar to vacant land, demountable buildings placed on land will not qualify for the business real estate exception because they are not 'real property' in their own right.

There are some exceptions to the rule, but the ATO will look at this on a case by case basis.

In-house asset rules

The in-house rules in SISA Part 8, do not totally prohibit Superannuation Fund from investing in in-house assets. Rather, they restrict Superannuation Fund investments in such assets to 5% of the total assets of the fund (based on market value) and prohibit the fund from acquiring new in-house assets if the market value ratio of in-house assets held exceeds 5%. The rules also require a fund to dispose of in-house assets in excess of the 5% threshold, and prohibit the fund from entering into schemes to avoid the in-house asset rules.

Subject to specific exclusions, an "in-house asset" of a superannuation fund includes, among other things, an asset of the fund that is subject to a lease or lease arrangement between the fund and a related party of the fund (section 71(1) of SISA)

The major exclusion which we are interested in here is for certain leases to related parties.

Section 71(1)(g) of SISA specifically provides that:

- A. real property subject to a lease, or
- B. real property subject to a lease arrangement enforceable by legal proceedings

between the trustee of the fund and a related party of the fund is not an in-house asset, if throughout the term of the lease or lease arrangement, the property is business real property of the fund within the meaning of section 66(5) of SISA.

Lease Arrangements

As mentioned earlier, any asset of the fund subject to a lease or lease arrangement between the trustee and a related party of the fund constitute an in-house asset.

However, for SMSFs, business real property subject to a lease between the trustee and a related party of the fund is exempted from the definition of an in-house asset.

The trustee still has to make sure that:

- A. The lease is offered to the tenant on commercial terms; and
- B. The tenant has to have been subject to a commercial review in line with any other prospective tenant in relation to solvency and reliability.

See further below about the “Arms Length Rule”

What is a lease arrangement?

A “lease arrangement” is defined in section 10(1) of SISA as:

“Any agreement, arrangement or understanding in the nature of a lease (other than a lease) between a trustee of a superannuation fund and another person, which the other person is to use, or control to use of, property owned by the fund, whether or not the agreement, arrangement or understanding is enforceable, or intended to be enforceable, by legal proceedings”.

A “lease” is an interest in land giving the tenant exclusive possession (see for example, *Victor Sheet Metal Co (Aust) Pty Ltd v Commissioner of State Revenue* 26 ATR 438).

Out of this follow two questions:

- A. First of all, do we have an arrangement which is “in the nature of a lease”; and
- B. Secondly, is the arrangement between a trustee of a superannuation fund and another person?

In most of the cases the arrangement will be between the trustee of the Superannuation fund and another person. However, the situation could be different if the arrangement is between the trustee of a subsidiary unit trust and another person. This arrangement might not be covered by section 71 and will not apply for this commercial lease.

However, the first question to consider is, is the arrangement a lease? There are similar arrangements which are not a lease. For example:

- A. Licence arrangements – a right to enter but not exclusive possession
- B. Management contracts – where you do not use or occupy the premises, but manage the premises
- C. Contract of bailments – where you store or transport something.

Sometimes it could be difficult to draw the fine line between a lease arrangement and a licence arrangement. You should be aware that if you treat something as a licence arrangement the ATO could take a different view and apply the anti-avoidance provision in section 71(2).

Therefore, we suggest if you are not sure, draft a proper lease agreement to comply with SISA and related legislation.

Some other issues:

Can an asset be purchased from your Self Managed Super Fund by you or a related party at market value?

There is no provision in the SISA that directly governs the sale of a superannuation fund’s assets to a related

party of the fund. However, the fund trustee must ensure that the sale is at arm's length and according to the regulations contained in SISA.

Arm's length rule

Section 109 of SISA provides that all investment transactions of a regulated superannuation fund are to be made and maintained on an arm's length basis. The arm's length rule does not prevent trustees (or investment managers) from entering into investment transactions with related or associated parties, as the rule applies to the terms of the transaction, not the identity or relationship of the parties.

Therefore, a superannuation fund's investment transactions may be between related or associated parties but the transactions must be entered into and maintained on commercial terms that are no more favourable to the other party than would reasonably be expected if the trustee were dealing with a person or entity that they had no association with.

For instance, the sale/purchase price of an investment should be at least market value and the agreed or expected return from that investment should be at not less than a true market rate. In addition, the trustee must enforce its ongoing rights against a related party in the same manner as it would against any other party.

The trustee's action will be gauged against the standard of whether a prudent person acting with due regard to his own commercial interests would have made the same investment decision.

For instance, the trustee should consider whether:

- A. the asking price is a fair price given the expected return on the asset, the risks to which the asset is exposed and the relative liquidity of the asset;
- B. the projected returns of income and/or capital are in line with market expectations;
- C. the contract or agreement adequately protects the interests of the superannuation fund, with clear legal identification of all parties and their rights and obligations; and
- D. professional valuations have been obtained, where appropriate.

While none of these considerations alone would necessarily determine an investment as being on an arm's length basis, each may constitute a degree of evidence in support of that inference.

In addition to the above, the trustee must also note that in all dealings of Superannuation Fund, it must have regard to the general trust law, the trust deed and the codified covenants imposed under SISA section 52. For instance, the trustee must:

- A. act honestly in all matters;
- B. exercise due care, skill and diligence;
- C. act in the best interests of the beneficiaries when discharging the trustee's duties and powers; and
- D. consider whether the disposal of fund assets is in accordance with or forms part of the properly formulated and implemented investment strategy of the fund under SISA section 52(2)(f).