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**MEMORANDUM**  
New South Wales  
Section 80A Real Property Act 1900



**AD480852L**

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

(A) **LODGED BY**

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(B) **APPLICANT**

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(C) The applicant requests the Registrar General to record this memorandum, comprising 48 pages including this page, which contains provisions deemed to be incorporated in any instrument which refers to it.


- (D) i. For option to renew see clause Part 8
- ii. For option to purchase see clause N/A

(E) **Signature of applicant or applicant's representative:**

Name of signatory:

Capacity of signatory (if applicable):

Date:

  
**JULIE BRISCOE**  
**SOLICITOR**  
**10 October 2007**

**MEMORANDUM**

On behalf of **SYDNEY HARBOUR FORESHORE AUTHORITY**, I certify that this Memorandum comprising 48 pages including the front page, contains the provisions which are deemed to be incorporated in such leases which refer to this Memorandum.



.....  
Signature of Authorised Officer  
Robert Lang, Chief Executive Officer

**Part 1 - Definitions and Interpretations**

**1.1 Definitions**

In the Lease, unless the contrary intention appears:

**"Building"** means the improvements constructed on the Land (including the Precinct if any), of which the Premises forms part if any applicable.

**"Business Hours"** means those hours referred to in **Item 17**.

**"Council"** means the Council of the City of Sydney or the relevant local government council in relation to the Land and its successors.

**"Commercial Outdoor Seating Policy"** means the Commercial Outdoor Seating Policy of the Lessor from time to time, for the Building or the Precinct. Where no such Outdoor Seating Policy has been prescribed for the Building or the Precinct, it is the Commercial Outdoor Seating Policy as may be prescribed by the Lessor for the Premises from time to time.

**"Common Areas"** means those parts of the Building or the Land (as the case may be), if any, which are from time to time provided by the Lessor for common use by the occupants of the Building and Land (as the case may be) and others and include the entrances, stairways, toilets, escalators, lifts, passageways and other common amenities and conveniences.

**"Corporations Act"** means the Corporations Act 2001 (Cth) as amended.

**"Development Area"** or **"The Rocks"** have the meaning assigned to the term "development area" in the SCRA Act, which expressions will be applicable only where the Premises are part of The Rocks.

**"Energy Management Plan"** means an Energy Management Plan to be prepared by the Lessee prior to the commencement of the Lease.

**"ESD"** means Ecologically Sustainable Development being the concept for minimising the ecological footprint building operations and maximising benefits for users in terms of improved indoor environment quality and lower operating costs from reduced waste, energy and water consumption.

**"Executive Director"** means the Executive Director of the Lessor for the time being and includes the Acting Executive Director or authorised delegate for the time being of the Lessor.

**"Governmental Agency"** means the Minister, any governmental or semi-governmental, administrative, fiscal or judicial department, commission, authority, tribunal, agency or entity, the Council and where the context allows, includes the Lessor if it has any statutory powers under the SHFA Act or any relevant legislation.

**"GST"** means any goods, services or other value added tax or similar additional levy or tax, howsoever called, if any imposed by any Governmental Agency applicable and payable during the Term.

**"GST Invoice"** means a tax invoice under the GST Law.

**"GST Law"** has the same meaning as in the A New Tax System (Goods & Services Tax) Act 1999 (Cth).

**"Guaranteed Sum"** means an amount equivalent to the sum of money if any stated in **Item 14**.

**"Guarantors"** means the persons if any named in **Item 15**.

**"Heritage Act"** means all current relevant legislation affecting the Premises if any.

**"Item"** means an item in the reference schedule being **Annexure "A"** to the Lease.

**"Land"** means the land described in **Item 3**.

**"Lease"** means the documentation executed by the Lessor and the Lessee which is expressed to incorporate some or all of the provisions of this Memorandum including any special conditions, schedule or annexure to such documentation and this Memorandum.

**"Lessee"** means the lessee named in **Item 2** and any successor or permitted assignee of the Lessee and where not repugnant to the context includes any servants, employees, agents, invitees and licensees of the Lessee.

**"Lessee's Covenants"** means the agreements contained or implied in the Lease to be observed by the Lessee.

**"Lessee's Fitout"** means any fitout carried out by the Lessee as specified in **Item 20** in accordance with clause 2.6(e) of the Lease, to be carried out to the standard referred to in the Lessor's Fitout Guide.

**"Lessor"** means the lessor named in **Item 1** and any successors and assigns and where not repugnant to the context, any of the Lessor's agents and employees.

**"Lessor's Energy Management Policy and Plan"** means the Energy Management Policy and Plan adopted by the Lessor in September 2005 or any reviewed energy management policy and plan adopted by the Lessor from time to time during the Term.

**"Lessor's Fitout Guide"** means the current Lessor's Fitout and Design Guides or statement for the Premises prescribing the minimum standard of fitout required to be undertaken by the Lessee in the Premises during the Term.

**"Lighting Policy"** means the current lighting policy in the Building, Precinct or The Rocks as described in the Rules or as prescribed by the Lessor in its absolute discretion from time to time subject to the Lessor's Fitout Guide.

**"Managing Agent"** means the person if any appointed as the managing agent of the Building by the Lessor and notified in writing to the Lessee and includes such managing agent's servants and agents, such managing agent to be deemed to have the powers of the Lessor under the Lease, where the context so permits.

**"Minister"** means the Minister for the Department of Planning or any person appointed to carry out the duties of the Minister in accordance with the SHFA Act and also where the context allows, the Government of the State of New South Wales.

**"Permitted Use"** means the use of the Premises as specified in **Item 11**.

**"Precinct"** means the area owned or controlled by the Lessor, of which the Building or Premises forms part. It is agreed that where the Lease is within The Rocks or Darling Harbour, The Rocks or Darling Harbour as the case may be will be considered Precincts for the purposes of the Lease.

**"Premises"** means the premises described in **Item 4** including any structures, improvements, fixtures, fittings, plant, machinery, furnishings and equipment installed or placed there at the commencement date of the Lease or during the Term by the Lessor for the exclusive use of the Lessee, or by the Lessee at the cost of the Lessor, or by the Lessee at the Lessee's cost with the express intention by the parties that they form part of the Premises.

**"Rent"** means the annual rent stated in **Item 9** and reviewed and paid in accordance with the Lease.

**"Rules"** means the Rules and Regulations set out in the First Schedule, any additional or alternative rules or policies made or tenant operations manual issued by the Lessor from time to time for the management or efficient operation of the Building or Precinct which do not permanently or substantially derogate from the Lessee's rights under the Lease.

**"SCRA Act"** means Sydney Cove Redevelopment Authority Act 1968 (NSW) and any regulations from time to time in force thereunder or any other replacement statute or regulations, including where the context allows the SHFA Act.

**"SHFA Act"** means Sydney Harbour Foreshore Authority Act 1998 (NSW).

**"Sign Policy"** means the Signage Policy of the Lessor as described in the Rules if applicable and as may be amended or added to from time to time during the Term, or such sign policy for the Building or the Precinct (as the case may be) which might be prescribed by the Lessor in its absolute discretion from time to time during the Term or if no such Sign Policy has been prescribed for the Building then, the Sign Policy prescribed by the Lessor for the Premises from time to time.

**"Structural Works"** means any works carried out to any primary load bearing element of a structure or building or part thereof which primary function is to form the structural load supporting framework to which all internal and external claddings, roof coverings, finishes, fixtures, fittings, plant and equipment are attached and supported. For the sake of clarity, Structural Works include:

- (i) External and internal load bearing walls, columns, piers, footings, sacrificial render and damp courses designed to prevent the vertical migration of moisture in load bearing walls.
- (ii) Roofing framework including bearers, rafters, batons and elements supporting roof claddings and membranes.
- (iii) Ceiling framework including hanging beams, batons, joists and struts.
- (iv) Floor structure including bearers, joists, floor boards, concrete slabs, columns, piers and footings.
- (v) Internal stairwells and associated balustrades.
- (vi) Damp courses and flashings incorporated within walls and fixed structural elements.
- (vii) Retaining walls.
- (viii) Arch Bars and lintels and associated flashings incorporated into the wall during construction.
- (ix) In relation to the Premises, any other work agreed in writing between the Lessor and the Lessee as being Structural Works.

Items and activities which are **excluded** from the definition of Structural Works include but are not limited to:

- (i) Any items which would normally be included in the definition of Structural Works but which form part of the Lessee's Fitout, Lessee's redevelopment, equipment and/or services.
- (ii) All applied finishes including paint, stains, wallpaper, plaster, render of tiles, membranes and coverings.
- (iii) Any toppings, approved floor coverings and applied finishes which are to be maintained by the Lessee at the Lessee's cost, according to approved Lessor colours and finishes.
- (iv) All moldings, skirting, architraves, picture railings, cabinet work and associated joinery.
- (v) Applied linings, claddings, finishes, paint, plaster stains, wallpaper, plaster, render, tiles, membranes, carpet or floor coverings.
- (vi) Roof cladding material and associated flashings, drainage system, rainwater goods, gutters, rainwater heads, membranes.
- (vii) Floor coverings, paint, coatings, oils, linings, carpets, floating floors and toppings.
- (viii) False and suspended ceilings and systems.
- (ix) Doors, windows, shutters, footpath pavement lights, pavement cellar doors, ladders under-stair cupboards, vents, signs and associated frames, moldings and all hardware including hinges, locks hinges, door handles etc.
- (x) All building services fixtures, fittings, plant and equipment including plumbing, gas, drainage, stormwater, electrical, fire, communications, mechanical ventilation, air-conditioning, refrigeration, lifts hoists etc.
- (xi) Below ground basement and cellar water proofing.
- (xii) Footpath cellar doors, ladders, under- stair cupboards.
- (xiii) All external pavement surfaces and timber decking.
- (xiv) In relation to the Premises, any work agreed in writing between the Lessor and the Lessee as not being Structural Works.

**"Supply"** has the meaning given to it in the GST Law.

**"Term"** means the term of the Lease stated in **Item 5** commencing and terminating on the respective dates stated in **Items 6 and 7** and any holding over period with the consent of the Lessor.

## 1.2 Interpretation

In the Lease, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of the Lease;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency;

- (e) a reference to any thing includes a part of that thing;
- (f) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to the Lease;
- (g) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute including any amendments;
- (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Lease or any part of it;
- (i) an agreement on the part of two or more persons binds them jointly and severally;
- (j) a reference to an association or body or Governmental Agency which has ceased to exist includes the organisation established in the place of the association or body or Governmental Agency to serve substantially the same purposes;
- (k) a reference to an officer of an association or body or Governmental Agency which has ceased to exist includes the most senior officer of the organisation established in the place of the association or body or Governmental Agency to serve substantially the same purposes;
- (l) where under the Lease anything is to be done on a Saturday, Sunday or a public holiday in New South Wales, the act must be done on the next day which is not a Saturday, Sunday or a public holiday; and
- (m) unenforceability of a provision of the Lease does not affect the enforceability of any other provision, unless the Lease is materially affected.

### **1.3 Exclusion of implied covenants and powers**

No covenant or power implied in leases under sections 84, 84A, 85, 132, 133, 133A and 133B of the Conveyancing Act 1919 (NSW) applies or is implied in the Lease except to the extent it is expressly included in the provisions of the Lease.

### **1.4 Lessor's reservations**

- (a) The Lessor reserves the right to:
  - (i) install, maintain, use, repair, alter and replace;
  - (ii) pass or convey any service including gas, water, sewerage, heat, oil, electricity and any other communication etc through any pipes, conduits, ducts or wires through the Premises; and
  - (iii) grant easements or enter into any arrangements or agreement (including dedicating land or granting any privilege or other right) to any other person or any Governmental Agency for access to or support of existing or future structures on adjoining land or services.
- (b) The Lessor must not exercise its rights under this clause in a way which derogates substantially and permanently from the enjoyment of the Lessee's rights under the Lease.
- (c) The Lessee must comply with any request of the Lessor to do any act which will allow the Lessor to exercise its rights under this clause.

### 1.5 Lessor's position as a public authority

The parties acknowledge that nothing in the Lease can in any way restrict or otherwise affect the Lessor's:

- (a) unfettered discretion as to the use of the Lessor's statutory powers as a Governmental Agency or a public authority; or
- (b) obligations, if any under the SHFA Act or any other legislation.

### 1.6 Provisions to be constructed as covenants

Those provisions and conditions which require or prescribe anything to be done or not to be done by the Lessee must, in addition to being read and construed as conditions of the Lease be also read and construed as covenants and agreements, whereby the Lessee for itself and its assigns, agrees with the Lessor to observe and perform such provisions and conditions.

### 1.7 Do includes cause to be done, etc.

- (a) A provision of the Lease which requires a party to do or not do something will be satisfied if that party causes that thing to be done.
- (b) If a provision of the Lease requires a party not to do something, that party:
  - (i) must not do that thing;
  - (ii) must procure that its agents, employees, contractors, invitees, sublessees and licensees do not do that thing; and
  - (iii) must use reasonable endeavours to ensure that other persons do not do that thing.

### 1.8 Opinion by Lessor

Any opinion to be formed by the Lessor for the purposes of the Lease may be formed by the Lessor on such grounds and material as the Lessor reasonably determines to be sufficient after consultation with any Governmental Agency or person whose objects or functions are relevant.

## Part 2 - Lessee's Covenants

### 2.1 Rent

#### (a) Rent covenants

The Lessee must pay to the Lessor the Rent:

- (i) stated in **Item 9** and as reviewed under the Lease and notified to the Lessee; and
- (ii) Outgoings Rent, if any payable in accordance with clause 2.3 and **Items 8A and 8B**;
- (iii) free of all deductions and any set off whatsoever;

- (iv) without demand or invoice from the Lessor (except where required under GST Law) by way of either direct deposit in the bank account of the Lessor as notified to the Lessee from time to time during the Term, or if required by direct debit from the Lessee's bank account in the nominated bank account of the Lessor and in that regard the Lessee must execute an appropriate authority to its bank and deliver such authority to the Lessor as required by the Lessor from time to time;
  - (v) at a place and in the manner notified by the Lessor in writing at any time or in the absence of notification at the address of the Lessor set out in the Lease;
  - (vi) by consecutive monthly payments in advance;
  - (vii) the first to be paid on the commencement date of the Lease;
  - (viii) each successive payment to be made on or before the first day of each successive month and must equal one/twelfth (1/12) of the Rent; and
  - (ix) the first and last payments to be proportionate to the number of days in that calendar month.
- (b) **Review of Rent**
- (i) The Rent will be reviewed in accordance with the Lease.
  - (ii) When the reviewed Rent is determined, any necessary adjustment of Rent must, within fourteen (14) days of the determination, be calculated from the relevant rent review date and paid by or allowed to the relevant party.

## 2.2 Rent review

### (a) CPI review

On each of the dates specified in **Item 10A ("CPI Review Dates")**, the Rent will be varied so as to be the amount being the amount derived from the following increase:

$$R = A \times \frac{B}{C}$$

Where:

"R" means the Rent payable for the following year of the Term.

"A" means the Rent payable during the year of the Term just ended.

"B" means the Index Number last published prior to the expiration of the Lease year just ended.

"C" means the Index Number last published prior to the commencement of the Lease year just ended.



- (i) In this sub-clause the expression "**Index Number**" means the Consumer Price Index Sydney All Groups Number published from time to time by the Australian Bureau of Statistics. In the event that there is any suspension or discontinuance of the Consumer Price Index, then "Index Number" means the New South Wales Basic Wage applicable in the City of Sydney. If the system or practice of the determination of the New South Wales Basic Wage ceases, then "Index Number" means such Index published at the date hereof and at the time of variation of the Rent by the Australian Bureau of Statistics which reflects fluctuations of the cost of living in Sydney and which the parties may mutually agree upon. If they are unable to agree, then such variation of the Rent will be by reference to such Index as may be determined by the President at the relevant time of the Real Estate Institute of New South Wales or some person nominated by him whose decision will be conclusive and binding.
- (ii) A. In the event only that upon the due date for payment of any instalment of the Rent, the rate at which the instalment is payable has not yet been finally determined in accordance with this clause, then the Lessee must pay to the Lessor an instalment on account of the Rent equal to the amount of the instalment of the Rent last payable prior to that date.
- B. Upon the final determination of the reviewed Rent, the Lessee must forthwith pay to the Lessor the total amount by which each of the instalments of the Rent which has become due and payable, as exceeds the total amount already paid to the Lessor on account of each of such instalments.

(b) **Market review**

On each of the dates specified in **Item 10B ("Market Review Dates")**, the Rent will be reviewed to current open market rent as follows:

- (i) at any time if the parties are able to reach agreement as to the Rent to be paid from the relevant Market Review Date, then the amount agreed upon by the parties will be the Rent payable in accordance with the Lease as from the relevant Market Review Date;
- (ii) if the parties are unable to reach agreement on the current open market rent, then:
- A. at any time commencing three (3) months prior to the relevant Market Review Date up to the next rent review date under this Lease the Lessor will be entitled to serve upon the Lessee a notice in writing ("**Lessor's Notice**") specifying the amount which the Lessor, having taken regard to the criteria referred to in paragraph B, considers will be the current open market rent ("**Market Rent**") of the Premises at the Relevant Market Review Date;
- B. the Market Rent will in addition to any other relevant criteria be based upon the following criteria:
- (i) the Rent currently paid in respect of other premises of similar quality in the area;
- (ii) the Market Rent of the Premises having regard to the highest and best use to which the Premises may be put with the consent of any Governmental Agency;
- (iii) if a breach of this Lease has adversely affected the condition or rental value of the Premises, the Market Rent will be determined as if such adverse effect had not occurred;

- (iv) no regard will be had to the Term diminishing;
  - (v) the terms and conditions of the Lease and any other matters, the valuer considers relevant;
- C. the Lessee may within a period of fourteen (14) days after service of the Lessor's Notice, by notice in writing served on the Lessor dispute that the amount set out in the Lessor's Notice is the Market Rent as at the relevant Market Review Date;
- D. in the event that the Lessee does not notify the Lessor within a period of fourteen (14) days that the Lessee disputes the Lessor's Notice, the Market Rent as notified to the Lessee under paragraph A of this clause will become the Market Rent as at the relevant Market Review Date;
- E. in the event of a notice being served on the Lessor in accordance with paragraph C of this clause, the Market Rent will be determined by the Lessor and the Lessee by agreement, such agreement to be reached within the period of twenty-eight (28) days after a service of a notice referred to in paragraph C of this clause;
- F. if the Lessor and the Lessee are unable to agree within the period referred to in paragraph E of this clause on the amount of the Market Rent as at the relevant Market Review Date, then the question must be referred for the decision of a qualified valuer appointed by the person for the time being holding or acting in the office of President of the Australian Property Institute (NSW Division) who must make his valuation within one month of the referral;
- G. a valuation for the purposes of the preceding paragraph is to be a "**speaking valuation**" (that is, the valuer must give detailed reasons for his or her determination and must specify the matters to which he or she had regard for the purposes of making his or her determination); and
- H. the parties are to pay the costs of the valuation pursuant to paragraph F in equal shares, unless the Market Rent is more or equal to that contained in the Lessor's Notice in which case the Lessee must pay the costs of the valuation.
- (iii) the Rent payable as from the relevant Market Review Date will be payable as from the relevant Market Review Date, regardless of the date on which the determination of such review of Rent is completed and, if such reviewed Rent is determined on a date after the relevant Market Review Date, any underpayment or overpayment of Rent will be adjusted between the parties within fourteen (14) days of the date of determination of the reviewed Rent.
- (c) **Percentage review**
- On each of the dates specified in **Item 10C ("Percentage Review Dates")** the Rent will be increased by the percentage set out in **Item 10C**.
- (d) **Rent not to be less than previous year**
- Notwithstanding anything contained in this Lease, the reviewed Rent will never be less than the Rent payable in the previous Lease year.

## 2.3 Outgoings Rent

- (a) In addition to the Rent, and any other moneys payable by the Lessee under the Lease, the Lessee must in respect of each year or part of a year of the Lease reimburse and pay to the Lessor as additional rent, the Outgoings Rent which will be calculated in accordance with one of the following alternatives specified in **Item 8C**:
- (i) either or both the percentage of the Lessor's Statutory Outgoings set out in **Item 8A** and the percentage of the Lessor's Non-Statutory Outgoings set out in **Item 8B**; or
  - (ii) Nil amount in relation to the Lessor's Outgoings; or
  - (iii) the Lessee's Proportion of the Increase in the Lessor's Outgoings calculated as follows:

$$LPLO = \frac{LP \times N [I - J]}{Y}$$

Where:

**LPLO** = Lessee's Proportion of the Increase in the Lessor's Outgoings for the relevant Outgoings Year.

**LP** = Lessee's Proportion.

**N** = The number of days of the Term falling within the relevant Outgoings Year.

**I** = The amount (to the nearest dollar) of the Lessor's Outgoings for the relevant Outgoings Year.

**J** = The amount (to the nearest dollar) of the Lessor's Outgoings for the Base Year.

**Y** = 365 (or 366 in the case of a leap year).

- (b) "**Lessor's Outgoings**" means the Lessor's Non-Statutory Outgoings and the Lessor's Statutory Outgoings applicable under the Lease.
- (c) "**Lessor's Non-Statutory Outgoings**" means (to the extent to which the same are not specifically payable from time to time by any lessee or licensee of any part of the area to which the Lessor's Outgoings relate to ("**Relevant Area**") under the terms of its occupancy thereof) the total costs of all non-statutory outgoings and expenses of the Lessor now or hereafter properly and reasonably assessed, charged or chargeable, paid or payable or otherwise incurred upon or in respect of the Relevant Area or upon the Lessor in relation thereto or in the conduct management and maintenance (but not the structural maintenance or repair) of the Relevant Area and includes:
- (i) All insurance premiums payable by the Lessor in respect of insurance of the Relevant Area and all improvements, fittings and fixtures and plant and equipment of an uninsurable nature on or in the Relevant Area for their full insurable reinstatement value against fire, flood, lightning, storm and tempest, riots, strikes, explosion, malicious damage, aircraft impact, earthquake and water damage and in respect of insurance of the Relevant Area and the Lessor against loss of rent and such other risks including workers' compensation and public liability (referable to the Relevant Area or the Lessor in relation to the Lessor's ownership or interest in the Relevant Area and for such other insurable risks as the Lessor deems appropriate from time to time) as the Lessor may deem necessary or desirable.

- (ii) All costs and charges (including all associated service charges) for water, gas, oil, electricity, light, power, fuel, telephone/communication, administration, emergency evacuation plans and training, precinct way finding maps and signage, CCTV monitoring, alarm monitoring, graffiti removal, facility maintenance supervision, condition audits and inspections, sewerage, sullage and garbage removal, cleaning, sanitary services, caretaking, security, building intelligence and emergency systems, public address and music systems, signs, uniforms, gardening and other services or requirements furnished or supplied to the Relevant Area for the benefit or purpose of the Relevant Area.
  - (iii) The cost of interior and exterior painting, repair and other maintenance work to the Relevant Area and of all cleaning of and removal of waste and rubbish from Common Areas including grease traps, pumpouts and such treatments and the washing of interior and exterior windows of the Building.
  - (iv) All costs of repairs, maintenance, renovations and replacements, of and to the Relevant Area (including where applicable carpet, floor coverings or floor covering treatments, air conditioning, escalators, lifts and lift machinery) other than work of a structural or capital nature or work normally the responsibility of any tenant or occupier of the Relevant Area or any part thereof.
  - (v) The costs of ventilating, exhausting and (where applicable) air-conditioning, heating or cooling the Relevant Area or any part thereof including the costs of any cooling tower registrations.
  - (vi) The cost of any pest or vermin inspection, eradication, control and treatment and odour control from the Relevant Area which is not the responsibility of any tenant or occupant of the Relevant Area or any part thereof.
  - (vii) The cost of supplying paper, towels, soap and/or other toilet or sanitary requisites in washrooms and lavatories in the Relevant Area.
  - (viii) All reasonable costs (inclusive of wages) of any management, control and administration of the Relevant Area including any accounting and audit fees, car parking, energy management systems, Work Cover registrations including for lifts and escalators, child minding, garbage removal, security, caretaking, maintenance of grounds and Common Areas (including gardens and other vegetation) and fire protection and other fire services.
  - (ix) Any legal costs incurred by the Lessor in respect of the Relevant Area which costs do not pertain to any particular tenant of the Relevant Area.
  - (x) Any GST payable in relation to the above.
- (d) **"Lessor's Statutory Outgoings"** means (to the extent payable from time to time by any tenant or occupier of the Relevant Area) the total costs properly assessed, charged or chargeable by any Governmental Agency in relation to the Relevant Area or the Premises at any time during the Term, whether levied on the Relevant Area, Premises, Building, or the Lessor in relation to the Premises and includes subject to clause 2.3(h), all taxes, rates, charges, assessments, duties, levies, impositions and fees of any public, municipal, statutory or government body, authority or department, including Council rates, water, drainage and sewerage rates, and carparking levies.
- (e) The liability of the Lessee to pay the Outgoings Rent will not determine or otherwise be prejudiced by the prior expiry of the Term or other determination of the Lease.
- (f) If at any time during the Term, the Lessor calls for the establishment of a sinking fund to fund provision for major items of repair or maintenance of the Building, the Lessee must make such appropriate contribution as is required by the Lessor.

- (g) Where the Lessee is liable to pay a proportion of the Lessor's Outgoings, the Lessor may require the Lessee to reimburse or pay such proportion in full on the earlier of when due and payable to the relevant Governmental Agency or supplier or within fourteen (14) days of written request by the Lessor.
- (h) Notwithstanding anything contained in the Lease:
- (i) The parties acknowledge the provisions of Section 10CA of the Land Tax Management Act 1956 (NSW) ("**Land Tax Act**") as amended in that it provides for a lessee of any land owned by the Sydney Harbour Foreshore Authority to be liable for land tax while that land remains in the ownership of the Sydney Harbour Foreshore Authority.
- (ii) Notwithstanding the provisions of the Land Tax Act, the Lessor agrees that subject to subparagraph (iii), the Lessor will pay such land tax applicable from the Lease commencement date directly to the relevant Governmental Agency being currently the Office of State Revenue provided that:
- A. the Lessee is not in breach of any essential terms of the Lease;
- B. the Lessee provides the Lessor with any required land tax return and a copy of any land tax assessment at least three weeks prior to the due date for payment to the relevant Governmental Agency;
- C. the Lessee is liable for any penalties for late payment where such penalties were incurred as a result of the Lessee failing to comply with subparagraph (ii)B; and
- D. the Lessee is liable for any GST payable on such land tax or if this payment on behalf of the Lessee is classified as a Supply.
- (iii) The Lessor will pay the land tax liability on behalf of the Lessee insofar as it is assessed on individual leases with the relevant threshold applied for each particular land tax year. Where assessments are made on the combined value of taxable land owned including Lessor-owned property and Lessee-owned property, the Lessor will only pay the land tax liability applicable to the Premises subject of the Lease alone with the entire threshold benefit applied. If the Office of State Revenue or the relevant levying Governmental Agency deems the Lessee to be a non-concessional company or a special trust and therefore not eligible for the threshold benefit, the Lessor will only pay the portion of the land tax liability that would have otherwise been paid, had the threshold applied.

#### **2.4 No liability to be imposed on Lessor**

The Lessee must not do or permit anything to be done which might impose on the Lessor any liability of the Lessee in respect of the Premises.

#### **2.5 Service charges**

- (a) The Lessee must pay for any service charges and any usage charges including for the supply of hot and cold towns water, recycled water, condenser water, chilled and heated water, waste removal and disposal inclusive of trade waste, liquids and solids, gas, electricity, telephone or any other services for the Premises when they become due and payable or if reasonably requested by the Lessor at the Lessee's cost install separate meters for the Premises at any time during the Term. Where separate meters are not installed or required to be installed by the Lessor during the Term, the Lessee must pay within fourteen (14) days of written demand by the Lessor a proportion of such service or usage charges calculated by the Lessor (acting reasonably) as may be appropriate given the use to which the Premises are put to by the Lessee (but not necessarily on an area basis).

- (b) The Lessee must pay for any levies or fees payable to Work Cover including registration payments relating to lifts and escalators, and any cooling tower or other air-conditioning plant and equipment which are available in the Premises or in the Building for the sole use of the Lessee.

## 2.6 Use of Premises

- (a) The Lessee must:
- (i) use the Premises only for the Permitted Use;
  - (ii) promptly maintain and renew from time to time all licences, permits, consents and registrations required for the Lessee's business in the Premises;
  - (iii) comply with all laws relating to the Premises, the Permitted Use, the Lessee's business, alterations to the Premises including any requirements, notices or orders from any Governmental Agency to do work on the Premises (excluding any structural work unless necessitated by the Permitted Use of the Premises by the Lessee);
  - (iv) ensure that the Lessee does not do anything which could be detrimental to the Building or Precinct or to the Lessor's public image and reputation;
  - (v) take all reasonable steps to maintain and develop the Lessee's business so that sales are increased to the highest level possible; and
  - (vi) where the Lessee has been authorised to serve or provide services to seats outside the Premises with the express written consent of the Lessor, comply with the Commercial Outdoor Seating Policy and any outdoor licence in relation to that outdoor area.
- (b) The Lessor does not make any representation as to whether the Premises and associated service capacities or facilities are suitable for the Permitted Use or for any use by the Lessee and the Lessee must make its own enquiries to determine whether the Premises are or are likely to be suitable for the Lessee or for the Permitted Use over the Term and any renewed lease and obtain its own consents from the relevant Governmental Agencies.
- (c) The Lessee acknowledges that:
- (i) its right to use the Premises for the Permitted Use are not exclusive to the Lessee and that the Lessor may permit other persons to conduct in or from the Building such business as it thinks fit notwithstanding that any such business is similar in whole or in part to the Permitted Use. The Lessee further agrees that the Lessor has no obligations whatsoever to the Lessee to enforce compliance by other tenants or occupiers in the Building, with the permitted uses of their agreements and the Lessee will not be entitled to any compensation or any rights against the Lessor in that regard;
  - (ii) a heritage listed building requires an extensive number of approvals from the relevant Governmental Agencies and the Lessor reserves the right to withhold or approve conditionally or unconditionally in its absolute discretion any proposed alterations, refurbishments or improvements which in the Lessor's absolute opinion may be detrimental to the Building's or the Premises' heritage significance.
- (d) The Lessee agrees that before observing and complying with any laws or requirements of any Governmental Agency, it must obtain the prior written consent of the Lessor if any alterations are necessary to be carried out to the Premises.

- (e) Subject always to clause 2.8, where the Lease requires the Lessee to carry out any Lessee's Fitout of the Premises either during the Term or prior to commencing trading from the Premises, or where the Lessee wishes to carry out a fitout or alteration to the Premises at any time during the Term, the Lessee:
- (i) must do so in accordance with plans and specifications prepared by the Lessee at its cost but approved first by the Lessor and then by any relevant Governmental Agency;
  - (ii) must obtain the Lessor's and any relevant Governmental Agency's prior written consent and approval to any variations of the Lessee's plans and specifications previously approved by the Lessor and the relevant Governmental Agency;
  - (iii) must carry out such Lessee's Fitout in accordance and to the standard required in the Lessor's Fitout Guide;
  - (iv) must use contractors approved by the Lessor in its absolute discretion in relation to any substantial work;
  - (v) must ensure that all contractors have current licences and carry all insurances required under all relevant legislation or usually required for building contractors;
  - (vi) must have in place and provide the Lessor with certificates of all currency of all insurances required under the Lease;
  - (vii) indemnifies the Lessor against any claims, injury, loss and damage whatsoever suffered as a consequence of the carrying out of the Lessee's Fitout;
  - (viii) must diligently carry out the Lessee's Fitout and obtain the final approval of any relevant Governmental Agency including the Lessor prior to occupying or trading from the Premises or affected area; and
  - (ix) provide to the Lessor evidence that approval has been obtained from all relevant Governmental Agencies including providing on request by the Lessor copies of certificate to the Lessor to that effect.

## 2.7 Lessee's Business Hours

- (a) Subject to any relevant law, and clause 2.16(i), the Lessee must keep the Premises open for business during the Business Hours as specified in **Item 17** or as notified to the Lessee from time to time as the standard business hours prescribed for such type of business in the Building or where applicable, the Precinct and during all legal trading business hours prescribed or permitted by law from time to time and must conduct that business in a proper professional, courteous, efficient, reputable and non-offensive manner.
- (b) Where the Lessee is allowed to occupy the Premises outside the Business Hours, the Lessor may require the Lessee to pay for the costs of opening or keeping open the Building during those extended hours.

## 2.8 Alterations to Premises

- (a) The Lessee may not make any alterations, modifications, refurbishment or fitout of the Premises without the prior written consent of the Lessor and any relevant Governmental Agency. The Lessee acknowledges and agrees that it may not apply for consent from the relevant Governmental Agency (whether or not the relevant Governmental Agency may be the Lessor) without first complying with paragraphs (b) and (c).

- (b) The Lessee must before doing anything to the Premises (however small the alteration), first apply for the Lessor's consent as landowner by submitting detailed CAD plans and specifications or plans and specifications in such format acceptable to the Lessor in its absolute discretion together with any other detail required by the Lessor.
- (c) If the Lessor has granted landowner's consent, the Lessee must then apply to the relevant Governmental Agency (including the Lessor's planning and/or heritage division if relevant) for approval (including development approval and/or heritage approval under the Heritage Act if necessary).
- (d) Any alterations to the Premises or to any services of the Premises must only be carried out by such person approved by the Lessor in writing and where appropriate, the Lessee must in addition comply with clause 2. 6(e) as if such alterations were a fitout.
- (e) The Lessee must provide to the Lessor on demand, any certification that any such alterations to the Premises or to any services in the Premises have complied with all requirements of any relevant Governmental Agency or of any laws.
- (f) The Lessee may not carry on business or occupy the Premises without providing satisfactory evidence to the Lessor as required under paragraph (e).
- (g) The Lessee acknowledges and agrees that where the Premises forms part or is heritage listed as referred to in **Item 19**, the Lessee must not paint, drill or in any way penetrate or affix any item to any surfaces of the Premises including walls, ceilings, architraves and floors without the prior written consent of the Lessor and must comply with the Heritage Act as may be applicable.
- (h) The Lessee acknowledges that it may not perform any alterations or new installations to the Premises' or Building's electrical system unless it first obtains all relevant approvals and the prior written consent of the Lessor. The Lessee must perform such approved electrical works in accordance with relevant Governmental Agency standards and directions and all works must be tested and certified and the Lessor provided with copies of such certificates, before using such electrical systems.

## **2.9 Signs and advertising**

- (a) The Lessee acknowledges that the Lessor may have adopted a Sign Policy for the Premises and must comply with that Sign Policy. In all cases whether or not there is a Sign Policy, the Lessee must obtain the prior written consent of the Lessor and any relevant Governmental Agency to affix or exhibit any sign, advertisement or notice on or to the Premises, unless it will not be visible from outside the Premises and does not contravene any other provision of the Lease.
- (b) On expiry or earlier determination of the Lease, the Lessee is to remove at its cost such signs and make good any damage caused by reason of such removal.
- (c) In making its determination for consent, the Lessor may have regard to the size, shape, colour, style, content, location, material and appearance of such sign and may refuse to give approval, if the Lessor considers in its absolute discretion that the sign or advertisement lacks in taste or is not acceptable to the Lessor for any reason or does not conform to the Sign Policy or the Rules prescribed by the Lessor or any relevant Governmental Agency from time to time in relation to the Building, The Rocks and/or the Precinct.



## 2.10 Fire control

- (a) The Lessee must comply with any relevant insurer and Governmental Agency regulations as to the appropriate fire alarm, smoke detection system and fire sprinkler system for the Premises including extinguishers, hose reels, EWIS system, emergency/exit lighting, fire doors, evacuation doors and training. The Lessee must ensure compliance with any fire laws or regulations in respect of any partitioning or alterations made by or for the Lessee in the Premises. In addition the Lessee must provide the Lessor with any certification including where relevant an Annual Fire Safety Statement for the Premises required by any relevant Governmental Agency or any relevant law when due to be provided.
- (b) Where the Lessee does not have to provide an Annual Fire Safety Statement for the Premises, it must provide the Lessor with sufficient information as may be required by the Lessor to enable the Lessor to comply and provide the relevant Governmental Agency with such Annual Fire Safety Statement as may be required for the Building. In the event that the Lessee fails to do so, the Lessor may enter the Premises to inspect and carry out any necessary audit or repair at the cost of the Lessee inclusive of fines and penalties to enable the Lessor to comply with any relevant legislation.
- (c) The Lessee must ensure that any emergency/exit lighting required in the Lessee's Fitout of the Premises is to be networked or connected at the cost of the Lessee to any existing monitoring system for the Premises or Building.
- (d) The Lessee must store and use any portable LPG gas or such similar containers or cylinders strictly in accordance with relevant legislation and the directions of the Lessor, which consent must be obtained at the Lessor's absolute discretion before such items are brought on to or used in the Premises.
- (e) The Lessee must reimburse the Lessor within seven (7) days of demand any fee, fine or penalty incurred by the Lessor as a result of a fire alarm, fault or false alarm which occurs in the Premises, unless such alarm was raised as a result of the Lessor's negligence.
- (f) The Lessee acknowledges that the Lessor has a policy prohibiting the lighting of fires within the Premises such as in fire places, if installed and the Lessee indemnifies and releases the Minister and Lessor from and against all actions with regard to the Lessor's no fire policy and the Lessee agrees to procure the compliance with such policy by its servants, officers, agents, invitees and subtenants.

## 2.11 Heavy equipment and damage to Building

- (a) The Lessee must ensure that no damage is caused to the Premises, Building or Land and in the event of any such damage, the Lessee must reimburse the Lessor for any cost incurred by the Lessor in the repair of such damage within seven (7) days of demand.
- (b) The Lessee must not permit to be brought on the Premises, the Building or to the pavement or to the road adjacent to the Building, any heavy article likely to cause structural damage to the Building including any beer kegs, gas cylinders, safes, strong rooms, or such items, unless the Lessor's prior written consent is obtained and the Lessor's directions are followed and the Lessor is reimbursed for any damage caused to the Premises or Building as a result, within seven (7) days of demand.
- (c) When requesting the approval of the Lessor, the Lessee must provide the Lessor details of the weight loadings of any heavy equipment and unless this information is provided to the Lessor, the Lessor reserves the right in its absolute discretion to withhold consent to the bringing of such heavy equipment in the Premises, the Building or the road adjacent to the Building. In the absence of an acceptable engineer's certificate of the weight loading of the heavy equipment, the Lessor may engage a structural engineer at the cost of the Lessee to determine and certify the relevant loading capacity.

**2.12 Rules**

- (a) The Lessee must comply with the Rules. Failure to do so will be deemed to be a breach of the Lease.
- (b) The Lessor will not be liable to the Lessee or any other person claiming under the Lessee for any non-enforcement of any of the Rules.

**2.13 Damage to Premises, pets and pest control**

- (a) The Lessee must immediately on becoming aware, give written notice to the Lessor of any infectious illness of a type that requires reporting under any relevant law or damage to the Premises, and take all steps required by the Lessor or any relevant Governmental Agency such as fumigation, disinfection or repair.
- (b) The Lessee must not bring or allow to be brought any pets in the Building or in the Premises (including birds or fish) except for registered guide dogs.
- (c) The Lessee must at its own cost keep the Premises free and clear of pests, insects and vermin including fleas and ticks and if required by the Lessor, at the Lessee's cost engage at regular intervals throughout the Term suitable and competent persons to install, supervise, and maintain controls and safeguards with respect to the Premises, necessary for the purpose of keeping the Premises free and clear of pests, insects and vermin, including procuring and producing on demand when requested by the Lessor a treatment certificate not more than twelve (12) months old from a licensed pest control company reasonably approved by the Lessor in relation to the Premises. The Lessor reserves the right to request additional inspections, treatments or certificates where the Lessor deems it appropriate to do so.
- (d) Where the Lessor considers that a pest infestation either in the Building or adjoining premises has resulted from the Premises or from acts or omissions of the Lessee, the Lessor may carry out the necessary pest inspection, control and treatment and recover all costs on a full indemnity basis from the Lessee within seven (7) days of demand.
- (e) The Lessee will be responsible for the cost of removing any dead vermin, pests or animals located in the Premises.
- (f) Without prejudice to the obligations on the Lessee's part contained in paragraphs (a) to (e) of this clause or elsewhere in the Lease in relation to pest infestation, the Lessee specifically agrees that termite protection, inspection and treatment program is to be the responsibility of the Lessee. Notwithstanding the above, the Lessee agrees that the Lessor will carry out the obligations of the Lessee under this clause whenever it considers necessary at the cost of the Lessee.
- (g) If Structural Works are required as a result of termite damage, in the absence of evidence that such termite damage was caused prior to the Lessee's or its predecessor's occupation of the Premises, all associated costs relating to structural termite damage will be borne by the Lessee, including all Lessor costs of arranging and investigating termite protection. Where proof of an accredited termite program is substantiated, the Lessor accepts responsibility for the resulting Structural Works.

**2.14 ESD**

- (a) The Lessee must where appropriate and relevant participate with the Lessor's Energy Management Policy and Plan, including realising the Lessor's objectives and adopting any guidelines or policies recommended by the Lessor in the Lessor's Energy Management Policy and Plan in so far as it is applicable to the Premises or the Precinct.

- (b) The Lessee must prepare and provide to the Lessor prior to the Lease commencement date an Energy Management Plan with respect to its proposed occupation of the Premises in a format reasonably acceptable to the Lessor and must during the Term perform the objectives stated in such Energy Management Plan.
- (c) In addition to the obligations referred to in paragraphs (a) and (b), the Lessee must:
- (i) supply to the Lessor copies of all waste and utility accounts including electricity, gas, water and trade waste detailing consumption for the relative billing period within the earlier of fourteen (14) days of written request by the Lessor and one (1) month from the date of receipt of such accounts from the relevant authorities or suppliers;
  - (ii) undertake and deliver to the Lessor in a form acceptable to the Lessor an energy audit within six (6) months of the commencement date of the Lease and every five (5) years thereafter;
  - (iii) comply with the Lessor's Fitout Guide on ESD when refurbishing the Premises or when carrying out the Lessee's Fitout;
  - (iv) use its best endeavours to reduce dependence on fossil fuels, through an increase in the use of renewable energy throughout all business activities;
  - (v) where practicable adopt best energy management practices throughout all business activities; and
  - (vi) must participate in any recycling initiative reasonably adopted by the Lessor for the Building from time to time as may be notified to the Lessee or as prescribed under the Rules.

#### **2.15 Use of sanitary and drainage facilities**

The Lessee must not use plumbing facilities in the Premises such as toilets, floor wastes, sinks, grease traps, gutters, storm water drains or any other form of drainage system for any purpose other than that for which they were constructed and any misuse must be fully decontaminated and made good by the Lessee at the Lessee's cost immediately.

#### **2.16 General Lessee's Covenants**

The Lessee must:

- (a) not apply for approval to carry on business from the Premises as a place of public entertainment ("POPE") under the Permitted Use without the prior written consent of the Lessor. Where any POPE has been obtained, the Lessee must at its cost, use its best endeavours to ensure that the Lessee's business is conducted strictly in compliance with the conditions of any POPE and all applicable legislation;
- (b) comply with all occupational health and safety legislation affecting the Premises in particular, the Lessee specifically acknowledges that the Lessee has control of the Premises within the meaning of the Occupational Health and Safety Act 2000;
- (c) not store or use any inflammable or volatile material in the Premises other than in an amount reasonably necessary to carry out the business of the Lessee in accordance with the Lease;
- (d) not use any method of heating other than any airconditioning plant already on the Premises;
- (e) not erect any radio or television aerial or antenna or other telecommunication equipment in the Premises;

- (f) not use any radio, loudspeaker, television, or device of any sort which may be heard from outside the Premises;
- (g) permit the Lessor to exhibit the Premises to prospective tenants or purchasers at all reasonable times including allowing the exhibition of "For Sale" notices at any time and "To Let" notices within the six (6) month period immediately preceding the expiry of the Lease;
- (h) not object to any construction or demolition by the Lessor of any part of the Building or on the Land or any adjoining land as long as the Lessee's rights under the Lease are not substantially and permanently derogated;
- (i) subject to any legislation forbidding or prohibiting carrying on business during certain hours cause the Premises to remain open for business at least during the Business Hours or additional hours that the Building as a whole or part of the Building where the Premises are open with the Lessor's prior written consent;
- (j) not display any signs on the Premises which relate to the closing down or sale of the business carried on by the Lessee at the Premises or the intention of the Lessee to deal with the Lessee's interest under the Lease such as sublease, assignment, etc;
- (k) not install or operate vending machines or other like amusement machines in or outside the Premises;
- (l) not in the Common Areas or elsewhere in the Precinct or the Building distribute handbills, notices, flyers or advertise the Lessee's business by way of A-frame signs, sandwich boards or blackboards or otherwise;
- (m) inform the Lessor from time to time of the names and private addresses of at least two (2) persons for communication in the event of emergency in the Premises or Building;
- (n) not itself nor permit any other person to carry on any offensive or illegal activity on the Premises nor any other activity likely to cause annoyance to any other occupier of the Building or any adjoining building; and
- (o) ensure that all communications with the Lessor are to be in writing and are to be served on the Lessor in accordance with the Lease provided that all emergency maintenance requests are to be made to the Lessor in accordance with the Lessor's directions from time to time.

#### 2.17 No assignment

- (a) The Lessee must not during the Term demise, sublet or part with or share the possession of or grant any licence affecting or mortgage, charge or otherwise deal with or dispose of the Premises or its interest in the Premises or any part thereof. The parties agree that this covenant is an absolute covenant.
- (b) If the Lessee wishes to assign the Lease it must not do so without the Lessor's prior consent. The Lessee must give notice in writing to the Lessor of such desire before doing or attempting any such assignment. The Lessor is entitled to withhold its consent to the proposed assignment in the following circumstances:
  - (i) where the proposed assignee proposes to alter the Permitted Use;
  - (ii) if in the Lessor's opinion, the proposed assignee has financial resources or business skills which are inferior to the Lessee; or
  - (iii) if the Lessee and the assignee do not comply with the following clause.

- (c) For the purposes of this clause, the Lessor is entitled to require the Lessee to furnish the Lessor with:
- (i) details of the Lessee's and the assignee's financial resources and business skills at the time of the request for consent;
  - (ii) such further information as the Lessor may reasonably require concerning the financial standing and business experience of the proposed assignee; and
  - (iii) a copy of any contract between the Lessee and the assignee including all information provided or required to be provided to the proposed assignee under any law.
- (d) For the purposes of the Lessee making a request and the Lessor considering that request under this clause:
- (i) if the assignee is a corporation, the business skills of the assignee include the business skills of those of its directors who have actively participated in the assignee's business and intend to actively participate in the business in the Premises; and
  - (ii) if the Lessor consents to a change of use by the assignee, the assignee's business skills for that use should be compared with the Lessee's business skills for the Lessee's use of the Premises.
- (e) (i) The Lessor may require the assignee to execute an instrument in which the assignee will:
- A. assume liability under the Lease for the residue of the Term;
  - B. acknowledge works being carried out by the Lessor or third parties during the Term in the Building or in the Precinct including acknowledgement from the assignee that no compensation (in whatever form) will be payable for any proposed or actual disturbances including those disclosed to the Lessee prior to the commencement of the Lease or for which the Lessee has already received compensation or where the Lessee has been given the opportunity to claim compensation, and has failed to so claim.
  - C. provide a bond to secure the obligations of the assignee under the Lease; and
  - D. provide or procure personal guarantees acceptable to the Lessor.
- (ii) If the assignee is a corporation whose shares are not listed on an Australian stock exchange, the Lessor may require, as a condition of the Lessor's consent to the assignment, that at least two (2) of its directors or shareholders (chosen by the Lessor) execute personal guarantees in respect of the payment of Rent and the observance and performance of the Lessee's Covenants by the assignee during the Term.
- (iii) The Lessee will pay the Lessor's reasonable legal and other expenses of investigating the Lessee's application for consent and of preparing, executing, stamping and registering all the required instruments or dealings and the costs of obtaining any mortgagee's consent.

## 2.18 No transfer of shares

The Lessee (if a company whose shares are not listed on the Australian Stock Exchange) must not without the prior written consent of the Lessor allow the registration of a transfer of shares which would eventuate in a transferee or transferees controlling the composition of the Board of Directors or controlling more than half the voting power of the company or holding more than half of the issued share capital of the company except where the transferee or transferees had such control or held such shares at the commencement of the Lease.

## 2.19 Repair and maintenance

- (a) Subject to paragraphs (d)-(g), the Lessee must at the Lessee's cost and at all times:
- (i) maintain, repair, replace, and clean the Premises; and
  - (ii) keep the Premises in good and substantial repair, order and condition,
- having regard to their condition at the commencement of the Lease or, in the case of any part of the Premises which has been refurbished, replaced or renewed, to the condition it was in when it was replaced or renewed taking into account its age.
- (b) This clause does not apply to damage by explosion, aircraft, riot, civil commotion, war, earthquake, fire, flood, lightning, storm, tempest or reasonable wear and tear or an act of God unless any insurance payment is irrecoverable due to the neglect, default or misconduct of the Lessee.
- (c) The Lessee agrees that the Premises were in good and substantial repair, order and condition at the commencement of the Term, except as indicated in any attachment to the Lease.
- (d) In the event that the Premises or the Building is a heritage listed property or has been designated as having a heritage interest in **Item 19**, then the Lessee must obtain the Lessor's express written consent before carrying out its obligations under this clause, clauses 2.20, 2.23 and 2.24 and must only use contractors approved in writing by the Lessor in its absolute discretion. Notwithstanding anything contained in this clause, the Lessor may elect to carry out the Lessee's obligations under this clause and clauses 2.20, 2.23 and 2.24 at the Lessee's cost and the Lessee must reimburse the Lessor for such cost within seven (7) days of written demand. A certificate from the Lessor certifying the costs of such works will be sufficient evidence of the amount payable by the Lessee to the Lessor under this clause.
- (e) The Lessor will be responsible for undertaking all Structural Works in the Premises and the Building (it being acknowledged by the Lessee that the Lessor may be the statutory body or the Governmental Agency which determines any requests from the Lessee in relation to any proposed activities affecting the structural integrity of the Premises or Building).
- (f) The Lessor agrees that the Structural Works will be carried out by the Lessor at its cost subject to paragraph (h).
- (g) The Lessee agrees that the Lessor will be entitled to access to the Premises where necessary to carry out such Structural Works and the Lessee agrees that any interruption to the Lessee's business are necessary and that such interruption will not be deemed disturbances for the purposes of the Lease.

- (h) The Lessee agrees that any Structural Works which are required by the Lessee for the Permitted Use, its particular use or occupancy of the Premises or any new Structural Works or repairs which result from the Lessee's activities giving rise to structural damage, including any activity caused by its servants and agents, customers or invitees will be carried out by the Lessor at the Lessee's cost, such costs to be paid within seven (7) days of written demand from the Lessor.

## 2.20 Painting

Subject to clause 2.19(d) if applicable, the Lessee must paint (using at least two (2) coats of paint), paper or otherwise appropriately treat (with good quality, suitable materials and in colours or finishes first approved by the Lessor in writing in its absolute discretion) in a proper and workmanlike manner, each part of the Premises at intervals of not more than three (3) years, and in the last year of the Term and from time to time, if necessary or reasonably required by the Lessor.

## 2.21 Cleaning by Lessee

- (a) The Lessee must clean the interior and exterior of the Premises (including any airconditioning filters, drains, sewers, gutters, downpipes and greasetraps) and the area being within two (2) metres of the shopfront or any entrance to the Premises in a proper and workmanlike manner and during the whole of the Term and remove all dirt, waste and rubbish on a daily basis from the Premises in accordance with the directions of the Lessor from time to time.
- (b) The Lessee is responsible for arranging its own cleaning including any airconditioning filters, drains, sewers, gutters, downpipes and greasetraps and the storage and removal of all rubbish, sullage and garbage including wet refuse daily from the Premises at the Lessee's cost.
- (c) The Lessee acknowledges that the Lessor may at its discretion engage contractors to remove garbage, rubbish, sewerage or sullage from the Building and in such case, the Lessee must:
- (i) allow access to the Lessor and/or its contractors to the Premises wherever necessary;
  - (ii) only deposit garbage or rubbish in receptacles if any, provided by the Lessor in the Building or on adjoining land for that purpose; and
  - (iii) reimburse the Lessor within fourteen (14) days of receipt of an account from the Lessor, such account representing the amount payable by the Lessee as reasonably estimated by the Lessor as applicable to the Premises having regard to the use of the Premises.
- (d) Where the Lessor does not engage contractors contemplated under paragraph (c), the Lessee will at the Lessee's cost be responsible for the storage and removal of all its rubbish, garbage or sullage from the Premises and the Building on a daily basis and at such times of the day or night as the Lessor may direct in writing.
- (e) Without limiting paragraphs (a) and (b), the Lessee must at its cost clean the inside surface of the windows and all internal windows of the Premises and the outside surface of the Premises front windows and other windows on the ground floor, not less than once a month, such cleaning to include windowsills, doors and passageways adjacent to the Premises.
- (f) The Lessee must observe any laws and obtain any required or necessary permits regarding the hosing of any hard surfaces and must ensure that any runoffs, cleaning materials and/or pollutants do not enter into the stormwater by providing adequate runoff barriers.

## 2.22 Maintenance of Lessee's equipment

The Lessee must keep and maintain all its plant and equipment and fixtures, fittings and furnishings clean and in good and substantial repair, working order and condition.

## 2.23 Lighting and glass

Subject to clause 2.19(d), if applicable, the Lessee must promptly replace at its own expense any burnt out, failed or broken lighting and diffusers including emergency/exit lighting and any cracked or broken glass including plate glass in the Premises, whether or not provided or installed by the Lessor at the Lease Commencement Date or during the Term.

## 2.24 Carpet and flooring

The Lessee must use its best endeavours to protect the carpet or any other type of flooring from damage and undue wear and tear and at its expense clean, repair or replace (subject to clause 2.19(d) if applicable) the flooring arising from accidental damage, misuse or neglect by the Lessee.

## 2.25 Insurances by Lessee

The Lessee must:

- (a) effect and maintain adequate public risk insurance in respect of the Premises for an amount which is not less than the amount stated in **Item 12** (such amount as may be reasonably varied by the Lessor during the Term by written notice to the Lessee) and ensure that such insurance covers the indemnities to be given by the Lessee under the Lease;
- (b) insure and keep insured all plate glass which is part of the Premises for its full insurable value;
- (c) keep in force a workers' compensation policy covering all workers relating to its business and, if required by the Lessor a common law extension or endorsement in an amount from time to time nominated by the Lessor;
- (d) keep in force a policy covering all fixtures and fittings in the Premises for their full insurable value;
- (e) take out appropriate insurance cover for all contents in the Premises including all stock and equipment for their replacement and reinstatement value; and
- (f) take out all appropriate insurance cover for interruption of the Lessee's business for a period of no less than twelve (12) months.

## 2.26 Policies

The Lessee must:

- (a) place all insurance policies with an insurer approved by the Lessor (that approval not to be unreasonably withheld) and not make any exclusions, endorsements or alterations to the policies, nor allow them to be made, without the prior written consent of the Lessor;
- (b) take the policies out in the names of the Lessor and the Lessee for their respective rights and interests;
- (c) waive any claim by the insurer against the Lessor;
- (d) lodge with the Lessor any duplicate or certified copies of the policies or renewal certificates and endorsement slips immediately on receiving them; and



- (e) punctually pay all premiums in respect of those policies and renewals of them.

### 2.27 Extra premiums

If as a result of the Lessee's use of the Premises, the Lessor's premium on any insurances is increased, then the Lessee must pay such extra premiums on written demand from the Lessor.

### 2.28 Cost of Lease, etc

The Lessee must pay within fourteen (14) days of written demand:

- (a) reasonable legal costs and all duties, fees, charges and expenses incurred or payable by the Lessor in respect of:
- (i) the preparation, completion, stamping, upstamping and registration of the Lease;
  - (ii) obtaining where necessary, the consent or approval of any party to the grant of the Lease;
  - (iii) the application for the Lessor's consent or approval to anything under or relating to this Lease;
  - (iv) any renewal of the Lease or any other lease granted under an option of renewal;
  - (v) any breach or enforcement of the Lessee's Covenants; and
  - (vi) the exercise of any right, power, privilege, authority or remedy of the Lessor in respect of the Lease; and
- (b) all professional consultants' fees properly incurred by the Lessor in respect of any of the matters referred to in paragraph (a).

### 2.29 The Lessee not to void insurances

The Lessee must not permit any act upon the Premises or the Building or the Common Areas which would void any insurances.

### 2.30 Release of Lessor from accident or damage

- (a) The Lessee agrees to occupy, use and keep the Premises at the risk of the Lessee, as if it were the owner of the Premises and hereby releases to the full extent permitted by law, the Minister, Lessor and its agents, servants, contractors and employees, in the absence of any negligent act or omission or wilful default on their part, from all claims and demands of every kind resulting from any accident, damage, death or injury occurring on the Premises or as a result of anything occurring in the Premises.
- (b) The Lessee EXPRESSLY AGREES that in the absence of any negligent act or omission or wilful default by the Lessor, the Lessor will have no responsibility or liability for any loss of or damage to fixtures and/or personal property of the Lessee wherever occurring.

### 2.31 Specific Lessee's indemnities

- (a) The Lessee indemnifies the Lessor from and against all actions, claims, losses, compensation costs (including solicitor and client costs and costs as between party and party), charges and expenses for which the Lessor may be or becomes liable arising from any use of the Premises, notwithstanding that these have resulted from any act or thing which the Lessee may be authorised or obliged to do under the Lease and notwithstanding that any time waiver or other indulgence has been given to the Lessee in respect of any obligation of the Lessee under the Lease.
- (b) The obligations of the Lessee under this clause will continue after the determination of

the Lease in respect of any act before such determination.

### 2.32 Bank Guarantee

- (a) On or before the date of the Lease, the Lessee must deliver to the Lessor a valid, enforceable, irrevocable unconditional banker's undertaking or unlimited bank guarantee with no expiry date, in favour of the Lessor (and where not prohibited by law, to any assignee or successor of the Lessor) upon terms satisfactory to the Lessor to pay at the Lessor's and its assignee's or successor's demand, any demanded sum or sums up to the Guaranteed Sum ("**Bank Guarantee**").
- (b) (i) The Lessor must not make demand on the Bank Guarantee unless the Lessee fails to punctually pay the Rent or any other money under the Lease or the Lessee fails to observe any of the provisions of the Lease.
- (ii) The Lessee agrees that the bank must act immediately on demand by the Lessor without reference to the Lessee and notwithstanding notice from the Lessee to the bank not to pay to the Lessor any money.
- (iii) The Bank Guarantee must continue in force either until payment to the Lessor by the bank of the whole of the Guaranteed Sum or until the bank receives written notice from the Lessor that the Bank Guarantee is no longer required or the Bank Guarantee is returned to the bank with the Lessor's consent.
- (iv) The Lessor agrees to give notice to the bank or return the Bank Guarantee as soon as practicable after the first to occur of:
- A. the expiration or earlier termination of the Lease; and
- B. in the event of an assignment of the Lease by the Lessee with the consent of the Lessor or under the terms of the Lease, upon the assignee delivering to the Lessor a new Bank Guarantee which satisfies the requirements of paragraph (a),
- provided that there are then no moneys outstanding under the Lease nor any breaches of the Lease nor any claims by the Lessor against the Lessee under the Lease.
- (c) Notwithstanding anything expressed or implied to the contrary, acceptance of the Bank Guarantee or payment under the Bank Guarantee will not affect or limit the rights of the Lessor under the Lease or operate as a waiver of the Lessee's breach.
- (d) If any payment is made to the Lessor consequent on a demand made under paragraph (b), the Lessee must immediately obtain and deliver to the Lessor a fresh Bank Guarantee for an amount not less than the Guaranteed Sum to the intent that there must be maintained during the Term a Bank Guarantee which secures the Lessor for the Guaranteed Sum.
- (e) The Lessor may by written notice during the Term require the Lessee to increase the amount of the Bank Guarantee in line with actual increases in the Rent, the Outgoings Rent and GST. The Lessee must replace the Bank Guarantee as required by the Lessor within fourteen (14) days of receiving the Lessor's written notice.
- (f) Where there is a change of Lessor and the Bank Guarantee is not assignable, at the request of the current registered proprietor, the Lessee must replace the Bank Guarantee with a Bank Guarantee in favour of such current registered proprietor within fourteen (14) days of written request.

**2.33 Lessee to comply**

The Lessee must at all times observe the reasonable requirements of the Lessor with regard to plant and services and will not do anything likely to interfere with the efficient operation of plant and services in the Premises or the Building.

**2.34 Keys, access control cards or devices**

- (a) All keys, access control cards or devices ("**keys**") including any copies of such keys made with or without consent of the Lessor in relation to the Premises and held by the Lessee during its occupancy whether provided by the Lessor or made or procured by the Lessee for its own use must be surrendered to the Managing Agent or the Lessor on termination or prior expiry of the Lease.
- (b) The Lessee must not make any copies of the keys (without the consent of the Lessor) and must not permit the keys for the Premises or Common Areas to come into the possession of any person other than the Lessee's servants or agents.
- (c) Any additional keys required by the Lessee must be obtained only from the Lessor at the cost of the Lessee. Where the Lessee has misplaced or has had any keys stolen, the Lessor may at its discretion (having regard to the security implications) re-key the Premises or Building where applicable at the cost of the Lessee.

**2.35 Attorney**

The Lessee irrevocably appoints the Lessor to be the true and lawful attorney of the Lessee to execute on behalf of and in the name of and as the act and deed of the Lessee a surrender of the Lease and if necessary a withdrawal of any caveat registered by the Lessee against the Premises or the Land as may be necessary to obtain registration of the surrender of the Lease or withdrawal of caveat, provided always that this power is exercised by the Lessor in accordance with the Lease. This clause will be sufficient proof of the authority of the Lessor.

**2.36 Lessee's trade name**

- (a) The Lessee will operate only under a name which is approved in writing by the Lessor which approval will not be unreasonably withheld.
- (b) The Lessee may not trade under a name or use a name which includes the name of the Lessor, the Building or Precinct outside the Building or the Precinct. This clause will survive the termination of the Lease.
- (c) If the Lessee's business or trade name includes words associating the business with the Lessor, the Building or the Precinct, the Lessee will forthwith on the termination of the Lease transfer that name to the Lessor or discontinue the use of such name and agrees not to use any business or trade name which associates the business with the Lessor, the Building or the Precinct. This clause will survive the termination of the Lease.

**2.37 No partnership**

The Lessee must not in any way hold itself out as a partner of the Lessor in the conduct of its business or otherwise or a joint venturer or a member of a joint enterprise with the Lessor.

**2.38 Superior Interest or concurrent lessee**

- (a) The Lessor may at any time assign its interest in the Lease to any person provided that the assignee has title to or a concurrent lease over the Land or the Premises following the assignment.
- (b) If the Lessor:
  - (i) sells the Land; or

- (ii) grants a concurrent lease over the Land or the Premises so that the Lessee becomes obliged to perform its obligations under this deed in favour of another person, then:
- A. the Lessor is released from its obligations under the Lease arising after the Lessee receives notice of that event;
  - B. the Lessee must procure the changes required by that other person to any insurances because the Lessee becomes obliged to perform its obligations under the Lease in favour of another person;
  - C. the Lessee must give that other person a replacement performance bond or bonds in favour of that other person, such performance bond or bonds to be in the same form (except as to the favouree) and for the same amount as the Bank Guarantee at the cost of the Lessor;
  - D. the Lessee must enter into those documents and assurances the Lessor or that other person reasonably requires to enable that other person to enforce the benefit of all obligations owed under the Lease in that other person's name; and
  - E. the Lessor must pay the reasonable costs incurred by the Lessee in complying with the Lessee's obligations under paragraphs C and D.

### 2.39 GST

- (a) If any Supply made by the Lessor under the Lease (including the supply of the right to occupy the Premises and the supply of any other rights, goods, services, benefits or other things) is subject to the GST, the Lessee must pay in addition to the consideration payable by the Lessee for the relevant Supply, the GST amount.
- (b) The GST amount:
  - (i) is equal to the consideration payable by the Lessee for the relevant Supply multiplied by the prevailing GST rate (currently ten percent (10%)); and
  - (ii) is payable at the same time and in the same manner as the consideration for the Supply to which the additional amount relates.
- (c) The Lessor must give to the Lessee a GST Invoice in respect of any payment received by the Lessor from the Lessee that relates to any Supply made by the Lessor under the Lease which is subject to GST.

### 2.40 Contaminated Land Management Act 1997

- (a) The Lessor warrants that as at the date of the Lease it is not aware that the Premises are "contaminated" as defined in the Contaminated Land Management Act 1997 (NSW) ("**CLM Act**").
- (b) In the event that any Governmental Agency serves a notice in relation to the Premises for the remediation of contaminated land in relation to the Premises, the Lessee will be deemed to be the "appropriate person" with respect to the Premises and will be responsible for bearing the costs of any investigation or remediation required under the CLM Act.
- (c) The Lessee indemnifies the Lessor and the Minister in relation to all costs and expenses incurred by the Lessor or the Minister in relation to any investigation or remediation required under the CLM Act, unless it can be shown that such contamination occurred prior to the Lessee or its predecessor entering into possession of the Premises.

- (d) This clause will not merge on the expiry or the earlier determination of the Lease.

#### 2.41 Special promotions and events

- (a) The Lessee acknowledges that the Premises forms part of a tourist destination and that the Precinct is known for its tourist activities and events. The Lessee agrees to use all reasonable endeavours to co-operate at no cost to the Lessor with arrangements made in relation to such special events or promotions organised by the Lessor on the Land or in the Precinct (as the case may be) from time to time during the Term.
- (b) The Lessee may not withhold any payment of Rent or other moneys under the Lease, object, claim any compensation or terminate the Lease if during any special event or any regular event organised by the Lessor within the Precinct, access to the Premises or pedestrian or vehicle flow or the Lessee's trade or business is affected in any manner or for any interruption of the Lessee's business whatsoever provided that such interruption only lasts for the duration of the event and during installation and removal of any necessary set up.
- (c) Where the Premises are within The Rocks, the Lessee acknowledges the operation by the Lessor of The Rocks Market on Saturdays, Sundays and occasional public holidays and agrees that it has acquainted itself with the effects of The Rocks Market, in particular, the road closure times, non-availability of parking and the noise and possible pedestrian traffic changes. The Lessor reserves the right to close-off temporarily any streets within The Rocks including pedestrian, vehicle and service access to certain streets. The Lessee agrees it will not make any claim against the Lessor in relation to any losses, damages, disruption or loss of business caused by The Rocks Market in any manner whatsoever.

#### 2.42 Stairs

- (a) Without limiting anything contained in the Lease, the Lessee specifically acknowledges that the Premises may contain internal stairs ("**stairs**") which will be used by the Lessee and its customers and that the stairs were in good repair and order and were safe for the proper use by the Lessee, its customers and invitees.
- (b) The Lessee agrees that if it proposes to carry out any alteration to the stairs, as part of its fitout, that it must ensure that prior to making any alterations to the stairs or the Premises, the Lessee obtains the Lessor's consent to such works and all necessary approvals from the relevant Governmental Agencies.
- (c) The Lessee covenants that any works are to be carried out by a proper qualified contractor approved by the Lessor in accordance with the approved plans by the Lessor and any relevant Governmental Agencies and in accordance with the Lessor's instructions having regard to the heritage or historical nature of the stairs or Premises if any.
- (d) The Lessee agrees to put up a clearly visible sign at both ends of the stairs to read as follows:
- 'Warning. Please use caution when using the stairs.'*
- (e) The Lessee indemnifies and releases the Lessor from any liability in relation to any claim for any injury, death, costs, damages or losses suffered by any party in relation to the stairs in the absence of any negligent act of the Lessor.

#### 2.43 No auction, fire or closing down sales

The Lessee will not conduct or allow any auction sale, fire sale, warehouse sale, closing down or liquidation sale in the Premises.

### **Part 3 - Lessor's Powers and Covenants**

#### **3.1 Lessor may inspect**

- (a) The Lessor may at any time enter the Premises providing the Lessee reasonable notice having regard to the circumstances, where the Lessor needs to access, service, repair, replace or maintain service hatches, electrical/data/communications, distributions boards, shared junction points, service valves, isolation cocks and such other facility, service or installation which may be located in the Premises. For the purposes of this paragraph, reasonable notice will be one (1) hour in the case of urgent work, and no notice will be required in the case of an emergency.
- (b) The Lessor may, at any time on giving the Lessee reasonable notice (other than in an emergency, when no notice is required) enter the Premises to ascertain that the Lessee is complying with the Lessee's Covenants and to view the state of repair of the Premises.
- (c) The Lessor may serve on the Lessee a notice in writing of any defect (the repair of which is the Lessee's obligation under the Lease) requiring the Lessee to repair the defect.
- (d) In default of the Lessee satisfactorily repairing the defect, the Lessor may enter and remain on the Premises and execute the repairs as if it were the Lessee. The Lessee may not claim any compensation for any disturbance in that regard.
- (e) The Lessee agrees and acknowledges that the Lessor will have unlimited access during Business Hours or outside Business Hours (in the case of an emergency) to enter the Premises to inspect, repair, maintain, upgrade or do any works or replace any electrical distribution boards, water meters, shared isolation cocks, plumbing, airconditioning and any other plant, equipment or fixtures which are shared with other premises or which are the responsibility of the Lessor to repair or maintain under the Lease.
- (f) The Lessee must pay to the Lessor on demand all costs of the Lessor in carrying out such work including all sums paid or payable for any insurances or indemnities or compensation under any relevant workers compensation legislation.
- (g) Unless the costs are reimbursed to the Lessor within twenty-eight (28) days of demand, then interest at the rate specified in **Item 13** will be payable from the time of expenditure to the date of payment.

#### **3.2 Lessor may repair**

- (a) The Lessor may at any time, on giving the Lessee at least one (1) month's notice (other than in order to comply with any request, requirement, notification or order of any Governmental Agency or in an emergency, when only such notice as is reasonably practicable in the circumstances is required) enter upon the Premises with any consultants, workmen, other persons or materials needed to carry out any Structural Works, repairs, renovations, maintenance, modifications, extensions or alterations to the Premises or the Building regarded as necessary or desirable by the Lessor.
- (b) The Lessor, in exercising its powers under this clause, must use its reasonable endeavours to cause as little inconvenience as possible to the Lessee in the circumstances.

#### **3.3 Quiet enjoyment**

Subject to clauses 2.41(b) and (c) and 3.8, the Lessee, while performing the Lessee's Covenants, may peaceably possess and enjoy the Premises during the Term with minimal interruption or disturbance from the Lessor or any person lawfully claiming under the Lessor, except as may be authorised by the Lease.

### 3.4 Air-conditioning and Plant

- (a) Without limiting clause 3.12, where any plant, machinery or equipment for heating, cooling or circulating air or any lifts or escalators ("**Plant**") are provided in the Building or the Premises by the Lessor for use by the Lessee in conjunction with other persons in the Building:
- (i) the Lessor will use its reasonable endeavours to ensure that the Plant is kept working and reasonably available for the use of the Lessee whenever the Building is open to the public (delays or stoppages due to repairs, maintenance, strikes, accidents or other unavoidable causes excepted);
  - (ii) the Lessee must observe the reasonable requirements of the Lessor with regard to the Plant and will not interfere with or impair the efficient operation of the Plant;
  - (iii) the Lessee may not determine the Lease or set off any moneys payable under the Lease for the Plant failing to function for any reason;
  - (iv) the Lessee may not seek compensation for a breakdown of the Plant under the Lessor's care or maintenance provided that the Lessor rectifies the problems as soon as reasonably practicable after being requested in writing by the Lessee to do so; and
  - (v) the Lessor and the Lessor's engineers or mechanics may enter the Premises to repair, maintain or replace the Plant or any part of it.
- (b) Where any Plant is provided in the Premises or the Building for the exclusive use of the Lessee, the Lessee must maintain, service and repair at its cost the Plant and if required by the Lessor must enter at the Lessee's cost into a service maintenance and repair (including six monthly inspections) contract with a reputable company acceptable to the Lessor and provide at the Lessor's request, documentary evidence to that effect.

### 3.5 Holding-over

- (a) Subject to clause 3.7, if the Lessee holds over after the expiration of the Term with the consent of the Lessor, it will be as a monthly tenant at a monthly rental equivalent to a monthly proportion of the Rent and other payments payable by the Lessee at the expiration or sooner determination of the Term multiplied by one hundred and ten percent (110%), but otherwise on the same terms and conditions as the Lease.
- (b) The monthly tenancy created in accordance with paragraph (a) is terminable by either party on one month's prior written notice, provided that if the Lessee is in default of its obligations under this clause, then the Lessor may determine such tenancy on seventy-two (72) hours' prior written notice.
- (c) During the holdover period, the Rent will be increased on each anniversary of the commencement date of the holdover period by ten percent (10%) per annum.

### 3.6 Make good and reinstatement of Premises

- (a) The Lessee must at or prior to the expiration of the Lease:
- (i) unless agreed otherwise in writing by the Lessor, remove from the Premises all fixtures, fittings, fasteners, plant, equipment or other articles brought onto the Premises by the Lessee (or its predecessor where the Lease has been assigned to the Lessee or where the Lessee had purchased such items from a previous occupier) without damaging the Premises or the Building; and

- (ii) repair any damage to the Premises (whether caused by installation or removal of fixtures, fittings, plant, equipment or other articles brought onto the Premises by the Lessee or otherwise) to the satisfaction of the Lessor, restore the Premises to a condition consistent with the Lessee's Covenants under the Lease and remove all rubbish and leave the Premises in a clean and repaired state and condition having regard to the Lessee's Covenants.
- (b) If the Lessee does not remove all fixtures, fittings, plant, equipment and other articles referred to in paragraph (a), the Lessor may either at the expense of the Lessee remove and store those items and/or elect that any item not removed by the Lessee or the Lessor will become the property of the Lessor, for which the Lessee will not be entitled to any compensation.
- (c) Notwithstanding anything in the Lease unless directed by the Lessor, the Lessee will not be entitled at any time to remove that part of the Premises being the Premises glass front if any and any other fixtures agreed by both parties to form part of the Premises and the Lessee specifically agrees that ownership of the Premises glass front and such fixtures will on any termination of the Lease vest in the Lessor at no cost to the Lessor notwithstanding whether they were installed or paid for by the Lessor or Lessee, unless so directed by the Lessor.
- (d) If the Lessee has not complied with this clause, without limiting the Lessor's rights under paragraph (b), the Lessee will be obliged to pay Rent and any other monies payable under the Lease for the period that the Lessee's fixtures, fittings and other articles remain in the Premises whether or not the Lease has expired and/or whether or not the Lessee is carrying on business during that period.

### **3.7 Conclusion of the Lease**

- (a) The Lessee acknowledges that the Lease is for the Term and that no representation has been made to the Lessee that any extension or renewal of the Lease will be granted by the Lessor save for any option to renew the Lease expressly provided for in the Lease and for the provisions of paragraph (b).
- (b) Unless the Lessee has obtained the Lessor's prior written consent to hold over under clause 3.5(a), the Lessee must yield the Premises to the Lessor on the expiry date or any earlier date of termination pursuant to the Lease and the Lessee acknowledges that the Lessor has the right to vacant possession of the Premises and that the Lessee is not entitled to any compensation whatsoever in relation to vacant possession being required by the Lessor in accordance with the Lease.

### **3.8 Lessor's Disclosures**

- (a) The Lessee acknowledges and agrees that:
  - (i) it has made its own enquiries regarding the Premises, Building and any proposals or work to be carried out to the Premises, Building, Precinct or Land prior to entering into this Lease; and
  - (ii) it may not claim any compensation or damages or costs relating to any matters that should have been discovered on any enquiry.



- (b) In addition the Lessee may not make any claim for compensation or take any other action:
- (i) in respect of any particular occurrence, if the anticipated disturbance was specifically drawn to the attention of the Lessee or its predecessor (in the case of an assignee) in writing before the Lease was entered into. In this regard without limiting the following paragraphs and provisions of the Lease, the Lessor also confirms that it proposes special events from time to time and to refurbish and upgrade the Building and continue to refurbish, upgrade and develop the Land and that not all the development may be completed prior to the commencement date of the Lease. The Lessee acknowledges that there may have been specific disclosures regarding proposed redevelopments, refurbishments or upgrades made to the Lessee in that regard, and/or as may also be specifically disclosed in **Annexure B** to the Lease if any;
  - (ii) in relation to any Structural Works or any work being carried out by the Lessor under:
    - A. the SCRA Act (if applicable);
    - B. the SHFA Act (if applicable);
    - C. any other work required by any legislation or building code whether passed or recommended only;
    - D. to the Building or Premises to comply with such legislation, building code or to make the Building or Premises a safer work or public environment; or
    - E. the Lease including maintenance, repair (which may include the provision of or replacement of any services, pipes, lines, etc), construction, renovation, upgrade, refurbishments and extension of the Building and adjacent areas and other areas of the Precinct (if applicable).

and in doing so, the Lessor may from time to time close off certain areas of the Precinct (if applicable) including some accesses to the Building or Premises to carry out such works provided the Lessor causes as little inconvenience as possible in the circumstances;
  - (iii) in respect of The Rocks Market or any events in the Building, the Precinct or the Land organised by the Lessor on its own or together with any third party which may include the temporary closing off of certain areas of the Precinct or the Land or access to the Premises or Building.

### 3.9 Maintenance of Common Areas

- (a) Subject to and without limiting clause 3.8(b), the Lessor will maintain the Common Areas in a good state of repair and in a clean and tidy condition but if any part of the Common Areas requires repair (which may include the provision of or replacement of any services, pipes, lines, etc) or cleaning or if it becomes necessary for the Lessor to prevent access to any part of the Common Areas for the purpose of cleaning, refurbishing, upgrading, maintaining or repairing such part of the Common Areas, the Lessee will not be entitled to terminate the Lease by that reason alone nor will the Lessor have any liability to the Lessee in that respect.
- (b) The Lessor agrees that it will give two (2) days' notice to the Lessee if any part of the Common Areas is required to be closed off except in the case of emergency repair where no notice will be required.

### 3.10 Use of Common Areas

The Lessor will allow the Lessee and the Lessee's officers, employees, agents, contractors and bona fide customers to use the Common Areas in common with others for the purposes of which such Common Areas were designed or intended by the Lessor to be used provided that:

- (a) the Lessor may deny access to the Common Areas to any person who does not observe the Rules or whose behaviour is otherwise unsatisfactory to the Lessor provided that the Lessor will act reasonably in that respect;
- (b) the Lessor may restrict or deny access to all or any other Common Areas outside the hours being within one hour of the Business Hours;
- (c) the Lessor may permit any person or organization to hold any function entertainment exhibition or display or to sell any merchandise or to organise any event in any part of the Common Areas at times and on terms and conditions that the Lessor determines; and
- (d) the Lessor may install a public address system in the Building and may broadcast music or public announcements on the system.

### 3.11 Structures and Common Areas

The Lessor reserves the right from time to time during the Term to construct or erect, remove and re-erect kiosks, signs, seats and other structures in the Common Areas and to grant exclusive use of any such structures to any person for such purposes and for such periods and upon such terms and conditions as the Lessor thinks fit in its absolute discretion. The Lessor may also permit the installation of vending machines by any person in the Common Areas including the toilets.

### 3.12 Services

- (a) The Lessor has complete control of the provision of services in or to the Building and may in its discretion vary the level of provision of such services including without limitation the level of lighting and air conditioning in the Building and the number of elevators and escalators operating in the Building and the Lessee expressly acknowledges that the Lessor gives no warranty that all or any part of the services must operate or operate at any particular level at any time or times.
- (b) The Lessor will not in any circumstances be liable to the Lessee for any loss or damage suffered by the Lessee for any malfunction, failure to function or interruption of or to any services contained in or appurtenant to the Premises, the Building or the Precinct or for the blockage of any sewers, drains, gutters, downpipes or storm water drains from any cause.

### 3.13 Directory boards

- (a) Any directory boards provided by the Lessor are under the sole control of the Lessor and the Lessor may allot space on any such directory board for the names and description of some or all of the occupiers of the Building in a format and design prescribed by the Lessor in its absolute discretion.
- (b) If the Lessee is allotted space on any such directory board, the Lessee's name and description and manner of their display will be subject to the approval of the Lessor and must be erected and removed by the Lessor (including any change of detail requested by the Lessee) at the cost of the Lessee.

### 3.14 Security

The Lessor has no liability to the Lessee whatsoever in relation to any personal or property safety or security of the Premises, the Building or the Precinct unless specifically provided for in the Lease.

### 3.15 Subdivision and strata

Notwithstanding any other provision of the Lease, the Lessor is entitled at any time during the Term to consolidate or subdivide the Land by way of strata, community, neighbourhood or other plan and prepare the appropriate plan ("Plan") in respect of such subdivision (provided that the Lessee's liability to pay the Outgoings Rent is not increased as a result) in which event:

- (a) the Lessee must, on request, furnish to the Lessor at the Lessor's reasonable expense the Lessee's written consent to the registration of the Plan by the Lessor;
- (b) the Lessor reserves the right to create and register such easements, covenants or restrictions as to user as may be desirable in the Lessor's reasonable opinion or as may be necessary to obtain the approval of the Plan by any relevant Governmental Agency;
- (c) the Lessee will make no objections, requisition or claim for compensation in respect thereof provided that the Lessee's use of the Premises and the Common Areas is not affected; and
- (d) subject to the above paragraphs, the Lessee will execute any documents necessary to enable the Lessor to exercise its rights under this clause.

## Part 4 - Abatement

### 4.1 Termination or abatement on damage

- (a) The following provisions apply if all or any part of the Building is destroyed or damaged (to the extent that it renders the Premises during the Term substantially unfit for the use of occupation of the Lessee) or the Premises is destroyed or damaged or resumed or compulsorily acquired by any Governmental Agency.
- (b) Either the Lessor or the Lessee may terminate the Lease on not less than seven (7) days' written notice to the other without being liable to pay compensation in the case of resumption or compulsory acquisition or where the Lessor considers any damage such as to make repair impracticable or undesirable and notifies the Lessee in writing of that fact.
- (c) Termination under this clause is without prejudice to any rights of the Lessor and Lessee in respect of any prior breach, matter or thing.
- (d) Nothing expressed or implied in the Lease imposes any obligation on the Lessor to rebuild or reinstate the Building or the Premises or otherwise make them fit for occupation.
- (e) The Rent (or a portion of it) and any other moneys payable by the Lessee in respect of Lessor's Outgoings or other charges, will abate according to the nature and extent of the damage or destruction which occurs, until the earlier of:
  - (i) the Premises being rebuilt, reinstated, accessible or otherwise made fit for the occupation and use of the Lessee; or
  - (ii) the Lease being terminated under the provisions of this clause.
- (f) If the Lessor fails to repair the damage within a reasonable time after the Lessee requests the Lessor to do so in writing, the Lessee may terminate the Lease on giving not less than seven (7) days' written notice.

**Part 5 - Default by Lessee and Termination of Lease**

**5.1 Default by Lessee**

It will be a default by the Lessee in any of the following circumstances:

- (a) if the Rent or any moneys payable by the Lessee to the Lessor under the Lease including Outgoings Rent is unpaid or in arrears for fourteen (14) days after the due date whether any formal or other demand has been made or not;
- (b) if the Lessee has not commenced the repairs required by any notice given by the Lessor to the Lessee under the Lease within a reasonable time after the giving of such notice;
- (c) if the Lessee has failed to observe any of the Lessee's Covenants;
- (d) if the Lessee being a company has a liquidator or a receiver or official manager or provisional liquidator or administrator appointed to it;
- (e) if the Lessee's interest in the Lease is attached or taken in execution under any legal process; or
- (f) if the Lessee has failed to comply with any order made by any Governmental Agency (including the Lessor if applicable) for a breach of any relevant legislation pertaining to the Premises or the Permitted Use at the Premises, within a reasonable time of being notified by the Lessor that the Lessee is in breach of any order made by the relevant Governmental Agency.

**5.2 Lessor's rights on default**

If the Lessee has defaulted, the Lessor may (after first giving prior notice where required by law) at its option:

- (a) without any prior demand or notice re-enter into and take possession of all or part of the Premises (by force if necessary) and eject the Lessee and all other persons from the Premises and repossess and enjoy the Premises as if the Lease had absolutely determined; or
- (b) by notice in writing to the Lessee, determine the Lease and from the date of giving such notice the Lease will be absolutely determined; or
- (c) by notice in writing to the Lessee elect to convert the Term into a tenancy from week to week in which event the Lease will be determined as from the giving of such notice and thereafter the Lessee will hold the Premises from the Lessor as tenant from week to week at a weekly rental equal to one (1) week's proportion of the Rent and other payments under the Lease commencing from the date of service of such notice (such rental being payable weekly in advance) but otherwise on the terms and conditions of the Lease, so far as they can be applied to a weekly tenancy; and
- (d) upon re-entry remove any contents including all plant, equipment, stock-in-trade and fixtures and fittings of the Lessee from the Premises and either store them at the cost of the Lessee or deal with them as the Lessor sees fit without being deemed guilty of conversion or liable for any loss whatsoever.

### 5.3 Essential terms

- (a) The Lessee hereby agrees that the following are essential terms of the Lessee's agreement with the Lessor, namely:
- (i) that the Lessee holds the Premises for the whole of the Term;
  - (ii) that the Lessee carries out in the Premises only the Permitted Use and complies with clause 2.6(a) of the Lease;
  - (iii) that the Lessee pays the Rent and all moneys payable by the Lessee under the Lease;
  - (iv) that the Lessee will not assign the Lease in breach of the Lease nor sub-let, part with, share the possession of, mortgage, charge or otherwise deal with any part of the Premises or by any act procure any of those things;
  - (v) that the Lessee keeps the Premises open for business at least during the Business Hours in accordance with clauses 2.7 and 2.16(i);
  - (vi) that the Lessee repairs, maintains, paints and cleans the Premises in accordance with clauses 2.19, 2.20 and 2.21; and
  - (vii) that the Lessee complies with the insurance provisions of the Lease.
- (b) In the event of a breach of an essential term, in addition to the remedies referred to in clause 5.2, the Lessor will be entitled to recover from the Lessee damages for all loss suffered because the Lease will not run the Term including, but not limited to the costs of recovery of possession, the costs of reinstating the Premises, the costs of re-letting and any loss arising out of any lapse of time before re-letting or any re-letting at a rent and upon terms not as advantageous to the Lessor as the terms of the Lease.

### 5.4 Failure by Lessee to pay moneys

If the Lessee fails to pay any moneys due to any person other than the Lessor, or if the Lessee fails to perform any affirmative covenant on the part of the Lessee, the Lessor may at its option as the agent of the Lessee, make such payment or do such acts and incur such expenses as may be necessary to perform those covenants and the full amount of any payments made or expenses incurred together with any interest due on such payments, constitutes a liquidated debt due and owing by the Lessee to the Lessor and must be paid by the Lessee to the Lessor on demand by the Lessor.

### 5.5 No waiver

A consent or waiver expressed or implied by the Lessor of any breach of any Lessee's Covenant will not be constructed as a consent or waiver of any other breach of the same or any other covenant, condition or duty.

### 5.6 Interest on overdue money

Without prejudicing the Lessor's rights, powers and remedies under the Lease relating to any unpaid rent or any other moneys due but unpaid by the Lessee to the Lessor under the Lease (although no formal or legal demand has been made), the Lessee must pay interest on any amount remaining unpaid from time to time at the rate referred to in **Item 13 AND** a certificate by an authorised agent of the Lessor as to any amount payable by the Lessee pursuant to this clause will be prima facie evidence thereof.

## Part 6 - Miscellaneous Provisions

### 6.1 Entire understanding

- (a) The Lease contains the entire understanding and agreement between the parties as to the letting of the Premises during the Term.
- (b) All previous agreements, negotiations, understandings, representations, warranties, statements, memoranda or commitments in relation to, or in any way affecting, the letting of the Premises during the Term are merged in and superseded by the Lease and are of no force or effect whatsoever unless specified in the Lease and neither party is liable to the other in respect of such matters.
- (c) No oral explanation or information provided by either party to the other affects the meaning or interpretation of the Lease or constitutes any collateral agreement, warranty or understanding between the parties.

### 6.2 Reliance on representations

The Lessee warrants that:

- (a) the Lessee has made such enquiries as it requires to make in respect to the Premises before entering in the Lease; and
- (b) the Lessee is not relying on any representations made by or on behalf of the Lessor in entering in the Lease and that, the Lessee agrees that it has not been induced to enter in the Lease by any representation made by or on behalf of the Lessor, and that the Lease contains all relevant conditions governing the agreement between the parties.

### 6.3 Notices

- (a) Any demand, consent or notice may be given to or served upon the parties by being posted by pre-paid mail or left in the case of the Lessee at the Premises or the address referred to in **Item 2** or in the case of the Lessor at the address referred to in **Item 1** or if no such address is available, at the registered address of the Lessor. Any demand, consent or notice may be signed by the Lessor or other authorised officer or the lawyer for the time being of the Lessor.
- (b) Any notice or communication given will be treated as having been given and received by the addressee:
  - (i) if by delivery in person, when delivered to the addressee;
  - (ii) if by post, three (3) business days from and including the date of postage;
  - (iii) if by facsimile transmission, when transmitted to the addressee;
  - (iv) if the delivery or receipt is on a day which is not a business day in New South Wales or is after 5.00 pm (addressee's time) it is treated as being received at 9.00 am on the following business day; and
  - (v) in this clause a reference to an addressee includes a reference to an addressee's officers, agents or employees.

### 6.4 Consents

In any case where consent of the Lessor is required in the Lease, such consent may be given conditionally or unconditionally or withheld by the Lessor in its absolute, uncontrolled discretion unless otherwise provided. Consents or approvals by the Lessor may be signed by the Lessor or the Director or any person duly authorised by the Lessor for that purpose from time to time.

## 6.5 Exclusion of warranties

Without prejudice to clauses 6.1 and 6.2, the Lessee acknowledges that no representation, warranty or undertaking expressed or implied has been given by or on behalf of the Lessor:

- (a) that the Development Area will be redeveloped in accordance with the approved scheme referred to in Part IV of the SCRA Act;
- (b) in respect of the carrying out of any redevelopment within the Development Area;
- (c) in respect of the suitability of the Premises for any business to be carried on thereon or use proposed by the Lessee for the Premises including the Permitted Use; and
- (d) in respect of the location or availability of drainage, electricity, gas, telephone, air conditioning, plant or other services, from or to the Premises or the Building.

## 6.6 Application of Lease

The Lease will, for the purpose of determining the rights and obligations of the parties, be construed as if it had been executed on the day from which the Term is expressed to run.

## 6.7 Minister's approval

The Lessor has prior to execution of the Lease obtained, where necessary, the approval of the Minister or any other third party to the grant under terms, conditions and covenants of the Lease.

## 6.8 Non-smoking

The Lessee acknowledges that the Lessor currently has a policy prohibiting smoking in the Premises and the Common Areas and reserves the right to prohibit smoking in the Building or the Precinct during the Term. The Lessee indemnifies and holds indemnified the Minister and Lessor from and against all actions with regard to the Lessor's non-smoking policy and any future policy and the Lessee agrees to procure the compliance with such policy within the Premises and the Common Areas by its servants, officers, agents, invitees and subtenants.

## 6.9 Name of Building

The Lessor reserves the right that at any time or from time to time to create a logo or change the name of the Building without being liable for compensation to the Lessee in any respect.

## 6.10 Managing Agent

The Lessor may from time to time appoint the Managing Agent to manage the Building. The Managing Agent will represent the Lessor in all matters relating to the Lease except as notified by the Lessor in writing directly to the Lessee.

## 6.11 Non-merger

None of the terms or conditions of the Lease nor any act matter or thing done under or by virtue of or in connection with the Lease or any other agreement between the parties hereto shall operate as a merger of any of the obligations, rights and remedies of the parties in or under the Lease or in or under any such other agreement all of which shall continue in full force and effect.

## 6.12 Executed as a deed

The parties agree that this document has been executed by them as a deed.

**Part 7 - Guarantee and indemnity**

**7.1 Guarantee and indemnity**

- (a) In consideration of the Lessor at the request of the Guarantors entering into the Lease (which request is acknowledged by the Guarantors' execution of the Lease), the Guarantors if more than one, jointly and severally guarantee to the Lessor:
- (i) the due and punctual payment of the Rent, and any other moneys due by the Lessee to the Lessor or any other person or authority pursuant to the Lease; and
  - (ii) the punctual observance and performance by the Lessee of the covenants and provisions contained in or implied under the Lease,
- for the whole of the Term and any renewal thereof and any holding over period and must immediately upon demand by the Lessor in the event of default by the Lessee under the Lease during the Term or any renewal thereof or any holding over period, pay the Rent and other moneys due by the Lessee to the Lessor or any other person or authority and perform the obligations of the Lessee under the Lease.
- (b) The Guarantors also agree with the Lessor to be liable for and to indemnify and keep indemnified the Lessor against all and any actions, claims, suits, demands, proceedings and losses which the Lessor may incur or be liable for or be made or taken against or upon the Lessor as a result of any default act or omission of the Lessee, or the provisions of section 568 of the Corporations Act under the terms of the Lease for the whole of the Term and any renewal thereof and any holding over period, notwithstanding that for any reason whatsoever the Lease is not enforceable against the Lessee or this guarantee and indemnity are not enforceable against any of the Guarantors.
- (c) The Guarantors further agree (any rule of law or equity to the contrary notwithstanding) that the guarantee and indemnity given by the Guarantors where more than one jointly and severally under this clause is a continuing guarantee and indemnity and that neither:
- (i) the granting of any time, credit, concession or indulgence to the Lessee or the Guarantors or any of them;
  - (ii) nor the making of any composition with;
  - (iii) nor the waiver of any breach or default by the Lessee;
  - (iv) nor the neglect or forbearance of the Lessor to enforce the covenants and provisions of the Lease or those of this guarantee and indemnity;
  - (v) nor the avoidance for any reason whatsoever by statute or otherwise of any payment by or on behalf of the Lessee or the Guarantors or any of them to the Lessor or any moratorium or other period staying or suspending by statute or the order of any court or authority of all or any of the Lessor's rights, remedies or recourse against the Lessee nor the transfer, assignment or other dealing by the Lessee with or under the Lease (whether with or without the consent of the Lessor);
  - (vi) nor the death bankruptcy or winding up of the Lessee or of any of the Guarantors;
  - (vii) nor the Lessee's liability under the Lease or the Lease being or becoming invalid, illegal, or unenforceable through any act, omission or legislation; or
  - (viii) nor any variation in Lease covenants, including any increase in Rent or Outgoings Rent or any extension of the Term,



will stay, suspend, release or discharge this guarantee and indemnity, it being the intention of the parties to the Lease that this guarantee and indemnity is unconditional and absolute in any and all circumstances and the Guarantors hereby waive in favour of the Lessor all rights, remedies and recourse of the Guarantors against the Lessee and any other person, estate or asset so far as is necessary to give effect to anything contained in this guarantee and indemnity.

## 7.2 Liability of the Guarantors

It is further agreed and declared that:

- (a) the liability of the Guarantors or any of them hereunder will not be affected if this guarantee and indemnity on the part of another person is unenforceable, void, defective or informal;
- (b) any account settled or stated between the Lessee and the Lessor will be received as conclusive evidence against the Guarantors or their representatives as to the balance of the amount then due from the Lessee to the Lessor and may not be questioned by the Guarantors or their representatives;
- (c) the amount of any moneys from time to time due and payable to the Lessor pursuant to the terms, covenants and conditions of the Lease for the whole of the Term and any renewal thereof and any holding over period and hereby guaranteed and/or the amounts of any moneys from time to time due and payable to the Lessor pursuant to the terms, covenants and conditions of this guarantee and indemnity will become due and payable by the Guarantors immediately after notice requiring payment of the same has been delivered or sent by prepaid post to the Guarantors at their addresses stated in **Item 15**;
- (d) the Lessor will not be under any obligation to grant any renewed lease whether under Part 8 or otherwise unless it contains provisions in similar terms to this Part 7 and the Guarantors execute the renewed lease (though the Lessor may elect to do so) PROVIDED THAT the liability of the Guarantors to the Lessor pursuant to the terms, covenants and conditions of this guarantee and indemnity in respect of any such renewed lease will not be reduced, prejudiced or abrogated in any way if for any reason whatsoever the Guarantors or any of them fail or refuse to execute such renewed lease.
- (e) this guarantee and indemnity is to be interpreted and governed by the applicable laws of the State of New South Wales only and the Guarantors hereby submit themselves irrevocably to the Courts of competent jurisdiction in the said State and to any Court of competent appellate jurisdiction therefrom;
- (f) the Guarantors jointly and severally covenant with the Lessor that they have been individually advised to obtain separate and independent legal and financial advice before executing the Lease and that they have in fact obtained such legal and financial advice as they may require; and
- (g) this guarantee and indemnity is in favour of the Lessor and its successors and assigns being the owner of the Premises from time to time during the Term.

## Part 8 - Option of Renewal

### 8.1 Option of renewal

- (a) The Lessee, from the expiry of the Lease, is entitled to take a renewed lease of the Premises for the further term or terms of years stated in **Item 16**, if the Lessee gives the Lessor not less than six (6) months' written notice prior to the expiry of the Lease of its intention to renew, and is not at the time in breach of any of the Lessee's Covenants.

- (b) Where the Lessee gives to the Lessor the notice referred to in paragraph (a), the Rent payable under the renewed lease at the commencement of the lease for the further term or terms will be determined in accordance with clause 2.2(b) as though the date for commencement of the renewed lease was a Market Review Date, unless specified otherwise in the Lease.
- (c) The renewed lease is subject to the same provisions as the Lease except that this Part will be omitted and the relevant **Items** and any other relevant special condition in the Reference Schedule will be appropriately amended in accordance with the Lease. It is specifically agreed that the Lessor may request a review of the Guaranteed Sum to be equivalent to the same proportion as the Guaranteed Sum bears to the Rent at the commencement of the Lease.

### Part 9 - Relocation Provision

#### 9.1 Relocation Notice

If at any time during the Term, the Lessor wants to refurbish, redevelop or extend the Building and requires the Premises to be vacated for that purpose, the Lessor may give the Lessee a relocation notice:

- (a) requiring the Lessee to surrender this Lease and vacate the Premises on a specified surrender date which is at least 3 months after the Lessor gives the Lessee the relocation notice; or;
- (b) and if provided in **Item 18** giving details of new premises within the Building or the Precinct (as the case may be) to be made available to the Lessee and offering to enter into a new lease of those premises.

#### 9.2 Lessee's termination notice

The Lessee is taken to have accepted the offer of a new lease unless it gives the Lessor notice of termination of this Lease within 1 month after the Lessor gives the relocation notice. If the Lessee gives a termination notice on time, then this Lease is terminated and the Lessee must vacate the Premises on the date that is 3 months after the date the Lessor gave the relocation notice.

#### 9.3 New lease

Unless the Lessee has given a termination notice on time, the Lessor must give the Lessee a form of surrender of this Lease and the form of a new lease (if any offered to the Lessee) at least 6 weeks before the proposed surrender date. The new lease (if any offered to the Lessee) must be:

- (a) for the term beginning on the day after the proposed surrender date and ending on the Termination Date as specified in **Item 7**; and
- (b) for the same Rent as is provided for in this Lease, save that the Rent (as defined in this Lease) will be adjusted to take into account the difference in the commercial values and /or the area of the Premises and the alternate premises (which may have an area more or less than the Premises), at the time of relocation; and
- (c) otherwise on the same terms and conditions as this Lease with only those changes necessary to make it appropriate to the new premises.

**9.4 New lease costs**

- (a) The Lessor must pay (if a new lease is offered to the Lessee) the reasonable costs of relocating the Lessee's business, including fitting out the new premises with the fitout from the Premises or where these do not fit, then new fitout to the same standard as the Premises were in at the date the relocation notice was given, stamp duty, registration fees and reasonable legal costs and disbursements in connection with the Lessee's execution of the surrender of this Lease and the new lease.
- (b) The Lessee must do everything reasonably necessary to ensure that any stamp duty refundable on this Lease is paid to the Lessor.

**9.5 Lessee's obligations on relocation**

Unless the Lessee has given a termination notice on time, then on or before the surrender date the Lessee must vacate the Premises and give the Lessor:

- (a) the surrender of this Lease executed by the Lessee;
- (b) the Lessee's counterpart of this Lease;
- (c) the new lease executed by the Lessee if any offered; and
- (d) a guarantee of or a guarantee of and an indemnity in connection with the Lessee's obligations under the new lease by the same person or another person acceptable to the Lessor on the same terms as any given in connection with the Lessee's obligations under this Lease.

**9.6 Lessee's release of Lessor**

The Lessee releases the Lessor from, and agrees that the Lessor is not liable for any liability or loss arising from, and costs incurred in connection with the Lessee relocating to new premises (except for those costs the Lessor agrees to pay under clause 9.4(a)).

**9.7 Lessor not required to offer new lease**

Notwithstanding anything contained in this Lease, the Lessor is not obliged to offer the Lessee new premises in the event of termination under this clause, unless this Lease specifically provides such an obligation in **Item 18**.

**FIRST SCHEDULE****Rules and Regulations****Rules for the Building**

The following Rules are made in relation to the Building or Precinct (as the case may be):

- (a) The Lessee must not do or permit or suffer to be done any of the following:
- (i) obstruct the pavement, courts, entrance, vestibules, corridors, passages, walkways, lifts, stairways, landings, fire doors, fire stairs and corridors and escape door or Common Areas;
  - (ii) cover or obstruct any fire sprinkler heads, skylight, glazed panel, ventilators or window or other means of illumination which reflects or admits light or air into any part of the Common Areas or obstruct any light or any other means of illumination in the Common Areas;
  - (iii) install any curtains, window blinds, window screens or awnings without the Lessor's prior approval in writing;
  - (iv) make any disturbing or irritating noises or interfere in any way with other lessees or occupiers or those having business to do in the Building;
  - (v) throw or wilfully permit to fall any paper, sweepings, rubbish, rags, ashes, refuse or other substance whatsoever into or upon the Common Areas or any other part of the Building other than into proper receptacles;
  - (vi) accumulate or burn any rubbish or waste for collection outside the Premises or in the Common Areas;
  - (vii) leave any garbage, rubbish or waste for collection outside the Premises or in the Common Areas;
  - (viii) erect, construct or maintain any sign, device, furnishing or object without the Lessor's prior consent;
  - (ix) use any method of lighting, cooling or heating other than as prescribed by the Lessor or under special agreement made with the Lessor for the purpose;
  - (x) leave any doors or windows unlocked or unfastened when the Premises are left unoccupied (and in that regard the Lessor reserves the right for any duly authorised person to enter the Premises and fasten the same if left insecurely fastened);
  - (xi) manipulate, interfere with or attempt to control any part of the electrical or mechanical equipment in the Building;
  - (xii) use the Common Areas or any part thereof for any business or commercial purpose or the display or advertisement of any goods or services except with the prior consent in writing of the Lessor and in accordance with any conditions imposed by the Lessor;
  - (xiii) apply for any licence to sell or supply intoxicating liquor or apply for any gaming licence, without the prior written consent of the Lessor, which may be withheld or granted conditionally or unconditionally in the Lessor's absolute discretion; or
  - (xiv) hang, display or drape any towel wearing apparel or similar article from any window or opening provided that this restriction does not apply to any merchandise displayed in the showcases.

- (b) The exterior of the Premises (other than the shopfronts) must be under the absolute control of the Lessor.
- (c) In addition to the above, the following applies in relation to the Development Area:

### Lighting

(i) Pedestrian ways and promenades

The Lessee shall observe the following time controls in respect to luminaries in the soffit for lighting at pavements:

Time Controls On & Off

<u>Day</u>	<u>On</u>	<u>50% Off</u>	<u>All Off</u>
Monday	Sunset	12.30 am Tues	Sunrise
Tuesday	Sunset	12.30 am Wed	Sunrise
Wednesday	Sunset	12.30 am Thurs	Sunrise
Thursday	Sunset	12.30 am Fri	Sunrise
Friday	Sunset	02.00 am Sat	Sunrise
Saturday	Sunset	02.00 am Sun	Sunrise
Sunday	Sunset	02.00 am Mon	Sunrise

(ii) Illuminated Signs

All illuminated signs are subject to the Lessor's prior written consent and must comply with the Sign Policy.

(iii) Façade Lighting

- A. If providing lighting of the Premises, the Lessee must provide for lighting on all faces in such manner and to such extent and level as may be required and approved by the Lessor in writing.
- B. Where appropriate, the Lessee must observe the Lessor's directions for general lighting display by floodlighting of all premises in co-ordination with all lessees on special occasions as nominated by the Lessor from time to time.

### Signs and advertising controls

- (i) No sign, including window signs, flags, promotional signs or banners shall be permitted which does not directly relate to an activity within the Premises.
- (ii) All signs, including window signs, flags, promotional signs or banners are subject to the Lessor's prior written approval and must comply with the Sign Policy.

The Lessor has developed appropriate general principles which limit the scale and type of signage. IT ALSO REQUIRES ALL SIGNAGE IN THE ROCKS TO BE FORMALLY APPROVED IN ADVANCE.

### Street numbers

Any Street numbers will be subject to the prior written approval of the Lessor and must comply with the Sign Policy where relevant.

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 6.10 Managing Agent  
 6.11 Non-merger  
 6.12 Executed as a deed

**PART 7 - GUARANTEE AND INDEMNITY**

- 7.1 Guarantee and indemnity  
 7.2 Liability of the Guarantors

**PART 8 - OPTION OF RENEWAL**

- 8.1 Option of renewal

**PART 9 - RELOCATION PROVISION**

- 9.1 Relocation notice  
 9.2 Lessee's termination notice  
 9.3 New lease  
 9.4 New lease costs  
 9.5 Lessee's obligations on relocation  
 9.6 Lessee's release of Lessor  
 9.7 Lessor not required to offer new lease

**FIRST SCHEDULE****Rules and Regulations**

Rules for the Building  
 Lighting  
 Signs and advertising controls  
 Street numbers