



Russell Kennedy
Lawyers

**JAMES MERLINO MP, MINISTER OF THE
CROWN ADMINISTERING THE *EDUCATION
AND TRAINING REFORM ACT 2006***

and

[##INSERT TENANT ENTITY NAME]
("Tenant")

and

[##INSERT GUARANTOR]
("Guarantor")

LEASE

Premises: Part of 17 Tooronga Road, East
Malvern, Victoria

TABLE OF CONTENTS

1	DEFINITIONS.....	1
2	LEASE AND TERM.....	3
3	RETAIL LEASES ACT 2003	4
4	PAYMENTS BY TENANT	4
5	RENT REVIEW.....	5
6	MARKET REVIEW AND VALUATION	5
7	CPI REVIEW	7
8	PERCENTAGE INCREASE	7
9	GOODS AND SERVICES TAX.....	8
10	LEGAL AND OTHER COSTS	8
11	SECURITY DEPOSIT	9
12	BANK GUARANTEE.....	9
13	USE OF PREMISES.....	10
14	EQUIPMENT ETC	11
15	SECURITY	11
16	TENANT'S OBLIGATIONS CONCERNING INSURANCE	11
17	MAINTENANCE OF PREMISES AND LANDLORD'S PROPERTY	13
18	NO WARRANTY BY LANDLORD.....	15
19	WORKS.....	15
20	ASSIGNMENT AND SUBLETTING.....	15
21	TENANT'S OBLIGATIONS AT END OF LEASE	17
22	HOLDING OVER	18
23	LANDLORD'S SIGNS	18
24	LANDLORD'S OBLIGATIONS.....	18
25	LANDLORD'S RIGHTS.....	19
26	DEFAULT BY TENANT.....	20
27	ESSENTIAL TERMS	21
28	MITIGATION OF DAMAGES	22

29 DAMAGE TO PREMISES 22

30 RESUMPTION OF PREMISES..... 23

31 RENEWAL OF LEASE..... 23

32 RELEASE AND INDEMNITY 24

33 GUARANTEE AND INDEMNITY 25

34 LANDLORD'S EXERCISE OF RIGHTS 26

35 DISPUTES..... 26

36 POWER OF ATTORNEY..... 28

37 APPROVALS AND CONSENTS 28

38 INDEMNITIES 28

39 FURTHER ASSURANCES..... 29

40 STATUTORY PROVISIONS..... 29

41 PAYMENTS..... 29

42 RIGHTS AND REMEDIES..... 29

43 ACTS OF TENANT'S AGENTS..... 29

44 CERTIFICATE IS EVIDENCE 30

45 ENTIRE AGREEMENT..... 30

46 WAIVER AND VARIATION 30

47 NOTICES 30

48 SEVERANCE 31

49 GENERAL 32

50 NO FETTERING 32

51 INTERPRETATION 33

SCHEDULE 1 1

SCHEDULE 2 9

SCHEDULE 3 11

SCHEDULE 4 12

##[TO BE INSERTED] 12

PARTIES

- 1 **JAMES MERLINO MP, MINISTER OF THE CROWN ADMINISTERING THE *EDUCATION AND TRAINING REFORM ACT 2006***
of 2 Treasury Place, East Melbourne, Victoria 3002
("Landlord")
- 2 **[##INSERT TENANT ENTITY]**
ACN [##INSERT] / ABN [##INSERT]
of [##INSERT]
("Tenant")
- 3 **[##INSERT GUARANTOR]**
of [##INSERT]
("Guarantor")

RECITALS

- 1 The Landlord is the registered proprietor of the Land upon which the Premises is situated.
- 2 The Tenant has agreed to provide the Lunch Order Service to the School on the terms and conditions set out in this lease and the Canteen Licence.
- 3 The Tenant's use of the Premises for the Shop Use and the Commercial Use enables the Tenant to provide the Lunch Order Service to the School at competitive prices.
- 4 In recognition of this benefit, and the other benefits outlined at special condition (b), to the School and the School Community, the Landlord has agreed to lease the Premises to the Tenant on the terms and conditions set out in this lease.

THE PARTIES AGREE THAT:

1 DEFINITIONS

In this lease:

- 1.1 "**Act**" means the *Retail Leases Act 2003*.
- 1.2 "**Authorised Officer**" in the case of either party means a person appointed by that party to act on its behalf under this lease.
- 1.3 "**Business Day**" means any day (other than a Saturday or a Sunday) on which banks are open for general banking business in Melbourne.
- 1.4 "**Canteen Licence**" means the school council canteen licence which the Tenant must enter into with the School.
- 1.5 "**Commencement Date**" means the date set out in item 7 of Schedule 1.
- 1.6 "**Commercial Use**" means the use described in item 6 of Schedule 1.
- 1.7 "**CPI**" means:
 - 1.7.1 the Consumer Price Index All Groups Melbourne;

- 1.7.2 if that index is suspended or discontinued and another index is substituted by the Australian Statistician, that index; or
- 1.7.3 if there is no index under clause 1.7.2, the general inflation rate in Victoria as used by the Victorian Treasury for the relevant period.
- 1.8 "**Default Event**" has the meaning given to it in clause 26.2.
- 1.9 "**Disclosure Statement**" means a statement prepared by the Landlord in accordance with the Act.
- 1.10 "**Expiry Date**" means the last day of the Term and is the date set out in item 8 of Schedule 1.
- 1.11 "**Financial Year**" means 1 July to 30 June.
- 1.12 "**GST**" means the goods and services tax levied under the GST Act or any other goods and services tax, value added tax, consumption tax or tax of similar effect levied from time to time.
- 1.13 "**GST Act**" means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended.
- 1.14 "**Information Brochure**" means the Information Brochure published by the Small Business Commission.
- 1.15 "**Land**" means the land described in item 4 of Schedule 1 on which the Premises is situated.
- 1.16 "**Landlord's Property**" means anything in the Premises at any time during the Term which is not the Tenant's Property, including any fixtures or other improvements added to the Premises by the Tenant.
- 1.17 "**Lunch Order Service**" means the lunch order service provided by the Tenant to the School from the Premises.
- 1.18 "**Lunch Order Service Use**" means the use described in item 6 of Schedule 1.
- 1.19 "**Permitted Use**" means the use described in item 6 of Schedule 1.
- 1.20 "**Premises**" means the premises described in item 5 of Schedule 1 and includes the Landlord's Property within the Premises.
- 1.21 "**Rent**" means the amount specified in item 9 of Schedule 1, and as revised in accordance with this lease.
- 1.22 "**Rent Free Period**" has the meaning ascribed by special condition (e) as set out in item 17 of Schedule 1.
- 1.23 "**Rent Review Date**" means each of the dates specified in item 10 of Schedule 1.
- 1.24 "**Review Period**" means the period following each Rent Review Date until the next Rent Review Date or until the end of this lease.
- 1.25 "**School**" means the Malvern Primary School.
- 1.26 "**School Community**" means the community of students, parents, staff and others who have some connection to the School.

- 1.27 **"Services"** includes electricity, gas, water, sewerage, telecommunication, air conditioning and ventilation systems, lifts, escalators, security services, fire detection and prevention equipment installed in or connected or supplied to the Premises or the Land, and the repair and maintenance of everything (such as plant and equipment) needed to supply them.
- 1.28 **"Shop Use"** means the use described in item 6 of Schedule 1.
- 1.29 **"Small Business Commission"** means the Small Business Commission appointed under the *Small Business Commission Act 2017*.
- 1.30 **"Start of the Lease"** means the commencement date of the first lease of the Premises to the Tenant.
- 1.31 **"Tenant's Agents"** means the members, employees, agents, customers, contractors, and invitees of the Tenant.
- 1.32 **"Tenant's Business"** means the business or businesses operated by the Tenant from or at the Premises.
- 1.33 **"Tenant's Property"** means everything on the Premises at any time during the Term belonging to the Tenant, excluding any fixtures or other improvements added to the Premises by the Tenant.
- 1.34 **"Term"** means the term of this lease as set out in clause 2.2.
- 1.35 **"Works"** means any improvement, alteration (whether structural or otherwise), or addition to the Premises or any demolition, landscaping or earthworks on the Premises, including anything permitted by the Landlord to be carried out before or after the Commencement Date, and including any works referred to in item 12 of Schedule 1.

2 LEASE AND TERM

2.1 Lease of Premises

The Landlord leases the Premises to the Tenant. This lease is subject to:

- 2.1.1 the Tenant providing the Lunch Order Service to the School in accordance with Item 6(1)(a) of Schedule 1 and the Special Conditions set out in Item 17 of Schedule 1, and pursuant to the Canteen Licence;
- 2.1.2 the terms contained in this lease;
- 2.1.3 the special conditions in item 17 of Schedule 1;
- 2.1.4 all encumbrances affecting the Land; and
- 2.1.5 the right of the Landlord to:
- (a) install maintain, use, repair, alter and replace the pipes, wires, ducts and cables leading through or around the Premises or included in the Land;
 - (b) run water, air, electricity, sewage, gas and other substances through the Premises or the Land; and

- (c) determine all areas of access to and from the Land and the Premises.

2.2 Term of lease

The Term of this lease begins on the Commencement Date and ends on the Expiry Date.

3 RETAIL LEASES ACT 2003

If the Act applies to this lease:

- 3.1 the Tenant acknowledges that the Landlord has delivered to the Tenant a copy of this lease, the Disclosure Statement and Information Brochure as and in the form required by the Act; and
- 3.2 the Tenant warrants that it has made enquiries and is satisfied by the matters disclosed in the Disclosure Statement.

4 PAYMENTS BY TENANT

4.1 Rent

The Tenant must pay the Rent without any deduction, counterclaim or set-off:

- 4.1.1 to the Landlord at the Landlord's address specified in this lease, or as the Landlord directs; and
- 4.1.2 by 12 equal monthly instalments in advance on or before the first day of each month. The first instalment must be paid on the Commencement Date. If the Commencement Date is not the first day of a month, the Tenant must pay proportional instalments in the first and last months of the Term.

4.2 Method of Rent payments

The Tenant must pay the Rent under clause 4.1 of this lease as directed from time-to-time on tax invoices issued by the Landlord or as directed by written notice to the Tenant. As at the Commencement Date, the Landlord will require payments of Rent by BPAY, by direct deposit or as otherwise directed on its tax invoices issued to the Tenant. **[Note to prospective Tenants: if some other method of rent payment is preferred, please outline that in your submission.]**

4.3 Outgoings and Services

The Tenant must:

- 4.3.1 pay direct to the relevant authority or reimburse the Landlord on demand all rates assessments and other charges payable in connection with the Premises and the Land;
- 4.3.2 unless the Act applies, pay direct to the relevant authority or reimburse the Landlord for all taxes (including land tax on the basis that the Land is the only land owned by the Landlord) but excluding the Landlord's income tax and capital gains tax;

- 4.3.3 pay all insurance premiums and other charges in connection with insurance policies taken out by the Landlord against the risks and for the amounts which the Landlord reasonably thinks are appropriate in connection with the Premises and this lease including, without limiting the generality of the preceding words:
- (a) damage to and destruction of the Premises, the Landlord's Property and any other buildings and improvements on the Land for their full replacement value;
 - (b) removal of debris;
 - (c) breakage of glass;
 - (d) loss of rent and outgoings for a period of at least 12 months; and
- 4.3.4 pay all assessments, rates, levies or charges for Services supplied to the Premises.

5 RENT REVIEW

5.1 Landlord may review

The Rent may be reviewed by the Landlord on each Rent Review Date in accordance with clause 6, 7 or 8, as specified in Item 10 of Schedule 1. Subject to the Act, a review of Rent may be initiated only by the Landlord.

5.2 Time of review

Any delay in making a rent review does not prevent the review from taking place and being effective from the relevant Rent Review Date.

6 MARKET REVIEW AND VALUATION

6.1 Procedure

If item 10 of Schedule 1 provides for a market review of Rent on any Rent Review Date, the following provisions apply.

- 6.1.1 The Landlord may initiate a review of Rent by giving the Tenant a written notice stating the rent that the Landlord considers to be the current open market rent for the Premises ("**Landlord's notice**").
- 6.1.2 If the Tenant disagrees with the proposed rent, the Tenant must give the Landlord a written notice ("**Tenant's notice**") objecting to the proposed rent within 21 days of the date of the Landlord's notice. Time is of the essence for the delivery of the Tenant's notice.
- 6.1.3 If the Tenant does not serve the Tenant's notice on the Landlord, the proposed rent as set out in the Landlord's notice will be the Rent for the Review Period.
- 6.1.4 If the Tenant serves the Tenant's notice within the prescribed time and the parties cannot agree on the rent for the Review Period, it must be determined by a valuer who:

- (a)** is a full member of not less than 5 years' standing of the Australian Property Institute;
- (b)** is qualified as a valuer of premises similar to the Premises; and
- (c)** holds any other qualifications as required under the Act (if applicable).

6.1.5 If the parties cannot agree upon a valuer within 21 days after the date of the Tenant's notice, either party may request the Small Business Commission to appoint a valuer who meets the criteria in clause 6.1.4 to determine the current open market rent of the Premises.

6.1.6 Until the adjusted rent is determined by the valuer, the Tenant must continue to pay the Rent payable immediately before the Rent Review Date.

6.1.7 In determining the current open market rent of the Premises, the valuer must:

- (a)** act as an expert and not as an arbitrator;
- (b)** assume the parties have acted knowledgeably, prudently and without compulsion;
- (c)** assume there is a willing landlord and a willing tenant in an arms' length transaction;
- (d)** consider all submissions made by the parties provided the submissions are made within 21 days of the valuer being appointed;
- (e)** assume that the parties have complied with their respective obligations under this lease;
- (f)** assume that the Premises are fit for immediate occupation and use;
- (g)** assume that the Premises are vacant and available to be leased on the same conditions as this lease;
- (h)** ignore the Tenant's Property and installations and all improvements made by the Tenant to the Premises;
- (i)** ignore any sub-lease of the Premises;
- (j)** ignore any poor condition of the Premises which has resulted from a breach of this lease by the Tenant;
- (k)** ignore any incentives or concessions used to secure the Tenant, including any periods of rent abatement or reimbursement unless such incentives or concessions are currently offered to prospective tenants of the Premises;
- (l)** determine the current open market rent of the Premises and give reasons for it in writing as soon as possible after the end of the 24 days allowed for submissions by the parties; and

- (m) take into account, all other relevant factors, matters or variables used in proper land valuation practices.

6.2 Appointment of replacement valuer

If for any reason no determination has been made by the valuer within 45 days of the valuer being appointed, then either party may immediately request the Small Business Commission to appoint a replacement valuer who meets the criteria in clause 6.1.4. The provisions of this clause will then apply to the determination by the replacement valuer.

6.3 Decision final

The valuer's decision is final and binds the parties.

6.4 Adjustments to be made

Within 7 days of being informed of the valuer's determination, the parties must make any necessary adjustments to the Rent.

6.5 Costs of valuer

The valuer's costs and disbursements must be paid by the parties equally.

6.6 No decrease in Rent

Despite the other provisions of this clause 6, unless the Act applies the Rent from and including a market Rent Review Date must not be less than the Rent paid immediately before that Rent Review Date.

7 CPI REVIEW

If item 10 of Schedule 1 provides for a CPI review of Rent on any Rent Review Date, then the Rent for the next Review Period must be calculated in accordance with the following formula:

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

where: **A** is the Rent for the next Review Period;

B is the annual Rent paid by the Tenant just prior to the relevant Rent Review Date;

C is the CPI last published before the relevant Rent Review Date; and

D is the CPI last published at least 12 months before the relevant Rent Review Date.

8 PERCENTAGE INCREASE

If item 10 of Schedule 1 provides for a percentage increase of Rent on any Rent Review Date, then on that Review Date the Rent immediately payable before the Review Date must be increased by the percentage specified in item 10.

9 GOODS AND SERVICES TAX

9.1 Interpretation

Expressions used in this clause and in the GST Act have the same meanings as when used in the GST Act.

9.2 GST exclusive amounts

Except where this lease states otherwise, each amount payable by a party under this lease in respect of a taxable supply by the other party is expressed as a GST exclusive amount and the recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the GST payable in respect of the supply.

9.3 Maximum amount to be paid

An amount payable by the Tenant in respect of a creditable acquisition by the Landlord from a third party must not exceed the sum of the value of the Lessor's acquisition and the additional amount payable by the Tenant under clause 9.2 on account of the Landlord's GST liability.

9.4 Tax invoice to be given

A party is not obliged under this clause 9 to pay the GST on a taxable supply to it under this lease, until given a valid tax invoice for the supply.

10 LEGAL AND OTHER COSTS

10.1 Costs incurred by Landlord

The Tenant must pay or reimburse the Landlord on request all reasonable costs (including legal costs and disbursements) incurred by the Landlord in connection with:

- 10.1.1 subject to the Act (if applicable), the negotiation, preparation, settling and execution of this lease;
- 10.1.2 any assignment or subletting of this lease;
- 10.1.3 any approval, variation, mortgage, charge or surrender concerning this lease including costs payable to a person appointed to evaluate or supervise any matter;
- 10.1.4 subject to the Act (if applicable), obtaining the consent of the Landlord's mortgagee (including a chargee or debenture holder) to this lease;
- 10.1.5 change, transfer, surrender or ending of this lease, except at the end of the Term or where the change occurs at the Landlord's request;
- 10.1.6 any breach of this lease by the Tenant; and
- 10.1.7 the exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, by the Landlord of any rights or remedies under this lease.

10.2 Other costs

Anything the Tenant is required to do under this lease must be done at the Tenant's cost.

11 SECURITY DEPOSIT

11.1 Tenant to provide

Subject to clause 12.1, the Tenant must pay a security deposit to the Landlord of the amount stated in item 11 of Schedule 1 and must maintain the deposit at that amount, such deposit to be held by the Landlord in an interest bearing account.

11.2 Use of security deposit

The Landlord may use the security deposit (including any accrued interest) to make good the cost of remedying breaches of the Tenant's obligations under this lease.

11.3 Refund at end of lease

After this lease has ended and the Tenant has vacated the Premises, the Landlord must refund the unused part of the security deposit within 14 days of the Tenant's demand.

12 BANK GUARANTEE

12.1 When Tenant to provide

If specified in item 11 of Schedule 1, the Tenant must give the Landlord an unconditional and irrevocable bank guarantee in place of the security deposit. The guarantee must be:

12.1.1 issued by an authorised deposit taking institution as defined by the *Banking Act 1959* (Cth) or any Act replacing or amending that Act; and

12.1.2 on such terms as the Landlord may require.

12.2 Use of bank guarantee

The Landlord may call upon the bank guarantee to make good the cost of remedying breaches of the Tenant's obligations under this lease. The Tenant must ensure that the bank guarantee is always of an amount as specified in item 11 of Schedule 1.

12.3 Assignment by Landlord

If the Landlord transfers the Land or assigns its interest in this lease, the Tenant must, if so required by the Landlord, provide a new bank guarantee to the Landlord's transferee or assignee.

12.4 Return at end of lease

After this lease has ended and the Tenant has vacated the Premises, and if the bank guarantee has not been called upon, the Landlord must return the bank guarantee within 30 days of the Tenant's demand.

13 USE OF PREMISES

The Tenant must:

- 13.1 use the Premises for the Permitted Use and must not, without the consent of the Landlord, use the Premises for any other use or purpose;
- 13.2 not use the Premises as a residence or allow anyone to sleep in the Premises;
- 13.3 not use the Premises for any illegal purpose or activity;
- 13.4 not sell or advertise tobacco products, alcohol or pornographic material at the Premises;
- 13.5 not conduct any auction sale or public meeting in or around the Premises;
- 13.6 not install or operate vending or amusement machines in the Premises;
- 13.7 not prepare or cook food in the Premises other than in areas which have been provided or approved by the Landlord for that purpose;
- 13.8 not open the Premises for business at or during any time prohibited by law for the Tenant's type of business or premises;
- 13.9 not burn rubbish in the Premises.
- 13.10 at its own expense comply on time with all laws and legal requirements concerning the Premises, the use and occupation of the Premises and the Tenant's Property;
- 13.11 not do anything or permit the Tenant's Agents to do anything which is or may be a nuisance or annoyance to the Landlord, any owners or occupants of premises adjacent to the Land, or the public;
- 13.12 conduct the Tenant's Business diligently and efficiently and in a proper reputable and businesslike manner befitting a high quality business;
- 13.13 at its own expense obtain, effect and keep in force all licences and permits (including any planning permit) necessary for the Tenant to conduct the Tenant's Business and the Permitted Use on or from the Premises;
- 13.14 unless the Landlord gives prior written consent:
 - 13.14.1 not bring, allow or permit any animal or pet on the Premises;
 - 13.14.2 keep the Tenant's Business open at all lawful times prescribed by the Landlord from time to time; and
 - 13.14.3 not store on the Premises any goods which are not required for the purposes of the Tenant's Business;
- 13.15 not without the Landlord's prior written consent and the consent of all relevant authorities, use or permit the Tenant's Agents to use any musical instrument, radio, television or other equipment so that it is capable of being heard or seen from outside the Premises; and

- 13.16 comply with all reasonable requests or directions given by any Authorised Officer of the Landlord that the Authorised Officer considers necessary or desirable for the safety, care or cleanliness of the Premises or areas near the Premises.

14 EQUIPMENT ETC

14.1 Floor loads

The Tenant must not:

- 14.1.1 overload the floors of the Premises beyond their maximum permitted loading; or
- 14.1.2 without the Landlord's prior written approval, bring onto or remove from the Premises any safe or other equipment which is likely, in the opinion of the Landlord, to cause damage to the Premises, the Landlord's Property or any Services.

14.2 Installation and removal of equipment

The Tenant must comply with any instructions given by the Landlord with respect to the installation, use or removal of any safe or equipment for which the Landlord has given the Tenant approval to bring onto or remove from the Premises under clause 14.

14.3 Air-conditioning

The Tenant must not install or use any form of heating, cooling, ventilation or air-conditioning in the Premises which is not approved beforehand in writing by the Landlord.

15 SECURITY

15.1 Tenant to protect Premises

The Tenant must use its best efforts to protect and keep safe the Premises and the Landlord's Property from theft and vandalism. This includes keeping all doors, windows and openings closed and securely fastened when the Premises are not in use and paying for any additional security measures which the Landlord considers are necessary due to the Tenant's Business.

15.2 Locks

The Tenant must not install any locks or security devices in the Premises which cannot be opened by the keys provided by the Landlord.

15.3 Landlord's Property

The Tenant must not remove any of the Landlord's Property from the Premises.

16 TENANT'S OBLIGATIONS CONCERNING INSURANCE

16.1 Tenant to maintain insurance

The Tenant must take out and maintain insurance for:

- 16.1.1 public liability in the joint names of the Landlord and the Tenant for the amount set out in item 13 of Schedule 1 in respect of any single

occurrence. This policy must indemnify the Landlord against all claims of any kind arising from any act, omission or neglect by the Tenant or any of the Tenant's Agents;

16.1.2 all plate glass windows installed in the Premises at any time during the Term; and

16.1.3 the Tenant's Property and any fit-out of the Premises against loss, damage or destruction by any cause,

and the Tenant must produce to the Landlord copies of all these insurance policies and evidence that they are in force, within 7 days of the Landlord requesting copies to be produced.

16.2 Policy requirements

All insurance policies under clause 16.1 must:

16.2.1 be taken out with an insurer approved by the Landlord (which approval may not be unreasonably withheld); and

16.2.2 have noted on them the respective interests of the Landlord and the Tenant, and if required by the Landlord, any mortgagee.

16.3 Tenant not to prejudice insurance

The Tenant must not do anything on the Premises or otherwise that:

16.3.1 may cause any insurance policy (taken out under this lease or otherwise) to become void or voidable; or

16.3.2 may cause any claim on any insurance policy (taken out under this lease or otherwise) being rejected or a premium to be increased.

16.4 Where premium increased

If the Tenant causes an increase in any premium payable by the Landlord for any insurance effected by the Landlord for the Premises or property in the Premises (whether taken out under this lease or otherwise), the Tenant must pay the Landlord, on request, the increase in the premium.

16.5 Compliance with insurer's requirements

The Tenant must comply with the requirements of any insurer under any insurance policy for the Premises or property in the Premises (whether taken out under this lease or otherwise).

16.6 Accident Compensation

The Tenant must:

16.6.1 take out and maintain insurance in respect of the business which the Tenant operates from or at the Premises and each person employed by the Tenant in that business, for the full amount of the Tenant's liability under any applicable workers' compensation legislation and for the full amount of the Tenant's potential legal liability independently of any such legislation; or

- 16.6.2 obtain and maintain approval as a self-insurer under any applicable workers' compensation legislation; and
- 16.6.3 provide evidence to the Landlord of such a policy or approval on demand.

17 MAINTENANCE OF PREMISES AND LANDLORD'S PROPERTY

17.1 Tenant to maintain

Except for fair wear and tear and subject to clause 17.4, the Tenant must keep the Premises, the Landlord's Property and the Tenant's Property in the same condition as at the Start of the Lease and properly cleaned, repaired and maintained.

17.2 Compliance with notices

Subject to clause 17.4, the Tenant must comply with all notices or orders affecting the Premises which are issued during the Term.

17.3 Specific obligations

In addition to its obligations under clauses 17.1 and 17.2, the Tenant must:

- 17.3.1 not use any lavatories, grease traps, drains or other sanitary facilities for any purpose other than that for which they were designed;
- 17.3.2 not without the written consent of the Landlord store or use any toxic or inflammable substances in the Premises;
- 17.3.3 promptly repair any damage to the Premises or any part of the Land caused or contributed to by the Tenant or any of the Tenant's Agents;
- 17.3.4 promptly replace any broken glass in the Premises with glass of the same thickness and quality;
- 17.3.5 immediately repair defective windows, lights, doors, locks and fastenings, and replace missing light globes and fluorescent tubes, keys and keycards in the Premises;
- 17.3.6 maintain in working order all plumbing, draining, gas, electric, solar and sewerage installations and fire protection apparatus in the Premises;
- 17.3.7 promptly give written notice to the Landlord of:
 - (a) any defect in or damage to any of the Services, the Premises or the Landlord's Property;
 - (b) service by any authority of a notice or order affecting the Premises; or
 - (c) any hazards arising from, threatening or affecting the Premises;
- 17.3.8 carry out repairs within 14 days of being served with a written notice of any defect or lack of repair which the Tenant is obliged to fix under this lease. If the Tenant does not comply with the notice, the

Landlord may carry out the repairs and the Tenant must pay the cost to the Landlord on demand;

- 17.3.9 properly maintain any courtyard or outside area that forms part of the Premises to a standard reasonably required by the Landlord;
- 17.3.10 paint all painted surfaces on the Premises, to the standard reasonably required by the Landlord, at least once every 3 years during the Term and any further term viewed as one continuous period;
- 17.3.11 redecorate those parts of the Premises that are not painted according to the relevant surface's previous treatment to the standard reasonably required by the Landlord, at least once every 3 years during the Term and any further term viewed as one continuous period;
- 17.3.12 replace all carpets and floor coverings at least once every 3 years during the Term and any further term viewed as one continuous period;
- 17.3.13 take all precautions required by law against fire; and
- 17.3.14 comply with all reasonable directions of the Landlord or any insurer of the Premises as to the prevention, detection and limitation of fire.

17.4 Limitations on obligations

The Tenant is not obliged to:

- 17.4.1 repair damage for which the Tenant is not responsible, unless the Landlord loses the benefit of any insurance for that damage because of any act or omission by the Tenant or any of the Tenant's Agents; or
- 17.4.2 carry out structural repairs or make payments of a capital nature or do anything which the Landlord is obliged to do under section 52(2) of the Act (if applicable) unless they are necessary due to the negligence of the Tenant or the Tenant's Agents, any breach of this lease by the Tenant, or the Tenant is entitled or required to remove the item at the end of the Term.

17.5 Cleaning of Premises

The Tenant must:

- 17.5.1 cause the Premises (including the interior and exterior surfaces of any shopfronts, windows and doors) the Landlord's Property and the Tenant's Property to be regularly cleaned;
- 17.5.2 arrange for all refuse to be regularly removed from the Premises, and comply with the Landlord's requirements for refuse removal;
- 17.5.3 take all proper precautions to keep the Premises free of refuse, rodents and vermin. If required by the Landlord, the Tenant must engage pest exterminators for that purpose;
- 17.5.4 store refuse before removal so that it cannot be seen from outside the Premises; and

- 17.5.5 comply with the Landlord's reasonable directions concerning cleaning and disposal of refuse.

17.6 Alterations to Premises

The Tenant must not:

- 17.6.1 make any alterations, additions or improvements (whether structural or otherwise), install any equipment (including air-conditioning or sprinkler systems) or exterior fixtures or fittings (including blinds or awnings) to or on the Premises; or

- 17.6.2 fix or place signs, notices or advertisements which are visible from outside the Premises in any place in or near the Premises,

without first obtaining the written approval of the Landlord, which must not be unreasonably withheld. If the Landlord grants its approval, the Tenant must comply with all the Landlord's requirements and specifications, including any applicable provisions of Schedule 2.

18 NO WARRANTY BY LANDLORD

- 18.1 The Landlord gives no warranty (either present or future) as to the condition or suitability of the Premises or the use to which the Premises may be put or for the Works.

- 18.2 By signing this lease, or going into occupation of the Premises, the accepts or is deemed to have accepted both the condition of the Premises and this lease with full knowledge of and subject to all terms of this lease and any and all prohibitions, restrictions and Laws applying to the use of the Premises.

19 WORKS

19.1 Tenant to carry out

Subject to the Act, if item 12 of Schedule 1 specifies that any Works are required, the Tenant must carry out those Works, including the Works set out in any plans or specifications submitted to the Landlord or which are annexed to this lease.

19.2 Standards

The Tenant must:

- 19.2.1 ensure that the Works are completed promptly, or if a time period is specified in item 12, within the time period so specified; and
- 19.2.2 carry out all Works in the manner and to the standard in Schedule 2.

20 ASSIGNMENT AND SUBLETTING

20.1 Consent of Landlord

The Tenant must not without the prior written consent of the Landlord:

- 20.1.1 assign or deal with any interest in the Premises or its rights or powers as tenant under this lease, which consent shall not be unreasonably withheld provided the provisions of clause 20.2 are complied with;

- 20.1.2 sub-let or part with possession or share the Premises; or
- 20.1.3 create or allow any mortgage, interest, easement or other encumbrance which would affect the Tenant's interest in the Premises or its rights as tenant under this lease.

20.2 Where consent not to be unreasonably withheld

The Landlord will not unreasonably withhold its consent if in the case of an assignment, the Tenant has:

- 20.2.1 requested an assignment by notice in writing to the Landlord;
- 20.2.2 given the name and address of the proposed assignee ("**New Tenant**") to the Landlord;
- 20.2.3 remedied any Default Event which exists at the time of the proposed assignment;
- 20.2.4 proved to the satisfaction of the Landlord that the New Tenant is respectable and responsible and has the financial resources and business experience to conduct the Tenant's Business and to comply with all of the Tenant's obligations under this lease;
- 20.2.5 procured the New Tenant to execute an agreement with the Landlord, in a form approved by the Landlord, that it will comply with all of the Tenant's obligations under this lease;
- 20.2.6 executed a deed in a form approved by the Landlord that releases the Landlord from all claims by the Tenant arising out of this lease, but which does not release the Tenant from any of its obligations under this lease;
- 20.2.7 if the Act applies, provided the New Tenant with a copy of the Disclosure Statement given by the Landlord to the Tenant and provided a new Disclosure Statement to the Tenant current within 3 months of the date given;
- 20.2.8 if the Act applies, provided the New Tenant with business records for the Tenant's Business for the period of the Tenant's operation of the Tenant's Business from the Premises or the period of 3 years prior to the date of the proposed assignment, whichever is the lesser;
- 20.2.9 ensured that the New Tenant does not propose using the Premises in a way which is not permitted under this lease;
- 20.2.10 agreed to pay the Landlord all reasonable costs (including legal costs and disbursements) incurred by the Landlord in connection with the proposed assignment including all enquiries made by the Landlord relating to the New Tenant; and
- 20.2.11 if the New Tenant is a corporation, its directors and principal shareholders have if required by the Landlord guaranteed to the Landlord the compliance by the New Tenant of its obligations under this lease.

20.3 Landlord may refuse consent

The Landlord may withhold its consent to a transaction referred to in clause 20.1.1 at the Landlord's discretion if:

- 20.3.1 the Act does not apply to this lease; and
- 20.3.2 a transfer or assignment of this lease would result in the Act applying, or applying if this lease is renewed for a further term.

20.4 Deemed assignment

Subject to clause 20.5, where the Tenant is a corporation, any circumstances that result in any person or group of persons who:

- 20.4.1 control the composition of the board of directors; or
- 20.4.2 beneficially hold more than one half of the issued share capital,

being different from the person or persons who were in that position at the Commencement Date, will be deemed to be an assignment of this lease that will require the prior written consent of the Landlord.

20.5 Listed corporation

Clause 20.4 does not apply where the Tenant is a company, the voting shares of which are listed on Australian Stock Exchange Limited or a wholly owned subsidiary of such a company, and where a change of control is caused only by a transfer of shares in the listed company.

21 TENANT'S OBLIGATIONS AT END OF LEASE**21.1 Vacating the Premises**

At the end of this lease, the Tenant must:

- 21.1.1 vacate the Premises and leave the Premises in the condition in which the Tenant must keep them under this lease;
- 21.1.2 unless required by the Landlord, not remove any fixtures or improvements to the Premises, those fixtures or improvements having become part of the Landlord's Property immediately upon installation in the Premises;
- 21.1.3 remove all the Tenant's Property from the Premises, and any signs, notices or advertisements placed in or near the Premises;
- 21.1.4 repair any damage caused by the Tenant complying with its obligations under this clause; and
- 21.1.5 deliver to the Landlord all keys, passes and other security devices giving access to the Premises or Land, which are held by the Tenant or any of the Tenant's Agents, whether or not they were supplied by the Landlord.

21.2 Tenant's Property left on Premises

Any of the Tenant's Property left on the Premises 7 days after the early determination or expiry of this lease may be treated by the Landlord as abandoned and dealt with or disposed of by the Landlord as the Landlord deems appropriate. Any costs the Landlord incurs in dealing with, removing or disposing of any abandoned Tenant's Property must be reimbursed by the Tenant to the Landlord on demand. The parties intend that this clause operates in place of any legislation that might otherwise apply to goods remaining on the Premises.

22 HOLDING OVER

If the Tenant remains in possession of the Premises without objection by the Landlord after the end of the Term:

- 22.1 the Tenant, without any need for written notice of any kind, is a monthly tenant on the conditions in this lease, modified so as to apply to a monthly tenancy;
- 22.2 either party may end the tenancy by giving 1 month's written notice to the other at any time;
- 22.3 the monthly rent starts at one twelfth of the annual Rent which the Tenant was paying immediately before the Term ended unless a different rent has been agreed upon; and
- 22.4 the Landlord may increase the monthly rent at any time by giving the Tenant 1 month's written notice.

23 LANDLORD'S SIGNS

23.1 Leasing of Premises

Within 3 months before the end of this lease, the Tenant must allow the Landlord or its agents access to the Premises at reasonable times to install "to let" signs and to allow prospective tenants to inspect the Premises.

23.2 Sale of Premises

If at any time throughout the Term the Landlord intends to offer the Premises for sale, the Tenant must allow the Landlord or its agents access to the Premises at reasonable times to install "for sale" signs and to allow prospective purchasers to inspect the Premises.

23.3 No interference

In exercising its rights under this clause, the Landlord must not unduly interfere with the Permitted Use.

24 LANDLORD'S OBLIGATIONS

24.1 Quiet enjoyment

Provided the Tenant complies with the terms of this lease, the Tenant may peacefully enjoy the Premises during the Term without interruption by the Landlord.

24.2 Structural repairs

24.2.1 If the Act applies, the Landlord must maintain in good repair:

- (a) the structure of or fixtures in the Premises;
- (b) that part of the Landlord's Property which is plant or equipment; and
- (c) appliances, fittings or fixtures provided under this lease by the Landlord relating to the Services.

24.2.2 The Landlord's obligations under clause 24.2.1 shall not apply where:

- (a) repairs are required to the Premises, the Landlord's Property or the Services due to the Tenant's misuse of the Premises or the Services; or
- (b) the Tenant is required or permitted to remove the fixture, fitting, appliance, plant or equipment upon the expiration or early termination of this lease.

25 LANDLORD'S RIGHTS

25.1 Right to enter

The Landlord and/or any person authorised by the Landlord may enter the Premises at reasonable times:

- 25.1.1 to inspect, maintain, repair or alter the Premises or the Services, subject to reasonable notice being given to the Tenant;
- 25.1.2 to carry out any building works required by the Landlord or any relevant authority, subject to at least 1 months' prior written notice being given to the Tenant; and
- 25.1.3 to show the Premises to prospective tenants or purchasers, subject to reasonable notice being given to the Tenant.

If there is an emergency, the Landlord and any person authorised by the Landlord may enter the Premises at any time without notice and remain there and use the Premises for as long as necessary in the circumstances.

25.2 Other rights

The Landlord may subdivide the Land and grant easements or other rights over the Land or the Premises to any person, on any terms and for any purpose, provided that this does not unduly interfere with the Permitted Use.

25.3 Landlord released

If a person other than the Landlord named in this lease becomes the owner, then the Landlord is released from all obligations under this lease arising after the other person becomes owner.

26 DEFAULT BY TENANT

26.1 Interest on overdue money

If the Tenant is late in paying the Landlord any money payable by it under this lease, the Tenant must pay interest on that money from the due date for payment until the money is paid in full. The rate of interest is 2% higher than the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983*.

26.2 Default Event

A Default Event occurs if:

- 26.2.1 the Tenant does not pay any money as required under this lease whether or not demand has been made;
- 26.2.2 the Tenant does not comply with any other obligation under this lease;
- 26.2.3 a judgment or order for \$10,000.00 or more is enforced or becomes enforceable against the Tenant's interest in this lease or the Tenant's Property;
- 26.2.4 the Tenant is a corporate body other than a public company listed on Australian Stock Exchange Limited and:
 - (a) an order is made or resolution is passed to wind up the Tenant except for reconstruction or amalgamation;
 - (b) the Tenant goes into liquidation;
 - (c) the Tenant has a receiver (including a provisional receiver) or a receiver and manager of any of its assets, or an administrator appointed; or
 - (d) the Tenant proposes a re-organisation, moratorium or other administration involving all or any class of its creditors except for reconstruction or amalgamation;
- 26.2.5 the Tenant being an individual:
 - (a) becomes bankrupt; or
 - (b) takes, or tries to take advantage of, Part X of the *Bankruptcy Act 1966* (Cth);
- 26.2.6 the Tenant enters into a scheme of arrangement or composition with, or assignment for the benefit of, any of the Tenant's creditors;
- 26.2.7 the Tenant, without the Landlord's written consent:
 - (a) discontinues the Tenant's Business; or
 - (b) leaves the Premises unoccupied for 7 consecutive days;
- 26.2.8 any Guarantor is a corporate body and any of the events referred to in clause 26.2.4 occurs in relation to that Guarantor; or

26.2.9 any Guarantor is an individual and any of the events referred to in clause 26.2.5 occurs in relation to that Guarantor.

26.3 Landlord's right to end lease

If a Default Event occurs, the Landlord may:

26.3.1 end this lease by re-entering the Premises without notice or, if required by law, with notice; or

26.3.2 end this lease by notice to the Tenant.

26.4 Notice period where required

For any breach of this lease to which section 146(1) of the *Property Law Act 1958* applies, 14 days after service of a notice under the section is fixed as the time within which:

26.4.1 the Tenant must remedy the breach if it is capable of remedy; and

26.4.2 make reasonable compensation in money to the Landlord's satisfaction for the breach.

26.5 Rights retained

If this lease is ended by the Landlord, the Landlord retains the right to sue the Tenant for all unpaid money or for damages for breaches of the Tenant's obligations under this lease. For the purpose of assessing damages to the Landlord, the benefit of the Tenant's performance of this lease to the Landlord must be calculated on the basis that this lease continues in force until the Expiry Date.

27 ESSENTIAL TERMS

27.1 Essential terms

The following Tenant's obligations are essential terms of this lease:

27.1.1 the obligation to pay money; and

27.1.2 without limitation, the obligations under clause 4.1 (Rent), 4.3 (Outgoings and Services), 9 (Goods and Services Tax), 11 (Security deposit), 12 (Bank guarantee), 13 (Use of Premises), 14 (Equipment etc), 15 (Security), 16 (Tenant's obligations concerning insurance), 17 (Maintenance of Premises and Landlord's Property), 19 (Works), 20 (Assignment and subletting), 21 (Tenant's obligations at end of lease) and 26.1 (Interest on overdue money); and

27.1.3 any special conditions set out at item 17 at Schedule 1.

However, this clause does not prevent any other obligation under this lease being an essential term.

27.2 Breach is repudiation

A breach by the Tenant of an essential term is taken to be a repudiation by the Tenant of all its obligations under this lease.

28 MITIGATION OF DAMAGES

28.1 Landlord must mitigate damages

If the Tenant vacates the Premises whether with or without the Landlord's consent, the Landlord must take reasonable steps to mitigate its loss and to endeavour to re-lease the Premises at a reasonable rent and on reasonable terms.

28.2 Assessment of damages

The Landlord's entitlement to damages will be assessed on the basis that the Landlord has observed the obligation to mitigate damages.

28.3 No deemed acceptance or surrender

The Landlord's conduct taken in exercising this duty to mitigate damages will not of itself constitute acceptance of the Tenant's breach or repudiation or a surrender by operation of law.

29 DAMAGE TO PREMISES

29.1 Rights of Landlord

If the Premises are damaged so that they cannot be used for the Permitted Use, the Landlord may, on written notice to the Tenant to be served within 30 days from the date of the destruction or damage, choose to either end this lease or reinstate the Premises.

29.2 Where Landlord's notice not given

If the Landlord does not serve any notice under clause 29.1 within the required time:

29.2.1 if the Premises are partly, but not substantially destroyed, then subject to clause 29.5 the Landlord must reinstate the Premises as soon as reasonably practicable; and

29.2.2 if the Premises are wholly or substantially destroyed, the Landlord is not obliged to reinstate the Premises, but (subject to clause 29.5) the Tenant may end this lease by written notice to the Landlord. However, if before the Tenant serves any such notice the Landlord gives the Tenant notice of its decision to reinstate the Premises, the Tenant will no longer have this right.

29.3 Delay in reinstatement

If the Landlord is obliged to or chooses to reinstate the Premises, and the reinstatement does not start within 3 months or is not completed within 18 months of the date of the destruction or damage, then either the Landlord or the Tenant (subject to clause 29.5) may end this lease by giving the other written notice at any time before the reinstatement is completed.

29.4 Abatement of Rent and Outgoings

Subject to clause 29.5, from the date of the destruction or damage until the Premises are again completely fit for the Permitted Use, a fair portion of the Rent

and Outgoings, as determined by the Landlord having regard to the nature and extent of the damage, will abate.

29.5 Refusal of insurance claim due to Tenant's conduct

If payment of an insurance claim in respect of any damage or destruction is refused because of an act or omission by the Tenant or any of the Tenant's Agents:

29.5.1 the Tenant is not entitled to any suspension of Rent or Outgoings under clause 29.4 or to end this lease under clause 29.2.2 or clause 29.3; and

29.5.2 the Landlord is not obliged to reinstate the Premises under clause 29.2.1.

29.6 No compensation to Tenant

The Landlord is not liable to pay the Tenant any compensation if any part of the Premises is destroyed or damaged or if this lease is ended under this clause.

29.7 Retail Leases Act

If the Act applies this clause is to be applied subject to the requirements of the Act.

30 RESUMPTION OF PREMISES

30.1 Either party may end lease

If any part of the Premises is resumed by any authority and the Premises becomes unfit for the Permitted Use, then either the Landlord or the Tenant may end this lease by written notice to the other.

30.2 No compensation to Tenant

The Landlord is not liable to pay the Tenant any compensation if any part of the Premises is resumed by any authority.

31 RENEWAL OF LEASE

31.1 Conditions for exercise of option

The Landlord must renew this lease for the further term or terms stated in item 14 of Schedule 1 if:

31.1.1 there is no unremedied breach of this lease by the Tenant of which the Landlord has given the Tenant written notice;

31.1.2 the Tenant has not persistently committed breaches of this lease of which the Landlord has given notice during the Term; and

31.1.3 the Tenant has requested the renewal in writing not more than 12 months nor less than 9 months before the end of the Term. The latest date for exercising the option is stated in item 15 of Schedule 1.

31.2 Conditions of renewed lease

The renewed lease:

- 31.2.1 starts on the day after this lease ends;
- 31.2.2 has a starting rent as determined in accordance with clause 6; and
- 31.2.3 must contain the same terms as this lease but with no option for renewal after the last option for a further term stated in item 14 of Schedule 1 has been exercised.

31.3 Guarantee for renewed lease

If any person has guaranteed the Tenant's obligations under this lease the Tenant must have that person, or another person acceptable to the Landlord, execute and deliver to the Landlord a guarantee and indemnity in relation to the Tenant's obligations under the new lease. The guarantee must be in a form satisfactory to the Landlord.

32 RELEASE AND INDEMNITY**32.1 Tenant's risk**

The Tenant occupies and uses the Premises and enters and uses the Land at the Tenant's own risk.

32.2 Release and indemnity

The Tenant releases and indemnifies the Landlord and its employees, agents and contractors from all legal liability arising from the use or occupation of the Premises or the conduct of the Tenant's Business by the Tenant or any of the Tenant's Agents, including:

- 32.2.1 any claim made by any person for injury, loss or damage arising in any manner;
- 32.2.2 any loss or damage to any property belonging to the Tenant or other persons located on or outside the Premises caused by the Tenant or the Tenant's Agents; and
- 32.2.3 any loss, damage, injury or illness sustained or incurred by the Tenant or any of the Tenant's Agents.

32.3 Restrictions on release and indemnity

The releases and indemnities in clause 32.2 do not apply to:

- 32.3.1 any legal liability of the Landlord that arises from any unlawful act or omission of or any misconduct by the Landlord or its employees, officers, agents or contractors; or
- 32.3.2 any breach of this lease by the Landlord.

32.4 No claim for compensation

The Tenant and any other person claiming rights under this lease releases the Landlord from any claim for compensation for:

- 32.4.1 the failure of any equipment or machinery in the Premises or on the Land; and
- 32.4.2 any damage or loss caused or arising out of the interruption of any Services including but not limited to the supply of gas, electricity or water.

33 GUARANTEE AND INDEMNITY

33.1 Guarantor's obligations

In consideration of the Landlord entering into this lease with the Tenant at the Guarantor's request, the Guarantor:

- 33.1.1 guarantees that the Tenant will perform all its obligations under this lease, any renewed lease, and during any period of holding over;
- 33.1.2 must pay the Landlord on demand any money owing to the Landlord by the Tenant; and
- 33.1.3 indemnifies the Landlord against all loss resulting from the Landlord having entered into this lease, whether from the Tenant's breach of any provision of this lease, or from this lease being or becoming unenforceable against the Tenant.

33.2 Liability not affected

The Guarantor's liability is not affected by:

- 33.2.1 the Landlord granting the Tenant or any Guarantor any time or other indulgence;
- 33.2.2 the Landlord agreeing not to sue the Tenant or any Guarantor;
- 33.2.3 any assignment (whether by the Landlord or the Tenant), sub-lease or variation of this lease;
- 33.2.4 any provision of this lease being or being found to be unenforceable;
- 33.2.5 the renewal of this lease; or
- 33.2.6 this lease not being signed, or not being signed correctly, by any one Guarantor.

33.3 Covenants

The Guarantor agrees:

- 33.3.1 not to seek to recover any money from the Tenant by way of reimbursement for payments made by the Guarantor to the Landlord until the Landlord has been paid in full;
- 33.3.2 not to prove, claim or exercise voting rights if a liquidator, provisional liquidator, administrator or trustee in bankruptcy is appointed in respect of the Tenant for any amount which the Landlord has demanded from the Guarantor until the Landlord has been paid in full; and

33.3.3 to pay the Landlord any money which the Landlord is required to refund to the Tenant's liquidator or trustee in bankruptcy as preferential payments received from the Tenant.

33.4 Reinstatement of guarantee

If any payment or other transaction in connection with this lease or this clause 33 is void, voidable, unenforceable or defective or claimed to be so and that claim is upheld, then:

33.4.1 the liability of the Guarantor is to be what it would have been if the payment or other transaction had not been made; and

33.4.2 immediately the Landlord requests it, the Guarantor must do everything necessary to put the Landlord back into the position it would have been in if the payment or other transaction had not been made.

33.5 Assignment

The Landlord may assign its rights under this clause 33 to any person to whom it transfers the Land or assigns its interest in this lease.

34 LANDLORD'S EXERCISE OF RIGHTS

34.1 Landlord has discretion

The Landlord may exercise a right, power or remedy at its discretion and separately or concurrently with another right, power or remedy.

34.2 Partial exercise

A single or partial exercise of a right, power or remedy by the Landlord does not prevent a further exercise of that right or an exercise of any other right, power or remedy.

34.3 Right not prejudiced by delay etc

Failure by the Landlord to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

35 DISPUTES

35.1 Application

35.1.1 Unless the Act applies, this clause 35 applies to all disputes under this lease except disputes:

- (a) under clause 6 (Market review and valuation) or clause 7 (CPI review);
- (b) because the Tenant has not paid money it owes under this lease;
- (c) to be resolved in another way prescribed by any other provision of this lease; or

- (d) because the Landlord wants possession of the Premises before or after the Expiry Date.

35.1.2 If the Act applies, all disputes under this lease are to be determined according to the requirements of the Act.

35.2 Dispute

If a dispute arises out of or relates to this lease (including any dispute as to breach or termination of this lease), a party may not commence any court proceedings relating to the dispute unless it has complied with this clause, except where the party seeks urgent interlocutory relief.

35.3 Mediation procedure

If a dispute or disagreement arises in relation to any matter under this lease, the parties must endeavour to resolve the matter in accordance with the following mediation procedure:

- 35.3.1 a party may start mediation by serving notice on the other party;
- 35.3.2 the notice must state that a dispute has arisen and identify what the dispute is;
- 35.3.3 the parties must jointly request appointment of a mediator. If the parties fail to agree on the appointment within 5 Business Days of service of the mediation notice, either party may apply to the President of the Law Institute of Victoria or the nominee of the President to appoint a mediator;
- 35.3.4 once the mediator has accepted the appointment, the parties must comply with the mediator's instructions; and
- 35.3.5 if the dispute is not resolved within 28 days of the appointment of the mediator, or any other period agreed by the parties in writing, the mediation ceases.

A party is not bound to follow the procedures set out in this clause 35 where to do so means that a limitation period for a cause of action relevant to the issues in dispute will expire.

35.4 Charges

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

35.5 Settlement of dispute

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

35.6 Confidential

The mediation is confidential and:

- 35.6.1 statements made by the mediator or the parties; and
- 35.6.2 discussions between the participants to the mediation,

before, after or during the mediation, cannot be used in any legal proceedings.

35.7 Mediator to be released

It must be a term of the engagement of the mediator that the parties release the mediator from any claim of any nature relating to this lease.

35.8 Rules of natural justice do not apply

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

35.9 Legal representation

Each party may be represented at the mediation by a legal practitioner or legal practitioners of its choice.

36 POWER OF ATTORNEY

The Tenant irrevocably appoints the Landlord, and its nominee or nominees, jointly and severally to be the true and lawful attorney or attorneys of the Tenant to act at any time after the power to re-enter contained in this lease has become exercisable or has been exercised (a sufficient proof of which is the statutory declaration of any officer of the Landlord duly authorised by the Landlord in that behalf):

- 36.1 to execute and sign a surrender of this lease and for this purpose to use the name of the Tenant; and
- 36.2 generally to do, execute and perform any act, matter or thing relating to the Premises as fully and effectually as the Tenant could do.

The Tenant covenants to ratify and confirm all things lawfully done or caused to be done by its attorney or attorneys in or about the Premises.

37 APPROVALS AND CONSENTS

37.1 Landlord's consent

Unless this lease provides otherwise, any consent or approval to be given by the Landlord may be given by the Landlord conditionally or unconditionally or withheld at the Landlord's absolute discretion. If conditions are imposed by the Landlord, the Tenant must comply with each condition imposed by the Landlord as if it were a provision of this lease.

37.2 Mortgagee or head lessor consent

If this lease is a sub-lease or the Land is subject to a mortgage or both, then the Landlord warrants that it has the consent of the head lessor or mortgagee to this lease. The Tenant will not require evidence of the consent to this lease of any mortgagee or head lessor of the Land.

38 INDEMNITIES

Each indemnity in this lease is a continuing obligation, independent from the other obligations of the Tenant, and survives the end of this lease.

39 FURTHER ASSURANCES

If the Landlord requests, the Tenant must:

- 39.1 execute, and cause its successors to execute, documents and do everything else necessary or appropriate to bind the Tenant and its successors under this lease; and
- 39.2 use its best endeavours to cause relevant third parties to do likewise to bind every person intended to be bound under this lease.

40 STATUTORY PROVISIONS

The following provisions do not apply to this lease:

- 40.1 the covenants, powers and provisions implied in leases by section 67 of the *Transfer of Land Act 1958*; and
- 40.2 section 144 of the *Property Law Act 1958*.

41 PAYMENTS**41.1 No set off etc**

The Tenant must make payments under this lease punctually without set-off, counterclaim or deduction.

41.2 No demand required

Unless this lease provides otherwise, the Landlord need not demand any amount payable by the Tenant under this lease.

42 RIGHTS AND REMEDIES**42.1 Prior breaches and obligations**

The ending of this lease, however occurring, does not affect:

- 42.1.1 the Landlord's rights in respect of a breach of this lease by the Tenant before the end of this lease; or
- 42.1.2 the Tenant's obligation to make any payment under this lease before the expiry or termination.

42.2 Remedies cumulative

The rights, powers and remedies provided in this lease are in addition to the rights, powers or remedies provided by law independently of this lease.

43 ACTS OF TENANT'S AGENTS

If this lease:

- 43.1 prohibits the Tenant from doing a thing, the Tenant must:
 - 43.1.1 ensure that the Tenant's Agents do not do that thing; and
 - 43.1.2 not allow or cause any person to do that thing.

43.2 requires the Tenant to do a thing, the Tenant must ensure that the Tenant's Agents do that thing.

44 CERTIFICATE IS EVIDENCE

A certificate signed by the Landlord or its Authorised Officer about a matter concerning this lease is sufficient evidence of the matter stated in the certificate unless the matter is proved to be incorrect.

45 ENTIRE AGREEMENT

The Tenant acknowledges that:

- 45.1 no information, representation or warranty by or on behalf of the Landlord was supplied or made concerning this lease with the intention or knowledge that it would be relied upon by the Tenant;
- 45.2 no information, representation or warranty has been relied upon; and
- 45.3 this lease constitutes the entire agreement between the parties concerning the Premises and supersedes all previous negotiations and agreements.

46 WAIVER AND VARIATION

46.1 Writing required

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

46.2 Limit of waiver

If the Landlord waives a provision of or a right created under or implied in this lease, that waiver does not extend to:

- 46.2.1 a breach by the Tenant of the same or any other provision; or
- 46.2.2 the future exercise by the Landlord of that right.

46.3 No deemed waiver

The acceptance of a payment under this lease will not be taken to constitute a waiver of any provision of or a right created under or implied in this lease, except the right to demand the payment of that amount of money.

47 NOTICES

47.1 Giving notice

Subject to clause 47.5, any notice (which includes, without limitation, a demand, request, consent, approval and any other communication made, required or authorised under this Agreement) given under this Agreement must be:

- 47.1.1 in writing;
- 47.1.2 directed to the recipient's address, email address or facsimile number specified in item 16 of Schedule 1, as varied by any notice; and

- 47.1.3 hand delivered or sent by prepaid post to that address or sent by email to that email address or sent by facsimile transmission to that number.

47.2 Receipt of notice

A notice given in accordance with clause 47.1 is taken to be received by the recipient:

- 47.2.1 if hand delivered, on delivery;
- 47.2.2 if sent by prepaid post, within Australia to an Australian address, 6 Business Days after the date of posting;
- 47.2.3 if sent by email, at the time of receipt as specified in section 13A of the *Electronic Transactions (Victoria) Act 2000*;
- 47.2.4 if sent by facsimile transmission, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within 8 Business Hours after that transmission, the recipient informs the sender that it has not received the entire notice.

In all cases, a notice received after 5.00pm in the place of receipt or on a day that is not a Business Day is taken to be received by the recipient at 9.00am on the next Business Day.

47.3 Proof of receipt of notice by email

In proving that a notice given by email has been received by the recipient, it is sufficient to produce an acknowledgement or receipt that the email has reached the recipient's email address.

47.4 Signing of notice

A notice given under this Agreement is sufficiently signed if:

- 47.4.1 in the case of a body corporate, it is signed by a director, secretary or other officer of, or a legal practitioner acting for, the body corporate; or
- 47.4.2 in the case of an individual, it is signed by the individual.

47.5 Other modes of service permitted

The provisions of this clause are in addition to any other mode of service permitted by law.

48 SEVERANCE

48.1 Preferred construction

The parties agree that a construction of this lease that results in all provisions being enforceable is to be preferred to any other construction.

48.2 Severance

If, despite the application of clause 48.1, a provision of this lease is illegal or unenforceable:

48.2.1 if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are omitted; and

48.2.2 in any other case, the whole provision is omitted,

and the remainder of this lease continues in force.

49 GENERAL**49.1 Counterparts**

This lease may be executed in any number of counterparts and all the counterparts together constitute one and the same instrument.

49.2 Power of attorney

If this lease is executed under power of attorney, each attorney executing this lease warrants that, at the time of executing this lease, he or she has no notice of revocation of the power of attorney under the authority of which this lease is executed.

49.3 No relationship

No party to this Lease has the power to obligate or bind any other party. Nothing in this Lease will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between the Landlord and the Tenant. Nothing in this Lease will be deemed to authorise or empower the Tenant to act as agent for or with the Landlord.

49.4 Party preparing document not to be disadvantaged

No rule of contract interpretation must be applied in the interpretation of this lease to the disadvantage of one party on the basis that it prepared or put forward this lease or any document comprising part of this lease.

49.5 Governing law

This lease is governed by the laws of Victoria.

50 NO FETTERING

The Tenant acknowledges that the Landlord has a range of statutory functions, and acknowledges and agrees that nothing in this lease:

50.1 fetters or restricts the exercise of any power or discretion of the Landlord under any law, rule, act, ordinance, regulation, by-law, order, statutory instrument, control, restriction, direction, notice or proclamation; or

50.2 requires the Landlord to exercise any power or discretion under any law, rule, act, ordinance, regulation, by-law, order, statutory instrument, control, restriction, direction, notice or proclamation in any manner.

51 INTERPRETATION

In this lease, unless the contrary intention appears:

- 51.1 if there is an inconsistency between a special condition in item 17 of Schedule 1 and another provision of this lease, the special condition prevails;
- 51.2 the singular includes the plural and vice versa;
- 51.3 a reference to a document or instrument, including this lease, includes a reference to that document or instrument as novated, altered or replaced from time to time;
- 51.4 a reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;
- 51.5 a reference to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
- 51.6 words importing one gender include other genders;
- 51.7 other grammatical forms of defined words or expressions have corresponding meanings;
- 51.8 a covenant, undertaking, representation, warranty, indemnity or agreement made or given by:
 - 51.8.1 two or more parties; or
 - 51.8.2 a party comprised of two or more persons,
 is made or given and binds those parties or persons jointly and severally;
- 51.9 a reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- 51.10 a recital, schedule, annexure or description of the parties forms part of this lease;
- 51.11 if an act must be done on a specified day that is not a Business Day, the act must be done instead on the next Business Day;
- 51.12 if an act required to be done under this lease on a specified day is done after 5.00pm on that day in the time zone in which the act is performed, it is taken to be done on the following day;
- 51.13 all monetary amounts are in Australian dollars;
- 51.14 a party that is a trustee is bound both personally and in its capacity as trustee;
- 51.15 a reference to an authority, institution, association or body ("**original entity**") that has ceased to exist, been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity; and
- 51.16 headings and the provision of a table of contents are for convenience only and do not affect the interpretation of this lease.

**SCHEDULE 1
REFERENCE TABLE**

1	Landlord	JAMES MERLINO MP, MINISTER OF THE CROWN ADMINISTERING THE <i>EDUCATION AND TRAINING REFORM ACT 2006</i> of 2 Treasury Place, East Melbourne, Victoria 3002
2	Tenant	##INSERT TENANT (ACN ##INSERT ABN [insert]) of ##INSERT
3	Guarantor	##INSERT GUARANTOR of ##INSERT
4	Land (Clause 1.15)	The land described in certificates of title volume 8986 folio 476 and volume 10353 folio 353
5	Premises (Clause 1.20)	The building and the area of the Land shown outlined in orange on the plan attached in Schedule 3 of this lease, known as part of 17 Tooronga Road, Malvern East.
6	Permitted Use (Clause 1.19)	1. Use for: (a) the provision of a lunch order service for students and staff of Malvern Primary School (" Lunch Order Service Use "): (i) which must operate on each school day during school term, from the rear of the Premises and away from the general public and Tooronga Road; and (ii) selling only those items and only at the prices shown in the menu approved from time to time by the Landlord and the School (" Menu ") and which must comply with the Victorian Government's <i>School Canteens and Other School Food Services Policy</i> , or any amended or replacement policy as may be issued from time to time and notified by the Landlord to the Tenant; and (b) a convenience shop and/or take away food premises (" Shop Use "); and 2. Use as an ancillary or associated commercial business, subject to the Tenant obtaining all necessary approvals (" Commercial Use ").
7	Commencement Date (Clause 1.5)	The date specified on page 1 of this lease, being the date by which all parties to this lease have signed this lease. ##[to be inserted]

8	Expiry Date (Clause 1.10)	##[to be inserted], being the date which is 3 years from the Commencement Date.	
9	Rent (Clause 1.21)	\$##[to be confirmed] per annum (plus GST), commencing after the end of the Rent Free Period provided in special condition (f).	
10	Rent Review (Clause 1.23 or 5.1)	Rent Review Dates	Method of Review
		On each anniversary of the Commencement Date:	CPI adjustment
		On the commencement date of each further term:	Market review
11	Security deposit or bank guarantee (Clause 11 or 12)	A security deposit for an amount equivalent to 3 months' Rent plus GST payable as at the Commencement Date, totalling \$##[to be confirmed] (inclusive of GST)	
12	Works (Clause 1.35)	Initial fitout Works to be carried out by the Tenant as soon as possible after the Commencement Date, strictly in accordance with the plans approved by the Landlord (and which, if approved by the date the parties sign this lease, are attached at Schedule 4), and in accordance with Schedule 2.	
		The Tenant must use all reasonable endeavours to complete the initial fitout Works during the Rent Free Period.	
13	Amount of public liability insurance (Clause 16.1)	\$20,000,000.00	
14	Options for renewal of term (Clause 31)	One (1) further term of three (3) years	
15	Last date for exercise of option (Clause 31.1.3)	##[to be inserted]	

16 **Addresses for service of notices**
(Clause 47)

Landlord	
Physical	[insert]
Post	[insert]
Fax	[insert]
Email	[insert]
Tenant	
Physical	[insert]
Post	[insert]
Fax	[insert]
Email	[insert]
Guarantor	
Physical	[insert]
Post	[insert]
Fax	[insert]
Email	[insert]

17 **Special conditions**
(Clause 2.1.3)

The following special conditions also bind the parties:

(a) Menu for Lunch Order Service

- (i) The Tenant must not vary the items and prices listed in the Menu unless it has first obtained the written approval of the Landlord (which must not be unreasonably withheld, though subject always to special condition (a)(iii)). The Landlord and Tenant must meet annually to review and approve the Menu, each party acting in good faith.
- (ii) The Landlord agrees that the Rent will not be adjusted on a CPI Rent Review Date if, during the 12 month period which precedes the relevant CPI Rent Review Date, there have been no increases to any of the prices listed in the Menu. If a price has increased for any one or more item/s on the Menu during the previous 12 month period, the Landlord may exercise its right to apply a CPI adjustment of Rent in accordance with clause 7 and item 10 of Schedule 1 of this lease. Nothing in this special condition affects the market review of Rent to take place on the commencement date of any further term.

- (iii) The Menu must comply with all government policies and guidelines on school canteens, including the *Victorian Government's School Canteens and Other School Food Services Policy*.
- (iv) The Tenant must at all times while the Premises are open for business clearly display the Menu at the Premises.

(b) School Community benefit and terms relating to the Lunch Order Service

- (i) The parties acknowledge and agree that:
 - (A) in itself, provision of the Lunch Order Service will provide a benefit to the education of the students at the School through the integration of the *School Canteens and Other School Food Services Policy*, which in turn will support learning opportunities in curriculum areas such as health and physical education, and personal and social capability. The benefit derives from the opportunity and convenience of ordering a variety of fresh, healthy lunches and snacks from an on-site canteen service that would not otherwise be available.
 - (B) permitting the Tenant to use the Premises for the Commercial Use and the Shop Use, as well as the Lunch Order Service, brings other benefits to the School, including:
 - (1) enabling the Tenant to provide a Lunch Order Service to the School at competitive prices;
 - (2) providing the School Community with an informal meeting place where members of the School Community can meet to discuss and work on projects and tasks related to the School; and
 - (3) providing a venue close to the School where members of the School Community can obtain refreshments without needing to leave the school precinct provides an additional opportunity for the School Community to connect and participate in school-based and community-based activities close to the School.

[Note to prospective tenants: any additional benefits (direct or indirect) to the students of the School can be added here, subject to agreement between the parties. E.g., ongoing nutritional related promotions and programs]

- (ii) The Tenant must ensure that:
 - (A) the Lunch Order Service for students of the School is accessible via an online ordering system;
 - (B) pricing for the Lunch Order Service must not be increased except in accordance with special condition (a) above;
 - (C) provision is made for a "forgotten lunch policy"; and
 - (D) the "cut-off" and delivery times for orders are reasonable taking into account school hours and timetables.
- (iii) If, in the reasonable opinion of the School and the Landlord, the Tenant's pricing for the Lunch Order Service does not comply with special condition (b)(ii)(B), the Tenant acknowledges and agrees that the Landlord may serve written notice on the Tenant requiring the Tenant to produce written evidence in a form acceptable to the School and the Landlord that the Tenant is complying with special condition (b)(ii)(B) within 28 days from the date of the Landlord's notice. If, after reviewing the evidence supplied by the Tenant, in the reasonable opinion of the School and the Landlord, the Tenant is not complying with special condition (b)(ii)(B), then the Landlord may serve written notice on the Tenant requiring the Tenant to cease using the Premises for the Shop Use and the Commercial Use within 3 months from the date of the Landlord's notice. The Tenant may, within 28 days from the date of the Landlord's notice, serve written notice on the Landlord and the School terminating this lease with effect as at the end of the current school term.
- (iv) The Tenant must not make any claim against the Landlord or the School in relation to any matter which is the subject of this special condition (b).

(c) Hours of Operation

[Note to prospective tenants: The Landlord is willing to consider proposed changes to these minimum operating hours. If any changes are to be

proposed, then you must set them out fully in your EOI response.]

- (i) The Tenant must keep the Premises open, and must trade from the Premises, during the following hours: Monday to Friday, 8am to 4:00pm during school term.
- (ii) The Tenant may, at its discretion (subject to the terms of any approval and subject always to any other Law), trade from the Premises on Saturday and/or Sunday.
- (iii) The Tenant may, at its discretion (subject to the terms of any approval and subject always to any other Law), use the Premises for the Shop Use and/or the Commercial Use at any other times.

(d) School relationships – Best endeavours

When operating the Tenant's Business from the Premises, the Tenant must, and must ensure that the Tenant's Agents, use best endeavours to establish and maintain friendly relationships with the School's students, their families, the staff, and any others in the School Community.

(e) Working with Children

- (i) The Tenant must, and must ensure that all persons working at the Premises, hold a current and valid "Working with Children Check" as referred to in the *Working with Children Act 2005* (or any such certificate or check which replaces the Working with Children check in the future).
- (ii) The Tenant must comply with, and implement, at its own expense in all respects, the Victorian Child Safe Standards.

(f) Rent Free Period

[Note to prospective tenants: You should nominate a rent free period that is comparable to the expected period of the fit out works. Please outline your reasons for seeking the length of the rent free period in you EOI response.]

- (i) Provided the Tenant performs all of its obligations under this lease, the Tenant is not required to pay Rent for a period of _____ months ##[to be confirmed] starting on the Commencement Date ("Rent Free Period"). All other monies payable under this lease must be paid in full during the Rent Free Period.
- (ii) This special condition will be omitted from any lease for a further term.

- (iii) The Tenant must use all reasonable endeavours to complete any initial fitout Works during the Rent Free Period, and the Tenant acknowledges that Rent will become payable on the day after the Rent Free Period even if the initial fitout Works are not completed during the Rent Free Period.

(g) Make Good

At the end of this lease, in addition to complying with the obligations set out in clause 21 of this lease, the Tenant must ensure that the Premises are left so that it may be used as a functional canteen, servery and shop (including ensuring that all necessary permits and licences are in place to allow for such use or can be transferred to the School or the School's nominee).

(h) Food Act

The Tenant must obtain a registration as a food business from the Stonnington City Council prior to commencing trade at the Premises. The Tenant must display at the Premises at all times, and must provide the Landlord with a copy of, the current registration certificate required under the Food Act 1984 (as amended from time to time) as issued from time to time by the local council or other registration authority.

(i) Car Park Space

The Tenant acknowledges and agrees that:

- (2) the driveway from Tooronga Road onto a paved and fenced off-street car park area immediately adjacent to the Premises (**Car Park Space**) is also used for a pedestrian thoroughfare;
- (3) the Car Park Space is shown hatched in blue on the plan attached to Schedule 3 of this lease and the Tenant shall have a non-exclusive licence to use the Car Park Space for the duration of this lease, subject to the terms of this lease, including this special condition (i);
- (4) the Car Park Space can only be used by the Tenant for parking one vehicle, and provided always that it does not impede the ability of the School Community and the public to use the Car Park Space as a pedestrian thoroughfare into the grounds of the School;
- (5) the Tenant must not permit anyone except for the Tenant or the Tenant's Agents to use the Car Park Space; and
- (6) if the Tenant wants to use any part of the Car

Park Space for any purpose other than as specified in this special condition (i), then the Tenant must obtain the approval of the School and the Landlord.

(j) Canteen Licence

The Tenant must enter into the Canteen Licence with the School Council. For the avoidance of any doubt, the Tenant acknowledges and agrees that if it ceases providing the Lunch Order Service for any reason (including because the Canteen Licence is ended for any reason), then the Landlord can terminate this lease by giving the Tenant one month written notice. This lease and the Canteen Licence are interdependent and this lease takes precedence over the Canteen Licence in all respects; however, to the extent that the Canteen Licence deals with any matter or issue which is not expressly and exhaustively dealt with by this lease, then the Canteen Licence must be given effect to and takes precedence to that extent.

SCHEDULE 2 WORKS

1 LANDLORD'S CONSENT

The Tenant may not carry on or continue any Works or make any application to any relevant authority for consent to carry out any Works without the Landlord's prior written consent.

2 LANDLORD'S CONSULTANTS

2.1 The Landlord may employ external consultants (eg. architects, building consultants) for the purpose of:

2.1.1 considering any proposed Works; and

2.1.2 supervising the Works.

2.2 The Tenant must cooperate with and allow the Landlord's consultants access to the Premises for these purposes.

3 DOCUMENTS AND OTHER REQUIREMENTS OF LANDLORD

Before granting the Tenant consent to carry out or continue with any Works, the Landlord may require the Tenant to:

3.1 deliver 3 copies of all drawings and specifications (including colour schemes) and a program of Works to the Landlord;

3.2 make all variations to the drawings, specifications and program of Works reasonably required by the Landlord and deliver further copies to the Landlord;

3.3 deliver a detailed quote for the cost of completing the Works (including the cost of all materials to be used) certified by a qualified consultant to be a bona fide estimate of the cost of completing the Works;

3.4 obtain all approvals and permits necessary for the Works;

3.5 deliver 1 copy of those approvals and permits to the Landlord;

3.6 give the Landlord the name of:

3.6.1 each contractor and tradesperson the Tenant intends to employ to carry out the Works; and

3.6.2 the person who will supervise the Works; and

3.7 effect and maintain the appropriate insurances in respect of the Works and provide written confirmation of same to the Landlord.

4 TENANT'S OBLIGATIONS

The Tenant must at its cost:

4.1 carry out and complete all Works within the Premises promptly and in a proper and workmanlike manner and:

- 4.1.1 in accordance with the drawings, specifications and program of Works approved by the Landlord;
- 4.1.2 in compliance with any conditions imposed by the Landlord;
- 4.1.3 using qualified tradespersons approved by the Landlord, acting reasonably;
- 4.1.4 in compliance with all laws and all requirements of authorities;
- 4.2 obey and cause its contractors and tradespersons to obey the Landlord's reasonable directions concerning the Works;
- 4.3 if the Works affect the air-conditioning, balance the air-conditioning to the correct air quantity and restore it to proper working order;
- 4.4 immediately give the Landlord a copy of any notice received from any party in relation to the Works; and
- 4.5 not interfere and ensure that the Tenant's contractors and tradespersons do not interfere with other occupiers or users of the Land.

5 COMPLETION OF WORKS

On completion of the Works, the Tenant must promptly:

- 5.1 remove from the Premises and the Land all unused building materials, equipment and debris as directed by the Landlord;
- 5.2 if required, obtain an occupancy permit or compliance from the relevant authority for the Works and deliver a copy to the Landlord; and
- 5.3 in the case of alterations or additions, deliver to the Landlord a complete set of drawings and specifications showing the alterations or additions as built.

6 COSTS

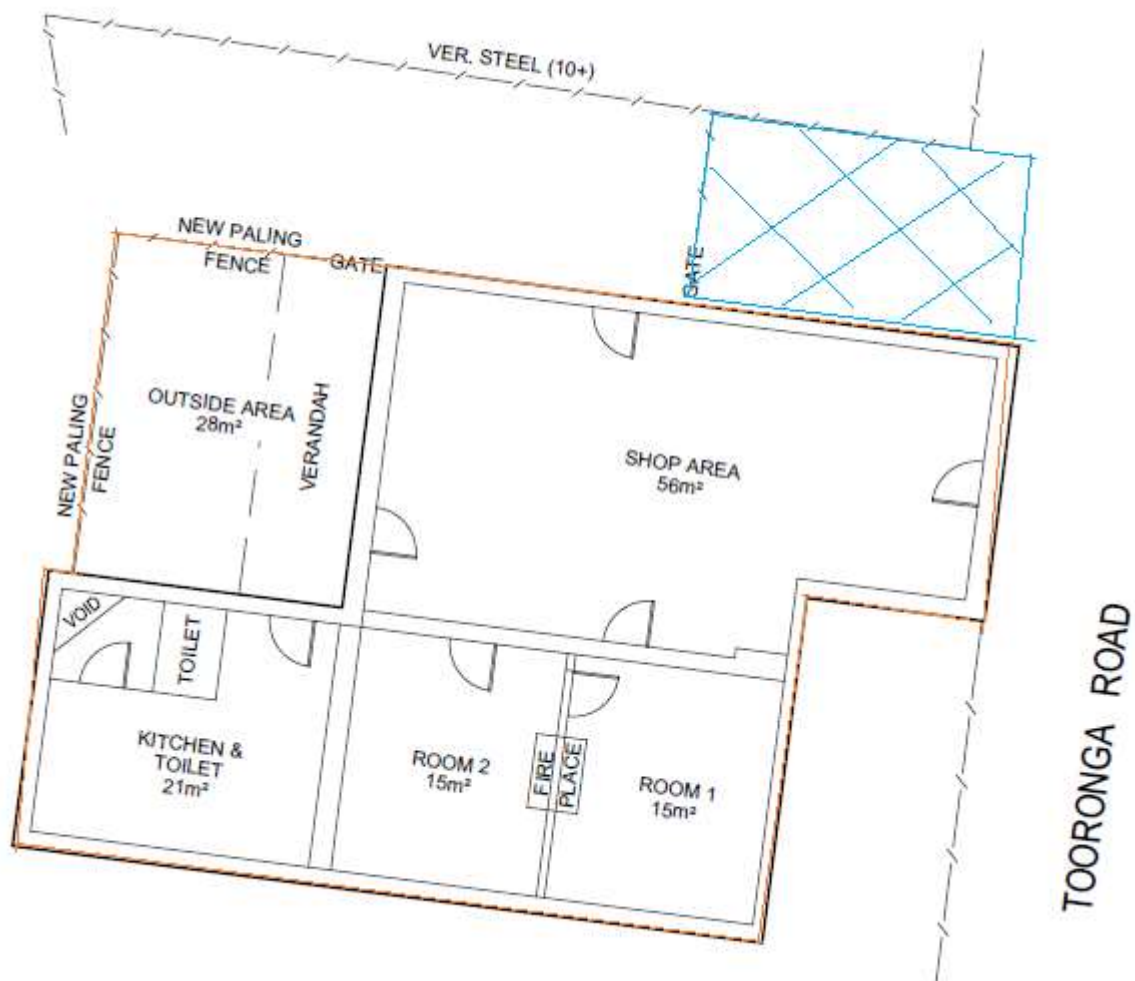
The Tenant must promptly pay when requested all reasonable costs incurred by:

- 6.1 subject to clause 6.2 of this Schedule, the Landlord associated with carrying out and completing the Works, or arising as a result of the Works; and
- 6.2 the Landlord in employing external consultants pursuant to clause 2 of this Schedule provided however that such costs shall be capped at \$2,500.00 plus GST.

7 LANDLORD'S PROPERTY

Subject to the provisions of this lease and any written agreement to the contrary, all improvements constructed by virtue of the Works remain at all times the property of the Landlord.

**SCHEDULE 3
PLAN**



**SCHEDULE 4
APPROVED PLANS FOR INITIAL FITOUT WORKS**

##[**TO BE INSERTED**]

EXECUTED as a deed.

SIGNED, SEALED AND DELIVERED by)
NICOLE POPE, SENIOR MANAGER,)
PROPERTY UNIT, VICTORIAN SCHOOL)
BUILDING AUTHORITY, DEPARTMENT OF)
EDUCATION AND TRAINING, for and on)
 behalf of **THE HONOURABLE JAMES**)
MERLINO, MP, in his capacity as the)
MINISTER OF THE CROWN)
ADMINISTERING THE *EDUCATION AND*)
TRAINING REFORM ACT 2006:)

.....
Nicole Pope

.....
Witness

.....
(Name of Witness)

.....
(Usual address)

EXECUTED by **##INSERT TENANT** (ACN)
##INSERT) in accordance with section)
 127(1) of the *Corporations Act 2001* (Cth) by)
 being signed by the authorised person:)

.....
Sole director and sole company secretary

.....
Full name

.....
Usual Address

SIGNED SEALED AND DELIVERED)
 by **##INSERT GUARANTOR** in the)
 presence of:)

.....
Witness