

**AGREEMENT TO LEASE PREMISES AT  
[PREMISES]**

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**between**

**AUCKLAND TRANSPORT**

**and**

**[LESSEE]**

DRAFT 2

**BETWEEN**                    **AUCKLAND TRANSPORT (Lessor)**

**AND**                            **[LESSEE] Company no. [TBC, currently company not incorporated and only approved name reservation] (Lessee)**

## **BACKGROUND**

- A.**            The Lessor has full control and management of the Property pursuant to the Local Government (Tamaki Makaurau Reorganisation) Council-Controlled Organisations Vesting Order 2010.
- B.**            The Lessee wishes to lease the Premises from the Lessor and the parties have agreed to enter into this Agreement to record the arrangement reached.

## **1. GRANT OF LEASE**

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- 1.1**           The Lessor agrees to grant and the Lessee agrees to take a lease of the Premises upon the terms and conditions specified in this Agreement, including the form of Deed of Lease attached as Schedule 2 (**Lease**). In the event of any conflict between the provisions of this Agreement and the Lease, then this Agreement shall prevail.
- 1.2**           Notwithstanding that the Lease may not have been executed, the parties shall be bound by the terms, covenants and provisions contained in this Agreement and the Lease as if the Lease had been properly executed.

## **2. DEFINITIONS AND INTERPRETATION**

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### **2.1**           Definitions:

“**XXX Transport Centre**” means the transport centre comprised within the Property and now known as the XXX.

“**Code Compliance Certificate**” has the meaning ascribed to it in the Building Act 2004.

“**Commencement Date**” means the date described in Item 3 of Schedule 1.

“**GST**” means Goods and Services Tax levied under the Goods and Services Tax Act 1985 and includes any tax levied in substitution for that tax.

“**Lessee Fit Out Works**” means the work to be carried out at the Premises by the Lessee in accordance with the tenancy fitout design and specifications approved by the Lessor.

“**Lessor’s Works**” means the work to be completed by the Lessor to the Premises, with the details of the Lessor’s Works set out in the indicative plans (which are subject to change) annexed to the Britomart Transport Centre Pre-Start Manual for Tenancy Fit-Out (attached as Schedule 3 of this Agreement).

“**Practical Completion of the Lessee Fit Out Works**” means that the Lessee Fit Out Works have been completed in accordance with the approved plan and specifications and the Britomart Transport Centre Pre-Start Manual for Tenancy Fit-Out, notwithstanding that there may be items of a comparatively minor nature that may require finishing attention or remedial action, and so that a certificate of Practical Completion has been issued for the Lessee Fit Out Works (if applicable). A certificate issued by the Lessee’s project manager to that effect except in the case of manifest error(s) shall be conclusive evidence thereof.

“**Property**” means the property described in Item 1 of Schedule 1.

“**Premises**” means the premises described in Item 2 of Schedule 1.

“**Previous Lease**” means the undated deed of lease of the Premises between the Lessor and the Previous Lessee.

**“Previous Lessee”** means Mojo Coffee Cartel Limited, company number 661777.

**“Previous Lessee’s Fitout”** means the fitout of the Premises completed by the previous lessee, Mojo Coffee Cartel Limited, and as detailed in the tenancy design approval dated 29 October 2020, a copy of which is attached as Schedule 5.

**“Relevant Authority”** means any body or corporation or any municipal government or statutory or any non-statutory authority having jurisdiction over the Property or any part thereof.

**“Unconditional Date”** means the date that all the conditions specified in clause 13.1 of this Agreement have been satisfied, or waived in writing, by the Lessor.

**“Utilities”** means all utility and other services connected and/or supplied to the Premises, including water, sewage, drainage, electricity, gas, telephone and rubbish collection.

**“Working Day”** means any day of the year other than Saturdays, Sundays, the provincial anniversary as observed in Auckland, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s birthday, Matariki, Labour Day and any day in the period commencing 24 December and ending on 5 January the next year (both days inclusive)

## 2.2 Defined expressions:

2.2.1 Expressions defined in the main body of this Agreement have the defined meaning in the whole of this Agreement, including the background.

2.2.2 Terms used in this Agreement which have a defined meaning in the Lease shall have the same meaning in this Agreement unless the context requires otherwise.

## 3. DEPOSIT

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3.1 The Tenant shall pay as a deposit an advance rental payment of the amount specified in Item 3 of Schedule 1. The deposit shall be payable to the Lessor or the Lessor’s agent immediately upon execution of this Agreement by all parties and/or at such other time as is specified in this Agreement. The person to whom the deposit is paid shall hold it as a stakeholder until this Agreement is unconditional or is avoided.

3.2 The Lessor shall not be entitled to cancel this Agreement for non-payment of the deposit unless the Lessor has first given to the Lessee three (3) Working Days’ notice in writing of intention to cancel and the Lessee has failed within that time to remedy the default. No notice of cancellation shall be effective if the deposit has been paid before the notice of cancellation is served.

3.3 Without prejudice to any of the Lessor’s rights or remedies, including any right to claim for additional expenses and damages, if the deposit or any portion thereof is not paid upon the due date for payment the Lessee shall pay to the Lessor interest at the Default Interest Rate on the portion of the deposit so unpaid for the period from the due date for payment until payment.

## 4. RENT REVIEW

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4.1 The rent shall be subject to review as follows:

4.1.1 an annual fixed increase percentage stipulated in Item 3 of Schedule 1 on the fourth (4<sup>th</sup>) anniversary of the Commencement Date and each and every subsequent anniversary of the Commencement Date; and

4.1.2 a market rent review on the market rent review dates stipulated in Item 3 of Schedule 1. The annual rent payable from the relevant market rent review shall be the greater of the market rent as at the rent review date and a 3% increase on the prevailing annual rental immediately prior to the review.

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**5. OUTGOINGS**

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**5.1** The Lessee shall be responsible for the following that are associated with the Premises:

- 5.1.1** water, gas, electricity, telecommunications and other utilities and services including line charges used by or in the Premises;
- 5.1.2** all costs associated with the cleaning and provisioning of the Premises and rubbish disposal from the Premises to the common rubbish bins which are to be provided by the Lessor;
- 5.1.3** general maintenance and repairs in relation to electrical fittings on the Premises. The Lessor will be responsible for maintenance and repairs to any other of the Lessor's fixtures or fittings, unless same are damaged or broken and require replacement due to negligent, improper, careless or abnormal use or action by the Lessee or their invitees, in which case the Lessee shall be responsible for any repair or replacement cost;
- 5.1.4** all security directly associated with the Premises. The Lessor will be responsible for all security relating to all other areas of the Property including common areas, and security to these areas shall be at the absolute discretion of the Lessor (but will not interfere with the Lessee's ability to access the Premises); and
- 5.1.5** any other costs or charges to the Property as specified in Schedule 2 in the Lease.

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**6. COSTS**

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**6.1** Each party shall pay their own costs of the negotiation and preparation of this Agreement.

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**7. LESSEE FIT-OUT WORKS**

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**7.1** The Lessee Fit Out Works are subject to prior written approval by the Lessor, in accordance with clause 13.1.3 below.

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**8. LESSOR'S WORKS**

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**8.1** Upon obtaining all necessary consents from the Relevant Authority, the Lessor shall commence, carry out and complete the Lessor's Works with all due speed and in a good and workmanlike manner and to sound and accepted architectural and engineering standards and in accordance with the requirements of the Relevant Authority.

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**9. LESSEE FIT OUT WORKS**

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**9.1** Upon obtaining all necessary consents from the Relevant Authority and the prior written approval of the Lessor under clause 13.1.3 below, the Lessee shall commence, carry out and complete the Lessee Fit Out Works with all due speed and in a good and workmanlike manner and to sound and accepted architectural and engineering standards and in accordance with the requirements of the Relevant Authority.

**9.2** The Lessee shall in respect of the Lessee Fit Out Works:

- a) comply with all obligations, restrictions and requirements imposed by or arising in consequence of all statutes, regulations, bylaws, unitary plans and district rules in force for the time being affecting the carrying out and completion of the Lessee Fit Out Works;
- b) obtain at its cost all relevant permits, consents and approvals required in accordance with the Building Act 2004, the Resource Management Act 1991 or any other relevant statute to enable the Lessee Fit Out Works to be lawfully commenced and carried out (including any consents necessary for any variations);

- c) arrange for all required inspections by the Relevant Authority to be carried out at all times in accordance with applicable bylaws or the building code (as may be applicable in the circumstances);
- d) comply with the requirements of the Relevant Authority and (if applicable) other authorities having jurisdiction;
- e) forthwith comply with any notices (including any rectification notices) issued by the Lessor and/or any Relevant Authority including the carrying out of any rectification work;
- f) obtain a Code Compliance Certificate or a certificate of public use (as appropriate) for the Lessee Fit Out Works (if applicable);
- g) ensure that all works are to be in accordance with Standards New Zealand codes; and
- h) comply with the requirements of XXX Transport Centre Pre-Start Manual for Tenancy Fit-Out (attached as Schedule 3).

**9.3** The Lessee will at its own expense and as soon as reasonably possible, in respect of the Lessee Fit Out Works, rectify any:

- 1. defective materials used in the construction;
- 2. substandard workmanship;
- 3. failure to comply with local authority requirements; and
- 4. inherent defects in the design or construction.

**9.4** The Lessee is liable for and indemnifies and agrees to keep the Lessor indemnified against all action, claims, demands, liabilities, losses, damages, costs and expenses of whatever nature that the Lessor may suffer, incur or sustain in connection with or arising out of the damage or loss in connection with the Lessee Fit Out Works, except to the extent caused by the Lessor or the Lessor's employees, agents or contractors.

**9.5** The parties acknowledge that the Lessee Fit Out Works will be completed by a date after the Commencement Date to be agreed between the parties, acting reasonably ("**Lessee Fit Out Works Completion Date**"). If the Lessee has not achieved Practical Completion of the Lessee Fit Out Works by the Lessee Fit Out Works Completion Date, the Lessor shall be entitled to complete the Lessee Fit Out Works themselves and be reimbursed by the Lessee for any reasonable costs incurred, unless the Lessee was prevented from completing the Lessee Fit Out Works by the Lessee Fit Out Works Completion Date because of delays caused by the Lessor's Works that has a material and adverse effect on the completion of the Lessee Fit Out Works by the Lessee Fit Out Works Completion Date.

## **10. EARLY ACCESS – Not applicable**

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## **11. BANK GUARANTEE**

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**11.1** The Lessee shall prior to the Commencement Date, deliver a bank guarantee to the Lessor guaranteeing the amount specified in Item 3 of Schedule 1.

**11.2** The bank guarantee shall be an unconditional and irrevocable undertaking by a registered bank in New Zealand in a form reasonably acceptable to the Lessor to pay the guaranteed amount to the Lessor on demand by the Lessor, without question or condition, in the event of a default by the Lessee in the observance or performance of the Lessee's covenants under the Lease.

## **12. CONFIDENTIALITY**

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**12.1** No disclosure of the contents of this document may be made to any third party without the Lessor's prior written approval. Upon any approved disclosure being made by the Lessee, the Lessee shall obtain an

undertaking from the party to whom the disclosure is made not to further disclose the terms of this Agreement.

### **13. CONDITIONS**

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**13.1** This Agreement is conditional upon the following:

13.1.1 the Lessor completing a surrender of the Previous Lease on terms and conditions acceptable in all respects to the Lessor in its sole discretion;

**13.1.2** the Lessor's Board granting approval to the intended lease; and

**13.1.3** the Lessee supplying for the Lessor's approval the complete Lessee fitout details, including but not limited to, plans, elevations, sections, signage, premises layout, building services specifications and connection points, hydraulic, mechanical plans and electrical including lighting scheme, programme of works, contractor details, health and safety and risk assessments and any other detail required by the Lessor, and the Lessor (in its sole and absolute discretion) approving in writing the Lessee's Fit Out Works.

13.2 If the Lessee breaches an obligation under this Agreement prior to of the execution of the Lease, the Lessor shall be entitled to cancel this Agreement.

### **14. SALE AND PURCHASE OF THE PREVIOUS LESSEE'S FITOUT**

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**14.1** The parties agree that on the Unconditional Date that the Lessor shall sell, and the Lessee shall purchase and take possession and control of, the Previous Lessee's Fitout for a purchase price of \$1 (if demanded).

**14.2** The parties further agree that the title to and risk in the Previous Lessee's Fitout remains with the Lessor until the Unconditional Date and will pass to the Lessee with effect from the Unconditional Date.

### **15. GENERAL**

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**15.1** The Lessee shall not assign, pledge or charge its interest under this Agreement.

**15.2** This Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same document. Communication of execution of this Agreement may be made by each party transmitting by email to the other party or their respective agents a counterpart of this Agreement executed by the party sending the email.

**15.3** Nothing in this Agreement shall create, or be deemed to create a partnership or joint venture.

**15.4** The Lessor and the Lessee agree that the terms contained in this Agreement and the Lease cover and comprise the whole of the agreement between the Lessor and the Lessee and declare that no further terms whether in respect of the Premises or otherwise shall be implied or arise between the Lessor and the Lessee by way of collateral or other agreement made by or on behalf of the Lessor or the Lessee on or prior to the execution of this Agreement and any implication of collateral or other agreement (if any) is invalidated.

**15.5** The obligations and warranties of the parties insofar as they have not been fulfilled at the time of signing the Lease will not merge but will remain in full force and effect.

**15.6** If a party has any dispute with the other party in connection with this Agreement, the dispute resolution procedures in the Lease will apply.

**15.7** If any provision of this Agreement is found by a Court to be illegal or invalid or unenforceable, that provision may at the option of the Lessor or the Lessee be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable to give it a valid operation of practical character. In the event that any provision cannot be so read down the provision shall be deemed to be void and severable and the remaining provisions of this agreement shall not be affected or impaired.

**IN WITNESS** of which this Agreement has been executed:

**SIGNED** for and on behalf of **AUCKLAND TRANSPORT**  
**UNDER DELEGATED AUTHORITY:**

\_\_\_\_\_  
Full name and role of authorised signatory or  
delegated signatory

\_\_\_\_\_  
Signature of authorised signatory or delegated  
signatory

**SIGNED** by **[LESSEE] LIMITED** as Lessee by:

\_\_\_\_\_  
Full name of director/authorised signatory

\_\_\_\_\_  
Signature of director/authorised signatory

\_\_\_\_\_  
Full name of director/authorised signatory

\_\_\_\_\_  
Signature of director/authorised signatory

**Witness:**  
*(if other than two directors sign)*

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
Address of witness

## SCHEDULE 1

**Item 1 Description of Property**

The property and building comprised in [XXX], record of title [XXX], North Auckland Registry, known as the [XXX] Station.

**Item 2 Description of Premises**

Part of the Property marked as [XXX] outlined in red on the attached Premises Plan in Schedule 4, having an approximate area of [XXX] square metres.

**Item 3 Terms of Lease**

- 1. Term:** [XX] years
- 2. Commencement Date:**
- 3. Rent Commencement Date:**
- 4. Initial Expiry Date:** [XXX] years after the Commencement Date
- 5. Renewal Term(s):** (X) rights of (X) years each
- 6. Renewal Date(s):**
- 7. Final Expiry Date:** If all the rights of renewal are exercised, XXX years after the Commencement Date
- 8. Annual Rent:** XXX plus GST subject to adjustment in accordance with clause 3.1A of Schedule 3 of the Lease
- 9. Monthly Rent:** XXX plus GST subject to adjustment in accordance with clause 3.1A of Schedule 3 of the Lease
- 10. Outgoings**
- The Lessee's liability for the Outgoings under clause 5.1.5 of this Agreement is fixed at \$150.00 plus GST per square metre of the Premises area per annum.
- The Lessee is also responsible for paying all metered Utilities relating to the Premises, in addition to the Outgoings.
- 11. Rent Payment Dates:** 1st day of each month commencing on the 1st day of the month following the Rent Commencement Date
- 12. Gross Sales Percentage:** N/A
- 13. Annual Fixed Percentage Increase:** Three (3)% fixed increase on the anniversary of the Commencement Date and each and every subsequent anniversary of the Commencement Date
- 14. Market Rent Review Dates:** On each and every Renewal Date



- 15. Deposit:** Two (2) months' rent
- 16. Bank Guarantee Amount:** Six (6) months gross rental and Outgoings plus GST
- 17. Permitted Use:**
- 18. Required Operating Times (clause 12.6 of the Lease):** In conjunction with XXX Station opening times to be confirmed by the Lessor in writing (subject to change at the sole discretion of the Lessor), or any other hours permitted by the Lessor in writing
- 19. Public Liability Insurance:** \$5 million
- 20. Default Interest Rate:** 5% per annum above the Lessor's bank's base rate for commercial lending
- 21. Floor Loading Capacity (clause 12.5(f) of the Lease):**

DRAFT 2

**SCHEDULE 2 – FORM OF DEED OF LEASE OF RETAIL PREMISES**

DRAFT 2

**SCHEDULE 3 –PRE-START MANUAL FOR TENANCY FIT-OUT**

DRAFT 2

SCHEDULE 4 – PREMISES PLAN

DRAFT 2

**SCHEDULE 5 -**

DRAFT 2

# DEED OF LEASE OF RETAIL PREMISES AT

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AUCKLAND TRANSPORT

**[LESSEE PARTY]**

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**DEED DATED**

**PARTIES**

1. **AUCKLAND TRANSPORT (Lessor)**
2. **[LESSEE PARTY]** [Company no. **[Lessee company no.]**] (**Lessee**)

**GRANT OF LEASE**

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The Lessor leases the Premises to the Lessee and the Lessee takes the Premises on lease together with the non-exclusive right for the Lessee to use:

- (a) The Lessor's Fixtures and Fittings, and
- (b) In common with the Lessor and others entitled to do so, the Common Areas,

for the Term beginning on the Commencement Date and ending on the Expiry Date at the Annual Rent (subject to review).

The Lessor and the Lessee covenant as set out in Schedule 1, Schedule 2 and Schedule 3.

**EXECUTED AND DELIVERED AS A DEED**

**SIGNED** by **AUCKLAND TRANSPORT** as Lessor  
by:

\_\_\_\_\_  
Full name of director/authorised signatory

\_\_\_\_\_  
Signature of director/authorised signatory

\_\_\_\_\_  
Full name of director/authorised signatory

\_\_\_\_\_  
Signature of director/authorised signatory

**SIGNED** by **[LESSEE PARTY]** as Lessee by:

\_\_\_\_\_  
[Director's name], Sole director

**In the presence of:**

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
Address of witness

### SCHEDULE 1 – REFERENCE SCHEDULE

<b>Property</b>	The property and building comprised and,
<b>Description of Premises</b>	Unit [INSERT] comprised within the Property and outlined in red on the Premises Plan attached in Schedule 6 and having an approximate area of [INSERT] metres squared.
<b>Lessor</b>	Auckland Transport
<b>Lessor's Address</b>	20 Viaduct Harbour Avenue, Viaduct Harbour Auckland Private Bag 92250 Auckland 1142
<b>Lessee</b>	[INSERT]
<b>Lessee's Address</b>	[INSERT]
<b>Term</b>	[INSERT] years
<b>Commencement Date</b>	[INSERT].
<b>Rent Commencement Date</b>	[INSERT]
<b>Initial Expiry Date</b>	[INSERT] years after the Commencement Date
<b>Renewal Term(s)</b>	[INSERT]
<b>Renewal Date(s)</b>	[INSERT]
<b>Final Expiry Date</b>	[INSERT] years after the Commencement Date
<b>Annual Rent (initial)</b>	\$([INSERT]) plus GST subject to adjustment in accordance with clause 3.1A of Schedule 3
<b>Rent Payment Dates</b>	1st day of each month commencing on the 1st day of the month following the Rent Commencement Date
<b>Outgoings</b>	<p>\$([INSERT]) plus GST per square metre of the Premises area per annum.</p> <p>The Lessee is also responsible for paying all metered Utilities relating to the Premises, in addition to the Outgoings</p>
<b>Gross Sales Percentage</b>	N/A

<b>Annual Fixed Percentage Increase of Rent</b>	3% fixed increase on each and every annual anniversary of the Commencement Date
<b>Market Rent Review Dates</b>	On each and every third anniversary of the Commencement Date and on any Renewal Date
<b>Bank Guarantee Amount</b>	Six (6) months gross rental plus GST
<b>Permitted Use of the Premises</b>	[INSERT].
<b>Required Operating Times</b> (subject to clause 12.5 of Schedule 3)	(subject to change at the sole discretion of the Lessor), or any other hours permitted by the Lessor in writing
<b>Floor Loading Capacity</b> (Clause 12.4 (e) of Schedule 3)	
<b>Public Liability Insurance</b>	\$5 million
<b>Default Interest Rate</b>	5% per annum above the Lessor's bank's base rate for commercial lending from time to time

## SCHEDULE 2 – OUTGOINGS

1. All rates, charges, levies, assessments, duties, impositions and fees from time to time payable by the Lessor to any Relevant Authority relating to the Property irrespective of its ownership.
2. All charges for and costs relating to the supply of electricity, telephones, gas, water, sewage, drainage, recycling charges, rubbish collection and other utilities and services supplied to the Property.
3. All premiums and valuation fees, any insurance excess on claims made and all other sums payable by the Lessor for all insurance policies on the Property.
4. All costs incurred in complying with the requirements contained in any Compliance Schedule relating to Specified Systems provided in the Property and in obtaining an annual Warrant of Fitness for the Property.
5. All New Zealand Fire Services charges.
6. All costs involved in maintaining all services for the Property, and keeping current comprehensive maintenance contracts in respect of the same, including but not limited to
  - HVAC/Ventilation systems
  - Lifts
  - Escalators
  - Fire systems including fire detection and fire-fighting equipment
  - Building management systems
  - Security systems
  - Access control systems
  - Electrical system
  - Plumbing systems
  - Other building services
7. All costs of repairs, maintenance, painting, renovations and replacements of and to the Property (including the roof and exterior of the Property) other than work of a structural nature and all expenses incurred by the Lessor in making good any damage to the Common Areas or any facilities in the Property which is not made good by or recoverable from the Lessee or any other lessee in the Property excluding however, repairs or reinstatement in respect of which any insurance company has accepted liability and made payment.
8. All costs (inclusive of all wages and other remuneration) of:
  - (a) cleaning and removing rubbish from Common Areas (including common area toilets);
  - (b) gardening, planting and supplying suitable plants and shrubs;
  - (c) engaging suitable contractors for such works; and
  - (d) purchasing, maintaining and replacing machinery and equipment employed for the above purposes;
9. All costs of providing consumable supplies for toilets and other common facilities.
11. Yard and car parking area maintenance and repair charges but excluding charges for repaving or resealing.
12. Reasonable management and administration expenses.
13. Body Corporate charges for any insurance premiums under any insurance policy effected by the Body Corporate and related valuation fees and reasonable management administration expenses.

## SCHEDULE 3 – LEASE TERMS

### 1. DEFINITIONS AND INTERPRETATION

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**1.1 Definitions:** In this lease, unless the context indicates otherwise:

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**Annual Rent** means the annual rent specified in Schedule 1 or as varied under this lease;

**Commencement Date** means the date described in Schedule 1;

**Relevant Authority** means any body or corporation or any municipal government or statutory or any non-statutory authority having jurisdiction over the Property or any part thereof;

**Broken Period** means either the period from the Commencement Date to the end of the then current Lease Year or Lessor's Accounting Period or the period from the last occurring first day of a Lease Year or Lessor's Accounting Period during the Term until the expiry or termination of the Term;

**Common Areas** means all those parts of the Property from time to time and at any time designated by the Lessor for common use and enjoyment by tenants or occupiers, any time designated by the Lessor for common use and enjoyment by tenants or occupiers in relation to the Property which are not the subject of this lease or any other lease of the Property;

**Gross Sales** includes the aggregate of the prices charged or chargeable and other remuneration received or receivable for all merchandise sold, leased, hired or otherwise disposed of, services sold or performed or both and all business of any nature whatsoever conducted from the Premises or in any way emanating from it. Without limiting the generality of the foregoing, the term will also include:

- (a) orders which originated or are accepted or both, at or from the Premises but delivery is made at or from any place other than the Premises;
- (b) orders which originated at any place other than the Premises but delivery is made at or from the Premises;
- (c) sales or other transactions made or effected as a result of solicitation of business off the Premises conducted by persons operating from, or reporting to, the Premises;
- (d) mail, telephone, email or similar orders received or filled at or from the Premises or directed to the Premises;
- (e) all deposits taken and not refunded to customers;
- (f) sales made or services provided by means of mechanical or vending devices at or from the Premises;
- (g) service, finance or interest charges made by the Lessee on any type of account which itself was or should have been included within gross receipts;
- (h) sales made or services provided (or both) by any concessionaire or licensee at, in, from or on the Premises; and
- (i) commissions receivable for sales conducted from within the Premises;

**Gross Sales** will not include or, if included there will be deducted from them:

- (j) the net amount of reasonable and proper discounts actually allowed to any customer in the usual course of business;
- (k) losses incurred in the resale or disposal of goods reasonably and properly purchased from customers as trade-ins in the usual course of business;
- (l) uncollectable credit accounts to the extent that they are written off by the Lessee provided that, if any such accounts are subsequently recovered, then they will be included within the gross receipts for the Lease Year in which they are recovered;

- (m) the exchange of merchandise between stores of the Lessee where such exchange is made solely for the convenient operation of the Lessee's business and not for the purpose of consummating a sale made at, in, from or on the Premises;
- (n) returns to shippers, wholesalers or manufacturers;
- (o) sales of the Lessee's capital items used in the conduct of business in the Premises;
- (p) refunds made on transactions included within gross receipts not exceeding the selling price of merchandise returned by the purchaser and accepted by the Lessee;
- (q) GST paid or payable by the Lessee in respect of merchandise sold;
- (r) delivery charges;
- (s) the net amount of any refund paid by the Lessee to customers where a lay-by transaction is cancelled; and
- (t) the amount received from the sale of lottery tickets and similar tickets (other than commission on those sales),

Each sale on an instalment basis including lay-bys, hire purchase, credit sales and any other sales on credit or terms will be treated as a sale for the full price in the Lease Year during which such sale will be made irrespective of the time of payment;

**GST** means tax levied under the Goods and Services Tax Act 1985 and includes any tax levied in substitution for that tax;

**Guarantor** means the person specified as the Guarantor in Schedule 1 and includes the Guarantor's successors;

**HSWA** means the Health and Safety at Work Act 2015;

**Lease Year** means each consecutive 12 month period during the Term commencing on the Commencement Date, or each consecutive 12 month period during any Renewal Term commencing on the relevant Renewal Date;

**Lessee** means the person or entity specified as the Lessee in Schedule 1 and includes the Lessee's permitted assigns and successors and where the circumstances permit, the employees, contractors, invitees, and agents of the Lessee and any person in the Premises under the Lessee's control or direction;

**Lessee's Fixtures and Fittings** this means all other improvements installed by or owned by the Lessee, including but not specifically limited to the Lessee's fittings, fixtures, floor coverings, blinds, curtains, shelving, signs, light fittings, non-structural internal partitions, alterations, additions, built in furniture, security devices, fire protection and detection equipment, and all other equipment and plant owned or placed on the Premises by the Lessee;

**Lessor** means the person or entity specified as the Lessor in Schedule 1 and includes the Lessor's assigns and successors and where the circumstances permit, the employees and agents of the Lessor;

**Lessor's Accounting Period** means the 12 month period commencing on 1 July and ending on 30 June in the following year;

**Lessor's Fixtures and Fittings** means the Lessor's fixtures, fittings, plant and equipment as listed in Schedule 5 and any such fixtures, fittings, plant and equipment of the Lessor situated in or on the Premises on or at any time after the date of this lease;

**Month** means a calendar month;

**Outgoings** means the Lessor's costs, expenses and charges properly or reasonably assessed or assessable in relation to:

- (a) **Property:** the Property;
- (b) **Control of Property:** the control, management and maintenance of the Property; and
- (c) **Use of Property:** the use or occupation of the Property;

but excludes costs, expenses or charges which are the direct and exclusive responsibility of the Lessor or the Lessee or any other occupier of the Property, and includes the costs, expenses and charges specified in Schedule 2 and **Outgoing** means any one of those costs, expenses or charges;

**Premises** means that part of the Property described in Schedule 1 and shown outlined on the plan attached to this lease and includes the Lessor's Fixtures and Fittings but excludes the Lessee's Fixtures and Fittings;

**Premises Condition Reports** means the Premises Condition Reports required under clause 11.2 and includes those attached in Schedule 7;

**Property** means the building and other improvements and yards, plazas and open spaces in which the Premises are situated and includes any part of that building and improvements and the Lessor's plant, machinery, equipment, fixtures and fittings on, in or forming part of the Property, as defined in Schedule 1;

**Rentable Area** has the meaning ascribed to it and follows the applicable system of calculation for measurement of commercial premises set down by the Property Council/NZPI from time to time in their Guide for Measurement of Rentable Areas in relation to measurement of retail premises;

**Rules** means the rules of the Property set out in Schedule 4 or as varied at the Lessor's discretion from time to time;

**Services** means fire detection or protection systems, security systems, airconditioning systems, lifts, water, gas, electrical, plumbing and drainage installations and systems, traffic control systems for carparking areas and any other systems and services in, on or serving the Premises;

**Structural Repairs** means repairs, maintenance or renovations to the foundations, floors, columns, beams, and trusses, roof and exterior wall claddings, gutters, downpipes and drains of the Property;

**Term** means the term of this lease and includes the Term and (if this lease is renewed) the Renewal Term and (if this lease is further renewed) any further Renewal Term(s);

**Total Rentable Area** means the total Rentable Area of those parts of the Property (including the Premises) from time to time leased or licensed or available for lease or licence from the Lessor but excluding: Common Areas (but not carparks leased or licensed to any person), Lessor-nominated storage or other similar areas, offices used by the Lessor or its agent for management of the Property, and office premises not associated with or comprised in any retail premises;

**Utilities** means all utility and other services connected and/or supplied to the Premises, including water, sewage, drainage, electricity, gas, and telephone; and

**Working Day** has the meaning given to it in the Property Law Act 2007.

**1.2 Interpretation:** In this lease, unless the context indicates otherwise:

- (a) **Auckland Council:** references to **Auckland Council** or the **Council** include any of its Council Controlled Organisations;
- (b) **Building Act Terms:** the terms **Building Work, Compliance Schedule, Code Compliance Certificate, Specified Systems** and **Warrant of Fitness** have the meanings given to those terms in the Building Act 2004;
- (c) **Defined Expressions:** expressions defined in the main body of this lease have the defined meaning throughout this lease, including the background and schedules;
- (d) **Schedule 1 Terms:** all the terms set out in Schedule 1 will be interpreted by reference to Schedule 1;
- (e) **Reference Schedule:** in the event of any conflict between the key commercial terms in the Reference Schedule (Schedule 1) and the other provisions of this lease, the provisions of Schedule 1 will prevail;
- (f) **Headings:** clause and other headings are for ease of reference only and will not affect this lease's interpretation;
- (g) **Joint and Several Obligations:** where two or more persons are bound by a provision in this lease, that provision will bind those persons jointly and each of them severally;



- (h) **Parties:** references to any **party** include that party's executors, administrators, successors and permitted assigns;
- (i) **Persons:** references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having separate legal identity;
- (j) **Plural and Singular:** references to the singular include the plural and vice versa;
- (k) **Clauses/Schedules/Attachments:** references to clauses, schedules and attachments are to clauses in, and the schedules and attachments to, this lease. Each such schedule and attachment forms part of this lease;
- (l) **Statutory Provisions:** references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any by-law, regulation, order, statutory instrument, determination or subordinate legislation made under it;
- (m) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (n) **Inclusive Expressions:** the term **includes** or **including** (or any similar expression) is deemed to be followed by the words **without limitation**; and
- (o) **Documents:** references to any document (however described) are references to that document as modified, novated, supplemented, varied or replaced from time to time and in any form, whether on paper or in an electronic form.

## 2. RIGHT OF RENEWAL AND RENEWAL TERMS

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### 2.1 Preconditions of Renewal: If:

- (a) **Written Notice:** at least three months before the Expiry Date, the Lessee gives the Lessor written notice of the Lessee's wish to renew this lease; and
- (b) **Compliance by Lessee:** there is no subsisting breach of the Lessee's obligations under this lease;

then the Lessor will renew this lease at the Lessee's cost for the Renewal Term beginning on the day following the Expiry Date.

**2.2 Rent on Renewal:** The Annual Rent payable from the beginning of each Renewal Term shall be the greater of the current market rent as at the relevant Renewal Date or a three percent increase on the prevailing Annual Rent payable immediately prior to the relevant Renewal Date. The current market rent as at the relevant Review Date shall be determined in accordance with clauses 3.2 and 3.3. Pending determination of the new rent, the Lessee shall pay an interim rent in accordance with clauses 3.4 and 3.5.

**2.3 Terms of Renewed Lease:** The renewed lease will be on the same terms as this lease but will exclude this present term for renewal unless further Renewal Term(s) are specified in Schedule 1. If so, the renewed lease will contain rights to renew for those further Renewal Term(s) to the same effect as clauses 2.1 – 2.5 (inclusive). The Term will never expire later than the Final Expiry Date.

**2.4 Lessee not released:** The grant of a new lease upon renewal pursuant to this clause will not release the Lessee from liability for the payment of rent and performance by the Lessee of covenants in the lease for the duration of the term of this lease and all renewals thereof.

**2.5 Deed of Renewal:** The parties will enter into a deed of renewal recording the terms of the renewal as soon as reasonably possible. The Lessor's solicitor(s) will prepare the deed of renewal. The Lessee must pay all costs (including the Lessor's legal costs) of the deed of renewal.

**2.6 Condition of granting a renewal:** The Lessor as a condition of granting a new lease shall be entitled to have the new lease guaranteed by any guarantor who has guaranteed this lease on behalf of the Lessee or the security of a bank guarantee that has been given by the Lessee.

**2.7 Holding Over:** If, other than under a renewal of this lease or the grant of a further lease, the Lessor permits the Lessee to remain in occupation of the Premises after the expiry or earlier termination of the Term, the occupation will be a periodic tenancy only, determinable by 20 Working Days' notice by either the Lessor or the

Lessee to the other of them, at the rent then payable and otherwise on the same terms and conditions (as far as applicable to a periodic tenancy) as are contained in this lease.

### 3. RENT

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**3.1 Rent:** The Lessee shall pay the Annual Rent by equal monthly payments in advance (or as varied pursuant to any rent review) on the rent payment dates. The first monthly payment (together with rent calculated on a daily basis for any period from the commencement date of the term to the first rent payment date) shall be payable on the first rent payment date. All rent shall be paid without any deductions or set-off by direct payment to the Lessor or as the Lessor may direct.

**3.1A Annual Fixed Percentage Increase:** The Annual Rent will be increased by the Annual Fixed Percentage Increase on each and every anniversary of the Commencement Date including, for the avoidance of doubt, every anniversary of the Commencement Date during any Renewal Term.

#### Market Rent Review

**3.2** The Annual Rent payable as from each Market Rent Review Date (except for a Market Rent Review Date that is a Renewal Date) shall be determined as follows:

- (a) Either party may not earlier than 3 months prior to a Market Rent Review Date and not later than the next rent review date give written notice to the other party specifying the annual rent proposed as the current market rent as at the relevant Market Rent Review Date.
- (b) If the party receiving the notice ("the **Recipient**") gives written notice to the party giving the notice ("the **Initiator**") within 20 Working Days after service of the Initiator's notice disputing the annual rent proposed and specifying the annual rent proposed by the Recipient as the current market rent, then the new rent shall be determined in accordance with sub clause 3.3.
- (c) If the Recipient fails to give such notice (time being of the essence) the Recipient shall be deemed to have accepted the annual rent specified in the Initiator's notice and the extension of time for commencing arbitration proceedings contained in the Arbitration Act 1996 shall not apply.
- (d) Notwithstanding any other provision of this clause, the annual rent payable from the relevant Market Rent Review Date shall be the greater of the market rent as at the rent review date or a 3% increase on the prevailing Annual Rent immediately prior to the market rent review.
- (e) The annual rent agreed, determined or imposed pursuant to sub clause 3.2 shall be the annual rent payable as from the relevant market rent review date, but subject to sub clause 3.3 and 3.4.
- (f) The market rent review at the option of either party may be recorded in a deed at the option of the Lessor.

#### Rent Determinations

**3.3** Immediately following service of the Recipient's notice on the Initiator, the parties shall endeavor to agree upon the current market rent, but if agreement is not reached within 10 Working Days then the new rent may be determined either:

- (a) By one party giving written notice to the other requiring the new rent to be determined by arbitration; or
- (b) If the parties so agree by registered valuers acting as experts and not as arbitrators as follows:
  - (1) Each party shall appoint a valuer and giving written notice of the appointment to the other party within 10 Working Days of the parties agreeing to so determine the new rent.
  - (2) If the party receiving a notice fails to appoint a valuer within the 10 Working Day period then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties.

- (3) The valuers appointed before commencing their determination shall appoint a third expert who need not be a registered valuer. If the parties cannot agree on the third expert within 10 Working Days of the appointment of the valuers for the parties, the appointment shall be made on the application of either party by the president or vice president for the time being of The New Zealand Institute of Valuers.
- (4) The valuers appointed by the parties shall determine the current market rent of the premises but if they fail to agree within 15 Working Days after commencing their determination, then the rent shall be determined by the third expert.
- (5) Each party shall be given the opportunity to make written or oral representations subject to such reasonable time and other limit as at the valuers or the third expert may prescribe and they shall have regard to any of the representations but not be bound by them.
- (6) The Lessee shall indemnify the third expert for their costs and all third expert costs shall be paid by the Lessee
- (7) If the parties agree, they may release the third expert from liability for negligence in acting as third expert in accordance with this subclause 3.3.

When the new rent has been determined the person or persons determining it shall give written notice of it to the parties.

#### **Interim Market Rent**

**3.4** Pending determination of the new rent, the Lessee shall from the relevant Market Rent Review Date, until the determination of the new rent pay an interim rent as follows:

- (a) If both parties supply a registered valuer's certificate substantiating the new rents proposed, the interim rent payable shall be half way between the new rents proposed by the parties; or
- (b) If only one party supplies a registered valuer's certificate, the interim rent payable shall be the rent substantiated by the certificate; or
- (c) If no registered valuer's certificates are supplied, the interim rent payable shall be the rent payable immediately prior to the relevant Market Rent Review Date,

but in no circumstances shall the interim rent be less than the a three percent increase on the prevailing Annual Rent payable immediately prior to the relevant Market Rent Review Date.

The interim rent shall be payable with effect from the relevant Market Rent Review Date, subject to subclause 3.5, shall not be subject to adjustment.

**3.5** Upon determination of the new rent, any overpayment shall be applied in payment of the next month's rent and any amount then remaining shall immediately be refunded to the Lessee. Any shortfall in payment shall immediately be payable by the Lessee.

#### **4. GROSS SALES FIGURES**

**4.1 Provide Statement:** The Lessee will:

- 4.1.1 Within 5 Working Days after the last day of each month during the Term of this Lease, give to the Lessor a statement (in the form required by the Lessor) certified by the Lessee showing calendar monthly sales by weeks or parts of weeks and customer counts and setting out the Lessee's Gross Sales during the preceding month or portion of that month, and
- 4.1.2 Within 20 Working Days of the expiration of each Lease Year or Broken Period the Lessee will give a statement (in the form required by the Lessor) certified by a chartered accountant of the Lessee's Gross Sales during such Lease Year or Broken Period.

This clause 4.1 applies whether or not the Lessee is obliged to pay any percentage rent.

**4.2 Right to Inspect and Audit:** The Lessee will keep and the Lessor will have the right at any time to inspect and audit all of the books of account, statements, documents, records, returns, papers and files of the Lessee

relating to Gross Sales and the Lessee, at the request of the Lessor, will make the same available for inspection and audit.

**4.3 Understatement:** In the event of the Lessor having carried out an audit and the Gross Sales being found to be understated by more than 5%, then the Lessee will pay to the Lessor the cost of any such audit.

**4.4 Further Information:** If there is a difference between the Lessee's annual Gross Sales figures as returned first, on a monthly basis and secondly, on an annual basis, of more than 3%, then without limiting the Lessor's rights the Lessor will be entitled, without requiring a full audit as provided in clause 4.2, to require that the Lessee produce to the Lessor such information as the Lessor might require in order to establish the reason for the difference in Gross Sales figures.

## 5. GST

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**5.1 Payment:** The Lessee must pay to the Lessor all GST payable on the Annual Rent and other money payable by the Lessee under this lease. The Lessee must pay GST:

- (a) **Rent:** on the Annual Rent on each occasion when any rent falls due for payment; and
- (b) **Other Money:** on any other money payable by the Lessee on demand.

**5.2 Default:** If:

- (a) **Lessee Fails to Pay:** the Lessee fails to pay the Annual Rent or other money payable under this lease (including GST); and
- (b) **Lessor Liable to Penalty:** the Lessor becomes liable to pay additional GST or penalty tax;

then the Lessee must pay the additional tax or penalty tax to the Lessor on demand.

## 6. DEFAULT INTEREST

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If the Lessee fails to pay any instalment of the Annual Rent or Outgoings or any other money payable under this lease for 10 Working Days after:

- 6.1 Due Date:** the due date for payment; or
- 6.2 Demand:** the date of the Lessor's demand, if there is no due date;

then the Lessee must on demand pay interest at the Default Interest Rate on the money unpaid from the due date or the date of the Lessor's demand (as the case may be) down to the date of payment.

## 7. OUTGOINGS

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**7.1 Lessee to Pay Outgoings:** The Lessee must on demand by the Lessor pay the Outgoings relating to the Premises which are specified in Schedule 2 without deduction or set-off.

**7.2 Initial Broken Period:** The Lessor will account for Outgoings in accordance with the Lessor's Accounting Period. As soon as practicable following the Commencement Date the Lessor will advise the Lessee of the Lessor's estimate of Outgoings through to the last day of the initial Broken Period. The Lessee will pay the Outgoings by equal instalments in advance on the first day of each month during that period.

**7.3 Payment:** During each Lessor's Accounting Period the Lessee will pay in advance one-twelfth of the Lessee's share of the Outgoings for that Lessor's Accounting Period.

**7.4 Expiry:** On the expiry or determination of this lease the Lessor will promptly advise the Lessee of the total of the monthly payments made by the Lessee during the then current Lessor's Accounting Period, the liability of the Lessee for Outgoings and any shortfall in the Outgoings payable to the date of expiry or determination. Following a statement being provided, any shortfall not held by the Lessor will be paid within 10 Working Days.

- 7.5 Continuing Obligation:** The Lessor will not be prevented from recovering Outgoings by reason of failing to demand payment from the Lessee, and the Lessee's liability to pay the Outgoings will continue despite any earlier determination of the lease Term.
- 7.6 Penalties:** If any Outgoing is payable by a date after which a penalty applies, the Lessee will have complied with clause 7.1 if that Outgoing is paid at least five Working Days before the penalty date.
- 7.7 Lessor's Obligation:** The Lessor must pay all costs, expenses and charges relating to the Premises which are not the Lessee's responsibility under this lease.

## 8. UTILITY CHARGES

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- 8.1 Lessee to Pay Utility Charges:** The Lessee must promptly pay to the relevant Relevant Authority or supplier all charges for Utilities which are separately metered or charged to the Premises.
- 8.2 Apportionment:** Where any Utility is not separately metered or charged to the Premises the cost will be dealt with under clause 7.
- 8.3 Meters:** If the Lessor or any Relevant Authority requires the Lessee to do so, the Lessee must at the Lessee's own expense install any meter or other measuring devices necessary for the proper measurement of the charges for any Utility or other services supplied to the Premises.

## 9. COSTS

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The Lessee must pay to the Lessor on demand:

- 9.1 Legal Costs:** the Lessor's legal costs for the negotiation, preparation and execution of this lease and of any renewal or variation of this lease (including any variation recording a rent review (if any));
- 9.2 Costs for Lessor's Consents:** the Lessor's reasonable costs incurred in considering any request by the Lessee for the Lessor's consent to any matter contemplated by this lease;
- 9.3 Costs for Other Consents:** the Lessor's costs incurred in obtaining other consents, for example obtaining landowner/Lessor consent if a Building Consent is required in relation to any works occasioned by or carried out on behalf of the Lessee; and
- 9.4 Default Costs:** all costs, charges and expenses for which the Lessor becomes liable as a result of the Lessee's breach of any of this lease's terms.

## 10. INSURANCE

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- 10.1 Lessor to Insure Property:** The Lessor will at all times during the Term insure and keep the Property insured on an indemnity cover basis or at the option of the Lessor to its full replacement value. The Lessor may determine what level of insurance excess or deductible is to apply to each insurance policy.
- 10.2 Lessee's Insurance Obligations:** The Lessee must keep current at all times during the Term a policy or policies:
- (a) **Glass Insurance:** for all glass (including plate glass, doors, windows, light fittings, glass and plate glass within exterior walls) in or enclosing the Premises for its full replacement value against the Insured Risks;
  - (b) **Public Risk Insurance:** for public risk applicable to the Premises and the business carried on, in, or from the Premises for:
    - (i) the amount specified in Schedule 1 (being the amount which may be paid out arising from any single accident or event); or
    - (ii) any increased amount that the Lessor reasonably requires;
  - (c) **Lessee's Fixtures and Fittings:** for the replacement of all the Lessee's Fixtures and Fittings and stock in trade in the Premises (including but not limited to Lessee's owned chattels, fixtures and fittings, office equipment, and Lessee-owned air conditioning units); and

(d) **Law:** for any matter for which the Lessee is required by law to hold insurance.

**10.3 Particulars of Insurance Policies:** The insurance policies taken out by the Lessee under clause 10.2 must be:

(a) **Joint Names:** in the joint names of the Lessor and the Lessee for their respective rights and interests; and

(b) **Approved Insurance Office:** with an insurance office approved by the Lessor.

**10.4 Policy Details:** The Lessee must produce to the Lessor on demand copies of all insurance policies taken out by the Lessee and proof of payment of premiums for those insurance policies on or before the Commencement Date and thereafter when reasonably requested.

**10.5 Section 271 Property Law Act 2007:** For the purposes of section 271 of the Property Law Act 2007, the Lessee acknowledges and agrees that:

(a) **Insurance Policy Excess:** the Lessor's insurance policy may include an excess (or non-deductible sum) and if so, to the extent of the excess, the Property is not fully insured against destruction or damage arising from fire, flood, explosion, lightning, storm, earthquake or volcanic activity; and

(b) **Indemnity for Excess:** the Lessee indemnifies the Lessor for the Lessee's proportion of the insurance excess on all claims under the policy.

**10.6 Council Policy:** While Auckland Council or any of its Council Controlled Organisations is the Lessor, the amount of excess and the terms and conditions of the insurance cover that the Lessor elects from time to time and considers appropriate, will be at its absolute discretion.

## 11. MAINTENANCE

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**11.1 Maintenance of Premises:** Subject to clause 11.2, the Lessee must:

(a) **Keep in First Class Repair:** maintain the interior of the Premises (including the Lessor's Fixtures and Fittings) in first class retail repair and condition (having regard to their condition at the Commencement Date with respect to the Lessor's Fixtures and Fittings); and

(b) **Expiry of Term:** at the expiry of the Term or on the earlier termination of this lease hand back the interior of the Premises to the Lessor in the same first class state of repair and condition as on the Commencement Date.

**11.2 Premises Condition Reports:** The Premises Condition Reports attached as Schedule 7 will be evidence of the condition of the Premises and the Lessor's Fixtures and Fittings at the Commencement Date.

**11.3 Limitations on Lessee's Maintenance Obligations:** The Lessee's obligations under clause 11.1 do not extend to Structural Repairs or situations where the Premises are damaged by fire, flood, explosion, lightning, storm, earthquake, volcanic activity or to any risk against which the Lessor is (or has covenanted with the Lessee to be) insured, unless:

(a) the damage was intentionally caused by the Lessee or by those for whom the Lessee is responsible; or

(b) the damage was the result of an act or omission by the Lessee or those for whom the Lessee is responsible and that act or omission:

(i) occurred on or about the Premises or on or about the land on which the Premises are situated; and

(ii) constitutes an indictable offence within the meaning of the Summary Proceedings Act 1957;

in which case the Lessee is liable for the cost of making good that damage; or

(c) any insurance money otherwise payable is rendered irrecoverable because of an act or omission of the Lessee or those for whom the Lessee is responsible.

**11.4 Further Maintenance/Repair Obligations:** The Lessee must at the Lessee's expense:

- (a) **Services:** keep the Services within the Premises in good repair and condition;
- (b) **Keep Premises Clean:** keep the Premises clean, tidy and free of rubbish;
- (c) **Removal of Rubbish:** ensure that all routine waste is placed daily in suitable receptacles and any excess waste and rubbish is promptly removed from the Property;
- (d) **Redecoration:** paint and decorate those parts of the interior of the Premises which have previously been painted and decorated as at the Commencement Date (or where the lease is renewed the commencement date of the initial term of this lease) when they reasonably require repainting and redecoration to a specification as approved by the Lessor (such approval not to be unreasonably withheld);
- (e) **Floor Coverings:** when required by the Lessor, immediately replace all worn or damaged parts of the floor coverings in the Premises with floor coverings of a similar quality;
- (f) **Damage:** immediately make good any damage to the Premises caused by the Lessee and people under the control of the Lessee;
- (g) **Glass:** immediately repair and replace all broken glass (including exterior shop windows) in and about the Premises with glass of the same or similar quality;
- (h) **Fittings:** immediately replace all damaged or non-operative light bulbs, globes and tubes within the Premises including ballasts, starters and other fittings with matching fittings of similar specification;
- (i) **Facilities:** immediately repair or, where appropriate, replace any facilities broken or damaged by the Lessee and people under the control of the Lessee; and
- (j) **Signs:** ensure that all signs of the Lessee are kept in attractive and good condition and, where appropriate, illuminated.

**11.5 Lessor's Maintenance:** The Lessor is responsible for Structural Repairs, for keeping the Services not within the Premises in good repair and condition and for keeping the Property weathertight. However the Lessor is not liable for any:

- (a) **Lessee's Maintenance:** repairs or maintenance for which the Lessee is responsible under this lease;
- (b) **Lessee's Default:** repairs or maintenance which are necessary as a result of any act, default or negligence of the Lessee; or
- (c) **Lessee's Property:** damage to or destruction of any property in the Premises unless the damage or destruction results from the Lessor's failure to carry out repairs or maintenance within a reasonable time.

**11.6 Notification of Defects:** The Lessee must promptly notify the Lessor of any damage to or defect in the Property, Premises or Services of which the Lessee becomes aware.

**11.7 Lessor may repair:** If default shall be made by the Lessee in the due and punctual compliance with any repair notice given by the Lessor pursuant to this lease, or if any repairs for which the Lessee is responsible require to be undertaken as a matter of urgency, then without prejudice to the Lessor's other rights and remedies expressed or implied the Lessor may by the Lessor's employees and contactors with all necessary equipment and material at all reasonable times and on reasonable notice (except in the case of emergencies) enter the Premises to execute the works. Any moneys expended by the Lessor in executing the works shall be payable by the Lessee to the Lessor upon demand together with interest on the moneys expended at the Default Interest Rate from the date of expenditure to the date of payment.

## 12. USE OF PREMISES

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**12.1 Permitted Use:** The Lessee will not use (or permit to be used) the Premises or any part of the Premises for any purpose other than for carrying on the Permitted Use. If the Permitted Use requires compliance with the Building Act 2004 the Lessee will comply with that and pay all compliance costs.

**12.2 Merchandise:** The Lessee will not exhibit or sell merchandise in breach of the Permitted Use and will, within 3 Working Days of receipt of notice of any breach of this provision, remove from the Premises any

contravening merchandise. On default the Lessor may enter during normal business hours and remove contravening merchandise and hold it at the Lessee's risk and cost.

**12.3 Storage:** Any storage space forming part of the Premises will not be used for any purpose other than for storage.

**12.4 Restrictions on Use:** The Lessee must:

- (a) **Noxious Activities and Nuisances:** not carry on any noxious, noisy or offensive business or activity in or about the Premises or do anything which is or may become a nuisance or annoyance to any other occupant of any adjoining premises, but the carrying on of the Permitted Use by the Lessee in a reasonable manner will not of itself be a breach of this clause;
- (b) **Contamination:** not contaminate the Premises or the Property, and undertake all works to remove any contamination other than contamination not caused by the Lessee or which took place before the Commencement Date, or any earlier date on which the Lessee first occupied any part of the Property. "Contamination" means any change to the physical, chemical, or biological condition of the Premises or the Property by a "contaminant" as that term is defined in the Resource Management Act 1991;
- (c) **Unlawful Immoral and Indecent Uses:** not use or allow the use of the Premises for any activity or purpose which is unlawful, immoral or indecent or which in the Lessor's opinion offends commonly accepted standards of decency;
- (d) **Insurance:** not do anything which may result in any insurance relating to the Premises being refused or cancelled or the premium for that insurance being increased, unless the Lessee has first obtained any necessary extensions of cover from the insurer and has paid any additional premiums required by the insurer;
- (e) **Heavy Objects:** not place anything in the Premises which causes the Property's loading rates to be exceeded and the Lessee will not without the prior written consent of the Lessor bring into the Premises anything of such weight, nature or description that will impose on the Property any stress, shock, vibration or weight likely to damage, weaken or cause any movement or structural defect in the Property. All damage done to the Property or any fixture or fitting contained in the Property in taking in, moving or removing heavy things will be made good by the Lessee who or whose agent caused it. Before any safe or other heavy article is moved into, out of or within the Property at least 48 hours' notice in writing will be given to the Lessor and the moving of it will be done only under the supervision of a person approved by the Lessor at a time stipulated by the Lessor and at the cost in all things of the Lessee; and
- (f) **Acts, By-laws etc:** comply with all acts, by-laws, regulations, rules and requisitions relating to the Premises including the Resource Management Act 1991 and the Health and Safety at Work Act 2015 and the Lessee's use of the Premises, but the Lessee is not liable to carry out any works of a structural nature required under any act, by-law, regulation, rule or requisition unless resulting from the Lessee's use of the Premises or the number or sex of persons allowed in the Premises by the Lessee.

**12.5 Required Operating Times:** The Lessee will at all times keep the Premises open for trade during the Required Operating Times specified in Schedule 1 or otherwise as may be determined from time to time by the Lessor to apply to the Property (or the relevant part of the Property in which the Premises are located) unless prohibited by law. The Lessee acknowledges that the Lessor has the right to change the Required Operating Times for the Property (or the relevant part of the Property in which the Premises are located) at any time and from time to time. For the avoidance of doubt, the Lessee shall be entitled to keep the Premises open for trade outside of the Required Operating Times provided that, where the Waitemata Station (also known as the Britomart Station) is closed to the public, any means of public access to such Station from within the Premises must remain closed.

**12.6 Merchandising Display:** The Lessee will use to the Lessee's best advantage all space in the Premises for display of stock and, during such times as may be specified from time to time by the Lessor, will keep display windows and (when the Lessor requires) the entire Premises adequately illuminated. Throughout the Term of this lease the Lessee must install and maintain to the satisfaction of the Lessor shopfront displays and/or window dressings in accordance with the design criteria specified by the Lessor from time to time. The Lessee



will ensure that merchandising displays do not spoil or detract from the form, style and appearance of the Premises or Common Areas.

**12.7 Conduct of Business:** The Lessee will conduct the Lessee's business in accordance with the best retail methods and will not commit any illegal or unlawful act on the Premises or permit any such act to be committed.

**12.8 Misuse of Common Areas:** Except as permitted by clause 17.5, the Lessee will not use the Common Areas for any business purpose or for display, advertising or storage. Any licence given by the Lessor may be revoked or modified by the Lessor at any time in its absolute discretion and following any failure of the Lessee to cease using the Common Areas the Lessor will be entitled to remove and store such of the Lessee's fittings or merchandise as will remain in the Common Areas and recover from the Lessee the costs of doing so. In no event will the Lessor be liable to compensate the Lessee.

**12.9 Rules:** The Lessee and people under the control of the Lessee will at all times observe the Rules. The Lessor will have the right to make reasonable variations and additions to the Rules provided that no such variation or addition will derogate from the rights of the Lessee under this lease and, in the event of any inconsistency between the provisions of this Lease and the Rules, then the provisions of this lease will prevail.

**12.10 Schedule of Performance:** The Lessee will comply with its obligations set out in Schedule 8.

**12.11 Britomart Transport Centre Pre-Start Manual for Tenancy Fit-Out:** The Lessee shall comply with the requirements and conditions relating to the Property as set out in the Britomart Transport Centre Pre-Start Manual for Tenancy Fit-Out (attached as Schedule 9 to this lease) at all times. The Lessor may amend the Britomart Transport Centre Pre-Start Manual for Tenancy Fit-Out from time to time in its absolute discretion.

### 13. HEALTH AND SAFETY

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**13.1 Lessor's Commitment:** The Lessor is firmly committed to the provision of a safe and healthy environment for its employees, clients, service delivery partners, contractors and the general public. The Lessor recognises that this commitment will only be achieved with positive leadership, the provision of necessary resources, and continued pursuit of best practice in occupational health and safety.

**13.2 Health and Safety Compliance:** The Lessee, as a "Person Conducting a Business or Undertaking" under the HSWA, will ensure that it complies with all duties and/or obligations it has in law. The Lessee will ensure that it complies with the duties it owes to other parties (including employees, agents, contractors, suppliers, players and team management, officials, merchandisers, customers etc), and will ensure that they comply so far as is reasonably practicable with the provisions of:

- (a) the HSWA (and accompanying regulations);
- (b) the Lessor's building codes of compliance notified to the Lessee;
- (c) the Lessor's health and safety policies and procedures, including evacuation schemes notified to the Lessee;
- (d) any operating procedures notified by the Lessor; and
- (e) all amendments to the above.

**13.3 Notification:** The Lessee agrees that it will immediately notify the Lessor of any risks or hazards that the Lessee observes or becomes aware of at the Property. The Lessee must also immediately notify the Lessor of any incident, near miss, accident or notifiable event (as that term is defined in the HSWA) that it becomes aware of, and the Lessee will provide the Lessor with such assistance as may be reasonably necessary to conduct any associated investigation at no cost to the Lessor.

**13.4 Access:** The Lessee acknowledges and accepts that the Lessor will have access to the Premises at all times in order to review, monitor and/or audit the Lessee's health and safety procedures and practices.

**13.5 Consultation, Co-operation and Co-ordination:** The Lessee agrees, so far as is reasonably practicable, to consult, co-operate, and co-ordinate with the Lessor in respect of any health and safety matters arising in respect of its rights pursuant to this lease.

**13.6 Nature of Engagement:** The Lessee will facilitate, if required, engagement between the Lessee and the Lessor in relation to health and safety matters.

**13.7 Lessee Responsibility:** The Lessee is responsible for maintaining standards of health, safety and environmental practice that at all times equal, or exceed, the requirements of any health and safety legislation as applicable from time to time.

**13.8 Material Breach:** Any failure by the Lessee to comply fully with its obligations in this clause 13 will be regarded as a material breach of this lease.

#### 14. ALTERATIONS AND ADDITIONS

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**14.1 Approval:** The Lessee must not damage or cut any of the floors, walls, ceilings or partitions of the Premises nor make any alterations to the Premises or to the external appearance of the Premises nor install or remove any partitioning, equipment, fitting or fixture (**Works**) without obtaining the Lessor's prior written approval. In seeking the Lessor's approval the Lessee must submit plans, specifications and a programme for the works. As a condition of the Lessor's approval (if given) and in carrying out the Works the Lessee must:

- (a) **Contractors:** ensure that the Works are supervised by and undertaken by contractors approved by the Lessor;
- (b) **HSWA:** ensure that the contractor:
  - (i) has an adequate site-specific health and safety operational risk management plan (**Plan**) in compliance with HSWA and the Lessor's health and safety operational risk management plan for the Property, and provides a copy of that plan to the Lessor, and
  - (ii) undertakes the Works in such a manner so as to comply with that Act and that Plan;
- (c) **Lessor's Costs:** pay on demand all costs (including consultancy) incurred by the Lessor in relation to the Works;
- (d) **Lessee's Fitout Costs:** pay all costs consequent to the Lessee's fitout;
- (e) **Lessor's Base Building Services:** ensure any alterations to the Lessor's base building services are carried out by contractors approved by the Lessor (at the cost of the Lessee);
- (f) **Building Consent:** obtain and provide to the Lessor an approved Building Consent and carry out all Building Work in conformity with that consent;
- (g) **Standards:** ensure that all fittings and fixtures installed in the Premises by the Lessee conform to the requirements and standards of the Lessor as to design, quality and appearance;
- (h) **Insurance:** prior to the commencement of the works submit to the Lessor evidence of adequate contract works and public liability insurance to cover the Works;
- (i) **Plans:** provide to the Lessor at the expense of the Lessee updated "as built" and "as laid out" plans of the Premises and their services properly integrated with the Property plans and services; and
- (j) **Compliance Certificate:** on completion of the Works and prior to occupation of the Premises, obtain a Code Compliance Certificate and provide such documents to evidence compliance.

**14.2 Reinstatement:** If the Lessor authorises any alterations or additions to the Premises or to the Lessor's Fixtures and Fittings the Lessee must, if the Lessor requires, remove at the Lessee's expense all those alterations or additions and repair any damage to the Premises caused by the removal:

- (a) **Expiry of Term:** before the expiry of the Term; or
- (b) **Earlier Termination:** if this lease is terminated before the expiry of the Term, within five Working Days of the date of termination.

**14.3 No Compensation:** If the Lessee does not remove alterations or additions under clause 14.2, then those alterations or additions will be forfeited, at the Lessor's option, and become the Lessor's property without payment of compensation to the Lessee, or if those alterations and additions are removed by the Lessor, all costs relating to their removal will be met by the Lessee.

## 15. SIGNS

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**15.1 Preconditions:** The Lessee must not affix or paint any sign, notice or advertising device on or to the Premises except with the Lessor's prior written consent and in compliance with all Relevant Authorities' requirements.

**15.2 Design and position:** The Lessee may only install signs of such colour, size or style and at such places at the Premises as have been approved in writing by the Lessor.

**15.3 Illumination:** The Lessee will ensure that all illuminated signs are the static illumination type.

**15.4 Removal:** At or before the expiry or earlier termination of the Term, the Lessee must:

- (a) **Remove Signs etc:** remove all signs and advertising devices affixed to or painted on the Premises; and
- (b) **Restore Premises:** restore all affected parts of the Premises and make good any damage caused by the signage to the Lessor's reasonable requirements (including but not limited to any requirements and conditions under the Britomart Transport Centre Pre-Start Manual for Tenancy Fit Out) and also paint all affected parts in a colour or colours approved by the Lessor.

## 16. PREPARING AND/OR SELLING FOOD ON THE PREMISES

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**16.1 General:** If the Lessee prepares and/or sells food on the Premises then the Lessee must comply with the following provisions of this clause 16 as applicable to the Permitted Use.

**16.2 Compliance with Health Requirements:** The Lessee will at the Lessee's cost comply with the requirements of any Relevant Authorities (including health authorities) relating to the use of the Premises for the storage, preparation and sale of food, and at all times when trading from the Premises maintain, and display at the Premises, the relevant 'A Grade' Food Safety Certificate. In the event of any breach of this clause 16.2 by the Lessee the Lessor may, at the expense of the Lessee, take such action as it deems necessary to remedy such breach.

**16.3 Extraction Fans:** The Lessee will immediately, if required to do so by the Lessor, install, operate and maintain to the satisfaction of the Lessor in all respects extraction fans and associated equipment adequate to prevent any odours, smells or the like resulting from the Lessee's use of the Premises from becoming noticeable by people outside the Premises or troublesome to other lessees in the Property. In the event of any breach of this clause 16.3 by the Lessee the Lessor may, at the expense of the Lessee, take such action as it deems necessary to remedy such breach.

**16.4 Cleanliness:** The Lessee will ensure that the Premises, the walls and surrounds in the general area of the front of the Premises and the walls, surrounds and floor in the general area of the rear entrance of the Premises do not smell, attract flies or other insects, become dirty, stained or littered with boxes, cartons and the like or constitute a fire hazard resulting from the use of the Premises for the preparation and retailing of food. In the event of any breach of this provision the Lessor will have the right to arrange, at the cost of the Lessee, for such cleaning and making good as it considers necessary.

**16.5 Deep Frying Equipment:** If any deep frying with oil or fat is conducted on the Premises the Lessee must ensure that:

- (a) Every frying vat is fitted with a close fitting steel lid and that such lid is kept securely shut when the vat is not in use;
- (b) A fire blanket is always kept in a conspicuous place in the vicinity of, but at a safe distance away from, the frying operation and that the fire blanket is readily accessible for immediate use at all times during any deep frying activity;
- (c) A fully charged multi-purpose extinguisher of not less than 2.25kg capacity or a fully charged extinguisher specifically designed for use on flammable liquid fires installed in a conspicuous place in the vicinity of, but at a safe distance away from, the frying operation and is accessible for immediate use at all times during any deep frying activity;
- (d) All thermostats, pans, blankets and extinguishers are maintained in good working order at all times;
- (e) Extraction filters are cleaned weekly and extraction flues and ducting inspected monthly and cleaned as necessary to minimise the risk of fire;

- (f) Where the fryer is an electric fryer, a separate non-adjustable manual reset thermostat is fitted to it and set to disconnect the power supply when the temperature of the cooking liquids reaches 240 degrees centigrade; and
- (g) All cooking liquids for disposal are stored at all times in a metal container with a close fitting metal lid until removed from the Premises. All grease traps must be cleared regularly from the Premises as required by the Lessor.

**16.6 Capacity:** The Lessee must not install in the Premises any equipment which exceeds the capacity of any utility facility in the Property or which requires additional utility facilities to be installed in the Property without the Lessor's prior written approval (which the Lessor may grant or withhold at its sole discretion). If such installation is approved by the Lessor and if the Lessor provides such additional facilities to accommodate the Lessee's installation, the Lessee agrees to pay the Lessor, on demand, the cost of providing such additional utility facilities.

## 17. COMMON AREAS

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**17.1 Use:** Subject to all other clauses of this lease and to any rights, powers and restrictions conferred on the Lessee by Rule 12 of Schedule 4, the Lessor will allow the Lessee to use the Common Areas in common with the Lessor and all other persons authorised by the Lessor but only for the purposes for which they are designed.

**17.2 Structures:** The Lessor reserves the right to erect, remove and re-erect kiosks, signs, seats and other structures in any part of the Common Areas and to grant to any person the exclusive use of any such kiosks or structures for such purposes and for such periods and on such terms and conditions as the Lessor may think fit.

**17.3 Improvements and Additions:** The Lessor reserves the right to improve, extend, vary or reduce the Common Areas and in any manner whatsoever to alter and deal with them. In so doing the Lessor will endeavour to cause as little inconvenience to the Lessee as is practicable but in no event will any compensation be payable by the Lessor to the Lessee.

**17.4 Closure:** The Lessor may temporarily or permanently close all or any part of the Common Areas if the Lessor thinks it necessary or desirable to do so.

**17.5 Licences for Use:** The Lessor reserves the right to grant to any person a licence to use any part of the Common Areas either exclusively or in common with others for such purposes and for such periods and on such terms and conditions as the Lessor may think fit.

## 18. ASSIGNMENT AND SUBLEASING

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**18.1 Control of Assignment and Subleasing:** The Lessee must not:

- (a) **Assignment:** assign any interest in this lease without the Lessor's prior written consent; or
- (b) **Sublease etc:** sublease, part with possession or share occupation of the whole or any part of the Premises;

**18.2 Assignment:** The Lessor will not unreasonably withhold or delay its consent to an assignment of the whole of this Lease:

- (a) to a respectable, responsible, solvent and suitable assignee proven to the satisfaction of the Lessor by the Lessee to be at least equally experienced in the conduct of the business of the Permitted Use as the Lessee and capable of carrying on the Permitted Use on the terms of this lease; and
- (b) where there is no subsisting breach of the Lessee's obligations under this lease and, where percentage rent is payable under this lease, the Lessee has paid to the Lessor a sum of money acceptable to the Lessor on account of the Annual Rent recognising the Lessee's Gross Sales for the Lease Year to the date of the proposed assignment.

**18.3 Conditions:** Without limiting the grounds on which the Lessor may withhold consent under clause 18.1, the Lessor may, as a condition of any consent require prior compliance with any one or more of the following conditions:

- (a) **Standing of Assignee:** the Lessee must show to the Lessor's reasonable satisfaction that the proposed assignee is responsible and financially sound;
- (b) **Performance by Lessee:** the Lessee must have performed all of the Lessee's obligations under this lease up to the date of the proposed assignment;
- (c) **Deed of Covenant:** in the case of an assignment, the assignee must execute a deed of covenant with the Lessor agreeing to perform the Lessee's obligations under this lease, but without releasing the assignor or any other person from liability under this lease;
- (d) **Assignment to a Company:** in the case of an assignment to a company, the shares in which are not listed on the New Zealand Stock Exchange, the directors and shareholders of the assignee must (if the Lessor requires) guarantee the assignee's obligations under the deed of covenant executed by the assignee; and
- (e) **Bank Guarantee:** In the case of an assignment to a company, a bank guarantee from a registered trading bank in New Zealand on terms set out in clause 26 of this lease as security for the performance by the assignee of its obligations under this lease must be provided to the Lessor.

**18.4 Costs:** The Lessee must pay the Lessor's reasonable costs for any consent or application for consent under this section (including the Lessor's legal costs) and the costs of investigating the suitability of the proposed assignee whether or not the proposed assignment proceeds.

**18.5 Change of Shareholding:** For the purposes of this section, any change in the shareholding (including any allotment of increased capital) of the Lessee, or any holding company of the Lessee, which results in the effective control of the Lessee being changed will be treated as an assignment of this lease requiring the Lessor's prior written consent. The persons acquiring effective control of the Lessee or the Lessee's holding company (as the case requires) under that change will be treated as the assignees. This clause does not apply to a company which is listed on the New Zealand Stock Exchange.

## 19. LESSOR'S RIGHTS OF ENTRY

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**19.1 Entry to Premises by Lessor:** The Lessor may, with all necessary materials and equipment at all reasonable times and on reasonable notice (but at any time without notice in the case of an emergency), enter the Premises to:

- (a) **Inspect Premises:** inspect the condition and state of repair of the Premises;
- (b) **Carry out Repairs:** carry out repairs or other works which are the Lessor's responsibility under this lease or which the Lessee has failed to carry out;
- (c) **Refurbish:** to refurbish the Property or any part of it; or
- (d) **Compliance with Statutes etc:** carry out any works to comply with any statutes, regulations, by-laws, ordinances, orders, proclamations, requirements of or notices by any Relevant Authority or the requirements or recommendations of the Property's insurer.

**19.2 Minimise Disturbance to Lessee:** The Lessor will take reasonable steps to minimise any disturbance to the Lessee when exercising the entry rights granted under clause 19.1.

## 20. OTHER RIGHTS OF LESSOR

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**20.1 Right to Alter the Property:** The Lessee acknowledges that the Lessor is to have the right to use, build on, add to or in any manner whatsoever alter or deal with the Property or any part of the Property. The Lessee will not make or lodge any objection to any resource consent, building consent or any planning or zoning applications by the Lessor relating to the Property.

**20.2 Passage of Services:** The Lessor reserves the right to install, use, maintain, repair and remove at any time all air-conditioning equipment, fire and sprinkler systems, pipes, services, ducts, cables, electrical wiring, water, sewerage and drainage connections and any other services through, along, in or into the Premises.

## 21. QUIET ENJOYMENT

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**21.1** If the Lessee pays the Annual Rent and performs the Lessee's obligations in this lease, the Lessee will be entitled to quiet enjoyment of the Premises without interruption by the Lessor or any person claiming under the Lessor.

## 22. NO WARRANTY BY LESSOR AS TO SUITABILITY OF PREMISES

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**22.1 Suitability:** The Lessor does not warrant that the Premises are or will be suitable for any of the purposes of the Lessee and to the extent permitted by law all implied warranties as to suitability are expressly negated.

**22.2 Sales and Revenue:** The Lessee acknowledges that no representation, warranty or undertaking has been given by or on behalf of the Lessor in respect of the Property, possible sales revenue likely to be generated from the Premises or the type or style of any present or future business anywhere in the Property and that no representation, warranty or undertaking has been given to entitle the Lessee to any exclusive trading rights within the Property.

## 23. DESTRUCTION AND REINSTATEMENT

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**23.1 Total Destruction:** If the Premises are destroyed or damaged due to any cause whatsoever to such an extent as to be rendered unfit for use or if the Property is totally destroyed or if any part or parts of the Property are so destroyed or damaged as to render the Property substantially unfit for use and if repair and reinstatement are in the opinion of the Lessor impracticable or undesirable then at the option of the Lessor this lease will terminate as from the date of such destruction or damage but without releasing the Lessee from liability for the Annual Rent and other money up to that date or for any previous breach of this lease.

**23.2 Partial Destruction/Damage:** If the Premises are damaged, but not so as to give rise to termination of this lease under clause 23.1, the Lessor will with all reasonable speed reinstate the Premises using materials, building techniques and designs which the Lessor chooses. The reinstated Premises must be reasonably adequate to enable the Lessee to carry out the Permitted Use.

**23.3 If Reinstatement Prevented:** The Lessor is not required to reinstate under clause 23.2 if:

- (a) **Insurance Proceeds Unavailable:** there are insufficient insurance proceeds available to the Lessor to carry out the reinstatement;
- (b) **Consents and Approvals:** any necessary Building Consent, resource consent or other approval is not available from any Relevant Authority;

in which case this lease will terminate with effect from the date of the damage.

**23.4 Reduction of Rent:** If clause 23.2 applies, a fair proportion of the Annual Rent and Outgoings will cease to be payable with effect from the date of the damage until the completion of the reinstatement. In calculating the amount of the rent reduction, the parties will take into account:

- (a) **Nature and Extent of Damage:** the nature and extent of the damage; and
- (b) **Reduction in Benefit:** the reduction in the benefit of the use and occupation of the Premises caused to the Lessee.

**23.5 Failure to Reinstate:** If:

- (a) **Reinstatement Not Prevented:** clause 23.3 does not apply;
- (b) **Lessee Requires Reinstatement:** the Lessee gives the Lessor written notice requiring the reinstatement work to be done; and
- (c) **Reinstatement Not Done:** the Lessor fails to carry out the Lessor's obligations under clause 23.2 within a reasonable time after receiving the Lessee's notice;

then the Lessee may terminate this lease by giving a further written notice to the Lessor.

**23.6 Earlier Breaches:** Termination of this lease under this section will not prejudice either party's rights relating to any earlier breach of this lease.

**23.7 No Access in Emergency:** If there is an emergency and the Lessee is unable to gain access to the Premises to fully conduct the Lessee's business from the Premises because of reasons of safety of the public or Property or the need to prevent reduce or overcome any hazard, harm or loss that may be associated with the emergency including:

- (a) a prohibited or restricted access cordon applying to the Premises; or
- (b) prohibition on the use of the Premises pending the completion of structural engineering or other reports and appropriate certifications required by any competent authority that the Premises are fit for use; or
- (c) restriction on occupation of the Premises by any competent authority,

then a fair proportion of the Annual Rent and Outgoings shall cease to be payable for the period commencing on the date when the Lessee became unable to gain access to the Premises to fully conduct the Lessee's business from the Premises until the inability ceases.

## 24. EXPANSION OR REBUILDING OF THE PROPERTY

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**24.1 Application:** This clause 24 will apply in the event of the Lessor electing to expand or rebuild or substantially alter the Property or any part of the Property (all such works referred to in this clause as **Rebuilding**).

**24.2 Surrender of Lease:** If in the reasonable opinion of the Lessor any proposed Rebuilding requires the demolition or alteration of the Premises or any part of the Premises or if such proposed expansion, rebuilding or alteration means that the Premises will not in the reasonable opinion of the Lessor be suitable or in a suitable location in the Property for the Permitted Use (or if the Rebuilding in the area close to the Premises means that it is desirable for the Lessor to rebuild that area of the Property in which the Premises are situated) the Lessor may give notice in writing (the "**Surrender Notice**") to the Lessee no earlier than the Initial Expiry Date that it requires this Lease to be surrendered on a date (the "**Date of Surrender**") to be specified in such notice and in no event being less than 6 months from the service of the Surrender Notice.

**24.3 Process:** On the Date of Surrender the Lessee will:

- (a) yield up vacant possession of the Premises as if this lease had expired by lapse of time; and
- (b) deliver to the Lessor its copy of this lease and do all such acts and things and sign all such documents as are reasonably required of it by the Lessor.

**24.4 No Compensation:** No compensation whatsoever will be payable by the Lessor to the Lessee, whether for interruption of its business, loss of profits arising from such interruption, relocation costs or otherwise however arising.

**24.5 Costs:** Each party will pay its own costs of and incidental to the preparation and execution of such surrender.

## 25. DEFAULT

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**25.1 Cancellation:** The Lessor may (in addition to the Lessor's right to apply to the Court for an order for possession) cancel this lease by re-entering the Premises at the time or any time afterwards:

- (a) **Failure to Pay Rent:** if any instalment of the Annual Rent is in arrears for 10 Working Days after the due date to pay and the Lessee has failed to remedy that breach within 10 Working Days after service on the Lessee of a notice in accordance with section 245 of the Property Law Act 2007;
- (b) **Failure to Perform:** if the Lessee fails to observe or perform any obligation under this lease (other than the covenant to pay rent) and the Lessee has failed to remedy that breach within the period specified in a notice served on the Lessee in accordance with section 246 of the Property Law Act 2007;
- (c) **Insolvency, Liquidation, etc:** if the Lessee is declared bankrupt or insolvent according to law or goes into liquidation, receivership, or has an application made or a resolution proposed for the appointment of a voluntary administrator, or a voluntary administrator is appointed, or is wound up or dissolved;

- (d) **Composition with Creditors:** if the Lessee enters into any assignment or other compromise or scheme of arrangement with the Lessee's creditors or any class of the Lessee's creditors; or
- (e) **Judgments:** if the Lessee suffers any judgment in any court for a sum greater than \$5,000 or is subject to any action for distress or execution against any of the Lessee's property that is not satisfied within the required timeframe.

**25.2 Lessor May Remedy Lessee's Default:** The Lessor may, without being under any obligation to do so, remedy any default or breach by the Lessee under this lease at the Lessee's cost.

## 26. BANK GUARANTEE

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- 26.1** The Lessee shall, prior to the Commencement Date, deliver a bank guarantee to the Lessor guaranteeing the amount specified in Schedule 1. The Lessee shall be obliged to provide the bank guarantee through the term of this lease (including any renewal(s)).
- 26.2** If the Lessor calls on the bank guarantee, then the Lessor may give the Lessee a notice requiring a replacement or additional bank guarantee so that the amount guaranteed is the amount specified in Schedule 1. The Lessee shall deliver the replacement or additional bank guarantee to the Lessor within 10 Working Days after the Lessor asks for it.
- 26.3** The bank guarantee shall be an unconditional and irrevocable undertaking by a registered bank in New Zealand in a form reasonably acceptable to the Lessor to pay the guaranteed amount to the Lessor on demand by the Lessor, without question or condition, in the event of a default by the Lessee in the observance or performance of the Lessee's covenants under the lease.
- 26.4** On each occasion on which the Annual Rent is increased under this lease, the Lessor may notify the Lessee that it requires a replacement or additional bank guarantee under which the amount secured by the bank guarantee is increased by the same percentage and the increase in the Annual Rent. The Lessee must deliver such replacement or additional bank guarantee to the Lessor within 10 Working Days after receipt of the Lessor's notice.
- 26.5** Failure by the Lessee to provide the bank guarantee when due shall be a breach going to the essence of the Lessee's obligations.
- 26.6** If the Lessor deals with its interest in the Property so that another person becomes the Lessor, the Lessee (if so requested) must deliver to the Lessor or the incoming Lessor a replacement bank guarantee in favour of the incoming Lessor and for the amount equal to the bank guarantee being replaced by such bank guarantee.

## 27. ESSENTIAL TERMS

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**27.1 Failure to Pay Rent:** The breach of any of the following will be a breach of an essential term of this lease:

- (a) The Lessee's failure to pay the rent or any other money payable by the Lessee under this lease;
- (b) The terms dealing with assignment or subletting;
- (c) The terms restricting the use of the Premises;
- (d) The terms dealing with alterations and additions to the Premises; and
- (e) The terms relating to the bank guarantee

**27.2 Waiver:** The Lessor's acceptance of any arrears of rent or other money payable under this lease is not a waiver of the essential obligation to pay any other rent or money payable under this lease.

**27.3 Compensation:** The Lessee must compensate the Lessor for any breach of an essential term of this lease. The Lessor may recover damages from the Lessee for those breaches. The



Lessor's entitlement to compensation under this clause is in addition to the Lessor's other remedies or entitlements (including the right to terminate this lease).

## 28. DAMAGES

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**28.1 Lessee's Acts or Omissions:** If any act or omission of the Lessee:

- (a) **Repudiation:** is a repudiation of this lease or of the Lessee's obligations under this lease; or
- (b) **Breach of Lease:** is a breach of any of the Lessee's obligations under this lease;

the Lessor may recover damages for the loss or damage suffered by reason of the repudiation or breach during the whole of the Term.

**28.2 Entitlement:** The Lessor's entitlement to recover damages:

- (a) **Abandonment:** will not be affected or limited by the Lessee abandoning or vacating the Premises;
- (b) **Re-entry or Termination:** will not be affected or limited by the Lessor electing to re-enter the Premises or to terminate this lease;
- (c) **Acceptance of Repudiation:** will not be affected by the Lessor accepting the Lessee's repudiation;
- (d) **Surrender:** will not be affected by the parties' conduct constituting a surrender by operation of law; and
- (e) **Additional:** is in addition to any other remedy or entitlement of the Lessor.

## 29. NO WAIVER

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The Lessor's waiver or failure to act in response to the Lessee's breach of any of the Lessee's obligations in this lease will not operate as a waiver of:

**29.1 Waiver of Breach:** the same breach on any later occasion; or

**29.2 Waiver of Obligations:** any other obligations in this lease.

## 30. INDEMNITY

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**30.1 Lessor Indemnified:** The Lessee indemnifies the Lessor against all actions, proceedings, calls, claims, demands, losses, damages, costs, expenses or liabilities of any kind suffered or incurred by the Lessor resulting from the Lessee's act or omission.

**30.2 Repair Costs:** The Lessee must pay to the Lessor on demand the amount of all costs and expenses incurred by the Lessor in making good any damage to the Premises resulting from the Lessee's act or omission.

**30.3 Extent of Indemnity:** The Lessee is liable to indemnify the Lessor only to the extent that the Lessor is not fully indemnified under any insurance policy.

## 31. RESOLUTION OF DISPUTES

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**31.1 Disputes:** Any dispute arising between the parties about:

- (a) **Interpretation:** the interpretation of this lease; or
- (b) **Lease:** anything contained in or arising out of this lease;

will be referred to the arbitration of a single arbitrator under the Arbitration Act 1996.

**31.2 Arbitrator:** The parties must try to agree on the arbitrator. If they cannot agree, the president or any vice president for the time being of the New Zealand Law Society (or his or her nominee) will, on either party's application, nominate the arbitrator.

- 31.3 Action at Law:** The parties must go to arbitration under this section before they can begin any action at law (other than an application for injunctive relief).

## 32. NOTICES

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**32.1 Service of Notices:** Any notice or document required or authorised to be given or served under this lease must be given or served:

- (a) **Sections 245 or 246 Property Law Act:** in the case of a notice under sections 245 or 246 of the Property Law Act 2007, in the manner prescribed by section 353 of that Act; and
- (b) **Other Cases:** in all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:
  - (i) in the manner authorised by sections 354 to 361 of the Property Law Act 2007; or
  - (ii) by personal delivery, or by posting, or by email.

**32.2 Time of Service:** In respect of the means of service specified in clause 32.1(b) (ii) any notice or other document will be treated as given or served and received by the other party:

- (a) **Personal Delivery:** when received by the addressee;
- (b) **Post:** three Working Days after being posted to the addressee's last known address in New Zealand; or
- (c) **Email:** when acknowledged by the addressee by return email or otherwise in writing.

**32.3 Signature of Notices:** Any notice or document to be given or served under this lease must be in writing and may be signed by:

- (a) **Party:** the party giving or serving the notice;
- (b) **Attorney:** any attorney for the party serving or giving the notice; or
- (c) **Authorised Person:** the solicitor or any director, officer, employee or other agent who has authority to give or serve the notice.

## 33. PROPERTY LAW ACT

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The covenants and powers contained in clauses 4, 5, 6, 9, 10, 11 and 12 of Part 2 and clause 13 of Part 3 of Schedule 3 of the Property Law Act 2007 will not be implied in this lease and are expressly negated.

## 34. LEASE NOT REGISTRABLE

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The Lessor does not warrant that this lease is in registrable form. The Lessee must not require registration of this lease against the title to the Premises.

## 35. LESSOR'S CONSENT

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**35.1 Consent Required on Each Occasion:** The Lessor's consent under this lease is required for each occasion even if the Lessor has given a consent for the same or similar purpose on an earlier occasion.

**35.2 Consent not to be Unreasonably Withheld:** If this lease states that the Lessor's consent is required for anything done or proposed to be done, then unless otherwise stated, in each case, the Lessor:

- (a) must not unreasonably withhold consent; and
- (b) must, within a reasonable time of the Lessor's consent being requested:
  - (i) grant that consent; or
  - (ii) notify the Lessee in writing that the consent is withheld.

## 36. GENERAL

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**36.1 Further Assurances:** Each party will do all things and execute all documents reasonably required to give effect to the provisions and intent of this lease.

**36.2 Governing Law and Jurisdiction:** This lease is governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this lease.

**36.3 Counterparts:** This deed may be executed in any number of counterparts all of which will be deemed to constitute one and the same deed. A party may enter into this deed by executing a counterpart and sending it to the other party including by email.

## SCHEDULE 4 – RULES OF THE PROPERTY

### Preamble

These Rules are made for the safety, care, operation and cleanliness of the Property and for the preservation of good order, safety and comfort of lessees and visitors in the Property.

### Obstruction

1. The Lessee will not obstruct or permit the obstruction of any part of the Property or the Common Areas or any appurtenances or conveniences in the Property. Without limiting the generality or enforceability of the foregoing obligation, the Lessee acknowledges that the Lessor will be entitled to remove and store at the Lessee's risk and expense any item(s) left or placed by or on behalf of the Lessee in the Common Areas.

### Protection of Light

2. The Lessee will not cover or obstruct any lights, skylights, windows or other means of illumination of the Common Areas.

### **Goods Delivery**

3.
  - (a) The Lessee will only use or permit to be used for the receipt, delivery or other movement of any goods or articles of bulk or quantity such parts of the Premises and the Common Areas including any loading dock at such times and manner as the Lessor may from time to time permit and in accordance with the requirements of any Relevant Authority. The Lessee will comply with all other reasonable requirements of the Lessor in such matters.
  - (b) The Lessee will only use loading docks for loading and unloading and not parking.
  - (c) In addition the Lessee will take particular care, and will ensure that all other persons having business with the Lessee also take particular care, in the delivery of goods to the Premises. Without limitation the Lessee will:
    - (i) personally ensure that no goods are delivered to the Premises other than via the back entrance to the Premises (if there is such a back entrance), except where such deliveries are able to be made either before or after Required Operating Times; and
    - (ii) direct all delivery persons to park their vehicles in service areas nominated from time to time by the Lessor.

### **Rubbish or Other Articles**

4. The Lessee will not throw or permit to be thrown or to be dropped or to fall any rubbish or other article or substance from or out of the Premises or the Common Areas. All rubbish will only be placed in the appropriate rubbish collection bins and areas.

### **Common Area Cleanliness**

5. The Lessee will keep clean and rubbish free such parts of the Common Areas as immediately adjoin the Premises.

### **Security**

6. The Lessee will use its best endeavours to protect the Premises from theft and robbery and will keep all doors windows and other openings closed and securely fastened when the Premises are not in use. If the Premises are not secured in the foregoing manner then the Lessee authorises the Lessor to secure the Premises in such manner as the Lessor determines is necessary in the circumstances but at the cost of the Lessee. If the Lessee desires to install a security alarm in the Premises then:
  - (a) such alarm shall be as approved by the Lessor using a contractor approved by the Lessor (the approval in both cases to be in the Lessor's sole discretion) and, if required by the Lessor, shall be connected to the alarm system for the Property;
  - (b) any security call out activated by the Lessee's alarm is to be undertaken by the security personnel engaged by the Lessor; and
  - (c) the Lessee will pay all costs of security call outs activated by the Lessee's alarm.

### **Keys**

7. If the Lessor has provided any keys for the Lessee then the Lessee will not permit them to come into the possession or control of any person other than the Lessee, its employees or agents and will return the keys to the Lessor on the expiration or determination of this Lease. Lost keys will be replaced by the Lessor at the cost of the Lessee. The Lessee will provide to the Lessor an after-hours contact telephone number.

### **Rubbish**

8. No rubbish will be burned on the Premises or the Common Areas.

### **Soliciting**

9. The Lessee will not solicit business in the Common Areas nor distribute hand bills, pamphlets or other advertising matter on motor or other vehicles parked in the Common Areas and will not use audio visual equipment, amplifiers or loud hailers in the Common Areas without the prior written consent of the Lessor's Property manager.

### **Closing of the Property**

10. The Lessee will observe any reasonable closing of the Property and the Common Areas by the Lessor (including for events such as natural disaster, terrorism or fire) and any direction prohibiting the Lessee from entering or remaining there at such hours as the Lessor may reasonably determine and at all other times at which the Premises or Common Areas are required to be closed by operation of law.

### **Air-conditioning**

11. The Lessee acknowledges the right of the Lessor to close down the air-conditioning services (if any) of the Property during times other than normal retail shopping hours (after giving 24 hour notice where practicable).

### **Restrictions on Use of Common Areas**

12. The Lessee's right to use the Common Areas will be subject always to the control of the Lessor and to the provisions for the making of rules as provided in clause 12.9 of Schedule 3. In particular but without limitation the Lessee will observe any restrictions imposed by the Lessor from time to time to close any part of the Common Areas to the extent that the same may be required by law to prevent such Common Areas becoming dedicated or to prevent any rights accruing to any person or the public otherwise than to the benefit of the Property.

### **Fire Drills**

13. The Lessee will perform fire drills and observe all necessary emergency evacuation procedures and will co-operate with the Lessor and all Relevant Authorities having jurisdiction in such matters.

### **Foodstuffs**

14. Foodstuffs will not be prepared or consumed within the Premises unless carried out in a place properly designed, equipped and set aside for the particular purpose and in accordance with clause 16 of Schedule 3.

### **Liquor**

15. The Lessee will not at any time permit the sale of intoxicating liquor within the Premises unless in accordance with the relevant licensing laws and the Permitted Use. If intoxicating liquor is consumed within the Premises the Lessee will ensure that all laws governing the consumption of intoxicating liquor are fully complied with by the Lessee and people under the control of the Lessee.

### **Eviction**

16. The Lessor reserves the right to exclude or evict from the Property any person who in the opinion of the Lessor is under the influence of intoxicating liquor or drugs or who in any manner wilfully does any act in violation of these Rules or who is in the opinion of the Lessor a nuisance to other people within the Property.

### **Pests and Illness**

17. The Lessee will:
  - (a) Keep the Premises free of rodents, insects, reptiles and pests generally. If the Lessee does not strictly and promptly comply with this Rule the Lessor will be entitled to engage pest exterminators and charge all costs to the Lessee and collect the costs in the same manner as the Annual Rent in arrears.
  - (b) Promptly bring to the attention of the Lessor the presence of any notifiable diseases.

### **Cleaning**

18. If the Lessee or the Lessee's contractors do not carry out the Lessee's cleaning of the Premises the Lessee will exclusively use the cleaning service stipulated by the Lessor. The Lessor will have the Common Areas cleaned in a proper manner and such cleaning will include the regular removal of rubbish from the Property. The Lessor will not be responsible to the Lessee for any loss or damage to the property of the Lessee caused by such cleaning services. The Lessee will keep the Premises in a good state of preservation and cleanliness and will not allow accumulations of dirt, rubbish or useless property in or about the Premises or the Common Areas.

### **Payment for Cleaning**

19. Should the Lessee use the cleaning service stipulated by the Lessor, the Lessor will cause the person providing the cleaning service to render accounts direct to the Lessee for the cost (if any) of cleaning the Premises. The Lessee will pay such accounts within 15 Working Days of receipt of them. All other cleaning costs will form part of the Outgoings.

### **Signs**

20. The Lessee will not at any time allow any sign to be displayed which refers to any closing down of the business or expiration or determination of this lease. The Lessee will not display show cards, price tickets or the like which are not professionally presented.

### **Aerials**

21. The Lessee will not erect or affix to the Property any radio or television mast or telecommunications antenna unless the Lessor has first consented in writing. In the event that the Lessor gives such consent and subsequently considers that the rights or interests of other lessees are being adversely affected then such consent may be modified or withdrawn on the giving of 10 Working Days' notice.

### **Sound Reproduction Apparatus**

22. Nothing in Rule 21 will prevent the Lessee from operating any musical instrument, compact disks, cassette tapes or record player, radio, television set, amplifier or other sound reproduction apparatus within the Premises in a manner which does not interfere with the use or enjoyment of the Property by any other lessee or customers.

### **Occupation of Premises**

23. In no event will the Lessee allow any person to sleep or reside on the Premises or in any part of the Common Areas.

### **Animals etc.**

24. Except in accordance with the Permitted Use, no animals, birds or pets will be kept in or about the Property.

### **Statements**

25. The Lessee will not issue statements, verbal or written to the media in respect of the Property.

### **Interference with Machinery**

26. The Lessee will not interfere with or attempt to control any part of the services or machinery installed in the Property or the Premises.

### **Smoke Free Environments**

27. For the comfort, safety and health of visitors and staff, the Property and the Premises are intended to be a smoke-free environment under the Smoke Free Environments Act 1990. Accordingly the Lessee will not smoke in any of the enclosed areas of the Property and the Premises and will procure its employees and invitees to comply with this rule.

**SCHEDULE 5 – LESSOR'S FIXTURES AND FITTINGS**

**SCHEDULE 6 – PREMISES PLAN**



**SCHEDULE 7 – PREMISES CONDITION REPORT**

## **SCHEDULE 8 - SCHEDULE OF PERFORMANCE**

The Lessee will:

- submit to the Lessor a monthly summary of trading performance, as set out in clause 4 of Schedule 3 of this lease; and
- maintain a high standard of presentation for the Premises, including cleanliness of windows, floors, signage, controlled use of furniture and branding, lighting, and actively manage the use and appearance of external areas allocated to the Premises;

to the Lessor's satisfaction.

**SCHEDULE 9**