

5.4. REGISTRATION OF STANDARD TERMS FOR TRUSTEE AND FREEHOLD LEASES

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DEPARTMENT: Governance

RECOMMENDATION

That Council resolves to:

- 1. register, with the Department of Natural Resources and Mines, standard terms documents for leasing of both freehold and trustee reserve land and / or buildings; and**
- 2. delegate authority to the Chief Executive Officer, in accordance with section 257 of the *Local Government Act 2009*, to finalise all matters associated with this matter.**

EXECUTIVE SUMMARY

The Property Unit has recognised the need for the creation and registration of standard terms documents that can be used by Council when issuing leases over freehold or trustee reserve land or buildings.

Having standard terms and conditions will introduce consistency in leasing arrangements for Council assets as new leases are instigated and existing leases renewed. There is also added benefits that prospective lessees can avail themselves of these standard terms and can gain an understanding of Council requirements prior to leasing a Council property.

Without having standard terms and conditions for Council leases, it would require a solicitor to be engaged for each new lease or lease renewal, therefore there are cost savings by having the standard terms registered with the Department of Natural Resources and Mines.

There is also an additional administrative benefit in having standard lease terms to effectively deal with lease enquiries, maintenance of assets and annual inspections.

BACKGROUND

Following de-amalgamation reference was made to Cairns Regional Council's standard terms documents in any new leases created by Douglas Shire Council. There is opportunity now for Douglas to customise its own terms and register the documents with the Department of Natural Resources and Mines (DNRM).

DNRM has its own mandatory standard terms document for trustee leasing (dealing number 711932933) that contains the particular lease requirements of the department. Generally, approval from DNRM will include the requirement that a trustee lease be subject to this mandatory standard terms document.

DNRM encourages trustees to prepare and register their own standard terms documents that include the requirements of the trustee and trustee lessee. Council is also able to register a similar document for freehold leases. Standard terms for trustee and freehold

leases are virtually identical, except that the State's compulsory clauses are removed from the freehold standard terms document.

A trustee's standard terms for trustee leases should not include any clauses conflicting with or provided for in the department's mandatory standard terms document.

Standard terms can include provisions for such items as:

- who pays for legal and / or valuation fees, rates, cleansing fees, electricity and water
- information about the erection of signs, upgrading or overloading of services, arbitration of disputes, additions to buildings
- who is responsible for pest control, property maintenance, painting of the interior or exterior, fencing
- details of tenants' rights such as the right to remove fittings.

Standard terms can easily be amended according to individual lease requirements by completing a Form 20 (Schedule) which attaches to the Form 7 lease and which itemises any changes, additions or deletions.

The standard terms documents attached to this report and proposed to be registered have been fully reviewed by King and Company Solicitors.

All proposed leases will continue to be submitted to Council for consideration and determination as per the usual process even after the standard terms are registered.

Standard terms documents are able to be accessed by the public through the land registry for a small fee, which increases Council's transparency in real estate dealings. This also provides the community, prospective tenants, solicitors and other interested parties information about the rights and obligations to use and occupy Council-owned or controlled (trustee) property.

PROPOSAL

That Council registers standard conditions documents for trustee and freehold leases.

FINANCIAL/RESOURCE IMPLICATIONS

Having appropriate standard terms documents means that the drafting of leases will be more efficient and much more cost effective. Legal advice can still be sought when required for the drafting of specific conditions, and any conditions in the standard terms not required can be removed very simply via the use of an attached schedule.

RISK MANAGEMENT IMPLICATIONS

Standard terms for leases that apply across the board ensure that all possible risks for Council or tenants are covered every time a lease is entered into.

The standard terms proposed to be adopted have been fully reviewed and approved by King and Company Solicitors.

SUSTAINABILITY IMPLICATIONS

- Economic:** A standard terms document, amongst other things, details how lease rental charges are calculated, the party responsible for financial outlays such as legal fees, property maintenance, rates and services, which enables lessees to calculate their future costs. This then means more accurate projections can be made by lessees and Council which can assist with the planning for economic sustainability.
- Environmental:** Clear guidelines can be outlined in standard terms with regard to waste disposal, water and electricity usage, use of chemicals and the like to ensure these are within regulations or Australian Standards and Council's objectives for the Shire.
- Social:** The community will have clarity around the duties and obligations of leasing Council-owned or controlled property and this will assist with forward planning for those who are interested in or already have a lease, such as not-for-profit groups.

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

Corporate Plan 2014-2019 Initiatives:

Theme 1 – Celebrating Our Communities

1.2.3 – Develop and support opportunities to build resilience and sustainability of community groups and agencies.

1.3.4 – Provide and enhance community facilities and opportunities that cater for the arts, recreational and cultural pursuits.

Theme 5 – Governance

5.1.2 – Implement a robust enterprise risk management culture to identify and manage potential risks.

5.2.1 – Provide Councillors and community with accurate, unbiased and factual reporting to enable accountable and transparent decision-making.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

- Asset-Owner** Meeting the responsibilities associated with owning or being the custodian of assets such as infrastructure.

CONSULTATION

- Internal:** Property Unit
- External:** DNRM, Titles Office; King and Company Solicitors

ATTACHMENTS

1. King Co final trustee standard terms **[5.4.1]**
2. King Co final freehold standard terms **[5.4.2]**

DOUGLAS SHIRE COUNCIL – STANDARD TERMS DOCUMENT FOR A TRUSTEE LEASE

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DOUGLAS SHIRE COUNCIL – STANDARD TERMS DOCUMENT FOR A TRUSTEE LEASE

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In addition to the definitions in clause 2.1 of the mandatory standard terms document recorded in dealing number 711932933, the following definitions shall have the following meanings unless the context otherwise requires:

act	Includes: <ul style="list-style-type: none">• an omission; and• a refusal to act
act of insolvency	<ul style="list-style-type: none">• Suffering the appointment of a receiver, which appointment is not terminated, postponed or enjoined within 14 days after it is made.• Entering voluntary administration.• Suffering the appointment of a provisional liquidator.• Failing to satisfy a statutory demand under the <i>Corporations Act 2001</i> section 459E.• Voluntarily applying to be wound-up, or suffering presentation of an application for winding-up.• Being wound up or being de-registered as a corporation.• Entering a composition or scheme of arrangement for the benefit of creditors.• Failing to secure the return of one's assets within 21 days after a creditor or an encumbrancee lawfully seizes them.• Committing an act of bankruptcy mentioned in <i>Bankruptcy Act 1966</i> section 40.• Presenting a debtors petition for bankruptcy, or suffering the presentation of a creditors petition.• Signing an authority under <i>Bankruptcy Act 1966</i> section 188 (to appoint a controlling trustee).• Becoming bankrupt upon a debtors petition or a creditors petition.
address for notices	For each party: <ul style="list-style-type: none">• its address specified in the reference schedule;• such other address or facsimile number as it has notified to the party giving it a notice as its address or facsimile number for notices; or• if it is not at either such address, its last principal place of business or facsimile number in Queensland known to the party giving it a notice.
adjustment date	A date upon and from which the rate of rent payable under this trustee lease is liable to adjustment. <i>Example: if this trustee lease provides for annual adjustment of the rent, each anniversary of the commencement date is an adjustment date.</i>
adjustment note	An adjustment note as defined in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)</i> , being, without limiting the ambit of that definition, a note: <ul style="list-style-type: none">• in the approved form under that Act; and• detailing an adjustment of the GST payable or paid upon a taxable supply under this trustee lease.
administering authority	The authority responsible for administering an act (for example, the authority that issues licences or permits under an act, and that monitors and enforces compliance with such act).
air-conditioning equipment	The plant, cooling towers, electrical installations, electrical equipment, ducts, valves, insulation, and diffusers used in the manufacture and reticulation of conditioned air throughout the building (including the premises), including: <ul style="list-style-type: none">• all mechanical ventilation equipment; and• (where the context admits) a package unit serving the premises.
appendix	An appendix to this trustee lease.
building	A building that: <ul style="list-style-type: none">• comprises or includes the premises; or• forms part of the premises.

caretaker	A person appointed by the trustee lessee to reside upon the premises: <ul style="list-style-type: none"> to help ensure the security of the premises; or to perform other services for the trustee lessee concerning the premises or the trust land.
chief executive officer	The trustee's chief executive officer, including: <ul style="list-style-type: none"> a person acting in the position at a relevant time; and a person to whom the chief executive officer's power has been delegated at a relevant time for a relevant purpose concerning this trustee lease.¹
clause	A clause, sub-clause or paragraph of this trustee lease.
consideration	Consideration as defined in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)</i> (being, without limiting the ambit of that definition, anything given or done, voluntarily or not, in return for a taxable supply).
cost	Includes loss, liability, damage and expense.
CPI	The Consumer Price Index (All Groups) Brisbane published from time to time by the Australian Bureau of Statistics.
CPI Adjustment	An adjustment of rent calculated in accordance with the following formula: $R = \frac{X \times Y}{Z}$ <p>where:</p> <p>R = the rent payable for the year in respect of which the rent is being calculated .</p> <p>X = the CPI for the quarter ended immediately prior to the commencement of the year in respect of which the rent is being calculated.</p> <p>Y = the rental payable during the year immediately preceding the year in respect of which the rent is being calculated.</p> <p>Z = the CPI for the quarter ended immediately prior to the commencement of the year immediately preceding the year in respect of which rent is being calculated.</p>
creditable acquisition	A creditable acquisition as defined in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)</i> (being, without limiting the ambit of that definition, an acquisition for which the acquirer is entitled to claim an input credit).
damage policy	An insurance policy that indemnifies against cost borne of harm to property, including harm resulting from one or more damaging events.
damaging events	<ul style="list-style-type: none"> fire entry of water storm and tempest lightning flood earthquake explosion and concussion from explosion impact of vehicles, aircraft, and articles escaping from them malicious acts negligent acts civil commotion theft act of god (for a damage policy the trustee lessee must obtain) other risks nominated reasonably by the trustee from time to time (for a damage policy the trustee obtains) other risks against which the trustee considers it prudent or appropriate to insure
defined expenses	In relation to a damage policy: <ul style="list-style-type: none"> for damage: the cost of repairing the damage or reinstating the damaged item or structure, in each case at least

¹ Local Government Act 2009 Section 256 empowers the chief executive officer of a local government, with certain exceptions, to delegate his/her responsibilities, generally or particularly, to another employee of the local government.

	to the condition in which it existed before it was damaged;
	<ul style="list-style-type: none">• for destruction: the cost of replacing the item or structure destroyed with one of a quality at least equivalent to that of the item or structure before its destruction;• the cost of debris removal and disposal, demolition, site clearance, and other work required by an act;• the fees payable to architects, engineers, surveyors, solicitors, building contractors, and other consultants and contractors engaged to facilitate the repair, reinstatement, rebuilding, or replacement; and• incidental expenses.
development permit	A development approval or development permit issued under, or continued in existence by, the <i>Sustainable Planning Act 2009</i> .
director	For a legal entity other than a natural person, or for a non corporate association of persons: <ul style="list-style-type: none">• its board of directors; or• its management/governing committee.
electrical equipment	Electrical equipment as defined in the <i>Electricity Act 1994</i> . ²
electrical installation	An electrical installation as defined in the <i>Electricity Act 1994</i> . ³
expiry date	The expiry date stated in Item 6 of the Form 7.
fixed improvement	<ol style="list-style-type: none">1. Part of the improvements, and is a structure, of a permanent or semi-permanent character, firmly affixed:<ul style="list-style-type: none">• to the premises; or• to a structure upon the premises,• to enable the premises to be used or better used for a particular purpose.<p><i>Examples:</i></p><ul style="list-style-type: none">• a building, whether demountable or not;• an observation or viewing tower;• floodlighting apparatus (including pole);• a swimming pool or other bathing facility;• a brick or concrete block barbecue;• a cold room;• an integrated <i>air-conditioning system and an air-conditioner that is mounted through a hole made in an external wall for the purpose of enabling the machine to be so mounted;</i>• an <i>in-ground</i> irrigation system;• a fence or wall other than a purpose-designed temporary fence or wall;• a building slab;• an immovable sight screen structure (irrespective of whether the screen itself can be re-positioned from side to side upon the structure);• a concrete, paved, or otherwise-constructed, path, patio or similar structure;• an entrance <i>arch</i>.2. The expression does not include an item that is affixed:<ul style="list-style-type: none">• to the premises; or• to a structure upon the premises,• to enable the item or structure to be used or better used.<p><i>Examples:</i></p><ul style="list-style-type: none">• a wall-mounted dispenser;• a window-mounted air-conditioner;• football goalposts;

² At 1 March 2010, *Electricity Act 1994* section 13 states, to paraphrase, that "electrical equipment" is any apparatus, appliance, cable, conductor, fitting, insulator, material, meter or wire used for controlling, generating, supplying, transforming, or transmitting electricity at a voltage greater than extra low voltage, or operated by electricity at a voltage greater than extra low voltage, or that is, or forms part of, a cathodic protection system. However, the expression does not include certain equipment associated with motor vehicles, e.g. headlights, spark plugs, and suchlike.

³ At 1 March 2010, *Electricity Act 1994* section 14 states, in broad terms and to paraphrase, that an "electrical installation" is a group of items of electrical equipment permanently connected to one another electrically, other than electricity generation and transmission works items (such as generators, transformers and cables), to which electricity can be supplied from generation and transmission works. An example is the switchboard, wiring, lighting, socket outlets, and other electrical equipment permanently connected for a shopping centre, or for a shop in a shopping centre.

	<ul style="list-style-type: none">• a flagpole;• a cargo container.
force majeure	An event of irresistible force that: <ul style="list-style-type: none">• occurs by chance;• is beyond the control of the party it impacts; and• cannot be avoided with the exercise of due care by that party. <p><i>Examples: war, civil commotion, terrorist action, natural disaster (such as flood, bushfire, earthquake, major cyclone), general strike, and aviation or maritime disaster.</i></p>
general tenancy agreement	The general tenancy agreement to be completed under the <i>Residential Tenancies and Rooming Accommodation Act 2008</i> .
GST	GST as defined in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)</i> (being, without limiting the ambit of the definition in that act, a tax upon the value of a supply of goods and/or services).
harm	All or any of: <ul style="list-style-type: none">• property loss, including loss through misplacement and theft;• property damage;• death;• personal injury, including shock; and• illness.
include	Encompass or include, without being limited to what is stated as encompassed or included. <p><i>Example: "act" is defined as including an omission and a refusal to act. However, the expression is not confined to an omission and a refusal to do something; it also encompasses (obviously) a positive action.</i></p>
input credit	An input tax credit as defined in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)</i> (being, without limiting the ambit of that definition, a tax credit allowed to the consumer of a supply who has borne the GST upon the value of that supply).
insurance-relevant information	<ol style="list-style-type: none">1. Any item of information:<ul style="list-style-type: none">• relating to the trustee lessee, or to any of its officers or principal members;• likely to affect an insurer's decision to grant or to continue trustee insurance against the risks of damaging events; or• likely to affect an insurer's decision to grant or to continue trustee public risk insurance.2. A principal member of the trustee lessee is a member:<ul style="list-style-type: none">• holding more than 20% of the voting entitlement at a general meeting of the trustee lessee; or• entitled to appoint to the directorate of the trustee lessee a person holding, or persons holding between them, more than 20% of the voting entitlement at a general meeting of the trustee lessee.
keys	Includes keys, codes, passwords, swipe cards, remote controls and other means of opening or unlocking any door, window, gate or other means of access to the premises or the buildings on the premises.
licensed activity	The activity for which a liquor licence is required or obtained.
liquor licence	A licence or permit for the premises, issued under the <i>Liquor Act 1992</i> .
maintain	Includes repair and replace.
month	A calendar month, that is to say, a period: <ul style="list-style-type: none">• commencing at the beginning of a day of one of the 12 months in the calendar; and• ending immediately before the beginning of the corresponding day of the next month; or• if there is no corresponding day of the next month, ending at the end of the next month. <p><i>Example: Where a month begins on 31 January, there can be no 30 February, therefore, the month ends on 28 February (or 29 Feb in a leap year).</i></p>
officer	For the trustee lessee: a member of its directorate, a corporate secretary, or an attorney. For the trustee: <ul style="list-style-type: none">• the chief executive officer, including his lawful delegate; or

- another person to whom the trustee has delegated a relevant power.⁴

For either party: its solicitor.

parking facilities	For clause 7.3 vehicle parking facilities to service the premises.
part	A numbered part or section of this trustee lease, other than an appendix or an attestations page, containing one or more items or clauses.
permitted use	The permitted use specified in the reference schedule. (Also refer to clause 5.1).
planning scheme	The planning scheme governing the region pursuant to the <i>Sustainable Planning Act 2009</i> .
PPSA	<i>Personal Property Securities Act 2009 (Cwth)</i>
public risk policy	The public liability insurance policy the subject of clause 14 of the mandatory standard terms document.
rates	<p>1. General rates, special rates and separate rates, made and levied under the <i>Local Government Act 2009</i> or another act.</p> <p><i>Examples:</i></p> <ul style="list-style-type: none">• A separate rate or charge pursuant to <i>Fire and Rescue Service Act 1990</i>, to fund a rural fire brigade operating in a local government area.• An environmental levy, or any levy otherwise named but which is imposed to assist or to facilitate preservation, restoration, or improvement of the natural environment/s within the region. <p>2. Any levy that an owner or occupier of land must pay to the local government under an act other than the <i>Local Government Act 2009</i>.</p> <p><i>Example: A levy under Fire and Rescue Service Act 1990, to fund fire services in urban districts.</i></p>
receiver	A receiver, or a receiver and manager, of the property of the trustee lessee relating to the business or other undertaking the trustee lessee conducts upon the premises pursuant to this trustee lease.
recipient	The person to whom a taxable supply is made under this trustee lease.
reference schedule	The reference schedule in clause 1 of the schedule of this trustee lease.
region	The local government area pursuant to the <i>Local Government Act 2009</i> in which the trust land is located.
registration	Recording a dealing with interest in or concerning the trust land, under the act or the <i>Land Title Act 1994</i> . ⁵⁶
rent	The amount specified in the reference schedule as varied on any adjustment date under this trustee lease and includes all statutory outgoings.
rent period	<ul style="list-style-type: none">• The period from the commencement date to the day before first adjustment date.⁷• The period from an adjustment date to the day before the next adjustment date.• The period from the last adjustment date and the expiry date.
sell	<p>In relation to liquor, includes:</p> <ul style="list-style-type: none">• barter or exchange;• offer, agree or attempt to sell;• expose, send, forward or deliver for sale;• cause or permit to be sold or offered for sale;• supply or offer, agree or a ttempt to supply in circumstances in which the supplier derives, or would be likely to derive, a direct or indirect pecuniary benefit;• supply or offer, agree or attempt to supply gratuitously, but to gain or keep custom or other commercial advantage; and• any other activity that the <i>Liquor Act 1992</i> includes within the <i>sell</i> definition.
services	<p>The utility services from time to time appurtenant to the trust land, including:</p> <ul style="list-style-type: none">• electronic services;

⁴ *Local Government Act 2009* Section 257 states the persons to whom a local government may delegate power (other than power that the Act obliges it to exercise only by resolution).

⁵ A trustee lease over reserve land is registered under the *Land Act 1994*. A trustee lease over a deed of grant in trust is registered under the *Land Title Act 1994*.

⁶ Section 57 of the act requires the registration of this trustee lease.

⁷ Refer to clause 1.9 (Block references).

- fire, sprinkler, and air conditioning;
- lighting, gas, fuel, and other energy; and
- water, sewerage, and drainage.

The infrastructure via which those utility services are delivered, including fittings, fixtures, appliances, plant, and equipment.

Examples: Air-conditioning equipment, fire equipment, water and sewerage pipes

state	The State of Queensland (as a constitutional entity).
supplier	The person who makes a taxable supply under this trustee lease.
taxable supply	A taxable supply as defined in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)</i> , being, without limiting the ambit of that definition a supply made: <ul style="list-style-type: none"> • by a person who is, or is required to be, registered for GST; • for consideration, in the course of or in furthering an enterprise connected with Australia.
tax invoice	A tax invoice as defined in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)</i> , being, without limiting the ambit of that definition, an invoice: <ul style="list-style-type: none"> • in the approved form under that Act; and • detailing the price for a Taxable Supply under this trustee lease.
trustee's asset	The trustee's fixtures and any improvements or alterations thereto and any other personal property (as that term is defined in the PPSA) provided by the trustee to the trustee lessee under this trustee lease at any time.
trustee's fixtures	All or any part of the apparatus and plan, equipment, partitions, windows and floor coverings and light and other fittings of the trustee, at any time installed by or on behalf of the trustee, in or located on the trust land.
trustee's office	The trustee address detailed in the reference schedule and any substitute address the trustee notifies to the trustee lessee.
utility charges	Charges by the local government for the supply of: <ul style="list-style-type: none"> • water, gas, and sewerage services; and • cleansing services. Any other service charge assessed in relation to the premises under chapter 4, part 1 of the <i>Local Government Act 2009</i> .

1.2. Superseded acts, etc

Where an act, section, provision, law, person, body or other thing referred to in this trustee lease is renamed, superseded or replaced with another act, law, person, body or other thing (as the case may be), references in this trustee lease will be taken to be changed in a corresponding manner except where the context requires otherwise.

1.3. Cognate expressions

Derivatives of a defined expression bear meanings corresponding to and consistent with the definition.

1.4. Particular references

Where a provision that is prefaced or introduced by the expression, "in particular" or "particularly", refers to or qualifies another provision of more general application, the former provision does not limit the ambit of the latter provision.

1.5. Imputed acts

Reference (direct or indirect) to a person's act (including, where applicable, the act of a guarantor) includes an imputed act, that is to say the act of another person, which act is deemed by law to be the first-mentioned person's act because of the relationship between the two.

1.6. Parties

1.6.1. Reference to a party who is a natural person includes the person's personal representatives and permitted transferees.

1.6.2. Reference to a party that is a corporation includes the corporation's successors and permitted transferees.

1.7. Concurrent responsibility

Where a party is composed of two or more persons, each item of agreement by the party binds all of those persons collectively and each of them as an individual. This collective and individual responsibility is otherwise known as joint and several responsibility.

1.8. References to bodies, offices and positions

Reference to an entity, office, or position includes an entity, office, or position established or constituted in its stead or succeeding as nearly as may be to its power or function.

1.9. Block references

1.9.1. Reference to the period between two specified dates, times or periods includes each of those two dates, times or periods.

1.9.2. Reference to the numbers, provisions or items, in this or another document, between two numbers, numbered provisions or numbered items, includes each of those two numbers, numbered provisions or items.

1.10. Miscellaneous references

1.10.1. Reference to the premises includes any area, section, or portion of the premises.

1.10.2. Reference to the singular includes the plural, and vice-versa.

1.10.3. Reference to a gender includes each other gender.

1.10.4. Reference to a person includes a corporation or other legal entity,⁸ a firm, and a voluntary association.

1.10.5. Reference to an agreement or other instrument is to that agreement or instrument as amended, supplemented, replaced, or novated.

1.10.6. Reference to money is a reference to Australian dollars and cents.

1.10.7. Reference to a time of day is a reference to Australian eastern standard time.

1.10.8. Reference to termination of this trustee lease is a reference to termination by any means (for example, by expiry or forfeiture).

1.10.9. Reference to writing is a reference to reproduction of words, figures, symbols, and shapes in visible form, in English.

1.11. Headings and notes

Subject headings, footnotes, endnotes, and the table of contents exist for convenience only and are to be disregarded when interpreting this trustee lease.

1.12. Contra proferentem interpretation

This trustee lease is not to be interpreted against the interest of the trustee merely because this trustee lease was prepared by the trustee or on its behalf.

1.13. Cumulative entitlements

The remedies and other entitlements this trustee lease gives a party are cumulative, not alternative and are not exclusive of other entitlements that the party possesses (whether under an act or at general law).

1.14. Character of trustee lease instrument

Irrespective of whether it records the passage of consideration between the trustee and the trustee lessee, this trustee lease is a deed.⁹

⁸ A local government constituted under the Local Government Act 2009 is an example of a legal entity that is neither a corporation nor a natural person. For clarity, this is not a characteristic of local governments generally; it is peculiar to Queensland local governments constituted under the Local Government Act 2009.
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1.15. Modification of implied covenants

The covenants implied by *Property Law Act 1974* sections 105¹⁰ and 107¹¹ are modified by or excluded from this trustee lease to the extent that they are inconsistent with it. No covenant is implied into this trustee lease by operation of *Property Law Act 1974* section 109.¹²

1.16. Survival of provisions

A provision of this trustee lease capable of continued application after this trustee lease has terminated or after a court has issued judgement or made an order against a party concerning that provision, will remain enforceable despite the termination, judgement or order.

1.17. Severance

A provision of this trustee lease that is void, voidable, illegal or unenforceable or the retention of which would render this trustee lease void, voidable, illegal, or unenforceable, is to be treated as having been omitted from this trustee lease.

1.18. Jurisdiction

Disputes under this trustee lease are to be adjudicated exclusively by:

1.18.1. Queensland courts and tribunals of competent jurisdiction; and

1.18.2. the High Court of Australia (as the final court of appeal).

2. TRUST LAND

2.1. Trustee lessee acknowledgements

2.1.1. The trustee lessee acknowledges that the trust land is administered under the *Land Act 1994* and the trustee holds the trust land as trustee under that Act.

2.1.2. The trustee lessee acknowledges that the trustee grants this trustee lease to benefit the community.

2.1.3. The trustee lessee further acknowledges that, in accepting this trustee lease, it intends to contribute benefit to the community through use of the premises in good faith, in accordance with this trustee lease.

3. RENT AND CHARGES

3.1. Payment of rent

The trustee lessee must pay the annual rent in advance, not later than the first day of each rent period (refer to clause 3.8 for general provisions concerning payment of money to the trustee), without demand.

3.2. Rent pending determination

3.2.1. Until rent for any rent period has been determined the trustee lessee must continue to pay rent monthly in the same amount as was payable during the preceding rent period.

3.2.2. If a determination of rent reveals:

3.2.2.1. a deficiency in rent paid for the relevant rent period to the date on which the determination is made, the trustee lessee must pay the deficiency to the trustee within 14 days from the date of that determination; or

⁹ A deed is a special form of contract that is signed and sealed by each party (contrasting with an agreement under hand, which is merely signed by each party). A contract by deed is enforceable without the necessity for one party to do or promise anything in return for what the other party does or promises.

¹⁰ Section 105 specifies obligations to pay the agreed rent and keep the premises repaired, that apply unless the parties agree otherwise.

¹¹ Section 107 specifies a number of lessor entitlements that will be implied into a lease unless the parties agree otherwise.

¹² Section 109 specifies a number of provisions that can be implied into a lease by the inclusion of short form expressions in the document.

3.2.2.2. an excess in rent paid for the relevant rent period to the date on which the determination is made, the trustee will allow the trustee lessee to deduct the excess from the next monthly rent payment or, if necessary, rent payments.

3.2.3. From the first day of the month that follows the date on which the determination of rent is made, the rent will for the relevant rent period will be one twelfth (to the next whole cent) of the rent for that rent period as determined by this clause.

3.3. Payment of rates and utility charges

The trustee lessee must pay upon demand all rates and utility charges assessments, levied against or with respect to the premises.

3.4. Charges for gas and electricity

The trustee lessee must pay all charges for gas and electricity consumed upon or serving the premises.

3.5. Cost of approved work

3.5.1. The trustee lessee must perform at its own expense whatever work the trustee or the minister approves for performance by it upon the premises or elsewhere upon the trust land.

3.5.2. The trustee lessee will indemnify the trustee and the minister against every cost borne of harm arising from performance of the work.

3.5.3. If the trustee lessee does not perform the work and the trustee does, the cost of performing the work will be a debt due to the trustee by the trustee lessee in accordance with clause 3.7.

3.6. Costs of litigation

3.6.1. This clause applies if, through no fault of its own, the trustee is made a party to litigation:

3.6.1.1. commenced by or against the trustee lessee (other than litigation between the trustee and the trustee lessee); and

3.6.1.2. arising directly or indirectly from the trustee lessee's occupancy of the premises or the trust land.

3.6.2. The trustee lessee must pay the trustee upon demand:

3.6.2.1. all legal fees and disbursements (assessed on a solicitor and own client basis) incurred by the trustee in connection with the litigation save those recovered from another party to the litigation; and

3.6.2.2. costs reasonably incurred by the trustee in seeking recovery of those costs from the other party or parties.

3.6.3. The trustee is not obliged to take unreasonable steps to recover its costs from another party to the litigation.

3.7. Costs generally

3.7.1. If the trustee lessee does not perform any obligation under this trustee lease, the trustee may perform that obligation. The cost of performing that obligation will be a debt due to the trustee by the trustee lessee. This clause applies to any obligation that may be unfinished at the expiration of the trustee lease.

3.7.2. The trustee lessee must pay the trustee:

3.7.2.1. all duty upon or arising from this trustee lease and any dealing with this trustee lease (including interest and fines other than interest and fines resulting from omissions of the trustee); and

3.7.2.2. the registration fees upon this trustee lease.

3.7.3. The trustee lessee also must bear the trustee's reasonable legal and other expenses of:

3.7.3.1. negotiating, documenting, executing and registering this trustee lease;

- 3.7.3.2. obtaining any sketch or survey plan of the premises;
- 3.7.3.3. obtaining a required consent or approval (such as a development approval or an approval of the minister) concerning this trustee lease or a dealing with this trustee lease, particularly a consent or approval requested by the trustee lessee;
- 3.7.3.4. negotiating, documenting, executing and registering consent to a trustee lessee dealing with this trustee lease (for example, a transfer, a sublease, mortgage, or a surrender); and
- 3.7.3.5. exercising or attempting to exercise an entitlement accruing to the trustee upon a default by the trustee lessee under this trustee lease or a consent agreement.

3.8. Payment of money generally

- 3.8.1. The trustee lessee must pay all money due to the trustee under this trustee lease:
 - 3.8.1.1. without set-off or other deduction;
 - 3.8.1.2. upon demand (absent contrary express provision in this trustee lease); and
 - 3.8.1.3. in the manner the trustee directs.
- 3.8.2. Unless the trustee directs otherwise, the trustee lessee must pay the money by delivering or posting it to the trustee at the trustee's office.

4. GOODS AND SERVICES TAX

4.1. Character of payments (GST)

Unless otherwise specified in this trustee lease, consideration for a taxable supply under this trustee lease is GST-exclusive.

4.2. Responsibility for payment of GST

The recipient must bear the GST upon a taxable supply made under this trustee lease and pay the tax to the supplier with the consideration for the taxable supply.

4.3. Adjustment for input credits (reimbursement of expenses)

- 4.3.1. If this trustee lease requires a recipient to reimburse a supplier the full cost of a creditable acquisition, that cost is to be net of the full Input credit to which the supplier is entitled for the cost.
- 4.3.2. If this trustee lease requires the reimbursement of a percentage of the cost of a creditable acquisition, the percentage is to be net of an equivalent percentage of the input credit to which the supplier is entitled for the cost.¹³
- 4.3.3. If the reimbursement of all or part of the cost of a creditable acquisition constitutes consideration for a taxable supply, the recipient must pay the supplier, in conjunction with the reimbursement payment, the GST referable to that taxable supply.

4.4. Adjustments by taxation authority

If the GST paid by the supplier differs from the amount of GST borne by the recipient because the administering authority has lawfully adjusted the value of a taxable supply:

- 4.4.1. the recipient must pay the shortfall to the supplier; or
- 4.4.2. the supplier must refund the overpayment to the recipient.

¹³ Example: If 75% of the cost of the creditable acquisition is to be reimbursed, the recipient may deduct from that amount 75% of the input credit to which the supplier is entitled for the acquisition.

4.5. Tax Invoices and adjustment notes

- 4.5.1. The supplier need not give the recipient a tax invoice or adjustment note for a taxable supply under this trustee lease if the administering authority has issued a written determination permitting the recipient to issue its own tax invoice or adjustment note for the supply.
- 4.5.2. Otherwise, however, the supplier must give the recipient, within 14 days after it receives the consideration and GST, a tax invoice or adjustment note for the taxable supply.

4.6. Payment of prospective GST (performance securities)

If a party is obliged to provide security for the discharge of obligations under this trustee lease, the security sum must include the GST that would be payable were the money drawn and applied against the cost of discharging the obligations.

5. USE OF PREMISES

5.1. Permitted use

The trustee lessee must use the premises only for activities specified in the reference schedule.

5.2. Assumption of risk by trustee lessee and preservation of trustee insurance protection

- 5.2.1. The trustee lessee will occupy and use the premises and any other part of the trust land permitted to be used by the trustee lessee under this trustee lease at its own risk, and the trustee will not be liable for harm to trustee lessee property.
- 5.2.2. Further, the trustee will not be liable for loss of profits resulting from that harm.
- 5.2.3. This clause does not exclude trustee liability where the damage results from trustee default or negligence.
- 5.2.4. Other than in the ordinary course of conducting the permitted use, the trustee lessee must not do or permit to occur upon the premises anything that it knows, or ought reasonably to know, will or might:
- 5.2.4.1. render void or voidable a policy of trustee insurance over the premises, or over property kept there; or
 - 5.2.4.2. increase a premium payable upon the insurance.
- 5.2.5. Without prejudice to the trustee's entitlement to terminate this trustee lease for breach of this clause, the trustee lessee must pay the trustee upon demand an insurance premium increase occasioned by such a breach.

5.3. Standards for conduct

- 5.3.1. The trustee lessee and its employees and/or agents in carrying on the permitted use from the premises must:
- 5.3.1.1. act honestly, competently and reasonably to maximise the benefit of this trustee lease to the trustee lessee and the trustee;
 - 5.3.1.2. demonstrate a high standard of workplace behaviour and personal conduct;
 - 5.3.1.3. treat customers, visitors to the premises and the trustee's employees and/or agents with respect and courtesy;
 - 5.3.1.4. comply with any lawful and reasonable direction given by the trustee or an authorised representative of the trustee;
 - 5.3.1.5. act respectfully and promptly when dealing with requests or enquiries from the trustee;
 - 5.3.1.6. attend meetings called by the trustee at the specified time, unless prior notice of non-attendance has been given to the trustee or its authorised representative;
 - 5.3.1.7. deliver services to customers in a courteous and business-like manner; and

5.3.1.8. handle any complaints from customers or employees of the trustee in a professional and prompt manner and where the matter is unable to be resolved, the trustee lessee will refer the matter to the authorised contact person of the trustee to discuss possible methods of dispute resolution.

5.3.2. The trustee lessee and its employees and/or agents in carrying on the permitted use from the premises must not:

5.3.2.1. do or permit anything that might adversely or reflect unfavourably upon the business or reputation of the trustee or the premises;

5.3.2.2. conduct themselves in such a manner as to cause any damage to the reputation of the trustee as a local government and trustee of the premises or of the premises itself; or

5.3.2.3. publicly criticise the trustee in relation to the premises nor criticise the premises itself, unless it is permitted or obliged by law to do so.

5.3.3. In particular, the trustee lessee and its employees and/or agents in carrying on the permitted use from the premises or any other area of the trust land must not do or permit anything that:

5.3.3.1. might confuse, mislead, or deceive the public or persons with whom the trustee lessee deals or might deal;

5.3.3.2. is unlawful; or

5.3.3.3. is annoying, noxious, or offensive to the trustee, persons lawfully occupying or using the trust land, or persons outside or beyond the trust land.

5.4. Improper/noxious behaviour

5.4.1. The trustee lessee must ensure that nothing illegal, immoral, noxious or offensive is undertaken upon the premises.

5.4.2. Without qualifying that obligation, the trustee lessee must ensure that nothing occurs upon the premises that might cause, in the trustee's opinion, nuisance, annoyance, or cost to any person, particularly:

5.4.2.1. the trustee;

5.4.2.2. a person lawfully upon or about the premises;

5.4.2.3. another person lawfully occupying or using the trust land; or

5.4.2.4. an owner or occupier of premises neighbouring the trust land.

5.5. Overnight sleeping/residential usage

5.5.1. In particular, the trustee lessee must not permit any person, other than a caretaker appointed in accordance with Part 16 or otherwise specified under the permitted use:

5.5.1.1. to sleep overnight upon the premises (on a temporary or permanent basis); or

5.5.1.2. otherwise to use the premises for residential purposes.

5.5.2. Despite clause 5.5.1, the trustee lessee may permit a person to sleep overnight upon the premises on a temporary basis provided that:

5.5.2.1. it is a necessary part of, or associated with an activity or event being conducted by the trustee lessee; and

5.5.2.2. the trustee lessee first obtains the written approval of the trustee, which may be given subject to such conditions as the trustee thinks fit.

5.6. Security

The trustee lessee must ensure that the doors and windows through which it is possible (irrespective of difficulty) to access or leave the premises are locked securely at all times when the premises are not occupied.

5.7. Keys

5.7.1. The trustee lessee must maintain a key register and give the trustee, when requested, copies of keys and details of the key register.

5.7.2. The trustee lessee must return all keys to the premises to the trustee at the expiration or sooner determination of the trustee lease.

5.7.3. The trustee lessee must not change the locks to the premises without the trustee's prior written consent.

5.8. Cessation of use

5.8.1. Subject to clause 13, the trustee lessee must not cease, wholly or substantially, to undertake the permitted use upon the premises.

5.8.2. For clarity, temporary suspension of use necessitated by the following does not equate to cessation for this clause:

5.8.2.1. the performance of maintenance work; or

5.8.2.2. the performance of development work for which the trustee lessee holds a development permit and a separate trustee consent pursuant to this trustee lease.

5.8.3. Without prejudice to any other right the trustee may have, if the trustee lessee ceases to undertake the permitted use on the premises, the trustee may require the trustee lessee to surrender this lease in respect of the whole or any part of the premises pursuant to clause 8.10.

5.9. Fees for use of premises

Subject to clause 8.5.5, the trustee lessee must not charge any person a fee to use the premises, without trustee approval. However, where the trustee lessee is a corporation or incorporated association reasonable membership admission and subscription fees may be charged in accordance with its constitution if applicable.

5.10. Administration of premises

The trustee lessee must make the rules and arrangements that the trustee directs it to make for:

5.10.1. protection, control and management of the premises; and

5.10.2. exclusion of dissolute, disreputable or otherwise undesirable persons from the premises.

5.11. Compliance with statutory requirements

5.11.1. The trustee lessee must discharge punctually the relevant requirements of all acts that regulate occupation and use of the premises and other areas of the trust land that it uses.

5.11.2. In particular, the trustee lessee must use the premises in compliance with all acts governing:

5.11.2.1. fire safety;

5.11.2.2. health and hygiene; and

5.11.2.3. storage, supply, sale, and consumption of intoxicating or stupefying substances upon the premises.

5.11.3. Further, the trustee lessee must not do anything that might render the trustee liable to incur a penalty prescribed by an act, or a cost generated by the necessity to discharge a requirement under an act.

5.12. Boundary Fences

Despite anything in the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*:

- 5.12.1. the lessee must maintain in good condition and repair any fencing within or on the boundary of the premises as at the commencement date; and
- 5.12.2. if the use of the premises by the lessee requires fencing of a particular nature or standard, or if the lessee considers such fencing desirable, the lessee must construct and maintain that fencing at its cost.

5.13. Signage and advertising devices

Subject to clause 20 of the mandatory standard terms document and section 66 of the *Land Act 1994*:

- 5.13.1. the trustee lessee must not paint or place a sign or hoarding upon an exterior surface of the premises (irrespective of whether the surface form part of the premises) without trustee consent;
- 5.13.2. no advertising sign, bill, placard, notice or poster is to be affixed, painted, exhibited or operated upon the premises without trustee permission;
- 5.13.3. any advertising sign, bill, placard, notice or poster mentioned must only relate to the operation and use of the premises or to a sponsor of the trustee lessee;
- 5.13.4. no other advertising is permitted;
- 5.13.5. no political advertising sign, bill, placard, notice or poster is allowed to be affixed, painted, exhibited or operated upon the premises; and
- 5.13.6. upon expiry or sooner termination of this trustee lease, the trustee lessee must:
 - 5.13.6.1. remove promptly each sign, bill, placard, notice or poster or hoarding it has painted or placed upon the premises or elsewhere upon the trust land; and
 - 5.13.6.2. restore the area affected by each removal to the condition in which it existed immediately before the sign, bill, placard, notice or poster or hoarding was painted or installed.

5.14. Connection of electricity

If required by the trustee, the trustee lessee must arrange with the relevant electricity supply authority for connection of suitable mains electricity to the premises and ensure, to the satisfaction of the electricity supply authority, that the connection and any equipment installed upon the premises by that authority are properly maintained.

5.15. Use of services

- 5.15.1. The trustee lessee must not use a service, or permit its use, for a purpose other than one for which it is designed and constructed. In particular, the trustee lessee must ensure that no sweepings, rubbish, rags, ashes, or other deleterious substances are placed in water or sewerage apparatus or in air-conditioning equipment.
- 5.15.2. Except to the extent the trustee lease permits, the trustee lessee must not interfere with a service without trustee consent.

5.16. Light and power

Other than during a period of power failure or power restriction (when it may use auxiliary power or lighting other than an exposed flame), the trustee lessee may use only light, power, or heat generated by electric current supplied through meters.

5.17. Electrical equipment

- 5.17.1. The trustee lessee must not install upon the premises, without trustee consent, equipment that overloads the electrical infrastructure or components serving the premises.

5.17.2. If the trustee grants consent, the trustee lessee must meet the cost of all alterations necessary to meet the requirements of the insurers of the premises and relevant acts. If required by the trustee, the trustee lessee must deposit with the trustee the estimated cost of the alterations before they are commenced.

5.18. Heating apparatus and inflammable substances

5.18.1. The trustee lessee must not use, without trustee consent, apparatus that radiates heat in a manner or at a level that creates a risk of harm other than in the ordinary course of conducting the permitted use. The trustee must not withhold or withdraw consent unreasonably but may grant consent subject to conditions.

5.18.2. Examples of apparatus to which this clause applies are blowtorches and other items that produce naked flame and soldering and welding equipment.

5.18.3. Examples of commonly-used apparatus to which this clause does not apply are computer hard drives and monitors, copiers, and similar information technology items, radios, televisions, and similar audio-visual devices, urns, jugs, and similar appliances for heating beverages, stoves and ovens properly connected to reticulated energy supplies and electric light globes.

5.18.4. The trustee lessee must not use an inflammable substance within the premises, or permit its use there, other than in the ordinary course of conducting the permitted use.

5.19. Earthwork and extractive activities

Subject to clause 6.5, the trustee lessee must ensure that:

5.19.1. no earthwork is undertaken upon the premises or other part of the trust land permitted to be used by the trustee lessee under this trustee lease;

5.19.2. no sand, stone, soil, plant, vegetation or mineral is removed from the premises or that other part of the trust land,

except where (and only to the extent) reasonably necessary for construction or installation of improvements to the premises that are:

5.19.3. expressly required of it under this trustee lease; and

5.19.4. approved by the trustee; and

5.19.5. approved, if required, under the relevant legislation.

6. CLEANING, HEALTH, MAINTENANCE AND REPAIR

6.1. Consequences of non-compliance

Without limiting any other right which the trustee may have pursuant to this lease or at law, if the trustee lessee fails to comply with its obligations under this part, the trustee may remedy that failure and recover any costs incurred pursuant to clause 3.7.

6.2. Legislative requirements

The trustee lessee shall at the trustee lessee's expense observe perform and fulfil all the requirements of any acts so far as the same may apply to the premises or to any business from time to time being conducted therein and in particular but without limiting the generality of the foregoing shall comply with the requirements of all such acts relating to health, water supply, sewerage, asbestos and fire and shall not knowingly or wilfully do or permit to be done anything which may conflict with any such acts.

6.3. Compliance with requirements

The trustee lessee must comply with the requirements of any health, local or other authority relating to the premises and other improvements, buildings, fences and other structures thereon.

6.4. Cleaning of the premises

- 6.4.1. The trustee lessee shall keep the premises in a thorough state of cleanliness.
- 6.4.2. The trustee lessee shall not allow any accumulation of useless property or rubbish therein and shall at its own expense ensure the regular cleaning of the interior of the premises and exterior surfaces of the premises during which times the premises is open for business or in use.
- 6.4.3. Kitchen areas must be kept clean and free from greases, oils, etc, at all times.
- 6.4.4. Foodstuffs must be stored in a safe and hygienic method.
- 6.4.5. Equipment is to be stored when not in use.
- 6.4.6. Should any part of the premises or any other area of the trust land be left in an unacceptable condition the trustee will attend directly to the matter and the cost associated with the cleanup will be charged to the trustee lessee in accordance with clause 3.7.

6.5. Pest control

The trustee lessee must keep the premises free of rodents, termites, cockroaches, and other vermin.

6.6. Infectious diseases

If it discovers, or possesses reasonable grounds for believing or suspecting, that there is present upon the premises an infectious disease that requires notification under an act, the trustee lessee must:

- 6.6.1. notify the proper authority or authorities as required by that act;
- 6.6.2. notify the trustee; and
- 6.6.3. fumigate and disinfect the premises thoroughly.

6.7. Landscaping and gardening

Other than where the premises comprise only a building or part of a building, the trustee lessee must:

- 6.7.1. keep the premises free of long grass and weeds;
- 6.7.2. water and fertilise all plants on the premises;
- 6.7.3. replace plants that die or are destroyed on the premises;
- 6.7.4. plant trees and lay grass upon the premises, and otherwise landscape them, as required by the trustee;
- 6.7.5. clear, fell and remove or prune trees on the premises in accordance with the reasonable directions of the trustee; and
- 6.7.6. throughout the term and to the trustee's satisfaction, maintain the landscaping and gardening required under this clause.

6.8. Water supply, waste disposal facilities and roof water

- 6.8.1. If required by the trustee, the trustee lessee must install and maintain, to the trustee's satisfaction, water supply facilities and sewerage facilities or effluent and waste water drainage facilities to serve the premises.
- 6.8.2. Installation includes connecting the facilities to the relevant local mains pipes adjacent or opposite the premises.
- 6.8.3. The trustee lessee's responsibility to maintain the relevant facilities does not extend to the mains connections outside the premises.
- 6.8.4. If required by the trustee, the trustee lessee must construct whatever facilities the trustee requires at any time for collecting and draining roof water from the premises.

6.9. Building inspections

6.9.1. The trustee may direct the trustee lessee to obtain a building inspection report in relation to the premises:

6.9.1.1. at any time reasonably determined by the trustee, provided that it is not less than five years since the later of:

6.9.1.1.1 the commencement date; or

6.9.1.1.2 the date on which a building inspection report was last obtained by the trustee lessee pursuant to this clause; or

6.9.1.2. after any incident or circumstance which in the trustee's opinion, acting reasonably:

6.9.1.2.1 may have caused structural damage to the premises; or

6.9.1.2.2 is indicative of a need for repairs or maintenance work to be carried out on the premises.

6.9.2. The trustee lessee must provide one copy of the building inspection report to the trustee within the time period required by the trustee, and must retain a copy.

6.9.3. The trustee may, after reviewing the report:

6.9.3.1. direct the trustee lessee to carry out any repairs or maintenance work which falls within the trustee lessee's obligations in this lease, within a reasonable time specified by the trustee. The trustee lessee must comply with any such direction; and

6.9.3.2. enter the premises and carry out such work as the trustee considers necessary or desirable.

6.9.4. In this clause, "building inspection report" means a written report prepared by a licensed building inspector (including a licensed pest inspector, where appropriate) as to the structural soundness, and state of repair and condition of the premises and any associated improvements.

6.10. Maintenance (general)

6.10.1. The trustee lessee must carry out or cause to be carried out proper maintenance of the premises, including air-conditioning equipment and other services within the premises, all fixtures and fittings and any alterations by the lessee, to keep them in good repair, working order, and condition, without allowance for fair wear and tear. However, the trustee will maintain all underground services except to the extent that they are damaged by the trustee lessee or any employee, contractor or invitee of the trustee lessee.

6.10.2. The trustee lessee is to keep a register of maintenance undertaken at the premises and must provide a copy to the trustee if requested. This register is to:

6.10.2.1. describe the maintenance undertaken;

6.10.2.2. record who undertook the work;

6.10.2.3. record the date the work was completed; and

6.10.2.4. record the expenditure associated with the work.

6.11. Maintenance of premises and services (particular)

6.11.1. Without limiting the effect of clause 6.10, the trustee lessee's obligation to maintain the premises and services includes:

6.11.1.1. rectifying damage to the premises;

6.11.1.2. rectifying damage caused by the trustee lessee or any employee, contractor or invitee of the trustee lessee, to any services;

- 6.11.1.3. repairing or replacing all broken, cracked or damaged plate or other glass;
- 6.11.1.4. replacing all broken or faulty light bulbs and tubes within the premises;
- 6.11.1.5. maintaining doors, locks, windows and window fittings in the premises in good working order and condition;
- 6.11.1.6. ensuring that electrical equipment and electrical installations connected to the source of electricity supply in the premises is maintained free of defects likely to cause fire or electric shock; and
- 6.11.1.7. repairing or replacing (as necessary) trustee property damaged by the trustee lessee which repair or replacement may be, at the trustee's option, effected by the trustee at the trustee lessee's expense.

6.11.2. The obligation in this clause extends to:

- 6.11.2.1. rectifying structural deterioration and damage;
- 6.11.2.2. rectifying fair wear and tear;
- 6.11.2.3. rectifying deterioration and damage attributable to fair wear and tear; and
- 6.11.2.4. removing graffiti, and reinstating (as necessary) the surfaces affected by the graffiti.

6.11.3. Reinstating a surface affected by the graffiti includes repainting or re-staining the surface to which the graffiti was applied and, to the extent it is necessary to do so to ensure reasonable consistency of finish with surfaces surrounding or adjacent that surface, repainting or re-staining the surrounding or adjacent surfaces.

6.12. Repainting

- 6.12.1. During the last three (3) months of the term, and at any other time it is reasonably required by the trustee to do so, the trustee lessee must repaint or re-treat those surfaces of the premises that are painted or otherwise treated at its own expense including the cost of paint and other material and to the trustee's satisfaction, in which respect the trustee must act reasonably. This clause applies to both internal and external paintwork.
- 6.12.2. The trustee lessee must use, for the purpose of repainting or re-treating the premises, paints or materials of at least the same quality and in at least the same quantities (in terms of the number of coats) as those with which the relevant surfaces were previously painted or treated.
- 6.12.3. If the trustee lessee fails to discharge its obligations under this clause, the trustee may perform the work at the trustee lessee's expense in accordance with clause 3.7.
- 6.12.4. This clause does not apply to a fixed improvement that the trustee permits the trustee lessee to sever and remove from the premises (refer to clause 7.5.)

6.13. Damage to premises

Any damage caused wilfully or accidentally is the responsibility of the trustee lessee and the trustee reserves the right to recover financial costs associated with such damage in accordance with clause 3.7.

6.14. Notice of damage, defect or danger

The trustee lessee must notify the trustee promptly if it becomes aware, or is informed, of:

- 6.14.1. damage to the premises (other than minor damage);
- 6.14.2. damage to, or the defective operation of, a service;
- 6.14.3. an unsafe condition of the premises or another part of the trust land;
- 6.14.4. an unsafe condition upon an area adjacent the trust land via which persons access the trust land or the premises; and

6.14.5. a dangerous or potentially dangerous activity in which persons are engaging regularly or from time to time upon the premises or elsewhere upon the trust land, or upon an area adjacent the trust land via which persons access the trust land or the premises.

6.15. Licensed personnel

6.15.1. The trustee lessee must ensure that licensed personnel attend to all installation and maintenance work upon the premises or services including, but not limited to:

6.15.1.1. water supply, sewerage and drainage apparatus;

6.15.1.2. electrical and mechanical apparatus;

6.15.1.3. buildings and other structures;

6.15.1.4. vermin and pest control;

6.15.1.5. wildlife removal;

6.15.1.6. other things for which the application of formally-accredited skill is necessary or prudent.

6.15.2. For this clause, *licensed personnel* are persons licensed under an act to perform the work concerned.

7. ALTERATIONS AND ADDITIONS

7.1. Alterations/additions by trustee lessee

7.1.1. Subject to clause 6.2 of the mandatory standard terms document, unless otherwise permitted or required by this trustee lease, the trustee lessee must not make improvements, alterations, or additions to the premises, or allow them to be made, without trustee permission.

7.1.2. In any event, the trustee lessee must ensure that all improvements, alterations and additions it makes or allows to be made to the premises are made:

7.1.2.1. competently;

7.1.2.2. in conformity with plans approved by the trustee in its capacity as trustee of the trust land;

7.1.2.3. in conformity with the conditions of all relevant development permits;

7.1.2.4. using quality materials; and

7.1.2.5. otherwise in conformity with the directions of the trustee, and to its satisfaction.

7.2. External lighting

7.2.1. The trustee lessee must not install external lighting upon the premises without trustee approval.

7.2.2. The trustee lessee also must not allow approved external lighting (other than lighting approved for the purpose of optimising the security of the premises) to operate later than the time (if any) nominated by the trustee, or if the trustee has not nominated a time, 10:00 pm.

7.3. Cost of car parking facilities

7.3.1. If the trustee determines that the permitted use renders the provision of parking facilities necessary or desirable, the trustee lessee must contribute all or part of the cost of constructing and maintaining those parking facilities upon the premises, or upon land owned by or under the control of the trustee, as determined by the trustee, acting reasonably, but the trustee's determination must not be inconsistent with a condition of a development permit for the premises or the trust land.

7.3.2. The trustee, subject to clause 7.3.1, will determine (acting reasonably, but in its sole discretion) the extent and type of parking facilities required and the location and design of those facilities.

7.3.3. The trustee will maintain the parking facilities constructed outside the premises, and, at regular periodic intervals determined by it, will notify the trustee lessee of:

7.3.3.1. the maintenance costs incurred by the trustee during the period specified in the notice; and

7.3.3.2. the contribution to those costs (which contribution may be the whole of the costs) for which the trustee lessee is responsible, calculated in accordance with the trustee's determination under this clause.

7.4. Vesting of fixed improvements

Fixed improvements that the trustee lessee constructs or installs upon the premises will become part of the trust land from the time of their construction or installation.

7.5. Severance of and removal fixed improvements

7.5.1. The trustee lessee may not sever a fixed improvement from the premises unless the trustee approves the severance or the trustee requires the trustee lessee to sever or remove the item.

7.5.2. Mere severance from the premises does not re-vest a fixed improvement in the trustee lessee.

7.5.3. If the trustee lessee wishes to remove a fixed improvement it has made to the premises, it must apply for trustee permission, before the expiry date. An application for permission to remove a fixed improvement must detail fully:

7.5.3.1. the improvement;

7.5.3.2. how the trustee lessee proposes to sever and remove it; and

7.5.3.3. how the trustee lessee proposes to repair damage caused or likely to be caused by the severance and removal, and to reinstate the premises and any other part of trust land to the condition required by clause 9.6.2 (including, where applicable, how it will perform necessary landscaping or land stabilisation work).

7.5.4. The trustee may grant or refuse consent to the application in its absolute discretion, conditionally or unconditionally, and without giving reasons.

7.5.5. The trustee lessee must:

7.5.5.1. comply strictly with the requirements (if any) the trustee imposes concerning the severance and removal process;

7.5.5.2. ensure that the improvement is severed and removed, and all relevant repair and reinstatement work is completed, to the trustee's satisfaction (acting reasonably); and

7.5.5.3. ensure that the severance and removal is completed not later than 60 days after the date of termination.

7.5.6. Irrespective of any conditions of consent imposed by the trustee, severance and removal must be completed not later than 60 days after the expiry date or the date this trustee lease otherwise terminates.

7.5.7. The trustee lessee will lose its entitlement to sever and remove any relevant improvements that remain upon the premises or the trust land after the 60-day period expires.

7.5.8. Without limiting the effect of any other provision in this clause, if it severs and removes a fixed improvement, the trustee lessee must, to the trustee's satisfaction clear from the premises what it has severed, including all debris created by the severance and removal, and leave the premises and any other part of the trust land used by the trustee lessee clean and tidy.

7.5.9. This clause is subject to clause 20 of the mandatory standard terms document and section 66 of the act.

8. RESERVATIONS

8.1. Application of part

Subject to clauses 6.4 and 6.5 of the mandatory standard terms document, the entitlement to exclusive possession granted by the trustee to the trustee lessee under this trustee lease is limited to the extent of the reservations contained in this Part 8.

8.2. Community purposes

The trustee lessee holds the trustee lease so that the trust land may be used for the purpose, as noted in the reference schedule, for which it was dedicated without undue interruption or obstruction. This clause does not apply, however, to a permitted building as provided for under section 61(5) of the *Land Act 1994*.

8.3. Suitability of premises

The trustee does not expressly or impliedly warrant that the premises are at the commencement date or will remain fit suitable or adequate for all or any of the purposes of the trustee lessee and all warranties (if any) as to the suitability, fitness and adequateness of the premises implied by law are negated.

8.4. Use of premises by third persons

8.4.1. When the trustee lessee is not using the premises for its own activities under this trustee lease, the trustee lessee must, at the trustee's risk and liability, permit others to use the premises for appropriate activities subject to clause 8.5.

8.4.2. However, the trustee lessee need not make the premises available if the person wishing to use them:

8.4.2.1. fails to seek the trustee lessee's permission in sufficient time; or

8.4.2.2. fails to give the trustee lessee whatever assistance the trustee lessee reasonably requests, to enable the trustee lessee to make a fully-informed decision upon the request.

8.4.3. Without limitation, an activity is not an appropriate activity if:

8.4.3.1. it is one that the trustee has notified to the trustee lessee as inappropriate for the premises; or

8.4.3.2. it is one for which the premises are not suitable in terms of their size, construction, services, and surrounds;

8.4.3.3. it is inconsistent with the purpose for which the trust land was dedicated or granted in trust;

8.4.3.4. it will render void or voidable a policy of trustee lessee insurance concerning the premises or property kept there, or will increase a premium payable by the trustee lessee for such insurance; or

8.4.3.5. the activity is more likely than not to result in the infringement of a requirement of this trustee lease (*for example*, clause 5.2.4 clause 5.4, or clause 5.11).

8.5. Conditions of third party use

8.5.1. A grant of permission under clause 8.4 will be subject to the requirements specified in this clause.

8.5.2. The trustee lessee (acting in good faith) must determine whether the premises are required for the conduct of its own activities at the relevant time, and whether its own activities can be conducted on the premises at the same time as use by the applicant for permission.

8.5.3. If it does not require the premises for its own activities, or it is prepared to allow the applicant to use the premises or a portion of the premises concurrently with it, the trustee lessee may impose reasonable conditions upon the grant of its permission.

8.5.4. The conditions under this clause must include that the applicant (third party) must have a public risk policy to the same extent as required under clause 14 of the mandatory standard terms document, and the trustee lessee must

ensure that the applicant (third party) provides an indemnity to the trustee, the minister, and the state and the trustee lessee on the same terms as the indemnity obligations imposed on the trustee lessee under this trustee lease, particularly clause 15 of the mandatory standard terms document.

8.5.5. The conditions may include requirements governing reimbursement of charges incurred by the trustee lessee through the applicant's use of electricity or other services.

8.5.6. Any dispute that the trustee lessee and the applicant for permission cannot resolve between themselves will be resolved by the chief executive officer, whose decision will be final.

8.5.7. Permission must not be granted where:

8.5.7.1. the applicant (third party) does not provide the trustee lessee with a copy of the public risk policy and the indemnity as required under this clause;

8.5.7.2. permanent or semi-permanent occupation of an area of the premises to the exclusion of the trustee lessee is intended; or

8.5.7.3. the trustee considers, in its absolute discretion, that a sublease should be granted.

8.6. Use by trustee for emergencies

8.6.1. If required by the trustee and at the risk and liability of the trustee, the trustee lessee must make the premises available without fee for use by the trustee or by a body or bodies nominated by the trustee during a civil emergency or event or force majeure event:

8.6.2. Specific examples of a civil emergency or event are:

8.6.2.1. natural disaster (for example, flood, bushfire, cyclone);

8.6.2.2. broad-scale conflict (for example, war, terrorist action, rioting);

8.6.2.3. small-scale conflict (for example, siege or sniper activity);

8.6.2.4. transportation disaster (for example, aviation, maritime, or rail crash disaster); and

8.6.2.5. an election or referendum

8.6.3. A force majeure event is an event that:

8.6.3.1. adversely affects, or may adversely affect, the safety and amenity of persons and property within the region or a community or area within the region; and

8.6.3.2. requires immediate governmental response to avert or minimise large-scale harm, or to ameliorate its effects.

8.6.4. During a civil emergency or event or force majeure event, the trustee or the nominee body or bodies may use the premises:

8.6.4.1. to provide shelter or other relief to the displaced, the injured, or the endangered;

8.6.4.2. as a storage, logistics, or communications facility; or

8.6.4.3. for any other emergency response purpose for which the premises are suitable (including, for example, a temporary mortuary).

8.7. Alterations/additions by trustee

8.7.1. The trustee may construct improvements, alterations, or additions to the premises to provide amenities or additional amenities (such as toilet facilities or car parks) for use in conjunction with or separately from the premises.

8.7.2. Where the constructed amenities are lockable the trustee must give the trustee lessee keys to the locks, and the trustee lessee must comply with the requirements of the trustee about locking the amenities when they are not being used by the trustee lessee.

8.8. Use of trustee alterations/additions

The trustee lessee must permit the amenities constructed by the trustee pursuant to clause 8.6:

- 8.8.1. to be used by the trustee's servants and agents;
- 8.8.2. to be used by the public or any class or section of the public nominated by the trustee; and
- 8.8.3. to be accessed through the premises (but only to the extent reasonable and necessary to provide that access).

8.9. Entry by trustee

8.9.1. The trustee lessee must permit the trustee's and the state's servants and agents to enter the premises at all reasonable times:

- 8.9.1.1. to examine their condition;
- 8.9.1.2. to effect repairs and alterations that the trustee deems necessary for their safety, preservation or improvement;
- 8.9.1.3. to monitor or verify the use made of the premises by the trustee lessee;
- 8.9.1.4. to exercise any of the trustee's entitlements under this trustee lease; and
- 8.9.1.5. to discharge any of the trustee's statutory duties relating to the premises.

8.9.2. The trustee is not obliged to compensate the trustee lessee, or any other person for inconvenience or cost attributable to the exercise of an entitlement under this clause.

8.10. Trustee may require surrender

8.10.1. At its discretion, the trustee may require the surrender of the trustee lease or part of the premises by notice to the trustee lessee if the trustee:

- 8.10.1.1. determines in its sole discretion that the use of the premises by the trustee lessee is not the most efficient or desirable use of the premises; and
- 8.10.1.2. requires the leased area or part of the leased area for another purpose or to lease to another person.

8.10.2. The termination notice must state the date upon which the trustee requires the trustee lessee to vacate the premises.

8.10.3. If a termination notice is given, the trustee lessee must execute the required surrender form to be prepared by the trustee.

8.10.4. Neither the trustee nor the trustee lessee shall have any further claim against the other arising from the trustee lease except in relation to any breach of the trustee lease that exists at the time of termination.

8.11. Surrender of trustee lease by trustee lessee

The trustee lessee may surrender this trustee lease at any time before the expiry date by giving six (6) months' notice to the trustee. Upon expiration of the period stated in that notice:

- 8.11.1. this trustee lease will be at an end;
- 8.11.2. the trustee lessee will deliver up possession of the premises in accordance with clauses 7.5 and 9.6; and
- 8.11.3. neither the trustee nor the trustee lessee shall have any further claim against the other arising from the trustee lease except in relation to any breach of the trustee lease that exists at the time of termination.

9. PROVISIONS WHICH BENEFIT THE TRUSTEE

9.1. Information to be provided to the trustee

The trustee lessee must, throughout the term:

- 9.1.1. keep the trustee informed of its office-bearers and other members of its directorate, and notify the trustee in writing of any change in them within 30 days after the change;
- 9.1.2. allow the trustee, its employees and contractors, to inspect and take copies of the records of the trustee lessee for the purposes of determining whether or not the trustee lessee has been or is complying with its obligations under this lease. If any such inspection reveals that the trustee lessee is not or has not complied with this lease, the trustee lessee must pay the costs incurred by the trustee in relation to the inspection and its outcome.
- 9.1.3. Within 21 days after each annual general meeting of the trustee lessee, provide to the trustee:
 - 9.1.3.1. a copy of the minutes of the annual general meeting;
 - 9.1.3.2. a copy of the treasurer's report and financial statements for the trustee lessee for the previous financial year; and
 - 9.1.3.3. a list of the members of the trustee lessee.

9.2. Intrusion of harmful commodities

The trustee lessee releases the trustee from liability for any cost sustained or incurred by the trustee lessee through sewage, gas, electric current or any other fluid, substance or force entering or otherwise affecting the premises unless it is caused or contributed by the trustee's negligence or deliberate act.

9.3. Indemnity by trustee lessee

- 9.3.1. Without limiting the effect of clause 15 of the mandatory standard terms document, the indemnity the subject of that section extends to cost resulting directly or indirectly from:
 - 9.3.1.1. harm attributable in any way to the trustee lessee's presence upon the premises, its use of the premises, and its power of control over the premises;
 - 9.3.1.2. harm attributable in any way to use of the parking facilities;
 - 9.3.1.3. harm attributable to alterations made to the premises or the trust land, irrespective of trustee consent or approval of the minister;
 - 9.3.1.4. negligent or improper use of a service by any person;
 - 9.3.1.5. non-timely discharge of a trustee lessee obligation under this trustee lease;
 - 9.3.1.6. harm attributable in any way to sewage, gas, electric current or any other fluid, substance or force entering or otherwise affecting the premises or the parking facilities, or escaping from them;
 - 9.3.1.7. trustee lessee failure to notify the trustee of a defect in a service where the trustee lessee is, or ought reasonably to be, aware of the defect; and
 - 9.3.1.8. without limiting the effect of this clause, the act of any member, servant, agent, person in a share arrangement (see clause 12.2) or invitee of the trustee lessee (including a caretaker).
- 9.3.2. Where it allows a person to use the premises, the trustee lessee must ensure that the person covenants to indemnify the trustee, the minister, and the state upon the same terms as the indemnity obligations imposed on the trustee lessee under this trustee lease.

9.4. Disclosure of Insurance-relevant Information

The trustee lessee assures the trustee that it disclosed all insurance-relevant information to the trustee in writing before entering this trustee lease.

9.5. Condition precedent to trustee liability

Irrespective of any rule of law, and anything in this trustee lease to the contrary, the trustee will not be liable to the trustee lessee for cost resulting from trustee negligence, or from trustee default under this trustee lease, unless the trustee lessee gives the trustee written notice of that negligence or default, and without reasonable cause, the trustee subsequently fails to take appropriate remedial action within a reasonable time.

9.6. Return of possession

9.6.1. Upon termination of this trustee lease, the trustee lessee must return possession of the premises and any other part of the trust land permitted to be used by the trustee lessee under this trustee lease to the trustee.

9.6.2. The trustee lessee must ensure (generally) that the premises and any other part of that trust land as returned are in good, tenable repair and condition, irrespective of their condition at the time it took possession of them.

9.6.3. In particular, the trustee lessee must ensure that:

9.6.3.1. signs, placards, posters and other adornments installed by the trustee lessee are removed from the premises and the trust land; and

9.6.3.2. walls or other surfaces from which those items are removed are reinstated to a condition consistent with the requirements of this clause.

10. TRUSTEE COMMITMENT

10.1. Quiet enjoyment

While it discharges promptly its obligations under this trustee lease, the trustee lessee may occupy and use the premises without interruption from the trustee. This clause does not apply to interruption specifically permitted under this trustee lease.

11. TRUSTEE LESSEE INSURANCE

11.1. Types and duration of insurance

The trustee lessee must:

11.1.1. insure under a damage policy all insurable items located upon the premises, including plate glass, irrespective of who owns the items;

11.1.2. insure under the *Workers Compensation and Rehabilitation Act 2003*, all persons it employs to work upon the premises;

11.1.3. maintain business interruption insurance, if it operates a business upon the premises; and

11.1.4. maintain whatever other insurance the trustee reasonably requires.

11.2. Insured parties (damage)

The damage policy must insure the trustee and the trustee lessee severally, for their respective rights and interests in the insured property.

11.3. Indemnity levels

11.3.1. All property insured under a damage policy must be covered for its full reinstatement or replacement cost. Without limiting the effect of this clause, the insurance proceeds under the damage policy must cover defined expenses.

- 11.3.2. The policy of business interruption insurance must provide indemnity sufficient to enable the trustee lessee to meet its obligations to pay rent and other money, and maintain the premises, whenever the trustee lessee is unable, for any reason, to use the premises.
- 11.3.3. The trustee may require from time to time, but not more frequently than once every 3 years, that the trustee lessee increase the level of its cover under the public risk policy to the sum nominated in a notice to the trustee lessee.
- 11.3.4. In determining the extent of an increase in the level of indemnity under the public risk policy, the trustee must act reasonably and by reference to demonstrable changes in the real value of damages awards.
- 11.3.5. Upon service of a notice under clause 11.3.3 the sum specified in mandatory standard terms document clause 14.1 will be increased to the sum specified in the notice.
- 11.3.6. The trustee may not give a notice under clause 11.3.3 earlier than the third anniversary of the commencement date.

11.4. General obligations concerning policies

- 11.4.1. The damage policy and any other policy of general insurance that the trustee lessee must obtain under clause 11.1:
- 11.4.1.1. must be obtained from an authorised insurer approved by the trustee;
 - 11.4.1.2. must contain no exclusions, endorsements or alterations the trustee disapproves;
 - 11.4.1.3. generally, must contain provisions acceptable to, or required by, the trustee; and
 - 11.4.1.4. must remain current at all times while the trustee lessee occupies the premises.
- 11.4.2. An authorised insurer is a corporation authorised under the *Insurance Act 1973 (Cwlth)* to conduct insurance business in Australia.
- 11.4.3. The trustee must not require unreasonably the inclusion, retention, modification or exclusion of a policy provision.
- 11.4.4. The trustee must not delay or withhold unreasonably an approval for this clause.

11.5. Specific contents (damage policy)

Each damage policy:

- 11.5.1. must provide indemnity upon a claim made after the policy has expired if the event precipitating the claim occurred while the policy was current (this is otherwise known as occurrence coverage); and
- 11.5.2. must include the trustee as a person (whether individually or as a member of a class) for whose benefit the insurance extends (though the trustee is not a named insured).

11.6. Proof of insurance

- 11.6.1. Irrespective of when the term begins, the trustee lessee is not entitled to possession of the premises until it produces to the trustee:
- 11.6.1.1. a copy of the policy instrument for each of the insurances the trustee lessee is obliged to maintain under the mandatory standard terms document and clause 11.1; and
 - 11.6.1.2. a certificate of currency issued under each such policy by the insurer.
- 11.6.2. During each year of the term, other than for the public risk policy, the trustee lessee must produce to the trustee a certificate of currency for the renewed insurance term issued under each policy by the insurer, without the necessity for a trustee request and not later than the date of expiry of the then current insurance term.
- 11.6.3. The trustee may request at any time the production of a relevant policy instrument and certificate of currency if it possesses reasonable grounds to believe that the policy has been vitiated or terminated.

11.7. Payment of premiums

The trustee lessee must pay promptly all premiums, duty, GST, and other money entailed in maintaining insurance this trustee lease obliges it to maintain.

11.8. Deductibles

If an insurance policy obtained under clause 11.1 requires the insured to pay a claims excess, the trustee lessee indemnifies the trustee against every cost the trustee incurs because of the excess.

11.9. Failure to insure

If the trustee lessee fails to discharge an obligation under clauses 11.1 to 11.7 the trustee may obtain or maintain the required insurance, at its option and at the trustee lessee's cost and the trustee lessee must reimburse the trustee upon demand any expenditure the trustee incurs pursuant to this clause.

11.10. Settlement of claims

11.10.1. The trustee lessee must not pursue a claim under an insurance policy it is required to maintain under this trustee lease if the policy concerns the premises and the trustee elects, by notice to the trustee lessee, to pursue the claim on the trustee lessee's behalf.

11.10.2. If the trustee elects to pursue the claim to the exclusion of the trustee lessee, it must pursue the claim diligently and use its best endeavours to ensure the trustee lessee receives from the insurer no less than its entitlement under the policy.

12. DEALINGS WITH TRUSTEE LEASE AND PREMISES

12.1. Transfer sublet and mortgage

The trustee lessee shall not transfer, sublet or mortgage this trustee lease or part with possession of the premises without the written permission of the trustee and the minister.

12.2. Parting with possession of premises

In addition to complying with clause 11.1 of the mandatory standard terms document, the trustee lessee but only first having obtained trustee consent, may appoint, to act for and on behalf of the trustee lessee and at the trustee lessee's risk and liability, a person to manage or operate the premises, or the business or other activities the trustee lessee conducts upon the premises, including any caretaker appointed under Part 16, ("share arrangement").

12.3. Usage in ordinary course

The trustee lessee does not breach clause 12.1 merely through permitting its agents and contractors to enter the premises in the ordinary course of visiting it and conducting with it day-to-day transactions consistent with the permitted use.

12.4. Pre-requisites for trustee consent to dealing

The trustee is not obliged to consent to a trustee lessee dealing with this trustee lease or the premises if the trustee less ee fails to comply with this clause 12.

12.5. Notice of proposed dealing

12.5.1. The trustee lessee must apply for trustee consent to the proposed dealing not later than 30 days before the due date for completion of the dealing.

12.5.2. The application must include:

12.5.2.1. copies of all relevant contract documents;

12.5.2.2. full details of the other party or parties to the proposed dealing (if these are not contained in the contract documents);

12.5.2.3. (for a proposed transfer of this trustee lease) a current statement of each proposed transferee's assets and liabilities; and

12.5.2.4. all other relevant information the trustee reasonably requests.

12.6. Prohibition of consent applications (outstanding default)

12.6.1. While it is in default under this trustee lease, particularly default in the payment of money due, the trustee lessee is not entitled to seek trustee consent to:

12.6.1.1. the transfer of this trustee lease; or

12.6.1.2. the grant of a sublease; or

12.6.1.3. a mortgage of this trustee lease; or

12.6.1.4. the trustee lessee entering into a share arrangement;

12.6.2. If the trustee lessee requests any such consent while in default, the trustee may ignore the request.

12.7. Suitability of proposed transferee/sub-trustee lessee/share arrangement

The trustee lessee must demonstrate to the satisfaction of the trustee (acting reasonably) that a proposed transferee, sublessee or person appointed under clause 12.2 is:

12.7.1. respectable, responsible, and of adequate financial substance;

12.7.2. capable of discharging the trustee lessee obligations under this trustee lease;

12.7.3. capable of competently conducting the permitted use; and

12.7.4. not likely (or certain), through its occupation or use of the premises, to cause:

12.7.4.1. a security risk to the premises or the trust land;

12.7.4.2. a loss of amenity within the premises or the trust land; or

12.7.4.3. a diminution in value of the premises or the trust land,

greater than that (if any) caused by the trustee lessee's occupation.

12.8. Formal consent to proposed dealing

12.8.1. Before completing a proposed transfer, sublease, or other dealing the subject of this clause 12, the trustee lessee must execute, and ensure that the proposed transferee, sub-lessee or other party executes, a consent agreement in favour of the trustee, in the form the trustee requires.

12.8.2. The consent agreement must contain:

12.8.2.1. a transferee covenant to discharge the trustee lessee obligations under this trustee lease;

12.8.2.2. a sublease or sharer covenant not to cause or contribute to a breach of this trustee lease;

12.8.2.3. a sublease or sharer covenant to discharge its obligations under the sublease or share agreement; and

12.8.2.4. a grant of the transferee's, sub-lessee's or sharer's power of attorney in favour of the trustee, in similar terms to those of the trustee lessee's power of attorney in this trustee lease.

12.9. Mortgage of trustee lease

The trustee may withhold consent to the proposed grant of a mortgage in this trustee lease until the mortgagee executes a consent agreement, in the form the trustee requires, specifying the conditions upon which the mortgagee may deal with this trustee lease and enter and use the premises to enforce its mortgage.

12.10. Excepted finance dealings

12.10.1. If the premises, including the improvements, and this trustee lease is not to be included in the secured property, the trustee lessee need not obtain trustee consent where it wishes, in good faith, to secure financial accommodation in the normal course of its business via:

12.10.1.1. a charge over its undertaking or other assets;

12.10.1.2. the encumbrance of other specific property upon the premises;

12.10.1.3. a hire purchase agreement for goods to be used at the premises; or

12.10.1.4. a chattel leasing agreement for goods to be used at the premises.

12.10.2. However, clause 12.10.1 does not constitute trustee consent to the financier entering the trust land or the premises to enforce its interest under the relevant agreement.

12.10.3. Irrespective of the terms of the agreement, the financier acquires no entitlement to enter the trust land or the premises or to deal with this trustee lease or the premises, other than in compliance with the relevant provisions of this clause 12 (as if it were the trustee lessee).

12.10.4. The trustee lessee must bring this clause clearly to the attention of the financier before it enters the relevant agreement.

12.11. Consent agreements

The trustee's solicitors will prepare all agreements to be executed pursuant to this clause 12.

12.12. Trustee costs and expenses

The trustee lessee must bear, and must pay to the trustee upon demand (irrespective of whether the relevant dealing is completed), the legal costs and other expenses the trustee incurs:

12.12.1. investigating any transfer of the trustee lease, sublease of the trustee lease, share agreement, or mortgage, whether proposed or completed;

12.12.2. drawing, settling, executing, and stamping any document mentioned in clause 12.11; and

12.12.3. doing anything else, necessary or requested, to facilitate any registration of the relevant dealing.

13. DAMAGE AND DESTRUCTION (FIXED IMPROVEMENTS)

13.1. Trustee causes damage

Clauses 13.2, 13.3 and 13.7 do not apply to the trustee lessee if the damage or destruction is caused by the trustee who, subject to clause 13.6, must immediately repair or replace the fixed improvement to the same standard prior to the damage or destruction occurring.

13.2. Repairing damage

Without limiting clause 6.11, if a fixed improvement upon or comprising the premises is damaged, the trustee lessee must repair the damage promptly (and comply with clause 6.15), to the satisfaction of the trustee (acting reasonably), irrespective of who or what has caused the damage.

13.3. Replacement upon destruction

If a fixed improvement upon or comprising the premises is destroyed, the trustee lessee must replace the improvement to the satisfaction of the trustee (acting reasonably), irrespective of who or what has caused the destruction.

13.4. Compliance with trustee directions

13.4.1. In effecting repairs or constructing or installing a replacement, the trustee lessee must comply with all directions given by the trustee, including directions concerning the submission and pursuit of insurance claims and the application of insurance proceeds.

13.4.2. The purpose of that obligation is to facilitate:

13.4.2.1. timely and competent completion of the necessary repair or replacement work (if this trustee lease is to continue); or

13.4.2.2. compensation of the trustee for loss of or damage to the fixed improvement (if the trustee lease is terminated under this clause 13).

13.5. Suspension and abatement of cleaning and maintenance obligations

13.5.1. If a fixed improvement is destroyed, or is so damaged as to be inaccessible or unusable, the trustee lessee obligations to clean and maintain the structure (clause 6.11) will be suspended until the structure (or its replacement) is accessible and fit for the permitted use.

13.5.2. If a fixed improvement is damaged but still partially usable, the trustee lessee obligations to clean and maintain the structure will abate proportionately with the nature and extent of the damage and diminution of utility.

13.6. Termination/surrender for damage/destruction

If the destruction of or damage to fixed improvements renders the premises unusable:

13.6.1. the trustee may terminate this trustee lease, other than if the destruction or damage was caused by the trustee;

13.6.2. the trustee lessee may surrender this trustee lease, but only upon satisfying the requirements of clause 13.7, other than if the destruction or damage was caused by the trustee lessee; and

13.6.3. any rights of the trustee lessee to take action against the trustee for failure to replace or repair fixed improvements destroyed or damaged by the trustee that leads to the premises being unable to be used for the permitted use is not affected by a surrender under clause 13.6.2.

13.7. Pre-requisite for surrender (insurance payment)

The trustee lessee may surrender this trustee lease pursuant to clause 13.6 only if the insurer has granted full indemnity upon a claim under the damage policy, for the reinstatement or replacement value of the fixed improvements and only after the insurer or the trustee lessee has paid the trustee the proceeds of the claim.

14. DEFAULT BY TRUSTEE LESSEE

14.1. Events of default

The trustee lessee defaults under this trustee lease if:

14.1.1. it fails to discharge an obligation this trustee lease imposes upon it;

14.1.2. it fails to discharge an obligation to the trustee in an agreement for consent to a sublease or the transfer of this trustee lease;

14.1.3. it fails to discharge an obligation to the trustee in an agreement for consent to the grant of a mortgage over this trustee lease;

14.1.4. it commits an act of insolvency; or

14.1.5. it does not use the premises for the permitted use for 45 consecutive days.

14.2. Remedies upon default

14.2.1. If the trustee lessee defaults under this trustee lease by failing to pay money, or to discharge an obligation, to a person other than the trustee, the trustee may:

14.2.1.1. pay the money or discharge the obligation as the agent of the trustee lessee; and

14.2.1.2. recover from the trustee lessee as a liquidated debt¹⁴ all of the money it expends in doing so.

14.2.2. Subject to the act and the *Property Law Act 1974* section 124,¹⁵ if the trustee lessee is in default under this trustee lease, the trustee also may without prejudicing the entitlements that have accrued to it for any earlier default by the trustee lessee:

14.2.2.1. terminate this trustee lease by retaking possession of the premises at any time, with or without notice; or

14.2.2.2. otherwise terminate this trustee lease.

14.3. Entry by trustee without forfeiture

14.3.1. If the trustee lessee vacates the premises during the term (whether or not it ceases to make rent and other payments), neither:

14.3.1.1. its acceptance of keys; nor

14.3.1.2. its entry upon the premises to inspect, clean, repair, or alter them, or to show them to prospective occupiers; nor

14.3.1.3. its advertisement of the premises for tenancy;

will constitute trustee re-entry or a waiver of trustee entitlement to recover all rent and other money owing by the trustee lessee.

14.3.2. In those circumstances, this trustee lease will continue, fully binding and effective, until the earlier of:

14.3.2.1. the time a new trustee lessee (or trustee permittee under a trustee permit) takes occupation of the premises; and

14.3.2.2. the time this trustee lease expires;

14.3.3. Entry by the trustee before that time will be deemed entry with the trustee lessee's permission.

14.3.4. Clauses 14.3.1 and 14.3.2 will not apply where the trustee gives the trustee lessee notice:

14.3.4.1. accepting surrender of this trustee lease; or

14.3.4.2. confirming forfeiture of this trustee lease and re-entry into possession of the premises.

14.3.5. Clauses 14.3.1 and 14.3.2 also will not apply where the trustee:

14.3.5.1. changes the locks to the premises, or otherwise prevents the trustee lessee reassuming possession; or

14.3.5.2. executes the acceptance provision in a formal surrender of this trustee lease, and delivers the executed instrument to the trustee lessee.

¹⁴ When the amount of a debt is certain, or can be ascertained by objective means (e.g. by the application of a formula or scale), the debt is a liquidated debt. In contrast, a non-liquidated debt is one that cannot be calculated until evidence is obtained and considered (e.g. evidence of what damage has been sustained and how much it will cost to repair).

¹⁵ Section 124 prevents a lessor from terminating a lease for the lessee's breach unless and until the lessee fails, within a reasonable time after being served with it, to comply with a written notice from the lessor (in a prescribed form) specifying the breach, requiring the lessee to remedy the breach (if it is capable of remedy), and requiring the lessee to pay compensation for the breach (if the lessor claims monetary compensation).

14.4. Removal of equipment

- 14.4.1. Upon lawfully re-entering the premises for trustee lessee default, the trustee may remove trustee lessee property from the premises and store that property at trustee lessee cost.
- 14.4.2. In exercising that entitlement, the trustee will not be liable to the trustee lessee for conversion or unlawful distress or cost occasioned by the removal or storage.
- 14.4.3. The trustee lessee must reimburse the trustee upon demand expenses the trustee reasonably incurs in removing and storing trustee lessee property under clause 14.4.1.

14.5. Essential Terms

Each of the following promises by the trustee lessee is an essential term of this trustee lease:

- 14.5.1. the promise to pay at the times and in the manner specified:
 - 14.5.1.1. the annual rent (clause 3.1);
 - 14.5.1.2. money owing for rates and utility charges (clause 3.3); and
 - 14.5.1.3. the GST payable in conjunction with a payment under this trustee lease (clause 4.2);
- 14.5.2. the promise to use and administer the premises in the required manner and in compliance with relevant acts (clauses 5.1 to 5.8 and 5.11);
- 14.5.3. the covenant not to store, sell, or supply, liquor upon or from the premises, or allow it to be stored, sold or supplied, without consent, or without a necessary licence or authority (mandatory standard terms document clause 10.1);
- 14.5.4. the promise not to operate gaming machine facilities, keno facilities, or tab facilities, upon the premises (mandatory standard terms document clauses 10.2 to 10.4);
- 14.5.5. the promise not to undertake extractive activities upon the premises (clause 5.19);
- 14.5.6. the promise to install and maintain water supply and waste disposal facilities (clause 6.8);
- 14.5.7. the promise to maintain the premises and keep them clean (clause 6);
- 14.5.8. the promises (clauses 8.4 to 8.6):
 - 14.5.8.1. to permit third persons to use the premises; and
 - 14.5.8.2. to make the premises available for civil emergencies;
- 14.5.9. the promises to insure (clause 11 and mandatory standard terms document clause 14);
- 14.5.10. the promises (clause 12 and mandatory standard terms document clause 11.1):
 - 14.5.10.1. not to transfer this trustee lease;
 - 14.5.10.2. not to sublease the premises or any area of them;
 - 14.5.10.3. not to enter into a share arrangement (see clause 12.2); and
 - 14.5.10.4. not to grant a mortgage over or affecting this trustee lease;
- 14.5.11. the promise not to transfer a liquor licence, or allow it to be transferred, without trustee consent or the approval of the minister (clauses 18.4 and 18.12);

- 14.5.12. the promise to give the trustee, or to ensure the holder of the liquor licence gives the trustee, annual returns particularising liquor purchases for the premises (clause 18.5); and
- 14.5.13. the promise to notify the trustee promptly if the liquor licence is suspended, cancelled, or surrendered, or is not renewed (clause 18.8).

14.6. Damages upon termination for breach

If it lawfully terminates this trustee lease for breach of an essential term (whether the term possesses the character of essentiality pursuant to or independently of clause 14.5) the trustee:

- 14.6.1. may recover damages for the breach, including damages for loss of bargain;ⁱⁱⁱ 16 but
- 14.6.2. will not be relieved of any duty it otherwise possesses at law to mitigate those damages.

14.7. Rights not affected by termination

If the trustee lease is terminated pursuant to this clause 14;

- 14.7.1. it shall be without prejudice to any existing rights between either party prior to the date of termination;
- 14.7.2. the trustee lessee needs to make good the premises; and
- 14.7.3. provided no other money is owing by the trustee lessee to the trustee, the trustee shall refund the trustee lessee any rent paid by the trustee lessee for a period after the date of termination.

14.8. Appointment of receiver where the trustee lessee is a corporation or incorporated association

- 14.8.1. If the trustee lessee fails to comply with a notice from the trustee requiring it to remedy a default under this trustee lease, the trustee may appoint a receiver (without prejudice to any other entitlement that it possesses under this trustee lease).
- 14.8.2. The receiver may comprise one or more persons.
- 14.8.3. If the receiver comprises more than one person, those persons may act jointly and individually.
- 14.8.4. An appointee must be qualified to act as receiver/manager.¹⁷
- 14.8.5. The trustee may:
 - 14.8.5.1. revoke the appointment of a person as receiver;
 - 14.8.5.2. appoint another person or an additional person as receiver.
- 14.8.6. Unless its appointment instrument states otherwise, the receiver is the trustee lessee's agent.
- 14.8.7. In any event, the trustee lessee is responsible for paying the receiver's remuneration.
- 14.8.8. The trustee lessee is solely responsible for the receiver's acts.
- 14.8.9. The receiver is not liable to the trustee lessee for its (the receiver's) act.
- 14.8.10. The receiver may exercise all of the powers the corporations act gives a receiver and manager.¹⁸
- 14.8.11. Without limiting clause 14.8.10:

¹⁶ Loss of bargain is loss of the benefit of performance of the trustee lessee's obligations under this trustee lease during the period between the date of termination by the trustee and the date upon which the trustee lease otherwise would have expired.

¹⁷ Refer to Corporations Act 2001 section 418.

¹⁸ Refer to Corporations Act 2001 section 420

- 14.8.11.1. the receiver may do in relation to the trustee lessee's affairs under this trustee lease anything that the trustee lessee's directorate could do were the receiver not appointed; and
- 14.8.11.2. generally, the receiver may operate the trustee lessee's business or superintend the trustee lessee's affairs and activities at the premises to the extent the trustee lessee could have done before the receiver's appointment.
- 14.8.12. Throughout the receivership, the directorate's power will abate to the extent of the receiver's power.
- 14.8.13. A person who deals with the receiver need not enquire about the receiver's authority to act or the application of money paid to the receiver.
- 14.8.14. Neither the receiver nor the trustee will be responsible for a loss the receiver makes in conducting trustee lessee activities at the premises or in exercising its power as receiver or manager.

15. POWER OF ATTORNEY

15.1. Additional provisions

The power of attorney granted under this clause 15 is additional to the power of attorney granted by the trustee lessee under clause 16 of the mandatory standard terms document.

15.2. Appointment of chief executive officer

- 15.2.1. The trustee lessee irrevocably appoints the chief executive officer as its attorney:
 - 15.2.1.1. to pursue a claim under a policy of trustee lessee insurance, pursuant to clause 11.10;
 - 15.2.1.2. to terminate on behalf of the trustee lessee, and as the act of trustee lessee, a (purported) sublease, or other permission to use or occupy the premises, granted by the trustee lessee without trustee consent;
 - 15.2.1.3. to recover on behalf of the trustee lessee, and as the act of the trustee lessee, possession of the area the subject of the terminated (purported) sublease or other permission; and
 - 15.2.1.4. to remedy a trustee lessee default under this trustee lease.
- 15.2.2. The trustee lessee also irrevocably appoints the chief executive officer its attorney:
 - 15.2.2.1. to take charge of the business or other activity the trustee lessee conducts upon the premises; and
 - 15.2.2.2. to manage that business or activity in consultation with the trustee lessee but to the exclusion of the trustee lessee's own personnel;

whenever, as for as long as, the chief executive officer considers the action necessary for ensuring that the trustee lessee uses the premises responsibly and competently.
- 15.2.3. The trustee must ensure the chief executive officer gives the trustee lessee reasonable notice of his intention to exercise the power conferred by clause 15.2.2.
- 15.2.4. In the exercise of that power, the chief executive officer may delegate one of more or all of his management functions to a person he considers possesses the requisite skill.

15.3. Proof of entitlement to terminate

Sufficient proof of trustee lessee default will be a statutory declaration by the chief executive officer, detailing the default.

15.4. Ratification and reimbursement

- 15.4.1. The trustee lessee will in the lawful exercise of its powers as attorney ratify whatever the attorney does and reimburse the trustee upon demand every expense the attorney reasonably and properly incurs.

- 15.4.2. To prevent argument, the trustee lessee releases the attorney from all liability the attorney incurs to the trustee lessee through exercising power of attorney under the mandatory standard terms document and clause 15.2.

16. CARETAKER

16.1. Appointment of caretaker

- 16.1.1. With trustee written permission, the trustee lessee may permit a caretaker to occupy the premises for and on behalf of the trustee lessee and at the trustee lessee's risk and liability.
- 16.1.2. In its absolute discretion, the trustee may:
- 16.1.2.1. grant its permission, conditionally or unconditionally;
 - 16.1.2.2. refuse its permission; or
 - 16.1.2.3. decline to give a reason for its decision.
- 16.1.3. To prevent doubt, the trustee is not required to act reasonably in determining whether to grant or refuse its permission for the trustee lessee to install a caretaker.
- 16.1.4. Without limiting the effect of any of the foregoing provisions, the trustee lessee acknowledges that the trustee will not grant the trustee lessee permission to install a caretaker upon other than a periodic basis.
- 16.1.5. It will be a condition of the trustee's consent that the trustee lessee must enter into a general tenancy agreement with the caretaker in respect of the part of the premises in which the caretaker will reside.

16.2. Caretaker's Residence

If the caretaker is to occupy a demountable structure, or other temporary or movable quarters upon the premises, the structure:

- 16.2.1. must be appropriate and receive the trustee's approval;
- 16.2.2. must be securely anchored or affixed to the premises;
- 16.2.3. must be situated in a position that will not render it an obstacle or nuisance to persons lawfully using the premises or the trust land;
- 16.2.4. must be closed and securely locked when the caretaker is not using it or in its immediate vicinity;
- 16.2.5. must be in safe and habitable repair and condition;
- 16.2.6. must be used for no purpose other than the caretaker's residence; and
- 16.2.7. must be removed from the premises promptly:
 - 16.2.7.1. when the term expires or this trustee lease is otherwise terminated, subject to clause 20 of the mandatory standard terms document and section 66 of the *Land Act; 1994* or
 - 16.2.7.2. when they are no longer required by the trustee lessee for use as the caretaker's residence.

16.3. Revocation of permission

- 16.3.1. The trustee may revoke at any time its permission for a caretaker to occupy the premises.
- 16.3.2. The trustee may revoke the permission by notice addressed to the trustee lessee and the caretaker, and given to each of them.

- 16.3.3. The trustee's notice may direct the caretaker to leave the premises, in which event the notice must specify the date by which the caretaker must leave.
- 16.3.4. If the trustee's notice does not direct the caretaker to leave the premises, the trustee lessee must give the care taker a notice to leave within the shortest period permissible by law.¹⁹
- 16.3.5. If the caretaker fails to remove all of his belongings from the premises before the direction or notice to leave expires, the trustee lessee must remove them from the premises promptly, unless the trustee directs the trustee lessee otherwise and repair any damage that is caused to the premises or other part of the trust land or to any other trustee property in the removal process.

16.4. Preventing breach of trustee lease

The trustee lessee must not permit or suffer a caretaker to do anything that constitutes or may precipitate the breach of a trustee lessee obligation under this trustee lease. The trustee lessee must ensure the caretaker does not continue or repeat such a breach.

16.5. Trustee lessee indemnity

The trustee lessee indemnifies the trustee against any cost that the trustee sustains or incurs through the caretaker failing to discharge its obligations.

16.6. Variation/waiver Obligations

The trustee lessee must not waive or vary any caretaker obligation if the waiver or variation will or might hinder the trustee lessee in discharging its obligations under this trustee lease. The trustee lessee must give the trustee prompt notice containing all reasonable and relevant particulars of any waiver or variation of a caretaker obligation.

17. PERSONAL PROPERTY SECURITIES ACT

17.1. Trustee to retain title

- 17.1.1. Notwithstanding anything to the contrary express or implied in this trustee lease, the parties agree that the trustee retains full title to the trustee's assets and title will not at any time pass to the trustee lessee notwithstanding:
- 17.1.1.1. the delivery of collection of the trustee's assets to/by the trustee lessee (as the case may be); and/or
- 17.1.1.2. the possession and use of the trustee's assets by the trustee lease.
- 17.1.2. The trustee lessee acknowledges that the trustee lessee has the right to possess the trustee's assets as a mere bailee only and will deal with the trustee's assets in such a manner which enables it to be clearly identified as trustee's assets belonging to the trustee and does not have any right to pledge the trustee's credit in connection with the trustee's assets and agrees not to do so.

17.2. Dealing with trustee's assets

- 17.2.1. The trustee lessee acknowledges and agrees that:
- 17.2.1.1. it will not agree, attempt, offer and purport to sell, assign, sub-let, lend, pledge, mortgage, let hire or otherwise part or attempt to part with personal possession of or otherwise deal with the trustee's assets without the express written consent of the trustee;
- 17.2.1.2. it will, if requested by the trustee, return the trustee's assets to the trustee following non-fulfilment of any obligation of the trustee lessee (including payment of moneys) without limiting any other right the trustee may have;
- 17.2.1.3. it will deliver up the trustee's assets at the end of the term and give the trustee or its agents or authorised representatives the right to enter any premises occupied by the trustee lessee and any premises where it believes any trustee's assets may be stored (without liability for trespass or any resulting damage) and to

¹⁹ Generally, this will mean the shortest period permissible under the Residential Tenancies and Rooming Accommodation Act 2008.
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use the name of the trustee lessee and to act on its behalf, if necessary, to recover possession of the trustee's assets and agrees to indemnify the trustee and its agents and/or loss arising from such recovery or attempted recovery of trustee's assets from the trustee lessee's possession or control;

17.2.1.4. it holds the proceeds, book debts and accounts receivable rising from selling or hiring of the trustee's assets on trust for and as agent for the trustee immediately when they are receivable or are received; and

17.2.1.5. the trustee may recover as a debt due and immediately payable by the trustee lessee all amounts owing by the trustee lessee to trustee in any respect even though title to the trustee's assets has not passed to the trustee lessee.

17.2.2. The trustee lessee acknowledges and agrees that, notwithstanding any other provision of this trustee lease:

17.2.2.1. the trustee's security interest in the trustee's assets covered by this trustee lease may be registered on the personal property securities register and the trustee lessee agrees to do all things necessary and required by the trustee to effect registration of the trustee's security interest on the personal property securities register in order to give the trustee's security interest the best priority possible and anything else trustee requests the trustee lessee to do in connection with the PPSA without delay;

17.2.2.2. all information provided by the trustee lessee to trustee, including but not limited to the trustee lessee's details, including the entity, name, ACN or ABN and address set out in this trustee lease is correct in all respects and the trustee lessee must not change its name, address or other details set out in this trustee lease without providing the trustee with at least 20 business days prior written notice;

17.2.2.3. the trustee's security interest in the trustee's assets extends to any proceeds, in all present and after acquired property including without limitation book debts and accounts receivable arising from the trustee lessee dealing with the trustee's assets;

17.2.2.4. it waives its right under the PPSA to receive a copy of any verification statement, financing change statement, or any notice that the trustee intends to sell the trustee's assets or to retain the trustee's assets on enforcement of the security interest granted to the trustee under this trustee lease or any other notice under the PPSA unless the notice is required to be given by the PPSA and cannot be contracted out of; and

17.2.2.5. a default under any other security agreement of and under which a security interest which it has granted to any other party in respect of the trustee's assets and/or any default under such security agreement which results in an exercise of rights under the PPSA is deemed to be a breach of this trustee lease.

17.2.3. The parties agree that the trustee is not required to respond to a request made under section 275 of the PPSA and that neither party will disclose information of the kind set out in section 275(1) of the PPSA.

18. LIQUOR LICENSING

18.1. Request for trustee consent

In accordance with clause 10.1 of the mandatory standard terms document, if asking the trustee and minister to consent to it obtaining a liquor licence concerning the premises, the trustee lessee must give the trustee copies of the completed application and supporting documents it proposes to submit to the liquor act administering authority and whatever additional items of information and other material the trustee requests to enable it to process the request.

18.2. Conditions of trustee consent

18.2.1. The trustee may grant or refuse consent in its absolute discretion.

18.2.2. To prevent argument, the trustee may grant consent upon whatever conditions it considers appropriate; for example, conditions concerning:

18.2.2.1. variation of the rent payable under this trustee lease;

18.2.2.2. development work;

- 18.2.2.3. the hours during which the trustee lessee may sell liquor at or from the premises (which hours may be shorter than those that the relevant liquor licence permits);
- 18.2.2.4. abatement or minimisation of noise or other nuisance;
- 18.2.2.5. parking vehicles; and
- 18.2.2.6. premises security, including lighting installation and positioning.

18.3. Dealing with licence upon termination of trustee lease

- 18.3.1. When this trustee lease terminates, the trustee lessee must deliver promptly to the trustee the application/s for transfer, the returns, and any other forms that the trustee requests to facilitate transfer of the liquor licence to the trustee or its nominee, or the issue of a new liquor licence enabling the trustee to conduct the licensed activity wholly or in part.
- 18.3.2. The trustee lessee must do everything necessary and everything reasonable to enable the trustee, by itself or its nominee, to obtain the transfer or the new licence.

18.4. Transfer of licence (trustee consent)

The trustee lessee must not transfer the liquor licence without trustee consent. The trustee must not withhold unreasonably its consent to a proposed transfer.

18.5. Returns to administering authority

The trustee lessee must give the trustee, not later than 30 September each year during the term, a statement, in the form required or accepted by the trustee, detailing to the extent the trustee requires the quantities of liquor purchased under the liquor licence during the year ending upon the immediately-preceding 30 June, and the purchase prices paid or payable for those quantities.

18.6. Standards for conduct of licensed activity

- 18.6.1. Subject to whatever restrictions the trustee lawfully imposes upon it, the trustee lessee must conduct the licensed activity in a professional and businesslike manner, during the hours and for the purposes customary for activities of that nature and permitted by the liquor licence.
- 18.6.2. The trustee lessee must not do, or permit to occur, upon or about the premises, anything that results or may result in the liquor licence being suspended or cancelled or the administering authority refusing to renew the licence.
- 18.6.3. In particular, the trustee lessee must ensure, to the satisfaction of the trustee (acting reasonably), that:
 - 18.6.3.1. no officer, manager, employee or contractor of the trustee lessee is under the influence of liquor in the course of his or her duties;
 - 18.6.3.2. all persons entering the premises for a purpose associated with or incidental to the licensed activity cause no excessive noise and create no nuisance, whether to the annoyance of other persons upon the premises or persons living in proximity to the premises.
- 18.6.4. The trustee lessee must give to the trustee, upon request a true and accurate account of the licensed activity and balance sheets and profit/loss accounts for the licensed activity, in forms acceptable to the trustee.
- 18.6.5. The trustee lessee must permit authorised trustee personnel to inspect and copy financial records and other material relevant to the licensed activity, to enable the trustee to verify or audit information and other material provided pursuant to this clause.

18.7. Inspection of administering authority records

- 18.7.1. The trustee lessee authorises the trustee to obtain from the administering authority or a court of competent jurisdiction, whatever information the trustee requires, and the administering authority or the court holds, concerning the trustee lessee's liquor licence.
- 18.7.2. In particular, the trustee lessee authorises the trustee to obtain particulars and copies of all returns and assessments concerning the premises and details of charges or complaints against the trustee lessee.

18.8. Notification of licence cessation

The trustee lessee must notify the trustee promptly if the liquor licence is suspended, cancelled, or surrendered, or is not renewed.

18.9. Defence of proceedings

- 18.9.1. If a proceeding is instituted against the trustee lessee or its nominee, for breach of the *Liquor Act 1992* occurring upon or concerning the premises, the trustee may (without being obliged to do so) defend the proceedings, in whichever name it chooses and appear or be represented at the proceedings.
- 18.9.2. Every cost the trustee incurs or sustains as a result of those proceedings (irrespective of whether it appears or is represented at them) must be paid or reimbursed by the trustee lessee upon demand and will bear interest at the rate charged for the time being by the trustee's banker on commercial overdraft accommodation exceeding \$100,000.00.

18.10. Presentation of premises

The trustee lessee must ensure that the premises are properly furnished and presented to the standard required by the administering authority. That obligation is additional to (not in substitution for) any other obligation under this trustee lease governing the standard of finish and presentation of the premises (it being the intention of the parties that, if there is inconsistency, the higher or highest of the standards variously required will prevail).

18.11. Payment of fees

The trustee lessee must ensure that all licence fees, imposts and levies assessed under the *Liquor Act 1992* concerning the premises or the licensed activity are paid when due. The trustee lessee must produce to the trustee upon request receipts or other evidence of payment.

18.12. Minister's approval

A transfer or issue of a new liquor licence under this clause 16 is subject to the approval of the minister.

19. NOTICES

19.1. Notices (general)

- 19.1.1. This part governs notices under this trustee lease unless a provision of this trustee lease specifically provides otherwise.
- 19.1.2. A notice must be in writing.
- 19.1.3. The chief executive officer may sign a notice to be given by the trustee.
- 19.1.4. A notice given by the trustee lessee may be signed by:
- 19.1.4.1. the trustee lessee; or
 - 19.1.4.2. one or more of its officers.

19.2. Service of notices

A party may give a notice by:

- 19.2.1. delivering it to the intended recipient's address for notices; or
- 19.2.2. posting it to the intended recipient at its address for notices; or
- 19.2.3. transmitting it by facsimile to the intended recipient at its address for notices.

19.3. Receipt of notices

19.3.1. A notice that is delivered or posted will be deemed received:

- 19.3.1.1. if delivered, at the moment of delivery;
- 19.3.1.2. if posted to an address in Australia, two business days after posting; or
- 19.3.1.3. if posted to an address outside Australia, five business days after posting.

19.3.2. A notice sent by facsimile transmission will be deemed received at the time of receipt specified in a confirmation report, if the report discloses that the transmission was received at or before 5:00pm.

19.3.3. If the confirmation report discloses that the transmission was received after 5:00pm, the notice will be deemed received at 8:30am on the business day following the date of receipt disclosed in the report.

19.3.4. A confirmation report is, for a facsimile transmission, a transmission confirmation report produced by the sender's facsimile machine:

- 19.3.4.1. containing the identification code of the intended recipient's facsimile machine; and
- 19.3.4.2. indicating that the transmission was received without error.

20. MISCELLANEOUS

20.1. Applications to trustee

An application or request for trustee consent, approval, or permission must be submitted in writing to the trustee.

20.2. Communication between parties

- 20.2.1. Neither an approval nor a consent or permission given under this trustee lease binds the party giving it unless that party gives it in writing.
- 20.2.2. An appointment or direction made or given under this trustee lease is ineffective unless made or given in writing.
- 20.2.3. A request made under this trustee lease is deemed neither made nor received if not made in writing.
- 20.2.4. The waiver of an entitlement under this trustee lease is not binding unless made in writing.
- 20.2.5. To prevent uncertainty, a notice under this trustee lease is ineffective unless given in writing (refer to clause 19.1.2 which states a notice must be given in writing).

20.3. Waiver/abandonment of entitlement

20.3.1. The mere fact that a party does not exercise an entitlement under or concerning this trustee lease when the entitlement accrues:

- 20.3.1.1. does not deprive it of the entitlement; and
- 20.3.1.2. does not deprive it of similar entitlements that accrue at other times.

20.3.2. The mere fact that a party grants an indulgence under or concerning this trustee lease on a given occasion does not entitle the recipient to the same or a similar indulgence on another occasion.

20.3.3. The mere fact that a party grants an indulgence under or concerning this trustee lease in a given circumstance does not entitle the recipient to the same or a similar indulgence in a similar circumstance.

20.4. Jurisdiction (adjudication of disputes)

20.4.1. For this clause, a *Queensland Court* is:

20.4.1.1. a court or tribunal, constituted under Queensland legislation and empowered to adjudicate a dispute arising under this trustee lease; and

20.4.1.2. the High Court of Australia (as the final forum of appeal from the decision of any such court or tribunal).

20.4.2. The parties submit to the exclusive jurisdiction of the Queensland Courts for the adjudication and resolution of disputes under this trustee lease.

20.4.3. Each party waives all entitlement to object to a party bringing action upon this trustee lease before a Queensland court, including entitlement to claim that the Queensland court is an inconvenient forum or no Queensland court has jurisdiction.

20.4.4. Each party undertakes to refrain from bringing action upon this trustee lease in a forum other than a Queensland court.

20.5. Completion of documents

The trustee lessee irrevocably authorises the trustee and its solicitor, collectively and individually, to complete this trustee lease and every ancillary document, but only prior to the endorsement of the minister's approval on this trustee lease for lodgement for registration of this trustee lease, by:

20.5.1. inserting a sketch or plan identifying the premises (if necessary);

20.5.2. inserting a necessary word and figure; and

20.5.3. initialling, executing, or correcting this trustee lease or document (if necessary),

but to the extent only that doing so will not alter the substance of the parties agreement.

20.6 Native Title

This lease is entered in to in accordance with the provisions of section 24JA of the *Native Title Act 1993* (Cth). In accordance with section 24JA of the *Native Title Act 1993* (Cth), the non-extinguishment principle applies.

[end of document]

**DOUGLAS SHIRE COUNCIL – STANDARD TERMS DOCUMENT FOR A LEASE
OVER FREEHOLD LAND
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DOUGLAS SHIRE COUNCIL – STANDARD TERMS DOCUMENT FOR A LEASE OVER FREEHOLD LAND

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

The following definitions shall have the following meanings unless the context otherwise requires:

act	Includes: <ul style="list-style-type: none">• an omission; and• a refusal to act
act of insolvency	<ul style="list-style-type: none">• Suffering the appointment of a receiver, which appointment is not terminated, postponed or enjoined within 14 days after it is made.• Entering voluntary administration.• Suffering the appointment of a provisional liquidator.• Failing to satisfy a statutory demand under <i>Corporations Act 2001</i> section 459E.• Voluntarily applying to be wound-up, or suffering presentation of an application for winding-up.• Being wound up or being de-registered as a corporation.• Entering a composition or scheme of arrangement for the benefit of creditors.• Failing to secure the return of one's assets within 21 days after a creditor or an encumbrancee lawfully seizes them.• Committing an act of bankruptcy mentioned in <i>Bankruptcy Act 1966</i> section 40.• Presenting a debtors petition for bankruptcy, or suffering the presentation of a creditors petition.• Signing an authority under <i>Bankruptcy Act 1966</i> section 188 (to appoint a controlling lessor).• Becoming bankrupt upon a debtors petition or a creditors petition.
address for notices	For each party: <ul style="list-style-type: none">• its address specified in the reference schedule;• such other address or facsimile number as it has notified to the party giving it a notice as its address or facsimile number for notices; or• if it is not at either such address, its last principal place of business or facsimile number in Queensland known to the party giving it a notice.
adjustment date	A date upon and from which the rate of rent payable under this lease is liable to adjustment. <i>Example: if this lease provides for annual adjustment of the rent, each anniversary of the commencement date is an adjustment date.</i>
adjustment note	An adjustment note as defined in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)</i> , being, without limiting the ambit of that definition, a note: <ul style="list-style-type: none">• in the approved form under that Act; and• detailing an adjustment of the GST payable or paid upon a taxable supply under this lease.
administering authority	The authority responsible for administering an act (for example, the authority that issues licences or permits under an act, and that monitors and enforces compliance with such act).
air-conditioning equipment	The plant, cooling towers, electrical installations, electrical equipment, ducts, valves, insulation, and diffusers used in the manufacture and reticulation of conditioned air throughout the building (including the premises), including: <ul style="list-style-type: none">• all mechanical ventilation equipment; and• (where the context admits) a package unit serving the premises.
appendix	An appendix to this lease.
business day	a day which is not a Saturday, Sunday or public holiday in the locality of the premises;

building	A building that: <ul style="list-style-type: none"> comprises or includes the premises; or forms part of the premises.
caretaker	A person appointed by the lessee to reside upon the premises: <ul style="list-style-type: none"> to help ensure the security of the premises; or to perform other services for the lessee concerning the premises or the land.
chief executive officer	The lessor's chief executive officer, including: <ul style="list-style-type: none"> a person acting in the position at a relevant time; and a person to whom the chief executive officer's power has been delegated at a relevant time for a relevant purpose concerning this lease.¹
clause	A clause, sub-clause or paragraph of this lease.
consideration	Consideration as defined in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)</i> (being, without limiting the ambit of that definition, anything given or done, voluntarily or not, in return for a taxable supply).
cost	Includes loss, liability, damage and expense.
CPI	The Consumer Price Index (All Groups) Brisbane published from time to time by the Australian Bureau of Statistics.
CPI Adjustment	An adjustment of rent calculated in accordance with the following formula: $R = \frac{X \ Y}{Z}$ <p>where:</p> <p>R = the rent payable for the year in respect of which the rent is being calculated .</p> <p>X = the CPI for the quarter ended immediately prior to the commencement of the year in respect of which the rent is being calculated.</p> <p>Y = the rental payable during the year immediately preceding the year in respect of which the rent is being calculated.</p> <p>Z = the CPI for the quarter ended immediately prior to the commencement of the year immediately preceding the year in respect of which rent is being calculated.</p>
creditable acquisition	A creditable acquisition as defined in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)</i> (being, without limiting the ambit of that definition, an acquisition for which the acquirer is entitled to claim an input credit).
damage policy	An insurance policy that indemnifies against cost borne of harm to property, including harm resulting from one or more damaging events.
damaging events	<ul style="list-style-type: none"> fire entry of water storm and tempest lightning flood earthquake explosion and concussion from explosion impact of vehicles, aircraft, and articles escaping from them malicious acts negligent acts civil commotion theft act of god (for a damage policy the lessee must obtain) other risks nominated reasonably by the lessor from time to time (for a damage policy the lessor obtains) other risks against which the lessor considers it prudent or appropriate

¹ *Local Government Act 2009 Section 256 empowers the chief executive officer of a local government, with certain exceptions, to delegate his/her responsibilities, generally or particularly, to another employee of the local government.*

	to insure
defined expenses	In relation to a damage policy: <ul style="list-style-type: none"> for damage: the cost of repairing the damage or reinstating the damaged item or structure, in each case at least to the condition in which it existed before it was damaged; for destruction: the cost of replacing the item or structure destroyed with one of a quality at least equivalent to that of the item or structure before its destruction; the cost of debris removal and disposal, demolition, site clearance, and other work required by an act; the fees payable to architects, engineers, surveyors, solicitors, building contractors, and other consultants and contractors engaged to facilitate the repair, reinstatement, rebuilding, or replacement; and incidental expenses.
development permit	A development approval or development permit issued under, or continued in existence by, the <i>Sustainable Planning Act 2009</i> .
directorate	For a legal entity other than a natural person, or for a non corporate association of persons: <ul style="list-style-type: none"> its board of directors; or its management/governing committee.
electrical equipment	Electrical equipment as defined in the <i>Electricity Act 1994</i> . ²
electrical installation	An electrical installation as defined in the <i>Electricity Act 1994</i> . ³
expiry date	The expiry date stated in Item 6 of the Form 7.
fixed improvement	<ol style="list-style-type: none"> Part of the improvements, and is a structure, of a permanent or semi-permanent character, firmly affixed: <ul style="list-style-type: none"> to the premises; or to a structure upon the premises, to enable the premises to be used or better used for a particular purpose. <p><i>Examples:</i></p> <ul style="list-style-type: none"> a building, whether demountable or not; an observation or viewing tower; floodlighting apparatus (including pole); a swimming pool or other bathing facility; a brick or concrete block barbecue; a cold room; an integrated air-conditioning system and an air-conditioner that is mounted through a hole made in an external wall for the purpose of enabling the machine to be so mounted; an in-ground irrigation system; a fence or wall other than a purpose-designed temporary fence or wall; a building slab; an immovable sightcreen structure (irrespective of whether the screen itself can be re-positioned from side to side upon the structure); a concrete, paved, or otherwise-constructed, path, patio or similar structure; an entrance arch. The expression does not include an item that is affixed: <ul style="list-style-type: none"> to the premises; or to a structure upon the premises, to enable the item or structure to be used or better used. <p><i>Examples:</i></p>

² At 1 March 2010, *Electricity Act* section 13 states, to paraphrase, that "electrical equipment" is any apparatus, appliance, cable, conductor, fitting, insulator, material, meter or wire used for controlling, generating, supplying, transforming, or transmitting electricity at a voltage greater than extra low voltage, or operated by electricity at a voltage greater than extra low voltage, or that is, or forms part of, a cathodic protection system. However, the expression does not include certain equipment associated with motor vehicles, e.g. headlights, spark plugs, and suchlike.

³ At 1 March 2010, *Electricity Act* section 14 states, in broad terms and to paraphrase, that an "electrical installation" is a group of items of electrical equipment permanently connected to one another electrically, other than electricity generation and transmission works items (such as generators, transformers and cables), to which electricity can be supplied from generation and transmission works. An example is the switchboard, wiring, lighting, socket outlets, and other electrical equipment permanently connected for a shopping centre, or for a shop in a shopping centre.

- a wall-mounted dispenser;
- a window-mounted air-conditioner;
- football goalposts;
- a flagpole;
- a cargo container.

force majeure	An event of irresistible force that: <ul style="list-style-type: none"> • occurs by chance; • is beyond the control of the party it impacts; and • cannot be avoided with the exercise of due care by that party. <p><i>Examples: war, civil commotion, terrorist action, natural disaster (such as flood, bushfire, earthquake, major cyclone), general strike, and aviation or maritime disaster.</i></p>
Form 7	means the form 7 which forms part of this lease
general tenancy agreement	The general tenancy agreement to be completed under the <i>Residential Tenancies and Rooming Accommodation Act 2008</i> .
GST	GST as defined in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)</i> (being, without limiting the ambit of the definition in that act, a tax upon the value of a supply of goods and/or services).
harm	All or any of: <ul style="list-style-type: none"> • property loss, including loss through misplacement and theft; • property damage; • death; • personal injury, including shock; and • illness.
include	Encompass or include, without being limited to what is stated as encompassed or included. <i>Example: "act" is defined as including an omission and a refusal to act. However, the expression is not confined to an omission and a refusal to do something; it also encompasses (obviously) a positive action.</i>
input credit	An input tax credit as defined in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)</i> (being, without limiting the ambit of that definition, a tax credit allowed to the consumer of a supply who has borne the GST upon the value of that supply).
insurance-relevant information	<ol style="list-style-type: none"> 1. Any item of information: <ul style="list-style-type: none"> • relating to the lessee, or to any of its officers or principal members; • likely to affect an insurer's decision to grant or to continue lessor insurance against the risks of damaging events; or • likely to affect an insurer's decision to grant or to continue lessor public risk insurance. 2. A principal member of the lessee is a member: <ul style="list-style-type: none"> • holding more than 20% of the voting entitlement at a general meeting of the lessee; or • entitled to appoint to the directorate of the lessee a person holding, or persons holding between them, more than 20% of the voting entitlement at a general meeting of the lessee.
keys	Includes keys, codes, passwords, swipe cards, remote controls and other means of opening or unlocking any door, window, gate or other means of access to the premises or the buildings on the premises.
lessee	means the lessee stated in item 3 of the Form 7 and includes any personal representative or successor in title to the lessee. Where the context permits, the definition also includes all of the lessee's officers, employees, agents, contractors and invitees.
lessor	means the lessor stated in item 1 of the Form 7 and includes any successor in title to the lessor. Where the context permits, the definition also includes all of the lessor's officers, employees, agents, contractors and invitees.
lessor's asset	The lessor's fixtures and any improvements or alterations thereto and any other personal property (as that term is defined in the PPSA) provided by the lessor to the lessee under this lease at any time.
lessor's fixtures	All or any part of the apparatus and plan, equipment, partitions, windows and floor coverings and light and other fittings of the lessor, at any time installed by or on behalf of the lessor, in or located on the land.
lessor's office	The lessor address detailed in the reference schedule and any substitute address the lessor notifies to the lessee.

licensed activity	The activity for which a liquor licence is required or obtained.
liquor licence	A licence or permit for the premises, issued under the <i>Liquor Act 1992</i> .
maintain	Includes repair and replace.
month	A calendar month, that is to say, a period: <ul style="list-style-type: none"> commencing at the beginning of a day of one of the 12 months in the calendar; and ending immediately before the beginning of the corresponding day of the next month; or if there is no corresponding day of the next month, ending at the end of the next month. <p><i>Example: Where a month begins on 31 January, there can be no 30 February, therefore, the month ends on 28 February (or 29 Feb in a leap year).</i></p>
officer	For the lessee: a member of its directorate, a corporate secretary, or an attorney. For the lessor: <ul style="list-style-type: none"> the chief executive officer, including his lawful delegate; or another person to whom the lessor has delegated a relevant power.⁴ For either party: its solicitor.
parking facilities	For clause 6.3 vehicle parking facilities to service the premises.
part	A numbered part or section of this lease, other than an appendix or an attestations page, containing one or more items or clauses.
permitted use	The permitted use specified in the reference schedule. (Also refer to clause 4.1).
planning scheme	The planning scheme governing the region pursuant to the <i>Sustainable Planning Act 2009</i> .
PPSA	<i>Personal Property Securities Act 2009 (Cwth)</i>
premises	means the premises the described in item 5 of the Form 7 and the improvements on those premises.
public risk policy	The public liability insurance policy referred to in clause 10.1.1.
rates	<ol style="list-style-type: none"> General rates, special rates and separate rates, made and levied under the <i>Local Government Act 2009</i> or another act. <i>Examples:</i> <ul style="list-style-type: none"> A separate rate or charge pursuant to <i>Fire and Rescue Service Act 1990</i>, to fund a rural fire brigade operating in a local government area. An environmental levy, or any levy otherwise named but which is imposed to assist or to facilitate preservation, restoration, or improvement of the natural environment/s within the region. Any levy that an owner or occupier of land must pay to the local government under an act other than the <i>Local Government Act 2009</i>. <i>Example: A levy under Fire and Rescue Service Act 1990, to fund fire services in urban districts.</i>
receiver	A receiver, or a receiver and manager, of the property of the lessee relating to the business or other undertaking the lessee conducts upon the premises pursuant to this lease.
recipient	The person to whom a taxable supply is made under this lease.
reference schedule	The reference schedule in clause 1 of the schedule of this lease.
region	The local government area pursuant to the <i>Local Government Act 2009</i> in which the land is located.
registration	Recording a dealing with interest in or concerning the land under the <i>Land Title Act 1994 (Qld)</i> .
rent	The amount specified in the reference schedule as varied on any adjustment date under this lease and includes all statutory outgoings.
rent period	<ul style="list-style-type: none"> The period from the commencement date to the day before first adjustment date.⁵ The period from an adjustment date to the day before the next adjustment date. The period from the last adjustment date and the expiry date.

⁴ *Local Government Act 2009 Section 257 states the persons to whom a local government may delegate power (other than power that the Act obliges it to exercise only by resolution).*

⁵ Refer to clause 1.9 (Block References).

sell	<p>In relation to liquor, includes:</p> <ul style="list-style-type: none">• barter or exchange;• offer, agree or attempt to sell;• expose, send, forward or deliver for sale;• cause or permit to be sold or offered for sale;• supply or offer, agree or attempt to supply in circumstances in which the supplier derives, or would be likely to derive, a direct or indirect pecuniary benefit;• supply or offer, agree or attempt to supply gratuitously, but to gain or keep custom or other commercial advantage; and• any other activity that the <i>Liquor Act 1992</i> includes within the <i>sell</i> definition.
services	<p>The utility services from time to time appurtenant to the land, including:</p> <ul style="list-style-type: none">• electronic services;• fire, sprinkler, and air conditioning;• lighting, gas, fuel, and other energy; and• water, sewerage, and drainage. <p>The infrastructure via which those utility services are delivered, including fittings, fixtures, appliances, plant, and equipment.</p> <p><i>Examples: Air-conditioning equipment, fire equipment, water and sewerage pipes</i></p>
state	<p>The State of Queensland (as a constitutional entity).</p>
supplier	<p>The person who makes a taxable supply under this lease.</p>
taxable supply	<p>A taxable supply as defined in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)</i>, being, without limiting the ambit of that definition a supply made:</p> <ul style="list-style-type: none">• by a person who is, or is required to be, registered for GST;• for consideration, <p>in the course of or in furthering an enterprise connected with Australia.</p>
tax invoice	<p>A tax invoice as defined in the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)</i>, being, without limiting the ambit of that definition, an invoice:</p> <ul style="list-style-type: none">• in the approved form under that Act; and• detailing the price for a Taxable Supply under this lease.
utility charges	<p>Charges by the local government for the supply of:</p> <ul style="list-style-type: none">• water, gas, and sewerage services; and• cleansing services. <p>Any other service charge assessed in relation to the premises under chapter 4, part 1 of the <i>Local Government Act 2009</i>.</p>

1.2. Superseded acts, etc

Where an act, section, provision, law, person, body or other thing referred to in this lease is renamed, superseded or replaced with another act, law, person, body or other thing (as the case may be), references in this lease will be taken to be changed in a corresponding manner except where the context requires otherwise.

1.3. Cognate expressions

Derivatives of a defined expression bear meanings corresponding to and consistent with the definition.

1.4. Particular references

Where a provision that is prefaced or introduced by the expression, "in particular" or "particularly", refers to or qualifies another provision of more general application, the former provision does not limit the ambit of the latter provision.

1.5. Imputed acts

Reference (direct or indirect) to a person's act (including, where applicable, the act of a guarantor) includes an imputed act, that is to say the act of another person, which act is deemed by law to be the first-mentioned person's act because of the relationship between the two.

1.6. Parties

1.6.1. Reference to a party who is a natural person includes the person's personal representatives and permitted transferees.

1.6.2. Reference to a party that is a corporation includes the corporation's successors and permitted transferees.

1.7. Concurrent responsibility

Where a party is composed of two or more persons, each item of agreement by the party binds all of those persons collectively and each of them as an individual. This collective and individual responsibility is otherwise known as joint and several responsibility.

1.8. References to bodies, offices and positions

Reference to an entity, office, or position includes an entity, office, or position established or constituted in its stead or succeeding as nearly as may be to its power or function.

1.9. Block references

1.9.1. Reference to the period between two specified dates, times or periods includes each of those two dates, times or periods.

1.9.2. Reference to the numbers, provisions or items, in this or another document, between two numbers, numbered provisions or numbered items, includes each of those two numbers, numbered provisions or items.

1.10. Miscellaneous references

1.10.1. Reference to the premises includes any area, section, or portion of the premises.

1.10.2. Reference to the singular includes the plural, and vice-versa.

1.10.3. Reference to a gender includes each other gender.

1.10.4. Reference to a person includes a corporation or other legal entity,⁶ a firm, and a voluntary association.

1.10.5. Reference to an agreement or other instrument is to that agreement or instrument as amended, supplemented, replaced, or novated.

1.10.6. Reference to money is a reference to Australian dollars and cents.

1.10.7. Reference to a time of day is a reference to Australian eastern standard time.

1.10.8. Reference to termination of this lease is a reference to termination by any means (for example, by expiry or forfeiture).

1.10.9. Reference to writing is a reference to reproduction of words, figures, symbols, and shapes in visible form, in English.

1.11. Headings and notes

Subject headings, footnotes, endnotes, and the table of contents exist for convenience only and are to be disregarded when interpreting this lease.

⁶ A local government constituted under the Local Government Act 2009 is an example of a legal entity that is neither a corporation nor a natural person. For clarity, this is not a characteristic of local governments generally; it is peculiar to Queensland local governments constituted under the Local Government Act 2009.

1.12. Contra proferentem interpretation

This lease is not to be interpreted against the interest of the lessor merely because this lease was prepared by the lessor or on its behalf.

1.13. Cumulative entitlements

The remedies and other entitlements this lease gives a party are cumulative, not alternative and are not exclusive of other entitlements that the party possesses (whether under an act or at general law).

1.14. Character of lease instrument

Irrespective of whether it records the passage of consideration between the lessor and the lessee, this lease is a deed.⁷

1.15. Modification of implied covenants

The covenants implied by *Property Law Act 1974* sections 105⁸ and 107⁹ are modified by or excluded from this lease to the extent that they are inconsistent with it. No covenant is implied into this lease by operation of *Property Law Act 1974* section 109.¹⁰

1.16. Survival of provisions

A provision of this lease capable of continued application after this lease has terminated or after a court has issued judgement or made an order against a party concerning that provision, will remain enforceable despite the termination, judgement or order.

1.17. Severance

A provision of this lease that is void, voidable, illegal or unenforceable or the retention of which would render this lease void, voidable, illegal, or unenforceable, is to be treated as having been omitted from this lease.

1.18. Jurisdiction

Disputes under this lease are to be adjudicated exclusively by:

1.18.1. Queensland courts and tribunals of competent jurisdiction; and

1.18.2. the High Court of Australia (as the final court of appeal).

2. RENT AND CHARGES

2.1. Payment of rent

The lessee must pay the annual rent in advance, not later than the first day of each rent period (refer to clause 2.8 for general provisions concerning payment of money to the lessor), without demand.

2.2. Rent pending determination

2.2.1. Until rent for any rent period has been determined under this clause, the lessee must continue to pay rent monthly in the same amount as was payable during the preceding rent period .

2.2.2. If a determination of rent under this clause reveals:

2.2.2.1. a deficiency in rent paid for the relevant rent period to the date on which the determination is made, the lessee must pay the deficiency to the lessor within 14 days from the date of that determination; or

⁷ A deed is a special form of contract that is signed and sealed by each party (contrasting with an agreement under hand, which is merely signed by each party). A contract by deed is enforceable without the necessity for one party to do or promise anything in return for what the other party does or promises.

⁸ Section 105 specifies obligations to pay the agreed rent and keep the premises repaired, that apply unless the parties agree otherwise.

⁹ Section 107 specifies a number of lessor entitlements that will be implied into a lease unless the parties agree otherwise.

¹⁰ Section 109 specifies a number of provisions that can be implied into a lease by the inclusion of short form expressions in the document.

2.2.2.2. an excess in rent paid for the relevant rent period to the date on which the determination is made, the lessor will allow the lessee to deduct the excess from the next monthly rent payment or, if necessary, rent payments.

2.2.3. From the first day of the month that follows the date on which the determination of rent is made under this clause, the rent will for the relevant rent period will be one twelfth (to the next whole cent) of the rent for that rent period as determined by this clause.

2.3. Payment of rates and utility charges

The lessee must pay upon demand all rates and utility charges assessments, levied against or with respect to the premises.

2.4. Charges for gas and electricity

The lessee must pay all charges for gas and electricity consumed upon or serving the premises.

2.5. Cost of approved work

2.5.1. The lessee must perform at its own expense whatever work the lessor approves for performance by it upon the premises or elsewhere upon the land.

2.5.2. The lessee will indemnify the lessor against every cost borne of harm arising from performance of the work.

2.5.3. If the lessee does not perform the work and the lessor does, the cost of performing the work will be a debt due to the lessor by the lessee in accordance with clause 2.7.

2.6. Costs of litigation

2.6.1. This clause applies if, through no fault of its own, the lessor is made a party to litigation:

2.6.1.1. commenced by or against the lessee (other than litigation between the lessor and the lessee); and

2.6.1.2. arising directly or indirectly from the lessee's occupancy of the premises or the land.

2.6.2. The lessee must pay the lessor upon demand:

2.6.2.1. all legal fees and disbursements (assessed on a solicitor and own client basis) incurred by the lessor in connection with the litigation save those recovered from another party to the litigation; and

2.6.2.2. costs reasonably incurred by the lessor in seeking recovery of those costs from the other party or parties.

2.6.3. The lessor is not obliged to take unreasonable steps to recover its costs from another party to the litigation.

2.7. Costs generally

2.7.1. If the lessee does not perform any obligation under this lease, the lessor may perform that obligation. The cost of performing that obligation will be a debt due to the lessor by the lessee. This clause applies to any obligation that may be unfinished at the expiration of the lease.

2.7.2. The lessee must pay the lessor:

2.7.2.1. all duty upon or arising from this lease and any dealing with this lease (including interest and fines other than interest and fines resulting from omissions of the lessor); and

2.7.2.2. the registration fees upon this lease.

2.7.3. The lessee also must bear the lessor's reasonable legal and other expenses of:

2.7.3.1. negotiating, documenting, executing and registering this lease;

2.7.3.2. obtaining any sketch or survey plan of the premises;

- 2.7.3.3. obtaining a required consent or approval (such as a development approval) concerning this lease or a dealing with this lease, particularly a consent or approval requested by the lessee;
- 2.7.3.4. negotiating, documenting, executing and registering consent to a lessee dealing with this lease (for example, a transfer, a sublease, mortgage, or a surrender); and
- 2.7.3.5. exercising or attempting to exercise an entitlement accruing to the lessor upon a default by the lessee under this lease or a consent agreement.

2.8. Payment of money generally

- 2.8.1. The lessee must pay all money due to the lessor under this lease:
 - 2.8.1.1. without set-off or other deduction;
 - 2.8.1.2. upon demand (absent contrary express provision in this lease); and
 - 2.8.1.3. in the manner the lessor directs.
- 2.8.2. Unless the lessor directs otherwise, the lessee must pay the money by delivering or posting it to the lessor at the lessor's office.

3. GOODS AND SERVICES TAX

3.1. Character of payments (GST)

Unless otherwise specified in this lease, consideration for a taxable supply under this lease is GST-exclusive.

3.2. Responsibility for payment of GST

The recipient must bear the GST upon a taxable supply made under this lease and pay the tax to the supplier with the consideration for the taxable supply.

3.3. Adjustment for input credits (reimbursement of expenses)

- 3.3.1. If this lease requires a recipient to reimburse a supplier the full cost of a creditable acquisition, that cost is to be net of the full Input credit to which the supplier is entitled for the cost.
- 3.3.2. If this lease requires the reimbursement of a percentage of the cost of a creditable acquisition, the percentage is to be net of an equivalent percentage of the input credit to which the supplier is entitled for the cost.¹¹
- 3.3.3. If the reimbursement of all or part of the cost of a creditable acquisition constitutes consideration for a taxable supply, the recipient must pay the supplier, in conjunction with the reimbursement payment, the GST referable to that taxable supply.

3.4. Adjustments by taxation authority

If the GST paid by the supplier differs from the amount of GST borne by the recipient because the administering authority has lawfully adjusted the value of a taxable supply:

- 3.4.1. the recipient must pay the shortfall to the supplier; or
- 3.4.2. the supplier must refund the overpayment to the recipient.

3.5. Tax Invoices and adjustment notes

¹¹ Example: If 75% of the cost of the creditable acquisition is to be reimbursed, the recipient may deduct from that amount 75% of the input credit to which the supplier is entitled for the acquisition.

- 3.5.1. The supplier need not give the recipient a tax invoice or adjustment note for a taxable supply under this lease if the administering authority has issued a written determination permitting the recipient to issue its own tax invoice or adjustment note for the supply.
- 3.5.2. Otherwise, however, the supplier must give the recipient, within 14 days after it receives the consideration and GST, a tax invoice or adjustment note for the taxable supply.

3.6. Payment of prospective GST (performance securities)

If a party is obliged to provide security for the discharge of obligations under this lease, the security sum must include the GST that would be payable were the money drawn and applied against the cost of discharging the obligations.

4. USE OF PREMISES

4.1. Permitted use

The lessee must use the premises only for activities specified in the reference schedule.

4.2. Assumption of risk by lessee and preservation of lessor insurance protection

- 4.2.1. The lessee will occupy and use the premises and any other part of the land permitted to be used by the lessee under this lease at its own risk, and the lessor will not be liable for harm to lessee property.
- 4.2.2. Further, the lessor will not be liable for loss of profits resulting from that harm.
- 4.2.3. This clause does not exclude lessor liability where the damage results from lessor default or negligence.
- 4.2.4. Other than in the ordinary course of conducting the permitted use, the lessee must not do or permit to occur upon the premises anything that it knows, or ought reasonably to know, will or might:
- 4.2.4.1. render void or voidable a policy of lessor insurance over the premises, or over property kept there; or
- 4.2.4.2. increase a premium payable upon the insurance.
- 4.2.5. Without prejudice to the lessor's entitlement to terminate this lease for breach of this clause, the lessee must pay the lessor upon demand an insurance premium increase occasioned by such a breach.

4.3. Standards for conduct

- 4.3.1. The lessee and its employees and/or agents in carrying on the permitted use from the premises must:
- 4.3.1.1. act honestly, competently and reasonably to maximise the benefit of this lease to the lessee and the lessor;
- 4.3.1.2. demonstrate a high standard of workplace behaviour and personal conduct;
- 4.3.1.3. treat customers, visitors to the premises and the lessor's employees and/or agents with respect and courtesy;
- 4.3.1.4. comply with any lawful and reasonable direction given by the lessor or an authorised representative of the lessor;
- 4.3.1.5. act respectfully and promptly when dealing with requests or enquiries from the lessor;
- 4.3.1.6. attend meetings called by the lessor at the specified time, unless prior notice of non-attendance has been given to the lessor or its authorised representative;
- 4.3.1.7. deliver services to customers in a courteous and business-like manner; and
- 4.3.1.8. handle any complaints from customers or employees of the lessor in a professional and prompt manner and where the matter is unable to be resolved, the lessee will refer the matter to the authorised contact person of the lessor to discuss possible methods of dispute resolution.

4.3.2. The lessee and its employees and/or agents in carrying on the permitted use from the premises must not:

- 4.3.2.1. do or permit anything that might adversely or reflect unfavourably upon the business or reputation of the lessor or the premises;
- 4.3.2.2. conduct themselves in such a manner as to cause any damage to the reputation of the lessor or of the premises itself; or
- 4.3.2.3. publicly criticise the lessor in relation to the premises nor criticise the premises itself, unless it is permitted or obliged by law to do so.

4.3.3. In particular, the lessee and its employees and/or agents in carrying on the permitted use from the premises or any other area of the land must not do or permit anything that:

- 4.3.3.1. might confuse, mislead, or deceive the public or persons with whom the lessee deals or might deal;
- 4.3.3.2. is unlawful; or
- 4.3.3.3. is annoying, noxious, or offensive to the lessor, persons lawfully occupying or using the land, or persons outside or beyond the land.

4.4. Improper/noxious behaviour

4.4.1. The lessee must ensure that nothing illegal, immoral, noxious or offensive is undertaken upon the premises.

4.4.2. Without qualifying that obligation, the lessee must ensure that nothing occurs upon the premises that might cause, in the lessor's opinion, nuisance, annoyance, or cost to any person, particularly:

- 4.4.2.1. the lessor;
- 4.4.2.2. a person lawfully upon or about the premises;
- 4.4.2.3. another person lawfully occupying or using the land; or
- 4.4.2.4. an owner or occupier of premises neighbouring the land.

4.5. Overnight sleeping/residential usage

4.5.1. In particular, the lessee must not permit any person, other than as a caretaker appointed under Part 15 or otherwise specified under the permitted use:

- 4.5.1.1. to sleep overnight upon the premises (on a temporary or permanent basis); or
- 4.5.1.2. otherwise to use the premises for residential purposes.

4.5.2. Despite the preceding clause, the lessee may permit a person to sleep overnight upon the premises on a temporary basis provided that:

- 4.5.2.1. it is a necessary part of, or associated with an activity or event being conducted by the lessee; and
- 4.5.2.2. the lessee first obtains the written approval of the lessor, which may be given subject to such conditions as the lessor thinks fit.

4.6. Security

The lessee must ensure that the doors and windows through which it is possible (irrespective of difficulty) to access or leave the premises are locked securely at all times when the premises are not occupied.

4.7. Keys

4.7.1. The lessee must maintain a key register and give the lessor, when requested, copies of keys and details of the key register.

4.7.2. The lessee must return all keys to the premises to the lessor at the expiration or sooner determination of the lease.

4.7.3. The lessee must not change the locks to the premises without the lessor's prior written consent.

4.8. Cessation of use

4.8.1. Subject to clause 12, the lessee must not cease, wholly or substantially, to undertake the permitted use upon the premises.

4.8.2. For clarity, temporary suspension of use necessitated by the following does not equate to cessation for this clause:

4.8.2.1. the performance of maintenance work; or

4.8.2.2. the performance of development work for which the lessee holds a development permit and a separate lessor consent pursuant to this lease.

4.8.3. Without prejudice to any other right the lessor may have, if the lessee ceases to undertake the permitted use on the premises, the lessor may require the lessee to surrender this lease in respect of the whole or any part of the premises pursuant to clause 7.9.

4.9. Fees for use of premises

Subject to clause 7.4.5, the lessee must not charge any person a fee to use the premises, without lessor approval. However, where the lessee is a corporation or incorporated association reasonable membership admission and subscription fees may be charged in accordance with its constitution if applicable.

4.10. Administration of premises

The lessee must make the rules and arrangements that the lessor directs it to make for:

4.10.1. protection, control and management of the premises; and

4.10.2. exclusion of dissolute, disreputable or otherwise undesirable persons from the premises.

4.11. Compliance with statutory requirements

4.11.1. The lessee must discharge punctually the relevant requirements of all acts that regulate occupation and use of the premises and other areas of the land that it uses.

4.11.2. In particular, the lessee must use the premises in compliance with all acts governing:

4.11.2.1. fire safety;

4.11.2.2. health and hygiene; and

4.11.2.3. storage, supply, sale, and consumption of intoxicating or stupefying substances upon the premises.

4.11.3. Further, the lessee must not do anything that might render the lessor liable to incur a penalty prescribed by an act, or a cost generated by the necessity to discharge a requirement under an act.

4.12. Boundary Fences

Despite anything in the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*:

4.12.1. the lessee must maintain in good condition and repair any fencing within or on the boundary of the premises as at the commencement date; and

4.12.2. if the use of the premises by the lessee requires fencing of a particular nature or standard, or if the lessee considers such fencing desirable, the lessee must construct and maintain that fencing at its cost.

4.13. Signage and advertising devices

- 4.13.1. The lessee must not paint or place a sign or hoarding upon an exterior surface of the premises (irrespective of whether the surface form part of the premises) without lessor consent;
- 4.13.2. No advertising sign, bill, placard, notice or poster is to be affixed, painted, exhibited or operated upon the premises without lessor permission;
- 4.13.3. Any advertising sign, bill, placard, notice or poster mentioned must only relate to the operation and use of the premises or to a sponsor of the lessee;
- 4.13.4. No other advertising is permitted;
- 4.13.5. No political advertising sign, bill, placard, notice or poster is allowed to be affixed, painted, exhibited or operated upon the premises; and
- 4.13.6. Upon expiry or sooner termination of this lease, the lessee must:
 - 4.13.6.1. remove promptly each sign, bill, placard, notice or poster or hoarding it has painted or placed upon the premises or elsewhere upon the land; and
 - 4.13.6.2. restore the area affected by each removal to the condition in which it existed immediately before the sign, bill, placard, notice or poster or hoarding was painted or installed.

4.14. Connection of electricity

If required by the lessor, the lessee must arrange with the relevant electricity supply authority for connection of suitable mains electricity to the premises and ensure, to the satisfaction of the electricity supply authority, that the connection and any equipment installed upon the premises by that authority are properly maintained.

4.15. Use of services

- 4.15.1. The lessee must not use a service, or permit its use, for a purpose other than one for which it is designed and constructed. In particular, the lessee must ensure that no sweepings, rubbish, rags, ashes, or other deleterious substances are placed in water or sewerage apparatus or in air-conditioning equipment.
- 4.15.2. Except to the extent the lease permits, the lessee must not interfere with a service without lessor consent.

4.16. Light and power

Other than during a period of power failure or power restriction (when it may use auxiliary power or lighting other than an exposed flame), the lessee may use only light, power, or heat generated by electric current supplied through meters.

4.17. Electrical equipment

- 4.17.1. The lessee must not install upon the premises, without lessor consent, equipment that overloads the electrical infrastructure or components serving the premises.
- 4.17.2. If the lessor grants consent, the lessee must meet the cost of all alterations necessary to meet the requirements of the insurers of the premises and relevant acts. If required by the lessor, the lessee must deposit with the lessor the estimated cost of the alterations before they are commenced.

4.18. Heating apparatus and inflammable substances

- 4.18.1. The lessee must not use, without lessor consent, apparatus that radiates heat in a manner or at a level that creates a risk of harm other than in the ordinary course of conducting the permitted use. The lessor must not withhold or withdraw consent unreasonably but may grant consent subject to conditions.
- 4.18.2. Examples of apparatus to which this clause applies are blowtorches and other items that produce naked flame and soldering and welding equipment.
- 4.18.3. Examples of commonly-used apparatus to which this clause does not apply are computer hard drives and monitors, copiers, and similar information technology items, radios, televisions, and similar audio-visual devices, urns, jugs, and

similar appliances for heating beverages, stoves and ovens properly connected to reticulated energy supplies and electric light globes.

4.18.4. The lessee must not use an inflammable substance within the premises, or permit its use there, other than in the ordinary course of conducting the permitted use.

4.19. Earthwork and extractive activities

Subject to clause 5.5, the lessee must ensure that:

4.19.1. no earthwork is undertaken upon the premises or other part of the land permitted to be used by the lessee under this lease;

4.19.2. no sand, stone, soil, plant, vegetation or mineral is removed from the premises or that other part of the land,

except where (and only to the extent) reasonably necessary for construction or installation of improvements to the premises that are:

4.19.3. expressly required of it under this lease; and

4.19.4. approved by the lessor; and

4.19.5. approved, if required, under the relevant legislation.

4.20. Liquor and Gaming

4.20.1. The lessee must not store, sell or supply, or allow to be stored sold or supplied, any liquor on or from the premises:

4.20.1.1. except with the prior written consent of the lessor; and

4.20.1.2. according to any required license or other authority under the *Liquor Act 1992*.

4.20.2. The lessee must not operate gaming machines on the premises under a gaming machine licence (as defined in the *Gaming Machine Act 1991*) without the prior written consent of the lessor.

4.20.3. The lessee must not operate KENO or TAB facilities on the premises.

5. CLEANING, HEALTH, MAINTENANCE AND REPAIR

5.1. Consequences of non-compliance

Without limiting any other right which the lessor may have pursuant to this lease or at law, if the lessee fails to comply with its obligations under this part, the lessor may remedy that failure and recover any costs incurred pursuant to clause 2.7.

5.2. Legislative requirements

The lessee shall at the lessee's expense observe perform and fulfil all the requirements of any acts so far as the same may apply to the premises or to any business from time to time being conducted therein and in particular but without limiting the generality of the foregoing shall comply with the requirements of all such acts relating to health, water supply, sewerage, asbestos and fire and shall not knowingly or wilfully do or permit to be done anything which may conflict with any such acts.

5.3. Compliance with requirements

The lessee must comply with the requirements of any health, local or other authority relating to the premises and other improvements, buildings, fences and other structures thereon.

5.4. Cleaning of the premises

5.4.1. The lessee shall keep the premises in a thorough state of cleanliness.

5.4.2. The lessee shall not allow any accumulation of useless property or rubbish therein and shall at its own expense ensure the regular cleaning of the interior of the premises and exterior surfaces of the premises during which times the premises is open for business or in use.

5.4.3. Kitchen areas must be kept clean and free from greases, oils, etc, at all times.

5.4.4. Foodstuffs must be stored in a safe and hygienic method.

5.4.5. Equipment is to be stored when not in use.

5.4.6. Should any part of the premises or any other area of the land be left in an unacceptable condition the lessor will attend directly to the matter and the cost associated with the cleanup will be charged to the lessee in accordance with clause 2.7.

5.5. Pest control

The lessee must keep the premises free of rodents, termites, cockroaches, and other vermin.

5.6. Infectious diseases

If it discovers, or possesses reasonable grounds for believing or suspecting, that there is present upon the premises an infectious disease that requires notification under an act, the lessee must:

5.6.1. notify the proper authority or authorities as required by that act;

5.6.2. notify the lessor; and

5.6.3. fumigate and disinfect the premises thoroughly.

5.7. Landscaping and gardening

Other than where the premises comprise only a building or part of a building, the lessee must:

5.7.1. keep the premises free of long grass and weeds;

5.7.2. water and fertilise all plants on the premises;

5.7.3. replace plants that die or are destroyed on the premises;

5.7.4. plant trees and lay grass upon the premises, and otherwise landscape them, as required by the lessor;

5.7.5. clear, fell and remove or prune trees on the premises in accordance with the reasonable directions of the lessor;

5.7.6. not clear, remove or destroy any native vegetation without the prior consent of the lessor; and

5.7.7. throughout the term and to the lessor's satisfaction, maintain the landscaping and gardening required under this clause.

5.8. Water supply, waste disposal facilities and roof water

5.8.1. If required by the lessor, the lessee must install and maintain, to the lessor's satisfaction, water supply facilities and sewerage facilities or effluent and waste water drainage facilities to serve the premises.

5.8.2. Installation includes connecting the facilities to the relevant local mains pipes adjacent or opposite the premises.

5.8.3. The lessee's responsibility to maintain the relevant facilities does not extend to the mains connections outside the premises.

5.8.4. If required by the lessor, the lessee must construct whatever facilities the lessor requires at any time for collecting and draining roof water from the premises.

5.9. Building inspections

5.9.1. The lessor may direct the lessee to obtain a building inspection report in relation to the premises:

5.9.1.1. at any time reasonably determined by the lessor, provided that it is not less than five years since the latter of:

5.9.1.1.1 the commencement date; or

5.9.1.1.2 the date on which a building inspection report was last obtained by the lessee pursuant to this clause; or

5.9.1.2. after any incident or circumstance which in the lessor's opinion, acting reasonably:

5.9.1.2.1 may have caused structural damage to the premises; or

5.9.1.2.2 is indicative of a need for repairs or maintenance work to be carried out on the premises.

5.9.2. The lessee must provide one copy of the building inspection report to the lessor within the time period required by the lessor, and must retain a copy.

5.9.3. The lessor may, after reviewing the report:

5.9.3.1. direct the lessee to carry out any repairs or maintenance work which falls within the lessee's obligations in this lease, within a reasonable time specified by the lessor. The lessee must comply with any such direction; and

5.9.3.2. enter the premises and carry out such work as the lessor considers necessary or desirable.

5.9.4. In this clause, "building inspection report" means a written report prepared by a licensed building inspector (including a licensed pest inspector, where appropriate) as to the structural soundness, and state of repair and condition of the premises and any associated improvements.

5.10. Maintenance (general)

5.10.1. The lessee must carry out or cause to be carried out proper maintenance of the premises, including air-conditioning equipment and other services within the premises, all fixtures and fittings and any alterations by the lessee, to keep them in good repair, working order, and condition, without allowance for fair wear and tear. However, the lessor will maintain all underground services except to the extent that they are damaged by the lessee or any employee, contractor or invitee of the lessee.

5.10.2. The lessee is to keep a register of maintenance undertaken at the premises and must provide a copy to the lessor if requested. This register is to:

5.10.2.1. describe the maintenance undertaken;

5.10.2.2. record who undertook the work;

5.10.2.3. record the date the work was completed; and

5.10.2.4. record the expenditure associated with the work.

5.11. Maintenance of premises and services (particular)

5.11.1. Without limiting the effect of clause 5.10, the lessee's obligation to maintain the premises and services includes:

5.11.1.1. rectifying damage to the premises;

5.11.1.2. rectifying damage caused by the lessee or any employee, contractor or invitee of the lessee, to any services;

5.11.1.3. repairing or replacing all broken, cracked or damaged plate or other glass;

- 5.11.1.4. replacing all broken or faulty light bulbs and tubes within the premises;
- 5.11.1.5. maintaining doors, locks, windows and window fittings in the premises in good working order and condition;
- 5.11.1.6. ensuring that electrical equipment and electrical Installations connected to the source of electricity supply in the premises is maintained free of defects likely to cause fire or electric shock; and
- 5.11.1.7. repairing or replacing (as necessary) lessor property damaged by the lessee which repair or replacement may be, at the lessor's option, effected by the lessor at the lessee's expense.

5.11.2. The obligation in this clause extends to:

- 5.11.2.1. rectifying structural deterioration and damage;
- 5.11.2.2. rectifying fair wear and tear;
- 5.11.2.3. rectifying deterioration and damage attributable to fair wear and tear; and
- 5.11.2.4. removing graffiti, and reinstating (as necessary) the surfaces affected by the graffiti.

5.11.3. Reinstating a surface affected by the graffiti includes repainting or re-staining the surface to which the graffiti was applied and, to the extent it is necessary to do so to ensure reasonable consistency of finish with surfaces surrounding or adjacent that surface, repainting or re-staining the surrounding or adjacent surfaces.

5.12. Repainting

- 5.12.1. During the last three (3) months of the term, and at any other time it is reasonably required by the lessor to do so, the lessee must repaint or re-treat those surfaces of the premises that are painted or otherwise treated at its own expense including the cost of paint and other material and to the lessor's satisfaction, in which respect the lessor must act reasonably. This clause applies to both internal and external paintwork.
- 5.12.2. The lessee must use, for the purpose of repainting or re-treating the premises, paints or materials of at least the same quality and in at least the same quantities (in terms of the number of coats) as those with which the relevant surfaces were previously painted or treated.
- 5.12.3. If the lessee fails to discharge its obligations under this clause, the lessor may perform the work at the lessee's expense in accordance with clause 2.7.
- 5.12.4. This clause does not apply to a fixed improvement that the lessor permits the lessee to sever and remove from the premises (refer to clause 6.5.)

5.13. Damage to premises

Any damage caused wilfully or accidentally is the responsibility of the lessee and the lessor reserves the right to recover financial costs associated with such damage in accordance with clause 2.7.

5.14. Notice of damage, defect or danger

The lessee must notify the lessor promptly if it becomes aware, or is informed, of:

- 5.14.1. damage to the premises (other than minor damage);
- 5.14.2. damage to, or the defective operation of, a service;
- 5.14.3. an unsafe condition of the premises or another part of the land;
- 5.14.4. an unsafe condition upon an area adjacent the land via which persons access the land or the premises; and

5.14.5. a dangerous or potentially dangerous activity in which persons are engaging regularly or from time to time upon the premises or elsewhere upon the land, or upon an area adjacent the land via which persons access the land or the premises.

5.15. Licensed personnel

5.15.1. The lessee must ensure that licensed personnel attend to all installation and maintenance work upon the premises or services including, but not limited to:

- 5.15.1.1. water supply, sewerage and drainage apparatus;
- 5.15.1.2. electrical and mechanical apparatus;
- 5.15.1.3. buildings and other structures;
- 5.15.1.4. vermin and pest control;
- 5.15.1.5. wildlife removal;
- 5.15.1.6. other things for which the application of formally-accredited skill is necessary or prudent.

5.15.2. For this clause, *licensed personnel* are persons licensed under an act to perform the work concerned.

5.16. Environment protection and duty of care

5.16.1. The lessee must not dispose of or allow to be disposed of, any substance or thing (including refuse, garbage, oil or chemical) into any watercourse, the sea or on the land (including the premises). For this clause and without limitation, a substance or thing is disposed of if it leaks, or is washed, blown or otherwise enters, into any watercourse, the sea or onto the land (including the premises).

5.16.2. Without limiting clause 5.16.1, the lessee must:

- 5.16.2.1. store and keep all refuse and garbage in proper containers; and
- 5.16.2.2. dispose of all trade refuse and trade garbage regularly and hygienically at an approved refuse station without causing pollution or damage to the land (including the premises), any adjoining land, a watercourse or the sea.

For this clause, and without limitation, trade refuse and trade garbage includes debris from building works, chemicals from chemical works, medical waste and other waste of this nature but does not include general refuse or and garbage that is collected regularly by or for the relevant local government.

5.16.3. The lessee must:

- 5.16.3.1. use all reasonable endeavours to overcome and minimise any harmful effects on the environment arising from the use of the premises; and
- 5.16.3.2. rehabilitate the premises, and any watercourse, the sea, the land and any other land (“the affected areas”) if there is any damage caused to the premises or the affected areas by its use of the premises or any other part of the land.

6. ALTERATIONS AND ADDITIONS

6.1. Alterations/additions by lessee

6.1.1. Unless otherwise permitted or required by this lease, the lessee must not make improvements, alterations, or additions to the premises, or allow them to be made, without lessor permission.

6.1.2. In any event, the lessee must ensure that all improvements, alterations and additions it makes or allows to be made to the premises are made:

- 6.1.2.1. competently;
- 6.1.2.2. in conformity with plans approved by the lessor in its capacity as lessor of the land;
- 6.1.2.3. in conformity with the conditions of all relevant development permits;
- 6.1.2.4. using quality materials; and
- 6.1.2.5. otherwise in conformity with the directions of the lessor, and to its satisfaction.

6.2. External lighting

- 6.2.1. The lessee must not install external lighting upon the premises without lessor approval.
- 6.2.2. The lessee also must not allow approved external lighting (other than lighting approved for the purpose of optimising the security of the premises) to operate later than the time (if any) nominated by the lessor, or if the lessor has not nominated a time, 10:00pm.

6.3. Cost of car parking facilities

- 6.3.1. If the lessor determines that the permitted use renders the provision of parking facilities necessary or desirable, the lessee must contribute all or part of the cost of constructing and maintaining those parking facilities upon the premises, or upon land owned by or under the control of the lessor, as determined by the lessor, acting reasonably, but the lessor's determination must not be inconsistent with a condition of a development permit for the premises or the land.
- 6.3.2. The lessor, subject to clause 6.3.1, will determine (acting reasonably, but in its sole discretion) the extent and type of parking facilities required and the location and design of those facilities.
- 6.3.3. The lessor will maintain the parking facilities constructed outside the premises, and, at regular periodic intervals determined by it, will notify the lessee of:
 - 6.3.3.1. the maintenance costs incurred by the lessor during the period specified in the notice; and
 - 6.3.3.2. the contribution to those costs (which contribution may be the whole of the costs) for which the lessee is responsible, calculated in accordance with the lessor's determination under this clause.

6.4. Vesting of fixed improvements

Fixed improvements that the lessee constructs or installs upon the premises will become part of the land from the time of their construction or installation.

6.5. Severance of and removal fixed improvements

- 6.5.1. The lessee may not sever a fixed improvement from the premises unless the lessor approves the severance or the lessor requires the lessee to sever or remove the item.
- 6.5.2. Mere severance from the premises does not re-vest a fixed improvement in the lessee.
- 6.5.3. If the lessee wishes to remove a fixed improvement it has made to the premises, it must apply for lessor permission, before the expiry date. An application for permission to remove a fixed improvement must detail fully:
 - 6.5.3.1. the improvement;
 - 6.5.3.2. how the lessee proposes to sever and remove it; and
 - 6.5.3.3. how the lessee proposes to repair damage caused or likely to be caused by the severance and removal, and to reinstate the premises and any other part of land to the condition required by clause 8.7.2 (including, where applicable, how it will perform necessary landscaping or land stabilisation work).
- 6.5.4. The lessor may grant or refuse consent to the application in its absolute discretion, conditionally or unconditionally, and without giving reasons.

6.5.5. The lessee must:

- 6.5.5.1. comply strictly with the requirements (if any) the lessor imposes concerning the severance and removal process;
- 6.5.5.2. ensure that the improvement is severed and removed, and all relevant repair and reinstatement work is completed, to the lessor's satisfaction (acting reasonably); and
- 6.5.5.3. ensure that the severance and removal is completed not later than 60 days after the date of termination.

6.5.6. Irrespective of any conditions of consent imposed by the lessor, severance and removal must be completed not later than 60 days after the expiry date or the date this lease otherwise terminates.

6.5.7. The lessee will lose its entitlement to sever and remove any relevant improvements that remain upon the premises or the land after the 60-day period expires.

6.5.8. Without limiting the effect of any other provision in this clause, if it severs and removes a fixed improvement, the lessee must, to the lessor's satisfaction clear from the premises what it has severed, including all debris created by the severance and removal, and leave the premises and any other part of the land used by the lessee clean and tidy.

7. RESERVATIONS

7.1. Application of part

The entitlement to exclusive possession granted by the lessor to the lessee under this lease is limited to the extent of the reservations contained in this clause 7.

7.2. Suitability of premises

The lessor does not expressly or impliedly warrant that the premises are at the commencement date or will remain fit suitable or adequate for all or any of the purposes of the lessee and all warranties (if any) as to the suitability, fitness and adequateness of the premises implied by law are negated.

7.3. Use of premises by third persons

7.3.1. When the lessee is not using the premises for its own activities under this lease, the lessee must, at the lessor's risk and liability, permit others to use the premises for appropriate activities subject to clause 7.4.

7.3.2. However, the lessee need not make the premises available if the person wishing to use them:

- 7.3.2.1. fails to seek the lessee's permission in sufficient time; or
- 7.3.2.2. fails to give the lessee whatever assistance the lessee reasonably requests, to enable the lessee to make a fully-informed decision upon the request.

7.3.3. Without limitation, an activity is not an appropriate activity if:

- 7.3.3.1. it is one that the lessor has notified to the lessee as inappropriate for the premises; or
- 7.3.3.2. it is one for which the premises are not suitable in terms of their size, construction, services, and surrounds;
- 7.3.3.3. it will render void or voidable a policy of lessee insurance concerning the premises or property kept there, or will increase a premium payable by the lessee for such insurance; or
- 7.3.3.4. the activity is more likely than not to result in the infringement of a requirement of this lease (*for example*, clause 4.2.4, clause 4.4, or clause 4.11).

7.4. Conditions of third party use

7.4.1. A grant of permission under clause 7.3 will be subject to the requirements specified in this clause.

- 7.4.2. The lessee (acting in good faith) must determine whether the premises are required for the conduct of its own activities at the relevant time, and whether its own activities can be conducted on the premises at the same time as use by the applicant for permission.
- 7.4.3. If it does not require the premises for its own activities, or it is prepared to allow the applicant to use the premises or a portion of the premises concurrently with it, the lessee may impose reasonable conditions upon the grant of its permission.
- 7.4.4. The conditions under this clause must include that the applicant (third party) must have a public risk policy to the same extent as required under clause 10.1, and the lessee must ensure that the applicant (third party) provides an indemnity to the lessor and the lessee on the same terms as the indemnity obligations imposed on the lessee under this lease, particularly clause 10.3 .
- 7.4.5. The conditions may include requirements governing reimbursement of charges incurred by the lessee through the applicant's use of electricity or other services.
- 7.4.6. Any dispute that the lessee and the applicant for permission cannot resolve between themselves will be resolved by the chief executive officer, whose decision will be final.
- 7.4.7. Permission must not be granted where:
- 7.4.7.1. the applicant (third party) does not provide the lessee with a copy of the public risk policy and the indemnity as required under this clause;
 - 7.4.7.2. permanent or semi-permanent occupation of an area of the premises to the exclusion of the lessee is intended; or
 - 7.4.7.3. the lessor considers, in its absolute discretion, that a sublease should be granted.

7.5. Use by lessor for emergencies

- 7.5.1. If required by the lessor and at the risk and liability of the lessor, the lessee must make the premises available without fee for use by the lessor or by a body or bodies nominated by the lessor during a civil emergency or event or force majeure event:
- 7.5.2. Specific examples of a civil emergency or event are:
- 7.5.2.1. natural disaster (for example, flood, bushfire, cyclone);
 - 7.5.2.2. broad-scale conflict (for example, war, terrorist action, rioting);
 - 7.5.2.3. small-scale conflict (for example, siege or sniper activity);
 - 7.5.2.4. transportation disaster (for example, aviation, maritime, or rail crash disaster); and
 - 7.5.2.5. an election or referendum
- 7.5.3. A force majeure event is an event that:
- 7.5.3.1. adversely affects, or may adversely affect, the safety and amenity of persons and property within the region or a community or area within the region; and
 - 7.5.3.2. requires immediate governmental response to avert or minimise large-scale harm, or to ameliorate its effects.
- 7.5.4. During a civil emergency or event or force majeure event, the lessor or the nominee body or bodies may use the premises:
- 7.5.4.1. to provide shelter or other relief to the displaced, the injured, or the endangered;

- 7.5.4.2. as a storage, logistics, or communications facility; or
- 7.5.4.3. for any other emergency response purpose for which the premises are suitable (including, for example, a temporary mortuary).

7.6. Alterations/additions by lessor

- 7.6.1. The lessor may construct improvements, alterations, or additions to the premises to provide amenities or additional amenities (such as toilet facilities or car parks) for use in conjunction with or separately from the premises.
- 7.6.2. Where the constructed amenities are lockable the lessor must give the lessee keys to the locks, and the lessee must comply with the requirements of the lessor about locking the amenities when they are not being used by the lessee.

7.7. Use of lessor alterations/additions

The lessee must permit the amenities constructed by the lessor pursuant to clause 7.5:

- 7.7.1. to be used by the lessor's servants and agents;
- 7.7.2. to be used by the public or any class or section of the public nominated by the lessor; and
- 7.7.3. to be accessed through the premises (but only to the extent reasonable and necessary to provide that access).

7.8. Entry by lessor

7.8.1. The lessee must permit the lessor's servants and agents to enter the premises at all reasonable times:

- 7.8.1.1. to examine their condition;
- 7.8.1.2. to effect repairs and alterations that the lessor deems necessary for their safety, preservation or improvement;
- 7.8.1.3. to monitor or verify the use made of the premises by the lessee;
- 7.8.1.4. to exercise any of the lessor's entitlements under this lease; and
- 7.8.1.5. to discharge any of the lessor's statutory duties relating to the premises.

7.8.2. The lessor is not obliged to compensate the lessee, or any other person for inconvenience or cost attributable to the exercise of an entitlement under this clause.

7.9. Lessor may require surrender

7.9.1. At its discretion, the lessor may require the surrender of the lease or part of the premises by notice to the lessee if the lessor:

- 7.9.1.1. determines in its sole discretion that the use of the premises by the lessee is not the most efficient or desirable use of the premises; and
- 7.9.1.2. requires the premises or part of the premises for another purpose or to lease to another person.

7.9.2. The termination notice must state the date upon which the lessor requires the lessee to vacate the premises.

7.9.3. If a termination notice is given, the lessee must execute the required surrender form to be prepared by the lessor.

7.9.4. Neither the lessor nor the lessee shall have any further claim against the other arising from the lease except in relation to any breach of the lease that exists at the time of termination.

7.10. Surrender of lease by lessee

The lessee may surrender this lease at any time before the expiry date by giving six (6) months' notice to the lessor. Upon expiration of the period stated in that notice:

- 7.10.1. this lease will be at an end;
- 7.10.2. the lessee will deliver up possession of the premises in accordance with clauses 6.5 and 8.7; and
- 7.10.3. neither the lessor nor the lessee shall have any further claim against the other arising from the lease except in relation to any breach of the lease that exists at the time of termination.

8. PROVISIONS WHICH BENEFIT THE LESSOR

8.1. Information to be provided to the lessor

The lessee must, throughout the term:

- 8.1.1. keep the lessor informed of its office-bearers and other members of its directorate, and notify the lessor in writing of any change in them within 30 days after the change;
- 8.1.2. allow the lessor, its employees and contractors, to inspect and take copies of the records of the lessee for the purposes of determining whether or not the lessee has been or is complying with its obligations under this lease. If any such inspection reveals that the lessee is not or has not complied with this lease, the lessee must pay the costs incurred by the lessor in relation to the inspection and its outcome.
- 8.1.3. Within 21 days after each annual general meeting of the lessee, provide to the lessor:
 - 8.1.3.1. a copy of the minutes of the annual general meeting;
 - 8.1.3.2. a copy of the treasurer's report and financial statements for the lessee for the previous financial year; and
 - 8.1.3.3. a list of the members of the lessee;

8.2. Intrusion of harmful commodities

The lessee releases the lessor from liability for any cost sustained or incurred by the lessee through sewage, gas, electric current or any other fluid, substance or force entering or otherwise affecting the premises unless it is caused or contributed by the lessor's negligence or deliberate act.

8.3. Indemnity by lessee

- 8.3.1. The lessee indemnifies and agrees to keep indemnified the lessor against all actions, suits, proceedings, claims, demands, costs, losses, damages and expenses ("claim") arising out of or in any way connected to or resulting from this lease or the lessee's use and occupation of the premises ("the indemnified acts or omissions"), except to the extent that the claim arises as a result of any negligent act or omission of the lessor.
- 8.3.2. The indemnity extends to cost resulting directly or indirectly from:
 - 8.3.2.1. harm attributable in any way to the lessee's presence upon the premises, its use of the premises, and its power of control over the premises;
 - 8.3.2.2. harm attributable in any way to use of the parking facilities;
 - 8.3.2.3. harm attributable to alterations made to the premises or the land, irrespective of lessor consent;
 - 8.3.2.4. negligent or improper use of a service by any person;
 - 8.3.2.5. non-timely discharge of a lessee obligation under this lease;

- 8.3.2.6. harm attributable in any way to sewage, gas, electric current or any other fluid, substance or force entering or otherwise affecting the premises or the parking facilities, or escaping from them;
- 8.3.2.7. lessee failure to notify the lessor of a defect in a service where the lessee is, or ought reasonably to be, aware of the defect; and
- 8.3.2.8. without limiting the effect of this clause, the act of any member, servant, agent, person in a share arrangement (see clause 11.2) or invitee of the lessee (including a caretaker).

8.3.3. To remove doubt, the lessee specifically agrees that the indemnity extends to any claim arising from the use of any other area of the land by the lessee.

8.3.4. Where it allows a person to use the premises, the lessee must ensure that the person covenants to indemnify the lessor upon the same terms as the indemnity obligations imposed on the lessee under this lease.

8.4. Release by lessee

The lessee releases and discharges the lessor from any claim relating to the indemnified acts or omissions which may be made against the lessor, except to the extent that the claim arises as a result of any negligent act of omission of the lessor.

8.5. Disclosure of Insurance-relevant Information

The lessee assures the lessor that it disclosed all insurance-relevant information to the lessor in writing before entering this lease.

8.6. Condition precedent to lessor liability

Irrespective of any rule of law, and anything in this lease to the contrary, the lessor will not be liable to the lessee for cost resulting from lessor negligence, or from lessor default under this lease, unless the lessee gives the lessor written notice of that negligence or default, and without reasonable cause, the lessor subsequently fails to take appropriate remedial action within a reasonable time.

8.7. Return of possession

8.7.1. Upon termination of this lease, the lessee must return possession of the premises and any other part of the land permitted to be used by the lessee under this lease to the lessor.

8.7.2. The lessee must ensure (generally) that the premises and any other part of that land as returned are in good, tenantable repair and condition, irrespective of their condition at the time it took possession of them.

8.7.3. In particular, the lessee must ensure that:

- 8.7.3.1. signs, placards, posters and other adornments installed by the lessee are removed from the premises and the land; and
- 8.7.3.2. walls or other surfaces from which those items are removed are reinstated to a condition consistent with the requirements of this clause.
- 8.7.3.3. all of the lessee's property is removed from the premises and the land. Any property left in the premises or the land after the termination date of this lease will be deemed abandoned by the lessee, and the lessor may dispose of it as it sees fit. The lessee indemnifies the lessor and agrees to keep the lessor indemnified against any cost, loss, claim or liability suffered or incurred by the lessor in connection with any item of property (other than the lessor's property) remaining on the premises after the lease has terminated.

9. LESSOR COMMITMENT

9.1. Quiet enjoyment

While it discharges promptly its obligations under this lease, the lessee may occupy and use the premises without interruption from the lessor. This clause does not apply to interruption specifically permitted under this lease.

10. LESSEE INSURANCE

10.1. Types and duration of insurance

The lessee must:

- 10.1.1. insure under a public risk policy in respect of all claims arising out of a single event,
- 10.1.2. insure under a damage policy all insurable items located upon the premises, including plate glass, irrespective of who owns the items;
- 10.1.3. insure under the *Workers Compensation and Rehabilitation Act 2003 (Qld)*, all persons it employs to work upon the premises;
- 10.1.4. maintain business interruption insurance, if it operates a business upon the premises; and
- 10.1.5. maintain whatever other insurance the lessor reasonably requires.

10.2. Insured parties (damage and public risk)

- 10.2.1 The damage policy must insure the lessor and the lessee severally, for their respective rights and interests in the insured property.
- 10.2.2 The public risk policy must insure the lessee severally and cover the rights and interests, and the liabilities to other persons, of the lessor and the lessee, and each of their employees, agents, and other service providers, concerning occurrences upon the premises.
- 10.2.3 The public risk policy also must cover the lessor and the lessee for liability to one another for the indemnified acts or omissions, other than to property the lessee is obliged to insure under the damage policy, and to persons the lessee is obliged to insure under the *Workers Compensation and Rehabilitation Act 2003 (Qld)*.

10.3. Indemnity levels

- 10.3.1. All property insured under a damage policy must be covered for its full reinstatement or replacement cost. Without limiting the effect of this clause, the insurance proceeds under the damage policy must cover defined expenses.
- 10.3.2. The public risk insurance policy must provide cover for an amount of not less than twenty million dollars (\$20,000,000.00).
- 10.3.3. The policy of business interruption insurance must provide indemnity sufficient to enable the lessee to meet its obligations to pay rent and other money, and maintain the premises, whenever the lessee is unable, for any reason, to use the premises.
- 10.3.4. The lessor may require from time to time, but not more frequently than once every 3 years, that the lessee increase the level of its cover under the public risk policy to the sum nominated in a notice to the lessee.
- 10.3.5. In determining the extent of an increase in the level of indemnity under the public risk policy, the lessor must act reasonably and by reference to demonstrable changes in the real value of damages awards.
- 10.3.6. The lessor may not give a notice under clause 10.1.5 earlier than the third anniversary of the commencement date.

10.4. General obligations concerning policies

- 10.4.1. The insurance policies that the lessee must obtain under clause 10.1:
 - 10.4.1.1. must be obtained from an authorised insurer approved by the lessor;
 - 10.4.1.2. must contain no exclusions, endorsements or alterations the lessor disapproves;
 - 10.4.1.3. generally, must contain provisions acceptable to, or required by, the lessor; and

10.4.1.4. must remain current at all times while the lessee occupies the premises.

10.4.2. An authorised insurer is a corporation authorised under the *Insurance Act 1973* (Cwth) to conduct insurance business in Australia.

10.4.3. The lessor must not require unreasonably the inclusion, retention, modification or exclusion of a policy provision.

10.4.4. The lessor must not delay or withhold unreasonably an approval for this clause.

10.5. Claims occurring basis

Each policy:

10.5.1. must provide indemnity upon a claim made after the policy has expired if the event precipitating the claim occurred while the policy was current (this is otherwise known as occurrence coverage); and

10.5.2. must include the lessor as a person (whether individually or as a member of a class) for whose benefit the insurance extends (though the lessor is not a named insured).

10.6. Proof of insurance

10.6.1. Irrespective of when the term begins, the lessee is not entitled to possession of the premises until it produces to the lessor:

10.6.1.1. a copy of the policy instrument for each of the insurances the lessee is obliged to maintain under clause 10.1; and

10.6.1.2. a certificate of currency issued under each such policy by the insurer.

10.6.2. During each year of the term, other than for the public risk policy, the lessee must produce to the lessor a certificate of currency for the renewed insurance term issued under each policy by the insurer, without the necessity for a lessor request and not later than the date of expiry of the then current insurance term.

10.6.3. The lessor may request at any time the production of a relevant policy instrument and certificate of currency if it possesses reasonable grounds to believe that the policy has been vitiated or terminated.

10.7. Payment of premiums

The lessee must pay promptly all premiums, duty, GST, and other money entailed in maintaining insurance this lease obliges it to maintain.

10.8. Deductibles

If an insurance policy obtained under clause 10.1 requires the insured to pay a claims excess, the lessee indemnifies the lessor against every cost the lessor incurs because of the excess.

10.9. Failure to insure

If the lessee fails to discharge an obligation under clauses 10.1 to 10.7 the lessor may obtain or maintain the required insurance, at its option and at the lessee's cost and the lessee must reimburse the lessor upon demand any expenditure the lessor incurs pursuant to this clause.

10.10. Settlement of claims

10.10.1. The lessee must not pursue a claim under an insurance policy it is required to maintain under this lease if the policy concerns the premises and the lessor elects, by notice to the lessee, to pursue the claim on the lessee's behalf.

10.10.2. If the lessor elects to pursue the claim to the exclusion of the lessee, it must pursue the claim diligently and use its best endeavours to ensure the lessee receives from the insurer no less than its entitlement under the policy.

10.11. Notification of relevant events

The lessee must notify the lessor as soon as practicable about:

- 10.11.1. the occurrence of an event which the lessee considers likely to give rise to a claim under any of the policies of insurance which the lessee is required to maintain under this lease, and must ensure that the lessor is kept reasonably informed of subsequent actions and developments concerning the claim; and
- 10.11.2. receipt of any notice from an insurer cancelling or limiting coverage under any policy.

11. DEALINGS WITH LEASE AND PREMISES

11.1. Transfer sublet and mortgage

The lessee shall not transfer, sublet or mortgage this lease or part with possession of the premises without the written permission of the lessor.

11.2. Parting with possession of premises

The lessee but only first having obtained lessor consent, may appoint, to act for and on behalf of the lessee and at the lessee's risk and liability, a person to manage or operate the premises, or the business or other activities the lessee conducts upon the premises, including any caretaker appointed under Part 15, ("share arrangement").

11.3. Usage in ordinary course

The lessee does not breach clause 11.1 merely through permitting its agents and contractors to enter the premises in the ordinary course of visiting it and conducting with it day-to-day transactions consistent with the permitted use.

11.4. Pre-requisites for lessor consent to dealing

The lessor is not obliged to consent to a lessee dealing with this lease or the premises if the lessee fails to comply with this clause 11.

11.5. Notice of proposed dealing

- 11.5.1. The lessee must apply for lessor consent to the proposed dealing not later than 30 days before the due date for completion of the dealing.
- 11.5.2. The application must include:
 - 11.5.2.1. copies of all relevant contract documents;
 - 11.5.2.2. full details of the other party or parties to the proposed dealing (if these are not contained in the contract documents);
 - 11.5.2.3. (for a proposed transfer of this lease) a current statement of each proposed transferee's assets and liabilities; and
 - 11.5.2.4. all other relevant information the lessor reasonably requests.

11.6. Prohibition of consent applications (outstanding default)

- 11.6.1. While it is in default under this lease, particularly default in the payment of money due, the lessee is not entitled to seek lessor consent to:
 - 11.6.1.1. the transfer of this lease; or
 - 11.6.1.2. the grant of a sublease; or
 - 11.6.1.3. a mortgage of this lease; or
 - 11.6.1.4. the lessee entering into a share arrangement;
- 11.6.2. If the lessee requests any such consent while in default, the lessor may ignore the request.

11.7. Suitability of proposed transferee/sub-lessee/share arrangement

The lessee must demonstrate to the satisfaction of the lessor (acting reasonably) that a proposed transferee, sublessee or person appointed under clause 11.2 is:

- 11.7.1. respectable, responsible, and of adequate financial substance;
- 11.7.2. capable of discharging the lessee obligations under this lease;
- 11.7.3. capable of competently conducting the permitted use; and
- 11.7.4. not likely (or certain), through its occupation or use of the premises, to cause:
 - 11.7.4.1. a security risk to the premises or the land;
 - 11.7.4.2. a loss of amenity within the premises or the land; or
 - 11.7.4.3. a diminution in value of the premises or the land,

greater than that (if any) caused by the lessee's occupation.

11.8. Formal consent to proposed dealing

- 11.8.1. Before completing a proposed transfer, sublease, or other dealing the subject of this clause 11, the lessee must execute, and ensure that the proposed transferee, sub-lessee or other party executes, a consent agreement in favour of the lessor, in the form the lessor requires.
- 11.8.2. The consent agreement must contain:
 - 11.8.2.1. a transferee covenant to discharge the lessee obligations under this lease;
 - 11.8.2.2. a sublease or sharer covenant not to cause or contribute to a breach of this lease;
 - 11.8.2.3. a sublease or sharer covenant to discharge its obligations under the sublease or share agreement; and
 - 11.8.2.4. a grant of the transferee's, sub-lessee's or sharer's power of attorney in favour of the lessor, in similar terms to those of the lessee's power of attorney in this lease.

11.9. Mortgage of lease

The lessor may withhold consent to the proposed grant of a mortgage in this lease until the mortgagee executes a consent agreement, in the form the lessor requires, specifying the conditions upon which the mortgagee may deal with this lease and enter and use the premises to enforce its mortgage.

11.10. Excepted finance dealings

- 11.10.1. If the premises, including the improvements, and this lease is not to be included in the secured property, the lessee need not obtain lessor consent where it wishes, in good faith, to secure financial accommodation in the normal course of its business via:
 - 11.10.1.1. a charge over its undertaking or other assets;
 - 11.10.1.2. the encumbrance of other specific property upon the premises;
 - 11.10.1.3. a hire purchase agreement for goods to be used at the premises; or
 - 11.10.1.4. a chattel leasing agreement for goods to be used at the premises.
- 11.10.2. However, clause 11.10.1 does not constitute lessor consent to the financier entering the land or the premises to enforce its interest under the relevant agreement.

11.10.3. Irrespective of the terms of the agreement, the financier acquires no entitlement to enter the land or the premises or to deal with this lease or the premises, other than in compliance with the relevant provisions of this clause 11 (as if it were the lessee).

11.10.4. The lessee must bring this clause clearly to the attention of the financier before it enters the relevant agreement.

11.11. Consent agreements

The lessor's solicitors will prepare all agreements to be executed pursuant to this clause 11.

11.12. Lessor costs and expenses

The lessee must bear, and must pay to the lessor upon demand (irrespective of whether the relevant dealing is completed), the legal costs and other expenses the lessor incurs:

11.12.1. investigating any transfer of the lease, sublease of the lease, share agreement, or mortgage, whether proposed or completed;

11.12.2. drawing, settling, executing, and stamping any document mentioned in clause 11.11; and

11.12.3. doing anything else, necessary or requested, to facilitate any registration of the relevant dealing.

12. DAMAGE AND DESTRUCTION (FIXED IMPROVEMENTS)

12.1. Lessor causes damage

Clauses 12.2, 12.3 and 12.7 do not apply to the lessee if the damage or destruction is caused by the lessor who, subject to clause 12.6, must immediately repair or replace the fixed improvement to the same standard prior to the damage or destruction occurring.

12.2. Repairing damage

Without limiting clause 5.11, if a fixed improvement upon or comprising the premises is damaged, the lessee must repair the damage promptly (and comply with clause 5.15), to the satisfaction of the lessor (acting reasonably), irrespective of who or what has caused the damage.

12.3. Replacement upon destruction

If a fixed improvement upon or comprising the premises is destroyed, the lessee must replace the improvement to the satisfaction of the lessor (acting reasonably), irrespective of who or what has caused the destruction.

12.4. Compliance with lessor directions

12.4.1. In effecting repairs or constructing or installing a replacement, the lessee must comply with all directions given by the lessor, including directions concerning the submission and pursuit of insurance claims and the application of insurance proceeds.

12.4.2. The purpose of that obligation is to facilitate:

12.4.2.1. timely and competent completion of the necessary repair or replacement work (if this lease is to continue);
or

12.4.2.2. compensation of the lessor for loss of or damage to the fixed improvement (if the lease is terminated under this clause 12).

12.5. Suspension and abatement of cleaning and maintenance obligations

12.5.1. If a fixed improvement is destroyed, or is so damaged as to be inaccessible or unusable, the lessee obligations to clean and maintain the structure (clause 5.11) will be suspended until the structure (or its replacement) is accessible and fit for the permitted use.

12.5.2. If a fixed improvement is damaged but still partially usable, the lessee obligations to clean and maintain the structure will abate proportionately with the nature and extent of the damage and diminution of utility.

12.6. Termination/surrender for damage/destruction

If the destruction of or damage to fixed improvements renders the premises unusable:

- 12.6.1. the lessor may terminate this lease, other than if the destruction or damage was caused by the lessor;
- 12.6.2. the lessee may surrender this lease, but only upon satisfying the requirements of clause 12.7, other than if the destruction or damage was caused by the lessee; and
- 12.6.3. any rights of the lessee to take action against the lessor for failure to replace or repair fixed improvements destroyed or damaged by the lessor that leads to the premises being unable to be used for the permitted use is not affected by a surrender under clause 12.6.2.

12.7. Pre-requisite for surrender (insurance payment)

The lessee may surrender this lease pursuant to clause 12.6 only if the insurer has granted full indemnity upon a claim under the damage policy, for the reinstatement or replacement value of the fixed improvements and only after the insurer or the lessee has paid the lessor the proceeds of the claim.

13. DEFAULT BY LESSEE

13.1. Events of default

The lessee defaults under this lease if:

- 13.1.1. it fails to discharge an obligation this lease imposes upon it;
- 13.1.2. it fails to discharge an obligation to the lessor in an agreement for consent to a sublease or the transfer of this lease;
- 13.1.3. it fails to discharge an obligation to the lessor in an agreement for consent to the grant of a mortgage over this lease;
- 13.1.4. it commits an act of insolvency; or
- 13.1.5. it does not use the premises for the permitted use for 45 consecutive days.

13.2. Remedies upon default

- 13.2.1. If the lessee defaults under this lease by failing to pay money, or to discharge an obligation, to a person other than the lessor, the lessor may:
 - 13.2.1.1. pay the money or discharge the obligation as the agent of the lessee; and
 - 13.2.1.2. recover from the lessee as a liquidated debt¹² all of the money it expends in doing so.
- 13.2.2. Subject to the act and the *Property Law Act 1974* section 124,¹³ if the lessee is in default under this lease, the lessor also may without prejudicing the entitlements that have accrued to it for any earlier default by the lessee:
 - 13.2.2.1. terminate this lease by retaking possession of the premises at any time, with or without notice; or
 - 13.2.2.2. otherwise terminate this lease.

13.3. Entry by lessor without forfeiture

- 13.3.1. If the lessee vacates the premises during the term (whether or not it ceases to make rent and other payments), neither:

¹² When the amount of a debt is certain, or can be ascertained by objective means (e.g. by the application of a formula or scale), the debt is a liquidated debt. In contrast, a non-liquidated debt is one that cannot be calculated until evidence is obtained and considered (e.g. evidence of what damage has been sustained and how much it will cost to repair).

¹³ Section 124 prevents a lessor from terminating a lease for the lessee's breach unless and until the lessee fails, within a reasonable time after being served with it, to comply with a written notice from the lessor (in a prescribed form) specifying the breach, requiring the lessee to remedy the breach (if it is capable of remedy), and requiring the lessee to pay compensation for the breach (if the lessor claims monetary compensation).

13.3.1.1. its acceptance of keys; nor

13.3.1.2. its entry upon the premises to inspect, clean, repair, or alter them, or to show them to prospective occupiers; nor

13.3.1.3. its advertisement of the premises for tenancy;

will constitute lessor re-entry or a waiver of lessor entitlement to recover all rent and other money owing by the lessee.

13.3.2. In those circumstances, this lease will continue, fully binding and effective, until the earlier of:

13.3.2.1. the time a new lessee (or lessor permittee under a lessor permit) takes occupation of the premises; and

13.3.2.2. the time this lease expires;

13.3.3. Entry by the lessor before that time will be deemed entry with the lessee's permission.

13.3.4. Clauses 13.3.1 and 13.3.2 will not apply where the lessor gives the lessee notice:

13.3.4.1. accepting surrender of this lease; or

13.3.4.2. confirming forfeiture of this lease and re-entry into possession of the premises.

13.3.5. Clauses 13.3.1 and 13.3.2 also will not apply where the lessor:

13.3.5.1. changes the locks to the premises, or otherwise prevents the lessee reassuming possession; or

13.3.5.2. executes the acceptance provision in a formal surrender of this lease, and delivers the executed instrument to the lessee.

13.4. Removal of equipment

13.4.1. Upon lawfully re-entering the premises for lessee default, the lessor may remove lessee property from the premises and store that property at lessee cost.

13.4.2. In exercising that entitlement, the lessor will not be liable to the lessee for conversion or unlawful distress or cost occasioned by the removal or storage.

13.4.3. The lessee must reimburse the lessor upon demand expenses the lessor reasonably incurs in removing and storing lessee property under clause 13.4.1.

13.5. Essential Terms

Each of the following promises by the lessee is an essential term of this lease:

13.5.1. the promise to pay at the times and in the manner specified:

13.5.1.1. the annual rent (clause 2.1);

13.5.1.2. money owing for rates and utility charges (clause 2.3); and

13.5.1.3. the GST payable in conjunction with a payment under this lease (clause 3.2);

13.5.2. the promise to use and administer the premises in the required manner and in compliance with relevant acts (clauses 4.1 to 4.8 and 4.11);

13.5.3. the covenant not to store, sell, or supply, liquor upon or from the premises, or allow it to be stored, sold or supplied, without consent, or without a necessary licence or authority (clause 4.20);

- 13.5.4. the promise not to operate gaming machine facilities, KENO facilities, or TAB facilities, upon the premises (clause 4.20);
- 13.5.5. the promise not to undertake extractive activities upon the premises (clause 4.19);
- 13.5.6. the promise to install and maintain water supply and waste disposal facilities (clause 5.8);
- 13.5.7. the promise to maintain the premises and keep them clean (clause 5);
- 13.5.8. the promises (clauses 7.3 to 7.5):
 - 13.5.8.1. to permit third persons to use the premises; and
 - 13.5.8.2. to make the premises available for civil emergencies;
- 13.5.9. the promises to insure (clause 10);
- 13.5.10. the promises (clause 11):
 - 13.5.10.1. not to transfer this lease;
 - 13.5.10.2. not to sublease the premises or any area of them;
 - 13.5.10.3. not to enter into a share arrangement (see clause 11.2); and
 - 13.5.10.4. not to grant a mortgage over or affecting this lease;
- 13.5.11. the promise not to transfer a liquor licence, or allow it to be transferred, without lessor consent (clause 17.4);
- 13.5.12. the promise to give the lessor, or to ensure the holder of the liquor licence gives the lessor, annual returns particularising liquor purchases for the premises (clause 17.5); and
- 13.5.13. the promise to notify the lessor promptly if the liquor licence is suspended, cancelled, or surrendered, or is not renewed (clause 17.8).

13.6. Damages upon termination by breach

If it lawfully terminates this lease for breach of an essential term (whether the term possesses the character of essentiality pursuant to or independently of clause 13.5) the lessor:

- 13.6.1. may recover damages for the breach, including damages for loss of bargain;¹⁴ but
- 13.6.2. will not be relieved of any duty it otherwise possesses at law to mitigate those damages.

13.7. Rights not affected by termination

If the lease is terminated pursuant to this clause 13:

- 13.7.1. it shall be without prejudice to any existing rights between either party prior to the date of termination;
- 13.7.2. the lessee needs to make good the premises; and
- 13.7.3. provided no other money is owing by the lessee to the lessor, the lessor shall refund the lessee any rent paid by the lessee for a period after the date of termination.

13.8. Appointment of receiver where the lessee is a corporation or incorporated association

- 13.8.1. If the lessee fails to comply with a notice from the lessor requiring it to remedy a default under this lease, the lessor may appoint a receiver (without prejudice to any other entitlement that it possesses under this lease).

¹⁴ Loss of bargain is loss of the benefit of performance of the lessee's obligations under this lease during the period between the date of termination by the lessor and the date upon which the lease otherwise would have expired.

- 13.8.2. The receiver may comprise one or more persons.
- 13.8.3. If the receiver comprises more than one person, those persons may act jointly and individually.
- 13.8.4. An appointee must be qualified to act as receiver/manager.¹⁵
- 13.8.5. The lessor may:
- 13.8.5.1. revoke the appointment of a person as receiver;
 - 13.8.5.2. appoint another person or an additional person as receiver.
- 13.8.6. Unless its appointment instrument states otherwise, the receiver is the lessee's agent.
- 13.8.7. In any event, the lessee is responsible for paying the receiver's remuneration.
- 13.8.8. The lessee is solely responsible for the receiver's acts.
- 13.8.9. The receiver is not liable to the lessee for its (the receiver's) act.
- 13.8.10. The receiver may exercise all of the powers the corporations act gives a receiver and manager.¹⁶
- 13.8.11. Without limiting clause 13.8.10:
- 13.8.11.1. the receiver may do in relation to the lessee's affairs under this lease anything that the lessee's directorate could do were the receiver not appointed; and
 - 13.8.11.2. generally, the receiver may operate the lessee's business or superintend the lessee's affairs and activities at the premises to the extent the lessee could have done before the receiver's appointment.
- 13.8.12. Throughout the receivership, the directorate's power will abate to the extent of the receiver's power.
- 13.8.13. A person who deals with the receiver need not enquire about the receiver's authority to act or the application of money paid to the receiver.
- 13.8.14. Neither the receiver nor the lessor will be responsible for a loss the receiver makes in conducting lessee activities at the premises or in exercising its power as receiver or manager.

14. POWER OF ATTORNEY

14.1. Appointment of chief executive officer

- 14.1.1. The lessee irrevocably appoints the chief executive officer as its attorney:
- 14.1.1.1. to pursue a claim under a policy of lessee insurance, pursuant to clause 10.10;
 - 14.1.1.2. to terminate on behalf of the lessee, and as the act of lessee, a (purported) sublease, or other permission to use or occupy the premises, granted by the lessee without lessor consent;
 - 14.1.1.3. to recover on behalf of the lessee, and as the act of the lessee, possession of the area the subject of the terminated (purported) sublease or other permission; and
 - 14.1.1.4. to remedy a lessee default under this lease.
- 14.1.2. The lessee also irrevocably appoints the chief executive officer its attorney:
- 14.1.2.1. to take charge of the business or other activity the lessee conducts upon the premises; and

¹⁵ Refer to Corporations Act section 418.

¹⁶ Refer to Corporations Act section 420.

14.1.2.2. to manage that business or activity in consultation with the lessee but to the exclusion of the lessee's own personnel;

whenever, as for as long as, the chief executive officer considers the action necessary for ensuring that the lessee uses the premises responsibly and competently.

14.1.3. The lessor must ensure the chief executive officer gives the lessee reasonable notice of his intention to exercise the power conferred by clause 14.1.2.

14.1.4. In the exercise of that power, the chief executive officer may delegate one of more or all of his management functions to a person he considers possesses the requisite skill.

14.2. Proof of entitlement to terminate

Sufficient proof of lessee default will be a statutory declaration by the chief executive officer, detailing the default.

14.3. Ratification and reimbursement

14.3.1. The lessee will in the lawful exercise of its powers as attorney ratify whatever the attorney does and reimburse the lessor upon demand every expense the attorney reasonably and properly incurs.

14.3.2. To prevent argument, the lessee releases the attorney from all liability the attorney incurs to the lessee through exercising power of attorney clause 14.1.

15. CARETAKER

15.1. Appointment of caretaker

15.1.1. With lessor written permission, the lessee may permit a caretaker to occupy the premises for and on behalf of the lessee and at the lessee's risk and liability.

15.1.2. In its absolute discretion, the lessor may:

15.1.2.1. grant its permission, conditionally or unconditionally;

15.1.2.2. refuse its permission; or

15.1.2.3. decline to give a reason for its decision.

15.1.3. To prevent doubt, the lessor is not required to act reasonably in determining whether to grant or refuse its permission for the lessee to install a caretaker.

15.1.4. Without limiting the effect of any of the foregoing provisions, the lessee acknowledges that the lessor will not grant the lessee permission to install a caretaker upon other than a periodic basis.

15.1.5. It will be a condition of the lessor's consent that the lessee must enter into a general tenancy agreement with the caretaker in respect of the part of the premises in which the caretaker will reside.

15.2. Caretaker's Residence

If the caretaker is to occupy a demountable structure, or other temporary or movable quarters upon the premises, the structure:

15.2.1. must be appropriate and receive the lessor's approval;

15.2.2. must be securely anchored or affixed to the premises;

15.2.3. must be situated in a position that will not render it an obstacle or nuisance to persons lawfully using the premises or the land;

15.2.4. must be closed and securely locked when the caretaker is not using it or in its immediate vicinity;

- 15.2.5. must be in safe and habitable repair and condition;
- 15.2.6. must be used for no purpose other than the caretaker's residence; and
- 15.2.7. must be removed from the premises promptly:
 - 15.2.7.1. when the term expires or this lease is otherwise terminated; or
 - 15.2.7.2. when they are no longer required by the lessee for use as the caretaker's residence.

15.3. Revocation of permission

- 15.3.1. The lessor may revoke at any time its permission for a caretaker to occupy the premises.
- 15.3.2. The lessor may revoke the permission by notice addressed to the lessee and the caretaker, and given to each of them.
- 15.3.3. The lessor's notice may direct the caretaker to leave the premises, in which event the notice must specify the date by which the caretaker must leave.
- 15.3.4. If the lessor's notice does not direct the caretaker to leave the premises, the lessee must give the caretaker a notice to leave within the shortest period permissible by law.¹⁷
- 15.3.5. If the caretaker fails to remove all of his belongings from the premises before the direction or notice to leave expires, the lessee must remove them from the premises promptly, unless the lessor directs the lessee otherwise and repair any damage that is caused to the premises or other part of the land or to any other lessor property in the removal process.

15.4. Preventing breach of lease

The lessee must not permit or suffer a caretaker to do anything that constitutes or may precipitate the breach of a lessee obligation under this lease. The lessee must ensure the caretaker does not continue or repeat such a breach.

15.5. Lessee indemnity

The lessee indemnifies the lessor against any cost that the lessor sustains or incurs through the caretaker failing to discharge its obligations.

15.6. Variation/waiver Obligations

The lessee must not waive or vary any caretaker obligation if the waiver or variation will or might hinder the lessee in discharging its obligations under this lease. The lessee must give the lessor prompt notice containing all reasonable and relevant particulars of any waiver or variation of a caretaker obligation.

16. PERSONAL PROPERTY SECURITIES ACT

16.1. Lessor to retain title

- 16.1.1. Notwithstanding anything to the contrary express or implied in this lease, the parties agree that the lessor retains full title to the lessor's assets and title will not at any time pass to the lessee notwithstanding:
 - 16.1.1.1. the delivery of collection of the lessor's assets to/by the lessee (as the case may be); and/or
 - 16.1.1.2. the possession and use of the lessor's assets by the lease.
- 16.1.2. The lessee acknowledges that the lessee has the right to possess the lessor's assets as a mere bailee only and will deal with the lessor's assets in such a manner which enables it to be clearly identified as lessor's assets belonging to the lessor and does not have any right to pledge the lessor's credit in connection with the lessor's assets and agrees not to do so.

¹⁷ Generally, this will mean the shortest period permissible under the Residential Tenancies and Rooming Accommodation Act 2008 (Qld).
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16.2. Dealing with lessor's assets

- 16.2.1. The lessee acknowledges and agrees that:
- 16.2.1.1. it will not agree, attempt, offer and purport to sell, assign, sub-let, lend, pledge, mortgage, let hire or otherwise part or attempt to part with personal possession of or otherwise deal with the lessor's assets without the express written consent of the lessor;
 - 16.2.1.2. it will, if requested by the lessor, return the lessor's assets to the lessor following non-fulfilment of any obligation of the lessee (including payment of moneys) without limiting any other right the lessor may have;
 - 16.2.1.3. it will deliver up the lessor's assets at the end of the term and give the lessor or its agents or authorised representatives the right to enter any premises occupied by the lessee and any premises where it believes any lessor's assets may be stored (without liability for trespass or any resulting damage) and to use the name of the lessee and to act on its behalf, if necessary, to recover possession of the lessor's assets and agrees to indemnify the lessor and its agents and/or loss arising from such recovery or attempted recovery of lessor's assets from the lessee's possession or control;
 - 16.2.1.4. it holds the proceeds, book debts and accounts receivable arising from selling or hiring of the lessor's assets on trust for and as agent for the lessor immediately when they are receivable or are received; and
 - 16.2.1.5. the lessor may recover as a debt due and immediately payable by the lessee all amounts owing by the lessee to lessor in any respect even though title to the lessor's assets has not passed to the lessee.
- 16.2.2. The lessee acknowledges and agrees that notwithstanding any other provision of this lease:
- 16.2.2.1. the lessor's security interest in the lessor's assets covered by this lease may be registered on the PPS register and the lessee agrees to do all things necessary and required by the lessor to effect registration of the lessor's security interest on the PPS register in order to give the lessor's security interest the best priority possible and anything else lessor requests the lessee to do in connection with the PPSA without delay;
 - 16.2.2.2. all information provided by the lessee to lessor, including but not limited to the lessee's details, including the entity, name, ACN or ABN and address set out in this lease is correct in all respects and must not change its name, address or other details set out in this lease without providing the lessor with at least 20 business days prior written notice;
 - 16.2.2.3. the lessor's security interest in the lessor's assets extends to any proceeds, in all present and after acquired property including without limitation book debts and accounts receivable arising from the lessee dealing with the lessor's assets;
 - 16.2.2.4. it waives its right under the PPSA to receive a copy of any verification statement, financing change statement, or any notice that the lessor intends to sell the lessor's assets or to retain the lessor's assets on enforcement of the security interest granted to the lessor under this lease or any other notice under the PPSA unless the notice is required to be given by the PPSA and cannot be contracted out of; and
 - 16.2.2.5. a default under any other security agreement of and under which a security interest which it has granted to any other party in respect of the lessor's assets and/or any default under such security agreement which results in an exercise of rights under the PPSA is deemed to be a breach of this lease.
- 16.2.3. The parties agree that the lessor is not required to respond to a request made under section 275 of the PPSA and that neither party will disclose information of the kind set out in section 275(1) of the PPSA.

17. LIQUOR LICENSING

17.1. Request for lessor consent

If asking the lessor to consent to it obtaining a liquor licence concerning the premises, the lessee must give the lessor copies of the completed application and supporting documents it proposes to submit to the liquor act administering authority and whatever additional items of information and other material the lessor requests to enable it to process the request.

17.2. Conditions of lessor consent

- 17.2.1. The lessor may grant or refuse consent in its absolute discretion.
- 17.2.2. To prevent argument, the lessor may grant consent upon whatever conditions it considers appropriate; for example, conditions concerning:
 - 17.2.2.1. variation of the rent payable under this lease;
 - 17.2.2.2. development work;
 - 17.2.2.3. the hours during which the lessee may sell liquor at or from the premises (which hours may be shorter than those that the relevant liquor licence permits);
 - 17.2.2.4. abatement or minimisation of noise or other nuisance;
 - 17.2.2.5. parking vehicles; and
 - 17.2.2.6. premises security, including lighting installation and positioning.

17.3. Dealing with licence upon termination of lease

- 17.3.1. When this lease terminates, the lessee must deliver promptly to the lessor the application/s for transfer, the returns, and any other forms that the lessor requests to facilitate transfer of the liquor licence to the lessor or its nominee, or the issue of a new liquor licence enabling the lessor to conduct the licensed activity wholly or in part.
- 17.3.2. The lessee must do everything necessary and everything reasonable to enable the lessor, by itself or its nominee, to obtain the transfer or the new licence.

17.4. Transfer of licence (lessor consent)

The lessee must not transfer the liquor licence without lessor consent. The lessor must not withhold unreasonably its consent to a proposed transfer.

17.5. Returns to administering authority

The lessee must give the lessor, not later than 30 September each year during the term, a statement, in the form required or accepted by the lessor, detailing to the extent the lessor requires the quantities of liquor purchased under the liquor licence during the year ending upon the immediately-preceding 30 June, and the purchase prices paid or payable for those quantities.

17.6. Standards for conduct of licensed activity

- 17.6.1. Subject to whatever restrictions the lessor lawfully imposes upon it, the lessee must conduct the licensed activity in a professional and businesslike manner, during the hours and for the purposes customary for activities of that nature and permitted by the liquor licence.
- 17.6.2. The lessee must not do, or permit to occur, upon or about the premises, anything that results or may result in the liquor licence being suspended or cancelled or the administering authority refusing to renew the licence.
- 17.6.3. In particular, the lessee must ensure, to the satisfaction of the lessor (acting reasonably), that:
 - 17.6.3.1. no officer, manager, employee or contractor of the lessee is under the influence of liquor in the course of his or her duties;
 - 17.6.3.2. all persons entering the premises for a purpose associated with or incidental to the licensed activity cause no excessive noise and create no nuisance, whether to the annoyance of other persons upon the premises or persons living in proximity to the premises.

17.6.4. The lessee must give to the lessor, upon request a true and accurate account of the licensed activity and balance sheets and profit/loss accounts for the licensed activity, in forms acceptable to the lessor.

17.6.5. The lessee must permit authorised lessor personnel to inspect and copy financial records and other material relevant to the licensed activity, to enable the lessor to verify or audit information and other material provided pursuant to this clause.

17.7. Inspection of administering authority records

17.7.1. The lessee authorises the lessor to obtain from the administering authority or a court of competent jurisdiction, whatever information the lessor requires, and the administering authority or the court holds, concerning the lessee's liquor licence.

17.7.2. In particular, the lessee authorises the lessor to obtain particulars and copies of all returns and assessments concerning the premises and details of charges or complaints against the lessee.

17.8. Notification of licence cessation

The lessee must notify the lessor promptly if the liquor licence is suspended, cancelled, or surrendered, or is not renewed.

17.9. Defence of proceedings

17.9.1. If a proceeding is instituted against the lessee or its nominee, for breach of the *Liquor Act 1992* occurring upon or concerning the premises, the lessor may (without being obliged to do so) defend the proceedings, in whichever name it chooses and appear or be represented at the proceedings.

17.9.2. Every cost the lessor incurs or sustains as a result of those proceedings (irrespective of whether it appears or is represented at them) must be paid or reimbursed by the lessee upon demand and will bear interest at the rate charged for the time being by the lessor's banker on commercial overdraft accommodation exceeding \$100,000.00.

17.10. Presentation of premises

The lessee must ensure that the premises are properly furnished and presented to the standard required by the administering authority. That obligation is additional to (not in substitution for) any other obligation under this lease governing the standard of finish and presentation of the premises (it being the intention of the parties that, if there is inconsistency, the higher or highest of the standards variously required will prevail).

17.11. Payment of fees

The lessee must ensure that all licence fees, imposts and levies assessed under the *Liquor Act 1992* concerning the premises or the licensed activity are paid when due. The lessee must produce to the lessor upon request receipts or other evidence of payment.

18. NOTICES

18.1. Notices (general)

18.1.1. This part governs notices under this lease unless a provision of this lease specifically provides otherwise.

18.1.2. A notice must be in writing.

18.1.3. The chief executive officer may sign a notice to be given by the lessor.

18.1.4. A notice given by the lessee may be signed by:

18.1.4.1. the lessee; or

18.1.4.2. one or more of its officers.

18.2. Service of notices

A party may give a notice by:

- 18.2.1. delivering it to the intended recipient's address for notices; or
- 18.2.2. posting it to the intended recipient at its address for notices; or
- 18.2.3. transmitting it by facsimile to the intended recipient at its address for notices.

18.3. Receipt of notices

- 18.3.1. A notice that is delivered or posted will be deemed received:
 - 18.3.1.1. if delivered, at the moment of delivery;
 - 18.3.1.2. if posted to an address in Australia, two business days after posting; or
 - 18.3.1.3. if posted to an address outside Australia, five business days after posting.
- 18.3.2. A notice sent by facsimile transmission will be deemed received at the time of receipt specified in a confirmation report, if the report discloses that the transmission was received at or before 5:00pm.
- 18.3.3. If the confirmation report discloses that the transmission was received after 5:00pm, the notice will be deemed received at 8:30am on the business day following the date of receipt disclosed in the report.
- 18.3.4. A confirmation report is, for a facsimile transmission, a transmission confirmation report produced by the sender's facsimile machine:
 - 18.3.4.1. containing the identification code of the intended recipient's facsimile machine; and
 - 18.3.4.2. indicating that the transmission was received without error.

19. MISCELLANEOUS

19.1. Applications to lessor

An application or request for lessor consent, approval, or permission must be submitted in writing to the lessor.

19.2. Communication between parties

- 19.2.1. Neither an approval nor a consent or permission given under this lease binds the party giving it unless that party gives it in writing.
- 19.2.2. An appointment or direction made or given under this lease is ineffective unless made or given in writing.
- 19.2.3. A request made under this lease is deemed neither made nor received if not made in writing.
- 19.2.4. The waiver of an entitlement under this lease is not binding unless made in writing.
- 19.2.5. To prevent uncertainty, a notice under this lease is ineffective unless given in writing (refer to clause 18.1.2 which states a notice must be given in writing).

19.3. Waiver/abandonment of entitlement

- 19.3.1. The mere fact that a party does not exercise an entitlement under or concerning this lease when the entitlement accrues:
 - 19.3.1.1. does not deprive it of the entitlement; and
 - 19.3.1.2. does not deprive it of similar entitlements that accrue at other times.
- 19.3.2. The mere fact that a party grants an indulgence under or concerning this lease on a given occasion does not entitle the recipient to the same or a similar indulgence on another occasion.

19.3.3. The mere fact that a party grants an indulgence under or concerning this lease in a given circumstance does not entitle the recipient to the same or a similar indulgence in a similar circumstance.

19.4. Jurisdiction (adjudication of disputes)

19.4.1. For this clause, a *Queensland Court* is:

19.4.1.1. a court or tribunal, constituted under Queensland legislation and empowered to adjudicate a dispute arising under this lease; and

19.4.1.2. the High Court of Australia (as the final forum of appeal from the decision of any such court or tribunal).

19.4.2. The parties submit to the exclusive jurisdiction of the Queensland Courts for the adjudication and resolution of disputes under this lease.

19.4.3. Each party waives all entitlement to object to a party bringing action upon this lease before a Queensland court, including entitlement to claim that the Queensland court is an inconvenient forum or no Queensland court has jurisdiction.

19.4.4. Each party undertakes to refrain from bringing action upon this lease in a forum other than a Queensland court.

19.5. Completion of documents

The lessee irrevocably authorises the lessor and its solicitor, collectively and individually, to complete this lease and every ancillary document by:

19.5.1. inserting a sketch or plan identifying the premises (if necessary);

19.5.2. inserting a necessary word and figure; and

19.5.3. initialling, executing, or correcting this lease or document (if necessary),

but to the extent only that doing so will not alter the substance of the parties agreement.

19.6 Native Title

This lease is entered in to in accordance with the provisions of section 24JA of the *Native Title Act* 1993 (Cth). In accordance with section 24JA of the *Native Title Act* 1993 (Cth), the non-extinguishment principle applies.

[end of document]