



**Maddocks**

Lawyers  
Collins Square, Tower Two  
Level 25, 727 Collins Street  
Melbourne VIC 3008  
Australia

Telephone 61 3 9258 3555  
Facsimile 61 3 9258 3666

info@maddocks.com.au  
www.maddocks.com.au

DX 259 Melbourne

**Lease**

**Premises: 222 Ferris Road, Melton South**

**Melton City Council**  
and

**Western BACE Limited**  
ACN 169 591 762

[8013197: 25248736\_1]

**Interstate offices**  
Canberra Sydney  
Affiliated offices around the world through the  
Advoc network - www.advoc.com



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## Schedule

<b>Item 1.</b>	<b>Council:</b> (Clause 1)	Melton City Council of 232 High Street, Melton 3337
<b>Item 2.</b>	<b>Tenant:</b> (Clause 1)	Western BACE Limited ACN 169 591 762 of 222 Ferris Road, Melton South 3338
<b>Item 3.</b>	<b>Guarantor:</b> (Clause 1 & 25)	Not applicable
<b>Item 4.</b>	<b>Land:</b> (Clause 1)	The land contained in certificate of title volume 11436 folio 551
<b>Item 5.</b>	<b>Premises:</b> (Clause 1)	The part of the Land and together with the improvements thereon as shown on the plan attached to this Lease as Attachment 2 and known as 222 Ferris Road, Melton South
<b>Item 6.</b>	<b>Commencement Date:</b> (Clause 1)	1 July 2020
<b>Item 7.</b>	<b>Expiry Date:</b> (Clause 1)	30 June 2025
<b>Item 8.</b>	<b>Term:</b> (Clauses 1 & 4.1)	5 years
<b>Item 9.</b>	<b>Further Term(s):</b> (Clauses 1 & 4.2.2)	1 further term of 5 years
<b>Item 10.</b>	<b>Last date for exercising the Option for the Further Term:</b> (Clause 4.3.1)	31 March 2025
<b>Item 11.</b>	<b>Rent:</b> (Clause 1 & 5)	\$1.00 per annum payable on demand
<b>Item 12.</b>	<b>Market Rent Review Dates:</b> (Clauses 1 & 6)	Not applicable
<b>Item 13.</b>	<b>CPI Adjustment Dates:</b> (Clauses 1 & 7)	Not applicable
<b>Item 14.</b>	<b>Percentage Rent Increase Dates:</b> (Clauses 1 & 8)	Not applicable
<b>Item 15.</b>	<b>Bank Guarantee:</b> (Clauses 1 & 12)	Not applicable
<b>Item 16.</b>	<b>Permitted Use:</b> (Clauses 1 & 17.1)	To operate the Western Business Accelerator and Centre for Excellence ('Western BACE') in accordance with the operating principles contained in Attachment 5





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**1. Definitions**

In this Lease unless expressed or implied to the contrary:

**Act** means the *Retail Leases Act 2003* (Vic).

**Bank Guarantee** means an unconditional undertaking issued by an authorised deposit taking institution under the *Banking Act 1959* (Cth) to pay on demand the amount specified in Item 15.

**Building Act** means the *Building Act 1993* (Vic).

**Building Regulations** means the *Building Regulations 2018* (Vic).

**Commencement Date** means the date specified in Item 6.

**Contamination** includes any solid, liquid, gas, radiation or substance which makes or may make the condition of the Premises or groundwater beneath or part of the surrounding environment:

- (a) unsafe, unfit or harmful for habitation by persons or animals; or
- (b) unfit for any use permitted under any applicable planning scheme as amended from time to time

or which is defined as such in any Environmental Protection Legislation.

**Council** means the Council specified in Item 1 and includes Council's successors and assigns and where it is consistent with the context includes Council's employees and agents.

**Council's Fixtures** means all fittings, fixtures, and chattels contained in the Premises at the Commencement Date or installed by Council during the Term.

**CPI** means the Consumer Price Index - All Groups Melbourne or if this index is not available or is discontinued or suspended, such other index that represents the rise in the cost of living in Melbourne, as Council reasonably determines.

**CPI Adjustment Date** means the date(s) (if any) described in Item 13.

**Current CPI** means the CPI number for the quarter ending immediately prior to the CPI Adjustment Date.

**Environmental Protection Legislation** means any statute, regulation, code, proclamation, ministerial directive, ordinance, by law, planning policy or subordinate legislation, past, present or future, relating to pollutants and contaminants, use of land, human health and safety or protection of the environment.

**Essential Safety Measure** has the meaning given to that term in the Building Regulations.

**Expiry Date** means the date specified in Item 7.

**Further Term** means the further term(s) specified in Item 9.

**Guarantor** means the person(s) specified in Item 3.





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**Insolvency Event** means in relation to a person, any of the following:

- (a) the person, being an individual, commits an act of bankruptcy;
- (b) the person becomes insolvent;
- (c) the person assigns any of its property for the benefit of creditors or any class of them;
- (d) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the person or the person enters into a scheme of arrangement with its creditors or is wound up;
- (e) the holder of a Security Interest takes any step towards taking possession of or takes possession of any assets of the person or exercises any power of sale;
- (f) a judgment or order is made against the person in an amount exceeding \$10,000 (or the equivalent in any other currency) and that judgment or order is not satisfied, quashed or stayed within 20 Business Days after being made;
- (g) the person, being a corporation, is deregistered with the Australian Securities and Investments Commission;
- (h) any step is taken to do anything listed in the above paragraphs; and
- (i) any event that is analogous or has a substantially similar effect to any of the events specified in this definition in any jurisdiction.

**Item** means an item in the Lease Particulars.

**Land** means the land specified in Item 4.

**Lease** means this lease and includes all attachments and schedules.

**Lease Particulars** means the schedule of Items specified on the page at the front of this Lease.

**Lettable Area(s)** means the lettable area of the Premises or the Land, as applicable, assessed for Rates and Taxes as determined by a surveyor engaged by Council.

**Local Government Act** means the *Local Government Act 1989* (Vic).

**Market Rent Review Dates** means the date(s) (if any) specified in Item 12.

**OHS Act** means the *Occupational Health and Safety Act 2004* (Vic).

**OHS Law** means the OHS Act, the OHS Regulations, and any other occupational health and safety law, regulation or by-law that applies to work being carried out on the Premises.

**OHS Regulations** means the *Occupational Health and Safety Regulations 2017* (Vic).

**Percentage Rent Increase Date** means the date(s) specified in Item 14.

**Permitted Use** means the use specified in Item 16.

**Premises** means the premises specified in Item 5 and includes Council's Fixtures.



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**Previous CPI** means the CPI number for the quarter ending immediately prior to the last date that the Rent was reviewed, adjusted or increased, or the Commencement Date (whichever is the later);

**Rates and Taxes** means the rates, taxes, charges and levies specified in clause 9.1.

**Principal Contractor** means the position of principal contractor referred to in Part 5.1 of the OHS Regulations.

**Rent** means the amount specified in Item 11 as reviewed, adjusted or increased under this Lease.

**Security Interest** means:

- (a) any mortgage, pledge, lien, charge or other preferential right, trust arrangement, agreement or arrangement of any kind given or created by way of security, including a security interest (as defined in the *Personal Property Securities Act 2009*); and
- (b) any agreement to create or grant any arrangement described in paragraph (a).

**Small Business Commissioner** means the Small Business Commissioner referred to in the Act.

**Special Conditions** means the conditions set out in Attachment 1 (if any).

**Tenant** means the Tenant specified in Item 2 and includes the Tenant's successors and assigns and where it is consistent with the context includes the Tenant's employees, contractors, agents, invitees and persons the Tenant allows in the Premises.

**Tenant's Property** means all property in the Premises including all fixtures and fittings owned or leased by the Tenant but excluding Council's Fixtures.

**Term** means the term specified in Item 8 and includes any period of overholding.

**Valuer** means the valuer appointed pursuant to clause 6.3 of this Lease.

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## 2. **Local Government Act 1989**

This Lease is entered into pursuant to s 190 of the Local Government Act.

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## 3. **Negotiation and disclosure requirements**

### 3.1 **Negotiation for Lease**

If the Act applies to this Lease, the Tenant acknowledges receiving from Council:

- 3.1.1 a copy of the proposed Lease; and
- 3.1.2 a copy of the information brochure about retail leases published by the Small Business Commissioner,

as soon as the Tenant entered into negotiations with Council, or its agent in respect of this Lease.



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**3.2 Disclosure statement**

If the Act applies to this Lease, the Tenant acknowledges having received from Council:

3.2.1 a disclosure statement (in the form prescribed by the Act) attached as Attachment 3; and

3.2.2 a copy of the proposed lease,

at least 7 days prior to the Tenant entering into this Lease.

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**4. Duration of the Lease****4.1 Term**

This Lease is for the Term starting on the Commencement Date.

**4.2 Lease less than 5 years**

4.2.1 If the Act applies to this Lease, and this Lease is for a term less than 5 years (including any further term) for the purposes of s 21 of the Act, the Tenant must:

- (a) request the Small Business Commissioner to give the certification specified in s 21(5) of the Act (**Certification**) within 7 days of the Commencement Date;
- (b) give to Council the Certification within 7 days of receipt; and
- (c) give to Council a written notice waiving the application of s 21 of the Act to this Lease at the same time as providing the certificate to Council.

4.2.2 The Tenant irrevocably appoints Council as its attorney to:

- (a) submit a request to the Small Business Commissioner for the Certification; and
- (b) sign a written notice waiving s 21 of the Act.

**4.3 Option for a Further Term**

Council will grant to the Tenant a new lease for the Further Term if the Tenant:

- 4.3.1 gives Council written notice asking for a new lease, not earlier than 6 months or later than 3 months, before the end of the Term (the last date for exercising the option for the Further Term is specified in Item 10);
- 4.3.2 has remedied any breach of this Lease of which the Tenant has received written notice from Council;
- 4.3.3 has not persistently defaulted under this Lease and Council has given written notice of the defaults; and
- 4.3.4 complies with all reasonable requirements of Council including where the Tenant is a corporation, procuring such directors or shareholders of the Tenant as may be reasonably required by Council to execute the guarantee contained in this Lease.



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The new lease for the Further Term will commence on the day after this Lease ends and contain the same terms and conditions as this Lease but with no option for a further term where the last option for the Further Term has been exercised. The Rent or the method to be used to review, adjust or increase the Rent during the Further Term is specified in clauses 6, 7 and 8.

**4.4 Execution of new Lease for Further Term**

The Tenant and the Guarantor (where applicable) must:

- 4.4.1 execute the new lease for the Further Term; and
  - 4.4.2 sign any disclosure statement provided by Council to the Tenant,
- and return the above to Council within 14 days of receipt from Council.

**4.5 Holding Over**

If the Tenant continues to occupy the Premises after the Expiry Date with Council's consent, except under a lease arising from the valid exercise of an option to renew, the following provisions will apply:

- 4.5.1 the Tenant will occupy the Premises as a monthly tenant at a total rental payable monthly in advance being an amount equal to one-twelfth of the aggregate of the Rent and any other money payable by the Tenant to Council under this Lease as at the Expiry Date, the first of the monthly payments to be made on the day following the Expiry Date;
- 4.5.2 as far as applicable, the monthly tenancy will otherwise continue on the terms and conditions of this Lease;
- 4.5.3 the Rent or any part of it for the monthly tenancy may be reviewed whenever Council determines it appropriate and any provisions in this Lease relating to calculation of, limitation on or right of review of the Rent or any part of it will not apply;
- 4.5.4 either party may terminate the monthly tenancy by giving to the other 1 month's notice to the other party expiring on any date; and
- 4.5.5 if the Tenant defaults in the performance of its obligations under the monthly tenancy, Council may terminate the monthly tenancy by giving the Tenant 24 hours' notice.

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**5. Payment of Rent**

The Tenant must:

- 5.1 pay the Rent to Council by equal calendar monthly instalments in advance (and pro-rata for any period less than one month) commencing on the Commencement Date and on the following first day of each month; and
- 5.2 pay the Rent in the manner specified by Council from time to time.



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**6. Market rent review****6.1 Notice by Council**

If a Market Rent Review Date is specified in Item 12, Council may give a notice to the Tenant of Council's assessment of the market rent for the Premises to apply from the Market Rent Review Date. If Council does not give a notice to the Tenant specifying the market rent, the Tenant must continue to pay the Rent payable immediately prior to the Market Rent Review Date.

**6.2 Tenant's objection**

The market rent nominated by Council in the notice to the Tenant will be the Rent which the Tenant must pay from the Market Rent Review Date, unless the Tenant gives a written notice to Council within 14 days of receipt of the notice from Council (time is of the essence) objecting to the market rent specified in the notice from Council. If the Tenant does not give Council the written notice, Council and the Tenant agree that the Rent will be the market rent nominated by Council.

**6.3 Appointing Valuer**

If the Tenant objects to the market rent specified by Council within the time and manner specified in the preceding sub-clause, then the Rent must be determined by a valuer, who is appointed by the parties jointly and where the parties cannot agree on a valuer within 14 days of Council receiving the Tenant's notice objecting to the rent, either party may request:

- 6.3.1 the President of the Australian Property Institute (Victorian Division) or its successor body, to appoint a valuer;
- 6.3.2 where the Act applies to this Lease, the Small Business Commissioner to appoint a specialist retail valuer pursuant to s 37 of the Act.

**6.4 Determination by Valuer**

Council and the Tenant must instruct the Valuer to:

- 6.4.1 determine a market rent for the Premises to apply on and from the Market Rent Review Date in accordance with clause 6.7;
- 6.4.2 determine a market rent which is not less than the rent payable immediately prior to the Market Rent Review Date except this sub-clause 6.4.2 will not apply where the Act applies to this Lease;
- 6.4.3 not reduce the market rent on account of any rent incentive (including a rent free period) payable to the Tenant or tenants of comparable premises except this sub-clause 6.4.3 will not apply where the Act applies to this Lease; and
- 6.4.4 act as an expert and not an arbitrator (the Valuer's decision is binding on Council and the Tenant). The Council and the Tenant must share the costs of the Valuer equally.

**6.5 Council's and Tenant's submissions**

- 6.5.1 The Valuer may confer with Council and the Tenant and may require either party to supply information which the Valuer considers relevant to the determination.



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- 6.5.2 Any request for information must be complied with promptly in writing by the party to whom it is directed, who will make a copy of that information available to the other party.
- 6.5.3 Either party may supply the Valuer with other information which it considers relevant and, if it does so, must make a copy of that information available to the other party.
- 6.5.4 Information may be provided on a confidential basis and, if so, the party receiving it and the Valuer will treat the information as confidential and will not use that information other than for the purposes of this clause 6.

**6.6 Written submissions**

- 6.6.1 Council and the Tenant may make written submissions to the Valuer in relation to the market rent within 30 days of receipt of written notice of the Valuer's acceptance of the Valuer's appointment.
- 6.6.2 The Valuer must not determine the market rent until the expiration of that period of 30 days.

**6.7 Valuer's criteria**

- 6.7.1 Where the Act applies to this Lease, in determining the market rent as at the Market Rent Review Date, the Valuer will have regard to the matters set out in s 37(2) of the Act.
- 6.7.2 Where the Act does not apply to this Lease, in determining the market rent as at a Market Rent Review Date, the Valuer may take into account any matters the Valuer considers relevant including taking into account or disregarding any written submissions received from Council or the Tenant but the Valuer must:

(a) disregard:

- (i) any goodwill attributable to the Premises by reason of the trade, business or activity carried on by the Tenant and the value of Premises and the Tenant's Property;
- (ii) any state of disrepair of the Premises if that condition results from any work carried out or not carried out on the Premises by the Tenant or from the Tenant's breach of any provision of this Lease;
- (iii) any money received under any sublease, subtenancy agreement or occupational arrangement in respect of the Premises which has not been approved by Council;
- (iv) any inducement provided or to be provided to the Tenant in connection with the granting of this Lease;
- (v) the restriction on the use of the Premises under clause 17.1; and
- (vi) anything (including part of a submission received from Council or the Tenant) which is not consistent with the matters to be disregarded or taken into account under this clause 6.7;



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- (b) take into account the following matters or, where the context requires, make the following assumptions:
- (i) the provisions of this Lease;
  - (ii) the Term and any option for renewal (disregarding the elapsed part of the Term);
  - (iii) the rent and outgoings paid or payable in respect of other premises of a quality, nature and size similar to the Premises (including any car parking areas, landscape areas or other areas made available to the Tenant) and leased at their highest and best use;
  - (iv) the use permitted by the relevant laws and the provisions of this Lease;
  - (v) assume that the Tenant has observed and performed all of the provisions of this Lease;
  - (vi) the value of the local goodwill attaching to the Premises (as distinct from the personal goodwill attached to the Tenant's business conducted at or from the Premises) attributable to the location, facilities, management and promotion of the Premises; and
  - (vii) assume that it is Council's and the Tenant's express requirement that no reduction or adjustment will be made to the market rent on account of any inducement provided or to be provided to the Tenant to secure it as a tenant of the Premises or to any other tenant in relation to the taking of a lease of any other premises whether or not those premises are comparable with the Premises.

6.7.3 For the purposes of this clause 6.7, **inducement** means any inducement or incentive provided by Council in respect of the Tenant's entry into this Lease and includes any payment, transfer of property, fit-out of premises or provision of services, assumption of obligation, rent moratorium or reduction, loan or gift.

#### 6.8 Payment of Rent pending valuation

Where the Tenant objects to Council's assessment of the Rent, until the Rent is agreed, or has been determined by the Valuer, the Tenant must continue to pay to Council the Rent payable immediately prior to the Market Rent Review Date. On the next due date for the payment of the Rent following Council and the Tenant agreeing on the Rent, or the Valuer determining of the Rent pursuant to the preceding sub-clause, Council and the Tenant must make any necessary adjustments, including payment of interest calculated in accordance with clause 13.2 on any money owing by either party calculated from the Market Rent Review Date.

#### 6.9 Appointing new Valuer

If the Valuer does not make a determination within 45 days of appointment, resigns or otherwise becomes unable to make the determination, an alternative valuer may be appointed pursuant to clause 6.3.



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**7. CPI adjustment of Rent****7.1 Calculation of adjustment**

If a CPI Adjustment Date is specified in Item 13, the Rent on the CPI Adjustment Date will be adjusted to an amount equal to the Rent payable immediately prior to the CPI Adjustment Date multiplied by the Current CPI and divided by the Previous CPI.

**7.2 Payment of adjusted Rent**

On the next due date for the payment of the Rent, after the Tenant receives notice of the adjusted Rent from Council, Council and the Tenant must make any necessary adjustment to apply on and from the CPI Adjustment Date, including payment of interest calculated in accordance with clause 13.2 on any money owing by either party calculated from the CPI Adjustment Date.

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**8. Percentage Rent increase****8.1 Calculation of adjustments**

If a Percentage Rent Increase Date is specified in Item 14, the Rent on the Percentage Rent Increase Date is increased by the percentage specified in Item 14.

**8.2 Payment of increased Rent**

The Tenant must pay to Council the increased Rent, on and from the Percentage Rent Increase Date regardless of whether Council has given a notice specifying the increased Rent or not.

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**9. Outgoings****9.1 Rates and Taxes**

The Tenant must pay to Council, or the relevant authority:

- 9.1.1 local government rates and charges;
- 9.1.2 water rates and charges, including water usage charges;
- 9.1.3 sewerage and drainage rates and charges;
- 9.1.4 land tax (assessed on a single holding basis) except this cost is excluded where the Act applies to this Lease; and
- 9.1.5 all other rates, taxes, charges and levies assessed in connection with the Premises.

**9.2 Proportion of Rates and Taxes**

If any Rates and Taxes are not separately assessed in connection with the Premises, the Tenant must pay to Council within 14 days of demand the proportion of the Rates and Taxes that the Lettable Area of the Premises bears to the total Lettable Area assessed.





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**9.3 Receipt for payment**

The Tenant must provide to Council:

- 9.3.1 copies of all notices, assessments or invoices for any Rates and Taxes received by the Tenant directly from the relevant authority within 14 days of receipt; and
- 9.3.2 receipts for any Rates and Taxes paid by the Tenant within 7 days of request by Council.

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**10. Other expenses****10.1 Services**

The Tenant must, within 14 days of demand:

- 10.1.1 pay for all services in connection with the Premises, including electricity, gas, water and telephone services; and
- 10.1.2 where the Premises are not separately metered, pay for the cost of installing separate meters to assess the charges for the services.

**10.2 Costs and duty**

The Tenant must pay to Council within 14 days of demand:

- 10.2.1 Council's reasonable costs of preparing, negotiating and entering into this Lease except this amount is not recoverable where the Act applies to this Lease;
- 10.2.2 the stamp duty payable on this Lease (including penalties and fees);
- 10.2.3 Council's reasonable costs in considering the granting of any consent or approval under this Lease (regardless of whether Council actually gives such consent or approval);
- 10.2.4 the cost of any insurance premium to insure the Premises against damage or destruction;
- 10.2.5 the cost of carrying out any repairs to Council's Fixtures except to the extent that such costs are not recoverable under the Act;
- 10.2.6 the cost of complying with the provisions of the Building Act and the Building Regulations in relation to any Essential Safety Measure;
- 10.2.7 the cost of obtaining Council's mortgagee's consent to this Lease (if required) except this amount is not recoverable where the Act applies to this Lease;
- 10.2.8 Council's architects or contractor's fees payable pursuant to clause 14.4.4; and
- 10.2.9 Council's costs (including charges on a solicitor-own client basis) incurred as a result of a breach of this Lease by the Tenant.



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**11. GST****11.1 Definitions**

In this clause:

11.1.1 words and expressions that are not defined in this Lease but which have a defined meaning in the GST Law have the same meaning as in the GST Law;

11.1.2 **GST** means GST within the meaning of the GST Law and includes penalties and interest. If under or in relation to the *National Taxation Reform (Consequential Provisions) Act 2000* (Vic) or a direction given under s 6 of that Act, the supplier makes voluntary or notional payments, the definition of GST includes those voluntary or notional payments and expressions containing the term 'GST' have a corresponding expanded meaning; and

11.1.3 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**11.2 GST exclusive**

Except as otherwise provided by this lease, all consideration payable under this Lease in relation to any supply is exclusive of GST.

**11.3 Increase in consideration**

If GST is payable in respect of any supply made by a supplier under this Lease (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

**11.4 Payment of GST**

Subject to clause 11.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Lease.

**11.5 Tax Invoice**

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 11.4.

**11.6 Reimbursements**

If this Lease requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

11.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and

11.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

**11.7 Adjustment events**

If an adjustment event occurs in relation to a taxable supply under this Lease:

11.7.1 the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and



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11.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

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**12. Bank Guarantee****12.1 Delivery of Bank Guarantee**

The Tenant must deliver to Council the Bank Guarantee on or before the Commencement Date which must:

- 12.1.1 be expressed to be in favour of Council and its successors and assigns;
- 12.1.2 not have an expiry date earlier than 6 months after the Expiry Date; and
- 12.1.3 contain such other terms and conditions as Council may reasonably require.

**12.2 Council's right to call up Bank Guarantee**

Council may call up the Bank Guarantee if any of the default events specified in clause 23.1 or 23.2 occur or any money owing by the Tenant to Council under this Lease is due and unpaid.

**12.3 Tenant not to injunct**

The Tenant must not take any steps to injunct or otherwise restrain:

- 12.3.1 any issuer of the Bank Guarantee from paying Council pursuant to the Bank Guarantee;
- 12.3.2 Council from taking any steps for the purpose of making demand under the Bank Guarantee; or
- 12.3.3 Council using the money received under the Bank Guarantee.

**12.4 Tenant to replace Bank Guarantee**

The Tenant must, within 14 days of demand, replace the Bank Guarantee if called up by Council, or restore the Bank Guarantee to the required amount.

**12.5 Return of Bank Guarantee**

Council must, if the Tenant has complied with all of its obligations under this Lease, return to the Tenant the Bank Guarantee within 60 days of the end of this Lease.

**12.6 Sale of the Premises**

The Tenant must provide a replacement Bank Guarantee to any future owner of the Premises.

**12.7 Increased Bank Guarantee**

If the Bank Guarantee in Item 15 is determined as a proportion of the Rent payable under this Lease and at any time during the Term the Rent is adjusted or increased, then within 7 days of the adjustment or increase the Tenant will deliver to Council an additional or replacement Bank Guarantee to ensure that the amount of the Bank Guarantee held by Council is the proportion specified in Item 15.



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**13. Payment requirements****13.1 No deduction or right of set-off**

The Tenant must pay all amounts due under this Lease to Council (including the Rent and Rates and Taxes without deduction or right of set-off.

**13.2 Interest on late payments**

The Tenant must pay to Council on demand interest at the rate per annum equal to the current rate fixed under s 2 of the *Penalty Interest Rates Act 1983* (Vic) on any money payable by the Tenant under this Lease and remaining unpaid after the due date. Interest will be computed from the date on which such payment became due.

**13.3 Payment after Termination**

The Tenant must:

13.3.1 make all payments due under this Lease; and

13.3.2 provide all information to Council under this Lease to calculate any such payments, even if this Lease has ended.

**13.4 Method of payment**

The Tenant must make all payments under this Lease in such manner as Council reasonably requires, which may include by direct debit.

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**14. Repairs, refurbishment and alterations****14.1 Condition report**

The Tenant acknowledges and agrees that the condition report attached to this Lease in Attachment 4 reflects the true condition of the Premises as at the Commencement Date.

**14.2 Repairs and Maintenance**

The Tenant must:

14.2.1 keep the Premises and the Tenant's Property clean and free from rubbish, store all rubbish in proper containers and have it regularly removed;

14.2.2 keep the Premises in the same condition as it was in at the date the Tenant first entered occupation of the Premises (fair wear and tear excepted) including repairing or replacing anything in the Premises (including all furnishings and floor coverings) which are damaged, worn or destroyed with items of at least the same quality;

14.2.3 paint and where appropriate paper, any parts of the Premises previously painted or papered whenever reasonably required by Council;

14.2.4 maintain in working order all plumbing, drains, pipes and sewers exclusively servicing the Premises;

14.2.5 pay the costs (if any) for the removal of waste and sewerage from the Premises;



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- 14.2.6 maintain any gardens in the Premises in good condition well-watered and free of weeds;
- 14.2.7 treat in a proper and professional manner (including polishing or varnishing as appropriate) all surfaces of the Premises (including wood, tile and metal surfaces) with the appropriate materials approved by Council when reasonably required by Council;
- 14.2.8 repair all defective lights, fluorescent tubes, windows, doors and locks in or exclusively servicing the Premises;
- 14.2.9 make good any damage caused to any adjacent property by the Tenant;
- 14.2.10 take all reasonable measures to ensure that any fair wear and tear to the Premises does not cause any loss or damage to the Premises, the Building, or any person; and
- 14.2.11 give Council prompt written notice of any material damage to the Premises or anything likely to be a risk to the Premises or any person in the Premises.

**14.3 Equipment in Premises**

The Tenant must:

- 14.3.1 repair and maintain Council's Fixtures including airconditioning and heating equipment exclusively serving the Premises (but excluding expenses of a capital nature) in accordance with Council's reasonable requirements; and
- 14.3.2 comply with Council's reasonable requirements concerning the use of Council's Fixtures, including airconditioning and heating equipment.

**14.4 Alterations to Premises**

The Tenant must ensure any alterations or works to the Premises, any services to the Premises or the Tenant's Property are carried out:

- 14.4.1 strictly in accordance with plans and specifications approved by Council;
- 14.4.2 by qualified tradespersons approved by Council;
- 14.4.3 to Council's reasonable satisfaction and in accordance with Council's reasonable requirements (including Council's requirements as to the standard, type, quality, size and colour of any of the Tenant's Property);
- 14.4.4 under the supervision of Council's architect or consultant (the cost of which must be paid by the Tenant to Council within 14 days of demand); and
- 14.4.5 in accordance with all rules and requirements of any authorities having jurisdiction over the Premises.

The Tenant is not required to seek Council's consent to making any alterations to the display of the Tenant's merchandise in the Premises.



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**14.5 Occupational health and safety**

For the purposes of the OHS Law, the Tenant agrees that:

- 14.5.1 the Tenant has sole management and control of the Premises and has sole responsibility for ensuring that the Premises and the means of entering and leaving them are safe and without risks to health;
- 14.5.2 Council appoints the Tenant as Principal Contractor in respect of any works to be carried out by the Tenant on the Premises to which an OHS Law applies;
- 14.5.3 the Tenant must carry out such works in accordance with the requirements of the OHS Law; and
- 14.5.4 Council authorises the Tenant to exercise whatever authority is necessary for the Tenant to discharge the responsibilities of the appointment under clause 14.5.2.

**14.6 Not interfere with services**

The Tenant must not interfere, misuse or overload any services to the Premises, including electricity, gas and water.

**14.7 Defacing Premises**

The Tenant must not deface or damage the Premises (including drilling holes in the Premises) except where approved by Council in accordance with clause 14.3.

**14.8 Failure to repair and maintain**

If the Tenant does not carry out any repairs, maintenance or other works required under this Lease within 14 days of receiving written notice from Council, Council may enter the Premises to carry out such repairs, maintenance and works at any reasonable time after giving the Tenant reasonable notice. The cost of all such repairs, maintenance and works must be paid by the Tenant to Council on demand.

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**15. Insurance****15.1 Public liability and glass insurance**

The Tenant must maintain insurance noting Council's interest as landlord, but not as joint insured, with an insurer approved by Council for:

- 15.1.1 public liability for the amount of \$20 million concerning 1 single event (or such greater sum as reasonably required by Council); and
- 15.1.2 any windows and any other glass in the Premises for the full replacement value.

**15.2 Tenant's Property**

The Tenant must insure the Tenant's Property for loss and damage from risks including fire and water damage for its full replacement value.

**15.3 Condition in policies**

The Tenant must ensure that the insurance policies effected by the Tenant contain a condition that the insurer will notify Council at least 14 days before the policies lapse.



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**15.4 Payment and production of policies**

The Tenant must pay all insurance premiums on or before the due date for payment and produce to Council copies of the certificate of currency on or before the Commencement Date and each anniversary of the Commencement Date.

**15.5 Not invalidate policies**

The Tenant must:

- 15.5.1 not do anything which may make any insurance effected by Council or the Tenant invalid, capable by being cancelled or rendered ineffective, or which may increase any insurance premium payable by Council; and
- 15.5.2 pay any increase in the insurance premium caused by the Tenant's act, default or use of the Premises.

**15.6 Requirements by insurer**

The Tenant must comply with all reasonable requirements of Council's insurer in connection with the Premises.

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**16. Release, indemnity, compensation and liability****16.1 Release**

The Tenant uses and occupies the Premises at its own risk and releases Council from all claims resulting from any damage, loss, death or injury in connection with the Premises except to the extent that such claims arise out of Council's negligence.

**16.2 Indemnity**

The Tenant must indemnify and hold harmless Council against all claims resulting from any damage, loss, death or injury in connection with the Premises and the use and occupation of the Premises by the Tenant except to the extent that such claims arise out of Council's negligence.

**16.3 No compensation**

Council is not liable to the Tenant for any loss or damage incurred by the Tenant due to:

- 16.3.1 any damage to the Premises;
- 16.3.2 the failure of Council's Fixtures or any plant and equipment (including air conditioning and escalators) to operate properly;
- 16.3.3 the interruption or damage to any services (including electricity, gas or water) to the Premises;
- 16.3.4 the overflow or leakage of water in the Premises, or

except to the extent to which Council is liable where the Act applies.



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**16.4 No liability**

The Tenant acknowledges and agrees that:

16.4.1 nothing in this Lease in any way limits, fetters or restricts the power or discretion of Council in the exercise of its statutory rights, duties or powers under the *Planning and Environment Act 1987* (Vic) or the Local Government Act or the exercise of any other statutory right, power or duty that Council may lawfully exercise; and

16.4.2 Council will not be liable to the Tenant under this Lease (including but not limited to a breach of the covenant of quiet enjoyment or a derogation of the grant of this Lease) for any acts or omissions of Council undertaken in any capacity including (but not limited to) in exercising any powers referred to in clause 16.4.1,

except nothing in this clause releases Council from any obligations it owes to the Tenant under this Lease in its capacity as the owner of the Premises.

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**17. Use of Premises****17.1 Permitted Use**

The Tenant must use the Premises for the Permitted Use and not use the Premises for any other purpose.

**17.2 No warranty**

The Tenant:

17.2.1 acknowledges that Council does not represent that the Premises are suitable for the Permitted Use; and

17.2.2 must make its own enquiries as to the suitability of the Premises for the Permitted Use.

**17.3 Illegal purpose**

The Tenant must not use the Premises for any illegal purpose or carry on any noxious or offensive activity on the Premises.

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**18. Other obligations concerning the Premises****18.1 Compliance with laws**

The Tenant must comply with all laws and any requirements of any authority in connection with the Premises and the Tenant's use and occupation of the Premises, except the Tenant will not be required to carry out any structural works unless the need for such works arises from:

18.1.1 the negligent act or omission of the Tenant;

18.1.2 the failure by the Tenant to comply with its obligations under this Lease; or

18.1.3 the Tenant's use of the Premises.





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**18.2 Licences and permits**

The Tenant must maintain all licences and permits required for the Tenant's use of the Premises and obtain the prior written consent of Council before varying any licence or permit or applying for any new licence or permit.

**18.3 Nuisance**

The Tenant must not do anything in connection with the Premises which may:

- 18.3.1 cause a nuisance or interfere with any other person; or
- 18.3.2 be dangerous or offensive in Council's reasonable opinion.

**18.4 Security**

The Tenant must keep the Premises secure at all times when the Premises are not being used by the Tenant.

**18.5 Signs**

The Tenant must seek the prior written consent of Council before displaying or affixing any signs, advertisements or notices to any part of the Premises where such signs, advertisements or notices are visible from outside the Premises.

**18.6 No vending machines**

The Tenant must not permit any vending or amusement machines in the Premises.

**18.7 No auctions**

The Tenant must not conduct any auctions or fire sales in the Premises.

**18.8 No smoking**

The Tenant must:

- 18.8.1 not permit any smoking in the Premises; and
- 18.8.2 display 'no smoking' signs in the Premises if requested by Council.

**18.9 Heavy objects and inflammable substances**

The Tenant must not:

- 18.9.1 store any inflammable or explosive substances in the Premises unless required for the Permitted Use; or
- 18.9.2 store any heavy objects in the Premises or anything likely to damage the Premises.

**18.10 Television and radio**

The Tenant must not install any televisions, radios, music systems or other equipment in the Premises which can be heard outside the Premises without obtaining the prior written consent of Council.



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**18.11 Endanger Premises**

The Tenant must not do or permit anything to be done in connection with the Premises which in the opinion of Council may endanger the Premises or be a risk to any person or property.

**18.12 Tenant's employees**

The Tenant must use all reasonable endeavours to ensure that the Tenant's employees, agents, contractors and invitees observe and comply with the Tenant's obligations under this Lease, where appropriate.

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**19. Tenant's environmental obligations****19.1 Comply with Environmental Protection Legislation**

The Tenant must, in its use of the Premises, comply with all Environmental Protection Legislation and any permit, approval, authority or licence issued pursuant to any Environmental Protection Legislation.

**19.2 Not permit Contamination**

The Tenant must not spill or deposit, or carry out any activities on the Premises which may cause any Contamination, or permit any Contamination to escape in any other way into or on the Premises, drainage or surrounding environment.

**19.3 Notify of and clean up Contamination**

If any Contamination is found in or near the Premises, or the existing Contamination is exacerbated during the Term, the Tenant must at its own cost:

19.3.1 immediately notify Council, the Environment Protection Authority and any other appropriate Authority;

19.3.2 clean up the Contamination and do everything necessary to minimise harm; and

19.3.3 promptly comply with any notice, order, direction or requirement of Council and of any authority in relation to any such Contamination.

**19.4 Indemnify Council**

In addition to any other indemnity in this Lease, the Tenant indemnifies Council against all claims for damages, loss, injury or death caused by or arising out of or otherwise in respect of any Contamination being spilled, deposited or otherwise escaping into or on the Premises or a breach of this clause by the Tenant.

**19.5 Obtain reports, surveys or audits**

The Tenant must immediately obtain any reports, surveys or audits which Council may reasonably require to enable Council to determine whether a breach of the terms of this clause has occurred. The Tenant will also pay Council on demand the reasonable costs of any such report, survey or audit which Council may obtain.



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**20. Dealing with interest in the Premises****20.1 No parting with possession**

The Tenant must not give up possession of the Premises including assigning this Lease, sub-lease the Premises or granting to any person a licence or concession in respect of the Premises, subject to clause 20.2.

**20.2 Conditions of assignment**

Where the Act applies to this Lease, Council will not unreasonably withhold its consent to an assignment of this Lease if the Tenant:

- 20.2.1 has complied with clause 20.4 and Council has not accepted the offer;
- 20.2.2 requests Council in writing to consent to the assignment of the Lease to a new tenant;
- 20.2.3 has remedied any breach of this Lease of which the Tenant has received written notice from Council;
- 20.2.4 provides to Council the name and address of the new tenant and proves to Council's reasonable satisfaction that the new tenant is solvent and able to comply with its obligations under this Lease by providing at least 2 references as to the financial circumstances of the new tenant and at least 2 references as to the business experience of the new tenant;
- 20.2.5 executes and procures the new tenant to execute an assignment of lease which must include a condition by which the Tenant releases Council from any claims arising under or in connection with the Lease and otherwise in a form approved by Council;
- 20.2.6 procures the new tenant to provide such additional security as Council may reasonably require;
- 20.2.7 where the new tenant is a corporation procures such directors or shareholders of the new tenant, as may be reasonably required by Council, to execute a guarantee substantially in the form of the guarantee contained in this Lease;
- 20.2.8 pays Council's reasonable costs in connection with approving the new tenant and the costs of the preparation, negotiation and stamping of any document required under this clause; and
- 20.2.9 where the Act applies to this Lease, provides the new tenant with a copy of the disclosure statement as required by s 61(3) of the Act.

**20.3 No assignment if Act to apply**

Despite anything to the contrary in this Lease, if the Act does not apply to this Lease and an assignment of this Lease, would result in the Act applying to this Lease (either during the Term or as a result of the grant of a lease for the Further Term) Council may withhold its consent to an assignment of this Lease.

**20.4 Right of first refusal**

The Tenant must, prior to applying for Council's consent for an assignment of this Lease, give written notice to Council offering to assign this Lease to Council, or its nominee on the



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same terms as the proposed assignment. The offer must remain open for acceptance by Council for 14 days.

**20.5 Change in shareholding**

If the Tenant is a corporation (other than a corporation listed on any stock exchange in Australia) a change in the control of the corporation as existed at the Commencement Date (whether occurring at the one time or through a series or succession of issues or transfers) or a change in the holding of more than one-half of the issued share capital, either beneficially or otherwise, will be deemed to be an assignment of this Lease and the Tenant must seek Council's prior written consent in accordance with this clause 20.

**20.6 Mortgage of Lease**

The Tenant must not create any security over this Lease or the Tenant's Property.

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**21. Tenant's obligations at the end of this Lease****21.1 Tenant's obligations**

At the end of this Lease, the Tenant must:

- 21.1.1 vacate the Premises and give them back to Council in a condition consistent with the Tenant having complied with its obligations under this Lease;
- 21.1.2 remove the Tenant's Property (including all signs and lettering) and reinstate the Premises to the condition the Premises were in prior to the installation of the Tenant's Property including making good any damage caused by the removal of the Tenant's Property; and
- 21.1.3 give to Council all keys and other security devices for the purposes of obtaining access to the Premises.

**21.2 Tenant's Property left in Premises**

Anything left in the Premises after 7 days of the end of this Lease will be deemed to be abandoned by the Tenant and will become the property of Council and may be removed by Council at the Tenant's cost and at the Tenant's risk and the parties agree that this clause 21.2 is an agreement about the disposal of uncollected goods for the purposes of s 56(6) of the *Australian Consumer Law and Fair Trading Act 2012* (Vic).

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**22. Council's rights and obligations****22.1 Quiet enjoyment**

As long as the Tenant does not breach this Lease, Council must not interfere with the Tenant's use and occupation of the Premises except as provided by this Lease.

**22.2 Alterations to the improvements**

Council may carry out any works, alterations, renovation or refurbishment of the Land which may include extending or reducing any buildings on the Land.



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**22.3 Dealing with the Land**

Council may:

- 22.3.1 subdivide the Land or grant easements or other rights over the Land or the Premises except where it will unreasonably interfere with the Tenant's use and occupation of the Premises;
- 22.3.2 install, repair and replace pipes, cables and conduits in the Premises; and
- 22.3.3 use the roof and external walls of the Premises for any purposes Council determines.

**22.4 Entry by Council**

Council may enter the Premises at any reasonable time after giving the Tenant reasonable notice to:

- 22.4.1 inspect the condition of the Premises;
- 22.4.2 rectify any default by the Tenant under this Lease;
- 22.4.3 undertake an environmental inspection or accreditation or monitor the environmental management of the Premises, including energy and water use;
- 22.4.4 carry out any inspection, repairs, maintenance, works or alterations in the Premises which Council decides to or is required to carry out by any law or authority.

Council must use all reasonable endeavours to cause as little disruption as possible to the Tenant's use of the Premises in exercising Council's rights under this clause.

**22.5 Emergency entry**

Council may enter the Premises at any time without giving notice to the Tenant in an emergency.

**22.6 Reletting and sale**

Council may:

- 22.6.1 affix a 'For Lease' sign on the Premises and show the Premises to intending tenants at any reasonable time upon reasonable notice to the Tenant during the 6 months prior to the end of the Term (except where the Tenant has validly exercised an option for a Further Term); and
- 22.6.2 affix a 'For Sale' sign on the Premises and show the Premises to intending purchasers of the Premises at any reasonable time upon reasonable notice to the Tenant during the Term.

Any sign erected by Council must not unreasonably interfere with the Tenant's use and occupation of the Premises.

**22.7 Council's consent**

Unless otherwise provided for in this Lease, where Council is required to give its consent under this Lease, Council may give or refuse its consent subject to such conditions as Council may determine in its absolute discretion.



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**22.8 Change in landlord**

If a person other than Council becomes entitled to receive the rents reserved by this Lease whether by operation of law or otherwise (**New Landlord**) then:

- 22.8.1 Council is released from all further obligations under this Lease arising after the New Landlord becomes landlord; and
- 22.8.2 the Tenant must at the cost of Council enter into a deed reasonably required by Council under which the Tenant covenants that the New Landlord shall have the benefit of all of the Tenant's obligations under this Lease; and
- 22.8.3 the Tenant must provide a Bank Guarantee in favour of the New Landlord, to replace the Tenant's existing Bank Guarantee.

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**23. Termination of Lease****23.1 Re-entry**

Council may re-enter the Premises and terminate this Lease if:

- 23.1.1 any part of the Rent is in arrears for 14 days (whether or not Council has demanded payment); or
- 23.1.2 an Insolvency Event occurs in relation to the Tenant or any Guarantor; or.
- 23.1.3 the Tenant breaches this Lease and does not remedy the breach within 14 days of receipt of written notice from Council.

**23.2 Damages following determination**

If this Lease is terminated by Council, the Tenant agrees to compensate Council for any loss or damage Council suffers arising in connection with the Tenant's breach of this Lease including the loss of the benefit of the Tenant performing its obligations under this Lease up to the expiration of the Term.

**23.3 Essential terms**

The essential terms of this Lease are clauses 5, 9.1, 10.1, 10.2, 11, 11.1, 14.2, 14.3, 14.4, 15, 17.1, 17.3, 18, 19, 20 and 21 and the Tenant's obligations under any Special Conditions. The breach of an essential term is a repudiation of this Lease.

**23.4 No deemed termination**

If the Tenant vacates the Premises, Council will not be deemed to have terminated this Lease merely by the acceptance of keys from the Tenant, entry into the Premises for any purpose, or the showing of the Premises to prospective tenants or purchasers. This Lease will be deemed to continue until such time as Council gives notice to the Tenant terminating this Lease, or otherwise agrees with the Tenant that this Lease is terminated.



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**24. Destruction or damage of Premises****24.1 Reduction in Rent**

If the Premises, or any part of the Premises is destroyed or damaged to the extent that the Tenant cannot use or have access to the Premises (except if the Tenant causes or contributes to the destruction or damage, or Council's insurer is not legally required to reinstate the Premises because the Tenant caused or contributed to the destruction or damage) then Council will reduce the Rent and other amounts due under this Lease by a reasonable amount depending upon the nature and extent of destruction or damage until the Tenant can use or have access to the Premises.

**24.2 Reinstatement of Premises**

If the Premises or any part of the Premises are destroyed or damaged, Council may, within 3 months from the date of such damage or destruction, give notice to the Tenant:

- 24.2.1 terminating this Lease, where Council considers that the damage or destruction is such that repairing it is impracticable or undesirable; or
- 24.2.2 that Council will commence reinstatement of the Premises to a condition where the Tenant can use or have access to the Premises.

Council does not have to reinstate the Premises.

**24.3 Tenant's right of termination**

Where the Tenant has not caused or contributed to the damage or destruction of the Premises and the payment of the insurance for the Premises is not refused due to the act or default of the Tenant, the Tenant may give written notice to Council terminating this Lease where Council does not:

- 24.3.1 give notice to the Tenant pursuant to clause 24.2; or
- 24.3.2 commence reinstatement within 12 months of the date of damage or destruction.

Upon termination of this Lease, each party is released from all further obligations under this Lease except nothing in this clauses releases either party from any breach of this Lease arising prior to the date of termination.

**24.4 Dispute resolution**

If a dispute arises under this clause about the amount of the Rent or Outgoings other amounts payable by the Tenant, either party may ask the President of the Australian Property Institute (Victorian Division) to nominate a valuer to determine the dispute as an expert. The parties will be bound by the determination of the valuer and will share the fees of the valuer equally.

**24.5 No compensation**

The Tenant acknowledges that if the Premises are destroyed or damaged, the Tenant is not entitled to receive any compensation from Council, except this clause does not apply where the Act applies to this Lease.



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**25. Guarantor****25.1 Liability of Guarantor**

In consideration of Council granting this Lease to the Tenant at the Guarantor's request, the Guarantor:

- 25.1.1 guarantees that the Tenant will strictly observe and perform its obligations under this Lease including during any period of overholding or any Further Term;
- 25.1.2 must pay on demand to Council money for any loss suffered by Council due to the Tenant's breach of this Lease.
- 25.1.3 indemnifies Council against all loss suffered by Council as a result of Council having entered into this Lease including as a result of a breach of this Lease by the Tenant or this Lease being unenforceable against the Tenant.

**25.2 Extension of liability**

The Guarantor is liable even if:

- 25.2.1 Council grants to the Tenant or a Guarantor any indulgence or extension of time;
- 25.2.2 this Lease is assigned, varied or ends for any reason whatsoever;
- 25.2.3 this Lease cannot be registered at the Land Titles Office;
- 25.2.4 any Guarantor does not sign this Lease; or
- 25.2.5 Council decides not to sue the Tenant or any other Guarantor.

**25.3 Not enforce claim against Tenant**

The Guarantor must:

- 25.3.1 not seek to recover any money from the Tenant until Council has been paid all moneys owing from the Tenant under this Lease;
- 25.3.2 not prove in the bankruptcy or winding up of the Tenant unless Council has been paid all moneys owing to Council by the Tenant under this Lease; and
- 25.3.3 pay to Council any money which Council has been unable to retain as a preferential payment received from the Tenant.

**25.4 Sale of Premises**

If Council sells the Premises Council may assign the benefit of the Guarantor's obligations.

**25.5 Alternate security**

- 25.5.1 If the Act applies to this Lease, Council and the Tenant agree that if the Tenant wishes to provide a bank guarantee issued by an authorised deposit taking institution under the *Banking Act 1959* (Cth) in lieu of the guarantee pursuant to this clause 25.2.1, it will be reasonable for Council to require the bank guarantee to be for an amount equal to the current year's Rent and the Tenant acknowledges that the payment of any bank guarantee pursuant to this clause 25.2.1 is in addition to the provision of the Bank Guarantee.





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- 25.5.2 The provision of the bank guarantee pursuant to this clause 25.5 will be governed by clause 12.

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**26. Personal Property Securities Act**

**26.1 Terms used in this clause**

In this clause 26 :

26.1.1 **Council PPS Property** means any item of property:

- (a) in which the Council has an interest; and
- (b) which is situated on the Premises at any time during the term of this Lease;

26.1.2 **PPS Act** means the *Personal Property Securities Act 2009* (Cth);

26.1.3 **Tenant PPS Property** means any item of property:

- (a) in which the Tenant has rights;
- (b) which is situated on the Premises at any time during the term of this Lease; and
- (c) of which, whether before or after the end of the term of this Lease:
  - (i) the Council may require the Tenant to transfer ownership to the Council; and
  - (ii) the Tenant is obliged to transfer ownership to the Council,

but does not include any Council PPS Property; and

26.1.4 words and expressions that are not defined in this Lease but which have a defined meaning in the PPS Act have the same meaning as in the PPS Act.

**26.2 Tenant's Security Interest in favour of Council**

The Tenant:

- 26.2.1 charges its right title and interest in all Tenant PPS Property in favour of the Council, as security for the performance of the Tenant's obligations under this Lease, including but not limited to the Tenant's obligations to transfer ownership in the whole or any part of the Tenant PPS Property to the Council at the expiry or termination of the Lease;
- 26.2.2 acknowledges and agrees that the charge granted by the Tenant under clause 26.2.1 constitutes the grant of a Security Interest which the Council is entitled to register under the PPS Act;
- 26.2.3 acknowledges and agrees that the grant of this Lease also constitutes the grant of a Security Interest in the Council PPS Property in favour of the Council, which interest the Council is entitled to register under the PPS Act as a Purchase Money Security Interest; and
- 26.2.4 must do all things required by the Council from time to time (including, without limitation, signing any documents required by the Council) to enable the Council to



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register its above Security Interests under the PPS Act, and to otherwise perfect its Security Interest in the Tenant PPS Property and the Council PPS Property so that the Council's Security Interests have priority over any other Security Interests under the PPS Act in relation to the Tenant PPS Property and the Council PPS Property.

**26.3 No other Security Interest**

The Tenant:

26.3.1 warrants that it has not granted a Security Interest in respect of any Council PPS Property on or prior to execution of this Lease that has not been previously disclosed to the Council in writing; and

26.3.2 agrees that it will not grant a Security Interest in respect of any Council PPS Property or Tenant PPS Property in favour of any person other than the Council without the Council's prior written consent, which consent may be granted or withheld in the Council's absolute discretion and on any conditions that the Council considers necessary or desirable at its absolute discretion.

**26.4 Indemnity**

The Tenant must indemnify and hold harmless the Council against all claims, damages or loss incurred by the Council as a consequence of any breach by the Tenant of this clause.

**26.5 Documents under PPS Act**

The Tenant acknowledges and agrees that:

26.5.1 it waives its right under the PPS Act to receive a copy of any 'verification statement' or 'financing charge statement' (as those terms are defined in the PPS Act); and

26.5.2 on the expiration or earlier termination of this Lease, the Tenant must sign (and procure any holder of a registered Security Interest to sign) any document that the Council considers necessary or desirable under or as a result of the PPS Act to release any registered Security Interests under the PPS Act in relation to the Tenant PPS Property and the Council PPS Property.

**26.6 Possession of Tenant PPS Property**

If this Lease is terminated by the Council as a consequence of a default by the Tenant under this Lease, without limitation to any other rights of the Council, the Council may take possession of the Tenant PPS Property by way of set off for any loss or damage the Council is entitled to recover in connection with the Tenant's breach of the Lease.

**26.7 Essential term**

This clause is an essential term of this Lease.

**26.8 Inconsistency with other clauses**

In the event of any inconsistency between this clause and any other provision of this Lease, the provisions of this clause will prevail and that other provision will be read down and interpreted accordingly.



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**27. General****27.1 Notices**

Any notice required to be served under this Lease must be in writing and must be served by post, facsimile transmission or hand delivered to:

- 27.1.1 the Tenant at its address set out in this Lease, the Tenant's registered office address, the Premises, or the last known address of the Tenant; and
- 27.1.2 Council at its address set out in this Lease or any other address notified in writing to the Tenant by Council.

**27.2 Time of service**

A notice or other communication is deemed served:

- 27.2.1 if served personally or left at the person's address, upon service;
- 27.2.2 if posted, 2 business days after posted;
- 27.2.3 if served by facsimile transmission, subject to the next sub-clause, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile machine; and
- 27.2.4 if received after 6.00 pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

**27.3 Entire understanding**

This Lease and the disclosure statement (if any) contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Lease and have no effect.

**27.4 Waiver**

If Council accepts the Rent or any other monies under this Lease (before or after the end of this Lease) or does not exercise or delays exercising any of Council's rights under this Lease, it will not be a waiver of the breach of this Lease by the Tenant or of Council's rights under this Lease.

**27.5 Special Conditions**

This Lease is subject to the Special Conditions. The Special Conditions override any inconsistent provisions in this Lease.

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**28. Interpretation****28.1 Governing law and jurisdiction**

This Lease is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.



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**28.2 Persons**

In this Lease, a reference to a person includes a firm, partnership, association, corporation or other corporate body.

**28.3 Joint and several**

If a party consists of more than 1 person, this Lease binds them jointly and each of them severally.

**28.4 Legislation**

In this Lease, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

**28.5 Clauses and headings**

In this Lease:

28.5.1 a reference to a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Lease; and

28.5.2 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Lease.

**28.6 Severance**

In this Lease:

28.6.1 if a provision is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and

28.6.2 if it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Lease.

**28.7 Number and gender**

In this Lease, a reference to:

28.7.1 the singular includes the plural and vice versa; and

28.7.2 a gender includes the other genders.

**28.8 No relationship**

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



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**28.9 Exclusion of statutory provisions**

The following statutory provisions are excluded from this Lease:

28.9.1 Section 144 of the *Property Law Act 1958* (Vic); and

28.9.2 Division 7 of the *Transfer of Land Act 1958* (Vic).



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## Attachment 1

### Special Conditions

#### 1. Additional signage

The Tenant must, at its own cost, erect a sign on the Premises which must:

- 1.1 clearly state the name of the Tenant, the activities conducted at the Premises and invite residents and ratepayers of the municipality to become members of the Tenant;
- 1.2 comply with all local planning laws and requirements; and
- 1.3 be to Council's reasonable satisfaction.

#### 2. Membership of Tenant

The Tenant must:

- 2.1 permit residents and ratepayers of the municipality to become members of the Tenant upon satisfying the Tenant's reasonable requirements for membership;
- 2.2 upon demand, inform Council of the number of members of the Tenant; and
- 2.3 within 7 days of demand, provide all necessary documents to Council to verify the membership of the Tenant.

#### 3. Record keeping and reporting

3.1 The Tenant must:

- 3.1.1 keep full and accurate accounts of the conduct of its business at the Premises; and
- 3.1.2 retain all such records for a period of no less than 7 years after the end of the Term.

3.2 The Tenant must give to Council:

- 3.2.1 (if requested) within 60 days of the end of each financial year an audited financial report, including a statement of assets and liabilities and profit and loss statement for the Tenant for that financial year;
- 3.2.2 within 14 days of the Tenant's annual general meeting, a written report detailing:
  - (a) the activities conducted by the Tenant during the preceding year and, where applicable, a list of the groups which have used the Premises and a list of times at which the Premises were used; and
  - (b) the office bearers appointed to the Tenant, their duties and the length of term of the office of each office bearer; and
- 3.2.3 a copy of any sublease or licence entered into by the Tenant, within 14 days following execution of such sublease or licence.

3.3 This Special Condition survives the expiry or early termination of this Lease.



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**4. Tax exempt**

The Tenant must not undertake any activity or permit anything to be done which may cause it to cease being exempt from Commonwealth income tax under the *Income Tax Assessment Act 1997* (Cth).

**5. Liquor licence**

The Tenant must:

5.1 The parties acknowledge that at the Commencement Date the Tenant holds a licence at the Premises and for the purposes of this Special Condition 5 such licence is a Licence or Permit save that the Tenant is not required to have obtained Council's consent before procuring or renewing such licence.

5.2 The Tenant must:

- 5.2.1 seek the prior written consent of Council before applying for any licence or permit under the *Liquor Control Reform Act 1998* (Vic) (**Licence or Permit**), or applying for any variation, removal, transfer, surrender or release of the Licence or Permit or nominating any person to be a licensee or permittee;
- 5.2.2 produce the Licence or Permit to Council for inspection upon demand;
- 5.2.3 comply with any conditions of the Licence or Permit imposed by Council;
- 5.2.4 comply with all conditions of the Licence or Permit and all laws relating to the licence or permit;
- 5.2.5 not allow the Licence or Permit to be cancelled or suspended;
- 5.2.6 renew the Licence or Permit and notify Council in writing within 14 days of the renewal;
- 5.2.7 promptly notify Council in writing if the Licence or Permit is cancelled or suspended or if the Tenant receives any notice, summons or fine in relation to the Licence or Permit;
- 5.2.8 indemnify Council for any damages or costs incurred in relation to the Licence or Permit or a breach of this clause by the Tenant; and
- 5.2.9 surrender the Licence or Permit within 21 days of receiving a written notice from Council, which Council may give to the Tenant if the Tenant's use of the Premises is causing or likely to cause a nuisance to local residents.

**6. Gaming licence**

The Tenant must seek the prior written consent of Council before applying for any licence under the *Gambling Regulation Act 2003* (Vic). Council may withhold its consent or give its consent subject to such terms and conditions as Council may determine in its absolute discretion.

**7. Subleasing and licensing**

7.1 The Council will not unreasonably withhold its consent to the Tenant entering into:

- 7.1.1 sublease arrangements with the Council's consent, provided that the sublease and disclosure statement are in the form attached as Attachment 7;



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- 7.1.2 licence arrangements for part of the Premises provided the form of licence is in a form acceptable to the Council and does not conflict with the Tenant's own use of the Premises and is consistent with the Permitted Use.
- 7.2 Within 3 months following the end of each financial year during the Term, the Tenant must, if requested, give the Council complete copies of all subleases and licences granted by the Tenant, together with details of the names, addresses and contact telephone numbers for each subtenant and licensee.
- 7.3 The Tenant must ensure that the Tenant's public liability insurance taken out pursuant to this Lease covers all subtenants and licensees for an amount of not less than \$20 million for any single event.
- 8. Garden areas**
- For the purpose of clause 14.2.6, the parties acknowledge that the Premises include the garden areas shown on the plan in Attachment 6.
- 9. Maintenance Schedule**
- 9.1 Each party must carry out the repair and maintenance obligations specified as being that party's responsibility in the Maintenance Schedule attached as Attachment 8 (**Maintenance Schedule**).
- 9.2 On the commencement date of each anniversary of the Lease, Council will provide revised agreed cost figures to the Tenant.
- 9.3 In the event of any inconsistency between a provision of the Maintenance Schedule and any other provision of this Lease, the provision of the Maintenance Schedule will prevail to the extent of the inconsistency.





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## **Attachment 2**

### **Plan of Premises**



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Projection: GDA1994, MGAz55

**Melton City Council**  
**Western BACE**

Map Produced 6/11/2019



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## Attachment 3

### Disclosure Statement

[TBC]



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## Attachment 4

Condition Report

[TBC]





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## Attachment 5

### Western BACE operating principles

1. The aim of the Western BACE is to:
  - 1.1 support a diverse range of local employment opportunities not traditionally found in growth areas, through provision of employment infrastructure, and targeted training and development for local businesses;
  - 1.2 improve sustainable design and construction practices in the residential construction industry;
  - 1.3 generate research and development into excellence in urban design in growth areas;
  - 1.4 achieve stronger social cohesion, capacity and community pride; and
  - 1.5 reduce the area's environmental load through reduced motorised transport.
2. The Western BACE is to include:
  - 2.1.1 The principal purpose for which the Company is formed is to create enterprise and business development for Melbourne's West, through fostering businesses, learning and innovation, which will generate sustainable and accessible employment within Melbourne's West including for the residents of the City of Melton, by focusing on the following objectives:
  - 2.1.2 the operation of a business incubator which will foster businesses, providing premises, mentoring and networking opportunities for business;
  - 2.1.3 the development of a sustainable centre(s) of excellence through research, training and skills transmission;
  - 2.1.4 encouragement of the uptake and use of advanced communications techniques in order to improve business outcomes;
  - 2.1.5 the fostering of a strong business culture and to promote investment in Melbourne's West.



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## **Attachment 6**

**Plan of garden areas**



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## **Attachment 7**

**Form of sublease and disclosure statement**

### **Sub-Lease**

**Premises:** Part of 222 Ferris Road, Melton South

**Melton City Council**  
and

**Western BACE Limited**  
ACN 169 591 762  
and

**##**



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## Schedule

- |     |  |   |
|-----|--|---|
| 1.  | <b>Date of this Sub-Lease:</b>           |   |
| 2.  | <b>Head Landlord:</b>                    | Melton City Council of 232 High Street, Melton 3337   |
| 3.  | <b>Landlord:</b>                         | Western BACE Limited ACN 169 591 762 of 222 Ferris Road, Melton South 3338  |
| 4.  | <b>Landlord's Guarantor:</b>             | Not applicable  |
| 5.  | <b>Tenant:</b>                           | ##  |
| 6.  | <b>Tenant's Guarantor:</b>               | Not applicable  |
| 7.  | <b>Premises:</b>                         | The premises shown on the plan attached as Attachment 2   |
| 8.  | <b>Term:</b>                             | ## years  |
| 9.  | <b>Commencement Date:</b>                | ##  |
| 10. | <b>Expiry Date:</b>                      | ##  |
| 11. | <b>Rent:</b>                             | ##  |
| 12. | <b>How the Rent is to be paid:</b>       | By equal calendar monthly instalments in advance commencing on the Commencement Date and on the following 1 <sup>st</sup> day of each month |
| 13. | <b>Tenant's Proportion of Outgoings:</b> | ##%   |
| 14. | <b>Bank Guarantee:</b>                   | \$##  |
| 15. | <b>Excluded Clauses:</b>                 |   |

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## Sub-Lease

### Dated

This Sub-Lease is made on the date specified in Item 1.

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## Parties

The Head Landlord

The Landlord

The Tenant

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## Background

- A. The Head Landlord leased the Premises to the Landlord pursuant to the Head Lease.
- B. The Landlord has agreed to sub-lease the Premises to the Tenant on the terms of this Sub-Lease and the Head Landlord has given its consent to this Sub-Lease.

**The Parties Agree**

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**1. Definitions**

In this Sub-Lease, unless expressed or implied to the contrary:

**Act** means the *Retail Leases Act 2003* (Vic).

**Additional Clauses** means the clauses (if any) specified in Attachment 1.

**Bank Guarantee** means the amount (if any) specified in Item 14.

**Commencement Date** means the date specified in Item 9.

**Excluded Clauses** means those clauses of the Head Lease specified in Item 15 which are excluded from this Sub-Lease.

**Expiry Date** means the date specified in Item 10.

**Head Landlord** means the Head Landlord specified in Item 2 and includes the Head Landlord's successors and assigns and where it is consistent with the context includes the Head Landlord's employees and agents.

**Head Lease** means the lease between the Head Landlord and the Landlord, a copy of which is attached to this Sub-Lease as Attachment 3.

**Insolvency Event** means in relation to a person, any of the following:

- (a) the person, being an individual, commits an act of bankruptcy;
- (b) the person becomes insolvent;
- (c) the person assigns any of its property for the benefit of creditors or any class of them;
- (d) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the person or the person enters into a scheme of arrangement with its creditors or is wound up;
- (e) the holder of a Security Interest takes any step towards taking possession of or takes possession of any assets of the person or exercises any power of sale;
- (f) a judgment or order is made against the person in an amount exceeding \$10,000 (or the equivalent in any other currency) and that judgment or order is not satisfied, quashed or stayed within 20 Business Days after being made;
- (g) the person, being a corporation, is deregistered with the Australian Securities and Investments Commission;
- (h) any step is taken to do anything listed in the above paragraphs; and
- (i) any event that is analogous or has a substantially similar effect to any of the events specified in this definition in any jurisdiction.

**Item** means an item in the Schedule.

**Landlord** means the party specified in Item 3 and includes the Landlord's successors and assigns and where it is consistent with the context includes the Landlord's employees and agents.

**Landlord's Guarantor** means the person or persons (if any) specified in Item 4.

**Premises** means the land specified in Item 7 including any buildings and fixtures on the land.

**Rent** means the amount specified in Item 11 as adjusted under this Sub-Lease.

**Schedule** means the schedule at the front of this Sub-Lease.

**Security Interest** means:

- (a) any mortgage, pledge, lien, charge or other preferential right, trust arrangement, agreement or arrangement of any kind given or created by way of security, including a security interest (as defined in the *Personal Property Securities Act 2009*); and
- (b) any agreement to create or grant any arrangement described in paragraph (a).

**Small Business Commissioner** means the Small Business Commissioner referred to in the Act.

**Tenant** means the party specified in Item 5 and includes the Tenant's successors and assigns and where it is consistent with the context includes the Tenant's employees, agents, servants and persons the Tenant allows on the Premises.

**Tenant's Guarantor** means the person or persons (if any) specified in Item 6.

**Term** means the Term specified in Item 8 and includes any extension or overholding.

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## **2. Negotiation and Disclosure requirements**

### **2.1 Negotiation for Lease**

If the Act applies to this Sub-Lease, the Tenant acknowledges receiving from the Landlord:

- 2.1.1 a copy of the proposed sub-lease; and
- 2.1.2 a copy of the information brochure about retail leases published by the Small Business Commissioner,

as soon as the Tenant entered into negotiations with the Landlord, or its agent in respect of this Sub-Lease.

### **2.2 Disclosure Statement**

If the Act applies to this Sub-Lease, the Tenant acknowledges having received from the Landlord:

- 2.2.1 a disclosure statement (in the form prescribed by the Act) and attached as Attachment 4; and

- 2.2.2 a copy of the proposed lease,  
at least 7 days prior to the Tenant entering into this Sub-Lease.

---

**3. Sub-Lease**

**3.1 Term**

This Sub-Lease is for the Term starting on the Commencement Date.

**3.2 Lease Less than 5 Years**

- 3.2.1 If the Act applies to this Sub-Lease, and this Sub-Lease is for a term less than 5 years (including any further term) for the purposes of s 21 of the Act, the Tenant must:
- (a) request the Small Business Commissioner to give the certification specified in s 21(5) of the Act (**Certification**) within 7 days of the Commencement Date;
  - (b) give to the Landlord the Certification within 7 days of receipt; and
  - (c) give to the Landlord a written notice waiving the application of s 21 of the Act to this Sub-Lease at the same time as providing the certificate to the Landlord.
- 3.2.2 The Tenant irrevocably appoints the Landlord as its attorney to:
- (a) submit a request to the Small Business Commissioner for the Certification; and
  - (b) sign a written notice waiving s 21 of the Act.

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**4. Terms of Sub-Lease**

This Sub-Lease contains the same clauses as the Head Lease to the extent that they are applicable to the Premises except:

- 4.1 a reference to the Head Landlord and the Landlord in the Head Lease is substituted for the Landlord and the Tenant respectively in this Sub-Lease;
- 4.2 the Landlord is not required to perform the Head Landlord's obligations under the Head Lease to the extent that those obligations are required to be performed by the Head Landlord; and
- 4.3 the Excluded Clauses are not incorporated into this Sub-Lease.

Where there is any inconsistency between the terms of the Head Lease and the Sub-Lease, the provisions of the Sub-Lease prevail.

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**5. Tenant's obligations****5.1 Comply with Terms of Head Lease**

The Tenant must observe and perform all of the Landlord's obligations in the Head Lease to the extent that such obligations are applicable to the Premises.

**5.2 Payment of Rent**

The Tenant must pay the Rent to the Landlord in the manner specified in Item 12.

**5.3 Outgoings**

The Tenant must pay or reimburse the Landlord within 7 days of receipt of a written notice, the proportion specified in Item 13 of all Rates and Taxes and other amounts of a recurring nature payable by the Landlord to the Head Landlord under the Head Lease.

**5.4 Insurance**

The Tenant must maintain all insurances required to be maintained under the Head Lease in the joint names of the Head Landlord, the Landlord and the Tenant with an insurer approved by the Head Landlord and the Landlord.

**5.5 Consents and Approvals**

The Tenant must obtain the consent or approval of the Head Landlord and the Landlord where the consent or approval of the Landlord is required pursuant to this Sub-Lease.

**5.6 Notices**

The Tenant must give notice to the Head Landlord and the Landlord where such notice is required to be given to the Landlord pursuant to this Sub-Lease.

**5.7 Rights of Inspection**

The Tenant must permit the Head Landlord and the Landlord to exercise any rights conferred on the Landlord in this Sub-Lease, including the right to enter and inspect the Premises.

**5.8 Indemnity**

The Tenant must indemnify and hold harmless all parties to this Sub-Lease against all claims resulting from any damage, loss, death or injury in connection with:

5.8.1 the Premises and the use and occupation of the Premises by the Tenant; or

5.8.2 any breach of this Sub-Lease by the Tenant.

**5.9 Costs and Duty**

The Tenant must pay to the Landlord within 7 days of demand:

5.9.1 the Landlord's and the Head Landlord's reasonable costs for preparing, negotiating and finalising this Sub-Lease and any other document in connection with this Sub-Lease except to the extent to which such costs are not payable pursuant to the Act;

5.9.2 stamp duty on this Sub-Lease (including penalties and fees) and any other document in connection with this Sub-Lease;



5.9.3 the Landlord's reasonable costs in giving any consent or approval under this Sub-Lease; and

5.9.4 the Landlord's costs (including charges on a solicitor-own client basis) incurred as a result of a breach of this Sub-Lease by the Tenant.

**5.10 No Deduction or Right of Set-off**

The Tenant must pay all amounts due under this Sub-Lease to the Landlord without deduction or right of set-off.

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**6. Landlord's obligations**

**6.1 Quiet Possession**

As long as the Tenant does not breach this Sub-Lease, the Landlord must not interfere with the Tenant's use and occupation of the Premises except as provided by this Sub-Lease.

**6.2 Observe Head Lease**

The Landlord must perform and observe all the terms and conditions of the Head Lease.

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**7. Termination of Sub-Lease**

**7.1 Termination of Head Lease**

This Sub-Lease will automatically terminate if the Head Lease ends for any reason.

**7.2 Re-entry**

The Landlord may re-enter the Premises and terminate this Sub-Lease if:

7.2.1 any part of the Rent is in arrears for 14 days (whether or not the Landlord has demanded payment); or

7.2.2 an Insolvency Event occurs in relation to the Tenant or any Tenant's Guarantor; or.

7.2.3 the Tenant breaches this Sub-Lease and does not remedy the breach within 14 days of receipt of written notice from the Landlord.

**7.3 Damages following determination**

If this Sub-Lease is terminated by the Landlord, the Tenant agrees to compensate the Landlord for any loss or damage the Landlord suffers arising in connection with the Tenant's breach of this Sub-Lease including the loss of the benefit of the Tenant performing its obligations under this Sub-Lease up to the Expiry Date.

**7.4 Essential terms**

The essential terms of this Sub-Lease are clauses 5 and 10. The breach of an essential term is a repudiation of this Sub-Lease.

**7.5 No deemed termination**

If the Tenant vacates the Premises, the Landlord will not be deemed to have terminated this Sub-Lease merely by the acceptance of keys from the Tenant, entry into the Premises for any purpose, or the showing of the Premises to prospective tenants or purchasers. This Sub-Lease will be deemed to continue until such time as the Landlord gives notice to the Tenant terminating this Sub-Lease, or otherwise agrees with the Tenant that this Sub-Lease is terminated.

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**8. Landlord not Released**

The Landlord must continue to perform and observe its obligations under the Head Lease and is not released from those obligations by this Sub-Lease.

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**9. GST****9.1 Definitions**

In this clause:

9.1.1 words and expressions that are not defined in this Lease but which have a defined meaning in the GST Law have the same meaning as in the GST Law;

9.1.2 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**9.2 GST exclusive**

Except as otherwise provided by this Sub-Lease, all consideration payable under this Sub-Lease in relation to any supply is exclusive of GST.

**9.3 Increase in consideration**

If GST is payable in respect of any supply made by a supplier under this Sub-Lease (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

**9.4 Payment of GST**

Subject to clause 9.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Sub-Lease.

**9.5 Tax invoice**

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 9.4.

**9.6 Reimbursements**

If this Sub-Lease requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

9.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and

9.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

**9.7 Adjustment events**

If an adjustment event occurs in relation to a taxable supply under this Sub-Lease:

9.7.1 the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and

9.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

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**10. Bank Guarantee**

**10.1 Delivery of Bank Guarantee**

The Tenant must deliver to the Landlord the Bank Guarantee on or before the Commencement Date which must:

10.1.1 be expressed to be in favour of the Landlord and its successors and assigns;

10.1.2 not have an expiry date earlier than 6 months after the Expiry Date; and

10.1.3 contain such other terms and conditions as the Landlord may reasonably require.

**10.2 Landlord's right to call up Bank Guarantee**

The Landlord may call up the Bank Guarantee if any of the default events specified in clause 7.2 occur or any money owing by the Tenant to the Landlord under this Sub-Lease is due and unpaid.

**10.3 Tenant to replace Bank Guarantee**

The Tenant must, within 14 days of demand, replace the Bank Guarantee if called up by the Landlord, or restore the Bank Guarantee to the required amount.

**10.4 Return of Bank Guarantee**

The Landlord must, if the Tenant has complied with all of its obligations under this Sub-Lease, return to the Tenant the Bank Guarantee within 60 days of the end of this Sub-Lease.

**10.5 Sale of the Premises**

The Tenant must provide a replacement Bank Guarantee to any future owner of the Premises.

**10.6 Tenant not to injunct**

The Tenant must not take any steps to injunct or otherwise restrain:

10.6.1 any issuer of the Bank Guarantee from paying the Landlord pursuant to the Bank Guarantee;

10.6.2 the Landlord from taking any steps for the purpose of making demand under the Bank Guarantee; or

10.6.3 the Landlord using the money received under the Bank Guarantee.

**10.7 Increased Bank Guarantee**

If the Bank Guarantee in item 14 is determined as a proportion of the Rent payable under this Sub-Lease and at any time during the Term the Rent is adjusted or increased, then within 7 days of the adjustment or increase the Tenant will deliver to the Landlord an additional or replacement Bank Guarantee to ensure that the amount of the Bank Guarantee held by the Landlord is the proportion specified in item 14.

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**11. Guarantor**

**11.1 Liability of Guarantor**

In consideration of the Landlord granting this Sub-Lease to the Tenant at the request of the Tenant's Guarantor, the Tenant's Guarantor:

- 11.1.1 guarantees that the Tenant will strictly observe and perform its obligations under this Sub-Lease including during any period of overholding or any further term;
- 11.1.2 must pay on demand any amount which the Landlord is entitled to recover from the Tenant and for any money for any loss suffered by the Landlord due to a breach of this Sub-Lease by the Tenant; and
- 11.1.3 indemnifies the Landlord against all loss suffered by the Landlord as a result of the Landlord having entered into this Sub-Lease including as a result of a breach of this Sub-Lease by the Tenant or this Sub-Lease being unenforceable against the Tenant.

**11.2 Extension of Liability**

The Tenant's Guarantor is liable even if:

- 11.2.1 the Landlord grants to the Tenant or a Tenant's Guarantor any indulgence or extension of time;
- 11.2.2 this Sub-Lease is assigned, varied or ends for any reason whatsoever;
- 11.2.3 this Sub-Lease cannot be registered at the Land Titles Office;
- 11.2.4 any Tenant's Guarantor does not sign this Sub-Lease; and
- 11.2.5 the Landlord decides not to sue the Tenant or any other Tenant's Guarantor.

**11.3 Not Enforce Claim Against Tenant**

The Guarantor must:

- 11.3.1 not seek to recover any money from the Tenant until the Landlord has been paid all moneys owing from the Tenant under this Sub-Lease;
- 11.3.2 not prove in the bankruptcy or winding up of the Tenant unless the Landlord has been paid all moneys owing to the Landlord by the Tenant under this Sub-Lease; and
- 11.3.3 pay to the Landlord any money which the Landlord has been unable to retain as a preferential payment received from the Tenant.

**11.4 Security Deposit**

11.4.1 If the Act applies to this Sub-Lease, the Landlord and the Tenant agree that if the Tenant wishes to provide a bank guarantee issued by an authorised deposit taking institution under the *Banking Act 1959* (Cth) in lieu of the guarantee pursuant to this clause 11, it will be reasonable for the Landlord to require the bank guarantee to be for an amount equal to the current year's Rent and the Tenant acknowledges that the payment of any bank guarantee pursuant to this clause 11.4 is in addition to the provision of the Bank Guarantee.

11.4.2 The provision of the bank guarantee pursuant to this clause 11.4 will be governed by clause 10.

**11.5 No compensation**

The Tenant acknowledges that if the Premises are destroyed or damaged, the Tenant is not entitled to receive any compensation from the Landlord, except this clause does not apply where the Act applies to this Sub-Lease.

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**12. General****12.1 Notices**

Any notice required to be served under this Sub-Lease must be in writing and must be served by post, facsimile transmission or hand delivered to:

12.1.1 the Tenant at its address set out in this Sub-Lease, the Tenant's registered office address, the Premises, or the last known address of the Tenant; and

12.1.2 the Landlord at its address set out in this Sub-Lease or any other address notified in writing to the Tenant by the Landlord.

**12.2 Entire understanding**

This Sub-Lease contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Sub-Lease and have no effect.

**12.3 Waiver**

If the Landlord accepts Rent or any other monies under this Sub-Lease (before or after the end of this Sub-Lease) or does not exercise or delays exercising any of the Landlord's rights under this Sub-Lease, it will not be a waiver of the breach of this Sub-Lease by the Tenant or of the Landlord's rights under this Sub-Lease.

**12.4 Additional Clauses**

This Sub-Lease is subject to the Additional Clauses. The Additional Clauses override any inconsistent provisions in this Sub-Lease.

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**13. Interpretation****13.1 Governing law and jurisdiction**

This Sub-Lease is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Victoria and waives any right to object to proceedings being brought in those Courts.

**13.2 Persons**

In this Sub-Lease, a reference to a person includes a firm, partnership, association, corporation or other corporate body.

**13.3 Joint and several**

If a party consists of more than 1 person, this Sub-Lease binds them jointly and each of them severally.

**13.4 Legislation**

In this Sub-Lease, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

**13.5 Clauses and headings**

In this Sub-Lease:

13.5.1 a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Sub-Lease; and

13.5.2 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Sub-Lease.

**13.6 Severance**

In this Sub-Lease:

13.6.1 if a provision is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and

13.6.2 if it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Sub-Lease.

**13.7 No Relationship**

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

**13.8 Number and gender**

In this Sub-Lease, a reference to:

13.8.1 the singular includes the plural and vice versa; and

13.8.2 a gender includes the other genders.

## Signing Page

**Executed** as a deed by the parties on the date specified in Item 1.

**The Common Seal** of the **Melton City Council** was )  
hereunto affixed in the presence of: )  
)

..... Councillor

..... Chief Executive Officer

**Executed** by **Western BACE Limited ACN 169 591** )  
**762** in accordance with s 127(1) of the *Corporations* )  
*Act 2001*:

.....  
Signature of Director

.....  
Signature of Director/Company Secretary

.....  
Print full name

.....  
Print full name

[Insert sealing clauses for subtenant and any guarantors as appropriate]



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## **Attachment 1**

### **Additional Clauses**

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## **Attachment 2**

### **Plan of Premises**

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## **Attachment 3**

### **Copy of Head Lease**

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## **Attachment 4**

### **Disclosure Statement**



Maddocks

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## **Attachment 8**

### **Maintenance Schedule**

Item	Tenant's Responsibility		Council's Responsibility @ Council's Cost	
	Lease	Council willing to provide	Lease	Council Team
Building Insurance Contents Insurance Valuation	Replacement costs for Tenants	No	Replacement Cost of Building and furniture/fittings provided	Finance
	Valuation of Building upon Practical Completion date and as required by insurer		Valuation of Building upon Practical Completion date and as required by insurer	Finance
Preventative Maintenance	Costs in relation to mechanical safety measures in accordance with Occupancy Permit requirements	Yes	Repair if damaged or no longer usable	Property Services
	This includes: - General preventative maintenance of all mechanical safety measures in accordance with AS - Servicing of all mechanical services equipment in accordance with current AS standards - Safety test of all equipment in accordance with relevant authority requirement and current AS standards. - Maintenance and provision of records of all servicing and safety tests for equipment in accordance with relevant authority requirement and current AS standards.	Yes	Evaluate any other repair recommendations and undertake any necessary works	Property Services
Essential Services Testing	Essential services testing and maintenance EWS Weekly, monthly and annual audits of equipment in accordance with Council to be prepared as required	Yes	Repair if damaged or no longer usable	Property Services
	Essential services testing and maintenance EWS Weekly, monthly and annual audits of equipment in accordance with Council to be prepared as required	Yes	Evaluate any other repair recommendations and undertake any necessary works	Property Services
Emergency Training	Training in accordance with the Building requirements under Australian standards	No		
Lift Maintenance	Perform regular safety checks of all lift equipment in accordance with AS standards	Yes	Repair if damaged or no longer usable	Property Services
	Maintain and provide records of all lift equipment in accordance with AS standards	Yes	Evaluate any other repair recommendations and undertake any necessary works	Property Services
Cleaning	Servicing of all lift equipment in accordance with the relevant authority and AS Standards	Yes		
	Supply and storage of cleaning supplies - supplies for all common areas, lift lobbies and entry	No	Annual inspection	Property Services
	General cleaning of toilet and shower areas	No		
	Removal of waste to bin storage area	Yes		
	Periodical cleaning schedule to be implemented	No		
	Periodical cleaning of all external windows and doors	No		

Landscape Maintenance	Maintenance of all soft landscaping areas including fertilising and pruning of areas as required.	Yes	Parks & Open Space	\$9,517.00	Citywide rates	Repair if damaged or no longer useable.	Parks & Open Space
General Maintenance	Removal of all loose litter and debris off site.	Yes	Parks & Open Space			Repair if a potential safety hazard.	Parks & Open Space
	Annual report of all landscape items that are a potential safety hazard and require additional work.	Yes	Parks & Open Space				
	Annual report of all landscape items that are a potential safety hazard and require additional work.	No					
	General maintenance of items that require the services contracts scope.	Yes	Property Services	\$1,440.00	Grease trap servicing (As per contract) \$1140 GST per annum	Repair if damaged or no longer useable. Evaluate any other repair and undertake any necessary works.	Property Services
Lighting	Replacement of light globes	Yes	Property Services	At cost, as required		Repair if damaged or no longer useable. Evaluate any other repair and undertake any necessary works.	Property Services
	Unforeseen minor electrical repairs with certificates of compliance required	Yes	Property Services	At cost, as required		Give approval of any switchboard works.	Property Services
Minor Electrical Repairs (less than \$1,000 in value)	Recommendations of repairs for Council to be prepared as required (less than \$1,000 in value)	Yes	Property Services	At cost, as required		Repair if damaged or no longer useable.	Property Services
	Common water usage	Yes	Property Services	At Cost, On-Charged		Evaluate any other repair and undertake any necessary works.	Property Services
Common Water Usage	Common power usage	Yes	Property Services	At Cost, On-Charged			
	Determine and document the specific need of the centre for any electrical services.	No				Evaluate design specification and scope of any building alterations as provided by approved building alterations.	Property Services
Furnishings and equipment	Document the maintenance required for the centre and forward to Council.	No				Approved building alterations	Property Services
	Cleaning as required.	Yes	Property Services	At cost, as required		Major repair and/or replacement due to structural damage.	Property Services
Blinds	Regular cleaning and repair if required	No	Property Services	At cost, as required	Repair only	Like for like replacement at end of life	Property Services
	Repair of internal/external doors due to major misuse or continual misuse.	Yes	Property Services	\$240.00	Automatic Door Servicing (Labour & Part Hire) Colonial Electrical, \$240 GST per annum	Like for like replacement due to age, structural fault or vandalism	Property Services
Electrical wiring, fittings and lights	Repair and replacement of electrical wiring if damage is due to major misuse or continual misuse.	Yes	Property Services	At cost, as required		Repair and replacement of all building wiring from main supply to and including the switchboard, power points, and light fittings.	Property Services
	Replacement on expiry date.	Yes	Property Services	\$1,117.92	Variation to Service Contract 15036, \$1117.92 GST	Repair and replacement if damaged or no longer useable	Property Services
Fire Extinguishers	Additional units as required by services.	Yes	Property Services				
	Service/annual inspections and maintenance of fire extinguishers.	Yes	Property Services				
Floor surfaces and coverings	Fill when damaged and replace if stolen.	Yes	Property Services				
	All regular cleaning and maintenance of floor coverings.	No				Like for like replacement at end of life.	Property Services
Garbage	All waste handling.	No					
	Replace broken or cracked windows arising from misuse.	Yes	Property Services	At cost, as required		Replace due to breakage arising from structural fault, age or vandalism.	Property Services
Grounds	Regular cleaning.	No					
	Large trees topped to meeting security safety requirements with building by cutting the grass, minor pruning, replacing trees, bushes, flowers if required.	Yes	Parks & Open Space	As per Landscape Maintenance		Major repair of pavement, driveway and carpark.	Civil Operations
		Yes	Parks & Open Space			Repair and replacement of fences if damaged or no longer useable.	Civil Operations