

East Kimberley Regional Airport Café Lease

Shire of Wyndham East Kimberley

Kimberley Group Training Inc.

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Tenant Guide

FORM 6

Commercial Tenancy (Retail Shops) Agreements Act 1985

[section 6A]

TENANT GUIDE

FOR NEW RETAIL SHOP LEASES FROM 1 JANUARY 2013

This guide is intended to assist you, as a tenant, to understand some of your legal rights and obligations in relation to a retail shop lease under the *Commercial Tenancy (Retail Shops) Agreements Act 1985* (the **Act**). This guide does not replace financial, legal or business advice.

The Act and the regulations are available from the State Law Publisher at www.slp.wa.gov.au.

WHAT IS A RETAIL SHOP LEASE

Entering into a lease for a retail shop means that you (the **tenant** or **lessee**) are entering into a legally binding contract with the landlord (or **lessor**). The lease agreement sets out your rights and obligations in relation to the use of the retail shop.

A lease cannot override the requirements of the Act.

The Act regulates some of the provisions which may be contained in your lease agreement, including the following:

- rent reviews
- options to renew a lease
- terminating a lease
- operating expenses (or outgoings)
- trading hours.

Which leases are covered by the Act?

The Act generally applies to leases for premises with a lettable area of 1 000m² or less:

- that are used for carrying on a business and that are in a retail shopping centre
- that are not in a retail shopping centre, but that are used (or predominantly used) for the sale of goods by retail
- that are used for conducting a 'specified business' – specified businesses include, drycleaning, hairdressing, beauty therapy, shoe repair and video or DVD stores (a list of all specified businesses is available from the Department of Commerce at www.commerce.wa.gov.au).

There are some retail shops with a lettable area greater than 1,000 sqm. The Act – a list of these premises can be obtained from the Department of Commerce at www.commerce.wa.gov.au.

The Act generally does not apply to leases to publicly listed companies.

(See section 3(1) of the Act, definition of retail shop lease.)

When is the lease “entered into”?

A lease is usually entered into when both parties have signed it. However, a lease is still valid even if the lease document hasn't been signed by the parties if:

- the tenant takes possession of the shop premises; or
- the tenant starts paying rent.

(See section 3(4) of the Act.)

What you should do:

- **if necessary, seek advice as to whether your lease is covered by the Act**
- **establish the area of the retail shop under the lease and have this verified if necessary.**

INFORMATION YOU SHOULD HAVE BEFORE ENTERING INTO A LEASE

Before entering into a lease you should do the following:

- carefully read this **tenant guide**
- carefully read the **disclosure statement** provided by the landlord or the landlord's agent
- carefully read any written **lease document (including any assignments, extensions or deeds of variation)**
- obtain **independent financial, legal and business advice.**

Rent, the term of the lease, options, outgoings and related costs are open to negotiation with the landlord. Make sure that you understand these, and all other aspects of the lease, before signing it. To avoid disputes at a later stage, you should make sure that all agreements that you have made are in writing and that the lease documents are consistent with any representations made by the landlord or the landlord's agents.

What you should do before signing or entering into a lease:

- ***seek independent legal and business advice before entering into a lease***
- ***make sure you understand the lease and your rights, liabilities and obligations before signing it***
- ***seek advice from financial experts to ensure you understand the costs of running the business.***

Tenant Guide to be located in lease

A new retail shop lease must include this tenant guide at the front of the lease.

If the landlord does not give you the tenant guide, you may have the right to do either or both of the following:

- terminate (end) the lease at any time up to 60 days after the lease was entered into (after this time you may apply to the State Administrative Tribunal for an order to terminate the lease)
- apply to the State Administrative Tribunal for an order for compensation for any monetary loss suffered by you.

(See section 6A of the Act.)

Disclosure statement to be given to you by landlord

At least 7 days before a lease is entered into the landlord must give you a disclosure statement. The disclosure statement sets out important facts about the retail shop and the lease. A copy of this tenant guide, the form of lease and annual estimates of expenditure in relation to operative expenses should be attached to the disclosure statement.

If the landlord does not give you a disclosure statement or gives you a disclosure statement that is incomplete or contains incorrect information you may have the right to do either or both of the following:

- terminate (end) the lease at any time up to 6 months after the lease was entered into
- apply to the State Administrative Tribunal for an order for compensation for any monetary loss you have suffered.

The disclosure statement should be in a prescribed form (this form is Form 1 of Schedule 2 to the *Commercial Tenancy (Retail Shops) Agreements Regulations 1985* and is available from the Department of Commerce at www.commerce.wa.gov.au). It is important to read the statement carefully and make sure it includes all verbal and written agreements, promises or commitments made during negotiations with the landlord or the landlord's agent (for example, any representations about customer traffic).

- the landlord's property, such as the total lettable area, tenancy mix and services provided
- the shop premises, such as location, area and services provided
- key terms and conditions of the lease such as rent, term of the lease, options to extend the term and rent review
- permitted use of the premises
- your contribution to the landlord's expenses (operating expenses)
- any additional charges payable by you, such as shop fitout or contributions to marketing and sinking funds.

By signing the disclosure statement you are acknowledging that you understand the basis for the retail shop lease with the landlord. If you do not understand or agree with anything in the disclosure statement you should advise the landlord immediately.

It is vital that you are satisfied that the disclosure statement sets out all relevant information regarding the retail shop and (where applicable) the shopping centre building and property. If necessary, you should check details by making relevant enquires and by seeking appropriate independent legal or expert advice.

(See section 6 of the Act.)

What you should do:

- ***make sure that you understand the disclosure statement before signing it and ensure it includes any agreements you reached during negotiations and any promises made to you by the landlord or their agent.***

Disclosure by the tenant

The landlord may ask for details of your retailing experience and financial capacity to establish and trade profitably and professionally. Any information provided to the landlord by you must also be correct and contain no misleading information.

PERMITTED USE OF THE RETAIL SHOP

The permitted use clause in a lease is very important as it sets out the type of business that you can run from the premises. You should ensure that the description of permitted use is broad enough to cover the type of business that you want to operate and, if anticipated, to allow you to expand the business.

The kind of things to consider about permitted use include:

- for a hairdresser, does the permitted use include providing beauty treatments?
- for a takeaway shop, can the type of food be changed?
- your future plans for the business.

You should also check that any local government approvals are in place for the type of business that you plan to operate. Avoid potential disputes by getting the approvals you need in writing.

A permitted use clause in a lease does not mean that you have the exclusive right to carry on a particular type of business in a shopping centre. Exclusivity is a separate issue that needs to be agreed separately with the landlord and included in the lease agreement.

What you should do:

- ***make sure the lease and the landlord's disclosure statement describes the shop's permitted use and that this description is broad enough so you can expand or sell the business***
- ***check that local government approvals are in place for the business you plan to conduct – get the approvals in writing***
- ***confirm whether or not you have an exclusive right to carry on your particular type of business***

TERM OF THE RETAIL SHOP LEASE

The term of a lease is the length of time for which you can rent the shop. The lease must set out the lease term and may also include one or more options to renew or extend the term.

The length of the term of the lease is critical because it should be long enough to enable you to recover your investment, make a profit and sell the business, if you wish.

Minimum of 5 years

In most cases, the Act gives a tenant who is entering into a new lease a right to a minimum 5 year lease term. The 5 year lease term can be a combination of the initial term and options to extend the lease (for example, an initial term of 2 years and an option to renew of 3 years). The initial term does not need to be 5 years.

If the lease does not provide for options to extend the lease to a 5 year term, you have a legal right to do so (often called a "statutory option"). You can exercise this option by giving the landlord written notice in the standard form at least 30 days prior to the expiry of the term of the lease (the standard form is Form 3 of Schedule 2 to the *Commercial Tenancy (Retail Shops) Agreements Regulations 1985* and is available from the Department of Commerce at www.commerce.wa.gov.au). Although the Act allows you to extend the lease to a 5 year term, you do not need to extend the lease for the whole of this period if you choose not to.

The right to a 5 year term will only apply to retail shop leases with a term of more than 6 months (this includes any lease where the tenant has been continuously in possession of the premises for more than 6 months).

(See section 13 of the Act).

The term can be longer or shorter than 5 years

Even though the Act gives tenants a right to a 5 year term, you can negotiate a term that is longer than 5 years (for example, a 10 year term, or a 5 year initial term with 2 options to renew for a further 5 years each).

In some circumstances, you may agree to a term shorter than 5 years, but this must be your decision and needs to be approved by the State Administrative Tribunal.

Exercising an option to renew

It is important that you exercise an option to renew a lease in the way set out in the lease (you may need to let the landlord know in writing and within certain timeframes). If you do not exercise an option to renew properly the landlord may not be obliged to renew the lease.

The Act requires the landlord to give you written notice of the expiry date for any options to renew (the date on which the option to renew is no longer valid). You must receive this notice between 6 and 12 months before the expiry date. If the landlord fails to give you notice the option expiry date may be extended.

(See section 13C of the Act.)

At the end of the lease term

At the end of the term of the lease and the use of any options to renew the lease, the landlord does not have to renew the lease and you will have no further rights to occupy the premises. In some instances the landlord may allow you to continue to occupy the premises on a month to month basis.

Within 12 months before the end of the lease term you can make a written request to the landlord asking whether the landlord intends to renew the lease. The landlord must reply to such a request in writing within 30 days.

(See section 13B of the Act.)

What you should do:

- ***seek advice as to the appropriate lease term for your business***
- ***don't assume that you will get a new lease at the end of the lease term – you need to make sure that the term of your lease is appropriate for your business structure***
- ***seek advice as to the landlord's intentions at the end of the lease term as early as possible so that you can plan accordingly.***

Does the lease include redevelopment or relocation clauses?

Many leases include a clause allowing a landlord to terminate a lease before the end of the agreed lease term if the premises are to be redeveloped. In some instances the landlord may offer to relocate a tenant to alternative premises.

For the initial 5 years of a lease term, a redevelopment or relocation clause may only be included in a lease if:

- it is in the prescribed form (see item 2 of Schedule 1 to the *Commercial Tenancy (Retail Shops) Agreements Regulations 1985* and is available from the Department of Commerce at www.commerce.wa.gov.au); or
- it has been approved by the State Administrative Tribunal (if the parties have agreed to a provision that is different to the prescribed form).

If 5 years of the term have already expired, then the clause must be in accordance with the provisions of the Act – which sets out requirements in relation to notice, offer of alternative premises, payment of the tenant's reasonable costs and payment of compensation.

(See section 14A of the Act.)

What you should do:

- ***carefully look at any redevelopment or relocation clause in the lease and consider:***
 - ***what commitment is the landlord giving about relocation of the shop – will the new location and rental be comparable to the current premises?***
 - ***what compensation is the landlord offering you if your trade is affected?***
 - ***what effect will it have on your business?***
- ***seek independent financial, legal and business advice on the clause.***

RENT

Rent is usually the largest ongoing payment required under a lease. The Act does not regulate what the rent should be. However, the Act includes some rules relating to rent based on turnover and review of rental.

Types of rent

The initial rent for a shop is a matter of negotiation between the landlord and the tenant. Rental for retail shops can vary considerably depending on the location, the size of the shop, the term of the lease and type of business.

Some common methods of determining rent are:

- net rent – an agreed base rent plus a contribution to the landlord's operating expenses or outgoings
- gross rent – an all inclusive payment for all the shop's occupancy costs
- semi-gross rent – an amount charged for rental inclusive of some outgoings (for example, the tenant may pay the semi-gross rent plus its proportion of rates and taxes)
- turnover rent or percentage rent – a component of rent that is determined as a percentage of the tenant's turnover during a specified period.

What you should do:

- **seek expert advice as to the basis for determining the rent that best suits your business operations**
- **pay your rent on time – if you don't pay your rent, the landlord may be able to end your lease**

Rent based on turnover

Some leases based rent (or a part of the rent) on a percentage of the turnover of the tenant's business.

If you have agreed to a rent based on turnover, then:

- the lease must set out an agreed formula
- your agreement must be formalised in writing on the prescribed form before the lease is entered into (the prescribed form is Form 2 of Schedule 2 to the *Commercial Tenancy (Retail Shops) Agreements Regulations 1985* and is available from the Department of Commerce at www.commerce.wa.gov.au).

The Act also recognises the confidentiality of turnover figures to a retail business and limits the use of this information.

(See section 7 of the Act.)

The landlord cannot require you to provide turnover figures unless your rent is to be based on turnover.

(See section 8 of the Act.)

RENT REVIEW

Most leases will state that the rent will be reviewed at regular intervals.

At each review time the lease must set out a single basis on which the rent is to be reviewed, this can include:

- the market rent
- an increase by reference to the Consumer Price Index (CPI)
- a set percentage increase
- an agreed formula or combination, for example, CPI + 2%.

The types of review may vary over the life of the lease (the lease may state that reviews are to alternate between CPI and market review). However, the lease cannot give the landlord the right to choose the greatest return from a range of rent types at any one review (for example, the lease cannot state that the increase is to be CPI or 5% whichever is higher).

The lease may specify only one method of review at a time.

Market rent

The Act provides that market rent is the rent obtainable for the retail shop in a free and open market if it were vacant and to be let on similar terms.

The market rent is not to take into account:

- the goodwill of the business
- any stock, fixtures or fittings that are not the property of the landlord
- any structural improvements paid for or carried out by the current tenant.

Market rent review

If your lease specifies a market rent review, the Act provides that both parties can initiate the market review process and if the parties cannot agree on the rental:

- appoint a licensed valuer (agreed to by both parties) to determine the new rental; or
- request that the Small Business Commissioner appoint a valuer to determine the rental; or
- each appoint a valuer to determine the rental.

A landlord is required under the Act to provide a valuer with certain information in relation to retail shops in a shopping centre or in the same building in order to assist the valuer to decide the market rent. A valuer must keep this information confidential.

A disagreement regarding the new rent may be referred to the Small Business Commissioner for mediation or to the State Administrative Tribunal for determination. Until the new rent is agreed, the current rent continues to apply. Once the higher or lower rent is agreed, adjustments will be backdated to the review date.

No “ratchet” clauses

Any provision in a lease about a market review that seeks to prevent the rent from rising or falling above or below a certain level is void. The lease must allow the rent to rise or fall to a level supported by market evidence, for example, a clause cannot stop the rent from decreasing on a market review.

(See section 11 of the Act.)

What you should do:

- ***make sure that you understand how your rent is to be calculated and what other payments may be required***
- ***consider whether your business can sustain the current rent, review increases and operating expenses over the term of the lease.***

CONTRIBUTION TO THE LANDLORD'S OPERATING EXPENSES

You may be required to contribute to a proportion of the landlord's expenses. The landlord's expenses are described in the Act as operating expenses. Leases can also refer to them as "outgoings or variable outgoings".

Operating expenses are the costs of operating, repairing or maintaining the landlord's premises including any building common areas. Typically these costs include the rates and taxes, cleaning, air conditioning, security, insurances and other valid expenses of running the property.

Details about the operating expenses and their payment are to be set out in the lease and the disclosure statement.

No capital expenses or management fees

The landlord cannot recover the following from you as an operating expense:

- management fees
- capital expenditures in relation to a retail shopping centre (for example, asset replacement).

Operating expenses are not to exceed the "relevant proportion"

Your contributions to operating expenses are negotiable. The Act provides that a tenant cannot be required to contribute more than the "relevant proportion" in relation to an operating expense. Nothing prevents you from negotiating with the landlord to pay less than the relevant proportion.

The relevant proportion is calculated by comparing the lettable area of your shop to the total lettable area of the shopping centre or the group of premises to which the expense relates.

$$\text{relevant proportion} = \frac{\text{lettable area of shop}}{\text{total lettable area}}$$

Referable expenses

In certain circumstances an operating expense may be incurred in relation to only some of the business in a centre or group of premises, for example, specialised cleaning used by only a few tenants. This is called a "referable expenses" and can be allocated using the total lettable area of only the shops to which the referable expense relates.

What you should do:

- ***make sure that you understand the operating expenses before signing the lease***
- ***budget to meet the operating expenses payments.***

Landlord to provide estimates and statements for operating expenses

In order to recover operating expenses from you, the landlord must provide you with:

- an annual estimate of expenditure for each operating expense

- an audited operating expenses statement for each accounting period detailing all expenditure by the landlord (this statement must be given within 3 months after the end of the accounting period).

(See section 12 of the Act.)

SINKING FUNDS

If your shop is in a shopping centre and you have agreed to contribute to a fund for major repair and maintenance works, your contributions are protected under the Act. These funds are subject to accounting and audit provisions and should not be spent by the landlord on anything other than the purpose for which they are collected. These costs may be in addition to operating expenses charged under the lease.

Capital works must be paid for by the landlord and would include such works as the construction and extensions to the shopping centre and the replacement of major plant and equipment.

(See section 12A of the Act.)

OTHER FUNDS AND RESERVES

The landlord is also required to properly account for the administration, expenditure and auditing of any other funds or reserves that you have agreed to contribute to for specific purposes such as for marketing or promotion. These costs may be in addition to operating expenses charged under the lease.

(See section 12B of the Act.)

FITOUT AND REFURBISHMENT

Tenants are usually responsible for the costs of installing fixtures and fittings in the shop (the ***fitout***). There may be a standard of construction required for fitouts. You may also be responsible for some or all of the landlord's costs of preparing the shop for the fitout.

Fitout requirements must be detailed in the disclosure statement.

A provision in a lease requiring a tenant to contribute to the cost of any of the landlord's finishes, fixtures, fittings, equipment or services will be void unless the disclosure statement notifies the tenant about the effect of the provision.

(See Section 12(3A) of the Act.)

The Act provides that a clause about refurbishment or refitting will be void unless it provides the tenant with enough detail about the required refurbishment or refitting as is necessary to indicate the nature, timing and extent of work required.

(See section 14C of the Act.)

What you should do:

- ***ensure that you understand your obligations with regards to the fitout of the premises***
- ***if possible, obtain or prepare a condition report prior to entering into the lease so that you have evidence of its condition***

- **ensure you have a sufficient fitout budget as some fitout costs (for example cost of moving plumbing) are often overlooked**
- **discuss variations of standard fitout with the landlord – as this could cost you extra.**

LEGAL FEES

The Act prohibits the landlord from claiming legal or other expenses from you relating to:

- the negotiation, preparation or execution of the lease (or any renewal or extension of the lease)
- obtaining the consent of a mortgagee to the lease
- the landlord's compliance with the Act.

However, if you assign your lease or sub-let the premises, the landlord may claim from you reasonable legal or other expenses incurred in connection with the assignment or sub-letting.

(See section 14B of the Act.)

TRADING HOURS

The trading hours for your shop may be affected by a number of matters.

Retail trading hours legislation in Western Australia sets out those hours that retailers may open (this can vary depending on the type of business that you operate).

If your retail shop is located inside a shopping centre then for practical reasons the opening and closing times for the centre (**core hours**) may be different to the trading hours permitted by law. This should be set out in the disclosure statement by the landlord.

When do you have to open your shop

A clause in a lease which requires you to open your premises at specified hours or for specified times is void under the Act. For example, you cannot be required to open your shop for the core hours for a centre. You can choose which hours to open your shop.

If you believe that your lease has not been renewed because you did not open at certain times you can apply to the State Administrative Tribunal for compensation.

(See section 12C of the Act.)

What you should do:

- ***if your premises are in a shopping centre you should check that the core hours are suitable for your business***
- ***find out whether you can open your shop at any times outside of the core hours and find out about what costs are involved***
- ***remember the lease can't require you to open your shop for specified hours or during specified times.***

Standard trading hours and operating expenses

The Act also sets out "standard trading hours" which are used only for the purposes of allocating operating expenses.

For the purpose of allocation of operating expense "standard trading hours" are:

- 8.00 a.m. to 6.00 p.m. Monday, Tuesday, Wednesday and Friday
- 8.00 a.m. to 9.00 p.m. Thursday
- 8.00 a.m. to 5.00 p.m. Saturday.

The Act provides that if you do not open outside standard trading hours, then you cannot be charged operating expenses related to the extended hours (for example, additional security costs).

If, however, you do open outside the standard trading hours, you may be required to pay operating expenses related to the extend hours. These expenses should be calculated based on the lettable area of those shops which were open during the extended hours.

If you are closed for a period during the standard trading hours (for example, if you do not open your shop until 10 a.m.), you may still be charged operating expenses for the time that you are closed, that is, between 8.00 a.m. and 10.00 a.m.

(See section 12(1)(c) of the Act.)

Retail trading hours law may allow you to open at times outside of the standard trading hours (for example, Sunday trading) – however:

- ***you can't be forced to open your business***
- ***you are not required to make a contribution to operating expenses relating to non-standard hours if you choose not to pen during those times.***

VOID CLAUSES

The lease agreement and any other verbal or written agreements cannot include clauses that are contrary to any provision in the Act.

In addition, the Act specifically precludes the lease or any other agreement from containing clauses that:

- require a tenant to pay key money, which is any money or other benefit in addition to rent paid to the landlord or others for the right to lease retail shop premises (***See section 9 of the Act.***)
- prevent the tenant disclosing the rent it has agreed to third parties, such as other retail tenants or their valuers (***See section 11(2a) of the Act.***)
- require the tenant to contribute to any fund that applies moneys to capital expenditure in a shopping centre, such as new building works (***See section 12(2) of the Act.***)

- require a tenant to open for specified hours or during specified times (*See section 12C of the Act.*)
- prevent a tenant from joining a tenant's association or similar body (*See section 12D of the Act.*)
- require a tenant to provide turnover figures to the landlord, unless the tenant has agreed to pay rent based on turnover (*See section 8 of the Act.*)

A clause in a lease that is contrary to the provisions of the Act is void and has no effect.

DISRUPTIONS – COMPENSATION BY THE LANDLORD

The Act states that, if your shop is in a shopping centre, you are entitled to seek reasonable compensation from the landlord if the landlord:

- inhibits or prevents your, or customer, access to the shop premises
- disrupts trading conditions, causing loss or profits to your business
- does not properly repair, maintain or clean the shopping centre premises or common areas.

You will only be entitled to compensation from the landlord if you have given the landlord notice in writing to rectify the problem and the landlord had not done so.

If you cannot agree the amount of compensation with the landlord, you can make an application to the State Administrative Tribunal for a decision as to the amount payable.

In most cases, before making an application to the State Administrative Tribunal you must attempt to resolve the matter through the Small Business Commissioner's dispute resolution processes.

(See section 14 of the Act.)

UNCONSCIONABLE CONDUCT AND MISLEADING AND DECEPTIVE CONDUCT

The Act provides that neither the landlord nor the tenant can engage in conduct that is:

- unconscionable (conduct that is so harsh, oppressive or unreasonable that it goes against good conscience)
- misleading or deceptive.

The State Administrative Tribunal can hear a claim for unconscionable conduction or misleading or deceptive conduct and may make an order for payment of compensation or another appropriate order (such as an order to vary a lease or an order that a party stop doing something).

In most cases, before making an application to the State Administrative Tribunal you must attempt to resolve the matter through the Small Business Commissioner's dispute resolution processes.

(See Part 11A of the Act.)

ASSIGNMENT AND SUB-LEASING

During the term of the lease, your circumstances may change and you may want to sell your business and assign your lease or sub-let all or part of the premises.

Your responsibilities if you assign your lease

If you assign your lease the new tenant “takes over” and assumes all your rights and responsibilities including rent and any other obligations under the lease from the date of assignment.

Although the Act gives you a right to assign your lease, the landlord may withhold consent on reasonable grounds. Examples of reasonable grounds include:

- if the landlord believes that the new tenant would not be able to meet their financial obligations; or
- if the proposed use of the premises is contrary to the use permitted in the lease.

You will need to write to the landlord seeking consent for the assignment of the lease. If the landlord doesn't reply within 28 days, you are entitled to assume the landlord has consented to the assignment.

You may have to pay the landlord's reasonable expenses for assessing a prospective tenant to take over your lease.

Your responsibilities if you sub-lease your shop

If you sub-let all or part of your premises you effectively become the landlord and the person you sub-let to is your tenant. Sub-leasing means that you will still be responsible under the lease to your landlord (for example, you may be liable for the rent if the sub-lessee does not pay).

You will also have obligations to the person you sub-let to, for example, you will need to provide a tenant guide and disclosure statement to your sub-tenant.

Your lease may include restrictions on sub-leasing. You should check your lease and seek advice as to its requirements on sub-leasing.

You may need to write to the landlord seeking consent to sub-lease. If the landlord doesn't reply within 28 days, you are entitled to assume the landlord has consented to the sub-lease.

(See section 10 of the Act.)

What you should do:

- ***seek independent legal advice as to the requirements of the Act and seek obligations on assignment or sub-leasing.***

DEFAULT OR BREACH OF LEASE

Most leases allow the landlord to terminate (or end) the lease on a breach of default by the tenant (for example, failure to pay rent). You should ensure that you understand the procedures set out in the lease in relation to default. For example, in many instances, your obligation to pay future rent will continue even after a lease has been terminated.

State Administrative Tribunal

If you are unable to resolve a dispute with your landlord over any aspect of your retail shop lease the Act allows the State Administrative Tribunal to deal with these disputes.

Either you or the landlord may initiate this action with the Tribunal by making an application and paying the appropriate fee. The Tribunal generally deals with matters through an initial directions hearing, a mediation process or in a hearing.

(See section 16 of the Act.)

Small Business Commissioner

In most cases, before making an application to the State Administrative Tribunal you must attempt to resolve the matter through the Small Business Commissioner's dispute resolution processes.

(See Part III of the Act and regulation 10.)

Advice about a dispute can be obtained from lawyers with property experience, the Small Business Development Corporation, industry sources, tenant advocates and retail representative groups.

KEEP RECORDS

You should make sure that you keep records of all agreements, undertakings, correspondence (including emails) and other communications with the landlord. Where possible you should confirm things in writing.

Make sure that you diarise important dates in relation to your lease.

If you need to make a claim in the Tribunal you will need to provide appropriate evidence to support your claim.

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Details

Parties

Shire of Wyndham East Kimberley

of 20 Coolibah Drive, Kununurra, Western Australia
(Lessor)

Kimberley Group Training Inc.

ACN 71 281 766 571
of 5 Kentia Way, Kununurra, Western Australia
(Lessee)

Background

- A The Lessor is the registered proprietor of the Land.
- B The East Kimberley Regional Airport is located on the Land (**Airport Terminal**). The Airport Terminal includes a café/kiosk (**Café**).
- C The Lessee was the successful offer or following a request for offers by the Lessor for the operation and lease of the Café.
- D The Lessor has agreed, to grant the Lessee a lease of the portion of the Airport Terminal comprising the Cafe, more particularly described in **Item 1** of the Schedule (**Premises**), on the terms and conditions contained within this agreement.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this Agreement -

Aggregate of Operating Expenses means the total amount of Operating Expenses expended or to be expended by the Lessor in any year of the Term;

Airport Opening Hours means those times at which the Lessor determines the Airport Terminal is to be open to the public which times are notified by the Lessor to the Lessee from time to time;

Airport Terminal is defined in Background Paragraph B;

Alterations means any of the acts referred to in **clause 12.1**;

Amounts Payable means the Rent and any other money payable by the Lessee under this Lease;

Authorisation includes a consent, authorisation, permit, licence, approval, agreement, certificate, authority or exemption from, by or with a Local or Public Authority or required under any Written Law and all conditions attached to an authorisation;

Basic Consideration means an consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply or use of the Premises and any goods, services or other things provided by the Lessor under this Lease (other than tax payable pursuant to this clause);

Business Day means a day other than a Saturday, Sunday and any public holiday in Perth, Western Australia;

Café is defined in **Background Paragraph B**;

Car Park means those parts of the Land and Airport Terminal from time to time set aside by the Lessor or made available for the purposes of parking of motor vehicles by the tenants or licensees of the Centre, and any other car park provided in addition or substitution thereof;

CEO means the Chief Executive Officer for the time being of the Lessor or any person appointed by the Chief Executive Officer to perform any of her or his functions under this Lease;

Commencement Date means the date of commencement of the Term specified in **Item 4** of the Schedule;

Common Areas means all those parts of the Airport Terminal from time to time set aside by the Lessor:

- (a) as areas open to the public; and
- (b) not leased to any lessee and intended for use by the lessees of the Airport Terminal and their respective customers or invitees in common with each other,

including (without limitation) all parking areas, roads, walkways, malls, corridors, passageways, stairways, elevators toilets and washrooms in on or about the Airport Terminal;

Contamination has the same meaning it has under the Contaminated Sites Act 2003;

CPI means the Consumer Price Index (All Groups) Perth number published from time to time by the Australian Bureau of Statistics or its equivalent determined in accordance with **clause 5(4)**;

Encumbrance means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat or anything described as an encumbrance on the Crown Land Title for the Land;

Environmental Expert means a reputable person who is suitably qualified and experienced in identifying and remediating Contamination, Pollution and Environmental Harm, to the reasonable satisfaction of the Lessor;

Environmental Harm has the same meaning as defined in the *Environmental Protection Act 1986*;

Environmental Law means all planning, environmental, Contamination or Pollution laws and any regulation, orders, directions, ordinances or all requirements, permissions, permits or licences issued under any of these laws;

Environmental Notice means any notice, direction, order, demand or other requirement to take any action or refrain from taking any action from any Local or Public Authority, whether written or oral and in connection with any Environmental Law;

Facilities mean lavatories, sinks, drains, drainage or other sewerage or plumbing facilities, and gas or electrical fittings or appliances, telecommunications fittings or appliances, kitchen fittings and appliances, air-conditioning fittings and equipment, fire equipment and lifts and escalators (if any) and any other mechanical, electric, hydraulic or electronic service including pipes, wires, and

cables the Lessor provides for the common use of users and occupiers of the Airport Terminal, but does not include the services flowing or being conducted through those facilities;

Further Term means the further terms specified in Error! Reference source not found. of the Schedule (if any);

Good Repair means good and substantial tenantable repair and in clean, good working order and condition;

GST has the meaning that it bears in the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any legislation substituted for, replacing or amending that Act;

GST Adjustment Rate means the amount of any increase in the rate of tax imposed by the GST Law;

GST Law has the meaning that it bears in section 195-1 of the GST Act;

GST Rate means 10%, or such other figure equal to the rate of tax imposed by the GST Law;

Interest Rate means the rate at the time the payment falls due being 2% greater than the Lessor's general overdraft rate on borrowings from its bankers on amounts not exceeding \$100,000.00;

Land means the land described at Error! Reference source not found. of the Schedule;

Lease means this deed as supplemented, amended or varied from time to time;

Lessee's Agents includes:

- (a) any person at any time upon the Premises other than the Lessor and the Lessor's employees, agents and contractors; and
- (b) the Lessee's employees, agents, customers, invitees, visitors and contractors at any time upon the Land (whether or not within either or both of the Airport Terminal and the Premises or not);

Lessee's Covenants means the covenants, agreements and obligations set out or implied in this Lease or imposed by law to be performed and observed by the Lessee;

Lessor's Agents means the CEO, an officer or the agent, solicitor, employee or contractor of the Lessor;

Lessor's Covenants means the covenants, agreements and obligations set out or implied in this Lease, or imposed by law to be performed and observed by the Lessor;

Lessor's Fixtures and Fittings means all fixtures, fittings and equipment installed in or provided to the Premises by the Lessor at the Commencement Date or at any time during the Term. An initial list of the Lessor's Fixtures and Fittings installed at the Commencement Date is annexed hereto as **Annexure 2**;

Licensed Area means that part of the Centre as shown cross hachured on the sketch attached to this Lease as **Annexure 1**;

Local or Public Authority means every governmental or semi-governmental body, municipal council, the Insurance Council of Australia and any other board, person or authority nor or in the future exercising under any Written Law any control or jurisdiction over or power in connection with the Premises or with any business at any time conducted on or from the Premises;

Notice means each notice, demand, consent or authority given or made to any person under this Lease;

Offer means the offer submitted by the Lessee for the operation and lease of the Café;

Party means the Lessor or the Lessee according to the context;

Permitted Purpose means the purpose set out in **Item 7** of the Schedule;

Pollution has the same meaning as defined in the *Environmental Protection Act 1986*;

Premises means the premises described in **Item 1** of the Schedule;

Relevant Proportion means the proportion that the retail floor area of the Premises bears to the total lettable area of the Centre at the commencement of the Lease year;

Rent means the rent specified in **Item 5** of the Schedule as varied from time to time under this

Reservations means the right of the Lessor to use the exterior walls and the roof of the Premises for advertising and other purposes and the right of the Lessor to install, maintain, use, repair, alter and replace, pipes, ducts, conduits and wires leading through the Premises and to pass and run gas water heat oil electricity and other power telephone lines and air-conditioning through such pipes ducts and conduits and wires, and to enter and remain on the Premises with or without workmen, contractors, employees and materials, plant and equipment for such purposes;

Rules means the rules in respect of the Airport Terminal and the Land which are prescribed by the Lessor in accordance with the provisions of this Lease;

Services mean any services to or of the Centre provided by a relevant authority or the Lessor and includes water, gas, electricity, fuel, oil, air-conditioning and fire equipment, and other like commodities or services;

Schedule means the Schedule to this Lease;

Tax Invoice has the meaning which it bears in section 195-1 of the GST Act;

Taxable Supply has the meaning which it bears in section 195-1 of the GST Act.

Term means the term of years specified in **Item 2** of the Schedule and any Further Term;

Termination means the date of:

- (a) expiry of the Term or any Further Term by effluxion of time;
- (b) sooner determination of the Term or any Further Term; or
- (c) determination of any period of holding over; and

Turnover has the same meaning as defined in the *Commercial Tenancy (Retail Shops) Agreements Act 1985*;

Written Law includes all acts and statutes (State or Federal) for the time being enacted and all regulations, schemes, ordinances, local laws, by-laws, requisitions, orders or statutory instruments made under any Act from time to time by any statutory, public or other competent authority.

2. Interpretation

In this Lease, unless expressed to the contrary:

- (a) words importing:
 - (i) the singular include the plural;
 - (ii) the plural include the singular; and
 - (iii) any gender include each gender;
- (b) a reference to:
 - (i) a natural person includes a body corporate or local government; and
 - (ii) a body corporate or local government includes a natural person;
- (c) a reference to a professional body includes a successor to or substitute for that body;
- (d) a reference to a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
- (e) a reference to a statute, ordinance, code, regulation, award, town planning scheme or other law includes a regulation, local law, by-law, requisition, order or other statutory
- (f) instruments under it and any amendments to re-enactments of or replacements of any of them from time to time in force;
- (g) a reference to a right includes a benefit, remedy, discretion, authority or power;
- (h) a reference to an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (i) a reference to this Lease or provisions or terms of this Lease or any other deed, agreement, instrument or contract include a reference to:
 - (i) both express and implied provisions and terms; and
 - (ii) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
- (j) a reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (k) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (l) if a Party comprises two or more persons the obligations and agreements on their part bind and must be observed and performed by them jointly and each of them severally and may be enforced against any one or more of them;
- (m) the agreements and obligations on the part of the Lessee not to do or omit to do any act or thing include:
 - (i) an agreement not to permit that act or thing to be done or omitted to be done by the Lessee's Agents; and

(11) an agreement to do everything necessary to ensure that that act or thing is not done or omitted to be done; and

(n) except in the Schedule headings do not affect the interpretation of this Lease.

3. Grant of Lease

- (1) This Lease is subject to and conditional upon the Lessor complying with the requirements of section 3.58(3) of the *Local Government Act 1995*.
- (2) The Lessor, subject to paragraph (1) above, leases to the Lessee the Premises for the Term subject to:
 - (a) all Encumbrances and any Reservations;
 - (b) the payment of the Amounts Payable; and
 - (c) the performance and observance of the Lessee's Covenants.

Lessee's General Covenants

4. Rent and Other Payments

The Lessee AGREES with the Lessor:

4.1 Rent

- (1) Subject to this **clause 4.1**, the Lessee must pay the Rent to the Lessor in the manner specified in **Item 5** of the Schedule at the Lessor's address in this Lease or any other address stipulated by the Lessor or by any other method specified by the Lessor, including without limitation by direct bank deposit, without deduction or set-off (including but not limited to equitable set-off).
- (2) The Lessee must give the Lessor a statement of the Lessee's Turnover for the previous three (3) completed calendar months (**Turnover Statement**), on the 15th day of May, August, November and February each Year.
- (3) The amount payable (if any) pursuant to **Item 5(b)** of the Schedule based on the Lessee's Turnover will be calculated from the Turnover Statement for the purposes of determining the Rent payable in accordance with Item 5 of the Schedule. The amount calculated must be paid at the same time as the Turnover Statement is due.
- (4) The Lessee will keep and maintain accurate records ("records") from which the Lessee's Turnover can be verified, and will preserve them for at least two (2) years after the end of each Lease year. The Lessee shall produce the records to the Lessor for inspection upon written request from the Lessor.
- (5) The Lessor may, at any time audit all records relating to the Lessee's Turnover. For the purposes of an audit, the Lessee must make those records available to the Lessor or its representative upon request (but no later than two (2) months after the end of each Financial Year) at a place which may be mutually agreed.
- (6) If the Lessee's Turnover shown by the Turnover Statement for any Lease year is found by the audit to be understated resulting in a further amount of rent being payable pursuant to Item 5 of the Schedule then the Lessee will pay to the Lessor the additional rent within 10 Business days of notification of the amount payable.

- (7) If the Lessee's Turnover shown by the Turnover Statement for any Lease year is found by the audit to be understated by more than five (5%) then the Lessee will pay to the Lessor the costs of the audit.
- (8) The Lessee will (if required) have a qualified Accountant prepare and certify at the Lessee's expense a statement of the Lessee's Turnover for each Lease Year. Each statement will be delivered to the Lessor within thirty (30) days after the end of each Lease Year.

4.2 Outgoings

- (1) To pay to the Lessor or to such person as the Lessor may from time to time direct punctually all the following outgoings or charges (if applicable), assessed or incurred in respect of the Premises:
 - (a) local government rates, taxes and charges and including charges for rubbish or garbage removal;
 - (b) subject to **clause 4.2(2)**, water, drainage and sewerage rates, charges for disposal of stormwater, meter rent and excess water charges;
 - (c) subject to **clause 4.2(3)**, telephone, electricity, gas and other power and light charges including but not limited to meter rents and the cost of installation of any meter, wiring, internet connections or telephone connection AND the Lessee shall ensure that any accounts for all charges and outgoings in respect of telephone, electricity, gas and other power and light charges are taken out and issued in the name of the Lessee;
 - (d) Department of Fire and Emergency Services (D.F.E.S) levies;
 - (e) land tax and metropolitan regional improvement tax on a single ownership basis;
 - (f) the costs of any cleaning and lighting of, supply of internal security and toilet requisites to, and maintenance and repair of the Premises; and
 - (g) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Premises.
- (2) Where there is a submeter in the Airport Terminal in respect of water consumed on the Premises then:
 - (a) the price charged for the consumption of water is to be at the highest rate charged from time to time by the responsibly Local or Public Authority to the Lessor for the supply of water to the Airport Terminal; and
 - (b) the Lessor may render an invoice to the Lessee monthly and the Lessee must pay the invoice within 14 days after receipt;
- (3) Where there is a submeter in the Airport Terminal in respect of electricity consumed on the Premises then:
 - (a) the prices to be charged for the supply of electricity and for reading the meter are to be the prices charged from time to time by the electricity supply authority to government customers; and
 - (b) the Lessor may render an invoice to the Lessee monthly and the Lessee must pay the invoice within 14 days after receipt.
- (4) If the Premises are not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in **clause 4.2(1)** being the proportion

that the Premises bears to the total area of the Land or Premises included in the charge of assessment.

4.3 Interest

Without affecting the rights, powers and remedies of the Lessor under this Lease, to pay to the Lessor interest on demand on any Amounts Payable which are unpaid for 7 days computed from the due date for payment until payment is made and any interest payable under this paragraph will be charged at the Interest Rate.

4.4 Costs

- (1) To pay to the Lessor on demand:
 - (a) all duty, fines and penalties payable under the *Duties Act 2008* and other statutory duties or taxes payable on or in connection with this Lease; and
 - (b) all registration fees in connection with this Lease.
- (2) To pay to the Lessor all costs, legal fees, disbursements and payments incurred by or for which the Lessor is liable in connection with or incidental to:
 - (a) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
 - (b) any breach of an obligation or agreement by the Lessee or the Lessee's Agents;
 - (c) the preparation and service of a notice under Section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a Court;
 - (d) any work done at the Lessee's request; and
 - (e) any action or proceedings arising out of or incidental to any matters referred to in this clause 4.4(2) or any matter arising out of this Lease.

4.5 Accrual of Amounts Payable

Amounts Payable accrue on a daily basis.

4.6 Payment of Money

Any Amounts Payable to the Lessor under this Lease must be paid to the Lessor at the address of the Lessor referred to in the Lease or as otherwise directed by the Lessor by Notice from time to time.

5. Rent Review

- (1) The Rent will be reviewed on and from each Rent Review Date to determine the Rent to be paid by the Lessee until the next Rent Review Date.
- (2) The review will be either based on CPI or on market review. The basis for each review is as identified for each Rent Review Date in **Item 8** of the Schedule.
- (3) A Rent review based on CPI will increase the amount of Rent payable during the immediately preceding period by the percentage of any increase in CPI having regard to the quarterly CPI published immediately prior to the later of the Commencement Date or the last Rent Review Date as the case may be and the quarterly CPI published immediately prior to the relevant Rent Review

Date. If there is a decrease in CPI having regard to the relevant CPI publications the Rent payable from the relevant Rent Review Date will be the same as the Rent payable during the immediately preceding period. Should the CPI be discontinued or suspended at any time or its method of computation substantially altered, the parties shall endeavour to agree upon the substitution of the CPI with an equivalent index, or failing agreement by the parties, the substitution shall be made by a Valuer appointed in accordance with paragraph 4(d) below.

- (4) A Rent review based on market review will establish the current rent for the Premises (which will not be less than the Rent payable in the period immediately preceding the Rent Review Date) by agreement between the parties and failing agreement; will be determined in accordance with the following provisions:
- (a) The Lessor shall notify the Lessee of the amount that it reasonably considers is the current market rent for the Premises.
 - (b) If the Lessee does not dispute the amount notified, that amount becomes the Rent.
 - (c) If the Lessee disputes the current market rent as notified by the Lessor, it must notify the Lessor of that dispute (**Dispute Notice**) within thirty (30) days after receiving the Lessee's notification. The Lessee must comply with this time limit to dispute the notified amount.
 - (d) If the Lessee gives a Dispute Notice, the current market then the current market rent for the Premises will be determined at the expense of the Lessee by a valuer (**Valuer**) licensed under the *Land Valuers Licensing Act 1978*, to be appointed, at the request of either Party, by the President for the time being of the Australian Property Institute (Western Australian Division) (or if such body no longer exists, such other body which is then substantially performing the functions performed at the Commencement Date by that Institute).
 - (e) The Valuer will act as an expert and not as an arbitrator and his or her decision will be final and binding on the Parties. The Parties will be entitled to make submissions to the Valuer.
 - (f) In this clause, "current market rent" means the rent obtainable for the Premises in a free and open market if the Premises were unoccupied and offered for rental for the use for which the Premises are permitted pursuant to this Lease and on the same terms and conditions contained in this Lease, BUT will not include:
 - (i) any improvements made or effected to the Premises by the Lessee; and
 - (ii) any rent free periods, discounts or other rental concessions.
- (5) The Lessor may institute a rent review notwithstanding the Rent Review Date has passed and the Lessor did not institute a licence fee review on or prior to that Rent Review Date, and in which case the Rent agreed or determined shall date back to and be payable from the Rent Review Date for which such review is made.

6. Insurance

6.1 Insurance required

The Lessee must effect and maintain with insurers approved by the Lessor (noting the Lessor's and the Lessee's respective rights and interest in the Premises) for the time being:

- (a) adequate public liability insurance for a sum not less than the sum set out at **Item 6** of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require;

- (b) insurance to cover the Lessee's fixtures, fittings, equipment and stock against loss or damage by fire, fusion, smoke, lightning, flood, storm, tempest, earthquake, sprinkler leakage, water damage and other usual risks against which a Lessee can and does ordinarily insure in their full replacement value, and loss from theft or burglary; and
- (c) a policy of employee's indemnity insurance in respect of the Lessee's employees.

6.2 Details and Receipts

In respect of the insurances required by **clause 6.1** the Lessee must:

- (a) on demand supply to the Lessor details of the insurances and give to the Lessor copies of the certificates of currency in relation to those insurances;
- (b) promptly pay all premiums and produce to the Lessor each policy or certificate of currency and each receipt for premiums or certificate of currency issued by the insurers; and
- (c) notify the Lessor immediately:
 - (i) when a material event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance; or
 - (ii) when a policy of insurance is cancelled.

6.3 Not to Invalidate

The Lessee must not do or omit to do any act or thing or bring or keep anything on the Premises which might:

- (a) render any insurance effected under **clause 6.1** and/or **clause 26** on the Premises, or any adjoining premises, void or voidable;
- (b) cause the rate of a premium to be increased for the Premises or any adjoining premises (except insofar as an approved development may lead to an increased premium).

6.4 Reports

Each party must report to the other promptly in writing and in an emergency verbally:

- (a) any material damage to the Premises of which they are or might be aware; and
- (b) any circumstances of which they are aware and which are likely to be a danger or cause any damage or danger to the Premises or to any person on the Premises.

6.5 Settlement of Claim

The Lessor may, but the Lessee may not without prior written consent of the Lessor, settle or compromise any claims under any insurance required by **clause 6.1**.

6.6 Lessee required to Pay Excess on Insurances

The Lessee agrees with the Lessor that it shall be responsible to pay any excess payable in connection with the insurances referred to in **clause 6.1** and/or **clause 26** in the event that it is determined by the insurer or otherwise that a claim arises out of or in connection with the negligence of the Lessee.

6.7 Lessee's equipment and possessions

The Lessee acknowledges it is responsible to obtain all relevant insurances to cover any damage and/or theft to its property. The Lessor does not take any responsibility for the loss or damage of the Lessee's property.

6.8 Failure to Comply with Insurance Requirements

If the Lessee fails to comply with any of its obligations under this **clause 6**, the Lessor may, by serving written notice upon the Lessee, require that such default be remedied within 28 days and in the event that the Lessee fails to comply with such notice, then the Lessor may, in its absolute discretion, immediately terminate this Lease.

7. Indemnity

7.1 Lessee responsibilities

The Lessee is responsible and liable for all acts or omissions of the Lessee's Agents on the Premises and for any breach by them of any covenants or terms in this Lease required to be performed or complied with by the Lessee.

7.2 Indemnity

(1) The Lessee indemnifies, and shall keep indemnified, the Lessor from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Lessor, or brought, maintained or made against the Lessor, in respect of:

- (a) any loss whatsoever (including loss of use);
- (b) injury or damage of, or to, any kind of property or thing; and
- (c) the death of, or injury suffered by, any person,

caused by, contributed to, or arising out of, or in connection with, whether directly or indirectly:

- (i) the use or occupation of the Premises by the Lessee or the Lessee's Agents;
- (ii) any work carried out by or on behalf of the Lessee on the Premises;
- (iii) the Lessee's activities, operations or business on, or other use of any kind of, the Premises;
- (iv) the presence of Contamination, Pollution or Environmental Harm in on or under the Premises caused or contributed to by the act, neglect or omission of the Lessee or the Lessee's Agents;
- (v) any default by the Lessee in the due and punctual performance, observance and compliance with any of the Lessee's covenants or obligations under this Lease; or
- (vi) a negligent or wrongful act or omission of the Lessee or the Lessee's Agents.

7.3 Obligations Continuing

The obligations of the Lessee under this clause:

- (a) are unaffected by the obligation of the Lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount, however if insurance money is received by the

Lessor for any of the obligations set out in this clause then the Lessee's obligations under clause 7.2 will be reduced by the extent of such payment; and

- (b) continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

7.4 No indemnity for Lessor's negligence

The parties agree that nothing in this clause shall require the Lessee to indemnify the Lessor, its officers, servants, or agents against any loss, damage, expense, action or claim arising out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

7.5 Release

- (1) The Lessee:

- (a) agrees to occupy and use the Premises at the risk of the Lessee; and
- (b) releases to the full extent permitted by law, the Lessor from:
 - (i) any liability which may arise in respect of any accident or damage to property, the death of any person, injury to any person, or illness suffered by any person, occurring on the Premises or arising from the Lessee's use or occupation of the Premises by; and
 - (ii) loss of or damage to the Premises or personal property of the Lessee; and

except to the extent that such loss or damage arises out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

- (2) The release by the Lessee continues after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

8. Maintenance, Repair and Cleaning

8.1 Maintenance & Repair

- (1) The Lessee AGREES during the Term and for so long as the Lessee remains in possession or occupation of the Premises to maintain, replace, repair, clean and keep the Premises (which for the avoidance of doubt includes the Lessor's Fixtures and Fittings) in Good Repair having regard to the age of the Premises at the Commencement Date PROVIDED THAT this subclause shall not impose on the Lessee any obligation:

- (a) to carry out repairs or replacement that are necessary as a result of fair and reasonable wear and tear, EXCEPT when such repair or replacement is necessary because of any act or omission of or on the part of the Lessee (or its servants, agents, contractors or invitees), or the Lessor's insurances are invalidated by any act, neglect or default by the Lessee (or its servants, agents, contractors or invitees); and
- (b) in respect of any structural maintenance, replacement or repair EXCEPT when such maintenance, repair or replacement is necessary because of any act or omission of or on the part of the Lessee (or its servants, agents, contractors or invitees), or by the Lessee's particular use or occupancy of the Premises.

- (2) In discharging the obligations imposed on the Lessee under this subclause, the Lessee shall where maintaining, replacing, repairing or cleaning:

- (a) any electrical fittings and fixtures;
- (b) any plumbing;
- (c) any air-conditioning fittings and fixtures;
- (d) any gas fittings and fixtures,

in or on the Premises use only licensed trades persons, or such trades persons as may be approved by the Lessor and notified to the Lessee, which approval shall not be unreasonably withheld.

8.2 Repair Damage

Unless such damage is the Lessor's responsibility pursuant to the terms of the Lease, the Lessee must promptly repair at its own expense to the satisfaction of the Lessor, any damage to the Premises, regardless of how the damage is caused and replace any of the Lessor's Fixtures and Fittings which are or which become damaged.

8.3 Cleaning

The Lessee must:

- (a) at all times keep the Premises thoroughly clean, tidy, unobstructed and free from dirt and rubbish;
- (b) dispose of all rubbish in the rubbish bins provided by the Lessor at the Airport Terminal except cardboard boxes and any large quantities of waste which the Lessee must remove from the Airport Terminal and the Land at the Lessee's expense; and
- (c) when required by the Lessor permit any cleaning contractor nominated by the Lessor to have access to the Premises at all necessary times and to remain on the Premises with necessary employees, sub-contractors, plant and equipment for cleaning purposes.

8.4 Floor Coverings

In relation to floor coverings installed in the Premises by the Lessor, the Lessee must:

- (a) maintain them in clean condition;
- (b) make good all damage to them arising otherwise than from fair wear and tear;
- (c) replace an appropriate part of them with floor coverings of a similar nature, design, colour and quality as the original floor covering if in the reasonable opinion of the Lessor any part is so damaged as to be incapable of being reinstated to its former condition;
- (d) protect them from excessive wear by the provision of protective devices reasonable specified by the Lessor; and
- (e) not cut, alter or replace any of them or install any other floor coverings in the Premises without the prior consent of the Lessor.

8.5 Lessor's responsibilities

Without limiting any of the Lessee's obligations under this **clause 8**, the Parties acknowledge and agree that the Lessor shall:

- (a) on a weekly basis clean the:

(i) exterior and interior of all windows, and

(ii) floor surfaces; and

(b) maintain the alfresco garden, reticulation and floor surface (pavers),

in accordance with the Lessor's maintenance schedule for the Airport.

8.6 Lessor's Fixtures and Fittings

The Lessee covenants and agrees that the Lessor's Fixtures and Fittings:

- (a) will remain the property of the Lessor and must not be removed from the Premises at any time; and
- (b) must be present and accounted for on the expiry of the Term and any further terms of this Lease.

8.7 Pest Control

The Lessee must keep the Premises free and clear of any rodents, vermin, insects, birds, animals and other pests and the cost of extermination will be borne by the Lessee.

8.8 Drains

- (1) The Lessee must keep and maintain the sinks, waste pipes, pipes, drains, conduits and any other plumbing facilities in the Premises or connected thereto in a clean clear and free flowing condition and must pay to the Lessor upon demand the cost to the Lessor of clearing any blockage which may occur in such waste pipes, drains and conduits between the external boundaries of the Premises and the point of entry thereof into any trunk drain unless such blockage has been caused without neglect or default on the part of the Lessee.
- (2) The Lessee must not permit the drains, toilets, grease traps (if any) and other sanitary appliances on the Premises to be used for any purpose other than that for which they were constructed and must not allow any foreign matter or substance to be thrown therein.

8.9 Painting

This clause is intentionally blank.

8.10 Comply with all reasonable conditions

The Lessee must comply with all reasonable conditions that may be imposed by the Lessor from time to time in relation to the Lessee's maintenance of the Premises.

9. Operation of Cafe

9.1 Handling of Food on the Premises

Where food is sold or handled in any way on the Premises, the Lessee shall:

- (a) provide adequate facilities for the hygienic handling of such food, including facilities for the washing of hands and utensils;
- (b) notwithstanding any other provision of this Lease, not permit or allow food vendor or handler to breach the provisions of the *Food Act 2008* and *Health Act 1911* or any order, regulation or other by-law or local law or direction made relating to food or its preparation or handling;

- (c) without limiting the generality of the obligations in the foregoing paragraphs the Lessee will take adequate measures at all times to the satisfaction of the Lessor to safeguard any food being sold or distributed on the Premises from flies and dust; and
- (d) obtain all necessary permits and approvals under the provisions of the Food Act 2008 and Health Act 1911 and any associated legislation or any equivalent replacement or re-enactment thereof.

9.2 Operation of Business

The Lessee must:

- (a) conduct its business on the Premises at all times in a proper efficient and reputable manner and must not use the Premises nor permit the Premises to be used for any illegal, immoral or improper use or purpose;
- (b) not without the prior written consent of the Lessor use or permit to be used any other method in lighting the Premises other than by electricity and will not use or permit or suffer to be used any method of heating other than by electricity, gas or oil;
- (c) keep in force all licences and permits required for the carrying on of any business conducted by it in or upon the Premises; and
- (d) deliver to the Lessor any notices or orders served on or received by the Lessee in respect of the Premises or the conduct of the Lessee's business on the Premises.

9.3 Opening Requirements

- (1) The Lessee must not open the Premises for business for the Permitted Purpose at any time other than during the Airport Opening Hours, without the prior written consent of the Lessor.
- (2) The Lessee must not enter the Airport Terminal or the Premises or remain on the Airport Terminal or the Premises other than during the Airport Opening Hours, without the prior written consent of the Lessor.
- (3) The Café must be as a minimum opened two hours prior to the arrival and thirty minutes after the actual departure of scheduled regular passenger transport.
- (4) The Lessee must use all reasonable endeavours to liaise with the Airport ground handlers and airline operators which use the Airport Terminal and with the Lessor to ensure that the eating and drinking requirements of passengers whose flights are delayed are adequately catered for by the Lessee.

9.4 Consumption of alcohol

The Lessee COVENANTS AND AGREES

- (a) that the consumption or sale of alcohol shall only be permitted by the Lessor if the alcohol is to be consumed with food sold by the Lessee on the Premises;
- (b) that if the Lessee wishes to use the Premises for the consumption of alcohol it shall make an application for a licence or permit under the *Liquor Control Act 1988* for the Premises; and
- (c) that it shall not apply for an amendment to a licence or permit it has been granted, without first obtaining the written consent of the Lessor.

The Lessee COVENANTS AND AGREES that if a licence or permit is granted under the Liquor Control Act 1988 for the Premises it must:

- (a) comply with any requirements attaching to the licence or permit at its cost and where any alteration is required to the Premises **clause 12** shall apply;
- (b) comply with the requirements of the Harm Minimisation Policy (as amended from time to time) of the Department of Racing, Gaming & Liquor, which will require, without limitation the following:
 - (i) the development and implementation of a House Management Policy and Code of Conduct (as defined by the Harm Minimisation Policy) for the Premises, and such policies must be displayed in a prominent position on the Premises at all times; and
 - (ii) the development and implementation of a Management Plan (as defined by the Harm Minimisation Policy) for the Premises.
- (c) provide a copy of the licence or permit (as well as a copy of any document referred to in the licence or permit, including without limitation a copy of the House Management Policy, Code of Conduct and Management Plan (as defined by the Harm Minimisation Policy)) to the Lessor as soon as practicable after the date of grant; and
- (d) indemnify and keep indemnified the Lessor from and against any breach of the *Liquor Control Act 1988*, *Health (Food Hygiene) Regulations 1993*, *Liquor Control Regulations 1989* or the licence or permit or any conditions imposed thereupon for which it may be liable as the owner of the Premises.

9.6 Café restrictions and requirements

The Lessee acknowledges and agrees that the Premises is only suitable for a Medium Risk Food Business or Class 9B Classification, and unless otherwise agreed by the Lessor in writing the Lessee must ensure that the number of patrons using at the Café at any one time does not exceed 100.

10. Use

10.1 Restrictions on Use

(1) Generally

The Lessee must not and must not suffer or permit a person to:

- (a) use the Premises or any part of it for any purpose other than for the Permitted Purpose; or
- (b) use the Premises for any purpose which is not permitted under any Written Law.

(2) No offensive or illegal acts

The Lessee must not and must not suffer or permit a person to do or carry out on the Premises any harmful, offensive or illegal act, matter or thing.

(3) No nuisance

The Lessee must not and must not suffer or permit a person to do or carry out on the Premises any thing which is a nuisance, grievance, damage, disturbance or annoyance to the Lessor or to owners or occupiers of other premises in the vicinity of the Premises.

(4) Storage

(a) The Lessee must not keep or store or permit to be kept or stored, on the Premises, anything or any quantity or anything which is not essential to the proper use of the Premises for the Permitted Purpose.

(b) The Lessee must comply with all reasonable directions, given by the Lessor from time to time, with respect to the keeping or storage of anything by the Lessee on the Premises.

(5) No dangerous substances

The Lessee must not and must not suffer or permit a person to store any dangerous compound or substance on or in the Premises, otherwise than in accordance with the following provisions:

(a) any such storage must comply with all relevant statutory provisions;

(b) all applications for the approval or renewal of any licence necessary for such storage must be first approved by the Lessor;

(c) the Lessor may within its absolute discretion refuse to allow the storage of any particular dangerous compound or substance on the Premises;

(d) upon the request of the Lessor, the Lessee will provide a manifest of all dangerous compounds or substances stored on the Premises; and

(e) when requested to do so by the Lessor, the Lessee must give to the Lessor a certificate signed by or on behalf of the Lessee, in a form approved by the Lessor, certifying that the Lessee complies with all written laws relating to the storage, handling and labelling of anything of an explosive, dangerous or inflammable nature.

(6) No harm or stress

The Lessee must not and must not suffer or permit a person to do any act or thing which might result in excessive stress or harm to any part of the Premises.

(7) Toilets

The Lessee must not use or permit toilets or other sanitary appliances on the Premises to be used for any purpose other than that for which they were constructed and must not allow any act or thing to be done that might choke or otherwise affect or damage the same.

(8) Signs

(a) The Lessee must not and must not suffer or permit a person to display from or affix any signs, notices or advertisements on the Premises without the prior written consent of the Lessor.

(b) The Lessee must maintain in good condition and repair any signs approved by the Lessor under clause 10(8).

(9) Equipment restriction

The Lessee must not without the consent of the Lessor use or permit to be used in or in connection with the Premises any form of lighting, heating, cooling or ventilation other than as installed in the Premises as at the Commencement Date.

(10) No floor overloading

- (a) The Lessee must not without the consent of the Lessor bring onto the Airport Terminal, the Premises or the Land or permit to remain on the Airport Terminal, the Premises or the Land any heavy machinery, plant or equipment of any nature, size, weight or design as to cause or which in the reasonable opinion of the Lessor is likely to cause damage of any kind to any part of the Airport Terminal, the Premises or the Land.
- (b) The Lessee must take all steps reasonably necessary to ensure that no part of the Airport Terminal or the Premises is broken, over-stressed or damaged by any overloading from any cause and must observe the maximum floor loading weights for the respective portions of the Airport Terminal or the Premises specified from time to time by the Lessor.
- (c) Before bringing or permitting to be brought onto the Land or into the Airport Terminal or the Premises any items referred to in paragraph (a) of this clause, the Lessee must give notice to the Lessor of the Lessee's intention to do so and must comply with every reasonable direction given by the Lessor in respect of the delivery times, routing, installation and location of each of those items and when appropriate their removal.
- (d) On demand the Lessee must make good to the Lessor's satisfaction any damage done to the Premises, the Airport Terminal or the Land by any of those items or their delivery or removal.

(11) No electrical overloading

The Lessee must not without the consent of the Lessor install or use any electrical equipment on the Premises that overloads or has the capacity to overload the cables, switchboards or sub-boards through which electricity is conveyed to or through the Premises.

(12) Air-conditioning Plan

The Lessee must comply with and observe the reasonable requirements of the Lessor in respect of the Air-Conditioning Plan and not do nor permit to be done anything which interferes with or impairs its safe and efficient operation.

(13) Deliveries

The Lessee may only make deliveries to and from the Airport Terminal at the times and in the manner which ensures as little interference as is reasonably practicable with persons using the Airport Terminal.

(14) No obstruction

- (a) The Lessee must not obstruct or permit to be obstructed by the Lessee's Agents any part of the Land by leaving or placing any article or thing or by any meeting of persons or in any other manner.
- (b) Where such an obstruction occurs and the Lessee does not remove or is not capable of immediately removing that article or thing the Lessor may remove it at the Lessee's expense and risk.

(15) Radio Interference

The Lessee must comply with all reasonable directions given by the Lessor from time to time in relation to the provision and installation, at the Lessee's own cost, of suppressors on the Lessee's electrical equipment to prevent interference with radio or television transmission and reception.

10.2 No Security over Plant and Equipment

- (1) The Lessee must not without the Lessor's consent give any charge or any other security interest of any kind (**Security**) over or affecting any plant or equipment affixed or to be affixed to the Premises and the Lessee must:
 - (a) duly and punctually comply in all respects with the terms and conditions of the Security; and
 - (b) give immediate notice to the Lessor of any notice of default or demand received by the Lessee in respect of the Security.
- (2) The Lessee authorises the Lessor and the Lessor's employees and agents to obtain from any grantee of the Security any particulars (including the amount from time to time owing) under the Security.

10.3 Keys and access

- (1) Unless otherwise approved by the Lessor in writing, the Lessee must not have additional sets of keys copied or cut.
- (2) The Lessee must notify the Lessor of any loss of keys immediately. The Lessor will arrange for replacement keys to be issued to the Lessee at the Lessee's cost, to ensure all keys conform with the Lessor's master keys.
- (3) The Lessee must not change any of the Premises' locks, without the prior approval of the Lessor. If the locks are changed the Lessee must provide the Lessor with keys to access all areas of the Premises.
- (4) If the Lessor requires access to the Premises pursuant to its powers under this Lease, and is unable to access the Premises due to an unauthorised change in locks, the Lessor may take all such measures to enter the Premises and to re-secure the Premises, and the Lessee will bear all costs associated with such measures.

10.4 Lessee to Observe Copyright

In the event that the Lessee or any person sub-leasing, hiring, or in temporary occupation of the Premises provides, contracts for, or arranges for the performance, exhibition or display of any music or work of art the copyright of which is not vested in the Lessee or that person, the Lessee shall ensure that all obligations in regard to payment of copyright or licensing fees with the owner or licensor of the copyright are met before any such performance, exhibition or display is held.

10.5 No Warranty

The Lessor gives no warranty:

- (a) as to the use to which the Premises may be put; or
- (b) that the Lessor will issue any consents, approvals, authorities, permits or licences required by the Lessee under any Written Law for its use of the Premises.

10.6 Premises Subject to Restriction

The Lessee accepts the Premises for the Term subject to any existing prohibition or restriction on the use of the Premises.

10.7 Indemnity for Costs

The Lessee indemnifies the Lessor against any claims or demands for all costs, on a solicitor client basis, reasonably incurred by the Lessor by reason of any claim in relation to any matters set out in this clause.

11. Use of Common Areas and other parts of the Airport Terminal

11.1 Lessee's Covenants and Acknowledgements

- (1) The Lessee acknowledges that the Lessee's right to use the Common Areas, Car Park and Facilities is in common with the Lessor and others entitled to such use.
- (2) The Lessee shall not use the Common Areas, the Car Park or any Facility, item of plant and equipment or Lessor's fixture for a purpose other than that for which was designed or for which it is designated by the Lessor.
- (3) The Lessee shall not do or omit to do any act or thing which might cause or allow the Common Areas, Car Park or Facilities:
 - (a) to deteriorate or become impaired except for fair wear and tear;
 - (b) to be in a condition other than a good and sanitary condition; or
 - (c) to be obstructed.

11.2 Lessor's Reservations

- (1) The Lessor may at any time cancel, suspend, vary or restrict the Lessee's rights in relation to the Common Areas, Car Park or Facilities:
 - (a) to enable work to be carried out;
 - (b) to comply with the law or with the Lessor's obligations to any third party; or
 - (c) in the interests of good building management,but in so doing, the Lessor must not prevent access to the Premises or otherwise materially impair the Lessee's use and enjoyment of the Premises during normal business hours.
- (2) The Lessor controls the Common Areas, Car Park and Facilities and has the right to:
 - (a) exclude or remove any person from;
 - (b) grant rights of use to any person over; or
 - (c) restrict access to or use of,

the Common Areas, Car Park and Facilities provided that they do not materially affect the use of the Premises.

- (3) The Lessor may, from time to time, at its absolute discretion:
- (a) provide or withdraw any amenity;
 - (b) make available any amenity to users and/ or occupiers of the Airport Terminal on such terms as the Lessor thinks fit,

provided that this does not materially affect access to or egress from or the use of the Premises during normal business hours.

- (4) The Lessor may, from time to time, at its absolute discretion:
- (a) erect, remove and re-erect kiosks, signs, eats and structures in any part of the Common Areas or the Car Park;
 - (b) grant to any person the use of a kiosk or structure in the Common Areas or Car Park for any purpose or any period and on any terms and conditions as the Lessor thinks fit provided that in doing so the Lessor does not unreasonably interfere with the Lessee's use of the Premises; and
 - (c) impose a charge or charges for the use of the Car Park.

11.3 Roof and Other Areas

The Lessee must not enter on or use the roof of the Airport Terminal or any other part of the Airport Terminal outside the Premises except the Common Areas.

11.4 Common Areas

The Lessee must not do or omit to be done any act or thing which might cause or allow the Common Areas:

- (a) to deteriorate or become impaired fair wear and tear excepted;
- (b) to be in a condition other than a good and sanitary condition; or
- (c) to be obstructed.

11.5 Lessor may Designate Employee Parking

- (1) The Lessor may from time to time designate:
- (a) the parts of the Car Park which may be used; and
 - (b) the days and hours during which those parts may be used,
- by the Lessee and the Lessee's employees.
- (2) The Lessee must not use the Car Park except for those parts designated for use by the Lessor, in the manner and during the hours specified by the Lessor.
- (3) If the Lessor or any employee of the Lessee parks a motor vehicle in the Car Park except in the area and during the days and hours specified by the Lessor, the Lessee must on demand pay as liquidated damages to the Lessor the sum of \$20.00 per vehicle per day that the Lessee is in breach of this clause.

11.6 Lessee to comply with Lessor's directions

The Lessee must:

- (a) comply with and observe the reasonable requirements of the Lessor in relation to the use and handling of the plant and equipment or any amenity or Facility; and
- (b) not do anything which might interfere with or impair the efficient operation of the plant and equipment or any amenity or Facility, unless as otherwise agreed between the parties.

11.7 Comply with Rules and Regulations in relation to Common Areas

The Lessee must comply with all rules and regulations made by the Lessor with respect to the Common Areas and the Airport Terminal.

11.8 Damage to Common Areas

The Lessee must make good any breakage defect or damage to the Common Areas, Car Park or to any other part of the Airport Terminal or any appurtenance or equipment or Facility therein caused by want of care misuse or abuse on the part of the Lessee or the Lessee's Agents or by any breach of this Lease by the Lessee.

12. Alterations

12.1 Restriction

The Lessee must not without prior written consent from the Lessor; from any other person from whom consent is required under this Lease and required under any Written law in force from time to time, including but not limited to the planning approval of the Lessor under a local planning scheme of the Lessor make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises.

12.2 Consent

- (1) If the Lessor and any other person whose consent is required under this Lease or at law consents to any matter referred to in **clause 12.1** the Lessor may:
 - (a) consent subject to conditions; and
 - (b) require that the works be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
 - (c) require that any works be carried out to the satisfaction of the Lessor under the supervision of an engineer or other consultant; and
- (2) If the Lessor consents to any matter referred to in **clause 12.1**:
 - (a) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any Written Law for such matters; and
 - (b) the Lessee must apply for and obtain all such consent approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.

12.3 Cost of Works

All works undertaken under this clause will be carried out at the Lessee's expense.

12.4 Conditions

If any of the consents given by the Lessor or other persons whose consent is required under this Lease or at law require other works to be done by the Lessee as a condition of giving consent, then the Lessee must carry out those other works at the Lessee's expense.

12.5 Compliance with Plans

The Lessee acknowledges that:

- (a) it shall not carry out any works on the Premises without first obtaining the consent of the Lessor to such works; and
- (b) any works approved by the Lessor on the Premises shall be carried out in accordance with plans or requirements or other restraints which relate to the Premises.

13. Statutory Obligations & Notices

13.1 Comply with Statutes

The Lessee must:

- (a) comply promptly with all statutes and local laws from time to time in force relating to the Premises;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the Permitted Purpose;
- (c) ensure that all obligations in regard to payment for copyright or licensing fees are paid to the appropriate person for all performances, exhibitions or displays held on the Premises; and
- (d) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Premises or to the business the Lessee carries on at the Premises.

13.2 Indemnity if Lessee Fails to Comply

The Lessee indemnifies the Lessor against:

- (a) failing to perform, discharge or execute any of the items referred to in **clause 13.1**; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clause 13.1**.

13.3 No Fetter

Notwithstanding any other provision of this Lease, the Parties acknowledge that the Lessor is a local government established by the *Local Government Act 1995*, and in that capacity, the Lessor may be obliged to determine applications for consents, approvals, authorities, licences and permits having regard to any Written Law governing such applications including matters required to be taken into consideration and formal processes to be undertaken, and the Lessor shall not be taken to be in default under this Lease by performing its statutory obligations or exercising its statutory discretions, nor shall any provision of this Lease fetter the Lessor in performing its statutory obligations or exercising any discretion.

14. Report to Lessor

The Lessee must immediately report to the Lessor:

(a) **Vandalism**

any act of vandalism or any incident which occurs on or near the Premises which involves or is likely to involve a breach of the peace or become the subject of a report or complaint to the police and of which the Lessee is aware or should be aware;

(b) **Pollution, Contamination or Environmental Harm**

any occurrence or circumstances in or near the Premises of which it becomes aware, which might reasonably be expected to cause, in or on the Premises, Contamination, Pollution or Environmental Harm of the environment;

(c) **Notices, etc**

all notices, orders and summonses received by the Lessee and which affect the Premises and immediately deliver them to the Lessor; and

(d) **Defects**

any accident to or defect or want of repair in any services or fixtures, fittings, plant or equipment in the Premises and of any circumstances known to the Lessee that may be or may cause a risk or hazard to the Premises or to any person on the Premises.

15. Obligations on Termination

15.1 Restore Premises

Prior to Termination, the Lessee at the Lessee's expense must restore the Premises to a condition consistent with the observance and performance by the Lessee of the Lessee's Covenants under this Lease.

15.2 Remove Lessee's Property prior to Termination

Prior to Termination, unless otherwise mutually agreed between the parties, the Lessee must remove from the Premises all property of the Lessee which is not a fixture (other than air-conditioning plant and fire equipment, security alarms and security systems and other fixtures and fittings which in the opinion of the Lessor form an integral part of the Premises) and promptly make good to the satisfaction of the Lessor any damage caused by the removal.

15.3 Lessor can Remove Lessee's Property on Re-Entry

On re-entry the Lessor will have the right to remove from the Premises any property of the Lessee and the Lessee indemnifies the Lessor against all damage caused by the removal of and the cost of storing such property.

15.4 Peacefully Surrender

On Termination the Lessee must:

- (a) peacefully surrender and yield up to the Lessor the Premises in a condition consistent with the observance and performance of the Lessee's Covenants under this Lease; and
- (b) surrender to the Lessor all keys and security access devices held by the Lessee.

15.5 Obligations to continue

The Lessee's obligations under this clause will survive termination.

16. No Absolute Caveat or Other Interest

16.1 No Absolute Caveat or other interest

The Lessee nor any person on behalf of the Lessee must not lodge at Landgate any absolute caveat or any other interest including any lease, sublease, mortgage, charge over the Land or Premises or part thereof, without the prior written consent of the Lessor.

16.2 Subject to Claim Caveat

Nothing in this clause 16 prevents the Lessee from lodging a caveat expressed to be subject to claim to protect the Lessee's interest under this Lease. Any caveat lodged by the Lessee in accordance with this clause must be withdrawn by the Lessee upon the expiration or earlier determination of this Lease.

16.3 Removal of interest

If any caveat or other interest is lodged without the consent of the Lessor, the Lessee irrevocably appoints the Lessor (or any person authorised by the Lessor for that purpose) jointly and severally:

- (a) for the Term of this Lease;
- (b) for any holding over under this Lease; and
- (c) for a period of six (6) months after Termination of this Lease

to be the agent and attorney of the Lessee in its name and on its behalf to sign and lodge at Landgate;

- (d) a withdrawal of any absolute caveat lodged by or behalf of the Lessee;
- (e) a withdrawal of any caveat lodged by on or behalf of the Lessee and not withdrawn on Termination; and
- (f) a surrender of the estate granted by this Lease.

16.4 Costs of removal, Indemnity and Ratification

- (a) The Lessee undertakes to ratify all the acts performed by or caused to be performed by the Lessor, its agent or attorney under this clause; and
- (b) the Lessee indemnifies the Lessor against:
 - (i) any loss arising from any act done under this clause; and
 - (ii) all costs and expenses incurred in connection with the performance of any act by the attorney on behalf of the Lessee including the withdrawing of any caveat effecting the Land the registration of this Lease to exercise the power of attorney set out in clause 16.3.

17. Lessee to Comply with Offer

The Lessee shall at all times comply with the Offer submitted by it and with any acceptance by the Lessor of that Offer.

18. Airport Security

18.1 Compliance with Aviation Legislation

Without limiting the Lessee's obligations under **clause 13**, the Lessee must comply, at all times, with the *Aviation Transport Security Act 2004* and the *Aviation Transport Security Regulations 2005*.

18.2 Local Laws

Without limiting the Lessee's obligations under **clause 13**, the Lessee must comply, at all times, with the provisions of any local law of the Shire of Wyndham East Kimberley relating to the Land, the Premises or the Airport Terminal.

18.3 Lessor's Emergency Plan

The Lessee must observe and comply with the requirements of the Lessor's emergency plan, for the East Kimberley Regional Airport and of the Lessor's Airport Transport Security Programme (as those documents are amended from time to time) insofar as those documents relate to the Premises and the Lessee and the Lessee's Agents.

18.4 Essential Terms

Each of the covenants of the Lessee under this **clause 18** are essential terms for the purposes of **clause 30.5** and **clause 30.6**.

19. Airport Rules

- (1) The Lessor may make, alter, and from time to time add to Rules (not inconsistent with any of the express provisions of this Lease) for the use, safety, security, control, care, appearance and cleanliness of the Premises, the Airport Terminal and the Land and for the comfort of persons and preservation of good order and conduct in and around the Premises, the Airport Terminal and the Land.
- (2) Any Rules and alterations and additions to the Rules bind the Lessee from the date notice of them is served on the Lessee and are to take effect as Lessee's Covenants.
- (3) The Lessee is responsible for ensuring that the Lessee's Agents observe the Rules.
- (4) Any breach of the Rules by the Lessee's Agents is to be taken to be a breach of the Rules by the Lessee.
- (5) A certificate signed by or on behalf of the Lessor is sufficient evidence that the Rules at any particular time have been duly made and are binding on the Lessee and that the Lessee was given a copy of the Rules and any alterations or additions on the date of service specified in the Certificate.

Guarantees

20. Lease Conditional on Guarantees

This grant of Lease is conditional on:

- (a) if the Lessee is a corporation, a person acceptable to the Lessor providing a guarantee in the terms provided in **clause 21 (Guarantor)**; and
- (b) a bank guarantee in the terms provided in **clause 22**.

21. Personal Guarantee

21.1 Personal Guarantee

In consideration of the Lessor entering into a Lease with the Lessee at the request of the Guarantor, the Guarantor hereby jointly and severally:-

- (a) **GUARANTEES** payment by the Lessee of the Amounts Payable by the Lessee to the Lessor pursuant to this Lease and the observance and performance by the Lessee of the Lessee's Covenants;
- (b) **AGREES** that if any money payable by the Lessee to the Lessor pursuant to the terms of this Lease shall not be recoverable from the Guarantor under this Guarantee by reason of any legal limitation disability or incapacity on or of the Lessee or by reason of any avoidance of the liability of the Lessee or of any other fact or circumstances then the Guarantor will hold the Lessor fully indemnified at all times against all loss or damage which the Lessor may suffer or incur by reason of any limitation disability incapacity failure fact or circumstances.

(Personal Guarantee)

21.2 Guarantor's Covenants

The Guarantor covenants and agrees with the Lessor as follows:

- (a) To pay all moneys due and payable to the Lessor by the Lessee under this Lease upon demand.
- (b) The liability of the Guarantor will not be affected by:
 - (i) the granting of any time or other indulgence by the Lessor to any person;
 - (ii) any compounding compromise release abandonment waiver variation or renewal of any term of this Lease or of the right of the Lessor or any omission;
 - (iii) the avoidance of any payment by the Lessee or the Guarantor to the Lessor;
 - (iv) any other dealing matter or thing which but for this provision operates to affect the liability of the Guarantor.
- (c) This Personal Guarantee is an irrevocable and continuing Personal Guarantee and will remain in effect for the benefit of the Lessor in respect of all liabilities of the Lessee arising from this Lease both before and after the determination of the Term.

- (d) All benefits or moneys received by the Lessor from or on account of the Lessee's operation being applied by the Lessor in reduction of any money owing to the Lessor will be taken and applied by the Lessor as payment in gross without any right of the Guarantor to claim any benefit from any moneys so received by the Lessor.
- (e) Upon liquidation or bankruptcy of the Guarantor the Lessor will be entitled to prove for the total indebtedness of the Lessee under this Lease for the Term notwithstanding that the Rent or other moneys payable by the Lessee to the Lessor under this Lease are not due and payable at the date of the liquidation or bankruptcy of the Guarantor.
- (f) The indemnity given in this clause by the Guarantor will be a principal obligation and may be enforced against the Guarantor without any responsibility on the part of the Lessor to proceed against the Lessee or any other person.
- (g) Upon liquidation or bankruptcy of the Lessee the Guarantor will not prove in competition with the Lessor and the Guarantor authorises the Lessor to provide for all moneys which the Guarantor has paid under this Lease and retain or to appropriate at the discretion of the Lessor any amount received by the Lessor.
- (h) To give effect to this Lease the Guarantor waives in favour of the Lessor all rights of the Guarantor against the Lessee.
- (i) The liabilities of the Guarantor created by this clause shall not be affected by reason of any security taken by the Lessor being or becoming void or defective.
- (j) In the event of any part of this Lease being severed in accordance with the provisions in that behalf contained or implied in this Lease then the Guarantor will not be entitled to rely on or claim the benefit of any severance.
- (k) This Personal Guarantee will remain in force and continue notwithstanding any extension, renewal or assignment of this Lease, and will continue during any period of holding over by the Lessee (whether or not with the Lessor's consent).

21.3 Obligations Effective in All Circumstances

The obligations (expressed or implied) of the Guarantor in this Lease shall apply to and be fully effective in respect of the Lessee's Covenants whether or not:

- (a) the whole or any part of the Lessee's Covenants are enforceable at law or in equity or otherwise pursuant to any express or implied lease, tenancy or other right of occupancy of or interest in the Premises granted by or derived from the Lessor under this Lease or under or pursuant to any antecedent agreement or otherwise enjoyed by the Lessee at law or in equity;
- (b) the Lease is in a form such as to be capable of being registered in the manner referred to in the Transfer of Land Act 1893; or
- (c) it is the intention (expressed or implied) of either or both of the Lessor and the Lessee that the Lease be registered in the manner referred to in the *Transfer of Land Act 1893*.

22. Bank Guarantee

22.1 Bank Guarantee

The Lessee must give the Lessor an unconditional and irrevocable undertaking (**Bank Guarantee**) from a bank or financial institution authorised to carry on banking in Australia under the *Banking Act 1959* in the terms provided in **clauses 22.2 to 22.6**.

22.2 Purpose of the Guarantee

The Bank Guarantee will authorise the Lessor to draw on the money guaranteed:

- (a) if any Amounts Payable remain unpaid for 7 days after becoming due whether or not a demand or Notice has been given to the Lessee; or
- (b) to recover the cost to the Lessor of rectifying any breach of any of the Lessee's Covenants (other than the covenant to pay the Amounts Payable) which has not been rectified by the Lessee within 14 days of being notified of the breach.

22.3 Form of the Guarantee

The Bank Guarantee must be in favour of the Lessor and in a form that is reasonably satisfactory to the Lessor.

22.4 Term of Guarantee

The Bank Guarantee must be enforceable at all times for:

- (a) the Term of the Lease;
- (b) any further term, extension or holding over; and
- (c) a period of three months after termination of the Lease.

22.5 Amount of Bank Guarantee

The amount of the Bank Guarantee shall be at any point in time during the Term or any Further Term be equal to the sum specified in **Item 10** of the Schedule.

22.6 Cost of Bank Guarantee

Any costs associated with meeting this obligation will be paid by the Lessee.

Lessor's Rights & Obligations

23. Quiet Enjoyment

Except as provided in the Lease, for so long as the Lessor is the registered proprietor of the Premises, and subject to the performance and observance of the Lessee's Covenants the Lessee may quietly hold and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or persons lawfully claiming through or under the Lessor.

24. Lessor's Right of Entry

24.1 Entry on Reasonable Notice

- (1) The Lessee must permit entry by the Lessor or the Lessor's Agents onto the Premises without notice in the case of an emergency, and otherwise upon reasonable notice:
 - (a) at all reasonable times;
 - (b) with or without workmen and others; and
 - (c) with or without plant, equipment, machinery and materials;

(d) for each of the following purposes:

- (i) to clean and maintain the Premises in accordance with **clause 8**;
 - (ii) to undertake property inspections to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;
 - (iii) to carry out any survey or works which the Lessor considers necessary, however the Lessor will not be liable to the Lessee for any compensation for such survey or works provided they are carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee;
 - (iv) to comply with the Lessor's Covenants or to comply with any notice or order of any authority in respect of the Premises for which the Lessor is liable;
 - (v) to do all matters or things to rectify any breach by the Lessee of any term of this Lease but the Lessor is under no obligation to rectify any breach and any rectification under this clause is without prejudice to the Lessor's other rights, remedies or powers under this Lease;
 - (vi) to the extent reasonably necessary, to carry out any repairs, renovations, maintenance, modifications, extensions, alterations or replacements to any part of the Airport Terminal and to any plant, machinery or equipment within the Airport Terminal (whether within the Premises or not);
 - (vii) without limiting subclause (v), to erect, make, excavate, lay or install in or over or under the Premises and to make use of any pipe, wire, amplifier, light, alarm, channel, drain, sump, vent, duct, inlet, outlet, plant or machinery or other thing requisite for or in addition to any of the Lessor's Purposes;
 - (viii) to inspect, remove, maintain, replace, repair, service, alter or add to any of the items referred to in subclause (vi) in or about the Premises or the walls floors and ceilings of the Premises or any other part of the Airport Terminal; and
 - (ix) to comply with any written law or any request, requirement, notification or order of any Local of Public Authority for which the Lessee is not responsible under this Lease.
- (2) In exercising the right of entry referred to in subclause (1) the Lessor must cause as little inconvenience, disruption or damage to the Lessee as is reasonably practicable in the circumstances. The Lessee has no claim for any abatement of Rent or compensation or damages in respect of that exercise.

24.2 Inspection by Intending Purchasers

- (1) At all times during the Term in respect of any prospective sale the Lessee must permit the Lessor or any person authorised by the Lessor:
 - (a) at all reasonable times to enter the Premises with and exhibit them to prospective purchasers of the whole or any part of or any interest in the Land; and
 - (b) to affix or exhibit where the Lessor reasonably thinks fit in or about the Premises, any notice or sign for selling the Land or that part or interest.
- (2) The Lessee must not remove, deface or obscure or permit to be removed, defaced or obscured any notice or sign referred to in subclause (1).

24.3 Costs of Rectifying Breach

All costs and expenses incurred by the Lessor as a result of any breach referred to at **clause 24.1(1)(d)(v)** together with any interest payable on such sums will be a debt due to the Lessor and payable to the Lessor by the Lessee on demand.

24.4 Notice to Relet

During the last three (3) months prior to the expiry of the Lease the Lessee must:

- (a) permit the Lessor to affix upon any part of the Premises a notice for reletting the same;
- (b) not remove, conceal or deface such notice to relet; and
- (c) permit intending tenants at all reasonable times to view the Premises.

25. Limit of Lessor's Liability

25.1 No Liability for Loss on Premises

The Lessor will not be liable for loss, damage or injury to any person or property in or about the Premises except to the extent that such loss, damage or injury was caused or contributed to by negligent or wilful act or omission of the Lessor or the Lessor's Agents or invitees.

25.2 Limit on Liability for Breach of Lessor's Obligations

- (1) The Lessor is only liable for breaches of the Lessor's Covenants set out in this Lease which occur while the Lessor is the registered proprietor of the Premises.
- (2) Without limiting any provision of this Lease and despite any implication or rule of law or equity to the contrary the Lessor will not:
 - (a) be liable for any failure to perform and observe any of the Lessor's Covenants due to any cause beyond the Lessor's control; or
 - (b) under any circumstances be liable to the Lessee for any loss or damage suffered by the Lessee or the Lessee's Agents attributable in any way to:
 - (i) any act, default or negligence of any other tenant of the Airport Terminal or the Land or that tenant's employees, agents, contractors or invitees; or
 - (ii) any malfunction, breakdown, interference or interruption of or to the Lessor's Installations; or
 - (iii) the breakage, blockage or overflow of any sewer, gutter or drain from any cause; or
 - (c) be liable to the Lessee for any damage or loss that the Lessee may suffer by reason of the neglect or omission of the Lessor to do any act or thing to or in respect of the Premises, the Airport Terminal or the Land which the Lessor is liable to do unless the Lessee has given to the Lessor notice of that act or omission and the Lessor has without reasonable cause failed within a reasonable time to take proper steps to do that act or rectify that omission.

26. Building Insurance

The Lessor shall effect and keep effected insurance to the full insurable value on a replacement or reinstatement value basis of the Premises against damage arising from fire, tempest, storm, earthquake, explosion, aircraft, or other aerial device including items dropped from any device, riot, commotion, flood, lightning, act of God, fusion, smoke, rainwater, leakage, impact by vehicle, machinery breakdown and malicious acts or omissions and other standard insurable risks.

Mutual Agreements

27. Damage or Destruction of Premises

27.1 Abatement of Lessee's Financial Obligations

If during the continuance of this Lease the Premises is wholly or partly damaged or destroyed or is rendered wholly or substantially inaccessible through an event described in **clause 27.2**, rendering the Premises or any part of it wholly or substantially unfit for the Lessee's use and occupation or inaccessible, then the Lessee's financial obligations abate in accordance with this clause.

27.2 Abating Events

This clause applies in case of fire, lightning, storm, flood, earthquake, explosion, malicious damage, war damage, if any Local or Public Authority resumes or takes the Premises for any public purpose or declares the Premises unfit for occupation or orders their demolition and any other event beyond the Lessee's control.

27.3 Lessee's Financial Obligations

Abatement extends to all the Lessee's financial obligations to the Lessor under this Lease, including Rent, and all the rates and taxes and utility charges (**Financial Obligations**).

27.4 Period of Abatement

The period of abatement of the Lessee's Financial Obligations will be from the date of the destruction, damage of the Premises or inaccessibility of the Premises until the date when the Premises are restored, accessible and rendered suitable for the Lessee's use and occupation. For the sake of clarity the abatement shall not apply to any amount that becomes due and payable by the Lessee prior to the date the Premises is wholly or partly damaged or destroyed or is rendered wholly or substantially inaccessible, save that if the Rent has been paid in advance the abatement shall apply to any Rent paid in advance which relates to any period from the date of the destruction, damage or inaccessibility of the Premises.

27.5 Effect of Abatement

During and for the period of abatement of the Lessee's Financial Obligations the Lessee's liability to pay the whole or proportion of the Financial Obligations under this Lease, as agreed or determined under **clause 27**, calculated on a daily basis will cease and abate.

27.6 Exception to Abatement

The Lessee is not entitled to an abatement of the Lessee's Financial Obligations under this clause if:

- (a) the event resulting in the damage, destruction to the Premises or inaccessibility of the Premises is caused or contributed to by the act or negligent omission of the Lessee or the Lessee's Agents; or
- (b) the Lessor fails to recover the benefit of any insurance for loss or damage to the Building or the Premises because of any act or omission of the Lessee or the Lessee's Agents.

27.7 Lessee's Use of Premises

If the extent of damage to the Premises enables the Lessee to use and enjoy the whole or part of the Premises for the Lessee's business, THEN the Lessee may continue to use the Premises and conduct its business whilst the Premises are being repaired unless:

- (a) the Lessor reasonably requires such use to cease during the whole or part of the repairs; or
- (b) any public authority prohibits occupation of the Premises in its damaged condition,

and such use by the Lessee will be taken into account when determining the partial abatement of the Lessee's Financial Obligations.

27.8 Determination of Abatement

- (1) The parties will endeavour to agree on the commencement and period of abatement of the Lessee's Financial Obligations, and if the Lessee is able to have partial use and enjoyment of the Premises, then the proportion of the abatement of the Lessee's Financial Obligations having regard to the nature and extent of the damage to and use of the Premises.
- (2) If the parties have any dispute regarding the Lessee's entitlement to an abatement of the Lessee's Financial Obligations, its period or amount, the dispute will be determined by a loss assessor:
 - (a) who is then a member of the Insurance Council of Australia Ltd (**Council**) and is experienced in assessing premises of the nature of the Premises and is nominated by the President for the time being or senior officer of that Council on the application of either party;
 - (b) acting as an expert;
 - (c) who is entitled to accept written submissions and expert reports from either party; and
 - (d) whose costs shall be borne equally by the parties;
 - (e) whose decision is final and binding on the parties.
- (3) If the loss assessor nominated under paragraph (2) above fails to proceed or to determine the dispute, either party may seek the nomination of another loss assessor in accordance with paragraph (2).

28. Option to Renew

If the Lessee at least three months, but not earlier than 6 months, prior to the date for commencement of the Further Term gives the Lessor a Notice to grant the Further Term and:

- (a) all consents and approvals required by the terms of this Lease or at law have been obtained; and
- (b) there is no subsisting default by the Lessee at the date of service of the Notice in:
 - (i) the payment of Amounts Payable; or

the Lessor shall grant to the Lessee a lease for the Further Term at the Rent and on the same terms as this Lease other than this clause in respect of the Further Terms previously taken.

29. Assignment, Subletting and Charging

29.1 No Assignment without Consent

The Lessee must not assign the leasehold estate in the Premises nor part with possession, sub-let or dispose of the Premises or any part of the Premises without the prior written consent of the Lessor and any other person whose consent is required under this Lease or at law.

29.2 Change in Ownership of Shares

If the Lessee is a corporation the shares in which are not quoted on any stock exchange in Australia, any change in the beneficial ownership, issue or cancellation of shares in that corporation or any holding company of that corporation within the meaning of the Corporations Act 2001 (Cth) will be deemed to be an assignment of the leasehold estate created by this Lease and the Lessee must give the Lessor written notification of the change in ownership of shares within 14 days of the change

29.3 Lessor's Consent to Assignment

Provided all parties whose consent is required under this Lease or at law to an assignment give their consent, then the Lessor may not unreasonably withhold its consent to the assignment of the leasehold estate created by this Lease if:

- (a) the proposed assignee is a respectable and responsible person of good financial standing;
- (b) all Amounts Payable due and payable have been paid and there is no existing unremedied breach, whether notified to the Lessee or not, of any of the Lessee's Covenants;
- (c) the Lessee procures the execution by the proposed assignee of a deed of assignment;
- (d) to which the Lessor is a party and which deed is prepared and completed by the Lessor's solicitors; and
- (e) the deed of assignment contains a covenant by the assignee with the Lessor to pay all Amounts Payable and to perform and observe all the Lessee's Covenants; and
- (f) the Lessor's consent to assignment of the Lease, where provided, may be given subject to such reasonable conditions as the Lessor sees fit.

29.4 Release of Lessee upon Assignment

The covenants and agreements on the part of any assignee will be supplementary to the Lessee's Covenants and will not release the assigning Lessee from the Lessee's Covenants, other than to the extent expressly provided in the Commercial Tenancy (Retail Shops) Agreement Act 1985.

29.5 Property Law Act 1969

Sections 80 and 82 of the *Property Law Act 1969* are excluded.

29.6 Costs for Assignment or Lease

If the Lessee wishes to assign or sublet the leasehold estate created by this Lease, the Lessee must pay all reasonable professional and other costs, charges and expenses, incurred by the Lessor or other person whose consent is required under this Lease, of and incidental to:

- (a) the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee;
- (b) any consents required under this Lease or at law; and
- (c) all other matters relating to the proposed assignment or sublease,

whether or not the assignment or sublease proceeds.

29.7 No Mortgage or Charge

The Lessee must not, without first obtaining the Lessor's consent, mortgage, charge or sub-let the Premises.

30. Default

30.1 Events of Default

- (1) Subject to **clause 30.1(2)**, a default occurs if:
 - (a) any Amounts Payable remain unpaid for one month after becoming due and written notice has been given to the Lessee to pay such Amounts Payable;
 - (b) the Lessee is in breach of any of the Lessee's Covenants other than the covenant to pay the Amounts Payable for 14 days after written notice has been given to the Lessee to rectify the breach;
 - (c) an order is made or a resolution effectively passed for the winding up of the Lessee unless the winding up is for the purpose of amalgamation or reconstruction;
 - (d) a controller, as defined by the *Corporations Act 2001* is appointed in respect of the Lessee's interest in the Premises under this Lease;
 - (e) a mortgagee takes possession of the Lessee's interest in the Premises under this
 - (f) the Premises are vacated;
 - (g) the registration of the Lessee is cancelled or dissolved under the *Corporations Act*; or
 - (h) a person other than the Lessee or a permitted sublessee or assignee is in occupation or possession of the Premises or in receipt of a rent and profits.
- (2) For the purposes of **clause 30.1(1)** the Lessor agrees that the Lessee will not be in default under the Lease if, at any time, an administrator, as defined by the *Corporations Act 2001*, is appointed in respect of the Lessee except where the administration comes to an end by reason of the Lessee's creditors resolving that the Lessee should be wound up.

30.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 30.2** the Lessor may:

- (a) without notice or demand at any time enter the Premises and on to carry out the work immediately determine;
- (b) by notice to the Lessee determine this Lease and from the date of giving such notice this Lease will be absolutely determined; and
- (c) by notice to the Lessee elect to convert the unexpired portion of the Term into a tenancy from month to month when this Lease will be determined as from the giving of the notice and until the tenancy is determined the Lessee will hold the Premises from the Lessor as a tenant from month to month under **clause 33**,

but without affecting the right of action or other remedy which the Lessor has in respect of any other breach by the Lessee of the Lessee's Covenants or releasing the Lessee from liability in respect of the Lessee's Covenants.

30.3 Lessor may Remedy Lessee's default

If the Lessee:

- (a) fails or neglects to pay the Amounts Payable by the Lessee under this Lease; or
- (b) does or fails to do anything which constitutes a breach of the Lessee's Covenants,

then, after the Lessor has given to the Lessee notice of the breach and the Lessee has failed to rectify the breach within a reasonable time, the Lessor may without affecting any right, remedy or power arising from that default pay the money due or do or cease the doing of the breach as if it were the Lessee and the Lessee must pay to the Lessor on demand the Lessor's cost and expenses of remedying each breach or default.

30.4 Acceptance of Amount Payable By Lessor

Demand for or acceptance of the Amounts Payable by the Lessor after an event of default has occurred will not affect the exercise by the Lessor of the rights and powers of the Lessor by the terms of the Lease or at law and will not operate as an election by the Lessor to exercise or not to exercise any right or power.

30.5 Essential Terms

Each of the Lessee's Covenants in **clauses 4** (Rent and Other Payments); **6** (Insurance); **7** (Indemnity); **8** (Maintenance, Repair and Cleaning); **10** (Use) and **29** (Assignment, Subletting and Charging) is an essential term of this Lease but this **clause 30** does not mean or imply that there are no other essential terms in this Lease.

30.6 Breach of Essential Terms

If the Lessee breaches an essential term of this Lease then, in addition to any other remedy or entitlement of the Lessor:

- (a) the Lessee must compensate the Lessor for the loss or damage suffered by reason of the breach of that essential term;
- (b) the Lessor will be entitled to recover damages against the Lessee in respect of the breach of an essential term; and
- (c) the Lessee AGREES with the Lessor that if the Term is determined:
 - (i) for breach of an essential term or the acceptance by the Lessor of a repudiation of this Lease by the Lessee; or

- (ii) following the failure by the Lessee to comply with any notice given to the Lessee to remedy any default,

the Lessee must pay to the Lessor on demand the total of the Amounts Payable under this Lease which would have been payable by the Lessee for the unexpired balance of the Term as if the Term had expired by lapse of time together with the losses incurred or reasonably expected to be incurred by the Lessor as a result of the early determination including but not limited to the costs of re-letting or attempting to re-let the Premises;

- (d) the Lessee agrees that the obligation set out in this **clause 30.6(c)** will survive termination or any deemed surrender at law of the estate granted by this Lease;
- (e) the Lessee may deduct from the amounts referred to at **clause 30.6(c)** the Rent and other money which the Lessor reasonably expects to obtain by re-letting the Premises between the date of Termination and the date on which the Term would have expired by lapse of time; and
- (f) the Lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rent and on reasonable terms but the Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

31. Repudiation by Lessee

31.1 Compensation

In the event that the Lessee's conduct (whether by acts or omissions) constitutes a repudiation of the Lease (or of the Lessee's obligations under the Lease) or constitutes a breach of any Lease covenants, it is agreed that:

- (a) the Lessee shall compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach; and
- (b) the Lessor shall be entitled to recover damages against the Lessee in respect of the repudiation or breach of covenant for the damage suffered by the Lessor during the entire Term of this Lease.

31.2 Entitlement to Recover Damages

The Lessor's entitlement to recover damages shall not be affected or limited in the event that:

- (a) the Lessee abandons or vacates the Premises;
- (b) the Lessor elects to re-enter or to terminate the Lease;
- (c) the Lessor accepts the Lessee's repudiation; or
- (d) the Parties' conduct constitutes a surrender by operation of law.

31.3 Legal Proceedings

The Lessor shall be entitled to institute legal proceedings claiming damages against the Lessee in respect of the entire Term, including the periods before and after the Lessee has vacated the Premises, and before and after the abandonment, termination, repudiation, acceptance of repudiation or surrender by operation of law referred to in **clause 31.2**, whether the proceedings are instituted either before or after such conduct.

32. Goods and Services Tax

32.1 Lessee must Pay

If GST is payable on the Basic Consideration or any part thereof or if the Lessor is liable to pay GST in connection with the sublease of the Premises or any goods, services or other Taxable Supply supplied under this Lease then, as from the date of any such introduction or application:

- (a) the Lessor may increase the Basic Consideration or the relevant part thereof by an amount which is equal to the GST Rate; and
- (b) the Lessee shall pay the increased Basic Consideration on the due date for payment by the Lessee of the Basic Consideration.

32.2 Increase in GST

If, at any time, the GST Rate is increased, the Lessor may, in addition to the GST Rate, increase the Basic Consideration by the GST Adjustment Rate and such amount shall be payable in accordance with this clause.

32.3 GST invoice

Where the Basic Consideration is to be increased to account for GST pursuant to this clause the Lessor shall in the month in which the Basic Consideration is to be paid, issue a Tax Invoice which enables the Lessee to submit a claim for a credit or refund of GST.

33. Holding Over

- (1) If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor, the Lessee will be a monthly tenant of the Lessor at a rent equivalent to one twelfth of the Rent for the period immediately preceding expiry of the Term and otherwise on the same terms and conditions of this Lease provided that all consents required under this Lease or at law have been obtained to the Lessee being in possession of the Premises as a monthly tenant.
- (2) Either party may terminate the monthly tenancy by giving not less than one month's notice ending on any day.
- (3) In the event that the Lessee is permitted to utilise the Premises in accordance with paragraph (1) above, the parties agree that the Rent will continue be reviewed in accordance with the provisions of **clause 5**.

34. Disputes

34.1 Referral of Dispute: Phase 1

Except as otherwise provided any dispute arising out of this Lease is to be referred in the first instance in writing to the Lessor's Representative as nominated in writing by the Lessor from time to time (**Lessor's Representative**) who shall convene a meeting within 10 days of receipt of such notice from the Lessee or such other period of time as is agreed to by the Parties between the Lessor's Representative and an officer of the Lessee for the purpose of resolving the dispute (**Original Meeting**).

34.2 Referral of Dispute: Phase 2

In the event the dispute is not resolved in accordance with **clause 34.1** of this Lease then the dispute shall be referred in writing to the CEO of the Lessor who shall convene a meeting within

10 days of the Original Meeting or such other date as is agreed to by the Parties between the CEO and the Lessee for the purpose of resolving the dispute.

34.3 Appointment of Arbitrator: Phase 3

In the event the dispute is not resolved in accordance with **clause 34.2** of this Lease then unless otherwise required pursuant to the provisions of the *Commercial Tenancy (Retail Shops) Agreements Act 1985* the dispute shall be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 1985* (as amended from time to time) and the Lessor and the Lessee may each be represented by a legal practitioner.

34.4 Payment of Amounts Payable to Date of Award

The Lessee must pay the Amounts Payable without deduction to the date of the award of the Arbitrator or the date of an agreement between the Parties whichever event is the earlier, and if any money paid by the Lessee is not required to be paid within the terms of the award of the Arbitrator or by agreement between the Lessor and the Lessee then the Lessor will refund to the Lessee the monies paid

34.5 WAPC Consent

If for any reason whatsoever this Lease requires the consent of the Western Australian Planning Commission or other consent under the *Planning and Development Act 2005*, then this Lease is made expressly subject to and conditional on the granting of that consent in accordance with the provisions of the *Planning and Development Act 2005*.

General Provisions

35. Notice

35.1 Form of Delivery

A Notice to a person must be in writing and may be given or made:

- (a) by a delivery to the Party personally; or
- (b) by addressing it to the Party and leaving it at or posting it by registered post to the address of the Party appearing in this Lease or any other address nominated by a Party by notice to the other.

35.2 Service of Notice

A Notice to a person is deemed to be given or made:

- (a) if by personal delivery, when delivered;
- (b) if by leaving the Notice at an address specified in **clause 35.1**, at the time of leaving the Notice provided the Notice is left during normal business hours; and
- (c) if by post to an address specified in **clause 35.1**, on the second business day following the date of posting of the Notice.

35.3 Signing of Notice

A Notice to a Party may be signed:

- (a) if given by an individual, by the person giving the Notice:

(v) if given by a corporation, by a director, secretary or manager of that corporation, or

(c) if given by a local government, by the CEO or a person authorised to sign on behalf of the local government; or

(d) by a solicitor or other agent of the person, corporation or local government giving the Notice.

35.4 Amendments to Lease

Subject to such consents as are required by this Lease or at law, this Lease may be varied by the agreement of the Parties in writing.

36. Waiver

36.1 No General Waiver

Failure to exercise or delay in exercising any right, power or privilege in this Lease by a Party does not operate as a waiver of that right, power or privilege.

36.2 Partial Exercise of Right Power or Privilege

A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

36.3 Acts by Agents

All acts and things which the Lessor is required to do under this Lease may be done by the Lessor, or the Lessor's Agents.

36.4 Statutory Powers

The powers conferred on the Lessor by or under any statutes for the time being in force are, except to the extent that they are inconsistent with the terms and provisions expressed in this Lease, in addition to the powers conferred on the Lessor in this Lease.

36.5 Further Assurance

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the terms of this Lease.

36.6 Severance

If any part of this Lease is or becomes void or unenforceable, that part is or will be severed from this Lease to the intent that all parts that are not or do not become void or unenforceable remain in full force and effect and are unaffected by that severance.

36.7 Moratorium

The provisions of a statute which would but for this clause extend or postpone the date of payment of money, reduce the rate of interest or abrogate, nullify, postpone or otherwise affect the terms of this Lease do not, to the fullest extent permitted by law, apply to limit the terms of this Lease.

36.8 Governing Law

This Lease is governed by and is to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.

36.9 Commercial Tenancy Act

For so long as the *Commercial Tenancy (Retail Shops) Agreements Act 1985* applies to this Lease and a provision of that Act conflicts with a provision of this Lease, then each conflicting provision of this Lease is deemed to be amended to the extent necessary to comply with that Act.

36.10 Additional Terms Covenants and Conditions

Each of the terms, covenants and conditions (if any) specified in **Item 11** of the Schedule are part of this Lease and are binding on the Lessor and the Lessee as if incorporated into the body of this Lease.

Schedule

Item 1 Land and Premises

Land

Lot 200 on Deposited Plan 66654 being the whole of the land comprised in Certificate of Title Volume 2760 Folio 199.

Premises

That part of the Airport Terminal as shown hachured on the plan annexed hereto as **Annexure 1**, including fixtures and fittings belonging to the Lessor therein and all additions or modifications and replacements from time to time.

Item 2 Term

Five (5) years commencing on the Commencement Date and expiring on 11 December 2020.

Item 3 Further Terms

Five (5) years commencing on 12 December 2020 and expiring on 11 December 2025.

Item 4 Commencement Date

12 December 2015.

Item 5 Rent

Subject to **clause 4** and any rent review, the Rent is:

- (a) Base rent (\$20,000 per annum ex GST), which is payable as \$5,000 ex GST every 3 months; or
- (b) 6% of the Lessee's Turnover plus GST for the preceding 3 months.

Which ever is the greater.

The Rent is calculated quarterly and is to be paid within 30 days of the Turnover Statement due date, as per **clause 4.1**.

Item 6 Public Liability

Twenty million dollars (\$20,000,000.00).

Item 7 Permitted purpose

Café, Kiosk.



Item 8 Rent Review Dates

CPI reviews are to be undertaken upon each anniversary of the Commencement Date for each year of the Term (including any Further Terms and any period of holding over, if applicable).

Item 9 Repainting Dates

Not applicable.

Item 10 Amount of Bank Guarantee

Equivalent to three (3) months Rent and outgoings, to be adjusted after each Rent Review. At the commencement of the Lease the amount of the Bank Guarantee shall be \$5,000 including GST.

Item 11 Additional Terms and Covenants

11.1 Vending Machines – operation

(1) In this Item 11.1:

Sterile Period means any period when the Lessor classifies or declares the departure lounge of the Airport Terminal as “sterile” because the departure lounge is occupied, or is ready to be occupied, by passengers who have been security screened and are awaiting departure; and

Vending Machine means any of the 3 vending machines provided by the Lessor at the Commencement Date for use by the Lessee at the Airport Terminal.

- (2) The Lessor grants to the Lessee a licence to use and operate the Vending Machines during the term subject to and conditional upon the due performance and observance by the Lessee of provisions of this Item 11.1.
- (3) The Lessee must keep the Vending Machines well stocked with a variety of foods and drinks at all times for use by the public at the Airport Terminal.
- (4) The Lessee must not stock the Vending Machines during any Sterile Period.
- (5) The Lessee must not move any of the Vending Machines from the location within the Airport Terminal designated by the Lessor except with the prior written approval of the Lessor.
- (6) The Lessee must use all reasonable endeavours, at the expense of the Lessee, to ensure that the Vending Machines are fully functional and operational at all times when the Airport Terminal is open to the public.
- (7) Without limiting Item 11.6 the Lessee is responsible for all maintenance and troubleshooting in relation to the Vending Machines.
- (8) If during the Term, the Lessor determines that either:
 - (a) the technology in relation to the Vending Machines has become obsolete; or
 - (b) maintenance of the Vending Machines is not economically viable,

the Lessee agrees at its cost to remove the Vending Machines and to replace the Vending Machines with machines of a similar or higher quality of the Vending Machines (**Replacement Vending Machines**).

- (9) If the Vending Machines are replaced in accordance with paragraph (9) of this **Item 11.1**, the parties acknowledge and agree:
- (a) that the Replacement Vending Machines will be the property of the Lessee; and
 - (b) the provisions of Item 11.1 and Item 11.2 continue to apply.

11.2 Vending Machines – purchase of stock

- (1) In this **Item 11.2**:

Purchase Price has the meaning given in **Item 11.2(4)**; and

Vending Machine has the meaning given in **Item 11.1**.

- (2) The Lessor agrees to sell and the Lessee agrees to purchase all food and drink which is, at the Commencement Date:
- (i) in the Vending Machines; and
 - (ii) for use in the Vending Machines and stored at the Airport Terminal.
- (3) On the Commencement Date, the Lessor is to undertake a stocktake of the food and drink in the Vending Machines and the Lessor is to give to the Lessee a written statement of the details of the stocktake including the cost of each item of food and drink.
- (4) The total cost referred to in the statement given under **Item 11.2(3)** is the “Purchase Price” for the purchase of the food and drink.
- (5) The Lessee must pay to the Lessor the Purchase Price within 7 days after the Lessor gives to the Lessee the statement under **Item 11.2(4)** and a tax invoice for the Purchase Price.
- (6) The Lessee is entitled to be present at the stocktake.

11.3 Food preparation

- (1) The Lessee must not roast, fry or deep fry any food on the Premises.
- (2) The Lessee must immediately cease to prepare any food after receipt of a notice given by the Lessor that, in the Lessor’s opinion, the preparation of that food impacts on the air quality of the Airport Terminal or is not conducive to the preservation of the public health having regard to the design of the food preparation area within the Premises.

11.4 Public Dining Area

- (1) In this **Item 11.4**:

Public Dining Area means that part of the Airport Terminal shown cross-hatched in yellow on the plan attached as Attachment B.

- (3) The Lessee must keep the floor of the Public Dining Area clean and free from refuse and discarded material at all times when the Airport Terminal is open to the public and the Lessee must clean up any liquid spills promptly and using a methodology approved in writing by the Lessor.
- (4) The Lessee must ensure that the Public Dining Area is set up with tables and chairs provided by the Lessor immediately prior to the Airport Terminal being opened to the public each day.
- (5) The Lessee must ensure that all tables and chairs in the Public Dining Area are packed up and stored away, in the Public Dining Area where directed by the Lessor from time to time, immediately after the Airport Terminal is closed to the public each day.
- (6) Promptly after a member of the public has consumed food or drink at a table in the Public Dining Area, the Lessee must remove all items of crockery and eating utensils from the table and the Lessee must clean the table.

11.5 Lessor's Chattels

- (1) In this **Item 11.5**:

Lessor's Chattels means the chattels, fixtures and fittings specified in the Inventory set out in Annexure 2.

- (2) The Lessor grants to the Lessee a licence to use the Lessor's chattels during the Term upon and subject to the due performance and observance by the Lessee of the Lessee's obligations under this Item.
- (3) The Lessee must keep and maintain the Lessor's Chattels in good and substantial repair, order and condition, fair wear and tear excepted.
- (4) The Lessee, must promptly, replace, at the Lessee's cost, any item of the Lessor's Chattels which is damaged or lost by reason of the Lessee's misuse or neglect. For the avoidance of doubt, the Lessee is not responsible for fair wear and tear in relation to the Lessor's Chattels.
- (5) The Lessee must not remove any item of the Lessor's Chattels from the Premises without prior written consent of the Lessor.
- (6) The Lessee is responsible for the usual maintenance and servicing of the Lessor's Chattels.

11.6 Equipment to be provided by the Lessee

The Lessee must provide at the Premises, at the Lessee's cost, all equipment and fixtures and fittings required for the conduct of the Permitted Purpose including a coffee machine, a microwave, a cash register, crockery, cutlery, glasses and utensils for food preparation.

11.7 Storage Area

- (1) In this **Item 11.7**:

Storage Area means that area of the Land shown edged in red on the plan attached as Annexure 1.

- (2) The Lessor grants to the Lessee revocable license to use the Storage Area to and upon the terms and conditions of this Item.
- (3) If at any time during the Term:
- (a) the Storage Area is required by the Lessor;
 - (b) The Lessor gives to the Lessee not less than 14 day's notice of this requirement,
- then the Lessee must vacate the Storage Area and remove all of the Lessee's property from the Storage Area.
- (4) When the Lessor gives notice under **Item 11.7(3)**, the Lessor must by notice to the Lessee offer an alternative area on the Land for the storage of property of the Lessee which is required for the conduct of the Permitted Purpose.
- (5) In the event that the Lessee accepts the Lessor's offer referred to in **Item 11.7(4)**, the "Storage Area" is taken to be a reference to the alternative storage area.
- (6) The Lessee must not store any property in the Storage Area other than items required by the Lessee for the conduct of the Permitted Purpose.
- (7) The Lessee must comply with all written directions given by the Lessee with respect to the use of the Storage Area.

11.8 Screening of stock and other items – departure lounge

The Lessee must not bring into the departure lounge of the Airport Terminal any stock or any other item or thing unless that stock, item or thing has been screened by the Lessee's security staff.

11.9 Placement of items outside the Premises

The Lessee must not place or deposit any item or thing outside the Premises and within the Airport Terminal unless with the prior written consent of the Lessor and the Lessor is entitled to give or withhold its consent in its absolute discretion and the Lessor is entitled to withdraw any consent which has been given at any time.

11.10 Redevelopment of Airport

- (1) The Lessee acknowledges that the Lessor is considering re-developing the Airport Terminal, where the Premises are located, as part of the master plan for the Airport (**Airport Redevelopment**).
- (2) The Lessor and the Lessee agree that notwithstanding anything to the contrary, the Premises may be required to be re-located as part of the Airport Redevelopment during the Term of the Lease.
- (3) If the Premises are required to be re-located in accordance with paragraph (2), the parties covenant and agree that:
 - (a) the Lessor will give the Lessee at least three (3) months written notice and will liaise with the Lessee in respect of the location and size of the new premises, and the timing and duration of the Airport Redevelopment;
 - (b) the terms of the Lease, save and except any changes to the area and size of the premises and the Rent payable, will apply unchanged to the new

location of the new premises, as if the new premises were in fact the Premises as specified in this Lease;

- (c) no compensation or other consideration shall be payable to or claimable by the Lessee from the Lessor for or arising out of the relocation, however, the Lessor agrees that Rent will abate for any period of time for which the Lessee is unable to operate its businesses; and
- (d) the Lessee covenants and agrees, within 30 days of the relocation to the new premises, to peacefully surrender and yield up to the Lessor the old premises in a condition consistent with the observance and performance of the Lessee's Covenants under this Lease.

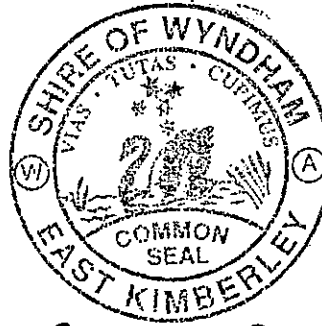
Signing page

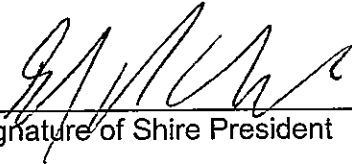
EXECUTED

3 December

2015

The Common Seal of the **SHIRE OF WYNDHAM-EAST KIMBERLEY** was hereunto affixed in the presence of:



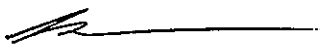

Signature of Shire President


Signature of Chief Executive Officer

BEATRICE JANE PARKER
Print Name

CARL ASKEW
Print Name

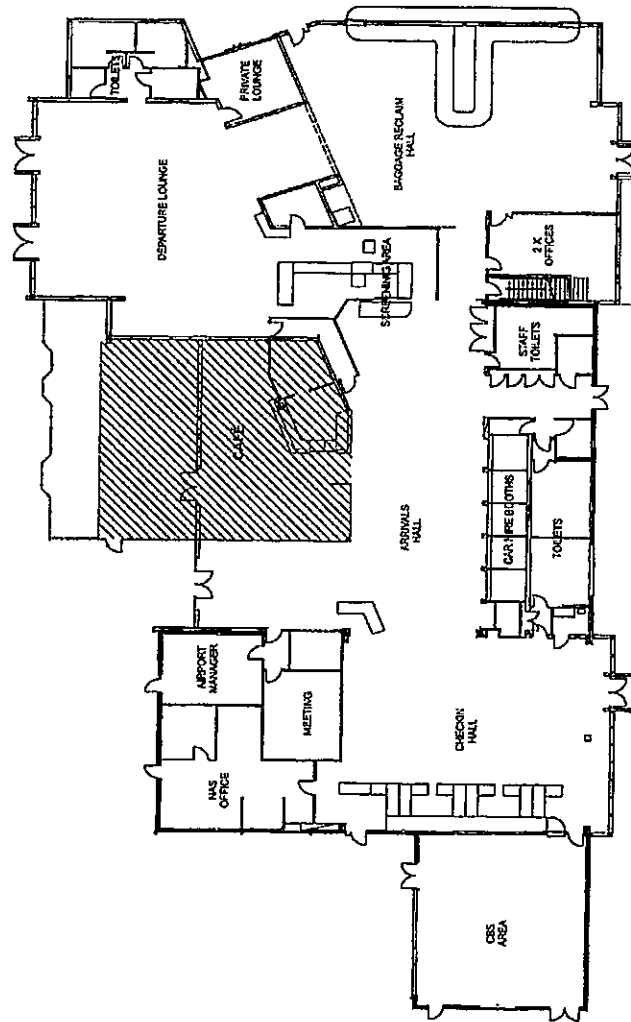
Kimberley Group Training Inc.
In the presence of:


Signature of Operations Manager

IAN WARREN
Print Name



Annexure 1 – Sketch of Premises



Annexure 2 – Lessor's Fixtures & Fittings

Café

Fagor AF-1602MIX Chiller and Freezer Unit
Washtech XG Glasswasher
Washtech UD Under counter Washer
Skope TME1500 3 Door Fridge
Turbofan E31D4 Convection Oven
Cossiga Cold Display 900mm
Cossiga Hot Display 600mm
Hot Water Unit
Hand Basin
Stainless Steel Wash Sink and Bench with tap fittings
Stainless Steel Range Hood
Stainless Steel Preparation Sink and Benches with tap fittings
Stainless Steel Bar Sink and Bench with tap fittings
Stainless Steel Service benches
Lighting
Painted Walls
Shop Front lined with mini-orb sheeting
Counter top and service area
Water Supply and sub meter
Fire Blanket and fire extinguisher

Dining Area

LG Television
UFL Stainless Steel Eco Bin
6 x White Isotop Dining Tables
24 x Black Replica Tolix Chairs
5 x White Isotop Bar Tables
15 x Black Replica Tolix Bar Stools
3 x Black Tango 2½ Seaters
3 x Black Tango Modular Chairs
3 x Stainless Steel Drum Tables
Potted Plant
Door Matt

Alfresco Area

UFL Stainless Steel Eco Bin
3 x Stainless Steel Dining Tables
12 x Metal Replica Tolix Chairs
4 x Stainless Steel Bar Tables
16 x Metal Replica Tolix Bar Stools
Door Matt

Annexure 3 – Lessee's Offer
