



**LEGAL**  
CONSOLIDATED  
BARRISTERS & SOLICITORS

**National Law Firm**

**Head Office**  
39 Stirling Highway  
Nedlands WA 6009

**T: 1800 141 612**

**legalconsolidated.com.au**

Your Reference: Lease to Mr and Mrs James  
Enquiries: Adj Professor, Dr Brett Davies  
Direct Telephone: 1800 141 612  
Email: brett@legalconsolidated.com

Tuesday, 13 September 20

TRT Holdings Pty Ltd ACN  
12 Avenue Road  
Mosman NSW 2088  
Australia  
Trustee for the Collin Smith

Dear Landlord,

*Build this legal document at*

*[https://www.legalconsolidated.com.au/co](https://www.legalconsolidated.com.au/commercial-lease-agreement-intro)*

*[mmercial-lease-agreement-intro-](https://www.legalconsolidated.com.au/commercial-lease-agreement-intro)*

*Telephone us. We help you complete the  
questions.*

*Adj Professor, Dr Brett Davies - Partner*

## **Commercial Lease Agreement**

Thank you for instructing us to prepare the attached **Commercial Lease Agreement**.

### **How to print your document**

When you are satisfied that the document is according to your instructions please:

1. Download the PDF (Don't print directly from the browser.)
2. Print the PDF Printer settings: A4 paper  
100% scale (turn off 'fit to page')
3. Print single sided (NOT duplex).
4. Once signed keep this covering letter with the document  
(However, do not staple the covering letter to the document.)

This Commercial Lease Agreement creates legally enforceable rights between the Landlord and Tenant.

### **Landlord due diligence on the Tenant and the Premises**

Legal Consolidated has provided no advice or due diligence on the Tenant, the Premises or the transaction itself. There is also no taxation, (stamp) duty, local council, other checks or advice.

Instruct your accountant and real estate managing agent to review this Loan Agreement. Check details of bonds/deposits/bank guarantees and procedures you need to follow.

Perform due diligence, identification and credit checks on the Tenant and the Guarantors (if any).

Further, as the Landlord seek legal, accounting and professional advice, (Legal Consolidated does not provide this advice):

- whether the Premises are correctly described and are correct
- whether you have authority to so lease the Premises
- do a title search of the Premises and check local council and other regulations including any town planning restrictions or authorities and permissions that are required including any region schemes and zoning and obtain any required certificates
- check for any previously unknown interests, caveats, easements, restrictive covenants, notifications, memorials, town planning, local council rules or other encumbrances or leases that may prohibit you leasing the Premises in this way
- check details of any unregistered interests, including car parking arrangements, if any, particularly with local authorities or adjoining owners.

### **Features of this Commercial Lease Agreement include:**

#### **1. Assignment and subletting**

The Tenant has no authority to sublet or assign, under this agreement, unless the Landlord and Tenant mutually agree otherwise – the ‘waive and variation’ clause will permit subletting and assignment, should it be the mutual wishes of the Landlord and Tenant.

#### **2. Damages**

If default, the landlord is entitled to recover liquidated damages from the Tenant – a standard formula is used to calculate this in most commercial lease agreements drafted by law firms.

#### **3. Waiver and variation**

Subject to a written agreement, signed by the Landlord and Tenant, the Landlord or Tenant has the power to waive a term of the lease. A term of an agreement that is ‘waived’ is one that no longer applies, and therefore one that parties are not bound by.

#### **4. Variable Outgoings**

The Tenant is responsible for paying all the Variable Outgoings as set out in the Reference Schedule and the items Separately Assessed.

### **Are the Premises owned by a Self-Managed Superannuation Fund?**

The aim of a self-managed superannuation fund (**SMSF**) is to benefit its members at retirement. There are laws regulating how commercial property held in SMSFs can be leased to related parties. Related parties in SMSFs can be members of the fund and their relatives (including parents, grandparents, children, brothers, sisters, uncles, nieces, nephews, lineal descendants and any of their spouses).

If you are the trustee of an SMSF, and the property you are leasing is owned by the SMSF, your Commercial Lease Agreement must comply with Australian Superannuation law. If your SMSF is non-compliant, you risk the Australian Taxation Office applying penalties and additional taxes.

We have drafted this Commercial Lease Agreement to comply with the requirements of Australian Superannuation law for SMSFs.

The important factors when leasing commercial property owned by a self-managed superannuation fund to a related party are:

1. a written lease agreement
2. an arm's length transaction – the trustee cannot give 'special treatment' to a related party through a lease for commercial property belonging to the fund. The rent must, therefore, be at market rate
3. the rent should be paid duly, according to the terms of the commercial lease agreement
4. the trustee must take proper action to remedy or enforce breaches of the commercial lease agreement

The trustee of the fund is required to provide evidence to the fund auditor that no advantage is conferred upon the related party leasing the premises.

### **This is not a Retail Shop Lease**

Your Commercial lease is NOT a retail shop lease.

In Australia, there are two types of leased properties: residential and commercial. To break that down further, commercial leases are either: 'commercial' or 'retail'. Each State regulates both.

'Commercial' leases are for such things as offices, warehouses and industrial sites. Generally, this is where there is little 'retail' activity. A 'commercial' lease is not subject to the onerous and additional rules that protect the tenant in a 'retail' lease:

- In a non-retail lease, the tenant and landlord are seen as having equal power of negotiation.
- However, 'retail' tenants are often considered to be 'at the mercy' of the big shopping centre owners.

It may be difficult to decide whether the commercial property is 'retail' or not.

To add complexity, each State has exceptions as to what is a 'retail' lease.

Your lease works only as a 'commercial lease'. It does not work for 'retail' leases.

If you are not sure whether your commercial property is 'retail' or not then you need to seek legal and real estate advice. This is before you present the Lease to the Tenant. Legal Consolidated does not provide this advice. The above is general information only.

### **Redevelopment and relocation**


A redevelopment clause may allow the landlord to terminate a lease early so you can carry out major works to renovate or redevelop the premises. In these circumstances the tenant finds itself without premises or relocated to alternative premises. This could severely affect their business.

Often the tenant tries to negotiate to have the redevelopment and relocation clauses removed from the lease. If you agree cross out the clause and all parties initial the change.

If you are unsure seek legal advice.

This now concludes the matter. Thank you for your instructions.

Yours sincerely,



Adj Professor, Dr Brett Davies, CTA, AIAMA, BJuris, LLB, LLM, MBA, SJD  
National Taxation Partner  
LEGAL CONSOLIDATED BARRISTERS & SOLICITORS

*Start building your Lease Agreement for free:*

1. Start building the Lease Agreement here:  
<https://www.legalconsolidated.com.au/commercial-lease-agreement-intro>.
2. Select *Start Building* - the building process is free.
3. Answer the questions. Read the hints and watch the training videos. Educate yourself.
4. Telephone the law firm for free help answering the questions.
5. Select *Lock and Build* and enter your credit card details.
6. Within seconds, you have our covering letter and the finished document.





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- *all documents come with law firm letter*
- *retain legal professional privilege*
- *we are responsible for the legal document*

*Only a law firm provides the above protection*

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## **Commercial Lease Agreement**

The land being 412 Fitzgerald Street, North Perth WA 6006,  
Australia comprising an area of approximately 346.7 square metres  
and together with all other improvements on the land (**Premises**)

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## Commercial Lease Agreement between

TRT Holdings Pty Ltd ACN 189 661 132  
12 Avenue Road, Mosman NSW 2088, Australia  
Trustee for the Collin Smith Family Trust  
and

Thomas Dean James  
32 Melbourne Avenue, Glenroy VIC 3046, Australia  
Trustee for the James Family Trust

Sandy Maria James  
12 Palm Beach Avenue, Palm Beach QLD 4221, Australia  
Trustee for the James Family Trust

### Reference Schedule

<b>Landlord:</b>	TRT Holdings Pty Ltd ACN 189 661 132 12 Avenue Road, Mosman NSW 2088, Australia Trustee for the Collin Smith Family Trust
<b>Tenant:</b>	Thomas Dean James 32 Melbourne Avenue, Glenroy VIC 3046, Australia Trustee for the James Family Trust Sandy Maria James 12 Palm Beach Avenue, Palm Beach QLD 4221, Australia Trustee for the James Family Trust
<b>Premises:</b>	The land being 412 Fitzgerald Street, North Perth WA 6006, Australia comprising an area of approximately 346.7 square metres and together with all other improvements on the land
<b>Lease Start Date:</b>	On the date this Deed is signed by the Landlord and Tenant
<b>Option to renew lease</b>	Renew the lease by 2 year(s). There will be three option(s) to renew the lease
<b>Rent and Payment Date:</b>	\$4583.33 monthly, payable in advance each calendar month after the Lease Start Date (all amounts include GST, if applicable)
<b>Rent Review</b>	On 10 September 2025 (Market Review Date) the rent will be reviewed to an increase by CPI or a fixed increase of 4% whichever is higher.
<b>Term:</b>	For 24 month(s) commencing on the Lease Start Date
<b>Permitted Use:</b>	Professional offices
<b>Bond:</b>	\$9166.66

*Leasing law is biased against the Landlord in Australia. Fight back by getting your Tenant to sign a legally prepared Commercial Lease.*

This Commercial Lease Agreement is between:

TRT Holdings Pty Ltd ACN 189 661 132  
12 Avenue Road, Mosman NSW 2088, Australia  
Trustee for the Collin Smith Family Trust  
(**Landlord**)

and

Thomas Dean James  
32 Melbourne Avenue, Glenroy VIC 3046, Australia  
Trustee for the James Family Trust  
Sandy Maria James  
12 Palm Beach Avenue, Palm Beach QLD 4221, Australia  
Trustee for the James Family Trust  
(**Tenant**)

James Nominees Pty Ltd ACN 646 548 946  
21 Adelaide Terrace, St Marys SA 5042, Australia  
(**Guarantor**)

*In this sample the landlord TRT Holdings is leasing its property to Mr James and Mrs James. They are co-trustees of their Family Trust.*

*The landlord has been able to get one of James' companies to guarantee the Tenant's obligations. Which is always useful.*

## 1 Rent

### Renting out the Premises

1.1 Then Tenant rents the Premises from the Landlord under the terms of the Lease.

### Payment of Rent

1.2 The Tenant pays the Rent to the Landlord at the location or bank as provided by the Landlord. The Rent is paid on the first day of each calendar month in advance in every month during the Term.

### Accrual of Rent

1.3 Rent accrues daily. The Rent payable for part of a month is  $1/365^{\text{th}}$  of the Rent multiplied by the number of days in that part of the month.

### Tenant to seek advice

1.4 The Tenant warrants and agrees that it has been advised, by its own independent legal, accounting, professional and other advisers, of the permissions required to conduct its business, including the Tenant's Business, on the Premises including local council by-laws, certificates, town planning rules, and permissions and licences, and has sought other advice including from the Authority before it signs the Lease.

1.5 The Tenant warrants and agrees that the Landlord, including the Guarantor, has provided any advice or warranties as to the above.

*This Lease Agreement is suitable for all Australian commercial property. It also accommodates:*

- 1. Where the tenant is acting as trustee of a trust*
- 2. Guarantors*

### Lease subject to mandatory rules

1.6 The Lease is subject to and is to be read down so as to comply with all related mandatory laws from time to time.

## 2 Variable Outgoings

Variable Outgoings

Payable by:

Water drainage and sewerage Rates	Tenant
Local authority Rates	Tenant
Land Tax	Tenant
Interest charges on outstanding Rates and Taxes	Tenant
Water consumed beyond allowance	Tenant
Fire services	Tenant
Cleaning, including window and rubbish removal	Tenant
Ground repairs and maintenance	Tenant
Building repairs and maintenance of a non-structural nature	Tenant
Building insurance	Tenant
Plate glass insurance and public liability insurance (minimum \$5,000,000)	Tenant
Property management fees	Tenant
Common area lighting and power	Tenant
Security	Tenant
Toilet requisites	Tenant
Hot water systems running and repairs and maintenance	Tenant
Electricity and gas and telephone services consumed in the premises	Tenant
Air-conditioning running and repairs and maintenance	Tenant
Lift running and repairs and maintenance	Not Applicable
Strata Company levy	Not Applicable

unless otherwise indicated in this Deed.

### Management Fees

2.1 The Tenant pays to the Landlord on demand from time to time the fees payable by the Landlord to any Managing Agent appointed by the Landlord for the management and administration of the Premises.

### Security Bond

2.2 The Tenant deposits with the Landlord or Managing Agent a Bond as security for the Tenant's compliance with this Lease. The Tenant shall pay the Landlord for any breach or default and all costs of the Landlord relating to any

## 3 Assignment and Subletting

### No assignment or subletting

3.1 The Tenant may not create, transfer or allow any interest in the Premises or in this Lease or any other right to possess.

*Start building this Commercial for free:*

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commercial-lease-agreement-intro/](https://www.legalconsolidated.com.au/commercial-lease-agreement-intro/)

*Read the free hints and watch the videos.*

*Only at the end are you invited to buy the  
Commercial Leas.*



## Costs and Expenses

3.2 The Tenant must pay to the Landlord on demand all fees and expenses payable by the Landlord to any agent or consultant engaged by the Landlord in connection with a proposed assignment transfer or subletting.

## 4 Use of Premises

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### Permitted Use

4.1 The Tenant must not, unless the Landlord consents in writing, use the Premises other than for the Permitted Use.

### Comply with necessary authorisation

4.2 The Tenant must obtain, comply with and renew on time every authorisation necessary to carry on the Tenant's Business.

### No warranties

4.3 The Tenant acknowledges that no promise, representation, warranty or undertaking has been given by or on behalf of the Landlord in respect of the suitability of the Premises for any purpose or for any business to be carried on in the Premises or as to the fittings, finish, facilities and amenities of the Premises and all warranties if any implied by law are so far as legally possible expressly negated.

### Signs

4.4 The Tenant must obtain the Landlord's consent to the erection of any signs, notices or advertisements on the outside surfaces of the Building or otherwise outside the Building. The Landlord will not unreasonably withhold its consent if the signs, notices or advertisements comply with the requirements of the local authority or any other Authority.

## 5 Insurance

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### Building Insurance

5.1 The Landlord may maintain building insurance for the full replacement value of the Building. The building insurance may include cover for all usual industrial special risks including, but not limited to, architects and other consultants' fees and the costs of demolition and removal of debris, loss of Rent, Variable Outgoings and machinery breakdown insurance.

### Tenant's insurance

5.2 The Tenant must:

5.2.1 maintain with insurers approved under the *Insurance Act 1973* in the names of the Tenant and the Landlord and, if required by the Landlord, any mortgagee of the Landlord, for their respective rights and interests:

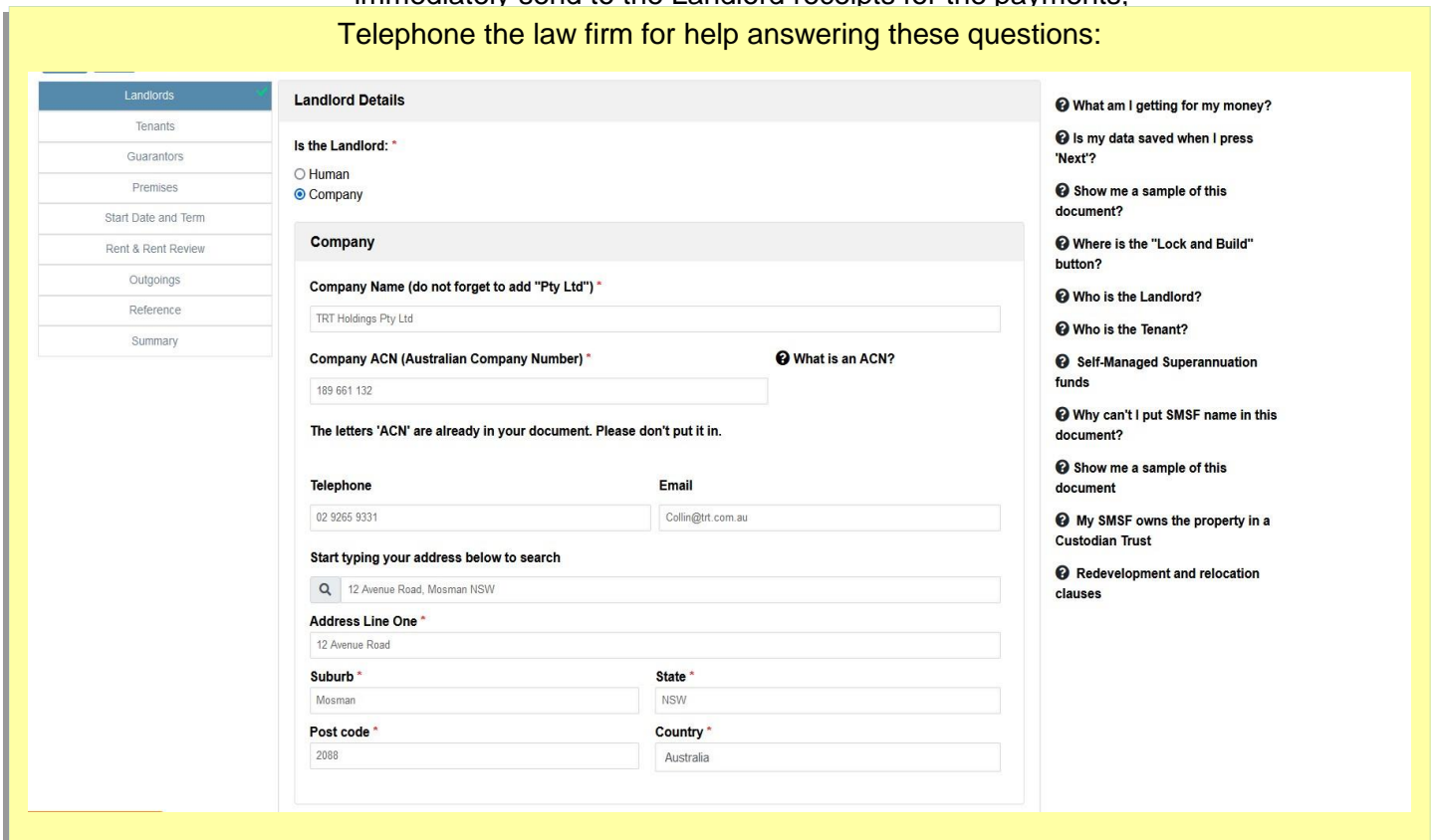
- (a) public risk insurance to a sum insured of at least the \$10,000,000. The Landlord may at any time reasonably require the Tenant to vary this amount by giving notice to the Tenant of the varied amount;

- (b) plate glass insurance against risks specified by the Landlord for the full replacement cost of the plate glass;
- (c) burglary insurance in respect of the Tenant's Property and damage to the Premises arising from any actual or attempted unauthorised entry;
- (d) other insurances in connection with the Premises which a prudent tenant leasing premises comparable with the Premises would take out or which are reasonably specified by the Landlord; and

5.2.2 for the insurances required by the above sub-clause the Tenant will:

- (a) deposit with the Landlord certificates of insurance;
- (b) pay each premium at least 28 days before the due date and, immediately send to the Landlord receipts for the payments;

Telephone the law firm for help answering these questions:



The screenshot shows a web form for 'Landlord Details'. On the left is a sidebar menu with options: Landlords (selected), Tenants, Guarantors, Premises, Start Date and Term, Rent & Rent Review, Outgoings, Reference, and Summary. The main form area is titled 'Landlord Details' and contains the following fields and sections:

- Is the Landlord:** Radio buttons for 'Human' and 'Company' (selected).
- Company** section:
  - Company Name (do not forget to add "Pty Ltd")**: Text input field containing 'TRT Holdings Pty Ltd'.
  - Company ACN (Australian Company Number)**: Text input field containing '189 661 132'. A help icon and text 'What is an ACN?' are next to it.
  - Text: 'The letters 'ACN' are already in your document. Please don't put it in.'
  - Telephone**: Text input field containing '02 9265 9331'.
  - Email**: Text input field containing 'Collin@trt.com.au'.
  - Start typing your address below to search**: Search bar with '12 Avenue Road, Mosman NSW' entered.
  - Address Line One**: Text input field containing '12 Avenue Road'.
  - Suburb**: Text input field containing 'Mosman'.
  - State**: Text input field containing 'NSW'.
  - Post code**: Text input field containing '2088'.
  - Country**: Text input field containing 'Australia'.

On the right side of the form, there is a list of help questions, each with a question mark icon:

- What am I getting for my money?
- Is my data saved when I press 'Next'?
- Show me a sample of this document?
- Where is the "Lock and Build" button?
- Who is the Landlord?
- Who is the Tenant?
- Self-Managed Superannuation funds
- Why can't I put SMSF name in this document?
- Show me a sample of this document
- My SMSF owns the property in a Custodian Trust
- Redevelopment and relocation clauses

received by virtue of such insurances in reinstating the Premises and will make up any deficiency out of the Tenant's own money. This is unless such deficiency has been caused by the voiding of the insurances by the act or omission of the Landlord or its employees agents or contractors.

### Restrictions on Tenant's activities

The Tenant must not unless the Landlord consents:

- 5.6 do or permit anything to be done on the Premises which increases or may increase the premium payable for any insurance taken out by the Landlord in connection with the Premises;
- 5.7 store or use inflammable, volatile or explosive substances on the Premises;
- 5.8 otherwise do or permit anything which adversely affects any insurance in connection with the Premises; or
- 5.9 vary, cancel or allow to lapse any insurance referred to in this clause.

If the Landlord gives its consent under this clause, the Tenant must pay any increased premium payable.

### Fire requirements

- 5.10 The Tenant must comply with the requirements of any Authority, the Insurance Council of Australia Limited and of any insurer in relation to fire protection of the Premises and the position of fire equipment.

## 6 Indemnities and Exclusions

### Indemnities by Tenant

6.1 Except to the extent covered by any of the insurances to be taken out by the Landlord or the Tenant, the Tenant indemnifies the Landlord against any loss, liability, cost or expense incurred or suffered by the Landlord or any employee, officer or agent of the Landlord, arising from or in connection with:

- 6.1.1 any damage to the Premises or any loss of or damage to anything in them;  
and
- 6.1.2 any injury to any person in or on the Premises,  
caused or contributed to by the Tenant or any of the Tenant's Employees, Agents and Customers, whether or not as a result of negligence by any of them.

### Release of Landlord

- 6.2 The Landlord is not liable for any liability or
- 6.2.1 any act or omission of any other person or not;
- 6.2.2 any malfunction, breakdown or interference of the Premises or for the Air-conditioning Equipment or any other plant, equipment or machinery in or on the Premises;
- 6.2.3 any other accident, damage or malfunction affecting the Premises including any blocked drains, pipes or conduits, any overflow of water or any break in wires or cables; or
- 6.2.4 damage to or loss of any property or injury to any person in or near the Premises due to any cause.

*Our Commercial Lease complies with the Superannuation law, including:*

- 1. A compliant written lease agreement*

### No right to terminate

6.3 The Tenant may not terminate this Lease or  
Lease and the Tenant will not have any  
including for damage or injury caused to the  
Tenant's Property or the Premises, arising from

*2. An arm's length transaction – the trustee cannot give 'special treatment' to a related party through a lease for commercial property. E.g. rent is at a market rate etc...*

## 7 Compliance with Laws and Requirements

The Tenant must comply on time with all requirements of any Authority and all laws in connection with the Premises and the Tenant's Property, but the Tenant need not carry out work of a structural nature unless it is made necessary by the nature of the Tenant's Business or the Tenant's use of the Premises.

## 8 Repair, Alteration, Cleanliness and Security

### Tenant's obligations

The Tenant must:

- 8.1 keep the Premises in good repair and condition;
- 8.2 keep the Tenant's Property and the Landlord's Property in good repair and condition;
- 8.3 promptly repair damage to the Premises or the Landlord's Property caused or contributed to by the Tenant or the Tenant's Employees, Agents and Customers;
- 8.4 if in the Landlord's reasonable opinion, items of the Tenant's Property, or the Landlord's Property which are not plant or equipment, are worn or damaged, promptly replace them with items of the same or similar quality to those items when they were first installed;
- 8.5 promptly replace damaged plate glass and other glass in the Premises with glass of the same or similar quality to that in place on the Lease Start Date;
- 8.6 promptly replace any damaged or faulty heating, lighting and other electrical equipment including light globes and fluorescent tubes with items of the same or similar quality to those installed;
- 8.7 maintain all signs in or affixed to the Premises;
- 8.8 maintain that part of any drains, pipes and other conduits originating in or connected to the Premises in a clean and free-flowing condition;
- 8.9 regularly maintain any grease traps serving the Premises, whether or not within the Premises in a clean condition; and
- 8.10 if, in the reasonable opinion of the Landlord, the Tenant's use of the Premises requires the provision of additional drainage or water supply facilities to the Premises, pay to the Landlord or the Landlord's Property the cost of such additional drainage or facilities;

The generality of any of the above obligations shall not be taken to exclude any other obligations of the Tenant set out in this Commercial Lease.

3. The requirement for duly paid rent, according to the terms of the Commercial Lease

4. The trustee takes appropriate action to remedy breaches

5. Sufficient evidence for the SMSF auditor and ATO that it confers no member advantage

## 9 Exceptions to repair obligations

The Tenant has no obligation to maintain or repair where:

- 9.1 any loss or damage is covered by any insurances taken out by the Landlord or the Tenant under this Lease, except where due to some act or omission of the Tenant or of the Tenant's Employees, Agents and Customers any of such insurances is prejudiced or made void or payment of policy money is refused by the insurer;
- 9.2 any loss or damage is caused by latent or inherent defects in the Premises; and
- 9.3 the maintenance and repairs to the Building are of a structural nature and are not caused by the negligence of the Tenant or the Tenant's Employees, Agents and Customers.

## **Clean**

9.4 The Tenant must keep the Premises clean, and free from refuse, including daily cleaning of the inside of the Building, periodic cleaning the windows of the Building and arranging regular rubbish removal services.

## **Maintain landscaped and other areas**

9.5 The Tenant must re-plant, maintain and reticulate the landscaped areas on the Premises and keep all parking areas, access ways and other areas on the Land outside of the Building in good repair and condition.

## **Pest Control**

9.6 The Tenant must control and eradicate all vermin from the Premises including employing pest contractors to periodically inspect and carry out treatment for such eradication.

## **Security**

9.7 The Tenant is responsible for all security of the Premises including employing security contractors and installing and maintaining all devices for the purpose of security.

## **Drainage**

9.8 The Tenant is not, unless the Landlord consents, to modify or in any other way interfere with the drainage or water supply facilities serving the Premises or any equipment connected to those facilities.

## **Notice of damage**

9.9 The Tenant must inform the Landlord in writing of any damage to the Premises or of damage to or defective operation of any Services immediately once the Tenant becomes aware of it.

## **Air-conditioning Equipment**

9.10 Except in respect of the replacement of any part of the Air-conditioning Equipment which is in the nature of capital expenditure, the Tenant must maintain the Air-conditioning Equipment in good working order and condition and for this purpose, the Tenant must maintain with reputable contractors a fully comprehensive air-conditioning maintenance agreement.

## **Tenant to redecorate**

9.11 The Tenant must redecorate the Premises every 3 years or upon expiration of the Term and at any other time if deemed necessary by the Landlord. The colours and materials used must be approved by the Landlord who may not unreasonably withhold its approval. The redecoration of the Premises includes repainting or retreating all painted or other treated interior and exterior surfaces of the Building and replacing curtains, blinds and other furnishings and decorations which are worn or damaged.

## **Carpets**

Where there is a carpet installed in the Premises, the Tenant must:

- 9.12 if the carpet has been installed by the Landlord:
  - 9.12.1 protect the carpet from excessive wear by the use of protective devices reasonably required by the Landlord;
  - 9.12.2 employ qualified and experienced contractors to clean the carpet when reasonably required by the Landlord but not more frequently than once every 3 months; and
- 9.13 if the carpet is damaged, repair or replace it with a carpet at least equal in quality to the existing carpet before it was damaged, and of a colour, style and quality approved by the Landlord.

### **Structural Alterations to the Premises**

- 9.14 The Tenant may not make any structural alteration or addition to the Premises unless the Landlord consents and that consent is not to be unreasonably withheld.

### **Damage to Building or Premises**

- 9.15 The Tenant is not to cause damage to the Premises or allow them to be damaged.

### **Works**

- 9.16 In carrying out its obligations to maintain, repair and redecorate the Premises and when making any alterations to the Premises (to which the Landlord has consented if the alteration is structural) the Tenant must:
  - 9.16.1 comply with all requirements of any Authority and all laws and standards;
  - 9.16.2 carry out the works in a proper manner; and
  - 9.16.3 before carrying out any works, obtain the Landlord's approval to the plans and specifications for the works.

## **10 Tenant's General Obligations**

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### **Positive obligations**

The Tenant must:

- 10.1 carry on the Tenant's Business in a proper and efficient manner;
- 10.2 observe the maximum floor loading weights for the Premises;
- 10.3 if, at the request of the Tenant, the Landlord alters a Service to accommodate equipment which the Tenant wants to install in the Premises, pay the Landlord on demand the cost to the Landlord (including consultants' fees) of altering the Service, and the Landlord may require the Tenant to deposit with the Landlord the estimated cost of the work before it is commenced;
- 10.4 securely lock all exterior doors and windows in the Premises when the Premises are not occupied;
- 10.5 permit persons having an estate or interest in the Premises superior to the Landlord's estate or interest to exercise the Landlord's or those other persons' rights and otherwise perform their obligations in connection with the Premises;
- 10.6 immediately deliver to the Landlord a copy of every notice received by the Tenant relating to the Premises; and

10.7 immediately notify the Landlord if the Tenant receives any threat of damage to the Premises and comply with any directions given by the Landlord for the purpose of protecting the safety of any property or persons in the Premises.

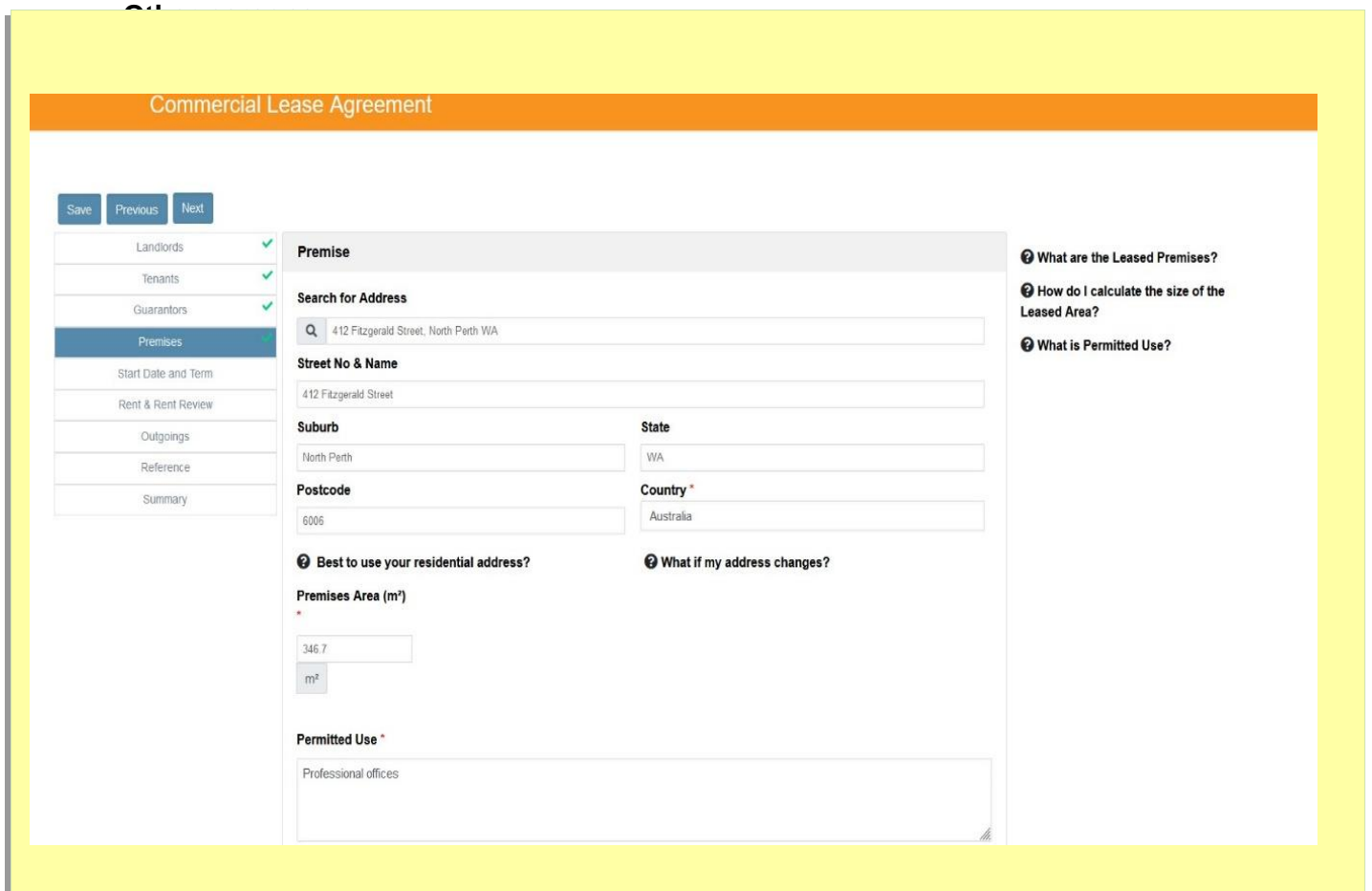
### Negative obligations

The Tenant may not unless the Landlord consents:

- 10.8 do anything in the Premises or the Building which in the reasonable opinion of the Landlord is noxious, offensive or audibly or visually a nuisance;
- 10.9 interfere with the Services;
- 10.10 obstruct access to or overload the Services;
- 10.11 use the facilities in or about the Premises, for any improper purpose;
- 10.12 fix blinds or awnings to the outside of the Building;
- 10.13 make holes in or otherwise interfere with the walls in the Building except as may be reasonably necessary to fix signs, blinds or fittings approved by the Landlord (if such approval is required under this Lease);
- 10.14 use the Premises as a residence;
- 10.15 keep any live animal or bird on the Premises;
- 10.16 lodge a caveat on the title to the Land except a 'subject to claim' caveat noting the Tenant's interest under this Lease and any option to renew the Term;
- 10.17 vacate, except as required by this Lease, or abandon the Premises.

### Security Interests

10.18 The Tenant may not create or allow to exist in favour of any person any Security Interest in or over the Premises or this Lease unless the Landlord consents.



Commercial Lease Agreement

Save Previous Next

Landlords ✓  
Tenants ✓  
Guarantors ✓  
**Premises** ✓  
Start Date and Term  
Rent & Rent Review  
Outgoings  
Reference  
Summary

**Premise**

Search for Address  
412 Fitzgerald Street, North Perth WA

Street No & Name  
412 Fitzgerald Street

Suburb North Perth State WA

Postcode 6006 Country \* Australia

Best to use your residential address?  What if my address changes?

Premises Area (m<sup>2</sup>)  
346.7  
m<sup>2</sup>

Permitted Use \*  
Professional offices

What are the Leased Premises?  
How do I calculate the size of the Leased Area?  
What is Permitted Use?



## Insurance

- 11.5 The Landlord may maintain with insurers approved under the Insurance Act 1973 in the name of the Landlord insurance in respect of property owners' liability.

## 12 Landlord's Rights

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### Right to enter

The Landlord or a person authorised by the Landlord may enter the Premises at reasonable times to:

- 12.1 inspect the state of repair;
- 12.2 repair or maintain the Premises;
- 12.3 repair, maintain or alter the Services;
- 12.4 carry out structural alterations to the Premises or other works if required by an Authority; or
- 12.5 remove harmful substances,

subject to the Landlord giving the Tenant reasonable notice or 24-hours' notice whichever is earlier of the intended entry. If the Landlord decides that there is an emergency, then the Landlord and persons authorised by the Landlord may enter the Premises at any time without notice.

### Inspection by prospective tenants or purchasers

The Landlord or a person authorised by the Landlord may:

- 12.6 enter the Premises to allow prospective purchasers of the Premises to inspect the Premises; and
- 12.7 within 3 months before the end of the Term display a sign containing any information that the Landlord sees fit;

subject to the Landlord giving the Tenant reasonable notice of the intended entry or display.

### Ownership of partitions and other structures

If partitions or any other structure which form an integral part of the Premises are installed by the Tenant:

- 12.8 those partitions or other structure cease to be part of the Tenant's Property on the expiration of the Term or the earlier termination of this Lease and ownership of them then vests in the Landlord; and
- 12.9 if those partitions or structures form part of the Tenant's trade equipment, the Tenant shall remove those partitions or structures, provided the Tenant makes good any damage caused by such removal. The Tenant shall not cause or contribute to any damage to the Premises in the removal of those partitions or other structures. Should the Tenant cause any damage to the Premises in the removal of those partitions or other structures, the Tenant shall make good any such damage and in any event shall leave the premises in a clean state and condition. If the Tenant fails to do so, the Landlord will make good and/or clean



the Premises at the cost of the Tenant and recover from the Tenant the cost to the Landlord of doing so as a liquidated debt payable on demand.

#### **Failure to remove partitions and other structures**

- 12.10 If the Tenant fails to remove those partitions and structures as required above, or in the occurrence of an Event of Default, the Landlord may at its option:
- 12.10.1 cause any such partitions and structures to be removed and stored in such manner as the Landlord in its absolute discretion deems fit at the risk and cost of the Tenant; or
  - 12.10.2 treat the Tenant's partitions and other structures as if the Tenant had abandoned its interest in them and they had become the property of the Tenant, and deal with them in such manner as the Landlord thinks fit without being liable in any way to account to the Tenant for them.
- 12.11 The Tenant shall:
- 12.11.1 indemnify and keep indemnified the Landlord for the removal and storage of the partitions and other structures and also for all claims which the Landlord may suffer or incur at the suit of any person claiming an interest in the Tenant's partitions and other; and
  - 12.11.2 pay to the Landlord as a liquidated debt payable on demand and costs incurred by the Landlord.

#### **Landlord may rectify**

- 12.12 The Landlord may do anything which should have been done by the Tenant under this Lease but which has not been done or which the Landlord considers has not been done properly and for that purpose, the Landlord and other persons authorised by the Landlord may enter the Premises and remain there for as long as is necessary.

#### **Creation of Security Interest or transfer of Land**

- 12.13 The Landlord may at any time create or allow to exist a Security Interest over the Land or transfer or otherwise deal with the Land or its rights under this Lease as the Landlord thinks fit.

## **13 Management of the Building**

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### **Managing Agent**

- 13.1 The Landlord may:
- 13.1.1 appoint a Managing Agent to manage the Premises and authorise the Managing Agent to represent the Landlord in all or nominated matters relating to this Lease; and
  - 13.1.2 at any time vary or terminate the authority of the Managing Agent.
- 13.2 Communications from the Landlord supersede those from the Managing Agent if there is any inconsistency between them.

## Tenant to deal with Managing Agent

- 13.3 The Tenant must deal with the Managing Agent in relation to all matters in which the Managing Agent is authorised to represent the Landlord until the Landlord notifies the Tenant that the Managing Agent is no longer its agent for those purposes. The Tenant may treat the acts of the Managing Agent as the acts of the Landlord.

## 14 Default

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### Essential terms

- 14.1 All obligations of the Tenant are essential terms of this Lease. This clause does not prevent any other obligation under this Lease from being an essential term.

### Events of Default

An Event of Default occurs if:

- 14.2 the Tenant repudiates or commits a fundamental breach of this Lease;
- 14.3 if the Rent is at any time unpaid for 1 day after becoming due, whether formally demanded or not;
- 14.4 the Tenant does not comply with any of its other obligations under this Lease, whether or not an essential term;
- 14.5 a judgment, order or an Encumbrance is enforced or becomes enforceable against the Tenant's interest in the Lease, the Tenant's Property, or any other property used in connection with the Tenant's Business; or
- 14.6 an Insolvency Event occurs in respect of the Tenant.

### Landlord's right to terminate

- 14.7 If an Event of Default occurs, the Landlord may terminate this Lease by re-entering the Premises without notice, or notice to the Tenant.

### Damages

- 14.8 If the Landlord terminates this Lease under this clause, then the Landlord is entitled to recover from the Tenant as liquidated damages, the difference between:

- 14.9 T in the formula, **T = R + C - RB**

where

**R** = the total of the Rent and all other amounts which would have been payable by the Tenant under this Lease if the Term had expired by effluxion of time, calculated at the rate payable at the date of termination;

**C** = costs and expenses incurred by the Landlord as a result of the Event of Default, including in relation to re-letting;

**RB** = a rebate calculated at 8% on all amounts not accrued due at the date of termination (but for this clause) to the extent that each amount is in fact paid or ought to have been paid earlier than it was originally due under this Lease; and

14.10 the total of the rent and other amounts which the Landlord could be reasonably expected to obtain by reletting the Premises until the date on which the Term would have expired by effluxion of time, except that the Landlord is not to be taken to be required to accept the same or similar terms to those contained in this Lease.

### **Indemnities**

The Tenant indemnifies the Landlord against any loss, liability, costs or expense incurred or suffered by the Landlord arising from or in connection with:

- 14.11 the occurrence of an Event of Default; or
- 14.12 if this Lease is terminated by the Landlord for any reason or on any ground:
  - 14.12.1 the Landlord re-entering the Premises;
  - 14.12.2 the Landlord not receiving the benefit of the Tenant fully and duly performing its obligations under this Lease from the date of that termination until the expiration of the Term; and
  - 14.12.3 anything else relating to that termination, including the Landlord attempting to mitigate its loss,

including in each case, legal costs and expenses relating to any of those matters.

### **Calculation of benefit of Tenant performing obligations**

14.13 The benefit of the Tenant performing its above obligations is calculated on the assumption that this Lease continues in force until the expiration of the Term and taking into account the provisions in this Lease relating to Rent and the payment of Rates and Taxes and other outgoings (or any variation of them).

### **Certain acts not to affect indemnities**

The indemnities are not affected by:

- 14.14 the Landlord re-entering the Premises or otherwise terminating this Lease;
- 14.15 the Landlord accepting a repudiation of this Lease by the Tenant;
- 14.16 the Tenant vacating or abandoning the Premises; or
- 14.17 the conduct of either party constituting a surrender by operation of law.

### **Interest on overdue money**

14.18 The Tenant must pay interest at the Rate of Interest on any amount payable by it under this Lease from when the amount becomes due for payment until it is paid. The interest must be paid on demand or at times notified by the Landlord and must be calculated on daily balances. Interest which is not paid when due for payment may be capitalised by the Landlord on the first day of each month. Interest is payable on capitalised interest at the rate set by the Commonwealth Bank housing loan plus 4%.

### **Acceptance of rent or mitigation**

The acceptance of Rent or other money under this Lease or an attempt by the Landlord to mitigate its loss is not:

- 14.19 a waiver of a preceding breach by the Tenant of its obligations under this Lease;
- 14.20 an acceptance of a repudiation of this Lease by the Tenant; or
- 14.21 a surrender by operation of law.

## **15 Tenant's Obligations on Termination**

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### **Tenant to vacate**

- 15.1 The Tenant must vacate the Premises and remove the Tenant's Property on the termination of this Lease except that when the termination is prior to the expiration of the Term, the Tenant must remove the Tenant's Property within 3 days after the termination.

### **Removal of Tenant's Property**

- 15.2 If the Tenant does not comply with the above clause, then the Landlord may remove the Tenant's Property from the Premises and either store it at the risk and cost of the Tenant or treat the Tenant's Property as abandoned and deal with it in any manner the Landlord sees fit.
- 15.3 The Tenant's Property remains at the Tenant's risk at all times before and after the expiration or earlier termination of this Lease.
- 15.4 The Tenant indemnifies the Landlord against any loss, liability, cost or expense incurred or suffered by the Landlord, or any employee, officer or agent of the Landlord arising from or in connection with the Landlord acting under this clause, or damage caused to the Premises by the removal of the Tenant's Property.

### **Condition of the Premises**

When the Tenant vacates the Premises:

- 15.5 the Tenant must leave the Premises in good repair and condition and in a good state of decoration taking into account the obligations of the Tenant under this Lease; and
- 15.6 the Tenant must have made good any damage to the Premises caused or contributed to by the Tenant or any of the Tenant's Employees, Agents or Customers.

### **Reinstatement**

- 15.7 If the Tenant makes any alterations or additions to the Premises (whether or not the Landlord has consented to them) and the Landlord so requires, the Tenant must reinstate the Premises before the expiration or earlier termination of this Lease so that the Premises are returned to the condition they were in before the alteration or addition was made.

### **Compensation**

- 15.8 If the Tenant does not perform its obligations under this clause, then the Tenant pays to the Landlord on demand and the Landlord may recover from the Tenant by way of liquidated damages, an amount equal to 1/365<sup>th</sup> of the Rent, Rates and Taxes and other outgoings payable by the Tenant for each day from

the termination of this Lease to the date on which the Tenant's obligations under this clause are performed. Any action by the Landlord under this clause is without prejudice to any other remedy of the Landlord.

## 16 Holding Over

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If the Tenant with the consent of the Landlord continues to occupy the Premises after the termination of this Lease, then the Tenant is a monthly tenant of the Premises and:

- 16.1 the tenancy may be terminated by the Landlord or the Tenant, giving to the other, at least one month's notice which may expire on any day;
- 16.2 the monthly rent is an amount equal to 1/12<sup>th</sup> of the Rent payable for the 12 months immediately preceding the termination; and
- 16.3 subject to this clause, all the provisions of this Lease apply (with necessary alterations) to the monthly tenancy except any option for a new lease of the Premises.

## 17 Damage to the Building or Premises

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### Procedure following damage

If the Building is:

- 17.1 damaged so that, in the reasonable opinion of the Landlord, it is necessary for the Building to be demolished; or
- 17.2 so damaged that the whole or a substantial part becomes unfit for use by the Tenant,

then the Landlord must give a notice to the Tenant within 6 months after the damage occurs.

### Termination by Tenant

- 17.3 If the Landlord gives a notice and does not make the Premises fit for use by the Tenant within 12 months of the date of the Landlord's notice, the Tenant may give a notice of intention to terminate this Lease if the Landlord does not make the Premises fit for use by the Tenant within one month after the date it receives the Tenant's notice. If the Landlord does not comply with the Tenant's notice under this clause, the Tenant may terminate this Lease by notice to the Landlord.
- 17.4 If the Landlord does not give notice under this clause, this Lease will terminate at the end of the 6 months referred to in this clause.

## 18 Costs, Expenses and Duties

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### Enforcement and consents

The Tenant must pay or reimburse the Landlord on demand for:

- 18.1 all the Landlord's costs and expenses
- 18.1.1 the exercise or enforcement by the Landlord of the Lease and

Build this Lease Agreement at  
<https://www.legalconsolidated.com.au/commercial-lease-agreement-intro/> -  
telephone us, we can help you complete the questions.

- 18.1.2 any act or omission by the Tenant causing cost or expense to the Landlord;
- 18.2 obtaining or giving any consent or approval under this Lease, or a variation or surrender of this Lease; and
- 18.3 in connection with any matter referred to in this clause, the Landlord's costs and expenses of engaging any consultant or agent.

including, in each case, the Landlord's legal costs and expenses.

### **Stamp duty**

- 18.4 The Tenant must pay or reimburse the Landlord on demand for all stamp duty, taxes and fees, and fines and penalties in respect of any of them, that may be payable in connection with this Lease.

### **Preparation of Lease**

- 18.5 The Tenant must pay to the Landlord on demand the Landlord's legal costs of and incidental to the instructions for and preparation, stamping and registration of this Lease.

## **19 Power of Attorney**

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The Tenant, for valuable consideration, irrevocably appoints the Landlord and every manager, director and secretary (all jointly and severally) its attorney for the purpose of withdrawing any caveat required to be withdrawn under this Lease, and agrees to ratify anything done by an attorney under this clause.

## **20 Notices**

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### **Notices**

A notice or other communication in connection with this Lease must be in writing and:

- 20.1 may be given by the solicitors or agents of the relevant party; and
- 20.2 may be left at the Premises or at the address of the addressee or sent by ordinary post to the address of the addressee or sent by email.

### **When notice takes effect**

- 20.3 Unless a later time is specified in it, a notice or other communication takes effect from the time it is received.

### **Receipt of notice**

A letter is taken to be received:

- 20.4 if left at the Premises or the address of the addressee, at the time it is left;  
and
- 20.5 in the case of a posted letter, on the third business day after posting.
- 20.6 In this clause, a 'business day' is a day on which banks are open for business, other than a Saturday or a Sunday.

## 21 Miscellaneous

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### Waiver and variation

21.1 A provision of or a right created under this Lease may not be waived except in writing signed by the party to be bound, or varied except in writing signed by the Landlord and the Tenant.

### Approvals and consents

21.2 The Landlord may, whenever its approval or consent is required under this Lease, give it conditionally or unconditionally or withhold it unless this Lease specifies otherwise.

### Remedies cumulative

21.3 The rights, powers and remedies provided in this Lease are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Lease.

### Set-off

21.4 At its sole discretion, the Landlord may apply, without notice, any funds held by the Landlord on account of the Tenant towards satisfaction of any amount then payable by the Tenant to the Landlord under this Lease.

### Further assurances

21.5 If requested by the Landlord, the Tenant must execute and cause its successors to execute documents and do everything else necessary or appropriate to bind the Tenant and its successors under this Lease.

### Accrued rights

21.6 The expiration or earlier termination of this Lease does not affect the rights of either the Landlord or the Tenant in relation to a breach of this Lease by the other before the expiration or termination.

### Severance

21.7 If any clause in this Lease or its application to any person or circumstance is or becomes invalid or unenforceable, then the remaining clauses of this Lease will not be affected and each remaining clause will be valid and enforceable to the fullest extent permitted by law.

### Supervening legislation

21.8 Any present or future legislation which operates to vary the obligations of the Tenant in connection with this Lease with the result that the Landlord's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

### Premises owned by a self-managed superannuation fund

21.9 If the Premises are owned by a self-managed superannuation fund, this Deed is read down and interpreted so that the Lease complies with

Superannuation law. If any clause nonetheless fails to comply with Superannuation law or is illegal, it is severed, read down or fettered, as required, from the Deed to the extent of the illegality or failure to comply with Superannuation law.

21.10 For all intents and purposes:

- (a) this Deed is read down and parts severed, as necessary;
- (b) this Deed is deemed to contain any provision that is required by the Superannuation law;
- (c) this Deed is deemed not to contain any provision that is required to be excluded by Superannuation law;
- (d) any covenant or other requirement made necessary by the Superannuation law to be included in this Deed is deemed to be included; and
- (e) if the Superannuation law no longer requires any such covenant or requirement to be so included then the covenant or requirement ceases to be included.

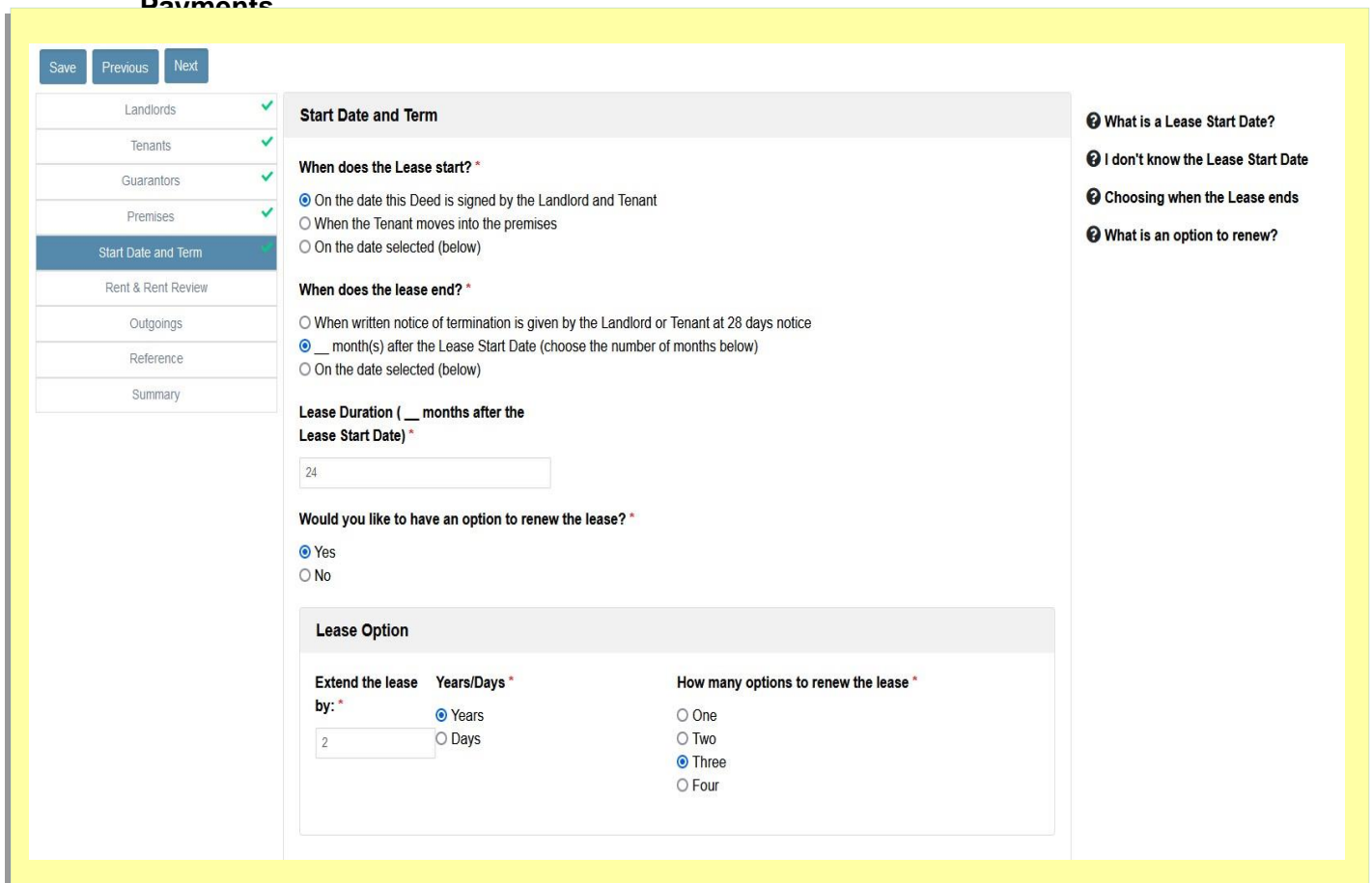
21.11 The Superannuation laws prevail over the terms of this Deed to the extent of any inconsistency.

21.12 For land ownership registration requirements, this Deed is read down or fettered, as required, and vesting restricted, as required to allow for minimal duty or stamp duty in the relevant jurisdiction.

### Retail Lease

21.13 The Tenant warrants that this is not a Retail Shop Lease or however that term is used.

### Payments



The screenshot shows a web-based form for generating lease terms. On the left is a navigation menu with buttons for 'Save', 'Previous', and 'Next'. Below these are several menu items: 'Landlords', 'Tenants', 'Guarantors', 'Premises', 'Start Date and Term' (which is highlighted in blue), 'Rent & Rent Review', 'Outgoings', 'Reference', and 'Summary'. Each menu item has a green checkmark to its right. The main content area is titled 'Start Date and Term' and contains the following sections:

- When does the Lease start? \***
  - On the date this Deed is signed by the Landlord and Tenant
  - When the Tenant moves into the premises
  - On the date selected (below)
- When does the lease end? \***
  - When written notice of termination is given by the Landlord or Tenant at 28 days notice
  - \_\_\_ month(s) after the Lease Start Date (choose the number of months below)
  - On the date selected (below)
- Lease Duration ( \_\_\_ months after the Lease Start Date) \***  
A text input field contains the number '24'.
- Would you like to have an option to renew the lease? \***
  - Yes
  - No
- Lease Option**

Extend the lease by: *	Years/Days *	How many options to renew the lease *
<input type="text" value="2"/>	<input checked="" type="radio"/> Years <input type="radio"/> Days	<input type="radio"/> One <input type="radio"/> Two <input checked="" type="radio"/> Three <input type="radio"/> Four

On the right side of the form, there are four help icons with the following text: 'What is a Lease Start Date?', 'I don't know the Lease Start Date', 'Choosing when the Lease ends', and 'What is an option to renew?'.



## 22 Trust Warranties

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### Tenant's Capacity

- 22.1 Where the Tenant acts as trustee of the Trust, the Tenant enters into this Lease as trustee of the Trust, and it does so both for itself and as trustee of the Trust, and in this Lease each, reference to the Tenant is a reference to it in each capacity.

### Tenant's Warranties

The Tenant warrants to the Landlord that:

- 22.2 the Tenant is the only trustee of the Trust;
- 22.3 the Trust is lawfully and validly constituted and the copies of the trust documents and instruments relating to the Trust produced to the Landlord disclose all the terms of the Trust;
- 22.4 the Trust is and throughout this Lease will remain unrevoked and not varied;
- 22.5 the Tenant has power under the trust deed to enter into and observe its obligations under this Lease and the Tenant has entered into this Lease in its capacity as trustee of the Trust and for the benefit of the beneficiaries of the Trust;
- 22.6 it has a right to be fully indemnified out of the trust fund in respect of obligations incurred by it under this Lease;
- 22.7 the assets of the Trust will at all times be sufficient to satisfy that right of indemnity and all other obligations in respect of which the Tenant has a right to be indemnified out of the assets of the Trust;
- 22.8 the consents or approvals of all parties necessary to execute this Lease so as to bind the property of the Trust have been obtained and all necessary conditions precedent for that purpose have been met;
- 22.9 that no one has taken or threatened, nor is the Tenant aware of anyone who is likely, to take action to have the Trust wound-up or otherwise administered by action brought in any court of competent jurisdiction or to charge the Tenant or any other person at any time connected with the Tenant or acting on behalf of the Tenant with any breach of trust or misappropriation of trust moneys in connection with the Trust;
- 22.10 the Landlord's rights under this Lease rank in priority to the interests of the beneficiaries of the Trust;
- 22.11 the Tenant has complied with its obligations in connection with the Trust;  
and
- 22.12 that no facts are known to the Tenant where the Trust might be wound-up voluntarily or otherwise or the trustee changed or the assets of the Trust vested in any other person or that the Trust may cease to operate or be deprived of funds prior to expiration of the Term.

## 23 Interpretation

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In this Lease, unless the contrary intention appears:

- 23.1 a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time before or after the Lease Start Date;
- 23.2 the singular includes the plural and vice versa;
- 23.3 the word 'person' includes a firm, a body corporate, an unincorporated association or an Authority;
- 23.4 a reference to 'Landlord' or 'Tenant' includes a reference to its executors, administrators, successors, and assigns;
- 23.5 an obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- 23.6 an obligation of, or a representation or warranty by two or more persons binds them jointly and severally;
- 23.7 a reference to a clause or a schedule is a reference to a clause or a schedule in this Lease;
- 23.8 a reference to anything (including any amount or the Premises) is a reference both to the whole and any part of it;
- 23.9 each obligation of the Landlord or the Tenant to the other of them has effect as a covenant; and
- 23.10 a reference to a month is a reference to a calendar month.

### Meaning of 'including' and 'include'

Where in this Lease, the word 'including' or 'include' is used, it is to be taken to be followed immediately by the words: 'but not limited to' or 'but are not limited to' as the case requires.

## 24 Governing law and jurisdiction

This Deed is governed by the laws applicable to the jurisdiction in which the Landlord is situated, as evidenced by the Landlord's address. If the Landlord is not situated in the jurisdiction of the courts of that jurisdiction, then the first Landlord's address shall be deemed to be the jurisdiction of the courts of that jurisdiction. The jurisdiction of the courts of that jurisdiction in relation to this Retail Lease is that Retail Lease jurisdiction.

*A Lease agreement is between two parties: the landlord and the tenant.*

*Legal Consolidated allows you to add guarantors. A guarantor acts as a third party to give extra security to the landlord.*

## 25 Guarantee

- 25.1 In consideration of and to induce the Landlord, to enter into this Deed, the Guarantor hereby:
- 25.1.1 Unconditionally and absolutely guarantees to the Lessor, the full and prompt payment and performance by the Lessee of all of its obligations under and pursuant to the Lease including Rent, Variable Outgoings and Bond, together with the full and prompt payment of any and all costs and expenses of and incidental to the enforcement of this guarantee, including, without limitation, reasonable lawyer and accounting fees.
- 25.1.2 Agrees that the Landlord, may from time to time, without notice to the Guarantor, which notice is waived by Guarantor, extend, waive, renew or compromise the Lease, in whole or in part, without releasing, extinguishing

- or affecting in any manner whatsoever the liability of the Guarantor hereunder, the above acts being consented to by Guarantor.
- 25.1.3 Agrees that this guarantee remains in full force and effect and is binding upon the Guarantor until the Lease is performed in full.
- 25.1.4 Agrees that so long as any portion of the Lease is due and owing or to become due and owing by the Lessee to the Landlord, the Guarantor must not, without the prior written consent of the Landlord, collect or seek to collect from the Lessee the claim, if any, by subrogation or otherwise, acquired by the Guarantor or through payment of any of the Lease.
- 25.1.5 Agrees that the possession of this instrument of guarantee by the Landlord is conclusive evidence of due execution and delivery by the Guarantor.
- 25.1.6 Agrees that this guarantee is binding upon the legal representatives, successors and assigns of the Guarantor, and inures to the benefit of the Landlord and its successors, assigns and legal representatives.
- 25.1.7 Agrees that the Guarantor may be joined in any action or proceeding started against the Lessee in connection with or based upon the Lease and recovery may be had against the Guarantor in any such action or proceeding or in any independent action or proceeding against the Guarantor should the Lessee fail to duly and punctually pay and perform any of the obligations of the Lease without any requirement that the Landlord first assert, prosecute or exhaust any remedy or claim against the Lessee.
- 25.1.8 Agrees that this Guarantee is deemed a contract made under and pursuant to the laws in the State in which the Landlord is situated, as evidenced by the Landlord's address in this Deed, and where more than one Landlord, then the first Landlord's address and is governed by and construed under the laws of such State; and that, wherever possible, each provision of this Guarantee is interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guarantee is prohibited by or invalid under the applicable law, such provision is ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of the Guarantee.
- 25.1.9 Agrees that no failure on the part of Landlord to exercise, and no delay in exercising, any right or remedy operates as or constitute a waiver thereof; nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy granted hereby or by any related document or by law.
- 25.1.10 Agrees that were there is more than one Guarantor they are all liable jointly and severally.
- 25.2 The Guarantor agrees that (i) the Guarantor has received legal and adequate consideration for the providing of this Guarantee and has executed and delivered this Guarantee to Landlord in good faith in exchange for reasonably equivalent value; (ii) the Guarantor is not presently insolvent or bankrupt and will not be rendered insolvent or bankrupt by virtue of the execution and delivery of this Guarantee; (iii) the Guarantor has not executed or delivered this Guarantee

with actual intent to hinder, delay or defraud the Guarantor's creditors; and (iv) that Landlord has entered into the Lease in reliance upon this Guarantee.

## 26 Review to Current Market Rent

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26.1 If there is a Rent Review by way of Current Market Rent requirement in the Reference Schedule, then the Landlord gives the Tenant notice of what the Landlord says is the current market rent for the Premises at least 30 days before the Market Review Date (**Notice Date**). Until the Landlord gives such notice the Tenant pays the old rent and any adjustment is calculated from the Market Review Date.

### 26.2 **Disputes**

26.3 If the Tenant disputes the rent notified by the Landlord the procedure in the following clause is followed. Each time limit is consecutive. Each time limit is of the essence. This means that if a time limit is not kept, the right attached is lost.

### 26.4 Review procedure

26.4.1 If the Tenant disputes the rent notified by the Landlord, the Tenant must give the Landlord notice of that dispute by not later than 28 days after the Landlord gives the Landlord's notice.

26.4.2 The Tenant and the Landlord must negotiate in good faith to try to agree on a new Rent within 14 days or if the new Rent is not agreed, on the appointment of a Valuer to decide the new Rent.

26.4.3 If the Tenant and the Landlord do not agree on the new Rent or on the appointment of a Valuer within the 14 days, then either the Tenant or the Landlord may instruct the Nominator to appoint a Valuer to decide the new Rent. The Valuer must decide the new rent based on the Current Market Rent.

### 26.5 **New rent applies from the Market Review Date**

26.6 The Tenant must pay the new rent from the Market Review Date. Until any dispute is resolved, or a right is lost, the Tenant must pay the old rent. Any adjustment is calculated from the Market Review Date and made when the Tenant's next monthly payment is due.

### 26.7 **Valuer's decision**

26.8 The Valuer acts as an independent expert and not as an arbitrator. The Valuer:

26.8.1 gives the decision in writing;

26.8.2 give detailed reasons for the decision; and

26.8.3 specify the matters to which the Valuer had regard in making the decision.

### 26.9 **Valuing the current market rent**

In the valuation the current market rent is to be taken as the rent obtainable at the time of the review in a free and open market, between a willing landlord and a willing tenant in an arm's length transaction, having regard to these matters:

26.9.1 the provisions of this Lease;

- 26.9.2 the rent that would reasonably be expected to be paid for the Premises if they were unoccupied and offered for lease for the same, or a substantially similar, use
- 26.9.3 the Landlord's outgoings to the extent to which the Tenant is liable to contribute to those outgoings.
- 26.9.4 rent concessions and other benefits offered to prospective tenants of unoccupied premises,
- 26.9.5 but the current market rent is not to take account of the value of goodwill created by the Tenant's occupation or the value of the Tenant's fixtures and fittings.

26.10 **The Valuer's costs**

The Tenant and the Landlord must share the Valuer's costs equally.

## 27 Review to CPI

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27.1 **Formula for increase by CPI rent increases (if applicable)**

If there is a Rent Review by way of CPI in the Reference Schedule, then the Rent is increased to a new rent calculated using the formula:

$$\text{NMR} = \text{CMR} \times \frac{\text{A}}{\text{B}}$$

where:

**NMR** is the new rent

**CMR** is the rent payable immediately before the CPI Review Date;

**A** is the level of the CPI at the end of the calendar quarter immediately preceding the CPI Review Date;

**B** is the level of the CPI at the end of the calendar quarter immediately preceding the date which is 12 months before the CPI Review Date; and

**CPI** is the Consumer Price Index Australia, All Groups as published quarterly by the Australian Bureau of Statistics (**ABS**).

However, the CPI can never be negative and can never reduce the Rent.

27.2 Changes made by the ABS

- 27.2.1 If the ABS updates the base year of the CPI a conversion is made to preserve the intended continuity of calculation by using the appropriate arithmetical factor determined by the ABS.
- 27.2.2 If the ABS stops publishing the CPI the Landlord and the Tenant agree to replace the CPI with any other index which is published to replace the CPI.
- 27.2.3 If the Landlord and the Tenant cannot agree on a replacement index, the Landlord may instruct the Nominator to select an index which appropriately reflects increases in the cost of living in Australia. The Nominator makes the selection as an expert and not as an arbitrator and the selection is final and binding on the Landlord and the Tenant who must share the Nominator's costs equally.

### 27.3 New rent applies from CPI Review Date

The Tenant must pay the new rent from the Market Review Date. If the new rent is not calculated until after the Market Review Date the Tenant must pay the old rent until the new rent is calculated. Any adjustment is calculated from the Market Review Date and made when the Tenant's next monthly payment is due.

## 28 Option to renew Lease

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### 28.1 Exercise of option

If there is an 'Option to renew lease' provided in the Reference Schedule, only then the Landlord gives the Tenant, the option to require the Landlord to grant to it a new lease of the Premises exercisable by the Tenant giving notice to that effect to the Landlord no later than 3 months before the expiration of the applicable Term.

### 28.2 Condition of exercise

The Landlord is not obliged to grant a new lease if an Event of Default has occurred and has not been remedied or waived by the Landlord.

### 28.3 Terms of new lease

The new lease is on the same terms as this Lease except that:

- 28.3.1 the Rent applicable at the commencement date of the new lease is as stated in the Reference Schedule;
- 28.3.2 the CPI Adjustment Dates applicable to the new lease are to be the CPI Adjustment Dates specified in item 9 of the Reference Schedule which occur within the term of the new lease; and
- 28.3.3 this clause does not apply and the Tenant has no further option to require the Landlord to grant a new lease of the Premises after the expiration of any further Option Term.

## 29 Redevelopment, asset rationalisation and demolition

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If as part of any redevelopment, asset rationalisation or other project conducted by the Landlord, the Landlord wishes to demolish or acquire vacant possession of the Premises or any part of the Premises, then the Landlord is entitled to terminate the Lease subject to the following provisions:

- 29.1 the Landlord provides the Lessee with details of the proposed redevelopment enough to indicate a genuine proposal to carry out that redevelopment within (unless the law requires a longer period) a reasonably practical time after this Lease is to be terminated
- 29.2 the Landlord may at any time after providing the Lessee with the above information give the Lessee a written notice of termination of the Lease (**Termination Notice**) saying the date on which this Lease is to end being a date (unless the law requires otherwise) not less than 6 months after the Termination Notice is given. The Lease, unless ended earlier by the Lessee, ends at midnight on the day stated in the Termination Notice

- 29.3 at any time after receiving the Termination Notice, the Lessee may end this Lease by giving not less than 7 days' written notice to the Landlord
- 29.4 when this Lease is terminated (whether by the Landlord or by the Lessee), the rights and obligations of the Landlord and the Lessee come to an end, however, if any breach by either party still exists at that time then the rights of the other party with regard to that existing breach continue
- 29.5 any reasonable costs incurred in relocating the Lessee are borne by the Landlord

## 30 Dictionary

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In this Deed:

**Air-conditioning Equipment** all air-conditioning plant and equipment used in the Building

**Authority** any governmental or other public body, regulator, organisation or authority of any kind

**Bond** the amount set out in the Reference Schedule

**Building** the building or buildings erected on the Premises and touching and concerning the Premises

**Corporations Law** the Corporations Law of Australia

**Encumbrance** any mortgage, charge, lien, pledge, easement, writ, warrant, caveat (and the claims stated in the caveat), Personal Property Securities Register (**PPSR**) or other right or interest of any third party affecting the Premises

**Event of Default** any of the events so stated in the Lease

**Insolvency Event** the happening of any of the following events in relation to the Tenant:

- (a) an application is made to a court that it be wound up or a provisional liquidator be appointed, or it is wound up voluntarily or by the Court or a provisional liquidator or official manager is appointed
- (b) it proposes to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them
- (c) a receiver or receiver and manager is appointed to any of its assets
- (d) it is, or is deemed to be under the Corporations Law unable to pay its debts
- (e) it becomes an insolvent under administration as defined in the Corporations Law

**Land** that part of the land comprising the Premises, and also to which the Premises touches and concerns

**Landlord** the person specified in the Reference Schedule

**Landlord's Property** all other plant and equipment, fixtures, fittings, furniture and furnishings including curtains, blinds and light fittings, in, on or fixed to the Premises that are not the Tenant's Property

Build this legal document at  
[https://www.legalconsolidated.com.au/  
commercial-lease-agreement-intro/](https://www.legalconsolidated.com.au/commercial-lease-agreement-intro/)



**Lease or Deed** this deed, including the Reference Schedule and any other schedules or any attachments, and as it may be varied from time to time

**Lease Start Date** the date specified in the Reference Schedule

**Lettable Floor Area** the floor space calculated using the Property Council of Australia method of measurement for measuring the gross lettable area of premises of a similar kind to the Premises

**Managing Agent** a person appointed by the Landlord

**Payment Date** the date set out in Reference Schedule in each month of the Term

**Permitted Use** the type of use limited to that set out the Reference Schedule

**Premises** as set out in the Reference Schedule (and as further outlined on the attached plan or sketch, if any) touching and concerning the Building and other improvements thereon and includes the Landlord's Property

**Property Council of Australia** or another similar reputable organisation as stated from time to time by the Landlord

**Rate of Interest** the rate being 4% in excess of the general overdraft rate charged on unsecured borrowings by the Commonwealth Bank of Australia on amounts not exceeding \$100,000

**Rates and Taxes** rates, taxes (land tax to be assessed as if the Land was the only property owned by the Landlord), levies, duties and other charges assessed or imposed by an Authority for Lease or the Premises or property which includes the Premises or by a strata company including stamp and transaction duties, together with any related interest, penalties, fines and expenses in connection with them, except if assessed on the overall net income or capital gains of the Landlord

**Reference Schedule** the Reference Schedule at the front of this Lease, which forms and is part of the operative part of the Lease

**Rent** the amount set out in the Reference Schedule as varied under this Lease

**Retail Lease** includes a retail lease and include retail leases under state and territory rules and legislation

**Responsible Authority** as the case requires, the relevant body responsible for superannuation including the Australian Taxation Office, the Australian Prudential Regulation Authority and the Australian Securities & Investments Commission

**Security Interest** any mortgage, charge, sub-demise, lien, trust or power, which is a security for the payment of money or compliance with any other obligation

**Separately Assessed** in reference to Variable Outgoings all Rates and Taxes, Insurance Premiums and Services that are separately assessed to the Tenant, imposed on the Tenant or billed to the Tenant

**Services** the services running through or servicing the Premises including without limitation:

- (a) cleaning of the Premises including cleaning of the windows, common areas and toilets



- (b) toilet requisites including rental of sanitary disposal unit
- (c) lighting and power including common area lighting and power
- (d) provision and maintenance of fire fighting equipment including fire sprinklers
- (e) all costs (including electricity and any other source of power used) associated with the running maintenance and repair of all air-conditioning, ventilation heating or cooling plant and equipment and including without limiting the generality of the aforesaid fees or premiums payable to specialist contractors and or the wages paid to permanent staff employed and the cost of materials used by the Landlord in or about the maintenance or servicing of such plant and equipment and also including all costs incurred in relation to any periodical maintenance and or service arrangements entered into or arranged by the Landlord or howsoever otherwise arranged or entered into in respect of such plant and equipment including the cost of any parts and or labour charged or incurred in relation to it
- (f) water and sewerage
- (g) gas
- (h) telecommunications
- (i) such other services as are properly and reasonably required for the proper care and conduct of the Premises

**SIS Act** *Superannuation Industry (Supervision) Act 1993*

**SIS Legislation** all superannuation acts, including, together with their regulations and administrative guidelines, including, by way of example:

- (a) SIS Act and SIS Regulations
- (b) Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011
- (c) Superannuation (Financial Assistance funding) Levy Act 1993, Superannuation (Resolution of Complaints) Act 1993, Superannuation (Rolled-Over Benefits) Levy Act 1993
- (d) Superannuation Industry (Supervision) Consequential Amendments Act 1993, Superannuation Supervisory Levy Amendment Act 1993
- (e) Occupational Superannuation Standards Amendment Act 1993
- (f) Superannuation Act 2005, Superannuation Act 1990, Superannuation Act 1976
- (g) Superannuation (Productivity Benefit) Act 1998
- (h) Superannuation Benefits (Supervisory Mechanisms) Act 1990
- (i) Superannuation (Family Law - Superannuation Act 1922) Orders 2004 and Superannuation (Family Law - Superannuation Act 1976) Orders 2004
- (j) Superannuation Guarantee (Administration) Act 1992

**SIS Regulations** Superannuation Industry (Supervision) Regulations 1994

**Superannuation law** includes:

- (a) SIS Legislation

- (b) any common law or law including the *Corporations Act 2001* and the *Social Security Act 1991*, relating to superannuation or the taxation of superannuation
- (c) any lawful requirement to the self-managed superannuation fund by a Responsible Authority
- (d) any other body that has responsibility for the regulation of superannuation including an Asset-test Exempt Pension, as defined under *Social Security Act 1991* and *Veterans Entitlement Act 1986*
- (e) changes to any superannuation law after the date of the self-managed superannuation fund deed
- (f) any proposed law or lawful requirement that the trustee believes may have retrospective effect

**Tenant** the person specified in the Reference Schedule, and includes a reference to an assignee, a sub-tenant or any other person having a right to possess, use or occupy the Premises

**Tenant's Business** the business carried on, at or from the Premises

**Tenant's Employees, Agents and Customers** each of the Tenant's employees, officers, agents, contractors, service suppliers, sublessees, licensees, concessionaires, customers and those other persons who at any time are under the control of the Tenant and are in or on the Premises with the consent (express or implied) of the Tenant

**Tenant's Property** any plant or equipment, fittings, furniture and furnishings or other property in or on the Premises supplied by the Tenant. Except any item which has become a fixture, unless the Landlord so declares it otherwise

**Term** the term specified in the Reference Schedule and includes a reference to any shorter term in the event of the early termination of the Term and, when the context so requires, includes any period of holding over and any additional term

**Variable Outgoings** as set out in the Reference Schedule

**SIGNED as a Deed** on the ..... day of ..... 20 .....

EXECUTED for and on behalf of  
**TRT Holdings Pty Ltd**  
**ACN 189 661 132**  
**Trustee for the Collin Smith Family Trust**  
by authority of its Directors in  
accordance with section 127  
*Corporations Act 2001* (Cth)

\_\_\_\_\_  
Signature of Director or Secretary

\_\_\_\_\_  
Signature of Director (if a 2<sup>nd</sup>)

SIGNED, SEALED AND DELIVERED by  
**Thomas Dean James**  
**Trustee for the James Family Trust**

Tenant:

\_\_\_\_\_  
**Thomas Dean James**

\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Name of witness)

SIGNED, SEALED AND DELIVERED by  
**Sandy Maria James**  
**Trustee for the James Family Trust**

Tenant:

\_\_\_\_\_  
**Sandy Maria James**

\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Name of witness)

EXECUTED for and on behalf of  
**James Nominees Pty Ltd**  
**ACN 646 548 946**

by authority of its Directors in  
accordance with section 127  
*Corporations Act 2001 (Cth)*

\_\_\_\_\_  
Signature of Director or Secretary

*In this example the company James Nominees Pty Ltd is guaranteeing the obligations of Mr & Mrs James.*

*A guarantor co-signs the lease agreement with the tenant. The guarantor takes on the tenant's financial and other obligations under the lease.*

\_\_\_\_\_  
Signature of Director (if a 2<sup>nd</sup>)