

TENDER NOTICE

INVITATION TO TENDER FOR A LEASE OF THE PROPERTY AT THE BASEMENT AND GROUND FLOOR OF HONG KONG HOUSE, 80 DRUITT STREET, SYDNEY, NSW 2000 AUSTRALIA

(Tender Reference No. : GPA OB53045)

The Financial Secretary Incorporated (hereinafter referred to as “the Lessor”), acting through the Government Property Agency of the Government of the Hong Kong Special Administrative Region of the People’s Republic of China (hereinafter referred to as “GPA”), invites tenders (hereinafter referred to as “Invitation to Tender”) for a lease (hereinafter referred to as “the Lease”) of the property at the Basement and Ground Floor of Hong Kong House, 80 Drutt Street, Sydney, NSW 2000 Australia comprising a total floor area of approximately 271.1 square metres or thereabouts (hereinafter referred to as “the Premises”) which is for identification purpose only shown coloured pink on the plans (Drawing Nos. GPA OB53045-1, GPA OB53045-2) annexed hereto on such terms and conditions as set out in this Tender Notice, the Form of Tender annexed hereto (hereinafter referred to as “the Form of Tender”), the Form of Lease annexed hereto (hereinafter referred to as “the Form of Lease”) and the Lessor’s Disclosure Statement annexed hereto (hereinafter referred to as “the Lessor’s Disclosure Statement”) (altogether, the “Tender Documents”), and for retail purpose excluding the following trades:

- (a) Clothing – men’s wear, women’s wear, local and overseas;
- (b) Tourism;
- (c) Representative Travel Office (similar work to the Hong Kong Tourism Board of the Hong Kong Special Administrative Region of the People’s Republic of China);
- (d) Representative Office (similar work to the Hong Kong Economic and Trade Office of the Government of the Hong Kong Special Administrative Region of the People’s Republic of China);
- (e) Regional/Area Trade Promotion (similar work to the Hong Kong Trade Development Council of the Hong Kong Special Administrative Region of the People’s Republic of China); and
- (f) Licensed premises including but not limited to pubs, restaurants and brasseries.

2. The Lessor does not bind itself to accept the tender with the highest Annual Rents proposed (submitted in accordance with paragraph 3(b) of this Tender Notice) or any tender submitted. The

Lessor reserves the right to negotiate with any tenderer about the terms and conditions of the award of the Lease, and to vary the terms and conditions of the Tender Documents with the consent of the relevant tenderer. The Lessor will consider the past or current performance of the tenderers as lessees of the Government of the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter referred to as "the Government") or the Lessor or both in examining any tender submitted and in deciding whether or not to award the Lease. The Lessor may also use any data collected pursuant to paragraph 23 of the Tender Notice together with any information of the tenderer's performance or breach of any terms and conditions of the licence or tenancy of any Government sites and premises, whether past, current or future, for consideration of the tender. The decision of the Lessor on whether or not to award the Lease shall be final.

3. Tenderers **MUST** state in the Form of Tender annexed hereto:-

- (a) the particular retail trade for which the Premises shall be used for and the range of goods and/or services to be provided after taking into account the purposes as specified in paragraph 1 of this Tender Notice. The particular purposes as stated in paragraph 6 of the Form of Tender of the successful tenderer will be inserted into the Reference Schedule to the Form of Lease and the use of the Premises will be restricted to the purposes as so stated therein; and
- (b) the proposed annual rents in Australian Dollars exclusive of utility charges and cleaning cost plus goods and services tax (GST) under the laws of Australia at which the tenderers are prepared to offer to the Lessor for the Lease (hereinafter referred to as "the Annual Rents").

Any tender submitted which is not in conformity with the requirement contained in this paragraph will not be considered by the Lessor.

4. Tenderers are hereby informed that Hong Kong House is heritage-listed and is subject to a conservation management plan. Tenderers are advised to note Clauses 35 and 40 of the Form of Lease, the Lessor's Disclosure Statement annexed hereto and Sections 4.6 to 4.8 and 6 of the Conservation Management Plan of Hong Kong House annexed hereto. The successful tenderer shall be required to preserve the historical and architectural character of the Premises. Full Conservation Management Plan of Hong Kong House will be provided on request. The Lessor reserves the right to carry out renovation works to the façade of Hong Kong House. Tenderers are advised to note Clause 41 of the Form of Lease and item 17.1 of the Lessor's Disclosure Statement and the Details of Renovation Works attached thereto.

5. This Tender Notice together with the Form of Tender shall be governed by and construed in accordance with the laws of Hong Kong Special Administrative Region of the People's Republic of

China (“Hong Kong”) save and except the Form of Lease and the Lessor’s Disclosure Statement as specified in paragraph 6 hereof and the parties hereby agree to submit to the jurisdiction of the courts of Hong Kong in relation to any matters arising out of the Tender Notice together with the Form of Tender.

6. Tenderers’ attention are drawn that Australian laws and regulations are applicable to the Form of Lease and the Lessor’s Disclosure Statement annexed to this Tender Notice. A copy of the NSW Retail Tenancy Guide 2022 is also annexed to this Tender Notice.

7. Tenderers should preferably have at least three (3) years of experience in aggregate within 7 years immediately before the Tender Closing Date (as set out in paragraph 12(a) of this Tender Notice) in Australia in retail business specified in the Form of Tender.

8. All tenderers are advised to note the Lessor’s right to terminate the Lease under Clause 39 of the Form of Lease in the event of the Lessee (as defined in the Form of Lease) or the Lessee’s Employees and Agents (as defined in the Form of Lease) being found to have been convicted of an offence under the Prevention of Bribery Ordinance (Cap. 201 of the Laws of Hong Kong) and/or any subsidiary legislation made thereunder and/or any law of a similar nature, in connection with the tenancy given to the Lessee under the Lease or the Lessee’s Business (as defined in the Form of Lease). Tenderers are also advised to note Clause 8 of the Form of Lease.

9. In assessing tenders, the Lessor will take into account the proposed retail trade for which the Premises shall be used for and the Annual Rents proposed by the tenderers in accordance with paragraphs 3(a) and 3(b) of this Tender Notice for the Lease.

10. A tenderer shall submit its tender at its own expenses. Under no circumstances shall the Government and the Lessor be responsible for or liable for any costs or expenses whatsoever incurred by a tenderer in response to this Invitation to Tender, including any costs or expenses relating to:

- (a) preparation or submission of tenders; and
- (b) any communication or negotiation with the Lessor (which shall be carried out in accordance with the terms and conditions of the Tender Notice and the Form of Tender), whether before or after the Tender Closing Date.

11. Tenders must be :-

- (a) made in **TRIPLICATE** in the Form of Tender annexed hereto; and

- (b) enclosed in a sealed envelope addressed to **“The Chairman, Tender Opening Committee, Government Logistics Department of the Government of the Hong Kong Special Administrative Region of the People’s Republic of China”** and clearly marked **“Invitation to Tender for a Lease of the Property at the Basement and Ground Floor of Hong Kong House, 80 Druitt Street, Sydney, NSW 2000 Australia (Tender Reference No.: GPA OB53045)”** on the outside of the envelope (which should not bear any indication which may relate the tender to the tenderer).
12. (a) Tenders must be placed in the Tender Box labelled “Government Logistics Department Tender Box” situated at the **Ground Floor, North Point Government Offices, No. 333 Java Road, North Point, Hong Kong, China** (hereinafter referred to as “the Specified Tender Box”) before 12:00 noon (Hong Kong time) (hereinafter referred to as “the Tender Closing Time”) on the 25th day of July 2024 (Thursday) (hereinafter referred to as “the Tender Closing Date”). In case Black Rainstorm Warning Signal or Tropical Cyclone Warning Signal No. 8 or above or “extreme conditions” announced by the Government is/are in force, for any duration between 9:00 a.m. (Hong Kong time) and 12:00 noon (Hong Kong time) on the 25th day of July 2024, the Tender Closing Date and/or the Tender Closing Time will be extended to 12:00 noon (Hong Kong time) on the next working day. In case of blockage of the public access to the location of the Specified Tender Box at any time between 9:00 a.m. (Hong Kong time) and 12:00 noon (Hong Kong time) on the 25th day of July 2024, the Government will announce extension of the Tender Closing Date and/or the Tender Closing Time until further notice. Following the removal of the blockage, the Government will announce the extended Tender Closing Date and/or Tender Closing Time as soon as practicable. The above announcements will be made via press releases on the website of Information Services Department (<http://www.info.gov.hk/gia/general/today.htm>). **Any tender submitted which is not in conformity with the requirement contained in this paragraph will not be considered by the Lessor.**
- (b) Late tenders will not be accepted.
- (c) In this Tender Notice and the Form of Tender, the term working day means Monday to Friday other than a public holiday as defined under the General Holidays Ordinance (Cap. 149 of the Laws of Hong Kong), or a day on which Tropical Cyclone Warning Signal No. 8 or above is hoisted, or Black Rainstorm Warning Signal or “extreme conditions” announced by the Government is/are in force, for any time during the normal business hours.

- (d) Save and except the filling in of requisite information and particulars at the spaces intended for such purpose as indicated in the Form of Tender, there shall be no insertion, deletion or alteration of or to any terms or conditions in the Tender Documents. **The Lessor may not consider any tender submitted with any insertion or deletion or alteration of or to any terms or conditions in the Tender Documents.**

13. Every submitted tender shall be irrevocable and shall constitute a formal offer capable of and remain valid and open for acceptance by the Lessor on and subject to the terms and conditions contained in the Tender Documents on or before the 25th day of January 2025. After any tender has been submitted, no tenderer shall be at liberty to withdraw his tender and the same shall be deemed to remain valid and open for acceptance by the Lessor until the expiry of 25th day of January 2025. The Lessor will consider and assess all tenders submitted which comply with all the terms and requirements of the Tender Notice and the Form of Tender.

14. Only tenders from persons or corporations who will occupy the Premises for their own use will be considered by the Lessor, and no assignment, sub-letting, underletting or parting with the possession of the Premises or any part thereof or any interest therein will be permitted.

15. TENDERERS MUST FORWARD WITH THEIR TENDERS an unconditional and irrevocable bank guarantee for an amount in Australian Currency equals to three (3) months' rent of the first year plus GST under the laws of Australia tendered in favour of "The Hong Kong Economic and Trade Office" and be an unconditional and irrevocable bank guarantee from an Australian bank approved by the Lessor as security for the due observance and fulfilment by the successful tenderer of the terms and conditions set out in paragraph 19 of this Tender Notice and for the due observance and performance of the obligations assumed by the successful tenderer under the Lease (hereinafter referred to as "the Bank Guarantee"). It must not contain an expiry date. If a tender is accepted, the Bank Guarantee submitted therewith will be treated as the Bank Guarantee referred to in Clause 30.1 of the Form of Lease. If the tender is not accepted, the Bank Guarantee will be returned to the unsuccessful tenderers at the addresses shown on their tenders. **Any tender submitted which is not in conformity with the requirement contained in this paragraph will not be considered by the Lessor.**

16. (a) If the tenderer is a subsidiary of a body corporate, the tenderer when submitting its tender should clearly state the name of its holding company and its correspondence address, the name of its contact persons, its telephone numbers and facsimile numbers.

(b) The person who signs a tender as tenderer shall be deemed to be acting as a principal unless he discloses therein that he is acting as an agent only, in which case he shall

also disclose therein the name, address and the name(s) of the contact person(s) of his principal.

- (c) The Lessor shall have the right to disclose to the public whenever it considers appropriate or upon request by any member of the public (which may have been a tenderer) without any further notice to or consent from the successful tenderer or any other tenderer, any information in connection with this Invitation to Tender and/or the Tender Documents including but not limited to the tender submitted, particulars of the Lease, date of award of the Lease, the name and address of the successful tenderer and its holding company, and the Annual Rents proposed.

17. No tender will be accepted unless it is accompanied by a copy of the record of registration of the business name (hereinafter referred to as “Business Name Certificate”) as well as, in the case of a partnership, details of all partners and a copy of the Australian business number registration certificate.

18. If a tender is accepted, the successful tenderer must return the executed Lessee’s Disclosure Statement in accordance with Section 11A of the *Retail Leases Act 1994* (NSW) of Australia together with the duly executed Form of Lease as required in paragraph 19 of this Tender Notice.

19. If a tender is accepted, the successful tenderer shall be awarded the Lease, and he shall be notified of the acceptance of his tender by a letter posted to him at or delivered to the address stated in his Form of Tender. The successful tenderer shall, within seven (7) days of being called upon by the Chief Property Manager, GPA so to do, execute the Form of Lease in duplicate and the Lessee’s Disclosure Statement, and shall return them to the Lessor or its nominated representative together with the first month’s rent plus GST due, together with any applicable legal fees, stamp duty and registration fees required to be given or paid under applicable laws, regulations and by-laws and all rules, directions and guidelines and other provisions (whatever name called) issued by the Australian Government, the Government or other relevant authorities or as requested by the Lessor in connection with and/or arising from the Lease. Where the successful tender has been made on behalf of a principal, the principal shall himself execute the Form of Lease and the Lessee’s Disclosure Statement. Where the successful tender has been made by or on behalf of a partnership, each partner shall execute the Form of Lease and the Lessee’s Disclosure Statement. Where the successful tender has been made by or on behalf of a company, the Form of Lease must be executed in accordance with the company’s constitution and Section 127 of the *Corporations Act 2001* (Cth) of Australia. If the successful tenderer shall fail to execute the Form of Lease or the Lessee’s Disclosure Statement or pay the first month’s rent plus GST due, together with any applicable legal fees, stamp duty and registration fees required to be given or paid under applicable laws, regulations and by-laws and all rules, directions and guidelines and other provisions (in whatever name called) issued by the Australian Government, the Government or other relevant authorities or as requested by the Lessor

in connection with and/or arising from the Lease to the Lessor or its nominated representative within the time limit as aforesaid, the Lessor shall have the right to require the tenderer to perform the Lease or to disqualify its tender submitted. On cancellation, the Bank Guarantee submitted with the tender as the Bank Guarantee under Clause 30.1 of the Form of Lease shall, without prejudice to the Lessor's right of action for damages for breach of contract, be wholly and absolutely forfeited to the Lessor as liquidated damages and not as a penalty and the Lessor shall be at liberty to grant a lease of the Premises to other parties or re-issue this Invitation to Tender or to otherwise deal with the Premises at such times and in such manner and on such terms and conditions as the Lessor shall deem fit.

20. Subject to the due execution of the Form of Lease and the Lessee's Disclosure Statement, and to the payment of the first month's rent plus GST due and other fees as hereinbefore provided, possession of the Premises will be given to the successful tenderer within three (3) calendar months of the date on which the Lease is executed. The successful tenderer will be notified by a letter from the Chief Property Manager, GPA of the date on which possession of the Premises will be so given and the date from which the term of the Lease shall commence.

21. The successful tenderer shall accept the Premises in such state and condition as existing on the date on which possession of the Premises is given. Tenderers are hereby informed that renovation works to the building façade are being carried out with hoardings and/or scaffolding erected during the tender period. The hoardings and/or scaffolding are expected to be removed before commencement of the Lease. Tenderers are advised to note Clause 41 of the Form of Lease and item 17.1 of the Lessor's Disclosure Statement and the Details of Renovation Works attached thereto. All tenderers are advised to inspect the Premises prior to tender submissions. All inspections shall be made by appointment and shall be undertaken in company with the Lessor's agents or representatives. The tenderer or its representative must comply with all work, health and safety legislation and associated regulations, codes or guidelines and policies in Australia relating to the Premises and as directed by the Lessor or its agents or representatives.

22. The result of a tender will be announced on or before the 25th day of January 2025. Tenderers who do not receive any notification from the Lessor by the said date may consider their tenders not being accepted. Neither the Lessor nor its agents or representatives shall be obliged to disclose to any tenderer or any person, corporation or firm the details of acceptance, non-acceptance or otherwise of any submitted tenders.

23. (a) In addition to name and address, the tenderer should provide his telephone number, mobile number, facsimile number and Hong Kong Identity Card number or Australian drivers licence number or passport number and issuing country in case of an individual, details of all proprietor(s)/partner(s)/venturer(s)/participant(s) and Australian business number of the proprietor(s)/ partner(s) venturer(s)/participant(s) and business name registration number in case of an unincorporated firm or other

form of incorporated venture, or company registration number in case of a corporate body. If the tenderer fails to provide the above data or provides inaccurate information, its tender may not be further considered by the Lessor.

- (b) The above data collected by the GPA are to be used for the consideration of tenders submitted for this Invitation to Tender by the Lessor, award of the Lease and resolution of any dispute arising from this Invitation to Tender and may be used by the GPA for such purposes and may be transferred to other Government departments to be used for such purposes. The above data may also be used for the consideration of tenders submitted for other invitations to tender by the Government or the Lessor at any time and the above data may be used by the GPA for such purpose and may be transferred to other Government departments to be used for such purpose.
- (c) A tenderer shall be responsible for procuring all requisite consents from all relevant individuals for the use and disclosure of their personal data in the tender submitted, and acknowledgments from these individuals that their personal data may be disclosed to the officers responsible for tender evaluation in the Government, award of the Lease and resolution of any dispute arising from this Invitation to Tender.
- (d) The tenderer or the relevant individuals to whom such personal data belong has the right to request access to and correction of his/her personal data provided in the Form of Tender pursuant to the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong). Any such request shall be made to the Personal Data (Privacy) Officer of the GPA at the address stated in paragraph 27 of this Tender Notice.

24. (a) Tenderers and any of their officers (including their directors), employees and agents should not communicate to any person other than the GPA the amount of the Annual Rents tendered, fix or adjust the amount of the Annual Rents tendered in arrangement with any person, make any arrangement with any person about whether or not he or that other person will or will not submit a tender or otherwise collude with other person in any manner whatsoever in the tendering process. If a tenderer is in breach of or fails to comply with this paragraph or any of the warranties given in paragraph 8 of the Form of Tender, without prejudice to his liability for such breach or non-compliance, the GPA shall be entitled to:
- (i) reject the tenderer's tender;
 - (ii) if the Lessor has accepted the tender, withdraw its acceptance of the tender; and
 - (iii) if the Lessor has entered into the Lease with the successful tenderer, terminate the Lease.

without any compensation to any person or liability on the part of the Government and the Lessor. The tenderer shall also be liable for all losses including but not limited to all of the GPA's losses, damage, costs and expenses in the present Invitation to Tender and any subsequent tender(s) exercise arising out of or in relation to any breach of this paragraph and/or any of the warranties given in paragraph 8 of the Form of Tender.

- (b) Paragraph 24(a) of this Tender Notice shall have no application to the tenderer's, his officers', directors', employee's and agents' communications in strict confidence with his own insurers or brokers to obtain an insurance quotation for computation of the Annual Rents tendered provided that the communications are limited to the information required to facilitate that particular insurance arrangement, or with his bankers for the purpose of obtaining financing for the Lease provided that the communications are limited to the information required to facilitate that financing, or his professional advisers provided that the communications are limited to the information required for the adviser to render their professional advice in relation to the tenderer's tender, or his consultants or sub-contractors provided that the communications are limited to the information required to solicit their assistance in preparation of tender submission, or any person other than the Government provided that the Government has given prior written consent, or the Government .
- (c) The rights of the Government, the GPA and the Lessor under paragraphs 24(a) and 24(b) of the Tender Notice are in addition to and without prejudice to any other rights or remedies available to it/them against the tenderer.

25. Tenderers and any of their officers (including their directors), employees and agents should not offer any advantage (as defined in the Prevention of Bribery Ordinance (Cap.201 of the Laws of Hong Kong ("PBO")) to any officer of the Lessor or of the GPA as an inducement to or a reward for or otherwise on account of such officer's giving assistance or using influence in, or having given assistance or used influence in the tender exercise. If a tenderer and any of their officers (including their directors), employees and agents is convicted of any offence under the PBO in Hong Kong in relation to the submission of tender or the performance of the Lease, the Lessor may disqualify its tender without payment of any compensation to any person or liability on the part of the Government, the GPA and the Lessor and the tenderer is not entitled to claim/make any relief of any nature whatsoever against the Government, the GPA and the Lessor. The tender it submitted will be rendered null and void save and except the right of the Government, the GPA and the Lessor to claim for any antecedent breach of this paragraph 25. The tenderer will also be liable for all losses including but not limited to all of the Lessor's losses, damages, costs and expenses in this Invitation to Tender and any subsequent tender(s) exercise arising out of or in relation to any breach of this

paragraph 25. The Lessor may also terminate the Lease awarded and hold the successful tenderer liable for any loss or damage which the Lessor may sustain.

26. Notwithstanding anything to the contrary in the Tender Notice, the Lessor reserves the right to disqualify a tenderer on the grounds that –

- (a) the tenderer or its holding company (if any) or any of their officers (including their directors), employees and agents have engaged, are engaging, or are reasonably believed to have engaged or to be engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or otherwise;
- (b) the disqualification is necessary in the interest of national security; or
- (c) the disqualification is necessary to protect the public interest, public morals, public order or public safety of Hong Kong.

For the avoidance of doubt, the word “engage” or its variants in this paragraph 26 shall include but not be limited to aiding, abetting, counselling or procuring. The Lessor shall have absolute discretion to decide whether the disqualification under paragraphs 26(b) or (c) of this Tender Notice is deemed necessary and shall not be required to provide justification for its decision under paragraph 26 of this Tender Notice.

27. Tenderers are advised to note that the Lessor will only answer questions of a general nature concerning the Premises or the tender process. All enquiries should be directed to:

Government Property Agency,
9/F, South Tower,
West Kowloon Government Offices,
No. 11 Hoi Ting Road,
Yau Ma Tei, Kowloon,
Hong Kong, China

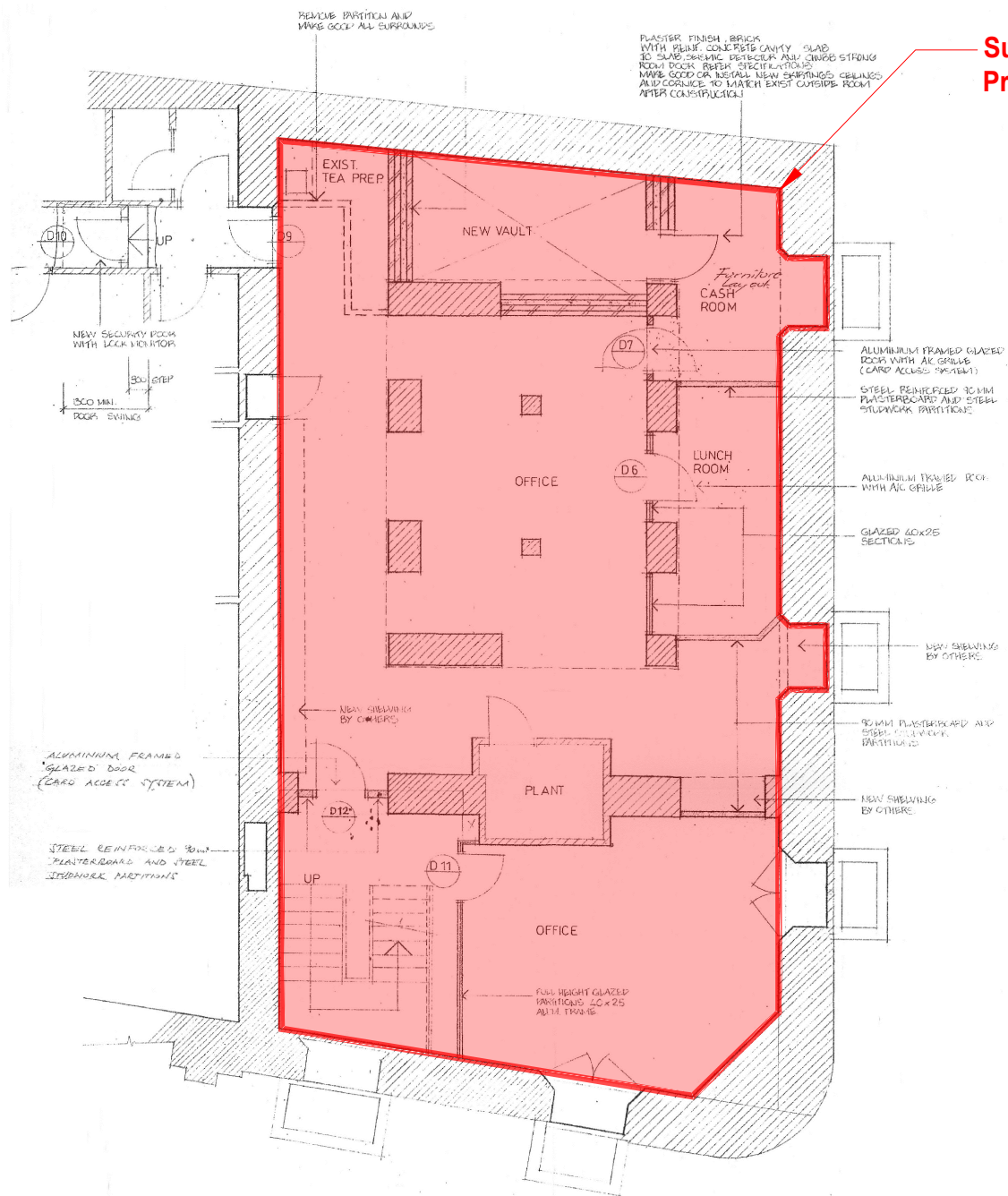
(Attn.: Mr. Dave WONG
Tel. No.: (852) 3842 6747
Fax No.: (852) 2827 1891
E-mail address: dklwong@gpa.gov.hk)

It is hereby specifically declared by the Lessor that any statement, whether oral or written, made and any action taken by any Government officer in response to any enquiry made by a prospective tenderer shall be for guidance and reference purposes only. Any such statement shall not be deemed

to form part of the Tender Documents and such statement or action shall not and shall not be deemed to amplify, alter, negate, waive or otherwise vary any of the terms or conditions as set out in this Tender Notice or the Form of Lease or the Lessor's Disclosure Statement annexed hereto. All information given by the Lessor or the Government in respect of the Premises shall be for the potential tender's general information only. By the submission of a tender, the tenderer shall be deemed to have acknowledged that the tender was prepared and submitted by the tenderer in reliance upon the tenderer's own enquiries and that no representations, warranties or inducements, have been made or given by the Lessor, its agent or its legal advisors, relating to the present state and condition of repair of the Premises or to its use or to any other matter or thing relating to the Premises. The Government, the GPA and the Lessor will not accept any liability in respect of the adequacy, accuracy and completeness of or otherwise arising out of or in relation to any statement, disclosure or action taken by their officers.

28. The Lessor declares that time is, and shall be, of the essence in respect of any date or dates or of any time, period, or periods as stipulated by the Tender Documents. By the submission of a tender, each tenderer shall be deemed to have acknowledged, confirmed and agreed that time is of the essence.

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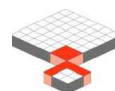


(FOR IDENTIFICATION PURPOSE ONLY)
 SHADED PINK AREA: NLA 135.5 SQUARE METRES
 (NOT TO SCALE)

Premises: Basement, Hong Kong House, 80 Druiit Street, Sydney, NSW 2000 Australia

Drawing No.: GPA OB53045-2

Tender Reference No.: GPA OB53045



Government Property Agency

The Government of the Hong Kong Special Administrative Region
 of the People's Republic of China

FORM OF TENDER

[# PLEASE SIGN AND SUBMIT THIS FORM OF TENDER
WITHOUT CHANGING THE ORIGINAL TEXT]

**INVITATION TO TENDER FOR A LEASE OF THE PROPERTY
AT THE BASEMENT AND GROUND FLOOR OF HONG KONG HOUSE,
80 DRUITT STREET, SYDNEY, NSW 2000 AUSTRALIA**

(Tender Reference No. : GPA OB53045)

This Form of Tender is submitted by the tenderer in response to the invitation to tender (hereinafter referred to as “Invitation to Tender”) for the lease (hereinafter referred to as “the Lease”) of the property of The Financial Secretary Incorporated (hereinafter referred to as “the Lessor”) at the Basement and Ground Floor of Hong Kong House, 80 Drutt Street, Sydney, NSW 2000 Australia comprising a total floor area of approximately 271.1 square metres or thereabouts (hereinafter referred to as “the Premises”) as shown for identification purpose only coloured pink on the plans to the Tender Notice (hereinafter referred to as “the Tender Notice”) and the Form of Lease in respect of the Premises (hereinafter referred to as “the Form of Lease”) on such terms and conditions as specified in the Tender Notice, this Form of Tender, the Form of Lease and the Lessor’s Disclosure Statement (hereinafter referred to as “the Lessor’s Disclosure Statement”) (altogether, the “Tender Documents”) at the Annual Rents specified below.

To : The Chairman,
Tender Opening Committee,
Government Logistics Department
of the Government of the Hong Kong Special Administrative Region
of the People’s Republic of China

Ground Floor, North Point Government Offices,
No. 333 Java Road, North Point,
Hong Kong, China

I/We, _____
(name)

of _____
(address)

having read the Tender Documents, the NSW Retail Tenancy Guide 2022, the extract of the Conservation Management Plan of Hong Kong House and the Details of Renovation Works annexed to the Lessor's Disclosure Statement and examined the plans annexed to the Tender Notice, hereby offer to rent the Premises from the Lessor at the following Annual Rents of Australian Dollars **exclusive of utility charges and cleaning cost plus goods and services tax (GST)** under the laws of Australia:

First year: AUD _____ per annum
(exclusive of utility charges and cleaning cost) plus GST
(AUD _____ p.a. (exclusive of utility charges and cleaning cost) plus GST)

Second year: AUD _____ per annum
(exclusive of utility charges and cleaning cost) plus GST
(AUD _____ p.a. (exclusive of utility charges and cleaning cost) plus GST)

Third year: AUD _____ per annum
(exclusive of utility charges and cleaning cost) plus GST
(AUD _____ p.a. (exclusive of utility charges and cleaning cost) plus GST)

Fourth year: AUD _____ per annum
(exclusive of utility charges and cleaning cost) plus GST
(AUD _____ p.a. (exclusive of utility charges and cleaning cost) plus GST)

Fifth year: AUD _____ per annum
(exclusive of utility charges and cleaning cost) plus GST
(AUD _____ p.a. (exclusive of utility charges and cleaning cost) plus GST)

(hereinafter referred to as "the Annual Rents")

for a term of **FIVE years** certain commencing on such date to be specified by the Chief Property Manager, Government Property Agency of the Government of the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter referred to as "GPA") and on such terms and conditions as set out in the Tender Documents. I/We have/have not* attached to this Form of Tender documentary proof of the details of my/our experience in the business specified in paragraph 6 of this Form of Tender. (* Delete if inappropriate)

2. If this tender is accepted, this tender together with the written acceptance thereof shall constitute a binding agreement between me/us and the Lessor on the terms and conditions contained in the Tender Documents. I/We understand that if I/we fail to comply with the terms of the Tender Documents, I/we are liable to forfeiture of the Bank Guarantee (given in accordance with paragraph

15 of the Tender Notice and paragraph 3 of this Form of Tender) (hereinafter referred to as “the Bank Guarantee”) pursuant to paragraph 19 of the Tender Notice.

3. An unconditional and irrevocable Bank Guarantee **with no expiry date** for Australian Dollars _____ only (AUD _____) in favour of “The Hong Kong Economic and Trade Office” and issued by an Australian bank approved by the Lessor is forwarded herewith as the Bank Guarantee in accordance with paragraph 15 of the Tender Notice if my/our tender is accepted.

4. I/We understand that the Lessor reserves the right to negotiate with any tenderer on the terms and conditions of the award of the Lease pursuant to paragraph 2 of the Tender Notice and the use of the Premises is restricted to the purposes as set out in Clause 8.1(a) of the Form of Lease and that my/our tender will not be considered unless it is accompanied by the Bank Guarantee.

5. (a) I/We understand that the Lessor reserves the right to disclose the identity of the successful tenderer and its holding company (if any) and to announce the tender results in accordance with paragraph 16(c) of the Tender Notice.

(b) I/We consent that the Lessor and its officers may use any data collected pursuant to paragraph 23 of the Tender Notice together with any information of my/our performance or breach of any terms and conditions of the licence or tenancy of any sites and premises of the Government of the Hong Kong Special Administrative Region of the People’s Republic of China (hereinafter referred to as “the Government”), whether past, current or future, for consideration of this tender by the Lessor, award of the Lease and resolution of any dispute arising from this Invitation to Tender, and the GPA may use any data and information for such purposes and may transfer the data and information to other Government departments to be used for such purposes; and that the data and information may also be used for consideration of tenders submitted for other invitations to tender by the Government or the Lessor at any time, and that the data and information may be used by the GPA for such purpose and may be transferred to other Government departments to be used for such purpose.

(c) I/We also confirm that for the avoidance of doubt and for the purposes of the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong Special Administrative Region of the People’s Republic of China (“Hong Kong”)) or otherwise, the provision in paragraph 23 of the Tender Notice and the provisions in paragraph 5 of this Form of Tender including the consent stated therein shall remain in full force and effect notwithstanding that this tender is not accepted by the Lessor. Where the tender is accepted by the Lessor, the said provisions and consent shall

survive the execution of the Lease and the term of the Lease, and shall remain in full force and effect notwithstanding the expiry or termination of the Lease.

6. I/We shall use the Premises for the purposes of

throughout the term of the Lease. The range of goods/services to be provided in the Premises includes:

_____.

7. I/We agree to keep my/our offer open for acceptance by the Lessor until the 25th day of January 2025, and to be bound by the terms and conditions contained in the Tender Documents.

8. (a) I/We represent and warrant that in relation to this Invitation to Tender, my/our tender was prepared genuinely, independently and made with the intention to enter into the Lease if awarded.

(b) I/We represent and warrant that up to the date hereof, other than the Excepted Communications (referred to in paragraph 8(d) hereof), I/we and my/our officers (including directors), employees and agents have not:-

- (i) communicated to any person the amount of the Annual Rents tendered;
- (ii) fixed or adjusted the amount of the Annual Rents tendered in arrangement with any person;
- (iii) made any arrangement with any person about whether or not I/we or that other person will or will not submit a tender; or
- (iv) otherwise colluded with any person in any manner whatsoever in the tendering process.

(c) I/We represent and warrant that at any time hereinafter in the tendering process, other than the Excepted Communications (referred to in paragraph 8(d)), I/we and my/our officers (including directors), employees and agents will not:-

- (i) communicate to any person other than the GPA the amount of the Annual Rents tendered;
- (ii) fix or adjust the amount of the Annual Rents tendered in arrangement with any person;
- (iii) make any arrangement with any person about whether or not I/we or that other person will or will not submit a tender; or

- (iv) otherwise collude with any person in any manner whatsoever in the tendering process.
- (d) The expression “Excepted Communications” means my/our officers’, directors’, employees’ and agents’ communications in strict confidence with:-
 - (i) my/our own insurers or brokers to obtain an insurance quotation for computation of the Annual Rents tendered, provided that the communications are limited to the information required to facilitate that particular insurance arrangement;
 - (ii) my/our consultants or sub-contractors, provided that the communications are limited to the information required to solicit their assistance in preparation of tender submission;
 - (iii) my/our professional advisers, provided that the communications are limited to the information required for the adviser to render their professional advice in relation to my/our tender;
 - (iv) banks for the purpose of obtaining financing for the Lease, provided that the communications are limited to the information required to facilitate that financing;
 - (v) any person other than the Government, provided that the Government has given prior written consent; and
 - (vi) the Government.
- (e) I/We understand that in the event of any breach or non-compliance with any representations, warranties and/or undertakings in this paragraph 8 or in paragraph 24 of the Tender Notice, the Government and/or the Lessor may exercise any of the rights under paragraph 24 of the Tender Notice in addition to and without prejudice to any other rights or remedies available to it/them against me/us.

Dated the _____ day of _____ 2024.

Notes:

*In compliance with the restriction set out in paragraph 12(d) of the Tender Notice, the Tenderer shall not make any insertion/deletion/alteration of or to the original text set out in this Form of Tender, otherwise **the Tender may not be considered further**. Deleting inapplicable word(s) denoted by *, or adding word(s) on space underlined or in the table of Part A or Part B as intended are however not to be treated as an insertion/deletion/alteration for the purpose of paragraph 12(d) of the Tender Notice and/or this note.*

If the tenderer is a natural person trading as a firm or business in sole proprietorship OR persons trading as a firm or business in partnership, Part A should be completed. If the tenderer is a limited company, Part B should be completed.

(End of the page)

Part A

(Please read Note 1 on page 10 of this Form of Tender before completing this Part)

Personal Information of Tenderer (**INCLUDING ALL PARTNERS**, if any)

1.

Name (in block letters)	HK I/D No. / Australian Drivers Licence Number / Passport No. and Issuing Country*
Telephone / Mobile / Fax No. / /	Signature
Residential Address	

2.

Name (in block letters)	HK I/D No. / Australian Drivers Licence Number / Passport No. and Issuing Country *
Telephone / Mobile / Fax No. / /	Signature
Residential Address	

3.

Name (in block letters)	HK I/D No. / Australian Drivers Licence Number / Passport No. and Issuing Country *
Telephone / Mobile / Fax No. / /	Signature
Residential Address	

4.

Name (in block letters)	HK I/D No. / Australian Drivers Licence Number / Passport No. and Issuing Country *
Telephone / Mobile / Fax No. / /	Signature
Residential Address	

Trading in Australia under the name of _____

(Name of firm)

Address of firm/business : _____

Business Name Registration No.: _____

(Please attach copy of Business Name Certificate)

Signature of Witness : _____

Name of Witness (in block letters) : _____

Occupation : _____

Address : _____

* Delete if inappropriate

Part B

(Please read Note 2 on page 10 of this Form of Tender before completing this Part)

Name of Tenderer (in block letters) : _____

SEAL of Tenderer (if applicable) and Signature(s) of Authorized Officer(s) in accordance with Corporations Act 2001 (Cth) :

Names (in block letters) of Authorized Officer(s) and their respective position(s) :

Company Registration Number : _____
(Please attach copy of Certificate of Incorporation)

Registered Office of Tenderer : _____

Business Name Registration Number : _____
(Please attach copy of Business Name Certificate)

Telephone No.: _____ Facsimile No.: _____

Name of Holding Company (if appropriate) : _____

Address (in block letters) : _____

Name of Contact Person : _____

Telephone No.: _____ Facsimile No.: _____

Signature of Witness : _____

Name of Witness (in block letters) : _____

Occupation : _____

Address : _____

- Note 1 In the case of a sole proprietorship, this tender must be made in the name of the sole proprietor. In the case of a partnership, the tender must be made in the names of all the partners. A copy of the record of registration of the business name (hereinafter referred to as “Business Name Certificate”) as well as (in the case of a partnership) details of all partners and a copy of the Australian Business Number Registration Certificate must be enclosed with this Form of Tender. Please also refer to paragraphs 17 and 19 of the Tender Notice.
- Note 2 The name of the company must be inserted and certified copy of the constitution of the company must be produced for inspection on demand. A copy of the Business Name Certificate and a copy of the Certificate of Incorporation must be enclosed with this Form of Tender. Please also refer to paragraphs 17 and 19 of the Tender Notice.

Provision of Personal Data

The personal data collected by means of this Form of Tender will be used and may be disclosed to other Government departments as set out in paragraph 23 of the Tender Notice and paragraph 5 of this Form of Tender. Individuals who wish to access to or correct his/her personal data in this Form of Tender pursuant to the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong) are requested to contact the Personal Data (Privacy) Officer of the GPA at the address referred to in paragraph 27 of the Tender Notice.

LEASE

Leave this space clear. Affix additional pages to the top left-hand corner.

New South Wales
Real Property Act 1900

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Insert Duty Assessment No. as issued by Revenue NSW Office.

Duties Assessment No.

(A) TORRENS TITLE

Property leased
Certificate of Title Folio Identifier 1/60727 PART being Basement and Ground Floor, Hong Kong House, 80 Druitt Street, Sydney NSW 2000

(B) LODGED BY

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any Squire Patton Boggs Level 17, 88 Phillip Street Sydney NSW 2000	CODE L
	Reference: GPA.008-0002	

(C) LESSOR

The Financial Secretary Incorporated

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) LESSEE

[Insert]

TENANCY:

(F)

(G)

1. TERM: 5 years
2. COMMENCING DATE: [Insert]
3. TERMINATING DATE: [Insert]
4. With an OPTION TO RENEW for a period of N/A set out in N/A of Annexure A.
5. With an OPTION TO PURCHASE set out in clause N/A of N/A.
6. Together with and reserving the RIGHTS set out in clause N/A of N/A.
7. Incorporates the provisions or additional material set out in ANNEXURE(S) A hereto.
8. Incorporates the provisions set out in N/A No. N/A.
9. The RENT is set out in Item 3 of the Reference Schedule contained in Annexure A.

DATE: / /

- (H) I certify that I am an eligible witness and that the lessor signed this dealing in my presence.
(See note* below).

Certified correct for the purposes of the Real Property Act 1900 by the lessor.

Signature of lessor: SEE ANNEXURE A

Signature of witness:

Name of witness:

Address of witness:

I certify that I am an eligible witness and that the lessee signed this dealing in my presence.
(See note* below).

Certified correct for the purposes of the Real Property Act 1900 by the lessee.

Signature of lessee: SEE ANNEXURE A

Signature of witness:

Name of witness:

Address of witness:

(I) STATUTORY DECLARATION*

I , solemnly and sincerely declare that—

1. The time for the exercise of option to renew/option to purchase in expired lease No. has ended;
and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at in the State of New South Wales on

in the presence of of

☐ Justice of the Peace ☐ Practising Solicitor ☐ Other qualified witness (specify)

who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person *OR* I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months *OR* I have confirmed the person's identity using an identification document and the document I relied on was (*Omit ID No.*)

Signature of witness:

Signature of applicant:

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment.

If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

** s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

Table of Contents

Reference Schedule	5
1. Definitions and Interpretation	7
2. Rent.....	11
3. Fixed Rent Review.....	12
4. Intentionally Deleted	12
5. Intentionally Deleted	12
6. Lessee's Charges	12
7. Assignment and Lease Dealings	13
8. Use of the Premises	14
9. Insurance	18
10. Indemnities	20
11. Compliance with Laws and Requirements	21
12. Maintenance and Repair.....	21
13. Cleaning of Premises.....	22
14. Fire and Essential Services.....	23
15. Lessee's General Covenants and Representations.....	23
16. Alterations to the Premises.....	24
17. Services.....	25
18. Lessor's Obligations	25
19. Lessor's Rights and Reservations	26
20. Default	27
21. Lessor's Obligations on Expiry or Termination	30
22. Lessee's Obligations on Expiry or Termination.....	30
23. Holding Over.....	32
24. Damage and Resumption	32
25. Costs	33
26. Power of Attorney	34
27. Notices	35
28. Intentionally Deleted	35
29. Miscellaneous.....	35
30. Bank Guarantee.....	38
31. Intentionally Deleted	40
32. Security Interest	40
33. FIRB	40
34. Retail Leases Act.....	41
35. Lessee's Fitout Works	41
36. Work Health and Safety	43
37. Governing Law	44

38. GST	44
39. Lessor's Right to Terminate the Lease	45
40. Conservation Management Plan.....	45
41. Renovation Works to Façade of the Building	45
Executed as an Agreement	47

THIS IS ANNEXURE "A" TO THE LEASE BETWEEN THE FINANCIAL SECRETARY INCORPORATED (LESSOR) AND [Insert Lessee's Name](LESSEE)

DATED:

Reference Schedule

Item 1 (clause 1.1)	Premises	The whole of the premises known as Basement and Ground Floor, Hong Kong House, 80 Druitt Street Sydney being part of the land and improvements contained in Certificate of Title Folio Identifier 1/60727
Item 2 (clauses 1.1 & 2.1)	Rent Day	The first day of each month in the Term
Item 3 (clauses 1.1 & 2)	Rent	AUD\$[Insert] per annum (exclusive of utility charges and cleaning cost) plus GST
Item 4 (clause 1.1)	Rent Commencing Date	[INSERT]
Item 5 (clauses 1.1 & 3)	Rent Review Date	On each anniversary of the Commencing Date
Item 6 (clauses 1.1 & 3)	Fixed Increase in Rent	[Insert]
Item 7 (clauses 1.1 & 4)	Intentionally Deleted	
Item 8 (clauses 1.1 & 4)	Intentionally Deleted	
Item 9 (clauses 1.1 & 8.1)	Permitted Use	[Insert]
Item 10 (clause 9)	Public Risk	AUD\$20,000,000.00
Item 11 (clause 14)	Specified Minimum Trading Hours	Not applicable
Item 12 (clause 27)	Address for Service of Notices	Lessor Address: The Financial Secretary Incorporated C/- Government Property Agency 9th Floor, South Tower West Kowloon Government Offices No. 11 Hoi Ting Road Yau Ma Tei, Kowloon Hong Kong, China Contact: Mr Dave Wong Telephone: (852) 3842 6747 Facsimile: (852) 2827 1891

Lessee

[Insert]

Contact:

Facsimile:

Item 13 (clauses 1.1 & 30)	Bank Guarantee	The amount equal to three (3) months' Rent plus GST, being AUD\$[Insert] as at the Commencing Date.
Item 14 (clauses 1.1 & 31)	Intentionally Deleted	
Item 15 (clauses 1.1 & 32)	Intentionally Deleted	
Item 16 (clauses 1.1 & 2.1)	Lessor's Bank Account	Account Name: Hong Kong Economic and Trade Office BSB: 342-011 Account number: 045499-001 Bank: HSBC Bank Australia Limited Branch: 28 Bridge Street, Sydney NSW 2000
Item 17 (clause 28)	Intentionally Deleted	
Item 18 (clause 8.7)	Lessee's Trading Name	[Insert]

1. Definitions and Interpretation

1.1 Definitions

The following words have these meanings in this Lease unless the contrary intention appears.

Act means the *Retail Leases Act 1994* (NSW).

API means The Australian Property Institute (Inc.) (New South Wales Division) or the division in the State or Territory in which the Building is located.

Appurtenance includes any drain, basin, sink, toilet or urinal.

Authority means any government, semi-government, local government, statutory, or public authority or body.

Bank Account means the Lessor's Bank Account referred to in Item 16.

Bank Guarantee means the bank guarantee to be provided including any replacement or additional guarantee under clause 30 for the amount referred to in Item 13.

Building means the building situated on the Land of which the Premises form part.

Building Impact Works are works which occur in or impact on the Common Areas including but not limited to works involving any of the following:

- (a) temporary occupancy or access (to conduct works) outside the Premises;
- (b) isolations to the fire system;
- (c) isolations or connections at any electrical board or panel or communications panel not located in the Premises;
- (d) welding, grinding, cutting;
- (e) roof access;
- (f) the drilling of core holes through walls or slabs;
- (g) the use of dangerous goods or hazardous substances;
- (h) the installation of heavy objects (such as a compactus or safe);
- (i) the removal or modification of the Lessor's assets (such as lighting, sprinklers, ceilings, and air conditioning plant); and
- (j) permission from an Authority in accordance with applicable environmental legislation in order to proceed with the works.

Business Day means any day except Saturday or Sunday or a day that is a public holiday throughout the State in which the Building is located.

Commencing Date means the day the Term begins as referred to on the cover sheet to this Lease.

Common Areas includes the foyers of the Building and the parts of the Land and Building from time to time set aside by the Lessor as areas open to the public, for common use by the occupants and for common amenity or convenience.

Corporations Law means the *Corporations Act 2001* (Cth).

Cost means any reasonable cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid), including where appropriate all rates (including statutory outgoings), all reasonable legal fees (including in-house lawyers charged at their usual rates) on a full indemnity basis or a solicitor/client basis, whichever is the greater and fees of other experts and consultants.

Coverings means blinds, screens, awnings or other window coverings;

Demand includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of rent obligation.

EFT means electronic funds transfer.

Event of Default means each or any of the events set out in clause 20.2.

FIRB means the Foreign Investment Review Board established under the FIRB Act.

FIRB Act means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

FIRB Approval means, in relation to this Lease:

- (a) the approval of FIRB under the FIRB Act or any relevant policy of the Commonwealth Government of Australia;
- (b) a 'no objection notification' from the Treasurer under the FIRB Act; or
- (c) the failure by the Treasurer to make an order within the time specified in the FIRB Act.

Fitout Works means the Lessee's fitting out, renovation and redecoration of the Premises to suit the Permitted Use, to be undertaken by the Lessee in accordance with clause 35.

Fixed Increase in Rent means the rent referred to in Item 6.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999*.

Item means an item of the reference schedule forming part of this Lease.

Land means the land referred to in the title reference described on the cover sheet of the Lease on which the Premises are situated.

Lease means this lease together with any variation or amendment as may be agreed between the Lessor and Lessee in writing.

Lessee means the party described as the Lessee on the cover sheet to this Lease including its executors, administrators and permitted assigns or in the case of a company, its successors and permitted assigns.

Lessee's Business means the business carried on at the Premises in accordance with the Permitted Use.

Lessee's Disclosure Statement means a disclosure statement given by the Lessee to the Lessor in accordance with Section 11A of the Act.

Lessee's Employees and Agents means the Lessee's employees, officers, agents, customers, contractors, service suppliers, sublessees, licensees, concessionaires, invitees and any other person who may at any time be in or upon the Premises with the consent or at the request of the Lessee whether express or implied.

Lessee's Property means all property on the Premises which is not the Lessor's Property including any of the Lessee's trade fixtures, fittings and partitions brought into and installed in the Premises.

Lessee's Trading Name means the name stated in Item 18 as varied from time to time with the Lessor's consent.

Lessor means the party described as the lessor on the cover sheet of this Lease and includes the Lessor, its successors and assigns.

Lessor's Disclosure Statement means a disclosure statement given by the Lessor to the Lessee in accordance with Section 11 of the Act.

Lessor's Property means all finishes, fixtures, fittings, plant, equipment, furnishings and other property the Lessor installs or supplies to the Premises.

Permitted Use means the use referred to in Item 9.

Personal Property has the meaning given to that expression in the PPSA.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPSR means the Personal Properties Securities Register established under the PPSA.

Premises means all or any part of those land and premises referred to in Item 1.

Principal Contractor means a principal contractor for the purposes of WHS Legislation.

Redecorate means:

- (a) washing down the interior of the Premises including partitions and the treating as previously treated of all internal surfaces of the Premises by painting, staining, polishing, repapering or otherwise to a specification approved by the Lessor;
- (b) the steam cleaning of carpets;
- (c) the replacing of all floor coverings and Coverings which, in the Lessor's reasonable opinion, are worn or damaged and in need of replacement with floor coverings and Coverings of a standard not less than that of the floor coverings and Coverings then provided by the Lessor to premises in the Building;

Related Agreement means any document entered into by the Lessor and the Lessee (or parties related to the Lessee) in connection with this Lease.

Rent means the amount referred to in Item 3 on a per annum basis as revised under this Lease from time to time.

Rent Commencing Date means the date referred to in Item 4.

Rent Day means the Rent Commencing Date and, for each month during the Term, the day referred to in Item 2.

Rent Review Date means each date referred to in Item 5.

Safe Work Method Statement means a safe work method statement for the purposes of WHS Legislation.

Safety Data Sheet means a safety data sheet for the purposes of WHS Legislation.

Secured Property means any items of Personal Property included in the Lessor's Property and leased to the Lessee or made available for use by the Lessee under this Lease or any Related Agreement.

Security Interest has the meaning given to that expression in the PPSA.

Services means any services available to or servicing the Premises including power, gas, water and sewerage (but excluding air conditioning, telecommunications, fire prevention services and security system and services).

Term means the period from and including the Commencing Date to and including the Terminating Date.

Terminating Date means the day the Term expires as shown on the cover sheet to this Lease.

WHS Legislation means all work, health and safety legislation and associated regulations, codes or guidelines applicable to the Building and the Premises.

WHS Requirements means all directions, notices, instructions, requirements or code of conduct requirements under the WHS Legislation, whether given by the Lessor or an Authority.

1.2 Interpretation

In this Lease unless the context otherwise requires:

- (a) the singular includes the plural and the plural includes the singular;
- (b) words importing a gender include all genders;
- (c) any covenant, representation, warranty or agreement on the part of two or more persons binds them jointly and each of them and their successors and assigns severally;
- (d) if a period of time is specified from a given day or date, it is to be calculated exclusive of that day or date;
- (e) "includes" (in any form) when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (f) if this Lease prohibits the Lessee from doing anything, then:
 - (i) the Lessee must do everything necessary to ensure that the Lessee's Employees and Agents do not do that thing; and
 - (ii) the Lessee may not allow or cause any person to do that thing;
- (g) headings and the contents page to this Lease have been inserted for convenience and do not affect the interpretation of this Lease;
- (h) a document includes any variation or replacement;
- (i) a law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a person includes a body corporate, an unincorporated association, firm or an authority and including that person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (k) an accounting term is to be interpreted in accordance with approved accounting standards under the Corporations Law and Corporations Regulations and, if not

inconsistent with those accounting standards and that schedule, generally accepted principles and practices in Australia consistently applied by a body corporate or as between bodies corporate and over time;

- (l) a thing (including any amount) includes the whole and each part of it;
- (m) a group of persons includes all of them collectively, any two or more of them collectively and each of them individually;
- (n) a president of a body or authority includes any person acting in that capacity;
- (o) a reference to conduct includes any omission, statement or undertaking, whether or not in writing;
- (p) an Event of Default subsists until it has been waived in writing by, or remedied to the satisfaction of, the Lessor;
- (q) all obligations are taken to be required to be performed duly and punctually;
- (r) unless the context otherwise requires, where the Lessor has a discretion or its consent or approval is required for anything the Lessor must, consistent with its rights and obligations as Lessor, not unreasonably withhold or delay its decision, consent or approval;
- (s) where anything is permitted in an emergency the reasonable opinion of the Lessor as to the existence or non-existence of that state of affairs is conclusive;
- (t) where the day or last day for doing anything or on which an entitlement is due to arise is not a Business Day that day or last day will be the immediately following Business Day;
- (u) month means calendar month; and
- (v) the expression Premises and the respective rights and obligations of the parties shall be determined on the basis that the Premises extend to and include the internal faces of:
 - (i) exterior walls and glass;
 - (ii) internal walls and doors of the cores containing the lifts and stairs;
 - (iii) the Building line of any glass or partitions or walls which separate the Premises from other premises or the Common Areas,

but, for the avoidance of doubt, does not include the roof areas.

2. Rent

2.1 Lessee to pay Rent

- (a) The Lessee must pay to the Lessor during the Term the Rent referred to in Item 3 without any deduction withholding, set-off or counter claim including in respect of any claim for damages or for compensation which the Lessee is or may be entitled to make against the Lessor.
- (b) Rent is payable in equal monthly instalments in advance on each Rent Day. Such monthly instalments must be paid directly into the Lessor's Bank Account referred to in Item 16 or as otherwise directed by the Lessor from time to time.

2.2 Electronic funds transfer

- (a) The Lessor may require the Lessee to pay the Rent by way of EFT.
- (b) Within fourteen (14) days of the Lessor notifying the Lessee that it requires the Rent to be paid by EFT, the Lessee must:
 - (i) inform the Lessor of the details of the Lessee's account from which the Rent is to be paid; and
 - (ii) provide such written authorisations as are required to authorise the transfer of the Rent by EFT.
- (c) The Lessee must not close the Lessee's account nor revoke the authorisation given under clause 2.2(b)(ii) during the Term and any period of holding over without the prior consent in writing of the Lessor.

2.3 Rent for broken periods

If an instalment of Rent is for a period of less than one month, then that instalment is the Rent divided by 365 multiplied by the number of days in that period.

3. Fixed Rent Review

If a Rent Review Date(s) is referred to in Item 5, then the Rent payable from and including each Rent Review Date is the Rent so specified in Item 6.

4. Intentionally Deleted

5. Intentionally Deleted

6. Lessee's Charges

6.1 Lessee to pay charges levied on Premises

The Lessee must pay all separately metered charges to the Premises by any Authorities, in the nature of charges for electricity, gas, oil and water (assessed on a water usage or consumption basis) consumed in the Premises, together with charges in respect of any telephone services connected to the Premises and all other rates, taxes, charges and assessments of any utility provider or Authority for the supply of any service separately supplied to the Premises.

6.2 Additional Charges

In addition to the charges set out in clause 6.1 above, the Lessee must also arrange and pay for the internal cleaning of the Premises by contractors approved by the Lessor.

6.3 Evidence of payment of charges

The Lessee must reimburse the Lessor or produce to the Lessor within seven (7) days of demand evidence of payment of the charges payable under clause 6.1.

7. Assignment and Lease Dealings

7.1 Lease assignment

Subject to clause 7, the Lessee must not assign this Lease without the Lessor's prior written consent. If the Lessee wishes to assign the Lease the Lessee must:

- (a) give the Lessor not less than one (1) month's prior written notice asking for that consent;
- (b) provide the Lessor with such information as the Lessor may reasonably require to be satisfied that the financial resources and retailing skills of the proposed assignee are not inferior to those of the Lessee;
- (c) not be in default under this Lease;
- (d) enter into a deed with the proposed assignee and the Lessor in the form reasonably required by the Lessor;
- (e) have the proposed assignee to give any Bank Guarantee or security and/or procure the giving of any personal guarantee that the Lessor reasonably requires;
- (f) pay to the Lessor within ten (10) Business Days of notice from the Lessor, the Lessor's reasonable costs (including legal costs) and disbursements of and incidental to the proposed assignment (whether or not the assignment proceeds to completion);
- (g) give the proposed assignee a copy of any Lessor's Disclosure Statement given to the Lessee in respect of this Lease together with details of any changes to it since it was given to the Lessee of which the Lessee is or could reasonably be expected to be aware.

7.2 Lessor to provide disclosure statement

The Lessee may request the Lessor to provide a copy of any Lessor's Disclosure Statement provided to the Lessee at the Lessee's request.

7.3 Lessor must approve promptly

The Lessor must advise the Lessee of its approval of or objection to the proposed assignment within 28 days of the Lessee giving its notice requesting consent. Subject to the Lessee complying with clause 7.1, if the Lessor fails to advise the Lessee accordingly, then the Lessor is taken to have consented to the assignment.

7.4 Lessor may refuse approval

The Lessor may refuse its consent to a transfer or assignment of this Lease :

- (a) if the proposed assignee proposes to change the Permitted Use;
- (b) if the proposed assignee has financial resources or retailing skills that are inferior to those of the Lessee;
- (c) if the Lessee has not complied with clause 7.1; or

- (d) if the Lease has been awarded by public tender, if the proposed assignee fails to meet any of the criteria of the tender.

7.5 Lessee's obligations

Prior to any assignment under this clause 7 the Lessee must:

- (a) pay all amounts owing under this Lease; and
- (b) remedy any existing breach or default under this Lease unless the Lessor has expressly waived such breach or default; and
- (c) ensure that the proposed assignee executes a transfer document in a form reasonably required by the Lessor; and
- (d) ensure that any guarantee, indemnity or other security reasonably required by the Lessor is properly provided; and
- (e) comply with and ensure that the proposed assignee complies with all the Lessor's reasonable requirements; and
- (f) pay all the Lessor's reasonable legal or other expenses in connection with the Lessor's consent to the transfer including costs of consideration of the application, investigation, preparation, stamping and registration of all documents; and
- (g) obtain the Lessor's confirmation that it has obtained all required consents it has agreed to obtain.

7.6 Exclusion for listed company

- (a) Where the Lessee is a corporation other than a public company listed on the Australian Stock Exchange (or wholly owned by a public company so listed), a change in more than 50% of the shareholding altering the effective control of the Lessee shall be deemed to be a proposed assignment for the purpose of this Lease.
- (b) The Lessee may not make any change referred to in clause 7.6(a) unless it obtains the Lessor's written approval and complies with clauses 7.1 and 7.5 (except for clauses 7.1(d) and 7.5(c)).

7.7 Lessee not to encumber Lease

The Lessee must not:

- (a) grant a sublease, licence or concession in respect of the whole or any part of the Premises; or
- (b) part with possession of the whole or any part of the Premises (except by assignment under this clause 7); or
- (c) mortgage or otherwise charge or grant any Security Interest or encumber the Lessee's estate or interest in the Lease.

8. Use of the Premises

8.1 Permitted Use

- (a) The Lessee must not use the Premises or any part of the Premises for any purpose other than the Permitted Use.

- (b) The Lessee must obtain, maintain and comply with, at the Lessee's Cost, all consents and approvals required by all relevant Authorities for use of the Premises as the Permitted Use and must not by act or omission cause or permit any consent or approval of any Authority to lapse or be revoked.
- (c) The Lessee acknowledges and agrees that the Premises must not be used for the following trades:
 - (i) Clothing – men's wear, women's wear, local and overseas;
 - (ii) Tourism;
 - (iii) Representative Travel Office (similar work to the Hong Kong Tourism Board of the Hong Kong Special Administrative Region of the People's Republic of China);
 - (iv) Representative Office (similar work to the Hong Kong Economic and Trade Office of the Government of the Hong Kong Special Administrative Region of the People's Republic of China);
 - (v) Regional/area Trade Promotion (similar work to the Hong Kong Trade Development Council of the Hong Kong Special Administrative Region of the People's Republic of China); and
 - (vi) Licensed premises including but not limited to pubs, restaurants and brasseries.
- (d) The Lessee must not use or cause, permit or suffer the use of the Premises or any part thereof for gambling or for any illegal, improper or immoral purposes or for any purposes of whatsoever kind connected or associated in any way which affects the images of the Government of Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong") and the decision and determination of the Lessor as to what constitutes gambling, illegal, improper or immoral purposes and what affects the images of the Government of Hong Kong shall be final, conclusive and binding on the Lessee.
- (e) (i) Notwithstanding anything herein, upon the occurrence of any of the following events, the Lessor may terminate this Lease with immediate effect:
 - (A) the Lessee or its holding company (if any) or any of their officers (including their directors), employees and agents have engaged, or are engaging, or are in the Lessor's reasonable belief to have engaged or to be engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security, or which would otherwise be contrary to the interest of national security, the public interest, public morals, public order or public safety of Hong Kong; or
 - (B) the continuation of this Lease is or shall in the Lessor's reasonable belief be contrary to the interest of national security, the public interest, public morals, public order or public safety of Hong Kong.

For the avoidance of doubts, the word "engage" or its variants in this clause 8.1(e)(i) shall include but not be limited to aiding, abetting, counselling or procuring. The decision of the Lessor to terminate this Lease shall be final, conclusive and binding on the Lessee. The Lessor shall not be required to justify its above mentioned beliefs.

- (ii) Upon exercising the right under clause 8.1(e)(i) hereof and without prejudice to any right of action of the Lessor in respect of any antecedent breach, non-performance or non-observance of any of the terms and conditions to be

performed or observed by and on the part of the Lessee herein contained, this Lease shall cease and determine and the Lessee shall in accordance with the terms and conditions herein contained quit and deliver up vacant possession of the Premises to the Lessor in all respects to the Lessor's satisfaction and upon the exercise of such right no compensation whatsoever shall be payable by the Lessor to the Lessee.

8.2 No representations as to use

The Lessee warrants that:

- (a) it has relied on its own enquiries as to how the Premises may be used and not on any representation or warranty by the Lessor or any person acting on the Lessor's behalf other than as disclosed in the Lessor's Disclosure Statement; and
- (b) it has made its own appraisal of the suitability of the Premises for the Lessee's Business; and
- (c) it is aware of all prohibitions and restrictions applying to the Premises and the approvals, requirements and orders of any Authorities and under any laws.

8.3 Business approvals

The Lessee must obtain, renew on time and comply with the terms of each consent, approval or authorisation necessary to carry on the Lessee's Business.

8.4 Title reservations

The Lessee takes possession of the Premises and this Lease subject to any rights or reservation under any easement, covenant or restriction affecting the title to the Land.

8.5 No Representation by the Lessor

The Lessee acknowledges that:

- (a) the Premises is leased to the Lessee on an 'as is' basis;
- (b) the Lessee is deemed to have accepted the Premises in their state and condition at the Commencing Date;
- (c) the Lessor gives no present or future warranty as to the suitability of the Premises for the Permitted Use;
- (d) it has not relied upon any representation from the Lessor as to how the Premises may be used;
- (e) it has made its own enquiries in relation to the suitability of the Premises for the Lessee's Business and any prohibitions or restrictions on the use of the Premises including legal and zoning restrictions;
- (f) it is not relying on the Lessor to become aware of prohibitions and restrictions applying to the Premises under requirements and orders of any Authorities or laws;
- (g) it has made its own enquiries and obtained independent advice as to all the things that could affect the profitability and value of the Lessee's Business; and
- (h) the Lessor may allow other existing or future occupants of the Building to carry on all or part of the Permitted Use or any other business that may compete with the Lessee's

Business and the Lessee is not entitled to exclusivity or restriction on competition of any kind.

8.6 Safety and security of the Building

- (a) The Lessee must:
 - (i) comply with all orders of the Lessor for the Lessee and the Lessee's Employees and Agents to participate in emergency evacuation procedures and emergency evacuation drills from the Building; and
 - (ii) not make or permit any of the Lessee's Employees and Agents to make any Demand against the Lessor, and the Lessee indemnifies the Lessor against any such Demand, arising from the Lessee's or the Lessee's Employees and Agents participation in any of those procedures or drills.
- (b) The Lessor will use its reasonable endeavours to minimise any disturbance caused to the Lessee in its occupation and use of the Premises in relation to any of those procedures or drills and shall consult with the Lessee in advance in relation to the need for and timing of any such procedures or drills.
- (c) The Lessor may close the Building or any part of it in an emergency or where the Lessor acting reasonably considers such action necessary for the safety of any person or property in the Building and/or on the Land.
- (d) The Lessee:
 - (i) must ensure that all exterior doors and windows in the Premises are securely locked and fastened at all times when the Premises are not occupied; and
 - (ii) authorises the Lessor or any agent or employee of the Lessor to enter the Premises whenever necessary for the purpose of locking any door or window left unlocked or unfastened or do any other reasonable act necessary to secure the Premises.

8.7 Lessee's Trading Name

- (a) The Lessee must:
 - (i) not operate the Lessee's Business under a trade name without the Lessor's prior written consent, which will not be unreasonably withheld; and
 - (ii) obtain the Lessor's consent if the Lessee's wishes to use the name of the Building in its trade name.
- (b) The Lessee warrants that at all times the Lessee's Trading Name is held by it as a registered business name or as its company name and the use of that name is not misleading or deceptive.
- (c) Subject to the Lessee obtaining the Lessor's consent in accordance with clause 8.7(a), if the Lessee's Trading Name includes words which indicate the name of the Building, then:
 - (i) the Lessee must deregister and stop using the Lessee's Trading Name at the end of this Lease; and
 - (ii) must never use that trading name as a trading name for a premises outside the Building.

9. Insurance

9.1 Required insurances

- (a) The Lessee must during the Term insure and maintain at all times and on terms approved by the Lessor in the names of the Lessee, the Lessor and any other person named by the Lessor insurance for:
 - (i) loss or damage in relation to all plant, fixtures, fitting and stock-in-trade in the Premises for an amount not less than their full insurable value on a full replacement and reinstatement basis; and
 - (ii) public liability insurance with respect to the Premises and the Lessee's Business for an amount not less than the amount referred to in Item 10 for any single claim; and
 - (iii) plate glass insurance (which includes the exterior windows of the Premises) in an amount not less than its full insurable replacement and reinstatement value against breakage from any cause whatsoever; and
 - (iv) all other insurances which, in the Lessor's reasonable opinion, the Lessee should effect.
- (b) In respect of the insurance policies under clause 9.1(a) the Lessee must:
 - (i) ensure that each insured person is treated on a separate policy basis but including in each policy a cross liability clause and a waiver of subrogation clause against and in respect of other insured persons; and
 - (ii) provide the Lessor with copies of the policies and certificates of insurance promptly when requested; and
 - (iii) pay each premium before the due date and, when asked by the Lessor, produce receipts for the payments; and
 - (iv) immediately rectify anything which might prejudice any insurance and reinstate the insurance if it lapses; and
 - (v) notify the Lessor immediately when an event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance, or when any policy of insurance is cancelled; and
 - (vi) ensure that the insurance policies:
 - (A) are taken out with a reputable insurance office or company of sound financial standing;
 - (B) include conditions acceptable to or required by the Lessor and the Lessor's insurer;
 - (C) are on an occurrence, not a claims made, basis;
 - (D) contain a provision that the insurance policy cannot be cancelled or avoided without at least 30 days prior notice to the Lessor;
 - (E) are taken out in the name of the Lessee and note the interests of the Lessor;

- (F) state the address of the Premises as being covered under the insurance policy; and
- (G) not include exclusions, endorsements or alterations unless the Lessee has sought and obtained the Lessor's consent.

9.2 Application and settlement of insurances

- (a) The Lessee must obtain the Lessor's approval, which shall not be unreasonably withheld, before the Lessee deals in any way with a claim (including an application, enforcement, settlement or compromise) which is to be made under any insurance policy required under clause 9.1(a).
- (b) Any proceeds of insurance policies received under clause 9.1 must be paid into a separate joint account in the names of the Lessor, the Lessee and any other person nominated by the Lessor.
- (c) If there is any loss or damage to the Premises or to any items insured or in connection with any event insured against by the Lessee, subject to clause 9.2(a), the Lessee must immediately apply for and expend the proceeds of policies under clause 9.1(a) in restoring, replacing or reinstating such loss or damage to the Premises or any such items and to otherwise use the proceeds in settling any claims.
- (d) If the proceeds of insurance policies held under clause 9.1 are insufficient for any of the above purposes, the Lessee must pay the balance out of its own moneys.
- (e) Any surplus must be shared between the account holders having regard to the nature of that party's interest in that item and the effect on them of that event.

9.3 Lessee not to void or affect insurance

The Lessee must not:

- (a) do or permit anything to be done in the Premises which may either render any of the insurances under clause 9.1(a) void or voidable or which may prejudice any insurance or which increases or may increase the premium payable for any insurance in connection with the Premises or property in the Premises; or
- (b) store or use flammable, volatile or explosive substances on the Premises unless their storage or use is required to conduct the Permitted Use, the Lessor is notified of that requirement and the Lessee complies with the Lessor's requirements in connection with their storage and use; or
- (c) without the Lessor's consent vary, cancel or allow to lapse any insurance referred to in clause 9.1(a); or
- (d) do anything which may conflict with any requirements or orders of any Authorities or any law or any insurance policy in connection with the Premises whether effected under this clause 9 or otherwise.

9.4 Compliance with regulations

The Lessee must comply with any insurance or Authority requirements in relation to alarms, fire safety, sprinklers and other fire prevention equipment and anything placed by the Lessee in the Premises.

9.5 Exclusion of Lessor's liability

Except to the extent caused by the wilful or negligent act of the Lessor or its servants or agents:

- (a) all property on the Premises is there at the sole risk of the Lessee and the Lessor has no responsibility or liability for any loss of or damage to the Lessee's Property;
- (b) the Lessor, its servants and agents are not liable for any Demand that the Lessee or the Lessee's Employees and Agents or any person claiming by, through or under the Lessee may incur or make and the Lessee releases the Lessor and its servants and agents from all liability which arises from:
 - (i) any fault in the construction or state of repair of the Premises or the Building or any part of it or the Lessor's Property;
 - (ii) any defect in or failure of any Service or any Appurtenance;
 - (iii) water, air-conditioning or other sources of energy or fuel, or
 - (iv) any other cause;
- (c) the Lessee releases the Lessor and its servants and agents from liability in respect of any:
 - (i) Demand relating to any property of the Lessee or any other person on the Premises or the Building or any part of them; and
 - (ii) damage or injury to any person or property on the Premises or the Building or any part of them.

10. Indemnities

10.1 Lessee indemnifies Lessor

The Lessee is liable for and indemnifies the Lessor against any liability or loss arising from, and any Costs incurred in connection with:

- (a) any damage to the Premises or loss of or damage to anything in it or near it and any injury to or the death of any person caused by any act or omission, negligence or default of the Lessee or of the Lessee's Employees and Agents; or
- (b) any damage (including water overflowing from the Premises) caused by the Lessee or the Lessee's Employees and Agents whether or not the existence of that damage was or ought to have been known to the Lessee; or
- (c) the negligent or careless use of the Building by the Lessee or the Lessee's Employees and Agents; or
- (d) anything the Lessee is required to do under this Lease but which has not been properly done.

10.2 Limit on Lessor's liabilities

- (a) The Lessee agrees that the Lessor is not liable for, and releases the Lessor from, any liability or loss arising from, and all Costs incurred in connection with, any damage to or loss of anything or injury to or the death of any person which is not caused by the negligence or default of the Lessor or an employee or agent of the Lessor.
- (b) Each and every indemnity in this Lease is irrevocable and continuing and is to be construed as a separate and independent obligation on the part of the Lessee through the Term and shall survive expiration, surrender and termination of this Lease.

- (c) The Lessor's rights of entitlement under any indemnity shall be enforceable notwithstanding the Lessor has not incurred any expense.

11. Compliance with Laws and Requirements

11.1 Lessee to comply

The Lessee must comply with all requirements and notices of any Authorities and any law in connection with the Premises, the Lessee's Property and the use or occupation of the Premises.

11.2 Lessee not liable for structural alterations

Despite clause 11.1, in complying with the requirements and notices of any Authorities and any law, the Lessee need not carry out any structural alterations or additions to the Premises except those required because of the default or negligent act or omission of the Lessee or the Lessee's Employees and Agents or because of the nature of the Lessee's Business or the Lessee's use or occupation of the Premises.

12. Maintenance and Repair

12.1 Condition of Premises on Commencing Date

The Lessee acknowledges and takes possession of the Premises in their state of repair, order and condition as at the Commencing Date.

12.2 Lessee must keep Premises in good condition

The Lessee must during the Term:

- (a) maintain, repair and keep the Premises in good and substantial order, repair and condition as first class retail premises excluding reasonable fair wear and tear (including any signs painted, erected or affixed to the exterior of the Premises or to any shop front); and
- (b) keep the Lessee's Property and all other fittings, plant, furnishings and equipment in the Premises clean and in good order, repair and condition; and
- (c) if in the Lessor's reasonable opinion any item of the Lessor's Property is worn or damaged or needs replacement, promptly replace such items including floor coverings, curtains, blinds and other furnishings and decorations which form part of the Lessor's Property with items of the same or similar quality to those in use when they were last replaced or, if they have not been replaced, then in no less condition to the quality of those in use as at the date the Lessee first occupied the Premises or the Commencing Date (whichever is the earlier); and
- (d) if required by the Lessor, promptly rectify defects in and repair damage to the Premises caused by:
 - (i) the default or negligent act or omission of the Lessee or of the Lessee's Employees and Agents; or
 - (ii) any danger created by the Lessee or the Lessee's Employees and Agents whether or not the existence of that danger was or ought to have been known to the Lessee; and
- (e) immediately replace damaged plate glass and other glass in the Premises (including that in exterior show-windows) with glass of the same or similar quality to that in place

when it was last replaced or if it has not been replaced, then in no less condition than those in place as at the date the Lessee first occupied the Premises or the Commencing Date (whichever is the earlier); and

- (f) promptly repair damage caused by the Lessee or the Lessee's Employees and Agents when removing anything in or fixed to the Premises; and
- (g) maintain, protect and immediately repair (or replace with items of the same or similar quality to those in place when they were last replaced or if they have not been replaced, then in no less condition than those in place as at the date the Lessee first occupied the Premises) illuminated signs, heating, lighting and other electrical equipment (including light globes and fluorescent tubes) installed in or on or fixed to the Premises which are damaged or faulty or reasonably suspected by the Lessor to be damaged or faulty.

12.3 Redecoration

The Lessee must Redecorate the Premises within the last six (6) months of the Term, or on determination of this Lease, whichever is the earlier.

12.4 Structural repairs limitation

The Lessee need not carry out work of a capital or structural nature except that which is required because of the default or negligent act or omission of the Lessee or the Lessee's Employees and Agents or because of the nature of the Lessee's Business or the Lessee's use or occupation of the Premises.

12.5 Lessee to notify Lessor of damage

The Lessee must promptly inform the Lessor in writing of any damage to the Premises or of damage to or defective operation of the Services when the Lessee becomes aware of it.

12.6 Lessor may inspect

The Lessor and persons authorised by the Lessor may enter the Premises to inspect the state of repair at reasonable times after reasonable notice. If the Lessor decides that there is an emergency, then the Lessor and persons authorised by the Lessor may enter the Premises at any time without notice.

12.7 Lessor may repair

If the Lessee does not repair any defect as specified and required in any notice given under this Lease, the Lessor may enter from time to time to carry out the required repairs and the cost of those repairs will be paid by the Lessee to the Lessor on demand.

13. Cleaning of Premises

13.1 Cleaning of Premises

The Lessee must:

- (a) keep the Premises, and within a distance of one metre of the Premises, clean and tidy and free of refuse and vermin; and
- (b) comply with any of the Lessor's reasonable directions in connection with cleaning and refuse disposal; and
- (c) remove wet refuse from the Premises daily; and

- (d) remove other refuse from the Premises regularly; and
- (e) store refuse before removal so that it cannot be seen from the Premises.

14. Fire and Essential Services

The Lessee must:

- (a) comply with the law, the reasonable requirements of the Lessor and the requirements of any relevant Authorities about fire safety and fire prevention for the Premises including any particular requirements which result from the Lessee's particular use of the Premises;
- (b) pay to the Lessor the Lessor's cost of any installation, alterations to or servicing of the sprinklers, hydrants, hose reels, extinguishers, fire alarm systems, fire detection or fire suppression systems or related equipment which is necessary because the Lessee does not comply with this clause 14; and
- (c) maintain any fire services, equipment or systems installed in the Premises at the Lessee's cost in accordance with requirements of all laws and Authorities and obtain all required certifications or periodic compliance statements for the services, equipment or systems.

15. Lessee's General Covenants and Representations

15.1 Lessee's covenants

The Lessee must:

- (a) carry on the Lessee's Business in a proper and efficient manner; and
- (b) observe the maximum floor loading weights for the Premises and not do anything which may cause damage to the Premises; and
- (c) keep the Premises and the signs in them lit:
 - (i) at times notified by the Lessor, and
 - (ii) whether or not the Premises are open for trading; and
- (d) securely lock all exterior doors and windows in the Premises when the Premises are not occupied. The Lessee authorises the Lessor or any agent or employee of the Lessor to enter the Premises whenever necessary to lock doors or windows or for other purposes relating to the security of the Premises; and
- (e) provide to the Lessor copies of keys, access cards or any other security access device from time to time necessary to enter the Premises to enable the Lessor to exercise its rights under this Lease; and
- (f) permit persons having an estate or interest in the Premises superior to or concurrent with the Lessor's to exercise the Lessor's or that other person's rights and otherwise perform their obligations in connection with the Premises; and
- (g) promptly pay to the Lessor when asked to do so, the cost of replacing any key, access card or similar device which is damaged or lost by the Lessee or any of the Lessee's Employees and Agents; and

- (h) promptly when asked to do so by the Lessor, do everything necessary for the Lessee to do to enable the Lessor to exercise its rights under clause 19.6.

15.2 Lessor's consent

The Lessee may not without the Lessor's prior written approval (which may be given or withheld at the Lessor's absolute discretion):

- (a) do anything in or about the Premises (despite any consent given by the Lessor under this Lease) which in the reasonable opinion of the Lessor is noxious, offensive, audibly or visually a nuisance; or
- (b) obstruct access to or overload the Services; or
- (c) use the facilities in or about the Premises for any purpose other than that for which they were constructed; or
- (d) place anything in the toilets, urinals, drains, basins or sinks which they were not designed to receive; or
- (e) fix or place any banner, signs, name, notice or advertisement or other thing to the outside of or outside the Premises or to the inside surfaces of the windows of the Premises or outside the Building of which the Premises form part; or
- (f) fix blinds or awnings to the outside of the Premises or blinds to the inside of the windows or doors of the Premises; or
- (g) fix shop fittings in the Premises; or
- (h) damage the Premises except so far as is reasonably necessary to fix or place signs, notices, advertisements, blinds, awnings or shop fittings approved by the Lessor; or
- (i) install or operate vending or amusement machines, in the Premises; or
- (j) hold auction, bankrupt or fire sales in the Premises; or
- (k) use the Premises as a residence; or
- (l) keep an animal or bird on the Premises.

16. Alterations to the Premises

16.1 No alterations without consent

The Lessee may not make any alteration or addition to the Premises or the Lessee's Property without the Lessor's prior written consent.

16.2 Alterations to comply

In carrying out alterations or additions the Lessee must obtain all necessary approvals and comply with the requirements of all Authorities and all laws.

16.3 Alteration works

Any alterations or additions carried out by the Lessee must be completed within a reasonable time and:

- (a) in accordance with plans and specifications required and previously approved by the Lessor; and
- (b) by contractors approved by the Lessor (which approval may not be unreasonably withheld); and
- (c) in a proper and workmanlike manner using materials of a quality and standard approved by the Lessor; and
- (d) each contractor must keep current a contractors all risk policy; and
- (e) the Lessee must pay the Lessor's reasonable costs in considering the Lessee's submissions for the alterations or additions and the reasonable fees of any consultants engaged by the Lessor; and
- (f) the Lessee must obtain and deliver to the Lessor copies of certificates of compliance issued by relevant authorities; and
- (g) the Lessee must ensure that all work carried out by it or on its behalf is carried out at times and in a manner which causes no damage or nuisance to and which minimises disturbance and inconvenience to others occupying or using the Building. The Lessee must comply with the Lessor's directions in that respect.

17. Services

17.1 Services

- (a) The Lessee has satisfied itself as to the availability of any Services to the Premises.
- (b) The Lessee may not stop or reduce payments under this Lease or terminate this Lease because of non-availability, interruption or failure in the supply of any Service.
- (c) Subject to any provisions of the Act which may apply, the Lessor is not liable for any loss or damage caused by reason of any Service not being available, interrupted or not properly working.

18. Lessor's Obligations

18.1 Quiet enjoyment

The Lessee may hold the Premises during the Term without interference by the Lessor subject to:

- (a) the rights of the Lessor under this Lease; and
- (b) the Lessee complying with all its obligations under this Lease.

19. Lessor's Rights and Reservations

19.1 Rights

The Lessor may in its absolute discretion and at any time:

- (a) carry out any works on or in the Premises or the Building with respect to the supply of any Services to the Premises if the Lessor takes reasonable steps (except in the case of an emergency) to minimise interference to the Lessee's Business; and
- (b) add to, renovate, alter or rebuild the Premises or the Lessor's Property.

19.2 Alterations and refurbishing

The Lessor may not alter or refurbish the Premises if this is likely to adversely affect the Lessee's Business, unless the Lessor has given the Lessee at least two (2) months' notice provided that where carrying out such alterations or refurbishment in an emergency, then the Lessor must give the maximum period of notice that is reasonably practicable in the circumstances.

19.3 No compensation payable

The Lessee is precluded from making any claim for compensation for any loss or damage suffered by the Lessee as provided in section 34 of the Act and the Lessor is exempted from any liability for compensation if the likelihood of the occurrence was specifically drawn to the Lessee's attention in the Lessor's Disclosure Statement, in writing, before this Lease was entered into.

19.4 Entry and view

The Lessee must allow the Lessor or any person authorised by the Lessor to enter the premises at all reasonable times (except in the case of an emergency at any time) for the following purposes:

- (a) to view the Premises to determine whether the Lessee is complying with the obligations under this Lease; and
- (b) to carry out anything which the Lessor may or must do under this Lease.

19.5 Prospective lessees or purchasers

The Lessee must allow after reasonable notice, and at reasonable times, the Lessor to:

- (a) enter the Premises to show prospective agents, purchasers, investors, analysts or lessees through the Premises; and
- (b) display for a reasonable time from the Building or on the Land a sign indicating that the Building is or the Premises are available for purchase or lease.

19.6 Lessor may deal with the Land

Subject to clause 18, the Lessor may grant easements or other rights over the Land or the Premises to any person on any terms and for any purpose.

19.7 Change of Lessor

If the Lessor transfers or deals with its interest in the Land so that another person becomes the lessor, the Lessor shall be released from any further obligation under this Lease arising after it ceases to be Lessor.

19.8 Benefit of Lessee's covenants

If a person (other than the Lessor) becomes entitled to receive the Rent either by operation of law or otherwise, the Lessee agrees that that other person shall have the benefit of all covenants and agreements on the part of the Lessee under this Lease and the Lessee will enter into such covenants with that person as the Lessor may reasonably require.

19.9 Agents

The Lessor may appoint agents or others to manage the Premises and exercise any of its rights or perform any of its duties under this Lease. Any communications from the Lessor shall override those from the agents or others in the case of any inconsistency.

19.10 Lessor may rectify

After giving the Lessee reasonable notice, the Lessor may do anything which the Lessee should have done under this Lease but which it has not done or which the Lessor considers it has not done properly at the Lessee's cost.

19.11 External walls

The Lessor reserves the right to use the roof and external walls of the Premises including the right to erect and display advertising signs.

20. Default

20.1 Essential terms

- (a) Each obligation to pay money (including Rent) and the following terms are essential and fundamental terms of this Lease and the breach, non-observance or non-performance of any one or more of those covenants in each case is a fundamental breach by the Lessee of an essential term of this Lease:
 - (i) Clause 7 (Assignment and Lease dealings);
 - (ii) Clause 8 (Use of the Premises);
 - (iii) Clause 9 (Insurance);
 - (iv) Clause 12 (Maintenance and repair);
 - (v) Clause 16 (Alterations to the Premises);
 - (vi) Clause 20.2 (Event of Default); and
 - (vii) Clause 30 (Bank Guarantee).
- (b) This clause 20.1 does not prevent any other obligation under this Lease from being or becoming an essential term of this Lease.

20.2 Event of Default

- (a) An Event of Default occurs if:
 - (i) the Lessee indicates by an act or omission that it does not intend to be bound under this Lease; or
 - (ii) the Lessee fails to comply with an essential or fundamental term of this Lease; or
 - (iii) the Lessee does not comply with any of its obligations under this Lease (which are not essential or fundamental terms) and if, in the reasonable opinion of the Lessor, the non-compliance can be remedied and the non-compliance is not remedied within a reasonable time after the Lessor gives the Lessee notice to remedy it; or
 - (iv) a judgment, order or any encumbrance on the Lessee's interest under this Lease is enforced, or becomes enforceable, or can be rendered enforceable by the giving of notice, lapse of time or fulfilment of any conditions, against the Lessee's interest in this Lease or any other property used in connection with the Lessee's Business; or
 - (v) if the Lessee abandons or vacates the Premises; or
 - (vi) If the Lessee is a natural person and the Lessee becomes bankrupt, commits an act of bankruptcy or has their estate brought within the operation of any law relating to bankruptcy; or
 - (vii) if the Lessee is a company:
 - (A) the Lessee becomes insolvent within the meaning of subsection 95A(2) of the Corporations Law; or
 - (B) a liquidator, provisional liquidator, controller, receiver, receiver and manager or administrator is appointed in respect of any part of the Lessee.
- (b) The Lessee must ensure that no Event of Default occurs.
- (c) If an Event of Default occurs then the Lessor may:
 - (i) terminate this Lease by re-entering the Premises with or without notice, but if notice is required by law, then with notice;
 - (ii) terminate this Lease by notice to the Lessee;
 - (iii) convert this Lease by notice to the Lessee into a tenancy which may be terminated at the will of the Lessor but not of the Lessee;
 - (iv) institute proceedings against the Lessee; and/or
 - (v) treat the Event of Default as the Lessee's repudiation of this Lease.
- (d) The Lessee shall be liable for and indemnifies the Lessor against any liability or loss arising from, and any costs incurred or the Lessor reasonably anticipates to incur in connection with an Event of Default including all reasonable legal costs and expenses whether incurred before or after termination of this Lease.

- (e) Subject to the Lessor reasonably mitigating its loss if an Event of Default occurs or any other breach of this Lease and as a consequence this Lease is terminated, then the Lessee is liable and indemnifies the Lessor against any liability or loss arising from, and any costs incurred:
 - (i) in connection with the Lessee's breach of this Lease; and
 - (ii) because the Lessor will not receive the benefit of the Lessee performing its obligations under this Lease from the date of that termination until the Terminating Date; and
 - (iii) in connection with anything else relating to that termination including any action by the Lessor attempting to mitigate its loss.
- (f) The benefit of the Lessee performing its obligations referred to in clause 20.2(e)(ii) is to be calculated on the assumption that this Lease continues in force until the Terminating Date and having regard to the provisions in this Lease relating to rent.
- (g) If, because of an Event of Default, this Lease is converted to a tenancy referred to in clause 20.2(c)(iii) and the Lessor terminates that tenancy, then that termination is taken to be a termination as a consequence of the Event of Default which entitled the Lessor to convert this Lease to a tenancy at will.
- (h) The indemnities under clauses 20.2(d) and 20.2(e) are not affected by:
 - (i) the Lessor having first converted this Lease into a lease which may be terminated at the will of the Lessor but not of the Lessee; or
 - (ii) the Lessor re-entering the Premises or otherwise terminating this Lease; or
 - (iii) the Lessor accepting the Lessee's repudiation; or
 - (iv) the Lessee abandoning or vacating the Premises.

20.3 Interest on overdue money

If any Rent or other moneys payable by the Lessee under this Lease remain unpaid for seven (7) days after their due date then the Lessee must pay to the Lessor interest on those moneys at the rate equivalent to the current maximum overdraft rate for the time being charged by the Commonwealth Bank plus 3% per annum determined at and calculated from the due date for payment of those moneys to the date of payment and the Lessor may recover those moneys and/ or that interest with all costs incurred in such recovery as if the same were Rent in arrears.

20.4 Events after termination

- (a) Money tendered by the Lessee after the termination of this Lease and accepted by the Lessor may be applied by the Lessor in fulfilment of the Lessee's obligations under the Lease.
- (b) The acceptance of Rent or other money under this Lease by the Lessor is not a waiver of any preceding breach or waiver of any acceptance of the repudiation of this Lease by the Lessee.
- (c) Any attempt by the Lessor to mitigate its loss is not a surrender by operation of law or a waiver of the Lessee's breach or an acceptance of the Lessee's repudiation of this Lease.

21. Lessor's Obligations on Expiry or Termination

21.1 Lessor's obligations on expiry or termination

- (a) This clause 21 applies if there are no particulars of a new Lease referred to in Item 17 or if this Lease is not the subject of an agreement to renew or extend the Term.
- (b) Not less than six (6) months and not more than twelve (12) months before the Terminating Date (unless the Term is twelve (12) months or less, in which case the periods of twelve (12) months and six (6) months are shortened to six (6) months and three (3) months respectively), the Lessor must give the Lessee a notice either:
 - (i) offering the Lessee a renewal of this Lease or an extension of the Term on terms (including terms as to rent) set out in the notice; or
 - (ii) informing the Lessee that the Lessor does not offer a renewal or an extension.
- (c) If the Lessor offers a renewal or an extension under clause 21.1(b)(i), then the Lessee must either accept or reject that offer within one (1) month after the Lessor makes it. If the Lessee does neither in that period, then the offer is taken to be not accepted.
- (d) If the Lessor fails to give a notice as required by clause 21.1(b), the Term is extended until the end of six (6) months after the Lessor gives the notice which it was required to give under clause 21.1(b) but only if the Lessee requests the extension in a notice to the Lessor before this Lease would have otherwise expired.
- (e) During any extension of the Term under clause 21.1(d), the Lessee may terminate the Lease by giving not less than one (1) months' notice of termination in writing to the Lessor.
- (f) If the Term is extended under this clause 21, then except in clause 21.1(b), "Terminating Date" means the last day of the extended Term.

22. Lessee's Obligations on Expiry or Termination

22.1 Lessee to vacate

The Lessee must vacate the Premises in accordance with this clause 22 on the earlier of the Terminating Date or sooner determination of this Lease.

22.2 Lessee to give vacant possession

- (a) The Lessee must:
 - (i) remove all fixtures and fittings and partitioning installed by the Lessee;
 - (ii) paint any area of the Premises that are marked, stained or chipped as the result of the removal of the Lessee's Property by the Lessee or its suppliers or customers;
 - (iii) replace any light globes which are not functioning at the termination of the Lease;
 - (iv) clean all internal and external glass; and
 - (v) clean all carpeted areas and dust throughout.

- (b) The Lessee must remove the Lessee's Property from the Premises on or before the day when the Premises must be vacated under clause 22.1 and must reinstate the Premises to its state and condition (including without limitation, configuration of the Premises) immediately prior to the date on which the Lessee first occupied the Premises and repair and make good any damage caused by such reinstatement unless directed otherwise in writing by the Lessor and shall repair and make good any plant and equipment belonging to the Lessor and being under the care and maintenance of the Lessee pursuant to this Lease.
- (c) The Lessee must at its own expense remove all signs, advertisements, names, notices or other distinctive marks made or installed by the Lessee from the Premises and must reimburse any disbursements caused by such removal.
- (d) The Lessee must return to the Lessor all keys, access cards and similar devices for the Premises held by the Lessee, the Lessee's Employees and Agents and any other person on the day the Lessee must vacate the Premises.
- (e) The Premises must be left in the same condition that the Premises were in when the Lessee first occupied the Premises, subject to fair and reasonable wear and tear.

22.3 Lessee's Property not removed

- (a) If after expiry or termination of this Lease the Lessee has not complied with clause 22.2, then the Lessor may give the Lessee a notice that the Lessor requires the removal of the Lessee's Property from the Premises within seven (7) days.
- (b) The Lessor may treat the Lessee's Property as abandoned and deal with it in any way it sees fit, at the Lessee's expense, if the Lessee does not:
 - (i) comply with the Lessor's notice on time; or
 - (ii) remove all Lessee's Property within the time provided for in the notice given under this clause 22.
- (c) The Lessee's Property is at the Lessee's risk at all times.

22.4 Delivery up of Premises

If the Lessee fails to deliver up possession of the Premises in accordance with its obligations under this clause 22, the Lessor may demand and recover from the Lessee in addition to any amount of Rent and other sums or damages due and payable under this Lease, a sum for use and occupation calculated at the same rate provided for in clause 23.1(b) up to and including the date when the Lessee delivers up full vacant possession of the Premises to the Lessor in the manner required under this Lease.

22.5 Evidence of Lessee's payments

Prior to vacating the Premises, the Lessee must provide to the Lessor evidence to the reasonable satisfaction of the Lessor of payment of all amounts due and payable by the Lessee under the Lease, to any Authority or utility service provider.

22.6 Indemnities for removal damage

The Lessee will be liable for and indemnifies the Lessor against:

- (a) damage caused to the Premises by the removal of the Lessee's Property; and

- (b) any liability or loss arising from, and any costs, incurred in connection with the Lessor acting under this clause 22 or as a result of the Lessee not complying with its obligations under this clause 22.

23. Holding Over

23.1 Holding over

If the Lessee remains in the Premises after the Terminating Date with the express or implied consent of the Lessor then:

- (a) the Lessee shall be under a monthly tenancy subject to the provisions of this Lease so far as they apply to a monthly tenancy; and
- (b) the monthly rent will be one twelfth of the Rent payable immediately prior to the expiration of the Term increased by 1.5%; and
- (c) either party may terminate the monthly tenancy on at least one (1) month's written notice to the other party expiring on any day.

24. Damage and Resumption

24.1 Damage

- (a) If the Premises are damaged so that they cannot be used under this Lease or are inaccessible due to that damage, the Lessee is not liable to pay Rent or any other amount payable to the Lessor under this Lease for the period that the Premises cannot be used or are inaccessible.
- (b) If the Premises are still useable under the Lease but their useability is diminished due to the damage, the Lessee's liability for Rent and any other amounts payable under this Lease are reduced in proportion to the reduction in useability caused by the damage.
- (c) If the Lessor notifies the Lessee in writing that the Lessor considers that the damage is such as to make its repair impracticable or undesirable, the Lessor or the Lessee may terminate this Lease by giving not less than seven (7) days' notice in writing to the other and no compensation is payable in respect of that termination.
- (d) If the Lessor fails to repair the damage within a reasonable time after the Lessee requests the Lessor in writing to do so, the Lessee may terminate the Lease by giving not less than seven (7) days' notice in writing of termination to the Lessor.
- (e) Clauses 22.1, 22.2, 22.3 and 22.4 do not affect any right of the Lessor to recover damages from the Lessee in respect of any damage or destruction to which those clauses apply.
- (f) This clause 24 does not affect any rights the Lessor may have if:
 - (i) the damage is caused by or contributed to by the Lessee or the Lessee's Employees and Agents; or
 - (ii) rights under any insurance policy in connection with the Premises are prejudiced or policies cancelled or payment of a premium or claim is refused by the insurer because of the act, negligence or default of the Lessee or of the Lessee's Employees and Agents.
- (g) The Lessor is not obliged to restore or reinstate the Premises.

- (h) Clauses 24.1(a) and (b) do not apply if the Lessee or the Lessee's Employees and Agents caused or contributed to the damage.

24.2 Resumption of Premises

- (a) If any part of the Premises is resumed and the residue of the Premises remains substantially fit for the occupation and use of the Lessee and remains wholly or substantially accessible, having regard to the nature and location of the Premises and the normal means of access, then the Lessee's liability to pay the Rent is reduced in proportion to the reduction in the Lessee's useability of the Premises.
- (b) If:
 - (i) the whole of the Premises are resumed; or
 - (ii) part of the Premises is resumed so that the residue of the Premises is wholly or substantially unfit for the occupation and use by the Lessee or is wholly or substantially inaccessible, having regard to the nature and location of the Premises and the normal means of access,

then either party may terminate this Lease by giving reasonable notice to the other party.

24.3 Liability

Neither the Lessor nor the Lessee is liable to the other because of the termination of this Lease under clauses 24.1 or 24.2 and that termination will be without prejudice to the rights of either party in respect of any preceding breach or non-observance of this Lease.

24.4 Dispute

- (a) Any dispute arising under clauses 24.1 or 24.2 is to be determined by an appropriate independent person who is:
 - (i) agreed between the Lessor and the Lessee; or
 - (ii) if the Lessor and the Lessee cannot agree, a member of a professional body appointed by the President of the API at the request of either the Lessor or the Lessee or both (**Appointed Person**).
- (b) The Appointed Person:
 - (i) must have substantial experience in relation to premises of a similar type within the area, or other comparable area, in which the Premises are located; and
 - (ii) in making his or her determination acts as an expert and not as an arbitrator.
- (c) The determination of the Appointed Person is final and binding on the parties.
- (d) The Cost of the determination of the Appointed Person is borne by either or both of the parties (and if by both of the parties in the proportion between them) as the Appointed Person decides.

25. Costs

25.1 Costs

- (a) The Lessee must pay stamp duty payable on this Lease and all registration fees.

- (b) Except to the extent set out in clause 25.1(a) and (c), each party will bear its own legal costs incurred in the preparation or entering into of this Lease.
- (c) Except where prohibited by the Act, the Lessee must pay on the demand the Lessor's reasonable legal and other Costs of and incidental to:
 - (i) any amendment to this Lease requested by the Lessee;
 - (ii) an application for consent, even if consent is not given;
 - (iii) an assignment, sublease or dealing with this Lease, even if the dealing does not proceed;
 - (iv) a surrender or termination of this Lease other than by expiry on the Terminating Date;
 - (v) an application for Lessor's mortgagee's consent;
 - (vi) any variation of this Lease requested by the Lessee;
 - (vii) preparation of any lease plan; or
 - (viii) the Lessee's failure to observe any term of this Lease including in connection with the contemplated or actual enforcement or preservation of any rights under this Lease, waiver, variation, release, surrender or discharge.

26. Power of Attorney

26.1 Power of attorney

- (a) The Lessee irrevocably appoints the Lessor its attorney to act at anytime after the Lessor has the power to terminate this Lease for breach and the power to re-enter has become exercisable.
- (b) The attorney may:
 - (i) in the name of the Lessee or the attorney do anything which the Lessee may lawfully authorise an attorney to do in connection with this Lease or the Premises or which in the attorney's opinion is necessary or expedient to surrender, transfer or request removal of this Lease from the NSW Land and Registry Services register or recover the full benefit of possession of the Premises and to otherwise give effect to any right, power or remedy conferred on the Lessor by this Lease, by law or otherwise, (including executing deeds and instituting, conducting and defending legal proceedings); and
 - (ii) delegate its powers (including this power of delegation) to any person for any period and may revoke a delegation; and
 - (iii) exercise or concur in exercising its powers even if the attorney has a conflict of duty in exercising its powers or has a direct or personal interest in the means or result of that exercise of powers.
- (c) The Lessee must ratify anything done by the attorney or its delegate in accordance with clause 26.1(b).

27. Notices

27.1 Notices

- (a) A notice, approval, certificate, consent or other communication in connection with this Lease:
 - (i) must be in writing unless expressly specified otherwise in this Lease; and
 - (ii) must be left at the address of the addressee or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the address which is referred to in Item 12 or if the addressee notifies another address or facsimile number, then to that address or facsimile number.
- (b) Unless a later time is specified in it, a notice, approval, consent or other communication takes effect from the time it is received.
- (c) A letter or facsimile is taken to be received:
 - (i) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting; and
 - (ii) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was transmitted in its entirety to the facsimile number of the recipient notified for the purpose of this clause before close of business on that day and if after close of business on the next Business Day following in the place of receipt.

28. Intentionally Deleted

29. Miscellaneous

29.1 Certificate

A certificate signed by the Lessor, Lessor's agent or its solicitors about a matter or about a sum payable to the Lessor in connection with this Lease is sufficient evidence of the matter or sum stated in the certificate unless the matter or sum is proved to be false.

29.2 Exercise of rights

The Lessor may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by the Lessor does not prevent a further exercise of that or an exercise of any other right, power or remedy. Failure by the Lessor to exercise or delay in exercising a right, power or remedy does not prevent its exercise. The Lessor is not liable for any loss caused by the exercise, attempted exercise, failure to exercise or delay in exercising a right, power or remedy whether by reason of the Lessor's negligence or otherwise.

29.3 Waiver and variation

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

29.4 **Supervening legislation**

Any present or future legislation which operates to vary the obligations of the Lessee in connection with this Lease with the result that the Lessor's rights, powers or remedies are adversely affected (including, without limitation, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

29.5 **Approvals and consent**

The Lessor may give conditionally or unconditionally or withhold its approval or consent in its reasonable discretion unless this Lease expressly provides otherwise.

29.6 **Remedies cumulative**

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.

29.7 **Set-off**

At its sole discretion the Lessor may set off and apply (without notice) any surplus amounts (including any credit balance) held for whatever reason by the Lessor towards satisfaction of any amount then payable by the Lessee under this Lease.

29.8 **Further assurances**

If asked by the Lessor, then the Lessee must at its own expense:

- (a) execute and cause its successors to execute documents and do everything else necessary or appropriate to bind the Lessee and its successors under this Lease; and
- (b) use its best endeavours to cause relevant third parties to do likewise to bind every person intended to be bound under this Lease.

29.9 **Exclusion of statutory provisions**

- (a) The covenants, powers and provisions implied by virtue of sections 84, 84A, 85 and 86 of the *Conveyancing Act 1919* (NSW) do not apply to this Lease.
- (b) In this Lease words used in any of the form of words in the first column of Part 2 of Schedule 4 to the *Conveyancing Act 1919* (NSW) shall not imply any covenant under section 86 of that act.
- (c) To the extent permitted by law, the application to the Lease of any laws whether State or Federal having the effect of extending the Term, reducing or postponing the payment of Rent or otherwise affecting the operation of the terms of this Lease is expressly excluded and negated.

29.10 **Easement**

- (a) The Lessor may for the purpose of:
 - (i) the provision of public or private access to the Premises;
 - (ii) rectifying any encroachment;
 - (iii) the support of structures in the future erected on or from adjoining land; or
 - (iv) any Service,

dedicate land or transfer, grant or create or take the benefit of any easement or other right to or from, or enter into any arrangement or agreement with, any owners, tenants or occupiers or others having an interest in any land (including the Land) near the Premises or with any Authority (under any valid and enforceable requirement of that Authority) as the Lessor thinks fit.

- (b) This Lease will be taken to be subject to that easement or other right as envisaged by this clause 29.10, and the Lessee will promptly upon request by the Lessor confirm to the NSW Land Registry Services or other relevant Authority its consent to that easement or other right.
- (c) In exercising its rights under this clause 29.10, the Lessor must not substantially or permanently derogate from the Lessee's rights under this Lease.

29.11 Entire agreement

This Lease (together with any annexures) constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

29.12 Building Manager

- (a) The Lessor may appoint such person to manage the Building on such terms as the Lessor thinks fit.
- (b) The Lessee acknowledges that if there is an inconsistency between any communications received from the Lessor and the Building Manager, the communications from the Lessor prevail.

29.13 Confidentiality

- (a) The parties must keep confidential and not disclose to any other person the contents of this Lease and all other documents and information made available to the parties in the course of the negotiation and performance of this Lease.
- (b) This provision does not apply to any disclosure:
 - (i) agreed to in writing by the other parties;
 - (ii) required by law or by any applicable stock exchange listing rules;
 - (iii) to solicitors, or other professional advisers under a duty of confidentiality;
 - (iv) to a bank or other financial institution for the purpose of raising funds or maintaining compliance with credit arrangements;
 - (v) to any other consultant of a party who signs a confidentiality agreement in favour of the other parties; or
 - (vi) effected by registration of this Lease.

29.14 Severability

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Lease without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

29.15 Continuation of Guarantees and Indemnities

- (a) Each guarantee and indemnity contained in this Lease is a continuing obligation, separate and independent from the other obligations and survives the expiry or termination of this Lease.
- (b) It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Lease.

29.16 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this Lease,expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 11:59 pm on the specified day, it is taken to have been done on the following Business Day.

29.17 Preservation of existing rights

The expiration or termination of this Lease does not affect any right that has accrued to a party before the expiration or Terminating Date.

29.18 Relationship of parties

Unless otherwise stated:

- (a) nothing in this Lease creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

29.19 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this Lease.

30. Bank Guarantee

30.1 Lessee to provide Bank Guarantee

- (a) If there is an amount referred to in Item 13, the Lessee must provide the Bank Guarantee as security for the due and punctual performance by the Lessee of the Lessee's covenants, conditions and other terms under this Lease.
- (b) The Bank Guarantee must:
 - (i) be an unconditional and irrevocable bank guarantee from an Australian bank approved by the Lessor;
 - (ii) be in favour of "The Hong Kong Economic and Trade Office";

- (iii) be taken out in the name of the Lessee;
 - (iv) state that the bank guarantee is security for the Lessee's obligations under the Lease of the Premises and include the address of the Premises; and
 - (v) not have an expiry date.
- (c) The Lessee must give the Bank Guarantee to the Lessor on the earlier of when the Lessee:
- (i) takes possession of the Premises; and
 - (ii) delivers this Lease, executed by the Lessee except the Lessor, to the Lessor.

30.2 Calling up the Bank Guarantee

- (a) The Bank Guarantee is security for the due and punctual observance and performance of the Lessee's obligations under this Lease and any other agreement in relation to this Lease.
- (b) If the Lessee has breached any term or covenant under this Lease (including any extension or holding over), whether the Lease is registered or not, then the Lessor may in its discretion and at any time call on the Bank Guarantee and apply any money received towards money (including damages) payable by the Lessee in connection with this Lease as the Lessor determines.
- (c) The Lessor may call and the bank is entitled to pay under the Bank Guarantee without reference to the Lessee and despite any contrary objection, claim or direction by the Lessee or any other party. The Lessor and Lessee agree that it is not a precondition to the exercise of the Lessor's rights under this clause 30.2(c) that a Court determines whether an actual breach has occurred.
- (d) Any appropriation of the Bank Guarantee by the Lessor will not waive the Lessee's breach and will not prejudice any other right of the Lessor arising from such breach.
- (e) If the Lessor calls on the Bank Guarantee or the Rent is increased, the Lessee must, no later than seven (7) days after the Lessor gives notice asking for it, provide the Lessor with a replacement or additional Bank Guarantee so that the amount guaranteed is equal at all times and is adjusted as may be necessary to reflect the amount referred to in Item 13.
- (f) The Bank Guarantee will remain in full force and effect until the due performance and observance by the Lessee of all of its obligations under this Lease.

30.3 Replacement Bank Guarantee

If the Lessor requires a replacement bank guarantee due to a loss of the original Bank Guarantee by the Lessor or a change in the Lessor's name or the Lessor transfers the Premises, the Lessee must provide a replacement bank guarantee to the Lessor or the new Lessor within 14 days of such request. The Lessee must pay the costs of any replacement bank guarantee under this clause.

30.4 Expiry or termination of Lease

The Lessor may call on the Bank Guarantee after the Terminating Date and notwithstanding that this Lease has been terminated.

31. Intentionally Deleted

32. Security Interest

32.1 Lessee's Acknowledgement

The Lessee acknowledges that:

- (a) rights pursuant to this Lease constitute or may constitute a Security Interest, and that the Lessor has a Security Interest in respect of the Secured Property;
- (b) the Lessor may register any Security Interest on the PPSR; and
- (c) the Lessor will not enforce its rights under the PPSA in respect of the Secured Property unless the Lessee is in default of this Lease; and
- (d) the Lessee must provide any information requested by the Lessor for the purpose of enabling the Lessor to register any Security Interest.

32.2 Notices

The Lessee waives its right to receive notices from the Lessor of:

- (a) a verification statement under s157 of the PPSA;
- (b) the removal of an accession under s95 of the PPSA;
- (c) a decision by the Lessor to enforce its Security Interest pursuant to a land law decision under s118 of the PPSA;
- (d) a proposal to dispose of Secured Property under s130 of the PPSA;
- (e) a statement of account under s132(3)(d) and 132(4) of the PPSA; and
- (f) any proposal of the Lessor to retain Secured Property under s135 of the PPSA.

32.3 Waiver

The Lessee waives its right to redeem Secured Property under s142 of the PPSA and to reinstate this agreement under s143 of the PPSA.

33. FIRB

33.1 Lessee's Warranty

- (a) The Lessee represents and warrants to the Lessor that the Lessee is not required to obtain FIRB Approval in respect of this Lease.
- (b) The warranty in clause 33.1 (a) is an essential term of this Lease, a breach of which entitles the Lessor to terminate this Lease.
- (c) The Lessee acknowledges that the Lessor has entered into this Lease in reliance on the warranty in clause 33.1 (a).

- (d) The Lessee indemnifies the Lessor against any Demand suffered or incurred by the Lessor in connection with or arising from a breach of the warranty in clause 33.1 (a).

34. Retail Leases Act

34.1 Lessee's Warranty

The Lessee represents and warrants to the Lessor that the Act applies to this Lease.

34.2 Lessee's acknowledgment

The Lessee acknowledges and warrants that it has received from the Lessor in accordance with the Act:

- (a) at the commencement of negotiations:
 - (i) a copy of the proposed lease; and
 - (ii) a copy of a retail tenancy guide (if any) prescribed by the Regulations to the Act; and
- (b) at least seven (7) days before this lease was entered into, a disclosure statement in the form and containing the information prescribed by the Act, which it read and understood.

35. Lessee's Fitout Works

35.1 Lessee's Fitout Works

This clause 35 applies in the event the Lessee carries out Fitout Works. The Lessee must comply with the obligations set out below:

- (a) The standard of design and construction of the Fitout Works must be equivalent to that of a first class retail operation for the Permitted Use within premises equivalent in size to the Premises.
- (b) The Fitout Works must be in accordance with the Lessor's reasonable requirements and the design plans and specifications for the Fitout Works must be approved by the Lessor prior to commencement of the Fitout Works. The Lessee shall submit fitting out proposals to the Lessor for approval no later than seven (7) Business Days prior to the commencement of the Fitout Works.
- (c) The Lessee will be liable for and must obtain at its own cost all approvals required by law or from any Authorities (including the local council) for the Fitout Works and the Permitted Use before commencing any part of the Fitout Works.
- (d) The Fitout Works must proceed to completion in a regular and diligent manner as quickly as possible to complete the Fitout Works in accordance with all the requirements of the Lessor (including without limitation the Plan referred to in clause 40) and of any Authority (including the local council) and in accordance with all laws.
- (e) The Fitout Works must be carried out by qualified and experienced contractors and tradesmen approved by the Lessor before commencement of any part of the Fitout Works in a proper and workmanlike manner using new materials. In carrying out the Fitout Works the Lessee must do all things reasonably necessary to ensure the Lessee's Employees and Agents promptly obey and comply with any directions of the Lessor (including any direction to cease any works) and act in a manner which does

not cause any inconvenience, loss or damage to any other tenant, customer or persons within or connected with the Premises.

- (f) The Lessee must at its own cost remove from the Premises all rubbish, debris, waste and garbage resulting from the Fitout Works on a daily basis or at any other time where directed by the Lessor.
- (g) If any alterations or additions are required to the fire sprinklers, electrical systems, plumbing, drainage or other plant and equipment or any other service or utility forming part of the base building works within the Premises as a result of the Fitout Works then such work must be carried out at the cost of the Lessee and at the direction of the Lessor. Such work must be carried out by contractors nominated by the Lessor.
- (h) During the course of carrying out the Fitout Works, the Lessee must immediately make good any damage resulting to the Premises or to any other property whether arising directly or indirectly from the Fitout Works and the Lessee will be liable for and indemnifies the Lessor in respect of all liability, loss, injury, damage or claim caused by or arising out of anything done or omitted to be done by the Lessee or the Lessee's Employees and Agents in carrying out the Fitout Works or in any way caused as a result of the Fitout Works .
- (i) The Lessee must on completion of the Fitout Works advise the Lessor of such completion and permit the Lessor to inspect the Premises for the purposes of obtaining the Lessor's acknowledgment that the Fitout Works have been completed.
- (j) The Lessee acknowledges that any carpet installed in the Premises by the Lessee shall become the property of the Lessor upon expiry or termination of this Lease, without any compensation whatsoever to the Lessee.
- (k) The Lessee must provide to the Lessor evidence of the following insurance policies which must be taken out by the Lessee and note the Lessor as an interested party:
 - (i) a public risk insurance policy in the amount not less than AUD\$20 million for any one event or occurrence or such amount as may be reasonably required from time to time covering the liability of the Lessee to pay compensation in respect of bodily injury (including death and illness) and damage to property as a result of any occurrence in connection with the Fitout Works and the Lessee's or the Lessee's Employee's and Agents' occupation of the Premises, Building or Land;
 - (ii) a contractor's all risk policy in a form acceptable to the Lessor covering the Fitout Works for the full replacement value;
 - (iii) a worker's compensation insurance policy in accordance with relevant legislation for all workers whom the Lessee may at any time be responsible to pay workers' compensation; and
 - (iv) insurance covering such other risks as the Lessor may reasonably require.
- (l) The Lessee must provide to the Lessor:
 - (i) acknowledgments signed by the Lessee's contractors and its subcontractors that they have agreed to be bound by the building site conditions provided to them by the Lessor; and
 - (ii) any documents from the Lessee's contractors and sub-contractors reasonably required by the Lessor in respect to the WHS Legislation and WHS Requirements.

- (m) The Lessee shall be responsible for all reasonable costs (including legal costs) incurred by the Lessor in connection with matters under this clause 35.
- (n) The Lessee must otherwise comply with the requirements of clause 16.3 in relation to the Fitout Works.

36. Work Health and Safety

- (a) The Lessee acknowledges that the Lessee is the relevant duty holder under the WHS Legislation with responsibility for all health and safety matters in connection with any work performed in connection with the Lessee's use of the Premises, other than in relation to the matters set out in clauses 36(c) and 36(d).
- (b) The Lessee acknowledges that the Lessor has no control or influence over health and safety matters in connection with the Lessee's use of the Premises, other than in relation to the matters set out in clauses 36(c) and 36(d).
- (c) The Lessee must not proceed with any Building Impact Work without:
 - (i) providing the Lessor with at least 48 hours' notice (including a description of the scope of the work) of the intention to commence any Building Impact Work;
 - (ii) providing the Lessor with information relevant to the Building Impact Work requested, which may include any or all of the following:
 - (A) permits to be completed prior to commencement;
 - (B) detailed drawings;
 - (C) specialist/consultant design/ specifications;
 - (D) Safety Data Sheets;
 - (E) Safe Work Method Statements or safety plans;
 - (F) the verification of insurances and licences;
 - (iii) ensuring that a person engaged by the Lessee either to perform or to supervise the performance of the Building Impact Works has undertaken the Lessor's induction program; and
 - (iv) receiving approval from the Lessor prior to proceeding with the Building Impact Works.
- (d) The Lessee must ensure that the Lessee's Employees and Agents who enter into the Building are briefed in the Lessor's emergency evacuation requirements.
- (e) The Lessee must provide appropriate information, training, instruction and supervision to all persons who may be affected by the conduct of its business or undertaking at the Building, including any workers employed or engaged by it, or who otherwise undertake work for its benefit, or at its direction, at the Premises.
- (f) The Lessee must comply with (and ensure that any person acting on its behalf, including any workers employed or engaged by it, complies with) all WHS Legislation and WHS Requirements.

- (g) The Lessee must consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter, including the Lessor where relevant.
- (h) The Lessee must fulfil, or engage a competent person to fulfil, the responsibilities of a Principal Contractor, where those obligations arise under WHS Legislation in connection with the Lessee's use of the Premises. The Lessee is authorised (or its nominee, if another person has been engaged under this subclause, is authorised) to the extent applicable, to have management or control of the Premises and discharge the responsibilities of a Principal Contractor.
- (i) The Lessor will not be responsible for the provision of any safety training or inductions, other than to persons engaged directly by the Lessor or as set out in clauses 36(c)(3) and 36(d).

37. Governing Law

37.1 Governing law

The construction, validity and performance of this Lease shall be governed in all respects by the law of New South Wales.

38. GST

38.1 In this Lease:

- (a) words or expressions which are defined in the GST Law have the same meaning, except where the context suggests otherwise;
- (b) any part of a supply which is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) is treated as a separate supply;
- (c) references to GST payable and to input tax credit entitlement include GST payable by, and input tax credit entitlement of, the representative member for a GST group of which the entity is a member; and
- (d) references to something done (including a supply made) by a party includes something done by any entity through which that party acts.

38.2 All consideration for a supply made under or in connection with this Lease is exclusive of GST, unless specified to be GST inclusive.

38.3 Where a party (**Supplier**) makes a taxable supply under or in connection with this Lease, the recipient will pay to the Supplier an amount equal to the amount of GST payable on the supply (**GST Amount**) at the same time as the recipient first provides consideration for that supply, unless the consideration is specified to be GST inclusive.

38.4 Where clause 38.3 applies, the Supplier must deliver a tax invoice to the recipient of the supply no later than the time at which the GST Amount for that supply is to be paid.

38.5 If an adjustment event occurs in relation a taxable supply for which a GST Amount was paid under clause 38.3:

- (a) and the GST Amount properly payable varies from that paid, the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the recipient. The amount paid, refunded or credited is taken to form part of the GST Amount should a subsequent adjustment event occur; and

- (b) the Supplier must deliver an adjustment note to the recipient as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- 38.6 Where a party is required to reimburse or indemnify another party under this Lease, the reimbursement or indemnity payment will be reduced by an amount equal to the amount of the payee's input tax credits entitlement on the outgoing, expense or loss which is to be reimbursed or indemnified.
- 38.7 This clause 38 does not merge on termination of this Lease.

39. Lessor's Right to Terminate the Lease

39.1 Lessor's right to terminate the Lease

The Lessee acknowledges and agrees that if the Lessee or the Lessee's Employees and Agents are convicted, or are found to have been convicted, of an offence under:

- (a) Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong);
- (b) any subsidiary legislation made thereunder; or
- (c) any law of a similar nature,

in connection with the tenancy given to the Lessee under this Lease or the Lessee's Business, then it will be deemed an Event of Default and the provisions of clause 20 apply.

40. Conservation Management Plan

40.1 Conservation Management Plan

- (a) The Lessee acknowledges that the Building is the subject of Conservation Management Plan Issue A – November 2003 (Plan).
- (b) The Lessee must comply with the Plan.

41. Renovation Works to Façade of the Building

41.1 Definitions

For the purposes of this clause 41, **Renovation Works** means the renovation works to the façade of the Building.

41.2 Renovation Works

- (a) The Lessee acknowledges and agrees that:
 - (i) as at the date of the Lease, the Lessor is carrying out the Renovation Works;
 - (ii) the nature and scope of the Renovation Works has been disclosed to the Lessee in writing prior to this Lease being entered into;
 - (iii) the Renovation Works are scheduled to be completed on or around September 2024;

- (iv) works associated with the Renovation Works may potentially impact on the Premises including but not limited to the following:
 - (A) the Renovation Works may emit noise, dust, vibration, and other similar effects as a result of the Renovation Works taking place;
 - (B) the Lessor may erect hoardings and scaffolding around the Premises and maintain those hoardings while the Renovation Works are being carried out which may partially obstruct the shopfront to the Premises;
- (v) the Lessee has satisfied itself as to the nature of the Renovation Works and the associated disturbance and loss of amenity the Renovation Works will have on the Lessee's use of, and trade from, the Premises.
- (b) The Lessee must:
 - (i) allow the Lessor and its contractors access to the Premises at all reasonable times required by the Lessor in order to undertake the Renovation Works; and
 - (ii) comply the Lessor's reasonable directions in relation to the Renovation Works and access to the Premises.

41.3 Lessee not to object

To the maximum extent permitted by law, the Lessee agrees that:

- (a) the Lessee will not make any claim for any loss or damage that occurs as a direct or indirect result of the Renovation Works;
- (b) the Lessee will not make any claim for compensation for disturbance, including but not limited to any claimed noise disturbance or loss of access to the Premises as a direct or indirect result of the Renovation Works; and
- (c) the Lessee releases the Lessor from any claim, action or liability for any loss or damage suffered by the Lessee in connection with the Renovation Works, including in relation to any adversely affected trading potential of the Premises caused by obstruction to the shopfront / window / natural lighting or disruption to access to the Premises or noise created or other disturbance brought about by the Renovation Works.

(End of the page)

Executed as an Agreement

Executed by the Lessor

SEALED with the official seal of **THE**)
FINANCIAL SECRETARY)
INCORPORATED and **Signed and**)
Delivered by Mr TONG King-chung, the)
Chief Property Manager of Government)
Property Agency, to whom the power of)
execution has been delegated by the)
Financial Secretary in accordance with)
section 4 of the Financial Secretary)
Incorporation Ordinance, Cap. 1015 of)
the Laws of Hong Kong Special)
Administrative Region of the People's)
Republic of China in the presence of:)

Signature of Witness

Signature of Authorised Representative

Full Name of Witness

Print Full Name

Address of Witness

Witness certification:

By signing above, I certify that:

- (i) I am an eligible witness (as defined in section 117 of the *Real Property Act 1900*); and
- (ii) I have known the signatory for more than 12 months or I have taken reasonable steps to ensure their identities.

Executed by the Lessee

EXECUTED by **[Insert Tenant's name and**)
ACN] in accordance with its Constitution:)
Authority: Section 127 of the)
Corporations Act 2001)
)

Signature
Director/Secretary

Signature
Director

Print Full Name

Print Full Name

Section 117 of the Real Property Act 1900 requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

Lessor/Landlord	THE FINANCIAL SECRETARY INCORPORATED C/- Government Property Agency, 9 th Floor, South Tower, West Kowloon Government Offices, No.11 Hoi Ting Road, Yau Ma Tei, Kowloon, Hong Kong, China
Lessee/Tenant	[Insert]
Premises	Basement and Ground Floor, Hong Kong House, 80 Druitt Street, Sydney NSW 2000

KEY DISCLOSURE ITEMS

Note. If the terms “landlord” and “tenant” are substituted for “lessor” and “lessee” in this form, they have the same meanings as “lessor” and “lessee” have, respectively, in the *Retail Leases Act 1994*.

1	Annual base rent under the lease (See item 10.1)	First year: AUD\$[Insert] per annum (exclusive of utility charges and cleaning cost) plus GST
2	Is rent based on turnover payable by the lessee in year 1? (See item 12)	☐ Yes ☒ No
3	Total estimated outgoings and promotion and marketing costs for the lessee in year 1 (See Part 5 and Part 6)	Not applicable
4	Term of the lease (See item 5)	5 years
5	Estimated commencement date of the lease (See item 5.1)	[Insert]
6	Estimated handover date of the premises (See item 7.1)	[Insert]
7	Does the lessee have an option to renew for a further period? (See item 6)	☐ Yes ☒ No
8	Does the lease provide the lessee with exclusivity in relation to the permitted use of premises? (See item 2.2)	☐ Yes ☒ No

PART 1 PREMISES

1 Premises details

1.1 Street address of premises <i>[Insert street address of premises and, as applicable, shop number, name of the building/centre in which the premises are located, street address of the building/centre]</i>	Basement and Ground Floor, Hong Kong House, 80 Druitt Street, Sydney NSW 2000																														
1.2 Plan of premises (if available) <i>[Insert description of premises by reference to a prepared plan. Attach the plan to this disclosure statement as per item 33.1]</i>	See plans drawing Nos. GPA OB53045-1 and GPA OB53045-2																														
1.3 Lettable area of the premises Will a survey be conducted?	Approximately 271.1m² (Ground Floor: GLAR 135.6m², Basement: NLA 135.5m²) ☐ Actual ☒ Estimate ☐ Yes ☒ No																														
1.4 Existing structures, fixtures, plant and equipment in the premises, provided by the lessor (excluding any works, fit out and refurbishment described in Part 3) <i>[Select as appropriate]</i>	<table border="0"> <tr> <td>☐ air conditioning</td> <td>☐ plastered walls</td> </tr> <tr> <td>☐ cool room</td> <td>☐ shop front</td> </tr> <tr> <td>☐ floor coverings</td> <td>☐ sink</td> </tr> <tr> <td>☐ grease trap</td> <td>☐ sprinklers</td> </tr> <tr> <td>☐ hot water service</td> <td>☐ suspended ceilings</td> </tr> <tr> <td>☐ lighting</td> <td>☐ telephone</td> </tr> <tr> <td>☐ mechanical exhaust</td> <td>☐ water supply</td> </tr> <tr> <td>☐ painted walls</td> <td>☐ waste</td> </tr> <tr> <td colspan="2">☐ electrical distribution load (3 phase)</td> </tr> <tr> <td colspan="2">☐ electrical distribution load (single phase)</td> </tr> <tr> <td colspan="2">☐ separate utility meter - gas</td> </tr> <tr> <td colspan="2">☐ separate utility meter – water – to be installed</td> </tr> <tr> <td colspan="2">☐ separate utility meter - electricity</td> </tr> <tr> <td colspan="2">☐ other</td> </tr> <tr> <td colspan="2">Nil</td> </tr> </table>	☐ air conditioning	☐ plastered walls	☐ cool room	☐ shop front	☐ floor coverings	☐ sink	☐ grease trap	☐ sprinklers	☐ hot water service	☐ suspended ceilings	☐ lighting	☐ telephone	☐ mechanical exhaust	☐ water supply	☐ painted walls	☐ waste	☐ electrical distribution load (3 phase)		☐ electrical distribution load (single phase)		☐ separate utility meter - gas		☐ separate utility meter – water – to be installed		☐ separate utility meter - electricity		☐ other		Nil	
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☐ electrical distribution load (single phase)																															
☐ separate utility meter - gas																															
☐ separate utility meter – water – to be installed																															
☐ separate utility meter - electricity																															
☐ other																															
Nil																															
1.5 Services and facilities provided by the lessor for the benefit of the premises (for example security services, cleaning)	Nil																														

2 Permitted use

2.1 Description of permitted use <i>[Note: the lessee should investigate if the proposed use of the premises is permitted under planning laws]</i>	[Insert] The Premises must not be used for the following: (i) Clothing – men’s wear, women’s wear, local and overseas; (ii) Tourism; (iii) Representative Travel Office (similar work to the Hong Kong Tourism Board of the Hong Kong Special Administrative Region of the People’s Republic of China); (iv) Representative Office (similar work to the Hong Kong Economic and Trade Office of the Government of the Hong Kong Special Administrative Region of the People’s Republic of China); (v) Regional/area Trade Promotion (similar work to the Hong Kong Trade Development Council of the Hong Kong Special Administrative Region of the People’s Republic of China); and (vi) Licensed premises including but not limited to pubs, restaurants and brasseries.
2.2 Is the permitted use described in item 2.1 exclusive to the lessee?	☐ Yes ☒ No

3 Number of car parking spaces

3.1 Approximate total spaces	Nil
3.2 Available spaces for customers of the building/centre	Nil
3.3 Reserved spaces for use of the lessee only	Nil

4 Head lease

4.1 Is the premises under a head lease or Crown lease?	☐ Yes ☒ No
4.2 Has the lessor provided a copy of the head lease or Crown lease to the lessee?	☐ Yes – attached at item 33.2 ☐ No ☒ Not applicable

4.3	Current term under the head lease or Crown lease and option/s to renew <i>[List any options for further terms held by the lessor under the head lease]</i>	☒ Not applicable ☐ Details of head lease as follows: Current term: / / 20 to / / 20 Options to renew: years / / 20 to / / 20
4.4	Is the head lessor's consent to the lease required?	☐ Yes ☐ No ☒ Not applicable

PART 2 TERM OF LEASE AND OPTION/S TO RENEW LEASE

5 Term of lease

5.1	Date lease commences (see also date of handover at item 7)	[Insert]
5.2	Length of term	5 years
5.3	Date lease expires (based on the date indicated at item 5.1 as the date the lease commences)	[Insert]
5.4	Early Termination	The Lessor may immediately terminate the Lease upon the occurrence of any of the following events: (i) the Lessee or its holding company (if any) or any of their officers (including their directors), employees and agents have engaged, or are engaging, or are in the Lessor's reasonable belief to have engaged or to be engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security, or which would otherwise be contrary to the interest of national security, the public interest, public morals, public order or public safety of Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong"); or (ii) the continuation of the Lease is or shall in the Lessor's reasonable belief be contrary to the interest of national security, the public interest, public morals, public order or public safety of Hong Kong.

6 Option/s to renew lease

6.1 Option/s to renew lease	☐ Yes – See item 6.2 ☒ No		
6.2 Option/s details	Length of option	Period of Option	Exercise date
<i>[List all options to renew lease]</i>	/ / 20 to / / 20	years	/ / 20 to / / 20
	to		to
	/ / 20 to / / 20		/ / 20 to / / 20

PART 3 WORKS, FIT OUT AND REFURBISHMENT**7 Date of handover**

7.1 Date of handover (If different to the date the lease commences indicated at item 5.1)	The date the lease commences.
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8 Lessor's works

8.1 Description of works to be carried out by the lessor before the date the lease commences <i>[exclude any works that form part of the lessee's fit out at item 9]</i>	Not applicable
8.2 Estimate of expected contribution by the lessee towards the cost of the lessor's works <i>[see also outgoings (item 14) in relation to any maintenance and repair outgoings]</i>	Not applicable

9 Lessee's fit out works

9.1 Fit out works to be carried out by the lessee (excluding the lessor's works at item 8)	The premises are to be fitted out as first class retail premises appropriate for its permitted use. The fitout works must be sympathetic to the building containing the premises. The lessee must obtain all necessary approvals and comply with the requirements of all relevant authorities and all relevant legislation. The lessee must obtain the lessor's approval (which must not be unreasonably withheld) before carrying out the fitout of the premises. The lessee acknowledges and agrees that: (a) the fitout must be in accordance with the lessor's reasonable requirements and the design plans and specifications for the fitout must be approved by the lessor prior to commencement of the fitout. The lessee shall submit fitting out proposals to the lessor for approval no later than 7 business days prior to the commencement of the fitout; (b) the lessor may approve the proposed works subject to the lessor's conditions as stated in the Lease and the lessee must undertake its works in accordance with the terms of the Lease; and (c) the lessee must also redecorate the shop in accordance with the terms of the Lease. A conservation management plan applies to the building which contains the premises (Conservation Management Plan). The lessee is alerted to sections 4.6 to 4.8 and 6 of the Conservation Management Plan.
9.2 Is the lessor providing any contribution towards the cost of the lessee's fit out?	☐ Yes ☒ No
9.3 Does the lessor have requirements as to the quality and standard of shop front and fit out?	☒ Yes –see item 9.1 above. ☐ No

PART 4 RENT

10 Annual base rent

10.1 Starting annual base rent (ie. when the lease commences)	AUD\$[Insert] per annum (exclusive of utility charges and cleaning cost) plus GST
10.2 Rent free period [Describe any rent free period]	Nil
10.3 Date of rent commencement	The Commencing Date of the Lease.

10.4 How rent payments are to be made? <i>[Insert description of how rent is paid – eg by equal monthly instalments in advance on the first day of each month, other than the first and last payments which is calculated on a pro-rata basis]</i>	Rent is payable by equal monthly instalments on the first day of each month.
---	--

11 Rent adjustment (rent review)

11.1 Rent adjustment date(s) and adjustment method <i>[Insert a list of all rent adjustment dates and adjustment methods – eg. fixed increase by X%, fixed increase by \$X, current market rent, indexed to CPI]</i>	On each anniversary of the commencement date, the Rent will increase as follows: [Insert]
---	---

12 Rent based on turnover

12.1 Is rent based on turnover payable by the lessee? [Note: the lease must specify the method by which a rent based on turnover is to be determined]	☐ Yes <i>[Insert method of calculating the turnover rent]</i> ☒ No
12.2 If a rent based on turnover is not required to be paid, does the lessor require the lessee to provide details of turnover?	☐ Yes ☒ No

PART 5 OUTGOINGS

13 Contribution by lessee towards lessor's outgoings

13.1 Is the lessee required to pay or contribute to the lessor's outgoings?	☐ Yes – fixed amount [per annum/other period] of \$ ☒ No
13.2 Describe any period during which the lessee is not required to pay outgoings	The Term of the Lease
13.3 Date on which payment of outgoings is to commence	Not applicable

13.4 Formula(e) for apportioning outgoings or determining lessee's contribution to the total outgoings for the building/centre: <i>[Insert formula(e)]</i>	Not applicable
14 Outgoings that the lessee is required to pay or contribute towards: <i>[Provide estimates for whichever of the following outgoings the lessee is liable to pay or contribute to. Estimates are for the first 12 months of the lease or, if the lease is for less than 12 months, for the term of the lease]</i>	Not applicable, other than the cost of utility services consumed at the Premises (including but not limited to electricity, gas, oil, water, telephone, internal cleaning, removal of trade waste).
14.1 Administration Administration costs (excluding management fees and wages): Audit fees: Management/Management fees:	\$ Not applicable \$ \$
14.2 Air conditioning/temperature control Air conditioning maintenance: Air conditioning operating costs:	\$ Not applicable \$
14.3 Building/centre management Body corporate/strata levies: Building intelligence services: Customer traffic flow services: Energy management services: Gardening and landscaping: Insurance: Pest control: Ventilation:	\$ Not applicable \$ \$ \$ \$ \$ \$ \$ \$

14.4 Building/centre security	
Caretaking:	\$ Not applicable
Emergency systems:	\$
Fire levy:	\$
Fire protection:	\$
Security services:	\$
Fire Monitoring	\$ Not applicable
Telephone line/fire line	\$ Not applicable
Fire System (repair and maintenance)	\$ Not applicable
Emergency Training	\$ Not applicable
14.5 Cleaning (common areas/Building)	
Cleaning consumables:	\$ Not applicable
Cleaning costs (excluding consumables):	\$
Window cleaning	\$ Not applicable
14.6 Communications	
Post boxes:	\$ Not applicable
Public telephones:	\$
14.7 Customer facilities	
Car parking:	\$ Not applicable
Child minding:	\$
Escalators:	\$
Lifts:	\$
Uniforms:	\$
14.8 Customer information services	
Information directories:	\$ Not applicable
Public address/music:	\$
Signage:	\$
14.9 Government rates and charges	
Local government rates and charges:	\$ Not applicable
Water sewerage and drainage rates and charges:	\$
Land tax:	\$
14.10 Repairs	
Repairs and maintenance:	\$ Not applicable
Sinking fund for repairs and maintenance:	\$
[Note: Under section 23 of the Retail Leases Act 1994, the lessor may not recover the capital costs of the building/centre from the lessee]	

14.11 Utility services Electricity: Gas: Oil: Water:	\$ As consumed \$ As consumed \$ As consumed \$ As consumed
14.12 Waste management Sewerage disposal: Waste collection and disposal:	\$ Not applicable \$ As consumed
14.13 Other outgoings <i>[list]</i> Miscellaneous	
14.14 Total estimated outgoings for the building/centre	
14.15 Formula for determining lessee's share of the total outgoings for the building/centre	Not applicable
14.16 Total estimated lessee contribution to outgoings	The cost of utility services consumed at the Premises.

PART 6 OTHER COSTS

15 Advertising and promotional costs

15.1 Is the lessee required to contribute towards advertising and promotional costs (including marketing fund contributions) for the building/centre?	☐ Yes ☒ No
15.2 Lessee's contribution to advertising and promotional costs per annum	☒ Not applicable ☐ Yes –contribution per annum is \$ Actual / Estimate ☐ Yes –contribution per annum is ## % of the rent (excluding GST) payable from time to time ☐ Yes – <i>[insert details of lessee's contribution per annum and how this is determined]</i>

16 Other monetary obligations and charges

16.1 Outline any costs arising under the lease including up-front costs or other costs not part of the outgoings and not referred to elsewhere in this disclosure statement:

[eg interest and legal costs]

- ☒ Interest
- ☒ Legal Costs – in respect of any costs permitted under the Retail Leases Act;
- ☒ Registration Fees
- ☐ Survey Fees
- ☒ Other:
 - Bank guarantee in the amount of 3 months' rent plus GST in accordance with the Lessor's requirements.
 - All rates, taxes and charges incurred by the Lessee for supply for any service to the premises.
 - Lessor's costs in considering the Lessee's requests and granting a consent.
 - The cost of any services the Lessee requires which have been paid for by the Lessor and for which the Lessor provides to the premises.
 - Lessee's costs of complying with all laws and making available to the Lessor all required certificates and licences.
 - On expiry or termination of the Lease, the costs associated with vacating, reinstating and yielding up the Premises.
 - Damages as a consequence of the Lessee's breach of any provisions of the Lease, including the cost of indemnities in favour of the Landlord.
 - For everything the Lessee is required to do under the Lease.

Note: the list above is not an exhaustive list and the Lessee may be required to make other payments in some circumstances.

PART 7 ALTERATION WORKS (INCLUDING RENOVATIONS, EXTENSIONS, REDEVELOPMENT, DEMOLITION)

17 Alteration works

17.1 Are there any alteration works, planned or known to the lessor at this point in time, to the premises or building/centre, including surrounding roads, during the term or any further term or terms?

☒ Yes - see below

☐ No

As at the date of this disclosure statement, renovation works to the building façade are being carried out with hoardings and/or scaffolding erected during the tender period (**Renovation Works**).

The Renovation Works are scheduled to be completed in around September 2024 and the hoardings and/or scaffolding are expected to be removed before commencement of the lease.

In the event that the Renovation Works are not completed before the commencement of the lease, the Lessee acknowledges and agrees that:

- works associated with the Renovation Works may potentially impact on the Premises including but not limited to the following:

	○ the Renovation Works may emit noise, dust, vibration, and other similar effects as a result of the Renovation Works taking place; ○ the hoardings and scaffolding erected around the Building during the period which the Renovation Works are being carried out may partially obstruct the shopfront to the Premises; ● the Lessee has satisfied itself as to the nature of the Renovation Works and the associated disturbance and loss of amenity the Renovation Works will have on the Lessee's use of, and trade from, the Premises. The Lessee must: ● allow the Lessor and its contractors access to the Premises at all reasonable times required by the Lessor in order to undertake the Renovation Works; and ● comply the Lessor's reasonable directions in relation to the Renovation Works and access to the Premises. The Lessee agrees that: ● the Lessee will not make any claim for any loss or damage that occurs as a direct or indirect result of the Renovation Works; ● the Lessee will not make any claim for compensation for disturbance, including but not limited to any claimed noise disturbance or loss of access to the Premises as a direct or indirect result of the Renovation Works; and ● the Lessee releases the Lessor from any claim, action or liability for any loss or damage suffered by the Lessee in connection with the Renovation Works, including in relation to any adversely affected trading potential of the Premises caused by obstruction to the shopfront / window / natural lighting or disruption to access to the Premises or noise created or other disturbance brought about by the Renovation Works.
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18 Clauses in lease dealing with relocation and demolition works

18.1 Clause(s) in lease providing for relocation of lessee:	☐ Clause(s) ☒ Not applicable
18.2 Clause(s) in lease providing for demolition of the premises	☐ Clause(s) ☒ Not applicable

PART 8 TRADING HOURS

19 Core trading hours relevant to lessee

To be confirmed - The Lessee is to provide the Lessor with its preferred core trading hours, which the Lessor will approve if they are suitable for the Premises (acting reasonably).

Monday	As permitted by law and in accordance with development consent (where applicable).
Tuesday	
Wednesday	
Thursday	
Friday	
Saturday	Not applicable
Sunday	Not applicable
Public holidays	Not applicable

20 Lessee access to premises outside core trading hours

20.1 Is the lessee permitted to access the premises and building/centre outside core trading hours?	☒ Yes –24 hours a day, 7 days a week subject to any Council or authority restrictions or requirements ☐ No
---	--

PART 9 RETAIL SHOPPING CENTRE DETAILS

~~Note. This Part must only be completed if the premises are in a retail shopping centre as defined in section 3 of the Retail Leases Act 1994.~~

~~21 Retail shopping centre details~~

~~21.1 Total number of shops~~	
~~21.2 Gross lettable area of the centre~~	

~~22 Annual turnover of the shopping centre~~

~~22.1 Annual estimated turnover (where collected):~~	
~~22.2 Annual estimated turnover for specialty shops, (where collected)~~	
~~Food~~	
~~Non food~~	
~~Services~~	

23 Major/anchor lessees

23.1 Major/anchor lessees and lease expiry dates: <i>[list all major and anchor lessees (eg department stores, discount department stores, supermarkets) and the dates on which leases held by those lessees expire]</i>	
---	--

24 Floor plan and tenancy mix

24.1 Floor plan showing tenancy mix, common areas, common area trading, kiosks and major lessees:	☒ Yes ☐ No
24.2 Does the lessor assure the lessee that the current tenant mix will not be altered by the introduction of a competitor?	☐ Yes ☒ No

25 Customer traffic flow information

25.1 Does the lessor collect customer traffic flow information?	☒ Yes ☐ No
---	--

26 Casual mall licensing for common areas

26.1 Do you adhere to the Shopping Centre Council of Australia's Casual Mall Licensing Code of Practice?	☐ Yes ☒ No
--	--

PART 10 OTHER DISCLOSURES

27 Other disclosures

27.1 Are there any current legal proceedings in relation to the lawful use of the premises or building/centre?	☐ Yes – <i>[provide details]</i> ☒ No
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28 Representations by lessor

28.1 Any other representations by the lessor or the lessor's agent: <i>[Lessor to insert details of any other oral or written representations made by the lessor or the lessor's agent]</i>	The Lessor has not given any warranty in relation to exclusivity of use or limitations on competing uses, and gives no warranty as to the suitability of the Premises for the Permitted Use. The Base Rent and any other payments due to the Lessor do not include GST. In addition to paying those amounts, the Lessee is to pay to the Lessor any GST on those amounts. The Lessor may wish to carry out alterations and renovations to the Building from time to time during the term of the lease which may substantially affect the premises. If the Lessor does so, the provisions of the lease and the Retail Leases Act 1994 shall apply in respect of any notice period and compensation. The Lessee must provide a bank guarantee in the amount equal to 3 months' Base Rent plus GST as security for performance of the Lessee's obligations under the Lease. The provisions of this disclosure statement (and the signing of the disclosure statement by or on behalf of the Lessor) are not intended to create a binding agreement between the Lessor and Lessee, nor shall execution and return of the Lessee's Disclosure Statement. No binding agreement shall exist until such time that a formal lease (in a form satisfactory to the Lessor) is executed by all parties and all ancillary documents are provided by the Lessee to the Lessor's satisfaction. This disclosure statement does not set out all terms of the leasing arrangements between the Lessor and Lessee. To the extent that there is any inconsistency between this disclosure statement and the Lease, the Lease prevails.
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PART 11 LESSOR ACKNOWLEDGEMENTS AND SIGNATURE

29 Acknowledgements by lessor

By signing this disclosure statement, the lessor confirms and acknowledges that:

- this disclosure statement contains all representations in relation to the proposed lease by the lessor and the lessor's agents as at the date of this disclosure statement,
- this disclosure statement reflects all agreements that have been made by the parties,
- the lessor has not knowingly withheld information which is likely to have an impact on the lessee's proposed business.

Warnings to lessor when completing this disclosure statement:

- The lessee may have remedies including termination of lease if the information in this statement is misleading, false or materially incomplete.

30 Lessor's signature

30.1 Name of lessor <i>[Insert name of the lessor]</i>	THE FINANCIAL SECRETARY INCORPORATED C/- Government Property Agency, 9 th Floor, South Tower, West Kowloon Government Offices, No.11 Hoi Ting Road, Yau Ma Tei, Kowloon, Hong Kong, China
30.2 Signed by the lessor or the lessor's agent for and on behalf of the lessor	x
30.3 Name of lessor's authorised representative or lessor's agent <i>[Insert name of person signing with the authority of the lessor]</i>	Mr TONG King-chung
30.4 Date	

PART 12 LESSEE ACKNOWLEDGEMENTS AND SIGNATURE

31 Acknowledgements by the lessee

By signing this disclosure statement, the lessee confirms and acknowledges that the lessee received this disclosure statement.

Before entering into a lease, lessees should consider these key questions:

- Does the planning authority allow your proposed use for the premises under planning law?
- Is the security of your occupancy affected by:
 - mortgages, charges or encumbrances granted by the lessor?
 - rights and obligations under a head lease?
- Does the premise comply with building and safety regulations?
- Are the premises affected by outstanding notices by any authority?
- Could your trading be affected by disturbances or changes to the building/centre?
- Does the lessor require you to refurbish the premises regularly or at the end of the lease?
- Can the lessor end the lease early even if you comply with the lease?
- Are all the existing structures, fixtures, plant and equipment in good working order?
- Are you required to make good the premises at the end of the lease?
- Is the tenancy mix of the shopping centre (if applicable) likely to change during the term of the lease? (see question 24.2)

32 Lessee's signature

It is important that a lessee seek independent legal and financial advice before entering into a lease.

[Section 11A of the Retail Leases Act 1994 requires a lessee's disclosure statement to be provided to the lessor within 7 days (or any agreed further period) of the lessee receiving the lessor's disclosure statement. The lessee may be liable to a penalty for an offence under that Act if the lessee's disclosure statement is not provided.]

32.1 Name of Lessee <i>[Insert name of the lessee]</i>	[Insert]
32.2 Signed by the lessee or for and on behalf of the lessee	
32.3 Name of lessee's authorised representative <i>[Insert name of the person signing with the authority of the lessee]</i>	
32.4 Date	

PART 13 ATTACHMENTS

33 List of attachments

33.1 Plan of premises (see item 1.2)	☒ Yes ☐ Not applicable
33.2 Head lease or Crown lease (see item 4.2)	☐ Yes ☒ Not applicable
33.3 Additional attachments <i>[list of any additional attachments]</i>	• <i>Extract of Conservation Management Plan</i> • <i>Details of Renovation Works</i> • <i>NSW Retail Tenancy Guide 2022</i>

34 List of attachments – retail shopping centre

34.1 Floor plan (see item 24.1)	☐ Yes ☒ Not applicable
34.2 Customer traffic flow statistics (see item 25.1)	☐ Yes ☒ Not applicable
34.3 Casual mall licensing policy (see item 26.1)	☐ Yes ☒ Not applicable
34.4 Additional attachments relating to the retail shopping centre <i>[list of any additional attachments]</i>	

PART A: LESSOR'S DISCLOSURE STATEMENT

Additional Information and Advice for Lessees

Information for the lessee to consider when entering into a retail shop lease.

Before signing a lease:

- You should have detailed discussions with the lessor/agent and also seek advice from business associations, your solicitor and your accountant. Also consult your local Council about any regulations, permitted use or development applications affecting the shop.
- Information on these topics is included in the retail tenancy guide.
- Ensure that all agreements arrived at with the lessor are included in the lease. Documentation is critical to avoiding and managing disputes about the lease.

Rent—be clear about the following issues:

- What the starting rent is, and on what basis it is calculated.
- How the rent will increase during the lease.
- If you have agreed to pay turnover rent, be clear as to how you will give this information to the lessor.
- If there is an option as part of the lease, find the clauses of the lease that tell you how and when you must exercise the option and that explain how the rent will be set.

Lease establishment—check:

- That you have read the lease and asked for advice on what it means.
- That the description of the premises in the lease is accurate and covers any rights you will have to use common areas or car parking for you, your staff or visitors.
- Whether statements you have relied on in agreeing to the lease have been documented in the Lessee's Disclosure Statement, so as to avoid disagreements later.
- Whether you need to provide a security bond or personal guarantee to secure the lease, and how much this will be. If a cash security bond is agreed to, be sure it is lodged under the NSW Government's retail bond scheme.
- What expenses you will have to meet to fit-out the shop ready for trading, and whether you will have to meet any of the costs incurred by the lessor in preparing the shop for you to occupy it.

The premises—you will need to be sure that:

- The location and building suit the proposed use you will make of the leased premises and to check whether you will have to renovate to enable the shop to operate.
- The hours you can access the shop and open it to trade, as allowed by the lessor and the Council, will be sufficient to allow you to trade profitably.
- You have, or can readily obtain, all the permits and licences required to operate the type of business you have chosen, and that the Council's zoning for the premises does not restrict you from operating this type of business.
- You have a condition report or photos to document the state of the premises when taking possession, to prevent or address disputes at the end of the lease. Agreements about equipment should also be documented.

Outgoings and expenses—you need to understand:

- The extra expenses you will have to meet as outgoings, and how they may change over the term of the lease. These are set out in the Lessor's Disclosure Statement.

- The information that the lessor will provide and your rights to receive estimates to allow you to plan for these expenses.
- The insurance costs you will have to meet, including any contribution to the lessor's insurance.

When you want to sell the business

If you want to sell your business, you need to be aware of the process set out in the Retail Leases Act 1994 for assigning the lease. The lessee becomes the assignor of the lease, and the potential new lessee becomes the assignee. In brief, these are the steps:

- 1 Get an updated copy of the lessor's disclosure statement. If an updated disclosure statement has not been issued during the term of your lease, request one in writing from the lessor. If it is not provided within 14 days, provide the latest version of the disclosure statement you have to the assignee (or if none exists, this requirement does not apply to you).
- 2 Give a copy of the assignor's disclosure statement to the assignee (and to the lessor at least 7 clear days before the assignment if you want to be protected from on-going liability under the lease).
- 3 Gather, from the assignee, the following information to provide to the lessor:
 - (a) The assignee's name and contact details.
 - (b) Documentation to indicate the assignee's financial standing.
 - (c) Business experience of the assignee.
 - (d) Written records of statements made by the assignor or lessor which influenced the assignee in deciding to enter the assignment.
- 4 Provide information in point 3 to the lessor in writing, by:
 - (a) delivering it personally, or
 - (b) leaving it at or posting it to the last known residential or business address of the lessor.
or
 - (c) or in any other manner referred to in section 81A of the Act.
- 5 The lessor must respond to the request for assignment of the lease within 28 days from the time all the required information is received, or the assignment is deemed to have taken place.
- 6 The reasons the lessor can refuse a request for assignment of a lease are:
 - (a) If the use of the premises is to change.
 - (b) If the assignee (new lessee) has inadequate retail skills compared to the assignor (current lessee).
 - (c) If the assignee has inferior financial resources to the proposed assignor.
 - (d) If the lessee has not complied with the procedure for obtaining consent to the assignment, as set out in section 41 of the Act.
 - (e) If the shop is in airside premises at Sydney (Kingsford-Smith) Airport and the lessor exercises the right to withhold consent to the assignment under section 80E of the Act.

General

- Check with your accountant the most tax effective way to structure the payment of rent, fit-out costs and GST.
- Make sure that all negotiated agreements are written into the lease.
- Inspect the property and take notes and photographs prior to moving in.
- Section 11A of the *Retail Leases Act 1994* requires a lessee's disclosure statement to be provided to the lessor within 7 days (or any agreed further period) of the lessee receiving the lessor's disclosure statement. The lessee may be liable to a penalty for an offence under that Act if the lessee's disclosure statement is not provided.

LESSOR AND LESSEE DISCLOSURE STATEMENTS

(Schedule 2, Retail Leases Act)

PART B: LESSEE'S DISCLOSURE STATEMENT

ADVICE TO THE LESSOR

- 1 The lessee acknowledges that the attached Part A - Lessor's Disclosure Statement, was received from the lessor prior to entering into the lease.
- 2 The lessor has made available to the lessee a copy of the proposed retail shop lease and a copy of the retail tenancy guide as prescribed or identified in the regulations.
- 3 The lessee has **sought/not sought** independent advice in respect of the commercial terms contained in the Lessor's Disclosure Statement and the obligations contained in the proposed retail shop lease.
- 4 The lessee believes that the lessee will be able to fulfil the obligations contained in the lease, including the payment of the proposed rent, outgoings and other amounts, based on the lessee's own business projections for the business.
- 5 In entering into the retail shop lease, the lessee has relied on the following statements or representations made by the lessor or the lessor's agents.

Note: *Matters such as agreements or representations relating to exclusivity or limitations in competing uses, sales or customer traffic should be detailed.*

- 6 Apart from the statements or representations set out above, no other promises, representations, warranties or undertakings (other than those contained in the lease) have been made by the lessor to the lessee in respect of the premises or the business to be carried out on the premises.

Should more space be required please detail on another page.

Signed by or for and on behalf of the Lessee

Print Name

Date

4.6 STATEMENT OF CULTURAL SIGNIFICANCE

Hong Kong House, formerly the Central Hotel and later the Gresham Hotel, is an item of state significance that is situated on a prominent site on the corner of York and Druitt Streets. It forms an important and lively link in the street elevations of Druitt Street between Town Hall and Queen Victoria Building. The building makes a significant contribution as a component of the Town Hall Precinct Streetscape and preserves a rich unity of civic space at the end of York Street.

Hong Kong House is a six-storey building with basement, designed in the Victorian Free Classical Style in the Baroque manner. The building has aesthetic significance as a rare intact original exterior of an 1890s building of Victorian Sydney. The building façade is of face brick with sandstone surrounds to doors, windows and ornamental gables and is particularly noted for its use of ornate stone decoration.

The erection of this building as a prestigious hotel in the early 1890s is historically significant in understanding the impact that the building of Centennial Hall and the Queen Victoria Building had on creating a focus of civic pride in Victorian Sydney. It is an important building in the career of architect Ambrose Thornley.

4.7 LEVELS OF SIGNIFICANCE FOR INDIVIDUAL SPACES, ELEMENTS AND FABRIC

4.7.1 Basis of individual assessments

Individual areas and elements of Hong Kong House have been assessed and a level of significance has been applied. This detailed assessment is provided to enable decisions to be made on the future conservation and development of the place.

Six levels of cultural significance have been used in the assessment of Hong Kong House. These categories provide a framework for logical Conservation Policies to be developed, interpretation and recommended treatment of the fabric (refer to the Conservation Policies detailed in Section 5).

A	EXCEPTIONAL	Where an individual space or element is assessed as displaying a strong contribution to the overall significance of the place. Spaces, elements or fabric exhibit a high degree of intactness and quality, though minor alterations or degradation may be evident.
B	HIGH	Where an individual space or element is assessed as making a substantial contribution to the overall significance of the place. Spaces, elements or fabric originally of substantial quality, yet may have undergone considerable alteration or adaptation resulting in presentation, which is either incomplete or ambiguous. This category also includes spaces, elements or fabric of average quality in terms of design and materials, but which exhibit a high degree of intactness.
C	MODERATE	Where an individual space or element is assessed as making a moderate contribution to the overall significance of the place. Spaces, elements or fabric originally of some intrinsic quality, and may have undergone alteration or degradation. In addition, elements of relatively new construction, where the assessment of significance is difficult, may be included. This category also includes original spaces, elements or fabric of any quality, which have undergone extensive alteration or adaptation.
D	LOW	Where an individual space or element is assessed as making a minor contribution to the overall significance of the place, especially when compared to other features. Spaces, elements or fabric originally of little intrinsic quality, and may have undergone alteration or degradation. This category also includes original spaces, elements or fabric of any quality, which have undergone extensive alteration or adaptation to the extent that only isolated remnants survive (resulting in a low degree of intactness and quality of presentation).
E	NEUTRAL	Where an individual space or element is assessed as having an unimportant relationship with the overall significance of the place. Spaces elements or fabric are assessed as having little or no significance.
F	INTRUSIVE	Where an individual space or element detracts from the appreciation of cultural significance, by adversely affecting or obscuring other significant areas, elements or items.

4.7.2 Built Elements

There has been a continuous program of upgrading of office spaces on upper floors of the building including extensive modification of areas on either side of the central corridor on all levels.

There are areas of original fabric and internal finishes remaining on every level of the building. However, there is limited evidence of the original form and fabric of the spaces when constructed.

Spaces and fabric that remain substantially intact and where the statement of significance for the site can be interpreted have been assessed as being of exceptional significance.

The principal elements of exceptional significance are:

- The building's York and Druitt Street facades
- Banking Chamber on the York Street presently used as a retail outlet.
- Board Room on the First Floor

Locations where there is an intact area of original fabric, either an entire corridor, a lift lobby or stair well, have been assessed as being of high significance. The Function Room on the Ground Floor has also been assessed to be of high significance, having been extensively modified and subsequently returned to its original appearance by restoration and reconstruction works.

In the central hall and lift foyer a significant section of original fabric remains intact, yet adaptation has occurred. These spaces have been assessed as being of moderate significance because they make a moderate contribution to the overall appreciation of the significance of the site. The central lift lobbies are seen as having a moderate level of significance as a result of past alterations having occurred. Modification of these spaces, while acceptable in principle, would have a moderate effect upon the overall significance of the site.

The principal staircase in the entry foyer of the Ground Floor remains largely intact and is seen as having a high level of significance as it contributes to the experience of the building, as does the original corner entry foyer, presently used as a small retail outlet.

4.8 SCHEDULE OF SPACES, ELEMENTS AND FABRIC

Item	Description	Levels of Significance
Exterior Areas		
General	All original 1890 face brick and external stone walls, including building base at street level, and corner entry granite columns.	Exceptional
Granite pilasters	Semi-circular polished pinkish brown granite pilasters used in the main corner entry at the window and doors. They have metal capitals and bases.	Exceptional
Granite columns bases	At the three street level entrances, polished grey granite bases to columns.	Exceptional
Sandstone Details to openings	Decorative sandstone details in the surrounds in the reveals, heads and sills of openings.	Exceptional
Windows	Original double hung timber windows retained on facades.	Exceptional
Doors	Doors replaced as part of adaptation works.	Neutral
Pediments	Six small pediments comprising a combination of circular and triangular pediments over window and door openings at the First and Second Floors on the York Street elevation. There are also four large freestanding pediments at level 5	Exceptional
Infill Balustrades	Carved baluster elements forming in-fill panels to the spandrels below windows.	Exceptional
Cornice and projecting string courses	At original roof level, projecting sandstone cornice with brackets at regular intervals. Massive sandstone projecting string course.	Exceptional
Carved Ornamentation	Many locations on the façade of building, including pediments on the original roof level, now level 5.	Exceptional
Cupola	Located on the corner above the largest pediment. Combination of cast and metal beaten elements, possibly of zinc.	Exceptional
Gas Lamp Fitting	Located at the street level entrances. Original 1890 fitting, one in working order	Exceptional
Streetscape quality	Scale, materials and detailing of the building in relation to Town Hall and Queen Victoria Building	Exceptional
Roof areas	The roof has been progressively modified	Low

Interior Areas - Basement		
Item	Description	Levels of Significance
Garage	Extensively modified to include new garage access and lift lobby	Neutral
Bank Vault	Modified to accommodated new work areas	Moderate
New access stairs	Located in part of the original entry foyer.	Neutral
Fire stairs	New fire stairs located in area of original light well	Neutral

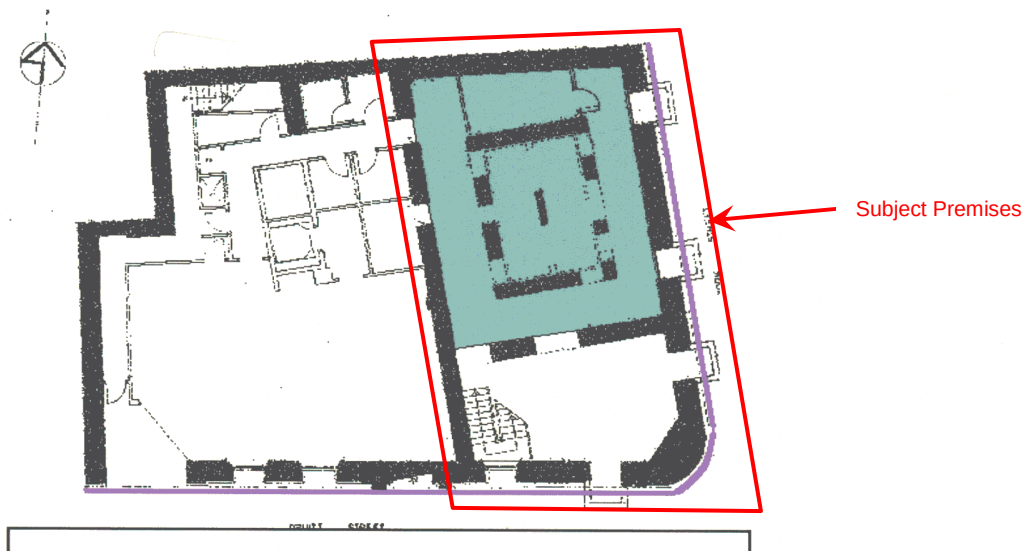


Figure 4. 3 Basement with areas of significance indicated

 Exceptional Significance
 High Heritage Significance
 Moderate Heritage Significance
 Low Heritage Significance

Interior Areas - Ground Floor		
Item	Description	Levels of Significance
Central lift lobby	Plaster coffered ceilings appear to be original. General area has been extensively modified with the removal of the old central lift and the installation of new lifts	Moderate
Banking Chamber	Highly decorated area with original pilasters and columns, metal ceiling largely intact. Highly decorative frieze and cornice.	Exceptional
Original Corner Entry Area	Extensively modified to accommodate new retail outlet. However, this area retains original plaster pilasters, door and window details, and decorative frieze and cornice largely intact.	High
Function Room	Progressive remodelling and alteration to the configuration of the room. Intact original metal ceiling, timber joinery in window and door details and decorative plaster pilaster frieze and cornices details.	High
Central stairs Ground Floor lobby	Original and intact marble wall panelling and marble stair balustrade, some repair carried out to upper level of the marble balustrade.	High
Fire stairs	New fire stairs located in area of original light well	Neutral
Sanitary facilities	Extensively up-graded and modified.	Neutral



Figure 4. 4 Ground Floor with areas of significance indicated

	Exceptional Significance
	High Heritage Significance
	Moderate Heritage Significance
	Low Heritage Significance

6 CONSERVATION POLICY

6.1 PURPOSE OF CONSERVATION POLICIES

The purpose of these conservation policies is to provide a guide to the conservation of the cultural significance of the building and its setting. The policies outline courses of action to be followed in the consideration and development of long-term use, care and maintenance plans for buildings such that the cultural significance is retained, enhanced and not diminished.

The policies have been developed with consideration for the issues identified in the previous sections, and will be presented as:

- general conservation policies to support the future conservation of the significant site;
- high level conceptual policies to support the head policy;
- detailed policies for the individual areas and features of the building; and
- detailed specific issue policies to assist in the operational management of the place.

6.2 GENERAL CONSERVATION POLICIES

The following general policies provide the essential guidelines for the conservation management of the building:

- a. Hong Kong House should be conserved and the building should continue to accommodate a viable use.
- b. Care should be taken in any future development to avoid or minimise any adverse effect on the quality of the Town Hall precinct, the setting for Hong Kong House.
- c. The Statement of Cultural Significance and schedule of significant spaces and fabric detailed in Section 4 should be accepted as one of the bases for future planning and conservation works to the building.
- d. The future conservation and development of the place should be carried out in accordance with the principles of the Australia ICOMOS Charter for the Conservation of Places of Cultural Significance (the Burra Charter).
- e. All parties should endorse the approach and options recommended for the conservation of specific fabric, spaces and qualities of the place as a guide to future work, the recommendations having been related to the principles of the Burra Charter.
- f. In areas assessed to be of exceptional and high significance, potential future uses should not compromise the character and significance of those areas and should enhance public appreciation of the cultural significance of the place.
- g. Fire safety measures should be implemented to comply with the intent of the Building Code of Australia and NSW Building Regulations.
- h. A regular maintenance program should be implemented.

The policies have been addressed in sequence:

- Managing Change
- Treatment of the Fabric, Spaces and Relationships (including general maintenance and care of the fabric)
- Conservation Works to the Exterior of the Building

The policies are referenced to the relevant Articles of the Burra Charter and the sections of this Conservation Management Plan, which fundamentally underlie each policy.

The policies have been presented under various headings seen to be those of critical importance to the conservation of the cultural significance of the building. A commentary segment that is intended to highlight the intent behind the policy has been included with each group of policies. This has been done to assist any future discussion of the merits of the policies and possible changes to their recommendations.

6.3 MANAGING CHANGE

This section is about the attitudes, processes and advisory resources necessary for the efficient management of change to the building in such a way that the heritage significance of the place is retained.

6.3.1 Listing on the State Heritage Register

Policy 1.1 Hong Kong House is listed on the NSW State Heritage Register. Any proposed work not subject to Section 57(2) exemptions will require the approval of the Heritage Council of NSW.

Hong Kong House is a building of importance to the State that contributes to our understanding of the history of New South Wales. Refer to Section 5 for details of works that do not require approval under the NSW Heritage Act. Refer also to Policy 1.8.

6.3.2 Adoption and Submission of the Conservation Management Plan

Policy 1.2 The building owner should formally adopt This Conservation Management Plan. It should then become a standard requirement for works being considered for the place to be in accordance with its recommendations.

Policy 1.3 This Conservation Management Plan should be submitted to the Council of the City of Sydney and the Heritage Council of NSW for endorsement.

Endorsement of this Conservation Management Plan by the owners of the building and the Statutory Authorities having jurisdiction over it will give the Plan the necessary influence over matters affecting its significance.

It is a requirement of the Council of the City of Sydney and the Heritage Council of NSW that works to Hong Kong House be guided by an approved Conservation Management Plan. It is proposed that this Conservation Management Plan become the Council approved plan.

6.3.3 How to use this Conservation Management Plan

Policy 1.4 The management of Hong Kong House at the corner of York and Druitt Streets and its setting as part of the Town Hall precinct should be informed by an understanding of the cultural significance of the place as described in this Conservation Management Plan.

Policy 1.5 Heritage management expertise should be incorporated into the management structure for the building or should be imported from appropriate services.

Policy 1.6 A management structure should be implemented that:

- *integrates conservation into the overall management of the building;¹⁸*
- *provides for long term conservation of significant fabric;¹⁹*
- *disseminates the aims and objectives of this Conservation Management Plan to appropriate officers and staff members;²⁰*
- *outlines the responsibility at each staff level for implementing this Plan;²¹*

¹⁸ Burra Charter, Article 2, Policy 2.3

¹⁹ Burra Charter, Article 2, Policy 2.1

²⁰ Burra Charter, Article 26, Policy 26.3

- *understands the balance between the functioning of the building and the conservation of cultural significance.*²²

The Conservation Management Plan has endeavoured to identify why the building and each of its major elements are significant. The Statement of Cultural Significance and significance assessment of elements within the building, together with policies recommended and options discussed throughout this report, will guide future planning and work.

The conservation policies make recommendations regarding the conservation of the place so that any proposed future intervention will not result in inappropriate loss of cultural significance. It is intended to be of practical use to the managers' of the site, enabling them to make decisions about the site with due regard to its significance.

The effectiveness of this Conservation Management Plan depends upon it being implemented. An effective management structure is required to ensure that the policies are adopted. The document should be made available to, and read by all relevant officers. In addition, it is essential that all officers are made aware of the processes that are to be followed when proposing maintenance, or other work involving the modification of significant fabric.

A person shall be nominated as being responsible for making all decisions related to this Plan. The person shall be appropriately qualified and experienced in all aspects of the care and maintenance of large buildings of heritage significance (for example, the building manager may be designated to the care of this building).

6.3.4 Statutory Considerations

Policy 1.7 A Development Application should be submitted to Sydney City Council for all works for which Development Approval is required.

Policy 1.8 An application under section 57(1) of the Heritage Act should be submitted to the Heritage Council of NSW for any works affecting the significance of the building and not covered by the Standard or Site Specific Exemptions or specific policies within this Conservation Management Plan.

Policy 1.9 Any works to upgrade the building to comply with the Building Code of Australia (BCA) and requirements of the Disability Discrimination Act, which may be required in the future should be undertaken in a way, which does not damage the cultural significance of the building.²³ In the case of the BCA this may be achieved using its objectives and performance requirements rather than deemed-to-satisfy provisions.

Policy 1.10 A fire engineering approach should be taken in the development of a fire safety strategy. Any upgrading for fire safety, which may be required in the future, should be done in a manner, which recognises the cultural significance of the building.²⁴

Refer to Section 5.4.1 and 5.4.2 for discussion of Standard and Site Specific Exemptions from the Heritage Council Approvals process and for exemptions from the Sydney City Council Development Application process.

The Heritage Council's Fire Access and Services Advisory Panel can provide valuable guidance on means of compliance with the Building Code of Australia and the Disability Discrimination Act while preserving the historic fabric of the building.

Disabled access into the building is currently provided through the Garage Entry ramp from York Street with access to most areas of the building via the lift from that level. Additional removable access ramps are available for the York Street entry of the building. Any modification of the York

²¹ Burra Charter, Article 30

²² Burra Charter, Article 6, Policy 6.2

²³ Burra Charter, Article 15, Policy 15.1

²⁴ Building Code of Australia objectives.

and Druitt Streets entry stairs to provide permanent disabled access to the building would be considered to irreversibly damage the building's fabric.

Access to all readily accessible spaces within Hong Kong House will be encouraged, providing the heritage values and building fabric are not damaged or compromised. It is likely that disabled access to some areas and spaces in the building will not be possible, as the introduction of access will irreversibly damage the fabric.

6.3.5 Use of the Burra Charter

Policy 1.11 The future conservation and development of the place should be carried out in accordance with the principles of the Burra Charter.

The Burra Charter is a useful guide to the conservation of culturally significant places such as Hong Kong House. The Charter is the criteria used by the Heritage Council of NSW, the Australian Heritage Commission and the National Trust of Australia. The Charter provides a philosophical framework that is reasonably flexible and recognises the need for continued use and compatible development.

6.3.6 Approach to changes to the fabric

Policy 1.12 While recognising the need for change, the approach to the building fabric should be one of minimal intervention: changing as much as necessary, but as little as possible.²⁵

Policy 1.13 Retain, enhance and retrieve culturally significant fabric as opportunities arise.²⁶

Policy 1.14 Where intervention is required to maintain in operating order and for purposes other than the conservation of significant building fabric, this should occur in areas of lower significance.

The Statement of Cultural Significance sets out the reasons why Hong Kong House is of exceptional significance. The more detailed assessments of significance levels for individual elements, spaces and fabric in Section 4 are an important factor to be considered when planning future action. This understanding of the levels of significance helps to introduce the flexibility necessary for the management of change.

The fundamental principle of the Burra Charter is one that requires the least intervention in the fabric as possible while achieving the desired results. It is a minimalist approach, which attempts to retain as much of the original building fabric as possible. The approach recognises and respects the intrinsic value of the fabric and its ability to tell an important story, and facilitates intervention in a sensitive way.

Policy 1.15 All changes to the building should be carefully recorded²⁷

When decisions are made requiring changes to the building fabric a process of recording those changes should be immediately instituted. All changes to the building including change of use and changes to the fabric of the building should be recorded.

6.3.7 Archaeology

Policy 1.16 Any excavation works that may be required at the site shall be carried out with care. Any findings during excavation must be reported to the Project Manager immediately and not be disturbed until the Heritage Architect issues formal instructions.

²⁵ Burra Charter, Article 3

²⁶ Burra Charter, Article 2

²⁷ Burra Charter, Article 27, Policy 27.2

The site is not identified on the Schedule 3 Archaeological/Townscape/ Landscape Items Map (Central Sydney Heritage LEP 2000) as having archaeological potential, nor is it identified in Section 3.4 of the Archaeological Zoning Plan for Central Sydney (1992).

Excavation works are exempt from the requirement for approval by the Heritage Council of NSW under Standard Exemption No. 4, where an archaeological assessment has been prepared which indicates that there is little likelihood of there being any relics in the land or that any relics in the land are unlikely to have State or local heritage significance; or where the excavation or the disturbance of land will have a minor impact on the archaeological resource; or where the excavation of land involves only the removal of fill which has been deposited on the land.

Due to extensive disturbance at the site associated with demolition of the former commercial buildings and excavation for construction of Hong Kong House, it is not anticipated that relics shall be discovered. The limited research potential of the building has been identified in NSW Heritage Assessment Criteria e) in Section 4.

Despite the low archaeological potential that is anticipated, contractors on site are required under heritage legislation to report archaeological remains and should be encouraged to do this.

6.3.8 Interpretation

Policy 1.17 The building should be presented and interpreted to reflect its significance as a building of state significance.

Policy 1.18 A modest interpretive display should be developed for the building which explains its history and significance.

Interpretation of the heritage significance of Hong Kong House should be provided for the public to increase their understanding and awareness of Hong Kong House and its broader historical and contemporary context. This may be achieved with a discrete interpretative display within the public areas of the building to reflect the historic, aesthetic, technological and social importance of the place.²⁸ The historical development of the place is demonstrated through the physical development of the building, in particular of the interior.

6.3.9 Future Use of the Building

Policy 1.19 The policies specified in this document should be appropriate regardless of the uses to which the building is put.

Policy 1.20 Changes to the use of the building are acceptable providing that there is minimal impact on the surviving significant fabric. Future uses should continue to allow the appreciation of the significant spaces.

Any potential new uses for the building should enhance the appreciation of the place and ensure the conservation of the significant features of the building and site. Potential future uses for Hong Kong House building and site may be considered compatible if the following criteria are met:

- The symbolic significance of the building and its interior spaces are not compromised.
- The proposed new use is sympathetic to the original use and does not detract from that use or the cultural significance of the building or spaces.
- Significant fabric and spaces are not damaged, destroyed or altered.
- The nature of the new use would not result in an unacceptable level of wear and tear on the fabric.
- The fixtures and fittings required as part of the new use would not damage or compromise the significant fabric.

²⁸ Burra Charter Article 25

- Additional modern services required for the new use would not cause damage, destroy or compromise the building or any interior spaces of significance.
- Proposed uses, which achieve relatively more of the stated outcomes of the conservation policies, are preferred to those, which necessitate greater change and intrusion.
- The types of occupants should be selected on the basis that they “fit” the building’s extant spaces; the reverse approach wherein the fabric of the building is altered and/or demolished to suit the requirements of the occupants is unacceptable.

Changes of use, which do not involve the alteration of the fabric, layout or setting of the place, are exempt from the requirement for approval by the Heritage Council of NSW under Standard Exemption No 9 provided that the significance of the building is not negatively affected.

6.3.10 Signage

Policy 1.21 New signage is acceptable provided it is sympathetic to significant fabric. The signage should respect and enhance the appearance of original fabric and be sufficiently flexible to allow for changes.

Policy 1.22 The introduction of new signage inside the building should not damage significant fabric.

Policy 1.23 Existing significant signage should not be removed, replaced, damaged or covered up by new signage.

New signage on the exterior of the building would be accepted only if a minimal approach is taken. New signage on the interior of the building is acceptable, particularly in the modern office areas, as long as significant fabric is respected. The Sydney City Council signage policy should be followed and advice from a heritage architect should be given if applying new signage to the exterior. The introduction of exterior signage to the building requires approval from the Sydney City Council.

6.3.11 Public Accessibility of the Conservation Management Plan

Policy 1.24 A copy of this Conservation Management Plan should be lodged with the NSW Heritage Office Library and City of Sydney Library.²⁹

The Plan should be accessible to the public in order to raise and foster community awareness of the significance of the building.

6.3.12 Review of Conservation Management Plan

Policy 1.25 This Conservation Management Plan should to be reviewed as the need arises. The results of future studies should be kept up to date, regularly reviewed and revised as necessary.³⁰

This Conservation Management Plan, and particularly its Conservation Policies, may need adjustment to take into account discrepancies and unforeseen circumstances, to clarify intentions or as a result of uncovered evidence. It is not a requirement of the Burra Charter to revise this Plan every five years if there have been no fundamental changes to the condition and/or use of the site or client and/or authority requirements. It is not necessary to revise this Conservation Management Plan unless circumstances regarding the building change substantially.

The Heritage Council of NSW endorsement of a Conservation Management Plan is for a maximum period of five years. After this time, the Heritage Council may consider re-endorsement.

²⁹ Burra Charter, Article 32

³⁰ Burra Charter, Article 26 (Explanatory Notes)

6.4 TREATMENT OF THE FABRIC, SPACES AND RELATIONSHIPS

This section sets out the recommended treatment or options appropriate for the future conservation and development of the site. The schedule of significance of fabric and spaces is included in Section 4 of this document. Fabric, spaces and relationships that remain substantially intact and through which the statement of significance for the site can be interpreted have been assessed as being of exceptional significance.

In summary, the following elements are identified as having “exceptional” significance:

- The setting of the building as part of the Town Hall Precinct;
- The building’s York and Druitt Street Facades;
- Banking Chamber on the ground Floor with access from York Street presently used as a retail outlet;
- Board Room on the First Floor;
- The Function Room on the Ground Floor;
- The external gas lights on the Ground Floor façade.

6.4.1 General

Policy 2.1 The more significant a concept, fabric, relationship, space or vista, the more care should be exercised in preparing proposals that may affect the place – the objective being to ensure that the work will not reduce, and may reinforce, the identified significance.³¹

Policy 2.2 Appropriate conservation methods and processes that relate to assessed levels of significance and intactness should be used to guide conservation of the building and site fabric, features and artefacts.

Policy 2.3 Surviving areas of significant original and early fabric and spaces of the original construction and design should be retained intact and conserved unless otherwise stated within these policies.

Policy 2.4 All conservation works should be preceded by thorough investigation, and be monitored to assess their effectiveness.

Policy 2.5 Identified fabric, features and associated artefacts of contributory and little or no significance of Hong Kong House should either be conserved, through retention and interpretation, or recorded prior to adaptation or removal.

The policies contained within this Conservation Management Plan are aimed at ensuring that all works, including conservation works, are undertaken with reference to the cultural significance of the place. An understanding of the historical development and the context should be a prerequisite for all those carrying out works to Hong Kong House.

The following table provides the recommended conservation treatment to the identified levels of significance for the individual spaces and elements (refer to Section 4.8 Schedule of Spaces, Elements and Fabric).

Works with no heritage impact and/or which affect non-significant fabric are exempt from the requirement for approval by the Heritage Council of NSW under Standard Exemption Nos. 7 and 8. Refer to Section 5.4.1.

³¹ Burra Charter, Articles 3, 5

LEVELS OF SIGNIFICANCE		RECOMMENDATIONS RELATED TO THE IDENTIFIED LEVELS OF CULTURAL SIGNIFICANCE
A	EXCEPTIONAL	Preserve, restore, reconstruct and adapt in accordance with the Burra Charter, in conjunction with minimum adaptation for new function or use.
B	HIGH	Restore, reconstruct and adapt in accordance with the Burra Charter, in conjunction with adaptation or supplementary new construction if required for function.
C	MODERATE	Maintain, preserve, restore, reconstruct or adapt as defined in the Burra Charter in conjunction with minimum adaptation for supplementary new construction if required. Removal in part or in full is acceptable if necessary. Retention may depend on factors other than the assessed heritage value, eg: its functional qualities.
D	LOW	Retain, recycle, add compatible new construction and/or remove in part or in full, minimising adverse impact on fabric of exceptional or high significance and having the least possible impact on fabric of moderate significance. Improvements are required which will contribute to the overall significance, aesthetic quality and functioning of Hong Kong House.
E	NEUTRAL	Retain, recycle, remove or modify as required. However if new work is proposed, general care and respect for potential extant original material concealed behind false ceilings and plasterboard partitions etc should be taken.
F	INTRUSIVE	Modify or remove in the long term, to reduce adverse impact on the overall significance, aesthetic quality and functioning of Hong Kong House.

Intervention to significant fabric should be limited to minimise loss of cultural significance. Detrimental intervention should occur in areas of lower significance and the work should be reversible. Intrusive elements should be removed.

Policy 2.6 All work affecting the significance of Hong Kong House should be in consultation with qualified and experienced conservation professionals acting within the guidelines of the endorsed Conservation Management Plan³²

Policy 2.7 All conservation work to significant fabric and spaces of Hong Kong House should be carried out by experienced tradespeople and conservators under the supervision of the designated conservation consultants, acting within the guidelines of the adopted Conservation Management Plan.³³

The conservation of this building requires the expertise of professionals. The coordination and briefing of these professionals is a task of great importance and should be performed by a suitably qualified person, such as a conservation architect. Under no circumstances should decisions relating to conservation work be left in the hands of tradesmen acting alone. However, once decisions are made regarding intervention in the significant building fabric, only the finest craftsmen and conservators should be employed to carry them out.

Policy 2.8 Prior to undertaking any conservation, maintenance or upgrading works on any part of the building's significant fabric or spaces, a Conservation Actions Schedule shall be prepared. The Schedule shall be a succinct document which:

³² Burra Charter Articles 4, 6

³³ Burra Charter, Articles 4, 6

- *Augments the assessment of cultural significance, by undertaking more detailed investigation, recording and assessment of the documentary and physical evidence;*
- *Determines the appropriate conservation policies;*
- *Sets out a comprehensive schedule of conservation actions, based upon the conservation policies.*³⁴

The purpose of these additional investigations is to:

- a) Assist in the determination of the impact of future works on the elements, spaces or components of exceptional and high significance.
- b) Assess the suitability of specific adaptive reuse works required for the accommodation of a new use, or for the upgrading of facilities of an existing function. This would include assessment of the impact of:
 - detailed alterations in relation to significant spaces, details and fabric; and
 - removal of unsympathetic additions, which may or may not reveal or deface the significant fabric.

Additional investigations are required which will assist any proposed conservation works including original joinery details, colour schemes etc.

6.4.2 Setting

Policy 2.9 The relationship of Hong Kong House with the Town Hall and the Queen Victoria Building is of considerable significance and should be retained. The major visual contribution of the building to the site should not be altered nor compromised.

Policy 2.10 The long term conservation objective for the site should be the retention of the existing form and materials unless sufficient historical evidence of the earlier or original form or materials can be found.

The setting of Hong Kong House is significant within the overall streetscape of the Town Hall Precinct. Despite the close proximity of other surrounding buildings, the exceptional siting at the end of York Street, gives the building a special prominence within its context.

6.4.3 Exterior

Policy 2.11 The external form and architectural detailing of the site as presented to York Street and Druiitt Street should be conserved and should not be altered.

Policy 2.12 A maintenance programme should be implemented to ensure the continued good care of the building.

Policy 2.13 The historic gas lamps on the façade should be maintained, if possible, provided that they do not represent a public safety risk.

The form, scale, materials and detailing of the 1890s York Street and Druiitt Street exterior fabric is of exceptional significance.

6.4.4 Access

Policy 2.14 Access to the building from Druiitt Street should be maintained in its existing configuration so as to avoid any additional impact on significant fabric of the building. The access points on the York Street frontage should be maintained and used as required.

Policy 2.15 Stairs at the major entry points should be retained in their original forms.

³⁴ Burra Charter Articles 4, 5, 6, 7

Disabled access to the building is available through the garage entrance on Druiitt Street and then via the lift to the various floors. Access is not available to the retail outlets fronting York Street, or to the Boardroom on the First Floor.

6.4.5 Roof

Policy 2.16 New services and sympathetic additions could be introduced to the roof, provided they do not intrude upon the appreciation of the site from the Town Hall Precinct.

Policy 2.17 Any new addition to the roof space should be sufficiently set back from the balustrade so as to not detract from this feature of the original facade.

Policy 2.18 Roof areas should be inspected regularly and readily maintained in accordance with policies 2.28 to 2.33.

The roof area has been altered by a number of ad hoc additions, which are partially visible from surrounding buildings. There is an opportunity to replace these additions at some time in the future with a more sympathetic addition to the roof. There is limited opportunity to increase the height of the roof addition.

6.4.6 Integration of Services

Policy 2.19 Ensure that future upgrading of the services in the existing building considers the following:

- minimises impact on significant fabric;*
- locates services in areas designed for services;*
- locates services in areas that are not visible;*
- allows to provide services that are complementary to their surrounding; and*
- uses fixings which do not damage significant fabric.*

It is recognised that services of a specific nature may be required for the future uses of the building and that future upgrading of existing services may be necessary. Integration of services has already occurred in the building and upgrade in the future will be required. Where integration has already occurred rationalisation of the services is required with minimal impact on the surrounding fabric.

6.4.7 Interior Elements and Spaces

Banking Chamber

Policy 2.21 The original internal structure, fixtures, fittings, finishes and spatial quality within the Banking Chamber should be retained and conserved, and should remain visible.

Policy 2.22 Any adaptation and reuse of the Banking Chamber should be controlled to ensure that the character of the place is not damaged.

Policy 2.23 Subdivision of the space is acceptable if it does not affect the spatial quality of the area and the appreciation of its volume.

The Banking Chamber is significant because of its grand spatial quality, reinforced by the survival of much of its early decorative material. Any future division of this area should take into consideration this quality and restrict the height and volume of partitioning of the space.

Board Room

Policy 2.24 Original elements or detailing that contribute to the decorative character of the Board Room should not be removed or destroyed with any proposed future upgrading works.

Policy 2.25 The original internal structure, fixtures, fittings, finishes and spatial quality within the Board Room should be retained and conserved, and should remain visible.

Function Room

Policy 2.26 Original elements or detailing that contribute to the decorative character of the Function Room should not be removed or destroyed with any proposed future upgrading works.

Policy 2.27 The original fixtures, fittings and finishes within the Function Room should be retained and conserved, and should remain visible.

6.4.8 Maintenance and Repair

Policy 2.28 The building should be maintained in accordance with a planned maintenance and repair programme that is based on extensive knowledge of the building and its materials, regular inspection and prompt preventative action.

Policy 2.29 Significant fabric should be maintained to the minimum standard required under the Heritage Act and be in accordance with the Burra Charter.

Policy 2.30 Previous maintenance and repair using unsuitable materials or detailing should be replaced when necessary using materials and details, which do not detract from the significance of the fabric.

Policy 2.31 Services should not be permitted to emit waste products in a manner that will give rise to deterioration of the fabric.

Policy 2.32 Systems that prevent water penetration into the building fabric should be well maintained.

Policy 2.33 A maintenance programme should be implemented in accordance with the following principles:

- *attend to building repair work regularly to maintain the condition of the building fabric between repair cycles;*
- *similar work should be undertaken as a unified operation, except in the case of urgent repairs;*
- *minor repairs should be attended to promptly to avoid needless expense or additional damage; and*
- *the maintenance programme should endeavour to preserve significant building fabric wherever possible, with the aim to repair instead of replace.*

A regular maintenance program should be implemented in order to ensure that the significance of its items is retained for future generations.

Prompt maintenance and repair are essential to the conservation programme.³⁵ Necessary works should be based upon regular inspection and appropriate construction methods.

Maintenance and cleaning works are exempt from the requirement for approval by the Heritage Council of NSW under Standard Exemption No. 1, and from the requirement of a Development Application to the Council of the City of Sydney, provided that they do not result in *the removal of or damage to the existing fabric or the introduction of new materials*. Refer Section 5.4.1 and 5.4.2.

Significant fabric worn by a process of use over time provides evidence of the building's history, which can contribute to our understanding of it. However, public health and safety considerations

³⁵ Burra Charter Article 16

would take precedence over need for the retention of these areas of worn fabrics, and appropriate measure would need to be taken to ensure public safety.

6.4.9 Conservation of Significant Finishes and Painting

Policy 2.34 Prior to any removal of existing significant finishes, the stratification of surface layers should be investigated and recorded.

Policy 3.29 All external and internal surfaces originally intended to be unpainted should remain unpainted. The preferred colour schemes for painted elements will be those originally applied.

Policy 2.35 New surface finishes or repainting should be, where possible, consistent with the historic surface finishes, which date from the 1890s.

Policy 2.36 Modern day equivalents in finishes, materials and methods of repair may be used to ensure the longevity of the original surface.

A building's painted finishes and other surface treatments provide a record of changing use of a building and as such can be read to provide historical information about the building.

Much of the original surface finishes and paint schemes, which are considered of historic significance, have been either removed or covered over by more recent works. Later surface finishes and paint schemes are considered to be of neutral significance only.

It is important to retain significant finishes and to minimise further deterioration or loss of building finishes.

Painting is exempt from the requirement for approval by the Heritage Council of NSW under Standard Exemption No. 3 provided that *the painting does not involve the disturbance or removal of earlier paint layers; involves over-coating with an appropriate surface as an isolating layer to provide a means of protection for significant earlier layers or to provide a stable basis for repainting; or employs the same colour scheme and paint type as an earlier scheme.*

Painting which employs a different colour scheme and paint type from an earlier scheme does not require approval under s. 57(1) of the Act, *provided that the proposed colour scheme, paint type, details of surface preparation and paint removal will not adversely affect the heritage significance of the item.*

6.4.10 Conservation of Significant Joinery

Policy 3.27 Replacement or reconstruction of damaged or missing significant joinery components is considered appropriate. Repairs should match the existing items.

Policy 3.28 New joinery to replace significant joinery items should match, where possible, the details, materials and finishes of the original joinery.

The long- term conservation objective for the joinery will be for the retention and ongoing maintenance of all original joinery of primary significance.

6.4.11 Conservation of Stonework

Policy 3.2 The stonework to the façade should be conserved. The conservation works should include repair or replacement of decayed or damaged original stonework and repair or replacement of unsympathetic stonework repairs.

Policy 3.3 All new stonework should be undertaken to match the original stonework form and finish of the original building.

Repair works generally are exempt from the requirement for approval by the Heritage Council of NSW under Standard Exemption No 2 provided that *the repair (such as refixing and patching) or the replacement of missing, damaged or deteriorated fabric that is beyond further maintenance, which matches the existing fabric appearance, material and method of affixing and does not involve damage to or the removal of significant fabric.* The proposed conservation works to the façade meet these criteria.

6.5 CONSERVATION WORKS TO THE EXTERIOR OF THE BUILDING

6.5.1 General

Policy 3.1 The conservation of the exterior of Hong Kong House should be undertaken in accordance with the detailed schedule of works in this Conservation Management Plan. An exemption from the requirement for approval by the Heritage Council of NSW for these works should be granted as part of Conservation Management Plan endorsement process.

The following Schedule of Façade Conservation Works is included to provide specific guidelines for the conservation of the significant fabric of the facade and roof of Hong Kong House. These policies are intended to provide the basis for an exemption from the requirement for approval under s 57(1) of the Act under Standard Exemption No. 6 Development Endorsed by the Heritage Council or Director.

The following Schedule of Conservation Works to the Façade has been prepared in conjunction with Hyder Consulting.

6.5.2 Schedule of Façade Conservation Works

Material	Element	Conservation and Remedial Works
Sandstone	Ashlar - street level	Removal of graffiti and graffiti residuals
		Treatment with anti-graffiti
	Window reveals and window heads	Prevention of water penetration from above.
		Removal of soluble salts by dry brushing/poulticing
		Rubbing back and redressing sanding/exfoliating areas
		Removal of past patches, redressing and indenting of new stone
	Window sills	Removal of cementitious patching and decayed stone
		Installation of new sandstone units
		Redressing of exfoliated sandstone to spandrels
		Installation of lead flashings or other treatment to prevent water penetration through top surface
	Projecting string courses	Removal of corroded iron fixings
		Removal of cementitious patching and decayed stone
		Installation of new sandstone units
	Infill balusters	Installation of lead flashings or other treatment to prevent water penetration through top surface
		Installation of new sandstone units
		Removal of soluble salts, redressing and indenting of new stone
		Installation of lead flashings or other treatment to prevent water penetration through top surface of window sills
	Pediments (L1/2 York)	Removal of cementitious patching and decayed stone
		Installation of new sandstone units
		Installation of lead flashings or other treatment to prevent water penetration through top surface
		Recarving of acroterium ornaments

Material	Element	Conservation and Remedial Works
	Cornice	Removal of cementitious patching and decayed stone
		Installation of new sandstone units
		Installation of lead weathering to prevent water penetration through top surface
	Parapet plinth & capping	Installation of lead weathering to prevent water penetration through top surface
		Redressing of parapet plinth to remove exfoliated stone
		Cleaning to remove algal buildup
	Pediments (L5)	Removal of cementitious patching and decayed stone
		Installation of new sandstone units to capping and cornice elements
		Installation of lead weathering to prevent water penetration through top surface
		Recarving of acroterium ornaments
	Carved elements	Installation of lead weathering to prevent water penetration through top surface
		Redressing of exfoliated areas to backing
		Removal of soluble salts by dry brushing and poulticing
		Recarving and replacement of elements
		Patching of elements
Brickwork	Ground floor	None
	Levels 1 - 3	None
	Levels 4-5	Dry brushing to remove efflorescence
		Cleaning to remove algae
		Removal of ferns
Granite and Trachyte	Circular pilasters	None
		Clean top surface
		Repair past signage holes
	Pilaster bases	Design compatible signage
		Removal of graffiti and graffiti residuals
		Treatment with anti-graffiti treatment
		Consider future replacement of Bluestone with Trachyte
Metalwork	Pilaster capitals & bases	Conservation of paint finishes
		Replacement of missing column base
	Cornice weathering	Remove existing lead weathering and replace
	Cupola	Prepare and paint cupola cladding
Windows	Timber frames	Repaint window frames within next 5 years
		Instigate repainting cycle every 15 years or so
	Glass panes / putty	Replace glazing putty as required at time of repainting
	Transome flashings	Repaint window frames, as specified above

Details of Renovation Works



Photo taken from the junction of Druitt Street and York Street on 20 June 2024.

- (1) Completion of Works : Around September 2024.
(**Expected** to be completed before commencement of the lease.)
- (2) Methodology : Full Scaffolding.
- (3) Remarks : Renovation works to the building façade are being carried out with hoardings and/or scaffolding erected. All tenderers are advised to inspect the Premises prior to tender submissions. All inspections shall be made by appointment and shall be undertaken in company with the Lessor's agents or representatives. The tenderer or its representative must comply with all work, health and safety legislation and associated regulations, codes or guidelines and policies in Australia relating to the Premises and as directed by the Lessor or its agents or representatives.

NSW Retail Tenancy Guide 2022



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MESSAGE FROM THE SMALL BUSINESS COMMISSIONER

A retail lease is often a critical contributor to the success of a business.

A lease secures a business's right to trade at a premises. For the property owner, it can underpin the revenue that supports an investment decision.

Entering a lease is a major commitment and it is critical that you understand your rights and responsibilities as a tenant (lessee) or landlord (lessor) before you enter a lease agreement and when any issues arise during the term of the lease.

This guide will assist with many common scenarios including starting a lease, changing the rent, transferring a lease and where lessors and lessees are in dispute. It is relevant for all retail leases entered into after 1 July 2017.

We recommend this guide be read as soon as, if not before, lease negotiations start, alongside a copy of a proposed lease.

The guide can also be used as a reference at any point during the term of a lease.

The guide does not replace professional advice or try to explain every aspect of the leasing laws. Different laws cover retail, commercial and residential leases and it is up to lessors and lessees to know their rights and responsibilities, including obligations and requirements set out within the *Retail Leases Act 1994 (NSW)*.



While many individuals or organisations represent themselves as experts in leasing matters, only some are qualified to give advice. We strongly advise getting independent and professional advice before signing a lease and encourage you to visit the Commission's website smallbusiness.nsw.gov.au or call **1300 795 534** if you require further information.

In the event of a dispute during the lease, the Commission offers a cost-effective mediation service which can help resolve lease disputes quickly and efficiently.

We hope this guide helps both lessees and lessors to successfully negotiate positive outcomes regarding retail leases.

Chris Lamont
NSW Small Business Commissioner
July 2022

CONTENTS PAGE

1. Things to know before signing the lease	4	3. Managing the lease and any issues during the lease	16
What is a retail lease?	4	Key dates to remember during the lease	16
When does a lease start?	4	Potential issues that may arise during the lease	17
What should the lease include?	5	Disruptions	17
Does the lease need to be registered?	6	Repairs and damage	17
What is 'permitted use'?	6	Relocation notices	18
Negotiating rent and trying to understand 'market rent'	6	Demolition notices	18
Lease incentives	7	What happens if someone breaches the lease?	18
Can the lessee afford the rent?	7	What happens if the lessee has been locked out of the premises?	18
Rent review	9	Improper conduct	19
Relocation or demolition clauses	9	Dispute resolution	19
Shopping centre leases	9	The NSW Civil and Administrative Tribunal	19
Key steps before signing the lease	11		
2. Understanding the costs of leasing	12	4. What to do at the end of the lease	20
Lease preparation	12	What happens when a lease, without an option, ends?	20
Fit-out	12	What happens if the lease has an option to extend or renew the lease?	21
Rent	13	Rent changes resulting from a lease extension or renewal	21
Changing the rent	13	Continuing the lease on a month-to-month basis	21
Outgoings	13	Are you required to 'make good' the premises at the end of the lease?	22
'Make good' and end of term provisions	13	Selling the business	22
Insurance	14	Collecting property after the lease has ended	23
Security	14	Useful resources	23
Cash bond	14	Checklist for lessors	24
Third party guarantees	14	Checklist for lessees	24
Bank guarantees	14	Glossary of key terms	25
Valuation	14	Other guides from the NSW Small Business Commissioner	27
Key money	14		

ACKNOWLEDGEMENT OF COUNTRY

We acknowledge and pay our respect to the traditional custodians of the lands and waters of NSW, and all Aboriginal Elders, past, present and emerging.



1. THINGS TO KNOW BEFORE SIGNING THE LEASE

Key information to help you understand aspects of the lease

Signing a lease is a significant financial commitment and the longer the lease, the longer the commitment. No matter how long the lease is, it's important for both lessors and lessees to understand their rights and obligations before signing a lease.

What is a retail lease?

A retail lease is a legally binding contract between the lessor and lessee for the use of the premises where the lessee conducts their retail business. A retail lease cannot override the requirements of the *Retail Leases Act 1994* (NSW). The lease must be provided to a potential lessee at the negotiating stage by the lessor.

The Act will relate to your premises if it is less than 1,000 square metres in size, sells and supplies goods and services, is a type of retail business listed in Schedule 1 of the Act, and the length of the lease is between six months and 25 years. Even if your type of business is not listed in Schedule 1, it may be covered by the Act if the premises you are leasing is in a shopping centre. To find out if your business type is listed in the Act, go to: legislation.nsw.gov.au/view/whole/html/inforce/current/act-1994-046

When does a lease start?

A lease typically starts when both parties sign it. However, a lease can start even if an agreement has not been signed, if:

- the lessee takes possession of the premises; or
- the lessee begins to pay rent.

If the lessee accepts the keys to the premises, this may be enough to start the lease – both parties should be careful to note whether handing over the keys is meant to start the lease or not (such as for a pre-lease inspection).

Terminology

Note that the terms 'lessor' and 'landlord' (usually the property owner) are interchangeable, as are the terms 'lessee' and 'tenant'. This guide will use the terms 'lessor' and 'lessee' which are further defined in the Glossary on page 26.

What should the lease include?



While there is no standard lease as such, a lease should include:

	The lease term (start/end dates)		A description of the premises and the address
	How the rent is calculated		If and how the rent can be changed
	Any agreed securities (eg. cash bond, third party guarantee, or bank guarantee)		The type of business the lessee intends to operate (i.e. the permitted use)
	Who is responsible for the costs of installing fixtures and fittings in the premises (the fit-out)		Any outgoings the lessee must pay (e.g. land tax, cleaning, security, council rates, water/utility charges, etc)
	Who repairs and who maintains the premises and equipment		Core trading hours (when the premises must be open for business) - if applicable
	If there is an option to renew or extend the lease		Any 'make good' provisions

Make sure that the lease includes the specific things relevant to the particular premises. Disputes often occur over small issues due to a lack of clarity in the lease. Importantly, no lease can override the Act which itself sets out certain base requirements.





TIPS

- The lease term should be long enough for the business to pay off fit-out investment, make a profit, and potentially sell the business. Consider negotiating for an “option” if the lessee needs or wants a shorter lease term, with the ability to lock in a longer term if things work out.
- Research ‘market rent’ by reviewing historical real estate listings and consulting with independent real estate agents, valuers, other retailers, relevant industry associations and specialist retail advisors. Consider also any incentives and how this affects the overall cost of the lease and your assessment of ‘market rent’.

Does the lease need to be registered?

Lessors must register a retail lease with a term of more than three years. This must be done within three months of the lease being signed by both parties via the NSW Land Registry Services. Visit their website: nswlrs.com.au/About/About/Announcements/96

For guidance on registering the lease go to: smallbusiness.nsw.gov.au/register-lease

What is ‘permitted use’?

Permitted use usually describes the type of business that the lessor allows to be run from the premises under the lease. Before signing the lease, the lessee should check with the local council that the premises can be used for that particular business and what permits may be required from the council (and strata manager if in a strata building) and any other authorities. Without these approvals in writing you may not be able to run your business from the premises. If a purchaser is taking over a lease (e.g. when buying a business), they should ensure the same approvals are in place. Some examples of permitted use are:

- For a hairdresser – consider, does it also include beauty treatments?
- For a takeaway shop – consider, can meals be served on re-usable plates? Can the type of takeaway food be changed?

Negotiating rent and trying to understand ‘market rent’

The rent payable under a lease is negotiated between the lessor and lessee. There are a variety of ways that the rent payable under the lease may be structured. For example, the lease may require base rent payments with outgoings paid on top of this, or base rent with a percentage of sales turnover (percentage rent or turnover rent). Whatever rent is agreed, this must be outlined in the lease.

‘Market rent’ is rent which is likely to be paid for a similar property based on size, location etc. Lessees may wish to consult other lessees in the same complex, lessees in neighbouring premises, independent real estate agents, relevant industry associations, specialist retail advisors, commercial valuers, conveyancers or private lease negotiators to help understand ‘market rent’ for the premises. Historical real estate listings can be reviewed online or by accessing historical leases from NSW



Land Registry Services (nswlrs.com.au/Find-Records), with whom all leases greater than 3 years should be registered. There are also a range of re-sellers of this information. Useful internet search terms include 'lease data', 'lease information' and 'lease records'. Consider also any incentives being offered by the lessor and how this affects the overall cost of the lease.

Lease incentives

It is common for lessors to provide incentives to lessees to enter into retail leases. Incentives can be provided in different ways, but the most common are:

- a rent-free period;
- a rent reduction/abatement over a part or whole of the lease term;
- the lessor contributes to the lessee's fit-out;
- the lessor pays outgoings;
- a combination of the above.

These arrangements may be outlined in a deed or agreement which is separate to the lease. When comparing leases of various premises, be mindful that due to such confidential 'side arrangements', the 'true' or 'effective' rent may not be obvious.

TIPS

- The lessee should know what expenses they will incur in preparing the premises for trade and follow the fit-out standard required by the lease.
- The lessee should check whether the electrical wiring in the premises is part of an embedded network (typically in apartment blocks, retirement villages, caravan parks and shopping centres) as it may affect their energy costs. For further information see: aer.gov.au/consumers/information-for-electricity-consumers-in-embedded-networks
- The lessee must pay the rent on time. If they don't, the lease may allow them to be locked out without warning.

Can the lessee afford the rent?

A business plan should help lessees know whether they can afford to rent the premises. The rent itself is only one aspect of the costs of a lease. There are many other costs that need to be considered including fit-out, outgoings, insurance and make-good requirements. For more information see section 2 of this Guide 'Understanding the Costs of Leasing'. Even if rent is considered reasonable compared to other premises, the focus should be on whether the overall costs of the lease align with the business plan. For help with a business plan, the services offered by Business Connect are a great starting point. Visit their website: <https://www.nsw.gov.au/working-and-business/business-advice-and-support/about-business-connect> or call 1300 134 359.



TIPS

- Consider getting independent legal advice about the lease, the Disclosure Statement, and the ongoing cost implications.
- Ensure the lease and the Disclosure Statement describe the premises' permitted use accurately, and for the life of the lease term.
- Check council approvals (and any other necessary approvals) are in place for the business type.
- Seek advice on outgoings for similar premises and be clear on what contribution the lessee will be making to lessor outgoings.
- Write a report on the condition of the premises before the lease begins that both the lessor and lessee sign. This may include photos.
- Be clear about the key contact points for any future discussion about the lease obligations during the term and maintain open and respectful communication throughout. Miscommunication is a key contributor to disputes and can escalate into unnecessary and costly conflict.



Rent review

Most leases will provide that the rent can be reviewed on a regular basis, usually every 12 months. The lease will also stipulate the method that is to be used for a rent review. Some common methods are:

- a set percentage increase;
- consumer Price Index (CPI) – The lease should detail which CPI measure is to be used (eg. the CPI published by the Australian Bureau of Statistics and whether it is monthly or yearly CPI);
- market review;
- any other agreed formulae or method.

Relocation or demolition clauses

A lessee will want to consider any potential impact on their business if the lease includes a relocation or demolition clause. Note that any relocation to a new premises may result in an increase in rent if the new premises has higher commercial value, unless negotiated otherwise.

Shopping centre leases

A shopping centre is defined in the Act as a cluster of premises:

- which are owned by the same person or company/s on the same strata plan;
- where at least five premises are used for retail business;
- which are located in the one building or in two or more buildings that are either adjoining or separated only by common areas or other areas owned by the retail shops owner; and
- which are regarded or promoted as a centre, mall, court or arcade.

There are many special issues to consider when leasing in a shopping centre including:

- Rent based on turnover is sometimes negotiated, turnover rent is usually a percentage of the actual turnover of the business conducted from the premises. If a lessee agrees to pay turnover rent, they do not have to report their online sales unless the sales “touch” the premises, such as pickup or delivery from the premises;
- a contribution by the lessee to the costs of advertising and promoting the shopping centre (marketing/promotional levies) is often negotiated;
- the centre’s core trading hours may change if a majority of premises agree to this in writing; and
- there may be relocation or other disruption in the event of a redevelopment, unless you negotiated otherwise.



Potential lessees in a shopping centre may wish to enquire about:

- The **Reporting of Sales and Occupancy Costs Retail Industry Code of Practice** (Sales Reporting Code) at scca.org.au/wp-content/uploads/2015/06/FINAL-Code-of-Practice_Reporting-of-Sales-and-Occupancy-Costs_2018.pdf; which encourages a mutual obligation arrangement that if a lessee provides turnover information to the lessor as part of the lease the lessee can request the lessor provide them with aggregate (anonymous) shopping centre data.
- The **Casual Mall Licencing Code of Practice** at scca.org.au/industry-information/casual-mall-licensing-code/. Part 9 of the Disclosure Statement refers to this code and other aspects of the shopping centre.

TIPS

- Consider getting independent advice on the likely costs of any fit-out (e.g. from a certified quantity surveyor), particularly in shopping centres where high construction standards may apply. Agree in writing (in the lease if possible) what fit-out items can stay and what must be removed, and how the premises will be 'made good' at the end of the lease.
- If the premises is in a shopping centre, review items that should be included in the Disclosure Statement, including:
 - the annual sales of the centre;
 - turnover for specialty shops per square metre, using at least three categories (food, non-food and services);
 - centre traffic count;
 - details of fit-out construction standards;
 - details of when the leases for major lessees end; and
 - any planned construction works at the shopping centre.



BEFORE SIGNING A PROPOSED LEASE, THE LESSEE MAY WISH TO:

- 1 Read our guidance '**Before you sign the lease**' at: smallbusiness.nsw.gov.au/sign-lease
- 2 Read the draft lease and get independent advice on anything they are unsure about and try to negotiate any aspects of the lease they are not happy with. Contact the NSW Law Society's solicitor referral service: lawsociety.com.au/for-the-public/going-court-and-working-with-lawyers/solicitor-referral-service.
- 3 Clearly understand the overall costs and risks of the lease for their business, and take independent advice if unsure. A great starting point for business support is Business Connect: business.nsw.gov.au/support-for-business/businessconnect. Also see section 2 of this Guide on 'Understanding the Costs of Leasing'.
- 4 Obtain the **Retail Lease Disclosure Statement** (with Part A signed by the lessor) at least seven days before they begin a new lease or renew a lease. There are two parts to the Disclosure Statement – one that the lessor signs (Part A, known as the Lessor's Disclosure Statement) and one that the lessee signs (Part B, known as the Lessee's Disclosure Statement). A **template Retail Lease Disclosure Statement** is available at: smallbusiness.nsw.gov.au/disclosure-statement-form
- 5 Carefully read the Disclosure Statement and our guidance '**Information about Disclosure Statements**' at: smallbusiness.nsw.gov.au/disclosure-statements. Consider getting legal advice to ensure they understand it. Check that it includes all the agreements reached during negotiations including whether the lessor expects to do any works that may disrupt your business. If they don't understand or don't agree with any parts of the Disclosure Statement the lessee should discuss this with the lessor and ensure any amendments to the lease are also noted in the Statement following any discussions.
- 6 Seven days after receiving the Lessor's Disclosure Statement (Part A) the lessee must provide the lessor with the Lessee's Disclosure Statement (Part B).



2. UNDERSTANDING THE COSTS OF LEASING

Rent, fit-out, outgoings, insurance and other items to consider

It is important to be aware of the costs and risks of leasing and incorporate these into any business planning. Seek independent advice from a retail leasing expert, accountant, solicitor or others before signing a lease.

The main costs of leasing are:



1. Lease preparation

The lessor must pay the full cost of preparing the lease, including any mortgagee consent fees. However, if the lessee asks for changes after the signed Lessee's Disclosure Statement has been returned to the lessor, the lessee may be required to pay for those amendments. For guidance on preparing the lease go to: smallbusiness.nsw.gov.au/preparing-lease

2. Fit-out

Lessees will usually be responsible for the costs of installing fixtures and fittings in the premises (the fit-out). In shopping centres, there is usually a standard of construction required for fit-outs. Lessees may also be responsible for some or all of the lessor's costs of preparing the premises for the fit-out. The Disclosure Statement must state who pays these costs. Lessees must agree to the maximum cost of the lessor's fit-out costs in writing before beginning the lease. Depending on the cost of the fit-out it may be worthwhile to have an independent certified quantity surveyor verify the costs associated with preparing the premises for fit-out. The lessor and lessee will need to consider/agree who is to pay for any surveyor.





3. Rent

Rent is one of the largest ongoing costs of running a business and is normally paid monthly in advance. Even if a lessee experiences financial difficulties, they must still pay the rent and use the premises only for the business stated in the lease. If the lease requires the lessee to keep actively trading in the lease period but they close the premises (including due to insolvency legislation and laws), it may be a breach of lease.

4. Changing the rent

The initial rent under a lease is commonly referred to as base rent. The lease must state when and how any change to the rent is to occur. If the lease says the rent is set at current market value, and the lessee and lessor cannot agree on the rent, then the Act provides a process for a specialist retail valuer to determine the rent. The NSW Small Business Commission appoints the valuer and the lessee and lessor share the costs equally. These costs can be upwards of \$1,500 per party, however, and will vary depending on the valuer and matter. If either party seeks a review, then both parties may be required to pay for the costs of a further two valuers.



5. Outgoings

Outgoings are expenses of the lessor that the lessee has agreed to pay under the lease. They are usually major costs for the lessee. Lessors are able to negotiate recovery of fees for management, operation, maintenance or repair of the premises or land as part of the outgoings. Outgoings may include things such as land tax, cleaning, security, promotional fund levies, council rates, water charges, utilities, insurance, pest control, emergency services levy, management fees and audit fees. The outgoings should be included in the Disclosure Statement and it is important you understand these before signing the lease. Undisclosed outgoings might not have to be paid. Outgoings can go up by market rates over time. For more information on outgoings, visit: smallbusiness.nsw.gov.au/outgoing

6. 'Make good' and end of term provisions

'Make good' provisions set out the obligations of the lessee before the lease ends, if any. Typically, these provisions require a lessee to return the premises to the lessor in an empty and neutral state, which is not necessarily a similar condition to that at the commencement of the lease. In some cases, make good involves a requirement for a lessee to strip back the premises to base building (or bare shell) condition and redecorate the premises (e.g. re-paint). It is important to agree to these provisions before signing the lease. Retail leases often include a clause which stipulates that where the lessor and lessee cannot agree on the make good costs, the President of the Australian Institute of Quantity Surveyors, or another industry body, will nominate an independent certified quantity surveyor to make a binding determination about these costs.



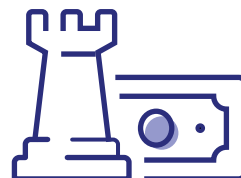


7. Insurance

The lease may include a provision requiring the lessee to take out certain insurance policies. Check these provisions and obtain quotes for any required insurance policies.

8. Security

The lessor may ask for some form of security when negotiating the lease. This security may be: (a) a cash bond; (b) a third party guarantee, or (c) a bank guarantee. Retail bonds are managed by NSW Fair Trading. See: fairtrading.nsw.gov.au/housing-and-property/renting/rental-bonds-online



8a. Cash bond

If the lessee agrees to give the lessor a cash bond as security, the lessor must deposit the bond with NSW Fair Trading within 20 business days of receiving it. The main advantages of a cash bond are: it is held in trust by the NSW Government; there are no fees; it is for a specified amount; and there are rules for paying out the bond at the end of the lease.



8b. Third party guarantees

This is a promise by a guarantor to pay the lessor compensation if the lessee breaks any of the terms of the lease. The person providing the guarantee can be sued and put their personal assets at risk should the lessee default.



8c. Bank guarantees

This is a promise by a bank to pay the lessor an amount in compensation up to an agreed limit if you break the terms of the lease. The lessor has the right to cash in the bank guarantee or draw on it if the lessee breaches the lease or damages the premises. The lessor is usually not required to inform the lessee that they have drawn on the bank guarantee before they do it. A bank guarantee can have an expiry date or be unlimited. The lessor should release the bank guarantee within two months of the lessee leaving the premises unless they owe money.



9. Valuation

Lessors and lessees may wish to get a valuation on the premises to check its market value. This can be done by hiring an expert valuer or by accessing specialist software. This will incur a cost.

10. Key money

Key money is any sort of non-refundable benefit, usually money, that the lessor asks for in exchange for the granting, renewal, extension or assignment of a retail lease. Key money does not include paying a cash bond or giving a guarantee. Lessors must not take key money for a retail lease.





3. MANAGING THE LEASE AND ANY ISSUES DURING THE LEASE

Key dates and how to manage issues as they arise

To best manage your lease and any issues that may arise during the lease, it's recommended that you maintain your records with the following:

- a copy of the signed lease;
- a copy of the signed Retail Lease Disclosure Statement;
- the condition report and any photos taken as part of this;
- notes about discussions between the lessor, lessee or any relevant agents or advisers in case you need to refer to them.

TIPS

- **Keep written records of your dealings with the lessor/lessee during the term of the lease.**
- **Keep detailed records of any disruptions or damage so you can be specific about their impact.**



KEY DATES TO REMEMBER DURING THE LEASE

These dates apply if the lessor uses a 1 July to 30 June financial year. If they don't use the same financial year accounting system these dates will be different.



By 31 January

If in a shopping centre and the lessee contributes to a marketing plan or an advertising and promotion plan, they may ask to examine a written statement with details of advertising and promotion costs for the first six months of the previous accounting period (1 July to 31 December).



By 31 May

If the lessee pays outgoings the lessor must provide an estimate for the upcoming accounting period. In addition, if in a shopping centre and paying advertising and promotion expenses, the lessor must provide a written marketing plan for the proposed advertising and promotion expenses during that accounting period.



By 31 July

If in a shopping centre and the lessee contributes to a marketing plan or an advertising and promotion plan, they may ask for a written statement with details of advertising and promotion costs for the last six months of the previous accounting period.



By 30 September

The lessor must provide a written statement which has been audited, detailing the outgoings for the previous accounting period. The lessor must provide a sinking fund statement, where this applies. In addition, if in a shopping centre and the lessee contributes to a marketing plan or an advertising and promotion plan, the lessor must provide a written and audited statement with details on advertising and promotional costs.



By 31 October

The lessee and lessor should settle any under-payment or over-payment to adjust the actual outgoings for the previous financial year.





POTENTIAL ISSUES THAT MAY ARISE DURING THE LEASE

If any of the below issues arise, you should seek independent advice if you are unsure about what to do, and review your lease. For further guidance, you should also review the Act: legislation.nsw.gov.au/view/html/inforce/current/act-1994-046.

Disruptions

Lessees should tell the lessor in writing as soon as possible about any disruptions impacting their business.

The Act requires the lessor to take all reasonable steps to avoid disrupting the lessee's business. Lessees may be able to seek compensation, unless they were told about the disruption before starting the lease.

Keep detailed records of any disruptions so you can be specific about their impact. **Consider seeking independent advice if necessary.**

Repairs and damage

The lessee is often going to be responsible for repairs and maintenance under the lease. Retail and commercial leases can be very different to residential leases, which often require the lessor to do more of the repairs and maintenance.

If the lessor supplies any equipment, such as individual air-conditioning units, then it is also common for the lease to require the tenant to maintain that kind of equipment whilst they are in occupation. The lessor might also agree to replace the equipment if it breaks down completely. These things can be negotiated at the

TIP

Try to resolve disagreements by discussion and negotiation wherever possible as this will be less costly and time consuming.

start of the lease and it is sensible for both parties to document all repair and maintenance obligations from the start.

If there is any damage to the premises or equipment supplied by the lessor, then the lessee (occupier of the property) should tell the managing agent (or the lessor if they are self-managing) about what has happened. This can often be a phone call in the first instance, but it's also a good idea for the tenant to send photos and a description of what has happened in writing (by email, for example).

If there is significant damage that makes the property or part of the property unusable, then a common question from the lessee will be whether they have to keep paying rent in full. If the damage is caused by weather or other events that are out of the control of the lessee or the lessor, then a negotiated outcome where the lessee pays less rent, or no rent for a period of time whilst the damage is being repaired, is also quite common. Under the *Retail Leases Act 1994 (NSW)* there are provisions that describe each party's rights when there are damaged premises. They include what happens with rent, notice requirements and termination if the premises cannot be repaired. Termination is not usually what a tenant with a long-term lease is looking for, so a mutually acceptable outcome can usually be negotiated. A mediator can always try to assist and can be arranged through the Mediation Services team.



Insurance should also be considered by both lessors and lessees and any contributions towards insurance premiums are usually detailed in the outgoing section of the lease. It is common for tenants to contribute towards building insurance premiums whilst they are in occupation and this is something that can be agreed before the lease starts.

Relocation notices

If a lessee receives a relocation notice, they should check whether the lease has a relocation clause. For further guidance visit: smallbusiness.nsw.gov.au/relocation-notice

If the lease has a relocation clause, the lessor must give the lessee at least three months' notice in writing when they ask the lessee to move to another premises.

The lessee has one month to tell the lessor that they don't want to move when they get the relocation notice.

If the lessee does not accept the new premises, the lease finishes at the end of three months from the original notice (or earlier if agreed).

Demolition notices

If a lessee receives a demolition notice, they should check whether the lease has a demolition clause and if the lessor has to compensate them for reasonable costs.

If the lease has a demolition clause, the lessor can end the lease to demolish the building or shopping centre if the work requires vacant possession of the premises. This applies whether all or part of the building is being

demolished. Demolition includes any major repair, renovation or reconstruction.

The lessor must give at least six months' notice that the lease will end because of demolition. A lessee can end the lease during that time by writing to the lessor and giving at least seven days' notice.

What happens if someone breaches the lease?

If a lessee or lessor does not abide by the lease then it may be a breach of the lease. For example, if the lessee doesn't pay rent on time it is a breach of the lease. Similarly, if the lessor doesn't do what is required of them under the lease, it is a breach of the lease. Where a party has breached the lease, the other party may recover any losses they experience because of the breach. Note that the non-breaching party must take reasonable steps to minimise their losses. In addition, certain breaches may entitle a party to terminate the lease. Seek legal advice if concerned.

What happens if the lessee has been locked out of the premises?

If a lessee has been locked-out of the premises, or received a letter or warning that the lessor or their agent is considering what is sometimes known as 're-entry', 'repossession', 'eviction' or 'termination' they should seek immediate independent legal advice on these warnings due to the potential impact on their business. For further guidance, visit our website: smallbusiness.nsw.gov.au/lock-out



Improper conduct

Neither the lessee nor the lessor may engage in unconscionable conduct, or misleading or deceptive conduct. This is a complex matter that usually requires legal advice to make a successful claim.

Dispute resolution

The NSW Small Business Commission provides mediation services for disputes between the lessor and lessee of a retail lease. Mediation is an effective and cost-efficient way of resolving disputes, as a neutral mediator helps both parties try to negotiate a solution. If you need help resolving a dispute, you can submit an application for Mediation at no charge. A Mediation Officer will be allocated to your matter and will assist both parties. If the parties decide a mediation session could help, they share equally in the relatively low Mediator's fee. For more information on mediation and the costs, visit: smallbusiness.nsw.gov.au/get-help/disputes/how-does-mediation-work.

The NSW Courts and the NSW Civil and Administrative Tribunal

If mediation is not successful you may be able to seek orders from a court or the Tribunal to resolve the dispute. Unlike mediation, the courts and tribunals focus strictly on legal matters and solutions. You can represent yourself at the Tribunal or engage a lawyer.

TIPS

- To find out more about your rights when facing these issues, visit our website at: smallbusiness.nsw.gov.au

Or, call us on 1300 795 534. Read the full *Retail Leases Act 1994 (NSW)* at: legislation.nsw.gov.au/view/html/inforce/current/act-1994-046
- If you need help to resolve a dispute and would like to access our mediation services, visit: smallbusiness.nsw.gov.au/get-help/disputes/how-does-mediation-work



4. WHAT TO DO AT THE END OF THE LEASE

Ending, renewing, extending or transferring the lease

The lease will outline when the lease is due to end as well as whether there are any options to extend or renew the lease. As the end of your lease approaches it is important for lessors and lessees to discuss their options so that there can be a smooth transition.

What happens when a lease, without an option, ends?

If the lease does not have an option to extend or renew then when the lease ends, the lessor is free to find a new lessee.

The lessor must give the lessee written notice about whether they intend to offer the lessee a new lease or if they want the lessee to move out at the end of the current lease. This notification must be given at least six months before the lease expiry date and not more than 12 months before expiry.

If the lessor offers the lessee a new lease and the lessee does not accept it within one month, the lessor can withdraw the offer.

If the lessor doesn't issue a notice telling the lessee whether there will be an offer of a new lease, the lessee should consider writing to the lessor before the lease ends to ask the lessor for this notice indicating their intentions. Otherwise, the lease may continue on a

month-to-month basis.

The lease can be extended by up to six months from the time the lessor gives the lessee the notice.

The lessor does not have to negotiate a new lease, or an extension, and they can stop negotiations at any time. They must tell the lessee in writing that they have finished the negotiations before they can advertise the premises for lease.

If no extension is offered or agreed between the parties then by the end of the lease you must vacate the shop, remove your belongings and 'make good' the premises as outlined in the lease.

For more information on what happens when a lease without an option ends, go to: smallbusiness.nsw.gov.au/options-end

TIP

The lessee should ask the lessor for an updated Disclosure Statement before they exercise the option to renew or extend the lease.



What happens if the lease has an option to extend or renew the lease?

A retail lease may include an option to renew or extend the lease.

Check the lease to see what you need to do to exercise the option and when it needs to be done.

If the lessee wants to take up the option, they must normally tell the lessor in writing during the 'option exercise window' stated in the lease. If the lessee misses the last date to exercise the option, they will probably lose the right to the option.

For more information on lease options go to: smallbusiness.nsw.gov.au/lease-options

Rent changes resulting from a lease extension or renewal

If the option to extend or renew the lease states that the rent changes to current market rent, the lessee may ask the lessor in writing to outline what the new rent will be. The lessee may send this request to the lessor before the time to exercise the option starts, usually nine to six months before the end of the lease.

If the lessee and lessor cannot agree on the current market rent, then the Act provides a process for a specialist retail valuer to determine the rent. The Registrar of Retail Tenancy Disputes appoints the valuer and the lessee and lessor share the costs equally.

These costs can be upwards of \$1,500 per party, however, will vary depending on the valuer and matter. If either party seeks a review, then both parties may be required to pay for the costs of a further two valuers.

Once the current market rent is agreed or determined, the lessee has up to 21 days to exercise the option. If the lessee misses the date to exercise the option, they will probably lose the right to the option.

Continuing the lease on a month-to-month basis

Almost all leases give the lessee an opportunity to 'hold over' the lease and stay in the premises on a month-to-month basis at the end of the fixed term period. The lessee becomes a 'periodic lessee' or 'lessee at will' and in this situation, either the lessee or the lessor can end the lease with one month's notice.

Be aware that some franchise and licence to sell agreements require a lease not to be month-to-month.

It can and does happen that lessees are unable to sell their business because their lessor is able to choose to terminate the month-to-month lease and a buyer typically wants a longer term lease.

It is good business practice to actively seek to negotiate a new lease with a new fixed term before the lessee transitions into a month-to-month lease unless they are seeking premises elsewhere.



For more information on lease hold overs and renewals, visit: smallbusiness.nsw.gov.au/hold-over

Are you required to 'make good' the premises at the end of the lease?

'Make good' provisions set out the obligations of the lessee before the lease ends, if any.

Typically, make good provisions require a lessee to return the premises to the lessor in "original condition", which may mean returning the property to the condition it was in when it was first built. In many cases, make good involves a requirement for a lessee to strip back the premises to base building (or bare shell) condition and redecorate the premises (e.g. re-paint). Ideally, you may be able to refer to the condition report prepared at the beginning of the lease.

If the lessee is vacating the premises they must be sure to leave enough time to remove any property and restore the premises to the state agreed in the lease. Alternatively, lessee's often agree to a payment to the lessor in lieu of the lessee carrying out the make good, leaving it to the lessor to carry out as necessary. Lessees can try negotiating with the lessor for this arrangement. If lessees don't carry out the make good, they will normally be liable to pay the lessor's costs.

Retail leases may include a clause which states that if the lessor and lessee cannot agree on the make good costs, the President of the Australian Institute of Quantity Surveyors (AIQS), or another industry body, will

TIP

If the lessee is vacating the premises be sure to leave enough time to remove any property and restore the premises to the state agreed in the lease (see sections 2 and 4 of this Guide which refer to 'make good' provisions).

nominate an independent certified quantity surveyor to make a binding determination about these costs.

Selling the business

If the lessee decides to sell their business, they will often need to transfer (assign) their lease to the buyer (the assignee). So, there are two transactions that may need to occur – a sale of business and a transfer of lease. Asking the lessor to agree to the assignment of the lease involves giving information to the lessor and to the new lessee, in order to be released from the financial obligations of the lease.

Under the Act, an Assignors Disclosure Statement is to be provided to the lessor when a lessee is requesting the lessor to consent to the assignment (transfer) of a lease. A copy should also be given to the assignee (proposed new lessee). A copy of this statement is available at: smallbusiness.nsw.gov.au/assignors

You should also consider getting independent advice. For more information on transferring your lease, visit: smallbusiness.nsw.gov.au/transfer-lease



Collecting property after the lease has ended

Usually, unless the lease states otherwise, the property the lessee brings into the premises remains the lessee's property after the lease has ended. The lessor has to give the lessee reasonable opportunity to remove their goods, whether the lease has expired, or it has ended early because of a breach of the lease terms. The lessee should contact the lessor and arrange a suitable time to collect their goods. Lessees may be liable to the lessor for compensation or damages for leaving their goods at the premises if this has not been agreed. For further guidance on lessee's right to enter a property after a lease ends, go to: smallbusiness.nsw.gov.au/right-to-enter



Useful resources

- **Lease Disclosure Statement:**
smallbusiness.nsw.gov.au/disclosure-statement-form
- **Information about Disclosure Statements:**
smallbusiness.nsw.gov.au/disclosure-statements
- **Information about lease options:**
smallbusiness.nsw.gov.au/lease-options
- **Manage your bond online at NSW Fair Trading:**
www.fairtrading.nsw.gov.au/housing-and-property/renting/rental-bonds-online
- **How to access the Commission's mediation services:** <https://www.smallbusiness.nsw.gov.au/get-help/disputes/how-does-mediation-work>
- **Retail leases and COVID-19 FAQs:**
smallbusiness.nsw.gov.au/covid-faq
- **Retail Leases Act 1994 (NSW) (the Act):**
legislation.nsw.gov.au/view/html/inforce/current/act-1994-046

CHECKLIST FOR LESSEES

- ☐ Look around for a suitable premises and consider talking to other retailers, independent real estate agents, valuers or relevant industry bodies.
- ☐ Consider seeking legal and financial advice prior to signing a lease. Ensure you read the lease and other lease documents (e.g. Disclosure Statement) thoroughly and highlight any parts which are unclear and seek clarity on these.
- ☐ Ensure the property is suitable/appropriate for conducting your business for the duration of the lease.
- ☐ Understand what the lease allows you to do (the permitted use) and also what other licenses or permits might be required (e.g. from local council or other authorities).
- ☐ Ensure it is clear what the rent is and how it can be increased and that this is clearly outlined in the lease.
- ☐ Ensure the area to be leased is clearly defined in the lease documents.
- ☐ Be aware of any security payments required (e.g. cash bond, third party guarantee, or bank guarantee).
- ☐ Note the deadline by which you must exercise an option, if you have one.
- ☐ Obtain a copy of the Disclosure Statement at least seven days before you begin a new lease or renew a lease.
- ☐ Ensure you fully understand what costs you have agreed to, such as outgoings, fit-out costs and other occupancy costs as well as the make good provisions at the end of the lease.
- ☐ Understand who is responsible for maintenance and repairs of the building and infrastructure, plant and equipment, air conditioner etc.
- ☐ If the premises is in a shopping centre, make sure you are aware of some of the unique requirements related to renting in a shopping centre.
- ☐ Before taking possession, consider doing an inspection/condition/dilapidation report (including photos) that both the lessor and lessee sign.
- ☐ Take possession of the premises after the lease has been prepared and signed.

CHECKLIST FOR LESSORS

- ☐ Consider seeking legal and financial advice when preparing a lease document, including to ensure it complies with the relevant legislation.
- ☐ Conduct appropriate enquiries to understand the financial capacity of the lessee.
- ☐ Provide a copy of this guide as soon as lease negotiations commence.
- ☐ Provide full details to the proposed lessee of all outgoings they are agreeing to pay under the lease.
- ☐ Be clear about who is responsible for the maintenance and repair of particular items (e.g. air conditioning, roof, structural issues).
- ☐ Clarify what will happen if there is a breach of lease, and what termination clauses are agreed.
- ☐ Provide the lessee with a copy of the lease within three months after it has been signed by the lessor.
- ☐ Register a lease longer than three years with NSW Land Registry Services within three months of the lease being signed by both parties.
- ☐ Hand over possession of the premises after the lease has been prepared and signed.

GLOSSARY OF KEY TERMS

Disclosure Statement

A list of information, as required under the Act, that lessors and lessees must sign before entering into the lease. There are two parts to the Disclosure Statement: (a) Part A, known as the Lessor's Disclosure Statement, which is signed by the lessor and must be provided to the lessee at least seven days before the commencement of a lease; and (b) Part B, known as the Lessee's Disclosure Statement, which is signed by the lessee and must be provided to the lessor within seven days after receipt of Part A.

Lessee (Tenant)

The tenant of the leased premises.

Lessor (Landlord)

The owner of the leased premises, who grants a lease to the lessee (tenant).

Hold over

You are on 'hold over' if you continue to occupy the premises after the expiry of the fixed term where the lessor has not taken action to end the lease. Leases often give the lessee an opportunity to 'hold over' under the lease and stay in the premises on a month-to-month basis. Under this arrangement either party can terminate the lease with one month's notice. See also: hold-over, holding over period, month-to-month, monthly tenancy, week-to-week, weekly tenancy, tenancy at will.

Make good

The obligation of a lessee at the end of their lease to ensure that their premises are returned to the condition it was first built, the same condition as at the start of the lease, or some other condition as specified in the lease. For example, the make good obligations may include re-painting or restoring partitions. Note: 'cold shell' or 'warm shell' are sometimes used in shopping centres, where you may need to take all services back to capped points, and install hoarding when the shop front is removed.

Mediation

A confidential process in which the participants, with the support of the mediator, identify issues and commercial interests, develop options, consider alternatives and make decisions about future actions and outcomes. Mediation is a cost-effective and quick way to settle disputes. The NSW Small Business Commission provides mediation services.

Option

Typically an option in a lease is a right for the tenant to call for a new lease with the same terms as their current lease, for a new fixed period of years, removing (striking out) the option that was used, and resetting the rent by a specified method. An option in a lease usually means an extra period that the lessee has the right to occupy the premises, in addition to the initial fixed term of the lease. For example, a lease with an initial fixed term of two years may have two options which will allow the lessee to stay for a further three years. A lessee may choose whether to 'exercise' or take up an option. Any option should be documented in the lease (in writing). The deadline for exercising an option is usually some months prior to the end of the lease (not the last day of the lease). If you miss that deadline, you lose the option.

Outgoings

The costs incurred by the lessor in operating and maintaining the leased premises which are typically passed on to the lessee. As such these are usually referred to as 'lessor outgoing' (i.e. separate to outgoing of the business itself). The responsibility for paying these outgoing is to be negotiated between the lessor and lessee and should be outlined in the lease. Examples may include council and water rates, repairs and maintenance and management fees. The *Retail Leases Act 1994* (NSW) impacts on what outgoing may be charged to the lessee.

Term

The duration of the fixed term of the lease, being the minimum amount of time that a lessee may remain at the premises. A lease agreement may also provide options to renew or extend the lease term.

For further information see: smallbusiness.nsw.gov.au

This document has been developed in consultation with a range of industry bodies including:

- Australian Institute of Quantity Surveyors
aiqs.com.au



- Australian Retailers Association
retail.org.au



- Business NSW
businessnsw.com



- CPA Australia
cpaaustralia.com.au

- National Retail Association
nra.net.au



- Newsagents Association of NSW and ACT Ltd
nana.com.au



- Restaurant and Catering Australia
rca.asn.au



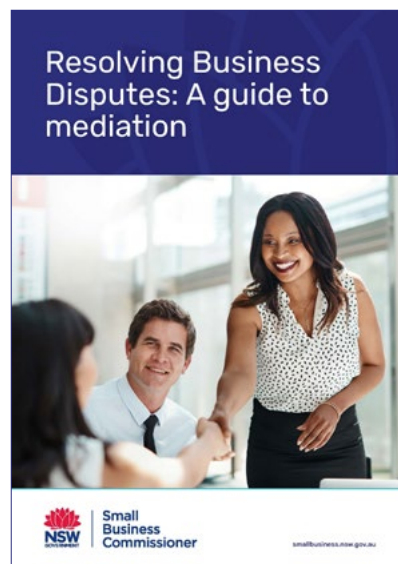
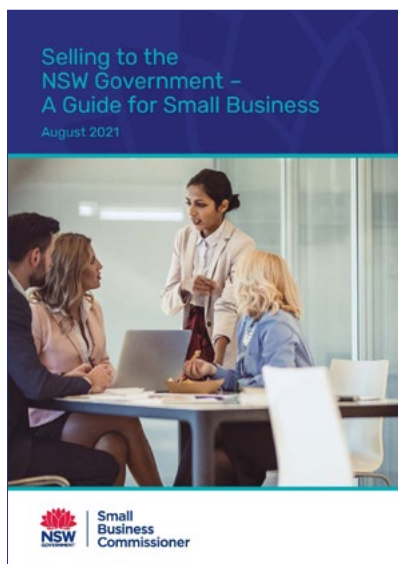
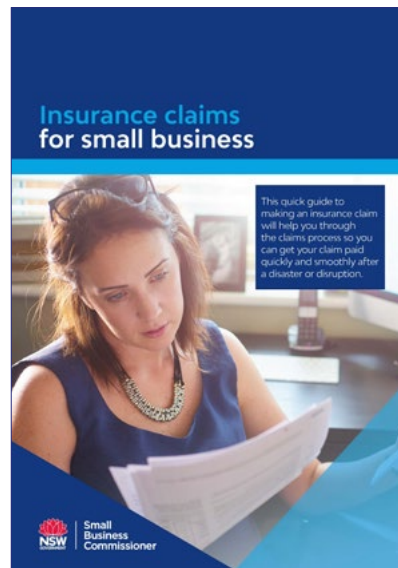
- Shopping Centre Council of Australia
scca.org.au



- The Law Society of NSW
lawsociety.com.au



Other guides from the NSW Small Business Commissioner



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