

This is a suggested form of a Lease Agreement for retail property where the transaction falls within the scope of the Consumer Protection Act No. 68 of 2008. The user of this Lease Agreement must adapt it to suit the user's own circumstances.

This Agreement must be read together with the practice notes on leases with consumer lessees, liability for defects, exclusion of liability and disclaimers.

This Agreement should not be used where the lessee (the consumer) is a juristic person (e.g. a company or a close corporation) whose asset value or annual turnover, at the time of this transaction, exceeds R2 million.

## **Retail Lease Agreement**

**between**

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**(Landlord/Lessor)**

**and**

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**(Tenant/Lessee)**

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## 1 **Schedule**

### 1.1 **Parties**

(1) Landlord/Lessor: \_\_\_\_\_  
(insert full name of person and identity number and marital status or full name of entity and registration number);

(2) Tenant/Lessee: \_\_\_\_\_  
(insert full name of person and identity number and marital status or full name of entity and registration number);

### 1.2 **Leased Premises:**

#### **[Insert exact description of the Leased Premises by referring to:]**

(1) Shop No: For example

Shop No 5, The Ultra Modern Shopping Centre being an approximate area of 1 000 square metres in extent as more fully described on the annexed diagram marked Annexure LA1;

(2) Building: For example

The Ultra Modern Shopping Centre

(3) Physical address: For example

123 Up Your Alley Avenue (corner Ladder Road), Cloud Nine, 1234

(4) Deeds office description: For example

Erf 123 in the Utopia Township; Registration Division AB; Province of Gauteng

In extent 10 000 (ten thousand) square metres

Held by Deed of Transfer T9876/2012

**(the Property)**

(5) together with use of the Common Areas located on the Property

(6) the Leased Premises includes any parking bays and storage space leased to the Tenant/Lessee.

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### 1.3 Lease period

**[See Practice Note point 2]**

(1) Beneficial occupation \_\_\_\_\_ **[Drafting note: the beneficial occupation date is the date on which the Tenant/Lessee may take occupation of the Leased Premises for purposes of attending to fit out and finishings (usually one/two months prior to Commencement Date). Depending on the terms negotiated, the Tenant/Lessee may not have to pay rental but only the utility charges associated with water, electricity, sewerage and refuse removal during this period]**

(2) Commencement date: \_\_\_\_\_

(3) Termination date: \_\_\_\_\_

(4) Renewal period (if any in terms of clause 7): \_\_\_\_\_

### 1.4 Use of the Leased Premises:

The Leased Premises will only be used for the purpose of \_\_\_\_\_ **[Drafting note: be specific - e.g. retail clothing etc]** and any ancillary activities associated with those business activities of the Tenant/Lessee.

### 1.5 Minimum Trading Hours:

**[Drafting note: be specific to suit your premises eg the minimum trading hours are 09h00-21h00 seven days per week, with extended trading hours over the festive season]**

### 1.6 Parking Bays:

The leased Parking Bays are **[insert]** number of covered/uncovered parking bays OR Basement Level X Parking Bays numbers 1 to 10 allocated to the Tenant/Lessee in writing or described on the annexed diagram marked Annexure LA2;

### 1.7 Storage Space:

The Storage Space let is **[insert]** square metre area located on the **[insert]** floor allocated to the Tenant/Lessee in writing or as described on the annexed diagram marked Annexure LA3.

**1.8 Rental and Escalation:**

**[See practice note point 3]**

- (1) The Tenant/Lessee will pay a monthly rental amount of R[insert] excluding VAT to the Landlord/Lessor's nominated account, the details being:

Account Name: \_\_\_\_\_

Bank Name: \_\_\_\_\_

Account Number: \_\_\_\_\_

Branch Code: \_\_\_\_\_

Deposit reference: \_\_\_\_\_

**Alternatively to 1.8(1)**

- (2) The Rental payable will be calculated at a rate of R[insert] per square metre for the Leased Premises and at a rate of R[insert] per square metre for the Parking Areas and R[insert] per square metre for the Storage Space.

**Alternatively to 1.8(2)**

- (3) The Tenant/Lessee shall pay to the Landlord/Lessee a monthly rental in the amount of R[insert] per month excluding VAT.
- (4) Each Parking Bay will be let to the Tenant/Lessee for an amount of R[insert] per month excluding VAT.
- (5) The amount payable for the Storage Space will be R [insert] excluding VAT, alternatively R [insert] per square metre per month excluding VAT.
- (6) The monthly rental, parking rental and storage costs payable by the Tenant/Lessee will escalate each year by [insert] % per annum, calculated and compounded annually, on the anniversary of the Commencement Date, for the duration of the Lease Period.
- (7) All rental payments under 1.8(1), (2) (3), (5) and (5) [delete whichever is not applicable] (Rental) will be made with effect from the Commencement Date, on the first day of the month, for the duration of the Lease Period, free of deduction and set-off.
- (8) If the Commencement Date does not fall on the first calendar day of a month, the Rental payable will be prorated according to the number of days the Tenant/Lessee is in occupation of the Leased Premises.

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- (9) In addition, the Tenant/Lessee will pay the amount by which **[insert]** % of the Tenant/Lessee's gross/net **[delete whichever is not applicable]** turnover plus VAT exceeds the Rental.

**[Drafting note- the rental may be a fixed amount or a combination of both the fixed amount and a percentage business turnover of the Tenant/Lessee at the leased premises]**

#### 1.9 Operating Costs:

**[See Practice Note point 4]**

The Tenant must pay a monthly charge of **[insert amount]** for the Pro Rata portion of the Operating Costs including, but not limited to, the costs and expenses in respect of –

**[Drafting Note: Operating costs are charged by Landlords/Lessors in a variety of different ways- some Landlords'/Lessors' charge a fixed monthly charge at a set rate per m<sup>2</sup>; others charge the Tenant/Lessee a pro rata charge of the monthly operating rating costs of the Landlord/Lessor; and others include this charge in the rental as a "gross rental". Make sure that this lease suits the requirements of the Landlord/Lessor.]**

- (1) cleaning and security;
- (2) lift and escalator maintenance, operating and running costs;
- (3) air conditioning and heating maintenance, operating and running costs;

**[ Drafting note: Depending on what is negotiated the Landlord may wish to charge separately for air conditioning maintenance. This should be included as a separate cost.]**

- (4) gardening, landscaping and horticulture;
- (5) Landlord's insurance premiums;
- (6) repairs, maintenance contracts and general maintenance of any kind;
- (7) redecoration and painting;
- (8) management fees (if any);
- (9) building amenity costs; and
- (10) wages and salaries.

**[Drafting note- this is an example of the sorts of things that will fall under operating costs, it must be adapted to suit the particular circumstances of each lease]**

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#### 1.10 **Property rates and taxes:**

The Tenant will be responsible to pay **[insert amount]** per month for its Pro Rata share of the:

- (1) municipal property rates applicable to the Property including assessment rates, basic water, electricity, refuse and sewerage charges;
- (2) body corporate, property owners association levies;
- (3) City Improvement District (CID) and/or Business Improvement District Levies

#### 1.11 **Utility charges**

- (1) The Tenant/ Lessee must pay for:
  - (a) all separately metered electricity, power and water used on the Leased Premises for any cause including operating any air conditioning installed in the Leased Premises. Despite any provision to the contrary in this Agreement, the Tenant's/Lessee's liability to the Landlord/Lessor in respect of all the electricity charges set out in this Agreement, shall be at the same tariff or rate as if the Tenant/Lessee had entered into a direct agreement with the local authority or supplier of such electricity; **[if it is not metered separately then a pro rata portion]**
  - (b) a Pro Rata share of any charges or amounts levied by or payable to any competent Authority for drainage purification or treatment or removal of effluent or waste water from the Leased Premises;
  - (c) a Pro Rata share of all fees and charges incurred by the Landlord/Lessor for water and electricity consumption relating to the common areas of the land and/or building not occupied by the Tenants/ Lessees;
  - (d) a Pro Rata share of the rubbish removal charges and/or any special refuse removal charges levied by or payable to an Authority;
  - (e) a Pro Rata share of the electricity of the central air-conditioning plant;
  - (f) a Pro Rata share of the electricity, water, sewerage and refuse removal charges in respect of the Common Areas; and
  - (g) any other utility or service or encroachment charges which may be incurred by or for the benefit of the Tenant/ Lessee and levied on the Property or the Leased Premises by an Authority.

**[Drafting note: If gas is used in the Property then allocate costs for a pro-rata portion of gas usage too]**

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**1.12 Increase of Operating Costs and Property rates, taxes and utility charges:**

Any increases in the Property rates and taxes, CID Levy, Business Improvement District Levy and/or Operating Costs will be passed on to the Tenant/Lessee with effect from the date when the Property rates and taxes, CID Levy, Business Improvement District Levy and/or Operating Costs are increased.

**[Drafting note: operating costs may be a set monthly charge escalating annually per month. The lease must be drafted according to the Landlord's/Lessor's requirements]**

**1.13 Contribution to the marketing fund:**

The Landlord/Lessor will be entitled to levy a marketing fee which will be used for the marketing of the Property. The fee will be a ...% **[insert percentage of rental to be levied]** of the Tenant/Lessee's monthly rental and will be paid monthly in advance together with the monthly Rental, free of deduction and without set-off.

**1.14 Tenant Installation Allowance:**

The Landlord/Lessor will provide a Tenant Installation Allowance to the Tenant/Lessee equal to an amount of R **[insert]** plus VAT per square metre of the Leased Premises (excluding the Parking Bays and Storage Space and Common Areas).

**1.15 Deposit/Rental Guarantee:**

The deposit/rental guarantee required by the Landlord/Tenant is for an amount of R **[insert]**

**1.16 Security:**

The Landlord/Lessor requires the Tenant/Lessee to furnish the following security:

- (1) Suretyships by each director/member/trustee of the Tenant/Lessee; and
- (2) Suretyship by parent/holding company.
- (3) **[Other?]**

**[See Practice Note point 12]**

## **Standard Terms of Lease**

### **2 Definitions and Interpretation**

- 2.1 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 2.2 The headings do not govern or affect the interpretation of this Agreement.
- 2.3 If any provision in a definition confers rights, or imposes obligations on any Party, effect is given to it as a substantive provision of this Agreement.
- 2.4 Unless the context indicates otherwise an expression which denotes any gender includes both the others; reference to a natural person includes a juristic person and *vice versa*; the singular includes the plural and *vice versa*, and the plural includes the singular and *vice versa*.
- 2.5 Any number of days prescribed in this Agreement excludes the first day and includes the last day and any relevant action or notice may be validly done or given on the last day.
- 2.6 Unless the context indicates otherwise if the day for payment of any amount or performance of any obligation falls on a day which is not a Business Day, that day will be the next Business Day.
- 2.7 The words "including" and "in particular" are without limitation.
- 2.8 Any reference to legislation is to that legislation as at the Signature Date, as amended or replaced from time to time.
- 2.9 Any reference to a document or instrument includes the document or instrument as ceded, delegated, novated, altered, supplemented or replaced from time to time.
- 2.10 A reference to a Party includes that Party's successors-in-title and permitted assigns.
- 2.11 The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the party responsible for the drafting of the contract does not apply.
- 2.12 The termination of this Agreement does not affect those of its provisions which expressly provide that they will operate after termination, or which must continue to have effect after termination, or which must by implication continue to have effect after termination.
- (1) **Agreement** means this Lease Agreement, including the Schedule and any annexures;
- (2) **Authority** means any government authority, body, entity, person, ministry, department, agency, authority, organ or body at any level of government and any other public authority or state organisation that has jurisdiction over the Parties, the

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land, the building, the Property, the Common Areas, the Shopping Centre or the Leased Premises including the relevant local authority;

- (3) **Business Day** means any day other than a Saturday, Sunday or an official public holiday in South Africa;
- (4) **Commencement Date** means the date of commencement in clause 1.3(2);
- (5) **Common Areas** mean all areas and facilities on the land and at the Shopping Centre outside the Leased Premises and which are provided by the Landlord/Lessor for the common and joint use and benefit of all tenants, their officers, employees, agents, customers and others, including all parking areas, access roads, and driveways surrounding the Shopping Centre and all entrances and exits, retaining walls, landscaped areas, truck service ways, loading bays, pedestrian malls, courts, escalators, stairs, ramps and pavements, exterior stairs, first aid stations and toilets **[amend as appropriate];**
- (6) **Landlord/Lessor** means the party referred to in clause 1.1(1) of the Schedule;
- (7) **Lease** means this Lease Agreement, including the Schedule and any annexures;
- (8) **Lease Period** means the period between the Commencement Date and the Termination Date;
- (9) **Leased Premises** means the leased premises referred to in clause 1.2;
- (10) **Operating Costs** means the costs incurred by the Landlord/Lessor in connection with the administration, management, maintenance, repair and operation of the Property, the land, the Building, the Common Areas and the Shopping Centre and for which the Tenant/Lessee is not otherwise responsible to pay for in terms of this Agreement;
- (11) **Minimum Trading Hours** means the minimum trading hours stipulated in clause 1.5 of the Schedule;
- (12) **Property** means the immovable property more fully described in clause 1.2(4) located at the physical address indicated in clause 1.2. (3);
- (13) **Pro Rata** means the ratio that the lettable area of the Leased Premises bears to the total gross lettable area of the Building or Property, as the case may be, which ratio shall be expressed as a percentage;
- (14) **SAPOA** means the South African Property Owners' Association;
- (15) **Schedule** means clause 1 setting out the basic commercial terms as agreed between the Parties which are relevant to this Agreement;

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- (16) **Shopping Centre** means the retail shopping centre located on the Property known as **[insert name]** Shopping Centre;
- (17) **Signature Date** means the date on which the last signatory signs this Agreement;
- (18) **Trading Day** means any day of the week on which the Tenant/Lessee is, or if not open, is requested to be open for trading purposes; and
- (19) **VAT** means Value Added Tax as provided for the in the *Value-Added Tax Act, No 89 of 1991*;

2.13 Any reference in this Agreement to:

- (1) a **clause** is, subject to any contrary indication, a reference to a clause of this Agreement;
- (2) **law** is any law (including common or customary law) or statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure of any government, supranational, local government, statutory or regulatory body or court;
- (3) a **person** is any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above;
- (4) **tax** includes any tax, levy, impost or other charge of a similar nature (including, without limitation, any penalty or interest payable in connection with any failure to pay or delay in paying any of the same).

### 3 **Introduction**

3.1 The Landlord/Lessor is the registered owner or occupier, as the case may be, of the Property on which the Leased Premises are situated.

3.2 The Leased Premises will be available for occupation by the Tenant/Lessee on the Commencement Date.

### 4 **Lease**

The Landlord/Lessor lets to the Tenant/Lessee the Leased Premises on the terms and conditions contained in this Agreement.

**5 No exclusivity**

The Landlord/Lessor may, at its discretion and without consultation, for the duration of this Lease, let premises on the Property to any other tenant who operates a business that competes with the Tenant/ Lessee.

**6 Lease Period**

**[See Practice Note point 2]**

Regardless of the Signature Date, this Lease commences on the Commencement Date and continues until the Termination Date.

**7 Option to Renew**

7.1 To the extent that the Lessee is given a right to renew this Lease, this right shall be exercised in accordance with the provisions set out in clause 7.2 read together with clause 1.3.(4) of the Schedule.

7.2 Renewal of lease period:

- (1) Subject to the provisions set out in this clause 7.2, and provided the Lessee has faithfully complied with all of its obligations in terms of this Agreement, the Lessee will have the right to renew this Lease on the same terms and conditions as contained here but for a period of \_\_\_\_\_ years (**renewal period**) and on payment terms determined in terms of clause 7.1(3) and (4) below;
- (2) The Lessee must notify the Lessor in writing if it wishes to renew this Lease by no later than 6 calendar months prior to the end of the Lease Period. Failure to notify on time will mean that the Lessee elects not to renew this Lease.
- (3) Subject to clause 7.2(1), on notice being given of the Lessee exercising its right of renewal, the parties will immediately engage one another to agree on the market related Rental, Parking Bays, Storage Space payments and escalations payable for the renewal period.
- (4) Should the parties not be able to agree within two months after the Lessee gives notice to renew on the Rental, Parking Bays and Storage Space payments that will apply during the renewal period, the parties will request the President of SAPOA to appoint an independent valuer to determine what the market related amounts will be for the renewal period. In this regard:
  - (a) The decision of this valuer (acting as an expert and not as arbitrator) will be final and binding on the parties; and
  - (b) The fees and charges of the valuer will be shared by the parties equally.

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**[Or alternatively to the foregoing and if the Lessee is a sole trader:]**

The Landlord/ Lessor will give the Tenant/Lessee notice no more than four months and no less than two months before the expiration of the Lease of the Tenant's/Lessee's option to renew the Lease for a further period. The Landlord /Lessor will advise the Tenant/Lessee of any material changes to the terms and conditions of the Lease should it be renewed and of the increases to Rental, Parking Bays and Storage Space payments.

The Tenant/Lessee must give the Landlord/Lessor reasonable notice of their choice to end the Lease or to renew for a further period, failing which the Lease will continue on a month-to-month basis on the terms and conditions and at the prices the Tenant/Lessee was advised of in the notice from the Landlord/Lessor.

## **8 Condition of Leased Premises**

8.1 The Tenant/ Lessee must notify the Landlord/ Lessor in writing within 14 days after the beneficial occupation date or the Commencement Date, (whichever is earlier) of any defects, faults or damage in the Leased Premises.

8.2 **If the Tenant/ Lessee does not notify the Landlord/ Lessor of any problems with the property, the Tenant/Lessee will be deemed to have acknowledged and accepted that the Leased Premises were received in good order and repair.**

## **9 Use of Leased Premises**

9.1 The Tenant/Lessee will only be entitled to use the Leased Premises, for the purpose set out in clause 1.4 of the Schedule, provided that the use does not contravene any town planning conditions, land use regulations and/or zoning applicable to the Property.

9.2 For the duration of the Lease, the Tenant/Lessee will be entitled to reasonable access and use of the Common Areas.

9.3 The Tenant/Lessee will adhere to the following guidelines for its use and occupation of the Leased Premises, namely the Tenant/Lessee will:

- (1) not use the Leased Premises for any purpose other than that set out in clause 1.4 of the Schedule;
- (2) not hold or permit the holding of sales by public auction in or on the Property;
- (3) not do anything which detracts from the appearance of the Property or has the effect of prejudicing the structural integrity of the Property and its Buildings;
- (4) at all times ensure that no nuisance is caused to anyone because of anything done on or in connection with the Property and that its employees, clients, contractors, guests

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and or agents at all times adhere to the conduct rules of the Building or Office/Industrial Estate;

- (5) not place any unsafe or other heavy articles in the Leased Premises which may have the effect of exceeding the load bearing capacity of the floors of the Leased Premises or any lifts which service the Leased Premises;
  - (6) be responsible for all equipment, stock, assets and any other items that it brings onto or are kept on the Property (including risk of loss and damage);
  - (7) not allow any dangerous or poisonous gases or effluent to be discharged into the air or drains or sewers of the Property and it will be obliged to take all reasonable measures that may be necessary to ensure that any gas or effluent discharged will not be corrosive or otherwise harmful to the drains or sewers or cause obstruction or deposit; and
  - (8) abide by any conduct rule or directive prescribed by the Landlord/Lessor regarding safety and security applicable to the Leased Premises, including evacuation and vehicular use of the roads surrounding the Buildings on the Property.
- 9.4 The parties agree to comply with all laws whether arising from common law or by statute, including circulars, directives, by-laws, proclamations and regulations (including the *Tobacco Products Control Act, No. 83 of 1993*, and all fire protection regulations), relating to the Property. The Tenant/Lessee will endeavour to secure compliance therewith by its employees, contractors, visitors and invitees.
- 9.5 The Tenant/Lessee must not keep, or do, or permit to be kept or done, by any of its employees, agents, contractors or clients anything which could invalidate or void, any conditions of any insurance policy held from time to time by the Landlord/Lessor in relation to the Leased Premises, unless
- (1) prior written permission is obtained from the Landlord/Lessor to that effect; and
  - (2) provided the appropriate policy endorsement has been effected by the insurers of the Landlord/Lessor. The Landlord will provide a copy of any applicable insurance policy on written request.
- 9.6 The Tenant/Lessee must ensure that it obtains all necessary trading licences and other permission required for the conduct of its business activities before commencing such business activities at its own risk and cost.
- 9.7 By the Commencement Date, the Tenant/ Lessee must provide the Landlord/ Lessor with an occupancy certificate in respect of their Leased Premises in terms of the *National Building Act and Regulations, No. 103 of 1977*.

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9.8 The Tenant/ Lessee will, at its own cost, procure a valid certificate of compliance in respect of the electrical installations in the Leased Premises as contemplated in the Occupational Health and Safety Act No.85 of 1993 at the termination of this Lease and after any alterations to the electrical installations in the Leased Premises have been affected by the Tenant/ Lessee. The Tenant/Lessee will deliver this certificate to the Landlord/ Lessor immediately after any alteration to the electrical installations in the Leased Premises and/or at the termination of this Lease.

9.9 The Tenant/Lessee is not entitled to obtain an alternative zoning in relation to the Property.

9.10 The Tenant/Lessee will not allow any person to reside on the Leased Premises.

## 10 **Conduct of Business**

10.1 The Tenant/ Lessee must conduct its business and keep the Leased Premises continuously open for that purpose during the Minimum Trading Hours on those Trading Days as set out in clause 1.5 of the Schedule.

10.2 During such times as the Tenant /Lessee/ keeps the Leased Premises open it will ensure that the Leased Premises are adequately stocked and staffed.

10.3 The Tenant /Lessee will keep the shop front lights of the premises on until **[insert time]** of each night, and ensure that the shop front and windows of the shop premises are kept properly dressed and that the shop front windows are not blocked or obscured in any manner without the Landlord/ Lessor's prior written consent, save where temporarily blocked or obstructed for window dressing purposes.

## 11 **Use of Common Areas**

11.1 The Common Areas are at all times subject to the exclusive control and management of the Landlord/Lessor. The Landlord/Lessor will exercise its rights reasonably to establish, modify and enforce by written notice to the Tenant/Lessee in the building rules and regulations notices in order to perform any acts in and to the Common Areas as the Landlord/Lessor in its discretion will reasonably determine to be advisable for the improvement of the convenience and the use of the Common Areas by Tenants/Lessees, their officers, agents, employees, customers and other visitors.

11.2 The Tenant/Lessee undertakes that it will not operate or permit to be operated in or around the Leased Premises and/or the Common Areas, any coin or token operated vending machines or similar device for the sale of any goods, merchandise, beverages, sweets, cigarettes, other commodities or services, nor any scales, pay lockers, amusement devices and machines, without the prior consent of the Landlord/Lessor in writing.

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## 12 Rental and Operating Costs

- 12.1 The payment due for monthly rental will be the amount set out in clause 1.8 of the Schedule. This amount will escalate annually at the same rate provided for in clause 1.8(6) of the Schedule.
- 12.2 The payment due for parking bays will be the amount set out in clause 1.8 of the Schedule. This amount will escalate annually at the same rate provided for in clause 1.8 (6) of the Schedule.
- 12.3 The payment due for Storage Space will be the amount set out in clause 1.8 of the Schedule, which amount will escalate annually at the same rate provided for in clause 1.8(6) of the Schedule.
- 12.4 Unless otherwise stated, all amounts that may be payable by the Lessee to Lessor will be exclusive of VAT. The Lessee will pay VAT on all amounts at the rate or rates determined in the *Value-Added Tax Act No. 89 of 1991*.
- 12.5 The Landlord/Lessor may nominate an alternative account to which all payments must be paid if notice of amended payee details are provided in writing to the Tenant/Lessee before the seventh day of the calendar month.
- 12.6 The Operating Costs will be an amount, calculated on a Pro Rata basis in accordance with the provisions of clause 1.9 of the Schedule and will be paid monthly to the Landlord/Lessor's nominated account together with the Rental. The Landlord/Lessor will furnish a detailed statement setting out the exact charges and the Pro Rata calculation on request. **[See Practice Note point 4]**
- 12.7 Where a payment is calculated based on a square metre area, measurement of the area of the Leased Premises will be done by way of the SAPOA method of measurement for retail premises.
- 12.8 The Tenant/Lessee must **within 21 days of the Commencement Date**, notify the Landlord/Lessor whether it agrees with the measurement of the Leased Premises and Storage Space as set out in the Schedule.
- 12.9 Any dispute between the Landlord/Lessor and Tenant/Lessee as to the measurement of the Leased Premises will be determined by
- (1) an architect agreed to by the parties; or
  - (2) if the Parties do not agree, within three days, at the instance of either party, by an architect appointed by the President for the time being of the South African Institute of Architects (or similar applicable body at the time), and

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(3) the agreed or appointed architect will act as an expert, whose decision will, in the absence of a manifest error be binding on the parties. A manifest error will be corrected by the expert.

12.10 The parties will share the cost of the agreed or appointed architect equally unless the architect finds that the Leased Premises are materially smaller than the measurement stipulated in the Schedule in which case the Landlord/Lessor will pay the costs.

12.11 If the variance between the measurement in the Schedule and the architect measurement is more than five percent, then the Rental payable by the Tenant/Lessee will be increased or decreased proportionately.

### 13 **General payment terms**

13.1 The Rental, Parking Bays, Storage Space, rates and taxes and marketing fund payments as set out in clause 1.6, 1.7, 1.8, 1.9, 1.10 and 1.13 of the Schedule, are payable monthly in advance on the first day of each month of the Lease Period, by Electronic Funds Transfer to the Landlord/Lessor's nominated account, free of deduction and set off.

13.2 All other charges as set out in this Lease will be payable together with the Rental in advance on the first day of each month of the Leased Period.

13.3 Should the Lessee fail to make any payments on time, the Lessor will be entitled to charge interest on such arrear amounts, equal to the prime rate of interest levied by the Lessor's bank, from time to time plus 2% per annum compounded. Currently the prime rate of interest is 8,5%. Interest will be calculated from the due date for the payment until the date on which payment is actually received.

13.4 Unless otherwise stated, all amounts that may be payable by the Tenant/Lessee to Landlord/Lessor will be exclusive of VAT. The Tenant/Lessee will pay VAT on all amounts at the rate or rates determined in the *Value-Added Tax Act No. 89 of 1991*.

13.5 Property rates, taxes, levies and utility charges

(1) The Tenant/Lessee will pay monthly in advance, free of deduction and without set-off and on demand, the Property rates, levies and all of the utility charges as provided for in clause 1.91.10 and 1.11 payable to the local authority and other providers in respect of the Property.

(2) A statement or invoice submitted to the Tenant/Lessee by Landlord/Lessor in respect of electricity, water, sewerage, refuse and other utility charges will, unless the contrary is proved by the Tenant, be proof that:

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- (a) the amount of electricity, water, sewerage, refuse and other utility charges indicated on the statement or invoice was consumed in respect of the Leased Premises; and
- (b) the amount reflected in the invoice and/or statement represents the correct charge for such electricity, water, sewerage, refuse or other utility charges consumption or use.

13.6 All payments must be made without deduction or set-off.

#### 14 **Generator usage**

- (1) To the extent that a generator is used by the Tenant/Lessee, it will be responsible for and must pay on demand, charges for all diesel used in creating the generator power consumed on the Leased Premises. Generator diesel usage on the Leased Premises will be charged on a Pro Rata basis according to percentage usage.
- (2) A statement or invoice submitted to the Tenant/Lessee by the Landlord/Lessor in respect of generator diesel charges will unless the contrary is proved by the Tenant/Lessee, be proof that:
  - (a) the amount of generator diesel usage indicated on such statement or invoice was consumed in respect of the Leased Premises; and
  - (b) the amount reflected in the invoice and/or statement represents the correct charge for such diesel consumption.

#### 15 **Marketing Fund**

15.1 The Landlord/ Lessor has already established or may establish a marketing fund and/or merchant's association of or for the lessees of the Building.

15.2 Should the Landlord/ Lessor may establish or has established the association or fund, the Tenant/Lessee agrees during the Lease Period (including any renewal period) to:

- (1) become and, for the duration of this Agreement, remain a member of any association;
- (2) comply with all the Constitution, rules, and/or bylaws of the association or fund that are consistent with the provisions of this Agreement; and
- (3) pay a monthly fee as set out in clause 1.13 of the Schedule.

15.3 The membership of the association will be limited to the tenants/lessees of the Shopping Centre.

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15.4 The purpose of the association or fund will be to assist and promote the Shopping Centre and the business of the tenants/lessees of the Shopping Centre and advance the interests of the members of the association.

## 16 Signage

16.1 The Tenant/Lessee will be permitted to display its name as follows:

- (1) as part of the public signage permitted in the Building in the format generally used for the Building's signage;
- (2) in the format on the outside of the Building designated and more fully detailed in the annexed Annexure LA3; and
- (3) generally as agreed with the Landlord/Lessor.

16.2 All signage will be subject to the following:

- (1) the signage complies with all law and requirements of any authority relating to such signs;
- (2) the Tenant/Lessee keeps and maintains all signs in good, clean and proper condition including replacing all light bulbs and or lighting of such signage;
- (3) **the Tenant/Lessee will pay any costs or losses to the Landlord/ Lessor as a result of claims made against the Landlord/Lessor as a result of the erection, operation or content of such signs; and**
- (4) the Tenant/Lessee will at the expiration or termination of this Lease for any reason remove all signs displayed and make good at its own cost any damage caused as a result of the removal.

## 17 General obligations of the Landlord/Lessor

17.1 The Landlord/Lessor will at its cost maintain the Common Areas and keep them clean, tidy and in a good state of repair and recover related expenses and disbursements from the Tenant/Lessee on a Pro Rata basis as part of the Operating Costs.

## 18 Tenant installation allowance

18.1 The Tenant/Lessee will be entitled to an installation allowance from the Landlord/Lessor up to the maximum amount set out in clause 1.14 of the Schedule.

18.2 The Landlord/Lessor will pay the installation allowance to the Tenant/Lessee within seven days of receipt of a valid VAT invoice together with proof of expenditure only if the installation allowance is used for installation costs and the invoice is received by Landlord/Lessor within three months from the Commencement Date.

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18.3 Any unclaimed or unused portion of the installation allowance will be forfeited on the expiry of three months from Commencement Date.

18.4 If necessary, prior approval of any statutory or other authority for any proposed use of the installation allowance must be obtained by the Tenant/Lessee in addition to Landlord/Lessor's consent before commencing such work.

## 19 **Reinstatement of the Leased Premises on Termination of the Lease**

19.1 Unless instructed to the contrary by the Landlord/Lessor, the Tenant/Lessee must remove any alterations, additions, fittings and/or fixtures effected by the Lessee/Tenant on the expiry or termination of the Lease and reinstate the Leased Premises at the Tenant/Lessee's cost, by painting the walls with two coats of white paint, restoring the screed flooring and leaving the plumbing, wiring and ceiling in a state acceptable to the Landlord/ Lessor.

19.2 Should the Tenant/Lessee fail to remove any or all of the alterations, additions, fittings and/or fixtures, or carry out its obligations in terms of reinstatement of the Leased Premises in preparation for the incoming Tenant/ Lessee then Landlord/Lessor will be entitled but not obliged to remove such alterations, additions, fittings and/or fixtures and reinstate the Leased Premises at Tenant/Lessee's cost.

19.3 The Landlord/Lessor may elect not to have the Leased Premises reinstated and in such event all alterations, additions, fittings and fixtures will become the property of the Landlord/Lessor and no compensation will be payable to the Tenant/Lessee and Tenant/Lessee will not be required to restore the Leased Premises.

## 20 **Alterations to the Leased Premises**

20.1 Subject to the provisions of this clause 20 and clause 19, the Tenant/Lessee must not make any structural and/ or non-structural alterations and/or additions to the exterior, roof or interior of the Building and/or Property.

### 20.2 **Alterations and Additions**

(1) The Tenant/Lessee must not make any structural alterations and/or additions to the exterior, roof or interior of the Leased Premises without the Landlord/Lessor's prior consent, which consent must not be unreasonably withheld or delayed.

(2) The Tenant/Lessee **will not at any time have any claim against the Landlord/Lessor for the improvements effected to the Leased Premises.** The Tenant/Lessee is responsible to pay for all claims, loss or damage arising from any alterations or improvements to the Leased Premises.

(3) All proposed alterations and/or additions to the Leased Premises must be submitted to the Landlord/Lessor for its prior written approval, before any work is commenced.

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- (4) The Landlord/Lessor will be entitled to require that alterations and/or additions be effected by builders or contractors that it approves of and working under the supervision of an architect appointed by it. The Tenant/Lessee must pay for the costs of any architect, builders or contractors appointed by the Lessor.
- (5) If prior approval of any statutory or other authority is required for proposed alterations and/or additions, the Tenant/Lessee must get this approval before commencing any work.

### 20.3 **Fixtures, Fittings and Equipment**

- (1) Subject to the Landlord's/Lessor's prior written approval, the Tenant/Lessee will be entitled, from time to time, to bring onto the Leased Premises its own furniture, equipment and plant (subject to the load bearing capacity limitations of the floors of the Leased Premises) and, subject to the Landlord's/Lessor's prior written approval, to install in the Leased Premises such fixtures and fittings and non-structural alterations (**Fixtures and Fittings**) as required by the Tenant/Lessee, provided that:
  - (a) It will remove all equipment from the Leased Premises on expiry or termination of the Lease; and
  - (b) Any damage caused to the Leased Premises as a result of the bringing onto or the removal of Fixtures and Fittings and equipment must be made good by the Tenant/Lessee at its own expense.
- (2) In bringing anything onto the Leased Premises, the Tenant/Lessee must not change or interfere in any way with the electrical, plumbing or sewerage installations in the Property unless prior written consent of the Landlord/Lessor has been obtained.

20.4 Any dispute between the Landlord/Lessor and Tenant/Lessee as to whether any alteration or addition effected by the Tenant/Lessee, with or without the prior written consent of the Landlord/Lessor, is structural, non-structural or a fixture or fitting, will be determined by:

- (1) an independent practising architect agreed to by the parties; or
- (2) if the parties do not agree, within three days, at the instance of either party, by an architect appointed by the President for the time being of the South African Institute of Architects (or similar applicable body at the time),
- (3) the agreed or appointed architect will act as an expert, and their decision will, in the absence of significant error be binding on the parties. The expert will remedy any error

20.5 The parties will share the cost of the agreed or appointed architect equally.

## 21 **Maintenance of leased premises**

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21.1 The Landlord/Lessor's obligations:

- (1) The Landlord/Lessor undertakes to comply with all of its obligations in this Lease relating to the maintenance and repair of the Property and the Common Areas, except if it is the Tenant's/Lessee's obligation in terms of this Agreement.
- (2) The Landlord/Lessor, its employees, agents and contractors will be entitled to reasonable access to the Leased Premises to carry out any repairs or maintenance to the Building provided that the Tenant/Lessee has been given reasonable notice by the Landlord/Lessor, except in circumstances where emergency repairs to prevent further damage or destruction must be done, then the Tenant/Lessee will be informed at the earliest opportunity.
- (3) The maintenance and repairs of the central air-conditioning plant and central heating systems will be the responsibility of the Landlord/Lessor, which costs will be paid by the Landlord/Lessor but be recoverable as part of the Operating Costs as set out in clause 1.9 of the Schedule.

21.2 The Tenant/Lessee will:

- (1) repair and keep and maintain in good order and condition at its cost, the Leased Premises, including all fixtures, fittings, air-conditioners, mechanical systems, electrical systems and appliances and all locks, keys, door handles, door, shopfronts, and windows;

**[Drafting Note: Air-conditioning may be a separate charge of the Landlord/Lessor. Each lease must be drafted to suit the Landlord's/Lessor's requirements.]**

- (2) on expiration or termination of this Lease, deliver the Leased Premises to the Landlord/Lessor in the same good order and condition as at the time when the Tenant/Lessee took occupation or as at a state immediately after the completion of the changes caused by the use of the installation allowance, fair wear and tear excepted;
- (3) use all reasonable efforts to prevent any blockage of sewerage or water pipes or drains in the Leased Premises and must remove at its cost any obstruction or blockage in any sewer, water pipes or drains in the Leased Premises and, where necessary, repair the sewer, water pipe or drain concerned where the obstruction or damage is caused because of the Tenant/Lessee's failure to comply with its obligations under this clause;
- (4) replace all fluorescent bulbs, starters, ballasts and incandescent bulbs used in the Leased Premises and will be responsible at its own cost for the maintenance of all lights in the Leased Premises;

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- (5) replace or make good and repair, at its own expense, any keys, locks, interior windows, fixtures, fittings, toilets, washbasins or other installations in the Leased Premises;
- (6) not allow anything to be done that causes damage to the walls or ceilings or causes any burden greater than the load bearing capacity of the walls and floors on any other portion of the Leased Premises in any way;
- (7) repair, keep and maintain in good order and condition any carpeting which may be fitted in the Leased Premises and must, on the expiry or termination of this Lease, deliver such carpeting or its replacement to the Landlord/Lessor in the same good order and condition as existed at the Commencement Date, fair wear and tear excepted;
- (8) keep the Leased Premises in a clean and tidy condition and free from all rubbish;
- (9) comply with all relevant health requirements of the local and municipal authority, by-laws and regulations at all times;
- (10) not engage in or allow any operations or activities on or in connection with the use of the whole or part of the Leased Premises for the purposes of or in any way involving:
  - (a) the handling, manufacture, treatment, storage, use, generation, recycling, release, discharge, refining, dumping or disposal of any hazardous materials under, in or about the Property;
  - (b) the transport any hazardous materials to, from or across the Property;
  - (c) allowing any hazardous materials to be used in any construction, or deposit or store or otherwise locate on, under, in or at the Property; and
  - (d) permitting hazardous materials to migrate from the Property upon or beneath surrounding properties;
- (11) ensure that the condition, use, maintenance and operation of the Leased Premises and all activities and conduct of business, comply at all times with all applicable local and municipal by-laws and regulations;
- (12) not cause or allow to be caused, any landfill on the Property or any adjoining property or create any polluting activity on the Leased Premises;

21.3 If either party does not carry out its maintenance, repair and/or replacement obligations in respect of the Leased Premises, as set out in this Lease, and remains in default after 7 days' written notice (or such longer period as may be reasonable in the circumstances), then the other party may

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- (1) effect the necessary maintenance, repair and/or replacement; and
- (2) claim the reasonable cost of doing so from the party in default.

## 22 Insurance

22.1 The Tenant/Lessee must seek independent advice and obtain and, at all times during the Lease maintain, at its cost, suitable and adequate insurance cover with reputable insurers which are in good standing, covering –

- (1) public liability and property damage in respect of all claims which may be made against the Tenant/Lessee arising out of its trading in the Leased Premises for an amount of not less than R10 million (ten million rand) per incident; **[Drafting note: change to suit situation]**
- (2) the replacement of any plate or other glass, window panels and shop fronts forming part of the Leased Premises and whether internal or external no matter how they may be damaged or destroyed;
- (3) the loss or destruction against all risks, of the Tenant/Lessee's fixtures and fittings, installations, equipment, merchandise, books, records and documents in the Leased Premises; and
- (4) the loss of profits due to any partial or total damage or destruction to the Leased Premises, covering profits for a period of at least 2 (two) years.

22.2 The Tenant/Lessee must provide the Landlord/Lessor with copies of such insurance policies and proof of premium payments on an annual basis and in any event at every other instance where a written request is received from the Landlord/Lessor from time to time.

22.3 The Tenant/Lessee may change insurance companies provided that the Landlord/Lessor receives prior written notice and that the Tenant/Lessee has insurance in place at all times.

22.4 The Landlord/Lessor will insure the Building against events such as fire, explosions, lightning, damage caused by water, impact from aircraft, any vehicles, storm, hail and snow on roofs, smoke, vandalism and terrorism as well as public liability. The premium will be shared by the Tenant/Lessee as part of its pro-rata contribution to the Operating Costs.

## 23 Damage and destruction of Leased Premises

**[See Practice Note point 7]**

23.1 The word **non-usable** means that the Leased Premises cannot be beneficially occupied by the Tenant/Lessee and cannot be used for its intended purpose.

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23.2 The Lessor/Landlord or the Tenant/Lessee, as the case may be, may terminate this Lease with immediate effect on the occurrence of any one of the following events continuing for a period of more than 30 days:

- (1) if the Leased Premises are destroyed or damaged and such damage or destruction is not due to the negligence, or misconduct of the Tenant/Lessee, to an extent which renders them substantially non-usable; or
- (2) if the Property is damaged or destroyed, and such damage or destruction is not due to the negligence, or misconduct of the Tenant/Lessee, to an extent that the Leased Premises become substantially non-usable because of loss of access to them or the disruption of necessary services and facilities required for proper use and occupation.

23.3 The right of termination in terms of clause 23.2 granted to the Landlord/Lessor or the Tenant/Lessee, as the case may be, will lapse unless it is exercised by notice in writing to the Landlord/Lessor or the Tenant/Lessee as the case may be, within 45 days from the date on which the event described in clause 23.2 occurred, or within such longer period as the parties may agree to because relevant investigations and assessments by the experts still need to be completed.

23.4 If the Landlord/Lessor or the Tenant/Lessee, as the case may be, does not exercise its right to terminate this Lease in terms of clause 23.2, then the parties agree that the following process will be followed:

- (1) In conjunction with the Landlord/Lessor's insurers, a complete assessment of the damage and destruction and likely nature and period of repair at the Leased Premises must be done by an architect, structural engineer, quantity surveyor and contractor and whichever other professional may be required (**the panel**);
- (2) The findings of the panel must be conveyed to the Tenant/Lessee for purposes of planning its future operations for the period of the re-construction and repairs;
- (3) The Landlord/Lessor may at its cost reinstate the Leased Premises to a "clean shell" as soon as reasonably practicable or the Landlord/Lessor may decide to terminate the lease;
- (4) The Landlord/Lessor will endeavour, but will not be obliged, to arrange alternative premises on the Property for the Tenant/Lessee to occupy during the period of reinstatement;
- (5) The Tenant/Lessee will still be obliged to pay rental and all other amounts arising from the occupation by the Tenant/Lessee of any alternative premises and will enjoy either a total, or partial if a part of the Leased Premises is usable, rebate of Rental as well as Operating Costs, for so long as it is unable to use the Leased Premises in whole or in part.

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23.5 Should the Leased Premises be damaged or destroyed (other than due to the negligence or misconduct of the Tenant/Lessee) to any extent which diminishes the Tenant/Lessee's enjoyment of the Leased Premises but which falls short of the events contemplated in clause 23.2 entitling the Landlord/Lessor or the Tenant/Lessee, as the case may be, to terminate this Lease then, without prejudice to any rights which either party may have against the other in law:

- (1) This Lease will not terminate but will not, unless the parties agree to an extension of the Lease term, be extended; and
- (2) The Rental, Parking Bay and Storage Space payments and Operational Costs and all other relevant costs payable by the Tenant/Lessee will be reduced Pro Rata to the extent to which Tenant/Lessee is deprived of beneficial occupation of part of the Leased Premises.

23.6 Any dispute between the Landlord/Lessor and Tenant/Lessee as to the extent of the destruction or whether it does or does not render the Leased Premises unusable or to what extent, or whether the Leased Premises are ready for occupation after reinstatement or the calculation of rental abatements, will be determined by

- (1) an independent practising architect agreed to by the parties; or
- (2) if the Parties do not agree by an architect appointed by the President for the time being of the South African Institute of Architects (or similar applicable body at the time),
- (3) the agreed or appointed architect will act as an expert, and their decision will, in the absence of significant error be binding on the parties. Any error will be corrected by the expert.

23.7 The parties will share the cost of the agreed or appointed architect equally.

## 24 **Certificate of indebtedness**

24.1 A certificate issued by an executive financial officer or any director of the Landlord/Lessor will be proof, in the absence of proof to the contrary, of any amount owed by the Tenant/Lessee under this Agreement for all purposes, including, all legal proceedings.

24.2 It will not be necessary to prove the authority and appointment of the executive financial officer or any director of the Landlord/Lessor.

24.3 Any notice or demand for payment by the Landlord/Lessor issued to the Tenant/Lessee will be accompanied by the certificate issued in terms of clause 24.1.

## 25 **Breach of lease**

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25.1 An event of material breach will occur if:

- (1) The Tenant/Lessee fails to pay any rental or other amount owing by it to the Landlord/Lessor in terms of this Lease on the due date and payment is not made within seven days of receipt of written notice requiring it to pay the amount due; or
- (2) The Tenant/Lessee commits two or more breaches of any of the provisions of this Lease (regardless of whether the same provision is breached) within a period of 12 months; or
- (3) The Tenant/Lessee commits any other breach of any provision of this Lease and fails to remedy that breach within a period of 12 days after receipt of a written notice requiring it to do so; or
- (4) The Tenant/Lessee effects or attempts to effect a compromise or composition with its creditors; or
- (5) Any property of the Tenant/Lessee is attached which may affect the statutory Landlord's Hypothec;
- (6) The Tenant/Lessee defaults or threatens to default in payment of its liabilities generally, or ceases or threatens to cease to carry on business;
- (7) The Tenant/Lessee is liquidated or sequestrated (whether provisionally or finally) or Business Rescue proceedings are commenced for it as contemplated in the *Companies Act, No. 71 of 2008*;

25.2 If an event of default (as provided for in clause 25.1) occurs, the non-defaulting party will be entitled, without prejudice to any other rights that it may have, under this Lease or in law, to either:

- (1) cancel this Lease and claim the arrear Rental and all other charges and/or damages; or
- (2) claim specific performance of all of the defaulting party's obligations.

25.3 If the Tenant/Lessee remains in occupation of the Leased Premises whilst a dispute is pending between the parties, including a dispute as to the Landlord/Lessor's right to cancel this Lease, then:

- (1) the Tenant/Lessee will continue to pay, without prejudice to its rights, all amounts due to the Landlord/Lessor in terms of this Lease on due dates;
- (2) the Landlord/Lessor will be entitled to recover and accept those payments; and

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- (3) the acceptance by the Landlord/Lessor of those payments will be without prejudice to and will not in any manner affect the Landlord/Lessor's claim to any remedy under this Lease.
- (4) Should the dispute between the Landlord/Lessor and the Tenant/Lessee be determined in favour of the Landlord/Lessor, any amounts paid by the Tenant/Lessee will be regarded as amounts paid on account of any amount due by the Tenant/Lessee including damages sustained by the Landlord/Lessor as a result of the holding over by the Tenant/Lessee of the Leased Premises.

## 26 Cancellation

**[if the Lessee is a sole trader use this clause – see Practice Note point 2]**

26.1 The Lessee may cancel this Lease on 20 days' written notice.

26.2 If the Lessee cancels the Lease before the termination date in clause 1.3 of the Schedule:

- (1) the Lessee must pay all amounts due by the Lessee to the Lessor at the date of cancellation;
- (2) the Lessee will have to pay the Lessor a cancellation penalty in an amount equal to any loss or expense actually and reasonably incurred by the Lessor because of the early cancellation of the lease by the Lessee.
- (3) The Lessor will make reasonable efforts to mitigate and minimise such loss.
- (4) The loss suffered by the Lessor, may include amounts for:
  - (a) the Rental for the period that the Leased Premises remains vacant after the Tenant/Lessee's early cancellation;
  - (b) the difference in Rental, for the remaining period till the termination date in clause 1.3, if the Lessor re-lets the Leased Premises for a Rental lower than it is entitled to under this Lease;
  - (c) other amounts due in terms of this lease (e.g. operational costs, rates and other charges in respect of the Leased Premises) which the Lessor is unable to recover; all wasted costs reasonably incurred by the Lessor in re-letting the Leased Premises to a third party (which costs will include the costs of advertising the premises, drafting and executing a new lease agreement, commission, costs of repainting and cleaning the Leased Premises; and
  - (d) interest on the above amounts from the date they become payable or are incurred by the Lessor until the amount owing is paid in full.

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26.3 The Landlord/Lessor may only cancel in the event of material breach by the Tenant/Lessee which is not remedied after 20 days' written notice.

## 27 **Dispute Resolution**

27.1 Any dispute between the parties regarding or arising out of this Lease will first be referred to a director or equivalent senior management of each of the parties, or alternatives appointed by them, who will use their best endeavours to resolve the dispute within 14 days of the dispute having been referred to them.

27.2 Any dispute between the parties in regard to this Lease and which has not been resolved or determined as provided for elsewhere in this Lease, will be decided finally by arbitration in the manner set out in this Clause 27.

27.3 Such arbitration will be held informally and confidentially, subject to the provisions of this clause, at **insert relevant location** in English, in accordance with the rules of the Arbitration Foundation of Southern Africa **AFSA**) or if AFSA has ceased to exist, the Arbitration Act No 42 of 1965, as amended.

27.4 The arbitrator will be a practising senior counsel of not less than 5 (five) years' standing, as agreed on between the parties.

27.5 If the parties cannot agree on the arbitrator, AFSA will appoint the arbitrator or, if AFSA has ceased to exist, the President for the time being of the **insert relevant** Law Society or its successor will appoint the arbitrator.

27.6 The decision by an arbitrator may be made an order of any competent court at the instance of any of the parties and such order will be subject to review of any competent court.

27.7 The parties agree that any decision in such arbitration proceedings –

- (1) will be binding on them;
- (2) will be carried into effect;
- (3) may be made an order of any court of competent jurisdiction; and
- (4) will include such order as to costs as the arbitrator deems fit.

27.8 This Clause 27 is severable from the rest of this Agreement and will remain valid and binding on the parties despite any termination or purported cancellation of this Agreement.

27.9 The provisions of this clause 27 will not preclude either party from obtaining interim relief on an urgent basis in the High Court of South Africa or any regulatory authority with jurisdiction pending the decision of the Arbitrator.

**28 Limitation of liability and indemnity**

**[see Practice Note point 9]**

**This clause limits the rights of the Lessee**

28.1 Subject to the requirements of the Consumer Protection Act (CPA) or any other law regulating liability or damages, the maximum aggregate liability of Landlord/Lessor will be limited to:

- (1) direct damages proven and will not exceed the total basic Rental paid by Tenant/Lessee to the Landlord/Lessor for the six months preceding the event or circumstances giving rise to such liability;
- (2) at no stage will the Landlord/Lessor be liable to the Tenant/Lessee for any damages and/or losses arising which are from a cause out of the control of the Landlord/Lessor; and
- (3) such limitations of liability will apply regardless of the cause of action, whether in contract, delict or otherwise.

28.2 Despite the above, the Landlord/Lessor will not, at any time be liable for any loss, delay, inconvenience or damages (whether direct or indirect, consequential or otherwise) which may be suffered by the Tenant/Lessee, its employees, contractors, agents, invitees, visitors or any other persons as a result of any failure in the supply of water, electricity, lights, power or gas or any other service or of any interruptions of same or of any failure to ensure an expeditious resumption of the same arising from any cause out of the control of the Landlord/Lessee.

**28.3 The Tenant/Lessee takes full responsibility for and must pay or repay the Landlord/Lessor for any claims that may be instituted against Landlord/Lessor by any of Tenant/Lessee's employees, contractors, agents, invitees, visitors, customers or any member of the public or any other person relating to this Lease unless the claim arises from the gross negligence or wilful misconduct of the Landlord/Lessor, its agents, employees or other Tenant/Lessee of the Property.**

**29 Inspection of leased premises**

29.1 The Landlord/Lessor's employees, contractors or agents will have the right to inspect the Leased Premises at all reasonable times.

29.2 Such inspections may be carried out without prior notice if the inspection is undertaken during normal business hours of the Tenant/Lessee.

29.3 The Landlord/Lessor or its employees, contractors or agents will not in carrying out such inspections, disturb the use, enjoyment or occupation of the Tenant/Lessee.

**30 Sub-letting and assignment**

*This is a draft lease only for transactions which fall under the Consumer Protection Act, No 68 of 2008. Each lease is unique, the user must seek legal advice for the user's specific circumstances.*

- 30.1 The Tenant/Lessee is not entitled to sub-let the whole or any part of the Leased Premises, or to cede and assign its rights and obligations under this Lease, without the prior written consent of Landlord/Lessor subject to any conditions imposed by the Landlord/Lessor including condition as to security for the Tenant/Lessee's or sub-tenants obligations.
- 30.2 A sub-lease must be in writing and signed by the duly authorised representatives of the Tenant/Lessee and its Tenant/Lessee but a sub-lease will not in any way relieve the Tenant/Lessee of any of its obligations provided for in this Lease unless specifically released in writing by the Landlord/Lessor.
- 30.3 If the Landlord/Lessor provides its consent as set out in clause 30.1, the Tenant/Lessee must provide the Landlord/Lessor with a copy of the sub-lease within seven days of entering into the sub-lease.
- 30.4 The Landlord/Lessor will be entitled to cede and assign its rights and obligations in respect of this Lease.
- 30.5 If the Landlord/Lessor sells the Property, it does not require the Tenant's/Lessee's consent, nor does it entitle the Tenant/Lessee to cancel this Agreement. The Landlord/Lessor will notify the Tenant/Lessee in writing of the sale of the Property.

### **31 Deposit or lease guarantee**

- 31.1 The Tenant/Lessee must, within 30 days of the Signature Date, provide in favour of Landlord/Lessor, a bank guarantee or a cash deposit, at the election of the Landlord/Lessor in the amount stipulated in the Schedule.
- 31.2 If a bank guarantee is provided, it must be issued by a reputable financial institution on such terms and conditions acceptable to the Landlord/Lessor and payable on written demand by the Landlord/Lessor in the event of a breach by the Tenant/Lessee of its obligations under this Agreement.
- 31.3 The lease guarantee, or deposit without interest, as the case may be will be returned to the Tenant/Lessee within a period of 30 days after the Leased Premises have been vacated if there is no amount due to the Landlord/Lessor and no damage to be repaired, as provided for in this Agreement.
- 31.4 If there is damage that must be repaired, or if the Tenant/Lessee failed to comply with its obligations in terms of this Lease, the Landlord/Lessor will be entitled to claim against the deposit or guarantee payment of those amounts required to repair the damage suffered or to remedy the consequences of the breach and the balance, if any, will be refunded to the Tenant/Lessee.

### **32 Set-off or holding over**

*This is a draft lease only for transactions which fall under the Consumer Protection Act, No 68 of 2008. Each lease is unique, the user must seek legal advice for the user's specific circumstances.*

The Tenant/Lessee will not for any reason withhold, make any deduction from any amounts due to or set-off any amount due by the Landlord/Lessor in terms of this Lease unless agreed to by the Landlord/Lessor in writing.

### 33 **Governing law**

This Agreement will be governed by the laws of South Africa.

### 34 **Jurisdiction**

The Parties agree to the non-exclusive jurisdiction of the South Gauteng High Court of South Africa (or any successor to that division) in regard to all matters arising from this Agreement.

**[Drafting note: the user will need to amend the reference to the “non-exclusive jurisdiction of the South Gauteng High Court” depending on the requirements of the landlord and where the Property is situated.]**

### 35 **Severability**

If, in terms of any judgment or order, any provision, phrase, sentence, paragraph or clause is found to be defective or unenforceable for any reason, the remainder of this Agreement will continue to be of full force. The parties will negotiate in good faith with a view to agreeing as soon as possible on valid terms that reflect the original intention of the parties.

### 36 **Notices and addresses**

#### 36.1 Notices

Any notice, consent, approval or other communication in connection with this Agreement (**Notice**) will be in writing in English.

#### 36.2 Addresses

(1) Each party chooses the physical address, fax number and/or email address corresponding to its name below as the address to which any Notice must be sent.

(a) Party 1:

Physical address: #Party1 Physical Address#

Fax number: #Party 1 Fax Number#

Email address: #Party 1 Email address#

Marked for the attention of: #Party 1 Marked for attention of#; and

(b) Party 2:

*This is a draft lease only for transactions which fall under the Consumer Protection Act, No 68 of 2008. Each lease is unique, the user must seek legal advice for the user's specific circumstances.*

Physical address: #Party2 Physical Address#

Fax number: #Party 2 Fax Number#

Email address: #Party 2 Email address#

Marked for the attention of: #Party 2 Marked for attention of#

- (2) Any party may by Notice to the other party change its address and/or the person, if any, for whose attention any Notice must be marked as set out in in clause 36.2(1).

### 36.3 Effective on receipt

- (1) Any Notice takes effect when received by the recipient (or on any later date specified in the Notice) and, unless the contrary is proved, is deemed to be received:
- (a) on the day of delivery, if delivered by hand to a responsible person at the recipient's physical address in clause 36.2. If delivery is not on a Business Day, or is after ordinary business hours on a Business Day, the Notice is deemed to be received on the Business Day after the date of delivery;
  - (b) on the first Business Day after the date of transmission, if sent by fax to the recipient's fax number in clause 36.2; and
  - (c) on the first Business Day after the date of transmission, if sent by email to the recipient's email address in clause 36.2.
- (2) Despite anything to the contrary in this Agreement, a Notice actually received by a Party is effective even though it was not sent, or delivered, or sent and delivered to its address in clause 36.2.

### 36.4 Service of legal process

- (1) Each party chooses its physical address referred to in clause 36.2(1) as its address at which legal process and other documents in legal proceedings in connection with this Agreement may be served (**domicilium citandi et executandi**).
- (2) Any Party may by Notice to other Party change its address at which legal process and other documents in legal proceedings in connection with this Agreement may be served to another physical address in South Africa.

## 37 General

- 37.1 This document constitutes the sole record of the agreement between the Parties in regard to the subject matter.



*This is a draft lease only for transactions which fall under the Consumer Protection Act, No 68 of 2008. Each lease is unique, the user must seek legal advice for the user's specific circumstances.*

DIAGRAM

ANNEXURE LA1

*This is a draft lease only for transactions which fall under the Consumer Protection Act, No 68 of 2008. Each lease is unique, the user must seek legal advice for the user's specific circumstances.*

PARKING BAYS

ANNEXURE LA2

*This is a draft lease only for transactions which fall under the Consumer Protection Act, No 68 of 2008. Each lease is unique, the user must seek legal advice for the user's specific circumstances.*

STORAGE

ANNEXURE LA3