

Hotel gaming machine entitlements lease

Division 2A of Part 3, *Gaming Machines Act 2001*



This Lease comprises this **Details Schedule**, the attached **Standard Term Sheet** and the attached **Schedule of Additional Terms**.

Part 1 Parties' Details - Lessor

1A Licensee of the Lessor Venue

Name (Licensee, as recorded on Hotel Licence for Lessor Venue at time of Lease execution).¹

Hotel Licence number for Lessor Venue ("the Lessor's Licence")

LIQ

Postal address

Suburb/town/city

State

Postcode

Contact person

Daytime phone

Mobile

Email

¹Note: Section 25B(a) of the Act provides that the lease operates as a lease by the licensee for the time being of the lessor venue to the licensee for the time being of the lessee venue (with the result that a transfer of the licence of the lessor venue or lessee venue does not affect the operation or continuation of the lease and does not require any assignment of lease).

1B Persons having a financial interest in the Hotel Licence for the Lessor Venue

Contact person

Daytime phone

Mobile

Email

Collectively "the Lessor"

Part 2 Parties' Details - Lessee

2A Licensee of Lessee Venue

Name (Licensee, as recorded on Hotel Licence for Lessee Venue at time of Lease execution.)

Hotel Licence number for Lessee Venue ("the Lessee's Licence")

LIQ

Postal address

Suburb/town/city

State

Postcode

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Lessor's initials

Lessee's initials

2B Person(s) having a financial interest in the Hotel Licence of the Lessee Venue

Contact person

Daytime phone

Mobile

Email

Collectively "the Lessee"

Part 3 Venue Details

3A Lessor Venue

(Licensed Hotel premises to which Lessor's Gaming Machine Entitlements (GME) attach)

Name

Address

Suburb/town/city

State

Postcode

To be eligible to lease GMEs the Lessor Venue's GM threshold must not exceed 10.

Gaming Machine Threshold for Lessor Venue (before lease of GMEs under this Lease)

3B Lessee Venue

(Licensed Hotel premises to which GMEs are to be transferred. To be eligible to lease GMEs the Lessee Venue must be a Hotel.)

Name

Address

Suburb/town/city

State

Postcode

Gaming Machine Threshold for Lessee Venue

Part 4 Gaming Machine Entitlement (GME) Details

Total number of GMEs held for Lessor Venue under Lessor's Hotel Licence

Before lease of GMEs under this Lease

After lease of GMEs under this Lease

Number of Leased GMEs (Number leased under this Lease.)

Total number of GMEs held for Lessee Venue under Lessee's Hotel Licence (Includes leased GMEs.)

Part 5 Lease Term

Select from one of the following terms. No part year is permitted. Maximum term is 5 years.

1 year

2 years

3 years

4 years

5 years

continue overleaf

Lessor's initials

Lessee's initials

Part 6 Lease Fee and Payment Terms

State total fee (GST excl. and incl.) payable over the term of the Lease. This must be a flat fee, fixed up front. Separately identify any GST amount.

Lease Fee

GST-excl.	\$
GST amount	\$
GST-incl.	\$

Payment Terms

The Lease Fee is payable in equal quarterly instalments, in advance, within ten (10) Business Days of the beginning of each quarter as directed by the Lessor (subject to receipt of a Tax Invoice).

Part 7 Reporting requirements

If no such requirements, leave blank.

Type of report

Report content

Format and frequency

Part 8 Additional Terms

Parties have agreed Additional Terms as set out in Schedule of Additional Terms:

Yes

No

Part 9 Lessor Execution

9A Licensee execution (natural person)

Executed as an agreement by the Licensee:

Name

Signature

Date

9B Licensee execution (company)

Executed as an agreement for and on behalf of the Licensee by its authorised officer:

1. Name

Position

Signature

Date

2. Name

Position

Signature

Date

continue overleaf

Lessor's
initials

Lessee's
initials

9C Person having a financial interest in the Hotel Licence of the Lessor Venue execution (natural person(s))

Executed as an agreement by:

Name

Position

Signature

Date

9C Person having a financial interest in the Hotel Licence of the Lessor Venue execution (company/companies)

Executed as an agreement by:

Name

Position

Signature

Date

Part 10 Lessee Execution

10A Licensee execution (natural person)

Executed as an agreement by the Licensee:

Name

Signature

Date

10B Licensee execution (company)

Executed as an agreement for and on behalf of the Licensee by its authorised officer:

1. Name

Position

Signature

Date

2. Name

Position

Signature

Date

continue overleaf

Lessor's initials

Lessee's initials

10C Person having a financial interest in the Hotel Licence of the Lessee Venue execution (natural person(s))

Executed as an agreement by:

Name

Position

Signature

Date

10D Person having a financial interest in the Hotel Licence of the Lessee Venue execution (company/companies)

Executed as an agreement by:

Name

Position

Signature

Date

continue overleaf

Lessor's initials

Lessee's initials

Hotel GME Lease Standard Term Sheet

1. Definitions and interpretation

- 1.1 Capitalised terms used in this Lease which are:
- (a) defined or described in the Details Schedule to this Lease have the same meanings as in that Schedule;
 - (b) defined in the GM Act have the same meanings as in that Act; and
 - (c) defined in the GST Act have the same meanings as in that Act.
- 1.2 Subject to clause 1.3, if a party to this Lease is made up of more than one person:
- (a) an obligation of those persons is joint and several;
 - (b) a right of those persons is held by them jointly and severally; and
 - (c) a representation, warranty or undertaking by those persons is given by them jointly and severally.
- 1.3 The right to terminate under clause 12 (Termination of Lease) may only be exercised jointly.
- 1.4 In this Lease:
- Additional Terms** means any terms stated in the Schedule of Additional Terms that are consistent with the Standard Terms.
- Adjustment Event** has the meaning given in section 195-1 of the GST Act
- Adjustment Note** has the meaning given in section 195-1 of the GST Act
- Application** means an application for approval of this Lease that complies with s. 25(4) of the GM Act.
- Application Fee** means the fee payable for an application for the Authority's approval of this Lease.
- Authorised Recipient** means a person authorised to receive confidential information under clause 9 of the Standard Term Sheet.
- Authority** means the Independent Liquor & Gaming Authority constituted under the *Gaming and Liquor Administration Act 2007* (NSW).
- Business Day** means any day which is not a Saturday, Sunday or public holiday in New South Wales.
- Confidential Information** in relation to a Party means:
- (a) this Lease;
 - (b) information regarding the business affairs of that Party; or
 - (c) information which is marked confidential by that Party,

but excludes information which:

- (d) is or becomes public knowledge (other than by breach of this Lease); or
- (e) is in the lawful possession of the other Party without restriction in relation to disclosure before the date of receipt of the information.

GM Act means the *Gaming Machines Act 2001* (NSW), and includes the Gaming Machine Regulation 2010, each as in force from time to time.

GME means gaming machine entitlement as defined in the GM Act.

GME Lease Levy means the GME lease levy payable under s. 25C of the GM Act.

GM Threshold means the maximum number of gaming machines allowed to be held by a hotel from time to time.

GST means the goods and services tax.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.

Input Tax Credit has the meaning given in the GST Act.

Licence means a Hotel Licence.

Lease Fee means the total amount payable for the whole lease term (GST inclusive) as set out on Page 3 of this Lease.

Lessee means the parties details of which are set out in the Details Schedule of the Lease and refers to each one or more of them.

Lessee Venue has the same meaning as set out in the Details Schedule of the Lease.

Lessor means the parties details of which are set out in the Details Schedule of the Lease and refers to each one or more of them.

Lessor Venue has the same meaning as set out in the Details Schedule of the Lease.

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

Regulatory Event means:

- (a) a change in the law;
- (b) a determination of a court of law; or
- (c) a determination of a government agency or public authority,

which:

- (d) in relation to the Lessor's Licence or Lessee's Licence, has the effect that the Licence would be unlawful (but a Regulatory Event does not include a suspension of the Licence); and

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Lessor's
initials

Lessee's
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(e) in relation to this Lease, has the effect that the Lease would be unlawful.

Security Interest has the meaning given in section 12 of the PPSA.

Standard Terms means the terms stated in this Standard Term Sheet.

Start Date means the last date on which the Parties receive notification from the Authority under clause 3 (Conditions Precedent) that the conditions precedent to commencement have been satisfied.

Supply has the meaning given in section 9-10 of the GST Act.

Taxable Supply has the meaning given in section 9-5 of the GST Act.

2. Lease subject to GM Act

- 2.1 This Lease is subject to the GM Act and has effect in accordance with, and subject to, that Act.
- 2.2 Any Lease provision inconsistent with the GM Act does not have any effect.
- 2.3 This clause 2 (Lease subject to GM Act) has effect despite any other clause of this Lease.

3. Conditions Precedent

- 3.1 This Lease does not commence until the Authority has notified both Parties that the following conditions precedent have been satisfied:
- (a) The Authority has approved this Lease upon application under s. 25 of the GM Act;
- (b) The Lessee has paid the GME Lease Levy in respect of this Lease in accordance with s. 25C of the GM Act; and
- (c) The Authority has approved an application under s. 34 of the GM Act to increase the Gaming Machine Threshold of the Lessee Venue, where that approval is necessary for the Lessee to hold the Leased GMEs without exceeding its Gaming Machine Threshold of the Lessee Venue.

4. Grant of Lease

- 4.1 Subject to clause 3 (Conditions Precedent), the Lessor leases to the Lessee the Leased GMEs on and from the Start Date for the Lease Term on the terms of this Lease.

5. Effect of Lease

- 5.1 By operation of s. 25B of the Act:
- (a) the Lease operates as a lease by the licensee for the time being of the Lessor Venue to the licensee for the time being of the Lessee Venue;
- (b) during the Lease Term:
- (i) the Lessee Venue has the benefit of (and the Lessor Venue does not have the benefit of) the Leased GMEs;

- (ii) the Leased GMEs are considered to be held by the Lessee Venue and count towards the total number of GMEs held by the Lessee Venue;
- (iii) the Leased GMEs are not considered to be held by the Lessor Venue;
- (iv) the Gaming Machine Threshold for the Lessor Venue is reduced by the number of Leased GMEs; and
- (v) the Licence attached to the Lessor Venue cannot be removed to other premises under the *Liquor Act 2007* (NSW) except as provided by s. 25B(3) of the GM Act.

6. Lease Fee

- 6.1 In consideration for the grant of this Lease the Lessee must pay the Lessor the Lease Fee in accordance with the Payment Terms as set out in the Details Schedule of the Lease.

7. Taxes

- 7.1 Subject to subclauses 7.2 to 7.6 (GST), the Lessee must pay any taxes payable upon, or in respect of, this Lease.

GST

- 7.2 Any consideration in this Lease is exclusive of GST unless stated otherwise.
- 7.3 If a Supply made under or in connection with this Lease is a Taxable Supply, the consideration for the Supply is increased by an additional amount equal to the amount of that consideration multiplied by the relevant GST rate.
- 7.4 The additional amount under subclause 7.3 is payable at the same time and in the same manner as the consideration for the Supply to which the additional amount relates.
- 7.5 Where an Adjustment Event in relation to a supply under this Lease has occurred, the Lessee must give an Adjustment Note to the Lessor no later than twenty (20) Business Days after that Adjustment Event.
- 7.6 If one party to this Lease (payer) is required to reimburse another party (payee) for any cost, loss or expense incurred by the payee, the requirement to pay does not extend to any part of the cost, loss or expense that is recoverable by the payee as an Input Tax Credit.

8. Reports

- 8.1 The Lessee must comply with the Reporting Requirements (if any) listed in the Details Schedule of the Lease.

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9. Confidentiality

- 9.1 Except to the extent necessary to comply with any law or legal process, each Party must hold the other Party's Confidential Information in confidence and must not disclose it to any person except in accordance with this clause 9 (Confidentiality) or with the prior consent of the other Party.
- 9.2 Each Party may disclose the other Party's Confidential Information:
- (a) to its employees for the purpose of performing this Lease;
 - (b) to its legal, financial or other professional advisers for the purpose of seeking advice from such advisers;
 - (c) in the case of the Lessor, to the operator of the business at the Lessor's Venue, for the purpose of the operation of the business at those premises; and
 - (d) in the case of the Lessee, to the operator of the business at the Lessee's Venue, for the purpose of the operation of the business at those premises;.
- 9.3 Unless the disclosure of Confidential Information is made to comply with a legal requirement to disclose or with a legal process, each Party must:
- (a) ensure that any person to whom it discloses the other Party's Confidential Information (in this clause 9 (Confidentiality), "Authorised Recipient") is aware of its confidential nature; and
 - (b) take reasonable steps to ensure that such information is treated as confidential by the Authorised Recipient.

10. Security Interests

- 10.1 Each Party warrants that it will not grant any Security Interest in the Leased GMEs (whether specifically or as part of a general Security Interest such as a fixed and floating charge) during the Lease Term to any third party.
- 10.2 The warranties given in subclause 10.1 are continuing warranties and survive execution of this Lease.

11. Warranties and indemnity - General

- 11.1 A Party warrants that if it is required to be registered for GST it is so registered and will continue to be so for the Lease Term.
- 11.2 The Lessor warrants that this Lease is supported by all parties that have a financial interest in the Lessor's Licence (as that expression is defined in s. 25 of the GM Act) and that the Lessor has legal capacity to lease the Leased GMEs as at the date of execution of this Lease.

- 11.3 The warranties given in subclause 11.1 and 11.2 are continuing warranties and survive execution of this Lease.
- 11.4 Each Party (in this clause, "Indemnifier Party") indemnifies the other Party and its representatives, employees and agents (in this clause, "Those Indemnified") from and against any and all damages, costs, judgments, awards, compromises, settlements, expenses, losses and liabilities suffered by Those Indemnified arising from, or in relation to, any third party action brought against either Party in relation to this Lease, including (without limitation) any action arising from a Security Interest granted by the Indemnifier Party in respect of the Leased GMEs.

12. Termination of Lease

Termination by agreement

- 12.1 Subject to subclause 12.3, the Parties may terminate this Lease by written agreement.

Termination for default

- 12.2 Subject to subclause 12.3, either Party may terminate this Lease at any time with immediate effect by giving notice to the other Party if:
- (a) the other Party has committed a material breach of this Lease that is not capable of remedy; or
 - (b) the other Party has committed a material breach that is capable of remedy and the other Party fails to remedy that breach within thirty (30) Business Days of the other Party receiving written notice of that breach.
- 12.3 The termination of this Lease (otherwise than by its expiry), does not have effect until written notice of the termination has been given to the Authority by both Parties.
- 12.4 Notice given to the Authority under subclause 12.3 must state these particulars:
- (a) the date on which the Lease was terminated;
 - (b) that no urgent interlocutory relief from termination has been sought by either party; and
 - (c) that:
 - (i) no notice of a dispute has been given under subclause 15.2; or
 - (ii) notice of a dispute has been given under subclause 15.2 and that either:
 - A. the dispute has been resolved and the lease is terminated; or
 - B. that neither party now wishes to proceed to mediation in accordance with subclause 15.3.

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Lessor's
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Lessee's
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Lessor as Lessee's attorney

- 12.5 The Lessee irrevocably appoints the Lessor as the Lessee's attorney to give notice to the Authority of termination of this Lease under subclause 12.3 in the Lessee's name should the Lessor terminate this Lease in accordance with its terms provided that the Lessor must not give notice to the Authority under subclause 12.3 unless:
- (a) at least five (5) business days have expired from the date of receipt by the Lessee of the Lessor's notice of termination; and
 - (b) the Lessor is able to truthfully attest to the matters listed in subclause 12.4.

13. Effect of termination and expiry

- 13.1 If this Lease terminates for any reason, the Parties acknowledge that no refund is payable by any NSW government agency or public authority of:
- (a) the GME Lease Levy paid by the Lessee in respect of this Lease or any part of it; and
 - (b) the Application Fee paid on the application for approval of this Lease under s. 25(4) of the GM Act.
- 13.2 If this Lease terminates by reason of it ceasing to have effect under the GM Act because the Lessor's Licence expires or otherwise ceases to be in force (except by reason of suspension), including by reason of a Regulatory Event but excluding by reason of its voluntary surrender by the licensor, the Lessor must, within three (3) months of such termination or such other period as the Parties may agree in writing, pay to the Lessee, by way of compensation and in total satisfaction of the Lessor's liability in respect of such termination, an amount equal to the total of:
- (a) a pro-rata portion of the GME Lease Levy paid in respect of this Lease and referable to the forfeited period of the Lease Term as a portion of the full Lease Term; and
 - (b) a pro-rata portion of the Lease Fee paid (if any) and referable on a daily pro-rata basis to the quarter in which the termination occurred, and referable, in each case, to the forfeited period of the Lease Term as a portion of the full Lease Term.
- 13.3 If this Lease terminates by reason of it ceasing to have effect under the GM Act because the Lessee's Licence expires or otherwise ceases to be in force (except by reason of suspension), including by reason of its cancellation or by reason of a Regulatory Event but excluding by reason of its voluntary surrender by the licensor, the Lessee must, within three (3) months of such termination or such other period as the Parties may agree in writing, pay to the Lessor, by way of compensation and in total satisfaction of the

Lessee's liability in respect of such termination, an amount equal to a pro-rata portion of the Lease Fee referable to the forfeited period of the Lease Term until termination as a portion of the full Lease Term and calculated by reference to the following compensation formula:

$$C = \frac{FPLT}{LT} \times LF$$

where:

C = total compensation payable by the Lessee to the Lessor under subclause 13.3.

FPLT = Forfeited Period of Lease Term, being that period of the Lease Term which has not been performed by the Parties.

LT = Lease Term.

LF = the Lease Fee.

- 13.4 If this Lease terminates by agreement of the Parties any compensation payable in respect of such termination may be agreed to by the Parties.
- 13.5 Upon termination or expiry of this Lease:
- (a) the Lessee Venue no longer has the benefit of (and the Lessor Venue has the benefit of) the Leased GMEs;
 - (b) the Leased GMEs are considered to be returned to and held by the Lessor Venue and count towards the total number of GMEs held by the Lessor Venue; and
 - (c) the Leased GMEs are not considered to be held by the Lessee Venue;
 - (d) the GM Threshold for the Lessor Venue ceases to be reduced by the number of Leased GMEs; and
 - (e) the GM Threshold for the Lessee Venue is reduced by the number of Leased GMEs unless a threshold increase application that was made together with an application for approval of this Lease was accompanied by an LIA, or was not required to be accompanied by a Local Impact Assessment because of s. 35(2) (a) of the GM Act.
- 13.6 Termination of this Lease will not affect the accrued rights and remedies of either Party except as provided by this clause 13 (Effect of termination and expiry).

14. Transition in and out

- 14.1 Upon commencement of this Lease the Lessor acknowledges that it must immediately take any necessary steps to ensure continued compliance with s. 56 (Requirement for authorisation to keep or dispose of gaming machines) of the GM Act.

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Lessor's
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14.2 Upon termination or expiry of this Lease the Lessee acknowledges that it must immediately take any necessary steps to ensure continued compliance with s. 56 (Requirement for authorisation to keep or dispose of gaming machines) of the GM Act.

15. Dispute resolution

- 15.1 The Parties must try to settle any dispute arising from this Lease by negotiation in accordance with this clause before resorting to external dispute resolution procedures and proceedings, except where seeking urgent interlocutory relief.
- 15.2 A Party claiming that a dispute has arisen from this Lease must immediately give written notice to the other Party, specifying the nature of the dispute and the matter must then be referred by each Party (if a corporate entity) to its senior executive or, if the Party is an individual, will be dealt with by that individual.
- 15.3 If the dispute is not resolved within ten (10) Business Days of the dispute being notified under subclause 15.2 or such longer period as the Parties may agree in writing (in this clause 15, "Initial Negotiation Period"), then the Parties must participate in mediation in accordance with this clause.
- 15.4 If the Parties do not agree, within five (5) Business Days of the end of the Initial Negotiation Period (or such longer period as the Parties may agree) on:
- (a) the procedures to be adopted in a mediation of the dispute;
 - (b) the timetable for all the steps in those procedures; and
 - (c) the identity and fees of the mediator; then: the President of The Law Society of New South Wales will appoint the mediator and determine the mediator's fees and determine the proportion of those fees to be paid by each Party (to be in equal shares unless otherwise agreed by the Parties).
- 15.5 The Parties must mediate the dispute:
- (a) with the mediator appointed under subclause 15.4;
 - (b) with a genuine commitment to participate; and
 - (c) in accordance with the Mediation Guidelines of The Law Society of New South Wales.
- 15.6 If the dispute is not resolved within twenty (20) Business Days of its referral to mediation either Party may begin legal proceedings without further notice.
- 15.7 Notwithstanding the existence of a dispute, each Party must continue to perform its obligations under this Lease except to the extent that it is legally prevented from doing so.

15.8 A Party may begin court proceedings relating to any dispute arising from this Lease at any time if that Party seeks urgent interlocutory relief.

16. General terms

Notices

16.1 A notice or other communication is properly given or served if the Party delivers it by hand, posts it or transmits a copy electronically (email or fax) to the address for the Party (but not the address for the Party's Lessor Venue or Lessee Venue) in the Details Schedule. If a notice is given or served electronically the sending Party must obtain a confirmation of receipt.

Variation

- 16.2 The parties may vary this Lease (including by addition or amendment of terms) by written agreement provided that:
- (a) the variation must be consistent with applicable laws and regulatory requirements;
 - (b) where the terms of this Lease are varied before signature, the varied terms are set out in the Schedule of Additional Terms, and in the Application;
 - (c) if the variation is to the Lease Term or to the number of Leased GMEs, the variation does not have effect until the agreed variation has been approved by the Authority; and
 - (d) if the variation is to the Lease Fee or with respect to any other payment to be made under or in respect of the Lease, the variation does not have effect without:
 - (i) written notice of the variation being provided to, and approved by, the Authority; and
 - (ii) the payment of any further amount due as a levy under s. 25C of the GM Act.

Assignment, novation and sublease

- 16.3 The Parties acknowledge that the transfer or sublease of Leased GMEs is not permitted under the GM Act.
- 16.4 Subject to subclause 16.5, a Party must not assign its rights under, or novate, this Lease without the prior approval of:
- (a) the Lessor, which it will not unreasonably withhold; and
 - (b) the Authority, which it may decline to give without providing reasons.

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Lessor's
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16.5 The Parties:

- (a) acknowledge that, by operation of s. 25B of the GM Act, the transfer of the Hotel Licence of the Lessor Venue or the Lessee Venue does not affect the operation or continuation of this Lease and does not require any assignment of the Lease; and
- (b) agree that a transfer of the Hotel Licence of the Lessor Venue or the Lessee Venue will have the effect that, on and from the effective date of that transfer (in this subclause 16.5, "Effective Date"):
 - (i) the transferee of the Hotel Licence (in this subclause 16.5, "Transferee Licensee") will be substituted for, as applicable, the transferor Lessor or the transferor Lessee (in this subclause 16.5, "Transferor Licensee") under this Lease as if it had originally been a party to the Lease instead of the Transferor Licensee, and all references in the Lease to the Transferor Licensee in its capacity as Lessor or Lessee shall be read and construed as if they were references to the Transferee Licensee;
 - (ii) the Transferee Licensee shall be bound by and comply with the provisions of the Lease binding upon the Transferor Licensee and shall enjoy all the rights and benefits of the Transferor Licensee under the Lease; and
 - (iii) the Transferee Licensee assumes all of the obligations of the Transferor Licensee under the Lease, whether arising before, on or after the Effective Date.

Approvals and consents

16.6 All approvals and consents must be in writing and may be given subject to conditions.

Waiver

16.7 A right under this Lease may only be waived in writing, signed by the Party waiving the right. A waiver of a breach of this Lease will not be taken to be a waiver in respect of any other breach. A failure to enforce a term of this Lease will not be interpreted as a waiver of that term.

Survival

16.8 Without limiting any other term of this Lease concerning survival, the following clauses survive termination or expiry of this Lease:

- (a) clause 9 (Confidentiality);
- (b) clause 10 (Warranties and indemnity);
- (c) clause 13 (Effect of termination or expiry);
- (d) clause 14 (Transition in and out);
- (e) clause 15 (Dispute Resolution);
- (f) subclause 16.8 (Survival) and
- (g) any other term of this Lease that contemplates performance after termination or expiry of this Lease.

Applicable law

16.9 This Lease is governed by the laws of New South Wales and the parties submit to the exclusive jurisdiction of the courts of New South Wales and any courts of appeal from them.

16.10 Each Party waives any right it has to object to any action being brought in those courts including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

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