

## The Cluster Terms and Conditions (T&Cs)

### 1. Overview of the T&Cs

These terms and conditions (**T&Cs**) set out Your rights and obligations as a Member of The Cluster and the use of the Services provided with Your Membership Package.

You should read them carefully before you apply to become a Member as by accepting you confirm that you have read, understood and agreed to all the T&Cs.

### 2. Defined Terms

**“Agreement”** means this agreement between You and Us.

**“Additional Services”** means the additional services that you may elect to purchase as part of Your Membership Package. It includes things like the use of meeting rooms, event spaces, mail handling and Telephony Answering.

**“Building Rules”** means the building rules that apply to the Premises. To view Our Building Rules, please visit: [www.thecluster.com.au/legal](http://www.thecluster.com.au/legal).

**“Call Handling Instructions”** means instructions provided as to how You would like Your calls handled as part of the Reception Answering Service. Each instruction is a short statement defining a rule in which the Reception team can follow when answering the call: i.e. *All Sales calls to xyz - or Enquiries relating to zzz please transfer to yyy.*

**“Day Pass”** means the right to drop in and enjoy Our workspace and facilities at the Premises including the right to use a hot desk, café, library, lounge and breakout spaces.

**“Flexi Desk / Hotdesk”** means the use of a variety of workspaces at the Premises within the Flexi Areas / Hotdesk Areas.

**“Flexi Areas / Hotdesk Areas”** means the allocation of one or many workspaces around the coworking space that have been marked for shared usage amongst Members utilising an active Hot desk or Day Pass service on a given day.

**“CBD Business Address Usage”** means, when specified, the right to use the address: Level 17,31 Queen Street, Melbourne, VIC 3000 as a mailing address for Your business, following the guidelines defined under “Mail Handling” in this Agreement.

**“House Rules”** means the rules, as may be amended from time to time, that apply to Members with respect to the use of the Building, events and etiquette. To view Our House Rules, please visit: [www.thecluster.com.au/legal](http://www.thecluster.com.au/legal).

**“Membership” and “Membership Package”** means **Your** membership with The Cluster and Your right to be provided with the agreed Services and, where applicable, the Additional Services.

**“Permanent Desk”** means the use of a desk for Your private use and belongings.

**“Premises”** means Levels 17, 20 and 21, 31 Queen Street, Melbourne (and such other locations as nominated by Us from time to time).

**“Prices Brochure”** means the prices which apply to Your Membership for the use of the agreed Services as updated from time to time. To view Our Prices Brochure, please visit: [www.thecluster.com.au/legal](http://www.thecluster.com.au/legal).

**“Private Office”** means the use of a private office.

**“Registered For Use”** means that an Employee has been assigned to use a specific Service, within the limits outlined in the Service Sharing section of a Service

**“Services”** means the services we agree to provide you as part of Your Membership Package which might include the use of a Flexi Desk, Permanent Desk, Private Office, Virtual Office, Telephony Answering and Day Pass.

**“Service Details”** means the Service Details document, as may be amended from time to time, which apply to Members as part of their Membership Package. To view Service Details document, please visit: [www.thecluster.com.au/legal](http://www.thecluster.com.au/legal).

**“T&Cs” or “Terms and Conditions”** means these terms and conditions.

**“Telephony Answering”** means the right to have Your calls answered by Our receptionists and includes a business phone number (all Australian area codes available), calls diverted to voicemail or Your mobile phone/landline, calls forwarded to you live or telephony answering voicemail.

**“Virtual Office”** means the use of Level 17, 31 Queen Street as Your business and mailing address which includes the right to mail collection, mail storage, mail forwarding, mail scanning, and email details of received post.

**“We” or “Our” or “Us” or “The Cluster”** means White Moon Holdings Pty Ltd trading as The Cluster.

**“You” or “Your” or “Member” or “Client”** and similar words means the individual or entity that has registered to become a Member.

### **3. About Us**

Operating since 2010, The Cluster is devoted to helping businesses grow and feel connected. Building a productive coworking community that challenges the status quo and offers a “new way of working” – where you have genuine friends and relationships around you. The Cluster believes that work should be both rewarding and fun.

White Moon Holdings Pty Ltd trading as The Cluster is the entity that you agree to enter into this Agreement with.

### **4. About You**

References to **“You”** and **“Your”** and similar words mean the individual or entity that has registered to become a Member. If you register on behalf of a business or entity, you represent and warrant to Us that you have the proper authority and consent to bind the Member to these T&Cs.

### **5. About the Services**

The **“Services”** means the services we agree to provide you as part of Your Membership Package. The Services that you are provided with will depend upon:-

- (a) the Services you have purchased;
- (b) the Services which are available (which may vary from time to time); and
- (c) the Additional Services, if any, you have purchased (which may be subject to additional terms and conditions and payment obligations).

The cost of the Services or the Additional Services is set out in the Service Details and Pricing Brochure, which may be updated from time to time. This is also available on Our website or can be provided to you upon request.

You acknowledge and warrant to The Cluster that you have relied on Your own independent assessment and judgment in determining whether the Premises and, if applicable, the Services meet Your business' requirements and have not relied on any representation made or given by The Cluster in that regard.

We may need to amend the Services and the T&Cs from time to time, which will be at Our sole discretion. We will keep you up to date with any changes and will notify you by providing notice to Your last nominated email address.

Whilst most changes will be effective immediately, any changes to the payments and fees will come into effect on Your next subscription period. If for any reason you don't agree to the changes, then you may terminate Your Membership in accordance with the terms of this Agreement.

The "**Additional Services**" mean the additional services that you might elect to purchase as part of Your Membership which could include the use of meeting rooms, event spaces, address and mail forwarding and Telephony Answering.

You acknowledge that the terms and conditions which apply to the Services and the Additional Services will be governed by the Building Rules, the House Rules and changes made to our Service Details that we implement from time to time.

You agree that you must not assign, or attempt to assign, or licence or sub-licence the benefits provided under Your Membership Package to another person or entity without The Cluster's written consent, which The Cluster may grant or withhold in its absolute discretion.

## **6. Eligibility and Proof of Identity**

To be eligible to apply for a Membership Package you must have (or be applying for) at least one of the following:-

- Australian Business Number (ABN);
- Australian Company Number (ACN); or
- Australian Registered Body Number (ARBN).

We will also need to obtain from you a copy of a primary form of ID like Your current driver's licence or a valid passport. We may also need to confirm the identity of Your employees. The Services that we can offer You and Your employees, and Your access to the Premises, may be limited until we can confirm Your identities. .

Members will also need to provide a current email address and contact telephone number.

## **7. About your Membership**

Your Membership starts when Your application for membership is accepted by Us. We will notify you as soon as that occurs. The Services will continue on a month-to-month basis (or as otherwise agreed) until it is terminated by You or Us.

Up to date rules and pricing for our Memberships can be found on our Service Details document.

## **8. Access Cards**

Members may be required to purchase an Access Card to gain access to the Premises outside of normal Service Hours. An Access Card grants you the ability to enter the Premises outside of the Service Hours, Your Membership level will determine Your eligibility to, and the quantity of access cards Your business may hold.

Access Cards require a security deposit (see Payments and Fees) before being transferred to you, this deposit will be surrendered in the case of the Access Card being lost or damaged whilst in Your care. This deposit amount may be claimed upon the return of the card to The Cluster in working condition and upon service completion.

## **9. Service Hours**

For any service that does not include an Access Card, access to the space will require a staffed reception desk, which is available under the following conditions:

- 9am to 5pm Monday to Friday

Access to the space will be unavailable on the following days:

- Public Holidays (as per Victorian law); and
- Christmas Closure period

The Cluster reserves the right to close the space for up to 7 business days between the beginning of the final week of December and the conclusion of the first week of January each year. During this time the reception desks will not be staffed.

## **10. Payments and Fees**

By signing up for a Membership Package, you agree that must pay to The Cluster the agreed fees for the Services in the manner and at the times specified in Your Particulars.

You also agree to pay to The Cluster on demand the following charges, which may be changed by The Cluster from time to time:

- (a) security deposit for new Access Card - \$70 each.
- (b) additional usage over Flexi Allocation - \$5 per hour.
- (c) for lost office keys - \$20 each.

- (d) for lost locker keys - \$20 each.
- (e) lost filing cabinet keys - \$20 each.
- (f) late payment administration fee - \$30 per incident

If you breach this Agreement, you also agree to pay The Cluster's costs and expenses (including legal costs on a solicitor/own client basis) of and incidental to the enforcement or the attempted enforcement of The Cluster's rights under this Agreement.

You should also be aware that the payments and fees for all Cluster Services will rise by 4% on the 1st of January each year.

You acknowledge and agree that the payment method nominated by you will be automatically charged the fees and any other amounts that you may incur or be liable for (including for damages caused to the Premises or property) in connection with the Services. You agree to provide Us with up-to-date and accurate details of Your nominated payment method.

## **11. Security**

To commence Your Services with The Cluster, We require a cash deposit to the value specified in Your Particulars. Upon receiving the deposit, Your Service will be able commence on the agreed start date.

Any cash deposit will be provided as security for an amount payable to The Cluster pursuant to this Agreement and The Cluster may claim under the cash deposit without prejudice to any other right or remedy The Cluster may have.

If The Cluster makes a claim under a cash deposit provided pursuant to this Agreement, you must, within seven (7) days of The Cluster doing so, reinstate the cash deposit of at least an amount equal to the claim and any previous claim.

## **12. Terms of payment**

The Cluster may agree to accept payment of any payments and fees by regular direct debit from Your nominated bank account or credit account. If You wish to pay by regular direct debit, You must complete and sign and deliver to The Cluster:

- (a) a written direct debit request (in a form agreed by The Cluster) authorising Your bank to transfer any payments and fees to The Cluster by regular direct debit; or
- (b) a written authority (in a form prescribed by The Cluster) authorising The Cluster or its collection agent to collect any payments or fees of by way of regular deductions from Your bank account or credit card.

You may only cancel such direct debit request or authority by giving The Cluster at least 14 days written notice, and only if at the time of the notice, there are no moneys owing to The Cluster. Upon receipt of such a notice, The Cluster will take reasonable steps to arrange for cancellation of any standing direct debit authorities as soon as reasonably possible.

If you make payment of any fees or charges or any other money due and payable under this Agreement by credit charge, then you will be charged any standard surcharges imposed by

the merchant.

If Your nominated account has insufficient funds to affect the transaction, The Cluster may charge you a payment administration fee for each transaction that is rejected.

If You fail to pay any payments or fees or any other money due and payable under this Agreement by the due date for payment, then The Cluster may (amongst other things):-

- (a) temporarily suspend Your Services; and/or
- (b) terminate Your Services; and/or
- (c) charge interest on any monies outstanding at a rate equivalent to two percent (2%) above the rate of interest for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983 (Vic)*.

### **13. GST**

If We make a Taxable Supply for the supply of Services in connection with this Agreement You agree to pay Us any GST Amount applicable to that Taxable Supply. For the purposes of this clause:

- (a) **“GST”** means a goods and services tax imposed under the GST Law;
- (b) **“GST Amount”** means the amount of GST payable in respect of a Taxable Supply calculated by applying the appropriate rate of GST in accordance with the GST Law;
- (c) **“GST Law”** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (or if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia), and any regulation made under the Act.
- (d) **“Taxable Supply”** has the meaning given to that term in the GST Law.

We will provide you with a Tax Invoice in a form that complies with the GST Law.

### **14. Technology**

If you have purchased a Flexi Desk, Permanent Desk, Private Office or Day Pass as part of Your Membership Package, you are entitled to access high speed fibre internet & WiFi as part of the Services. However, whilst we will do Our best to provide a consistent and reliable service, we do not warrant or represent that there will be a particular availability or level of service in connection with Your use of the internet or The Cluster’s internal computer network.

As part of Your Membership Package, you might be entitled to be provided with IT technical support or IT concierge from The Cluster. You agree that, to the fullest extent permitted by law, the Cluster will not be responsible for any damage which may arise in relation to any of Your electronic equipment or systems as a result of Us providing such technical support or software installation.

### **15. Mail Handling**

If you have elected to purchase mail handling, storage or forwarding as part of Your Membership Package, then the following applies:-

- (a) we have no obligation to store mail for more than 30 days after receipt; this is Our maximum hold duration;
- (b) we have no obligation to receive or hold mail for clients who have terminated their Membership with Us that provides for mail service;
- (c) we will not be able to post out or forward mail larger than 22kg, longer than 105cm or with a volume greater than 0.25 cubic metres (mail of this size will have to be picked up);
- (d) we reserve the right to return-to-sender or dispose of any held mail that has not been picked up within 30 days after receipt;
- (e) we reserve the right to refuse the delivery of 'bulk goods' or oversized mail, which we classify as an item that weighs more than 50kg or a with a volume greater than 0.6 cubic metres.

## **16. Intellectual property and copyrights**

We hold the copyright to the content of this Website, including all uploaded files, layout design, data, graphics, articles, file content, codes, news, tutorials, videos, reviews, forum posts and databases contained on the Website or in connection with the Services. You must not use or replicate Our copyright material other than as permitted by law. Specifically, you must not use or replicate Our copyright material for commercial purposes unless expressly agreed to by Us, in which case we may require you to sign a license agreement.

If you wish to use content, images or other of Our intellectual property, you should submit Your request to us at the following email address: [info@thecluster.com.au](mailto:info@thecluster.com.au)

## **17. Trademarks**

The trademarks and logos contained on this Website are trademarks of White Moon Holdings Pty Ltd trading as The Cluster. Use of these trademarks is strictly prohibited except with Our express written consent.

## **18. Premises forms Part of Building**

You acknowledge that:

- (a) the Premises forms part of a lot on Plan of Subdivision PS347187U (**Plan**) and part of the Building;
- (b) that other parts of the Building are owned or occupied by persons other than The Cluster and not in the control of or under the authority of The Cluster;
- (c) that the common areas of the Building are subject to the owner's corporation created by the Plan (**Owners Corporation**) and that the use and occupation of the Building is subject to the rules of the Owners Corporation;

- (d) that the owners of the other lots in the building and/or the Owners Corporation may have adopted other rules for the Building, which together with the rules of the Owners Corporation are referred to as the Building Rules; and
- (e) that the Building Rules may be modified from time to time.

You agree to comply with:

- (a) the directions of the Owners Corporation; and
- (b) the Building Rules as they apply and are added to or varied from time to time, and to the extent of any inconsistency between the Building Rules and the provisions of this License, the Building Rules prevail.

As at the date of this Agreement, the Building Rules are set out here  
<https://www.thecluster.com.au/legal/>

## **19. Use of Premises and Building**

If you use the Premises or the Building as part of Your Membership Package, You must at Your own cost:

- (a) obtain all approvals, consents and licenses from the relevant and proper authorities to carry on Your business at the Premises, and where requested by The Cluster, provide copies and/or evidence of those approvals, consents or licences; and
- (b) comply with all laws relating to the use of the Premises and the Building (including without limitation all occupational health and safety laws and environmental laws) and You must ensure that Your employees, contractors, customers and invitees also comply with all such laws.

You must not and must ensure that Your employees, contractors and invitees do not:

- (a) use the Premises or the Building other than for the permitted use under Our lease;
- (b) use the Premises or the Building for any illegal purpose;
- (c) carry out any noxious or offensive activity in or about the Premises or the Building;
- (d) cause a nuisance, damage or disturbance to other owners, users and occupiers of the Building or adjoining property;
- (e) conduct auctions or public meetings in the Premises;
- (f) use sound producing equipment at a volume that can be heard outside the Premises;
- (g) do anything which may affect any insurance policy relating to the Premises or the Building by causing any such insurance to become void or voidable, or any claim on any such insurance to be rejected or any premium to be increased;
- (h) bring use or keep hazardous material of any kind in or on the Premises or the Building;

- (i) erect, paint, write or attach any signage on the exterior of the Premises or any part of the Building without the prior written consent of The Cluster and, if necessary, the approval of the Owners Corporation and any relevant statutory or other authority;
- (j) install or attach any fixtures, fittings or equipment or add to or alter the Premises or the Building without the prior written consent of The Cluster;
- (k) remove any fixtures or fittings attached by You where the removal would cause damage to the Premises without the prior written consent of The Cluster;
- (l) bring any heavy article into the Premises, which may by its weight cause damage to the Premises, without The Cluster's consent;
- (m) interfere with any plant or equipment installed in or servicing the Premises or the Building; or
- (n) bring pets onto the Premises if the Building Rules do not permit it.
- (o) conduct events or host invitees within the Premises outside of Service Hours without first having a Meeting or Event registered with and confirmed by The Cluster beforehand.

## **20. The Care and Use of the Premises**

If you use the Premises as part of Your Membership Package, You agree you must:

- (a) keep the Premises cleaned and free from rubbish, keep waste in proper containers and have it removed regularly;
- (b) not put anything harmful down any sink, toilet or drain or do anything which is likely to cause damage or blockage to any plumbing, drainage or sewerage installation;
- (c) promptly notify The Cluster orally or in writing of any damage to the Premises or the need for any repair or maintenance to the Premises, or any defect in the Fixtures and Fittings or any defect in the services to the Premises;
- (d) take all precautions required by law against fire;
- (e) comply with the reasonable directions of The Cluster or the insurer of the Premises or the Building with respect to the prevention, detection and control of fire;
- (f) carry on Your business subject to all applicable laws; and
- (g) refund on demand any increase in insurance premiums paid by The Cluster as a result of Your use of the Premises.

You must not and must ensure that Your employees, contractors and invitees do not cause or permit to be caused any damage to the Premises, the Fixtures and Fittings, the Building or any adjoining property (including, without limitation, by the removal of any fixtures and fittings installed by the Licensee). If You or Your employees, contractors and invitees cause damage to the Premises, the Fixtures and Fittings, the Building or any adjoining property, You must immediately notify Us of the damage and provide Us with such information as We may require in relation to the damage. In the event of damage, The Cluster may:

- (a) elect to repair the damage, (and in the case of damage to Fixtures and Fittings, replace those that would be impractical to repair) in which case You must reimburse The Cluster on demand the costs reasonably incurred by The Cluster in repairing the damage (and in the case of Fixtures and Fittings, the cost of replacement); or
- (b) elect to require You to repair the damage, (and/or replace the Fixtures and Fittings where repairing the same is impractical) in which case, You must immediately and at Your cost, attend to the required repairs using only contractors approved by The Cluster in writing (and in the case of Fixtures and Fittings which are to be replaced, replace the Fixtures and Fittings with new fixtures and fittings approved by The Cluster). All repairs and replacements must be undertaken in accordance with the reasonable requirements of The Cluster and in accordance with the Building Rules. All repairs and replacements must be completed to the reasonable satisfaction of The Cluster.

## **21. Release and Indemnity**

You agree to use the Premises and the Building at Your own risk, and release The Cluster and its directors, officers, employees, contractors and agents in the absence of any fraudulent conduct or wilful wrongdoing from all claims and demands of any kind.

You indemnify The Cluster from and against all claims, demands, actions, losses, damages, costs and expenses for which The Cluster will or may become liable for, arising out of any act or failure to act by You or any employee servant agent or contractor of the Member in their use and occupation of the Premises and the Building, except to the extent that same is contributed to by the wilful wrongdoing or fraudulent conduct of The Cluster or any officer, employer, contractor or agent of The Cluster.

## **22. Cleaning**

We will be responsible for general office cleaning at the Premises. However, You must on demand reimburse The Cluster for any additional cleaning costs incurred as a result of You not leaving the Premises in a clean and tidy condition suitable for general office cleaning. You authorise The Cluster to arrange for any additional required cleaning.

## **23. Insurance**

During Your Membership, you must take out and keep current insurance cover for all stock, furnishings and other property of Yours for their full insurable value against all reasonable risks, with a reputable insurance company.

Upon request by The Cluster, You must provide copies of the insurance policies taken out under this clause and, if applicable, must provide certificates of currency of insurance to The Cluster at least once in each year of the Term.

You must obtain any additional insurance reasonably requested by The Cluster from time to time, or as may be required by any applicable law from time to time.

Members who are to bring in guests or members of the public into the Premises must first obtain public liability insurance, ensuring that their insurance is current and active before doing so.

## **24. You and other Members**

The Cluster is determined to provide a safe, productive and harmonious work environment.

With this in mind, You acknowledge that we do not control the actions of Our Members.

You are responsible for Your own actions and behaviours, as well as any employees that access the Premises as part of Your Membership. You are also responsible for the actions and behaviours of Your guests and third parties that are brought into the Premises.

We have a zero-tolerance policy towards discrimination, harassment (including sexual harassment) and bullying. If You, Your employees or guests breach this obligation it will allow Us, at Our discretion, to take the following actions:

- barring of an offending Member from the Premises;
- requiring a Member to participate in suitable disciplinary or mediation activities in order to rectify the situation;
- the immediate termination of a Member's Membership.

The Cluster also reserves the right, if a dispute arises, to not agree to participate in or facilitate any mediation between the parties.

## **25. Liability and Indemnity**

Except for any express undertakings to indemnify and any warranties set out in this Agreement, to the fullest extent permitted by the law, The Cluster expressly excludes all conditions and warranties whether express or implied. In no instance will The Cluster be liable to any party including You for any indirect, punitive, special, incidental or consequential loss or damage in connection with or arising out of this Agreement (including for loss of profits, use, or other economic advantage), regardless of how it arises, whether for breach of this License, in tort, or under statute or any applicable law, and even if The Cluster has been previously advised of the possibility of such damage.

You will indemnify The Cluster and keep it indemnified from and against any claims by any party for or in respect of such losses or damages. In no instance will The Cluster's total aggregate liability in respect of all claims arising under or pursuant to this Agreement exceed the amount paid to The Cluster under this Agreement, regardless of whether such claims arise out of a single event or a series of events.

## **26. Termination of Membership**

The Cluster may terminate Your Membership if in the opinion of The Cluster:

- (a) You do not pay the agreed payments or fees within 7 days of the due date for payment (whether The Cluster has demanded payment or not); or
- (b) You breach any obligation under this Agreement that is not capable of remedy; or
- (c) You breach any other obligation under this License; or
- (d) You attempt to assign any of Your rights or obligations under this Agreement without The Cluster's prior written consent; or

- (e) You and/or the Guarantor becomes insolvent or any insolvency proceedings are instituted by or against You or the Guarantor; or
- (f) a different person becomes in Effective control of You, where You are a company, resulting from changes in:-
  - a. membership of Your company or its holding corporation; or
  - b. beneficial ownership of the shares in Your company or its holding corporation; or
  - c. beneficial ownership in the business or assets of You.

“**Effective control**” means the ability to control the composition of the board of directors or having more than 50% of the shares giving the right to vote at general meetings.

- (g) in the reasonable opinion of The Cluster, the Services are being used for illegal, immoral or unethical purposes;
- (h) in the reasonable opinion of The Cluster, the activities of the Member pose a threat to The Cluster’s staff, business or business reputation or to that of other Members;
- (i) the activities of the Member cause an unreasonable disruption to the peaceful working environment at The Cluster;
- (j) the activities of the Member are in breach of the House Rules or the Building Rules of the Cluster;
- (k) You assign, licence or sub-let the benefit of any of the Services to another person or entity without the prior written consent of The Cluster;
- (l) You, Your employees or guests breach any policy in connection with discrimination, harassment (including sexual harassment) and bullying.

Termination by The Cluster ends this Agreement, but The Cluster retains the right to sue You for unpaid money or for damages for breaches of its obligations under this Agreement.

Seven (7) days is fixed as the period within which You must remedy a breach that is capable of remedy and make reasonable compensation in money. The Cluster’s rights, and Your duties and responsibilities, will continue in full force and effect notwithstanding any notice given pursuant to, or termination in accordance with this clause.

You shall indemnify The Cluster, in respect of all and any liabilities, obligations, claims, actions, proceedings, demands, losses, damages, costs and expenses (**Liabilities**) for which The Cluster shall or may become liable resulting from Your default under this Agreement or from the negligence or wilful or unlawful act or omission or default of You in the performance of Your obligations under this Agreement.

Subject to the provisions of this Agreement, The Cluster’s duties and responsibilities cease from the date of termination for any reason.

## **27. Guarantee and Indemnity**

In consideration of The Cluster entering into this Agreement at the request of Member, the

persons named in Item 3 of the Particulars (**Guarantor**), the Guarantor:

- (a) guarantees that the Member will perform all of its obligations under this Agreement for the duration of its Membership;
- (b) will pay on demand any amount which The Cluster is entitled to recover from the Member under this License; and
- (c) indemnifies The Cluster against all loss resulting from The Cluster having entered into this Agreement whether from the Member's failure to perform its obligations or from this Agreement being or becoming unenforceable against the Member.

The liability of the Guarantor will not be affected by:

- (a) The Cluster granting the Member or the Guarantor time or any other indulgence, or agreeing not to sue the Member or another Guarantor; or
- (b) failure by any Guarantor to sign this Agreement; or
- (c) any variation to this Agreement.

If the Member's obligations are unenforceable against the Member, then this clause will operate as an indemnity and the Guarantor indemnifies The Cluster against all loss resulting from The Cluster's inability to enforce performance of those obligations against the Member, and the Guarantor must pay The Cluster the amount of the loss resulting from the unenforceability.

If there is more than one Guarantor, the obligations under this guarantee bind them jointly and severally.

## **28. Privacy Act 1988 (Cth)**

To enable The Cluster to assess Your application for credit, You authorise The Cluster:

- (a) to obtain from a credit reporting agency a credit report containing personal information about the Licensee pursuant to Part IIIA of the *Privacy Act 1988 (Cth)*; and
- (b) to obtain a report from a credit reporting agency and any other information in relation to Your commercial credit activities.

In accordance with to Part IIIA of the *Privacy Act 1988 (Cth)*, You authorise The Cluster to give to and obtain from any person who has provided credit to Your information about Your credit arrangements. You understand that this information can include any information about Your creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the *Privacy Act 1988 (Cth)*.

You understand that this information can be used for the purposes of assessing its application for credit, assisting it to avoid defaulting on its credit obligations, notifying other credit providers of a default by it and assessing its creditworthiness.

## **29. Nature of these Terms**

Despite any other condition to the contrary, nothing in this Agreement grants you any title, easement, lease possession or related rights in Our Business or the Premises of any proprietary nature. These T&Cs create no tenancy interest, leasehold estate, or any other real property interest. Your rights rest in contract only.

### **30. General Provisions**

Any:

- (a) delay or failure by The Cluster to enforce or insist upon the timely performance of any term, condition, covenant or provision in this Agreement;
- (b) delay or failure by The Cluster to exercise any right or remedy available under this Agreement or at law;
- (c) delay or failure by The Cluster to insist upon timely payment of payment or fee or other money when due; or
- (d) extension of time or forbearance under this Agreement by The Cluster, shall not constitute a waiver of any default or a waiver of The Cluster's right to demand timely payment or the performance by You of any of their obligations, or their strict compliance with this Agreement.

Any notice required to be delivered to You under this Agreement may be given by hand, or by mail to the address set out in the Particulars (or the address last notified by the Licensee) or electronically via the internet or to Your email address (**Notice**).

Where the consent of The Cluster is required to any matter or thing under this Agreement, unless any clause provides otherwise, The Cluster can grant or withhold such consent in its absolute discretion.

This Agreement shall be governed by and interpreted according to the laws of Victoria and The Cluster and the Licensee consent and submit to the jurisdiction of the courts of Victoria.

Notwithstanding that any provision of this Agreement may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason, that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of this Agreement shall continue in full force and effect.

The Cluster will not be liable to You or to any other party for any non-performance or delay in the performance of its obligations under this Agreement, if events or conditions beyond its reasonable control cause the non-performance or delay. In no event will this provision affect Your obligation to make payments to The Cluster under this Agreement.