

Form: 07L
Licence: 01-06-027
Licensee:
Release: 4.4

LEASE
New South Wales
Real Property Act 1900

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

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

STAMP DUTY

Revenue NSW use only

(A) TORRENS TITLE

Property leased

The area shown pink on the attached plan marked "D" being part of the land in Certificate of Title Volume 5018 Folio 1

(B) LODGED BY

Document
Collection
Box

Name, Address or DX, Telephone and Customer Account Number if any

CODE

L

Reference:

(C) LESSOR

TRANSPORT FOR NSW ABN 18 804 239 602

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

(D)

Encumbrances (if applicable):

(E) LESSEE

Your Name

(F)

TENANCY:

- (G)**
1. **TERM** Number (#) years
 2. **COMMENCING DATE**
 3. **TERMINATING DATE**
 4. With an **OPTION TO RENEW** for a period of N/A set out in N/A
 5. With an **OPTION TO PURCHASE** set out in N/A
 6. Together with and reserving the **RIGHTS** set out N/A
 7. Incorporates the provisions or additional material set out in **Annexures A, B, C and D** hereto.
 8. Incorporates the provisions set out in N/A No(s). N/A
 9. The **RENT** is set out in item 5 of Annexure B.

DATE / /
 dd mm yyyy

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

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

SEE EXECUTION PAGE 3 ATTACHED

Signature of witness:

Signature of lessor:

Name of witness:

Address of witness:

Note: where applicable, the lessor must complete the statutory declaration below.

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

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

SEE EXECUTION PAGE 3 ATTACHED

Signature of witness:

Signature of lessee:

Name of witness:

Address of witness:

(I) **STATUTORY DECLARATION**

I

solemnly and sincerely declare that –

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

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

Made and subscribed at in the state of

on in the presence of –

Justice of the Peace (J.P. Number) Practising Solicitor

Other qualified witness [specify].....

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

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the cover; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a

Signature of witness:

Signature of applicant:

* As the services of a qualified witness cannot be provided at lodgement, the declaration should be signed and witnessed prior to lodgement.
If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

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

Execution Page

Executed as a Deed in New South Wales

EXECUTED by a delegate of
**Transport for NSW (ABN 18 804
239 602)** who hereby certifies that he
or she has no notification as to the
revocation of such delegation, in the
presence of:

Signature of Witness

Signature of Delegate

Name of Witness (print)

Name of Delegate (print)

Address of Witness (print)

Title of Delegate (print)

EXECUTED by **Lessee 1** in the
presence of:

Signature of Witness

Signature of Lessee

Name of Witness (print)

Name of Lessee (print)

Address of Witness (print)

EXECUTED by **Lessee 2** in the
presence of:

Signature of Witness

Signature of Lessee

Name of Witness (print)

Name of Lessee (print)

Address of Witness (print)

THIS DEED OF LEASE is dated

PARTIES:

- 1** **TRANSPORT FOR NSW** (ABN 18 804 239 602) a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) of 33 James Craig Road, Rozelle NSW 2039 (“Lessor”) and
- 2** **LESSEE 1** and **LESSEE 2** of Property Address (“Lessee”).

INTRODUCTION:

- A** The *Lessor* is the registered proprietor of the *Leased Land*.
- B** The *Lessor* has agreed to grant to the *Lessee* and the *Lessee* has agreed to accept from the *Lessor* a lease of the *Leased Land* subject to the terms and conditions of this Deed of Lease.

IT IS AGREED that this Deed of Lease comprises:

- (a) the LRS cover page, this page and the execution page;
- (b) the Terms and Conditions of the *Lease*, annexed and marked “A”;
- (c) the *Reference Schedule*, annexed and marked “B”;
- (d) the Special Conditions annexed and marked “C”; and
- (e) the *Plan* of the *Leased Land* annexed and marked “D”.

ANNEXURE "A" TO LEASE

BETWEEN

TRANSPORT FOR NSW

AND

LESSEE 1 AND LESSEE 2

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1 DEFINED TERMS AND INTERPRETATION

1.1 Definitions in the Dictionary

A term or expression in italics is a defined term with the meaning ascribed to it in Schedule 1 (“Dictionary”) of this *Lease*.

1.2 Interpretation

The interpretation clause in Schedule 1 (“Dictionary”) of this *Lease* sets out the rules of interpretation that apply to this *Lease*.

2 GRANT AND RESERVATIONS

2.1 Grant

The *Lessor* grants and the *Lessee* accepts a lease of the *Leased Land* and *Lessor’s Improvements* on the *Leased Land* for the *Term* subject to the reservations, covenants, conditions, stipulations and provisos contained in this *Lease*.

2.2 Reservations

The *Lessor* reserves from the grant contained in Clause 2.1 of this *Lease*, for itself and persons claiming through or authorised by the *Lessor* the rights contained in Clause 2.3, Clause 2.4, Clause 2.5, Clause 2.6, Clause 2.7 and Clause 11.2 of this *Lease*.

2.3 Special Conditions

This *Lease* is granted subject to any Special Conditions set out in the Annexure that is annexed to this *Lease* and marked “C”.

2.4 Lessor may Create Easements

The *Lessor* acting reasonably may at any time dedicate its land or be a party to the creation of easements, restrictions or covenants benefiting or burdening its land or enter into any arrangements or agreements with any person for purposes including the following:

- (a) to provide access to and egress from the *Leased Land* only in the event of an emergency; or
- (b) for the support of structures erected or to be erected on any land adjoining the *Leased Land* if the grant of the easement, restriction or covenant or the entering into of the arrangement or agreement is required by any *Relevant Authority* or under any *Law*; or
- (c) to comply with the requirements of any *Relevant Authority* or with any *Law*, including where such compliance relates to the provision of a service, including water, sewerage, drainage, gas, electricity and telephonic or electronic communications; or

- (d) for any purpose that the *Lessor* determines, acting reasonably, is appropriate,

but in doing so, the *Lessor* must not dedicate land or be party to the creation of any easement, restriction or covenant or enter into any arrangement or agreement that materially derogates from the enjoyment of rights conferred on the *Lessee* by this *Lease*.

2.5 Statutory Resumption

Clause 2.4 of this *Lease* does not affect the power of resumption of the *Lessor* or any *Relevant Authority* under any *Law*. The *Lessor* acknowledges that in the event of a compulsory acquisition of the Leasehold interest the *Lessee* would be entitled to submit a claim for compensation in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

2.6 Lessor may Subdivide and Re-subdivide

The *Lessor*, acting reasonably, may subdivide and re-subdivide the *Leased Land* including under the *Strata Schemes (Freehold Development) Act 1973 (NSW)* and the *Community Land Development Act 1989 (NSW)* and, if necessary, to reflect changes because of the subdivision or re-subdivision, require the *Lessee* to vary this *Lease* or replace this *Lease* with another if:

- (a) the *Lessor* notifies the *Lessee* that the *Lessor* wishes to do these things; and
- (b) after the subdivision or re-subdivision the *Premises* are substantially the same and the amounts payable by the *Lessee* in respect of the *Premises* are not substantially greater than before the subdivision or re-subdivision; and
- (c) the *Lessor* pays, in respect of the variation or replacement of this *Lease*, the *Lessee's* reasonable legal costs and disbursements.

2.7 Acknowledgements by Lessee

The *Lessee* acknowledges:

- (a) that the *Lessor* is a *Relevant Authority* that has responsibility for marine safety functions and other functions under the *Law*; and
- (b) the obligations of the *Lessor* under this *Lease* in no way alter or restrict its role, functions and obligations as a *Relevant Authority* and no exercise of any function by the *Lessor* as a *Relevant Authority* will constitute a breach of this *Lease*; and
- (c) the obligations under this *Lease* do not reduce or affect the powers of the harbour master of the *Port* in which the *Premises* are located;
- (d) the *Lessor* has made no warranty, statement or representation in relation to the condition or repair of the *Premises*, the fitness or suitability of the *Premises* for any purpose, whether any proposed use is permissible or whether the *Premises* or use of the *Premises* will be affected by *Climate Change*. The *Lessee* relies solely on its own

enquiries and investigations in determining whether to enter into this *Lease*; and

- (e) in granting this *Lease*, the *Lessor* makes no warranty, statement or representation as to:
 - (i) the existence and/or extent (if any) of “existing use” rights or “continuing use” rights within the meaning of the *Environmental Planning and Assessment Act 1979* applying to the *Premises*, including whether or not those rights have been abandoned. The *Lessee* relies on its own enquiries; and
 - (ii) the lawfulness of any *Lessee's Fixtures* and/or *Lessor's Improvements* or use made of the *Premises*.

2.8 Registration of Lease

- (a) The *Lessee* acknowledges that if the *Term* of this *Lease* is more than three (3) years, the *Lease* needs to be registered to create a legal interest in land and to confer indefeasibility of title on the *Lessee*.
- (b) The *Lessee* acknowledges that it is aware of the provisions of the *Real Property Act 1900* and other *Law* relevant to leases and that prior to making a decision not to register this *Lease* the *Lessee*:
 - (i) has or had the opportunity to obtain independent legal and financial advice in relation to the consequences of not registering the *Lease*;
 - (ii) fully understands the consequences of not registering the *Lease*; and
 - (iii) releases the *Lessor* from any *Loss* incurred by the *Lessee* as a result of non-registration of this *Lease*.
- (c) The *Lessee* acknowledges that if the *Lessee* decides to register the *Lease* during the *Term*, the *Lessee* must:
 - (i) notify the *Lessor* in writing of its request to register the *Lease*;
 - (ii) pay, on demand, any legal costs and disbursements incurred by the *Lessor* in registering the *Lease*, including but not limited to any revision of the documents, plans of subdivision and registration fees; and
 - (iii) in the event that the Land Registry Services raises any requisition which can not be rectified and which would prevent this *Lease* from being registered, the *Lessee* agrees to surrender this *Lease* and simultaneously enter into a new lease on the same terms and conditions of this *Lease* for the remainder of the *Term* except for any necessary amendments to enable registration of the new lease.

3 RENT AND OTHER PAYMENTS

3.1 Rent

The *Lessee* must pay the *Rent* without demand and without set-off or counterclaim and free from any deductions, to the *Lessor* during the *Term*.

3.2 Costs

The *Lessee* must pay, on an indemnity basis, to the *Lessor* or as the *Lessor* directs:

- (a) all stamp duty, including any fines or penalties, payable in connection with this *Lease*; and
- (b) all registration fees in connection with registration of this *Lease* at the Land Registry Services, if applicable; and
- (c) all costs in connection with any plan or other document required to be registered with this *Lease* at the Land Registry Services; and
- (d) the *Lessor's* reasonable costs, legal costs and disbursements in connection with:
 - (i) any discussion or correspondence, preparation, completion, execution and stamping of this *Lease* and all ancillary documents; and
 - (ii) any action or dealing by or with the *Lessee* in relation to this *Lease*, including but not limited to removal of the *Lessee's* *Fixtures* or the *Lessor's* *Improvements* from the *Premises* and associated assessments required under the *Environmental Planning and Assessment Act 1979* or by the *Lessor*, and assignment of the *Lease*, whether or not such action or dealing proceeds; and
 - (iii) the consideration of any request made by the *Lessee* for the *Lessor's* consent or approval under this *Lease* (whether or not it is given); and
 - (iv) any failure by the *Lessee* to perform and observe the *Lessee's* obligations under this *Lease*;
 - (v) any costs associated with the redefinition of the boundaries of the *Lessee's* *Land*; and
 - (vi) any assessment, report, survey or investigation reasonably required in the circumstances, commissioned or carried out by or on behalf of, or at the request or direction, of the *Lessor* for the purposes of this *Lease*; and
- (e) all reasonable costs and expenses in connection with any action taken by the *Lessor* to recover *Rent* or other money payable by the *Lessee* to the *Lessor* pursuant to this *Lease* that remains unpaid for a period of thirty (30) *Business Days* from the due date for payment.

3.3 Outgoings

- (a) The *Lessee* is liable for and must pay all *Services* and *Outgoings* in connection with the *Premises* on or before the due date for payment to the relevant persons or the *Relevant Authorities* or, if required, to the *Lessor*.
- (b) The *Lessee* agrees that where the *Lessee* has failed to pay for any *Services* or *Outgoings* by the due date for payment, the *Lessor* may, in its absolute discretion, elect to pay the amount due in respect of the *Services* or *Outgoings* to the relevant person or the *Relevant Authority*, and that amount will constitute a debt payable to the *Lessor* and the *Lessee* must reimburse the *Lessor* for the debt within ten (10) *Business Days* of written demand from the *Lessor*.

3.4 Goods and Services Tax

- (a) In this Clause 3.4, the terms “*GST*”, “*Input Tax Credit*”, “*Supply*”, and “*Tax Invoice*” have the same meanings given to them in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- (b) *Rent* and any other payments under this *Lease* do not (unless expressly stated otherwise) include *GST*.
- (c) If a *Supply* made under this *Lease* is subject to *GST*, the recipient of the *Supply* must pay to the supplier an additional amount equal to the *GST* payable in respect of that supply at the prevailing *GST* rate.
- (d) The *GST* amount is payable at the same time and in the same manner as the consideration for the *Supply* to which the *GST* amount relates.
- (e) The *Lessor* must provide the *Lessee* with a tax invoice for the *GST* amount for each payment made by the *Lessee* under Clause 3.4(b) of this *Lease* in accordance with the requirements of the *Law*.
- (f) If the *Lessor* is entitled to be reimbursed or indemnified for any cost, expense or liability by the *Lessee* the amount payable by the *Lessee* in respect of such cost, expense or liability will not include any amount in respect of *GST* for which the *Lessor* is entitled to an Input Tax Credit.

3.5 Lessee’s Obligation to Continue to Pay Rent

If, upon the expiration or earlier determination of this *Lease*, the *Lessee* has not performed and observed all its obligations under this *Lease*, the *Lessee* must continue to pay *Rent* and all other money payable by the *Lessee* under this *Lease* until the *Lessee* has performed and observed all of its obligations to the reasonable satisfaction of the *Lessor*.

3.6 No Abatement of Rent

To the extent permitted by *Law* and except to the extent any damage, loss or inability to use the *Premises* is caused or contributed to by any intentional or wilful or negligent act or omission by the *Lessor*, its officers, agents or employees, the *Lessee* will not be entitled to any abatement of *Rent* or *Outgoings*, damages or compensation:

- (a) if *Damage* or *Serious Property Damage* occurs to the *Premises* or part of the *Premises* even if the *Lessee* is denied access to the *Premises*; or
- (b) during any period in which the *Lessee*, *Lessor*, any *Relevant Authority* or third party as agent for the *Lessor* is carrying out any *Work* to or in the vicinity of the *Premises*; or
- (c) if any other interruption, disruption or *Loss* is incurred by the *Lessee* as a result of the *Lessor* or any *Relevant Authority* carrying out its legislative functions, rights and obligations; the act or omission of any third party; the existence of any *Contamination* or *Pollution*; or by the proximity of the *Premises* to a working harbour,

provided however, that the *Lessor* must use its reasonable endeavours to minimise any *Loss* or inconvenience incurred by the *Lessee* to the extent that it has been caused or contributed to by the *Lessor*.

3.7 Review of Rent Formula or Rate of Return

- (a) The *Lessor* must vary the *Rent Formula* to implement the recommendation of *IPART* or its successors (as accepted by the *Minister*) in relation to the rent for such a lease. The *Lessor* must notify the *Lessee* in writing of the new *Rent Formula* varied in accordance with this Clause 3.7(a) at least sixty (60) days before the commencement of the new *Rent Formula*.
- (b) The *Lessor* must vary the *Rate of Return* each year in accordance with the *Rate of Return* (if any) specified by *IPART* or its successors which is applicable to this *Lease*. The *Lessor* must publish the new *Rate of Return* varied in accordance with this Clause 3.7(b) at least sixty (60) days before the commencement of the new *Rate of Return* via the *Lessor's* internet website.
- (c) If the new *Rate of Return* varied under Clause 3.7(b) of this *Lease* results in an increase in the rent payable under this *Lease*, the *Lessor* must notify the *Lessee* in writing of:
 - (i) the new *Rate of Return*; and
 - (ii) the increase in rent payable under the *Lease*,
 at least sixty (60) days before the commencement of the new *Rate of Return*.
- (d) If the new *PSLV* calculated annually in accordance with the terms of this *Lease* results in an increase in the rent payable under this *Lease*, the *Lessor* must notify the *Lessee* in writing of:
 - (i) the new *PSLV*; and
 - (ii) the increase in rent payable under the *Lease*,
 at least sixty (60) days before the commencement of the new *PSLV*.
- (e) The *Lessee* is deemed to have agreed to and accepted:

- (i) the new *Rent Formula* stated in a notice given by the *Lessor* pursuant to Clause 3.7(a) of this *Lease*;
- (ii) the new *Rate of Return* stated in a notice given by the *Lessor* pursuant to Clause 3.7(c) of this *Lease*; or
- (iii) the new *PSLV* stated in a notice given by the *Lessor* pursuant to Clause 3.7(d) of this *Lease*,

unless the *Lessee* gives the *Lessor* a notice in writing terminating this *Lease* on the basis that it does not accept the new *Rent Formula*, the new *Rate of Return*, or the new *PSLV* (as applicable) within one hundred and twenty (120) days of the date of the *Lessor's* notice.

3.8 Administration Fee

- (a) The *Lessee* must pay without demand and without set-off or counterclaim and free from any deductions to the *Lessor* during the *Term*, an administration fee for occupation of the *Premises* in relation to the *Lessor's* costs of administering domestic waterfront occupancies. The administration fee is currently set at \$511.72 (plus GST) per annum.
- (b) The administration fee is to be increased on 1 July each year, the current annual increase being set at 2.5%.
- (c) The administration fee is to be reviewed and updated every four (4) years and published on the *Lessor's* website,

in accordance with recommendations from *IPART*.

4 PREMISES

4.1 Permitted Use

The *Lessee* must not use or permit the use of the *Premises* otherwise than for private purposes:

- (a) in accordance with the *Permitted Use*; and
- (b) in connection with the residential use of the *Lessee's Land*.

4.2 Berthing of Vessels

- (a) The *Lessee* may only permanently berth a vessel at the *Premises* if "Permanent Berthing" is specified as a *Permitted Use* in Item 3 of the *Reference Schedule* and then only in accordance with the conditions, if any, of the *Development Consent* and the *Law*.
- (b) Any vessel permanently berthed at the *Premises* pursuant to Clause 4.2(a) of this *Lease* must be berthed in the *Berthing Area* identified on the *Plan* and must not exceed the maximum dimensions, or other conditions, if any, specified in Item 3 of the *Reference Schedule*.

- (c) If the *Lessee* is not permitted to berth a vessel at the *Premises* on a permanent basis pursuant to Clause 4.2(a) of this *Lease*, the *Lessee* must ensure that any vessel berthed in connection with the *Premises* does not exceed the maximum dimensions (if any) specified in Item 3 of the *Reference Schedule* and is only berthed for the purpose and for the period of time necessary to embark or disembark passengers or to load or unload goods.
- (d) Any vessel berthed at the *Premises* in accordance with this Clause 4 must be berthed in a safe manner, which the *Lessee* acknowledges is its responsibility, and no fee or any other form of consideration may be received by the *Lessee* for the berthing.

4.3 Compliance with the Law & Relevant Authorities

- (a) The *Lessee* must at all times during the *Term* observe, perform, fulfil and comply with the requirements of the *Law*, including the *Development Consent*, that relate or apply to the *Premises* or the use of or occupation of the *Premises*.
- (b) The *Lessee* must observe, perform, fulfil and comply with the requirements of all *Relevant Authorities*, including any notice, order or direction given by any *Relevant Authority*.

4.4 Lessee to provide Copies of Notices

The *Lessee* must, as soon as reasonably practicable, provide the *Lessor* with a copy of any notice received from any *Relevant Authority*, other than for payment of statutory *outgoings*, that relates to the *Premises*, the *Permitted Use* of the *Premises*, the condition of the *Premises*, the insurances to be affected under this *Lease* or any notice, order or direction referred to in Clause 4.3(b) of this *Lease*.

4.5 Prohibition on Certain Use and Behaviour

The *Lessee* must not at any time during the *Term*:

- (a) use, permit or carry on, or permit to be used, exercised or carried on in, upon or in the vicinity of the *Premises*, any noxious, nuisance or offensive act, activity, trade, business, occupation or calling; or
- (b) use, permit or carry on, or permit to be used, exercised or carried on in, upon or in the vicinity of the *Premises*, any illegal or dangerous activity; or
- (c) do, or omit to do, or permit or cause to be done any act, matter or thing in, on, upon, or in the vicinity of the *Premises* that is or may be a breach of the *Development Consent* or any *Law* or for which *Development Consent* is required but has not been obtained; or
- (d) reside on the *Premises*, or permit or cause any person to reside on the *Premises*, or in any vessel permitted to be berthed at the *Premises* pursuant to Clause 4.2 of this *Lease*; or

- (e) cause or permit any auction sale or public meeting to be held in or on the *Premises*, unless the *Lessor's* prior written approval has been obtained.

4.6 Signs

- (a) The *Lessee* must not erect, display, affix or exhibit any sign, embellishment, advertising, name or notice on or to the *Premises* or that is visible from the *Premises* unless:
 - (i) Required by the *Lessor*, the *Law* or any *Relevant Authority*; or
 - (ii) the *Lessor's* prior written approval has been sought and obtained and the requirements of any *Law*, *Relevant Authority* or *Development Consent* have been satisfied.
- (b) The *Lessee* must, at its expense, ensure that all the mooring piles that form part of the *Premises* have white markings on the top of the pile, painted or capped, for navigational purposes, in accordance with the *Lessor's* requirements.
- (c) The *Lessee* is responsible for the installation, maintenance and removal costs associated with any signage or markings installed pursuant to this Clause 4.6, including any signage or markings required by the *Lessor*, any *Relevant Authority* or under the *Law*.

4.7 No Antennas

The *Lessee* must not affix any aerial, antenna, flag pole or wind vane to the *Premises* for any purpose unless the *Lessee* obtains the prior written approval of the *Lessor*, which must not be unreasonably withheld, and complies with the *Law*.

4.8 No Chemicals

The *Lessee* must not use or store chemicals, burning fluids, gas or alcohol on or in the *Premises* except where the *Lessor* has given its prior written approval to such use or storage and the *Lessee* has obtained the approval of any other *Relevant Authority*.

4.9 Premises to be Kept Clean

The *Lessee* must, at its own expense, keep the *Premises* clean, free of rubbish and free and clear of pests, insects, rodents and vermin to a standard deemed acceptable by the *Lessor*.

4.10 Lessee to give Notice of Accidents

The *Lessee* must, as soon as practicable, give notice to the *Lessor* and to any *Relevant Authority* of any accident, incident, or circumstance that occurs in, on or in the vicinity of the *Premises* that causes or is likely to cause injury, damage, danger, risk or hazard to the *Premises* or any person.

4.11 No Storage

The *Lessee* must ensure that no vessels, materials or equipment is or are stored in or on the *Premises* at any time unless such storage is permitted in accordance with the *Permitted Use*.

5 MAINTENANCE, REPAIRS, ALTERATIONS AND ADDITIONS

5.1 Lessee's General Repair Obligation

- (a) The *Lessee* must at all times, at its own expense, keep and maintain the *Premises*, and the *Services* to the *Premises* in good order, repair and condition, and in a condition that is safe and physically suitable for carrying on the *Permitted Use*.
- (b) The *Lessee's* obligation under Clause 5.1(a) of this *Lease* includes, without limitation:
 - (i) repair, maintenance, *Work*, rectification, reconstruction, *Remediation* or replacement to the *Premises* or any part of the *Premises*; and
 - (ii) the rectification of any *Damage* to the *Premises* or part of the *Premises*,

to the standard and extent necessary to ensure the *Lessee's* compliance with Clause 5.1(a) of this *Lease* and in accordance with the requirements of the *Lessor*, if any, the *Law*, and any *Relevant Authority*.

5.2 Serious Property Damage

- (a) Except to the extent *Serious Property Damage* is caused or contributed to by any intentional or wilful or negligent act or omission of the *Lessor*, its officers, agents or employees, if *Serious Property Damage* occurs to the *Premises* or part of the *Premises*, the *Lessee* must:
 - (i) immediately provide the *Lessor* with full written details of the *Damage*, and in any event, within 48 hours; and
 - (ii) at its expense, promptly rectify the *Damage* and repair, replace and/or reinstate the *Premises*, or part of the *Premises* affected by the *Damage* to the standard and extent necessary to ensure the *Lessee's* compliance with this Clause 5.2 and in accordance with the requirements of the *Lessor*, if any, the *Law* and any *Relevant Authority*.
- (b) In the event *Serious Property Damage* occurs to the *Premises* which is caused or contributed to by any intentional or wilful or negligent act or omission by the *Lessor*, its officers, agents or employees, the *Lessor* shall at its cost repair and rectify the *Damage* in accordance with any *Relevant Authority* or *Law*.

5.3 Notice to Carry Out Work

- (a) The *Lessor* may (but is not required to) give to the *Lessee* a notice requiring the *Lessee*, within a reasonable time as specified in the *Lessor's* notice, to carry out any *Work* in, on or to the *Premises* that is necessary to ensure the *Lessee's* proper performance of its obligations under this *Lease* except to the extent *Work* is necessary because of any intentional or wilful or negligent act or omission by the *Lessor*, its officers, agents or employees.
- (b) The *Lessee* must, at its own expense, comply with a notice issued under Clause 5.3(a) of this *Lease*.
- (c) The *Lessee* acknowledges that the failure of the *Lessor* to give notice pursuant to Clause 5.3(a) of this *Lease* does not prejudice the *Lessor's* rights under this *Lease*.

5.4 Lessor's Right of Entry and Rectification

- (a) The *Lessor* may, on giving the *Lessee* reasonable notice (except in the case of a reasonably perceived emergency when no notice is required) enter the *Premises* with workmen and others and all necessary materials for the purposes of:
 - (i) carrying out any *Work* in, on or to the *Premises* in respect of which the *Lessor* has given a notice under Clause 5.3(a) of this *Lease* that has not been carried out by the *Lessee* within the time specified in that notice; or
 - (ii) carrying out any *Work* in, on or to the *Premises* that in the opinion of the *Lessor*, acting reasonably, needs to be carried out immediately; or
 - (iii) viewing the state of repair and condition of the *Premises* and/or to ascertain whether there has been any breach of the *Lessee's* covenants or obligations under this *Lease*; or
 - (iv) carrying out any of its obligations or exercising any of its powers or authorities under this *Lease*; or
 - (v) carrying out any of its obligations under any *Law*, including complying with any request, requirement, notification or order of any *Relevant Authority* having jurisdiction or authority over or in respect of the *Premises* for which the *Lessee* is not responsible under this *Lease*.
- (b) The *Lessee* must provide the *Lessor* with access to the *Premises*, and must otherwise cooperate with the *Lessor*, for the purpose of Clause 5.4(a) of this *Lease*, including where it is necessary, providing the *Lessor* with access to any adjoining land that is under the control of the *Lessee*.
- (c) The *Lessor* must, in the exercise of any power under Clause 5.4(a) of this *Lease*, do all things reasonably practicable to minimise inconvenience and disruption to the *Lessee's* use and occupation of

the *Premises*, and the *Lessor* must leave the *Premises* or that part of the *Premises* used in the exercise of the *Lessor's* power, clean and free of rubbish.

- (d) The *Lessee* acknowledges that the exercise of the *Lessor's* rights pursuant to this Clause 5 is not a breach of Clause 11.1 ("Quiet Enjoyment") of this *Lease*.

5.5 Approval for Work

The *Lessee* must not carry out any *Work* in, on or to the *Premises* unless it has, at its own expense:

- (a) notified the *Lessor* of the proposed *Work* and obtained its prior written approval to carry out the *Work* other than work to be carried out pursuant to a notice issued under Clause 5.3;
- (b) complied with the conditions, if any, of the *Lessor's* approval pursuant to Clause 5.5(a) of this *Lease* or a notice issued under Clause 5.3; and
- (c) complied with the requirements of any *Law* and any *Relevant Authority* in relation to the proposed *Work*, including obtaining all necessary approvals, consents and permits required by any *Relevant Authority*.

5.6 Submission of Plans and other Documentation

The *Lessee* must, in seeking the consent of the *Lessor* pursuant to Clause 5.5 of this *Lease*, provide such documentation as the *Lessor* reasonably requires, including detailed drawings, plans and specifications of the proposed *Work*.

5.7 Carrying out the Work

In carrying out any *Work* approved by the *Lessor* under Clause 5.5 of this *Lease*, the *Lessee* must:

- (a) comply with the conditions, if any, of the *Lessor's* approval and comply with any reasonable direction (either written or oral) and/or requirements of the *Lessor*; and
- (b) comply with the conditions and requirements of any *Law* including all applicable Australian Standards, and any *Relevant Authority*, including the conditions and requirements in respect of any approval, consent and permit issued by any *Relevant Authority*; and
- (c) act in a proper and work-man like manner, using suitable and proper construction methods and materials; and
- (d) cause as little inconvenience, nuisance or damage of any kind to any occupier of adjoining property as is reasonably practicable; and
- (e) not cause or permit the storage of any *Hazardous Material* in, on or in the vicinity of the *Premises* except as is reasonably necessary for the *Work* being carried out and must not allow any *Hazardous Material* to escape or enter into any waterway; and

- (f) with all due expedition and within a reasonable time complete the *Work* at no expense to the *Lessor*; and
 - (g) promptly remove all waste material and rubbish resulting from the *Work* and not cause or permit any waste material or rubbish to escape or enter into any waterway; and
 - (h) promptly repair and make good any *Damage* that is caused by anything done or omitted to be done in connection with carrying out any *Work*.
-

6 RELEASE AND INDEMNITY

6.1 Lessee as Owner

The *Lessee* agrees to be subject to the same responsibilities in respect of persons and property in, on, under, over, or near the *Premises* as those to which it would be subject to if, during the *Term*, it was the registered proprietor and occupier of the freehold of the *Premises*.

6.2 Release by Lessee

- (a) The *Lessee* agrees that it uses and occupies the *Premises* at its own risk and releases the *Lessor*, the *Minister* and the State of New South Wales to the full extent permitted by *Law* from any *Loss*, including any *Loss* in connection with the death or injury of any person or damage to any property that is paid, suffered, incurred or that has arisen out of or in connection with (directly or indirectly) this *Lease*, including without limitation, the *Lessee's* use and occupation of the *Premises*, a breach by the *Lessee* of any of its obligations under this *Lease* and any action taken by the *Lessor* pursuant to this *Lease*.
- (b) The *Lessee* agrees that the release under Clause 6.2(a) of this *Lease* is full and absolute except to the extent the *Loss* is caused by any wilful or negligent act or omission of the *Lessor*.

6.3 Indemnity by Lessee

- (a) The *Lessee* indemnifies and agrees to keep indemnified the *Lessor*, the *Minister* and the State of New South Wales at all times for any *Loss*, including any *Loss* in connection with the death or injury of any person or damage to any property, that is paid, suffered or incurred by the *Lessor*, the *Minister* or the State of New South Wales or for which the *Lessor*, the *Minister* or the State of New South Wales may be or become liable or would except for this indemnity have been liable, and that is wholly or partly due to, arising out of, in connection with (directly or indirectly), in the course of, caused by or contributed to by all or any of the following:
 - (i) the occupation or use of the *Premises* by the *Lessee* even if the *Loss* is caused by an incident or event which takes place outside the boundaries of the *Leased Land*; and

- (ii) a breach by the *Lessee* of any of its obligations under this *Lease*; and
 - (iii) any negligence, act or omission of the *Lessee* which might impose on or increase any liability of the *Lessor* in respect of the *Premises*; and
 - (iv) any action taken by the *Lessor* pursuant to this *Lease*.
- (b) The *Lessee* agrees that the indemnity under Clause 6.3(a) of this *Lease* is full and absolute except to the extent the *Loss* is caused by any wilful or negligent act or omission of the *Lessor*.

6.4 Continuation and Independence of Release and Indemnity

The obligations of the *Lessee* pursuant to Clauses 6.1, 6.2 and 6.3 of this *Lease* are continuing obligations, separate and independent from the other obligations of the *Lessee*, and survive the expiration, termination or surrender of this *Lease* for a period of six (6) months. It is not necessary for the *Lessor* to incur expense or make any payment before enforcing a right of indemnity conferred by this *Lease*.

7 INSURANCE

7.1 Insurance Policies

- (a) The *Lessee* must effect and maintain, from the *Commencement Date* and for the duration of the *Term*, insurance against all foreseeable risks relating to the *Premises* or relating to the occupation or use of the *Premises*, including, without limitation:
- (i) public liability insurance in respect of its liability pursuant to Clause 6 (“Release and Indemnity”) of this *Lease*:
 - (A) for an amount of not less than \$20,000,000 for any one occurrence or for any other amount the *Lessor* reasonably requires;
 - (B) that contains all provisions normally contained in public liability policies or as reasonably required by the *Lessor*; and
 - (C) that covers all of the *Lessee*’s obligations under this *Lease*, including the obligation to indemnify the *Lessor*; and
 - (ii) worker’s compensation insurance in respect of job related injuries to the *Lessee*’s employees or contractors at any time in, on or in the vicinity of the *Premises*; and
 - (iii) any insurance policies required by *Law*; and
 - (iv) any other insurance policy or level of coverage that the *Lessor* reasonably requires.

7.2 Insurance Policy Requirements

The *Lessee* must ensure that all insurances required to be effected and maintained pursuant to Clause 7.1 of this *Lease*:

- (a) are taken out with insurers which are members of the Insurance Council of Australia and on terms that are acceptable to the *Lessor*; and
- (b) note the interests of the *Lessor* and any other person who has an insurable interest and who is nominated by the *Lessor* at any time as an interested party.

7.3 Insurance Policies and the Lessee's Obligations

In respect of the insurances required to be effected and maintained by the *Lessee* pursuant to Clause 7.1 of this *Lease*, the *Lessee* must:

- (a) properly disclose to the insurer full, true, and particular information of all matters and things known or ought to be known to the *Lessee* and which the non-disclosure of which may prejudice or affect the insurance or any payments or benefits under the insurance; and
- (b) ensure that the insurances are maintained in force from the *Commencement Date* until the later of the expiration or earlier determination of this *Lease*, or the date on which the *Lessee* vacates the *Premises* in accordance with this *Lease*; and
- (c) not do or permit anything to be done or omit to do anything that could potentially prejudice any insurance or vitiate or render void or voidable any insurance; and
- (d) immediately rectify anything that might prejudice any insurance and reinstate the insurance if it lapses; and
- (e) not vary, cancel or allow any insurance policy to lapse without the *Lessor's* prior written consent; and
- (f) not do or permit anything to be done or omit to do anything that could potentially conflict with the requirements of any *Law* or *Relevant Authority*, including any *Law* relating to fire or fire safety or any insurance policy; and
- (g) at all times comply with the terms and conditions of any insurance; and
- (h) pay the premium of any insurance at least five (5) *Business Days* before the due date for payment and provide receipts evidencing payment to the *Lessor* if requested by the *Lessor*; and
- (i) keep accurate and up to date records of any occurrence which may give rise to a claim under the insurances; and
- (j) comply with the requirements of the Insurance Council of Australia Limited and of any insurer in relation to anything placed or intended to be placed by the *Lessee* in the *Premises* and alarms, sprinklers and other fire prevention equipment.

7.4 Copies of Insurance to be Provided to Lessor

The *Lessee* must, upon the commencement of this *Lease*, before any *Work* is carried out to the *Premises* if required by the *Lessor* and at any other time during the *Term* upon the written request of the *Lessor*, provide the *Lessor* with a copy of all insurances required to be effected and maintained pursuant to Clause 7.1 of this *Lease*, together with certificates of currency to evidence the existence of same.

7.5 Notification of Claim or Cancellation

In respect of the insurances required to be effected and maintained by the *Lessee* pursuant to Clause 7.1 of this *Lease*, the *Lessee* must immediately notify the *Lessor*, and in any event within 48 hours, of:

- (a) any occurrence or event that gives rise or may give rise to a claim under or which could prejudice any policy of insurance; or
- (b) any occurrence or event that may result in any insurance policy lapsing or being cancelled; or
- (c) the cancellation of any policy of insurance.

8 WORK HEALTH & SAFETY (WH & S) OBLIGATIONS

8.1 Lessee's Acknowledgments regarding WH & S Legislation

The *Lessee* acknowledges that:

- (a) as the owner of the *Leased Land* and the *Lessor's Improvements*, the *Lessor* has obligations under the *WH & S Legislation*; and
- (b) as occupier and controller of the *Premises* and owner or occupier of the *Lessee's Fixtures*, the *Lessee* has obligations under the *WH & S Legislation*.

8.2 Lessee to Perform Obligations

The *Lessee* must:

- (a) perform all the *Lessee's Obligations* under the *WH & S Legislation*; and
- (b) ensure that the *Lessee* does not by any act or omission cause the *Lessor* to be in breach of the *WH & S Legislation*; and
- (c) put in place workplace systems, if applicable, to ensure compliance with the *WH & S Legislation*; and
- (d) ensure its systems include emergency procedures and adequate provisions for information and training for staff, contractors, invitees and visitors in relation to them; and
- (e) minimise risk from its operations to the general public.

8.3 Lessee to Perform Lessor's Obligations

To the extent permitted by *Law*, the *Lessee* agrees that the *Lessee* will perform and be liable for the non-performance of the obligations of the *Lessor* under the *WH & S Legislation*, except for works carried out or supervised by the *Lessor*.

8.4 Principal Contractor

The *Lessor* appoints the *Lessee*, and the *Lessee* accepts the appointment, as principal contractor for the purposes of the *WH & S Legislation* in relation to *Work* carried out to the *Premises* except for works carried out or supervised by the *Lessor*.

9 ENVIRONMENTAL OBLIGATIONS

9.1 Compliance with the Law

- (a) The *Lessee* must, at its expense, comply with the *Environmental Law* applicable to the *Premises*.
- (b) The *Lessee* must, at its expense, promptly comply with any *Environmental Notice*.
- (c) The *Lessee* must not carry out the *Permitted Use* in an environmentally unsatisfactory manner for the purposes of section 95 of the *Protection of the Environment Operations Act 1997 (NSW)*.
- (d) The *Lessee* must notify the *Relevant Authority* and the *Lessor* of any *Pollution* incident as defined in the *Protection of the Environment Operations Act 1997 (NSW)*.

9.2 Liability for Contamination & Pollution

- (a) The *Lessee* acknowledges and accepts:
 - (i) the *Premises* in its existing state and condition on the date that the *Lessee* takes possession of the *Premises*, including but not limited to, any existing *Contamination* or *Pollution* of the *Premises* and the existence on or in the *Premises* of *Hazardous Materials*; and
 - (ii) that the *Lessor* makes no representation or warranty as to whether the *Premises* or adjoining or neighbouring premises, land or waterway owned by the *Lessor* is contaminated or affected by *Pollution* or the suitability of the *Premises* for the *Permitted Use*.
- (b) The *Lessee* is responsible for any *Contamination* or *Pollution* of the *Premises* which is identified in any *Environmental Site Assessment* provided however the *Lessee* is not responsible for any *Contamination* or *Pollution* that has migrated to the *Leased Land* from any adjoining or neighbouring premises, land or waterway not in the possession of the

Lessee unless the *Lessee* caused or contributed to the *Contamination* or *Pollution*.

- (c) Without limiting Clause 6 of this *Lease*, the *Lessee* indemnifies the *Lessor* in respect of all claims, judgments, fines, orders, costs (including legal costs on a full indemnity basis) and expenses for which the *Lessor* is or may become liable in respect of or arising from the *Lessee's* breach of any of its obligations under this Clause 9.

9.3 Hazardous Material

The *Lessee* must not:

- (a) use, keep or handle in, on or in the vicinity of the *Premises*, any *Hazardous Material* without the prior written consent of the *Lessor*;
- (b) cause or permit any *Hazardous Material* to emanate from the *Premises* or spill into any waterway; or
- (c) generate or dispose of any *Hazardous Material*, including any sewage or waste, in or from the *Premises* or any adjoining or neighbouring premises, land or waterway without the prior written consent of the *Lessor*.

9.4 Remediation

If, at any time during the *Term* of this *Lease*, the *Lessor* reasonably considers that the *Premises* are or may be affected by *Contamination* or *Pollution* caused by the *Lessee*, the *Lessor*, may require the *Lessee*, at its own expense to do all or any of the following:

- (a) engage an appropriately qualified environmental consultant to prepare an *Environmental Site Assessment*; and
- (b) promptly implement and carry out all recommendations made in the *Environmental Site Assessment*; and
- (c) provide a certificate from an appropriately qualified environmental consultant to the effect that the recommendations in that assessment have been satisfactorily carried out.

10 ASSIGNMENT, SURRENDER, SUBLETTING & MORTGAGING

10.1 Lessee not to Assign without Consent

The *Lessee* may not, without the written consent of the *Lessor*, which will not be unreasonably withheld, at any time dispose of, deal with or, subject to Clause 10.3 of this *Lease*, assign its estate or interest in the *Premises* or this *Lease* or its rights and powers as *Lessee* under this *Lease*.

10.2 Lessee not to Sublet, Mortgage or Charge

- (a) The *Lessee* may sublet the *Premises* without the *Lessor's* consent to an *Authorised Person* who is lawfully occupying the *Premises*.

- (b) Notwithstanding any agreement between the *Lessee* and the *Authorised Person*, the terms of this *Lease* shall prevail to the extent of any inconsistency or conflict with the terms of any agreement.
- (c) The *Lessee* must not create or allow to come into existence any *Encumbrance* that affects the *Lessee's* estate or interest in the *Premises* or its rights and powers as *Lessee* under this *Lease*.

10.3 Assignment

The *Lessee* may only assign its estate and interest in the *Premises* and its rights and powers as *Lessee* under this *Lease* to a person who is or is entitled to be the registered proprietor of the *Lessee's Land* **PROVIDED THAT** before the proposed assignment takes effect, the *Lessee*:

- (a) gives at least twenty-eight (28) *Business Days'* notice to the *Lessor* of its intention to assign its estate and interest in the *Premises* and its rights and powers under the *Lease*; and
- (b) is not in breach of any of the *Lessee's* covenants and obligations under this *Lease*, including that all *Rent* and other money due and payable by the *Lessee* to the *Lessor* under this *Lease* has been paid; and
- (c) pays to the *Lessor* the proper costs, charges and expenses, including legal costs, fees and expenses incurred by the *Lessor* in connection with the proposed assignment:
 - (i) in connection with the giving of the *Lessor's* approval to the assignment; and
 - (ii) in connection with any document required for the proposed assignment,whether or not the proposed assignment proceeds to completion; and
- (d) enters into, and procures that the proposed assignee enters into, a Deed of Consent to Assignment with the *Lessor* in the form required by the *Lessor*; and
- (e) complies with the *Lessor's* requirements in relation to the documentation, and the stamping and registration of any documentation required to effect the proposed assignment; and
- (f) complies with the *Transport for NSW Guidelines*, if any, in relation to the assignment.

10.4 Surrender

In the event that the *Lessee* sells the *Premises* and does not enter a Deed of Consent to Assignment with the *Lessor*, then the *Lessee* will enter into a Deed of Surrender and pay the *Lessor's* costs.

11 COVENANTS BY LESSOR

11.1 Quiet Enjoyment

Subject to the *Lessor's* rights and reservations under this *Lease*, the *Lessee*, paying the *Rent* and other money payable by the *Lessee* to the *Lessor* under this *Lease* and otherwise complying with the provisions of this *Lease*, may peaceably possess, use and enjoy the *Premises* during the *Term* without any interruption or disturbance from the *Lessor* or any other person lawfully claiming by, from or under the *Lessor* or having power over the *Lessor*.

11.2 The Lessor may Inspect and Survey

The *Lessor* may, at its own expense, enter the *Premises* to view and inspect the *Premises*, the *Permitted Use* and/or the performance of the *Lessee's* covenants and obligations under this *Lease* or to survey the *Premises*. The *Lessor* may give the *Lessee* notice of its intention to enter the *Premises*, where deemed appropriate but is not obliged to give the *Lessee* prior notice at any time.

11.3 Access to Premises

- (a) The *Lessee* must provide the *Lessor* with access to the *Premises* for the purpose of Clause 11.2 of this *Lease*.
- (b) For the purpose of complying with Clause 11.3(a) of this *Lease*, the *Lessee* must also, where it is necessary, provide the *Lessor* with access to any adjoining land or premises, including but not limited to the *Lessee's Land*, that are under the control of the *Lessee*.

12 LESSEE'S DEFAULT

12.1 Notice of Default

- (a) The *Lessee* must notify the *Lessor* as soon as practicable after becoming aware of any breach by the *Lessee* of any provision of this *Lease*.
- (b) If at any time the *Lessee* breaches any provision of this *Lease*, the *Lessor* must give the *Lessee* a notice in writing requiring the *Lessee*, to rectify the breach within a reasonable time, which cannot be less than a period of ten (10) *Business Days*, as specified in the *Lessor's* notice.
- (c) The *Lessee* must, at its own expense, comply with a notice issued under Clause 12.1 of this *Lease*.

12.2 Lessor may Remedy Default

- (a) Where the *Lessee* has failed to comply with a notice issued under Clause 12.1(b) of this *Lease* within the specified time period or where the *Lessee* has not substantially commenced to rectify the breach to the satisfaction of the *Lessor* within the specified time period, the *Lessor* may itself remedy the breach.

- (b) The *Lessee* must pay the *Lessor's* reasonable costs in remedying any breach under Clause 12.2(a) of this *Lease* on demand.

12.3 Essential Terms

The essential terms of this *Lease* are as follows:

- (a) Clause 3 (“Rent & Other Payments”);
- (b) Clause 6 (“Release and Indemnity”);
- (c) Clause 7 (“Insurance”);
- (d) Clause 9 (“Environmental Obligations”);
- (e) Clause 10 (“Assignment, Subletting and Mortgaging”);
- (f) Clause 12 (“Lessee’s Default”);
- (g) Clause 13 (“Removal of Improvements and Fixtures”);
- (h) Clause 14.18 (“No Caveat”); and
- (i) the *Reference Schedule*.

12.4 Events of Default

- (a) The *Lessee* will be in default under this *Lease* in the event that, at any time during the *Term*:
 - (i) the *Rent* or any other money payable by the *Lessee* under this *Lease* remains unpaid for thirty (30) *Business Days* after the date appointed for payment, with demand; or
 - (ii) the *Lessee* has failed to comply with a notice to carry out *Work* issued under Clause 5 of this *Lease* or a notice of default issued under Clause 12.1(b) of this *Lease* within the time specified in the notice; or
 - (iii) the *Lessee* has not substantially commenced to carry out the *Work* specified in a notice to carry out *Work* issued under Clause 5 of this *Lease* or rectify the breach specified in a notice of default issued under Clause 12.1(b) of this *Lease* to the satisfaction of the *Lessor*; or
 - (iv) the *Lessee* breaches an essential term of this *Lease*; or
 - (v) an *Insolvency Event* occurs in relation to the *Lessee*; or
 - (vi) the *Lessee* repudiates this *Lease*, or
 - (vii) the *Lessee* ceases to be the registered proprietor of the *Lessee's Land* and this *Lease* has not been assigned to the person who is or is entitled to be the registered proprietor of the *Lessee's Land* in accordance with Clauses 10.1 and 10.3 if this *Lease*.

THEN the provisions of Clauses 12.5 and 12.6 of this *Lease* will apply.

12.5 Remedies

Where any event referred to in Clause 12.4 or Clause 14.18 of this *Lease* occurs, the *Lessor* may, in its absolute discretion:

- (a) terminate this *Lease* by re-entering and taking possession of the *Premises* with or without notice; or
- (b) terminate this *Lease* by notice in writing to the *Lessee*; or
- (c) by notice in writing to the *Lessee*, convert this *Lease* into a tenancy that may be terminated at the will of either party on the terms of this *Lease* with any changes or variations necessary to convert this *Lease* to a tenancy at will; or
- (d) by notice in writing to the *Lessee*, reduce the *Term* to the period specified in the notice; or
- (e) do anything else that the *Lessor* is entitled to do under or in connection with this *Lease* or under the *Law*.

12.6 Lessor's Damages

- (a) Upon the termination of this *Lease* by the *Lessor* pursuant to Clause 12.5 of this *Lease*, the *Lessor* is entitled to:
 - (i) recover from the *Lessee* any and all *Losses*, damages, costs and expenses reasonably incurred or suffered by the *Lessor* before and after the termination, either directly or indirectly as a consequence of the termination, including, without limitation, money that would have been payable to the *Lessor* pursuant to this *Lease* for the unexpired residue of the *Term*; and
 - (ii) recover any and all money due but unpaid to the *Lessor* under this *Lease* up to the date of termination.
- (b) The *Lessor's* right to damages under Clause 12.6(a) of this *Lease* is without prejudice to any other claim the *Lessor* has against the *Lessee* in respect of any breach of this *Lease*.

12.7 Lessor's Right to Recover Damages

The *Lessor's* right to recover any *Loss*, damages, costs or expenses incurred or suffered as a result of any breach by the *Lessee* of any provision of this *Lease* is not affected or limited in any way by:

- (a) the *Lessee* abandoning or vacating the *Premises*; or
- (b) the *Lessor* electing to re-enter the *Premises* or to terminate the *Lease*; or
- (c) the *Lessor* accepting repudiation of this *Lease* by the *Lessee*; or
- (d) any surrender of this *Lease* by operation of *Law*, or
- (e) the failure of the *Lessor* to issue a Notice of Default under Clause 12.1(b) of this *Lease*.

12.8 Right to Remedy Default after Expiry

If, on the date of expiration or termination of this *Lease*, the *Lessee* has failed to perform or observe any of its obligations or covenants under this *Lease*, then notwithstanding that expiration or termination, the *Lessor* has the right to require the *Lessee* to remedy the default.

12.9 Power of Attorney

If the *Lessor* becomes entitled to terminate this *Lease*, the *Lessee* hereby irrevocably appoints the *Lessor* to be the attorney of the *Lessee* for the *Lessee* in the *Lessee's* name and to perform the *Lessee's* acts and deeds from time to time if and when such attorney thinks fit for the purpose of:

- (a) giving full effect to that entitlement to terminate this *Lease* and to execute and procure the registration of a surrender of this *Lease*; and
- (b) recording and/or registering this power of attorney and to do anything that may be required to be done to give full effect to that entitlement to terminate this *Lease* according to any *Law* and everything the *Lessor* may lawfully do pursuant to such power of attorney is ratified and confirmed by this *Lease*.

13 REMOVAL OF IMPROVEMENTS AND FIXTURES

13.1 Removal of Lessee's Fixtures by Lessee

- (a) If notified by the *Lessor* in writing, the *Lessee* must, at the *Lessee's* cost, *Remove* the *Lessee's Fixtures* from the *Leased Land* upon the expiration or earlier determination of this *Lease* or within any other time period as agreed by the *Lessor* in writing and comply with any conditions of the *Lessor* in relation to the removal, including any requirement to conduct an assessment of the environmental impact of the removal.
- (b) The *Lessee* must comply with Clause 13.1(a) of this *Lease* and take any necessary steps to effect compliance including, without limitation, obtaining any approvals, consents and/or permits required by any *Relevant Authority* at the *Lessee's* cost, including the obligation to commence legal proceedings including exhausting all appeal rights to any *Relevant Authority* if required by the *Lessor*.
- (c) If the *Lessee* has not removed the *Lessee's Fixtures* prior to the expiry of the *Term*, the *Lessor* grants the *Lessee* a non-exclusive licence of the *Premises* to *Remove* the *Lessee's Fixtures* in accordance with this Clause 13 and the provisions of this *Lease*, including the requirement to pay *Rent* apply until removal is effected.
- (d) The *Lessee* acknowledges that should the *Lessor* issue the notification referred to in Clause 13.1(a) of this *Lease* the *Lessor* is not required to pay any compensation, or make any other payment to the *Lessee* in relation to the *Lessee's Fixtures*.

- (e) The *Lessee* may, within the period of six (6) months before the expiry of this *Lease*, request the *Lessor* in writing to either give a notice pursuant to Clause 13.1 of this *Lease* requiring removal of the *Lessee's Fixtures* or alternatively, confirm in writing that no notice pursuant to Clause 13.1(a) of this *Lease* will be given.

13.2 Removal of Lessor's Improvements at Request of Lessor

- (a) Upon, or prior to the expiration or earlier determination of this *Lease*, the *Lessor* may give notice in writing to the *Lessee* of the requirement for the *Lessee*, at its cost, to *Remove* or partially *Remove* any or all *Lessor's Improvements* from the *Leased Land* by the date specified in the notice and in accordance with the *Law* and any other conditions, if any, specified in the notice. The notice will continue to have effect, despite expiry of the date specified in the notice, until the *Lessee* complies with such notice.
- (b) The *Lessee* must use its best endeavours to comply with any notice issued pursuant to Clause 13.2(a) of this *Lease* and take any necessary steps to effect compliance including, without limitation, obtaining any approvals, consents and/or permits required by any *Relevant Authority* at the *Lessee's* cost, including the obligation to make an appeal to any *Relevant Authority* if required by the *Lessor*.
- (c) The parties agree that the date specified in the notice issued pursuant to Clause 13.2(a) of this *Lease* may be a date before or after the *Termination Date* of the *Lease*. If the date is after the *Termination Date*, the *Lessor* grants the *Lessee* a non-exclusive licence to carry out the removal works only in accordance with the notice and the provisions of this *Lease*, including the requirement to pay *Rent* apply until removal is effected.
- (d) The *Lessee* acknowledges that should the *Lessor* issue the notice referred to in Clause 13.2(a) of this *Lease*, the *Lessor* is not required to pay any compensation, or make any other payment to the *Lessee* in relation to the *Lessor's Improvements* whether or not the *Lessee* has constructed or otherwise incurred any expenses in relation to the *Lessor's Improvements*.
- (e) The *Lessee* may, within the period of six (6) months before the expiry of this *Lease*, request the *Lessor* in writing to either give a notice pursuant to Clause 13.2(a) of this *Lease* requiring removal of the *Lessor's Improvements* or alternatively, confirm in writing that no notice pursuant to Clause 13.2(a) of this *Lease* will be given.
- (f) Any *Work* done pursuant to this clause should be done under the supervision of a suitably qualified engineer at the *Lessee's* expense.

13.3 Failure to Remove Improvements and Fixtures

If the *Lessee* does not comply with Clause 13.1 or Clause 13.2 of this *Lease* then:

- (a) the *Lessor* may *Remove* or partially *Remove* and dispose of the *Lessor's Improvements* and/or *Lessee's Fixtures* on the *Leased Land*

in such manner and on such terms as the *Lessor* determines, acting reasonably; and

- (b) the *Lessee* must pay to the *Lessor* on demand the costs and expenses incurred by the *Lessor* in taking action under Clause 13.3(a) of this *Lease* or any costs and expenses incurred by the *Lessor* retaining the *Lessor's Improvements* and/or *Lessee's Fixtures* in the event the *Lessee* does not comply with Clause 13.1 or Clause 13.2 of this *Lease*; and
- (c) the *Lessee* agrees that no compensation is payable by the *Lessor* to the *Lessee* in relation to the removal, disposal or retention of the *Lessor's Improvements* and/or *Lessee's Fixtures* and the *Lessee* indemnifies the *Lessor* against any *Loss* that is paid, suffered, incurred or that has arisen out of or in connection with (directly or indirectly) any action taken by the *Lessor* pursuant to this Clause 13.3 of this *Lease*; and
- (d) the *Lessee* must observe and comply with the terms, conditions, covenants and agreements contained in this *Lease* which will remain in full force and effect and binding on the *Lessee* until the *Lessor's Improvements* and/or *Lessee's Fixtures* are removed in accordance with this Clause 13 or the requirement for the *Lessee* to comply with Clause 13.1 and/or Clause 13.2 of this *Lease* is waived by the *Lessor* in writing, whichever is the earlier date; and
- (e) any *Work* done pursuant to this clause should be done under the supervision of a suitably qualified engineer at the *Lessee's* expense.

14 GENERAL COVENANTS AND AGREEMENTS

14.1 Holding Over

- (a) If the *Lessee* continues to occupy the *Premises* after the expiration or earlier determination of this *Lease* with the consent of the *Lessor*, then the *Lessee*:
 - (i) becomes a yearly tenant upon the same terms and conditions as are contained in this *Lease* so far as they are applicable to a yearly tenancy and the tenancy will be determinable by either party on the giving of at least two (2) month's prior notice in writing to the other party which notice may be given to expire at any time; and
 - (ii) must pay the *Rent* in advance quarterly to the *Lessor* under the yearly tenancy and must be a sum equivalent to either:
 - (A) the quarterly *Rent* payable by the *Lessee* to the *Lessor* at the date of the expiration or sooner determination of this *Lease*, to be reviewed on the same basis and as frequently as this *Lease* provides;

- (B) the amount determined by the *Lessor*, it being agreed that the date of expiration of the *Term* will be deemed to be the rent review date and a date upon which the *Lessor* will be entitled to determine the *Rent* in accordance with the *Lease*; and
 - (iii) must pay all *Outgoings* and *Services* in relation to the *Premises* as provided in Clause 3 of this *Lease*.
- (b) If this *Lease* is terminated by either party pursuant to Clause 14.1(a), the *Lessor* must refund to the *Lessee* a proportionate amount of any *Rent*, *Outgoings* or *Services* paid in advance in accordance with Clause 14.1(a)(ii) or Clause 14.1(a)(iii) within 60 days of the date of the notice of termination.

14.2 Notices

- (a) In this Clause "Address for Service" means:
 - (i) in the case of the *Lessor*, the address specified in Item 1 of the *Reference Schedule*; and
 - (ii) in the case of the *Lessee*, the address specified in Item 1 of the *Reference Schedule*,or if the addressee notifies another address, then that address.
- (b) Any notice, demand, consent, approval, request or other communication to be given or made under this *Lease* must be in writing and must be given or made to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by prepaid ordinary mail within Australia; or
 - (iii) sent by prepaid Express Post International airmail if the Address for Service of the sender and the recipient are in different countries.
- (c) A notice is deemed to have been given:
 - (i) if hand delivered, as at the time and date that the notice is handed or delivered to an officer or representative of the recipient; or
 - (ii) if sent by prepaid ordinary mail within Australia, on the day that is two (2) *Business Days* after the date of posting; or
 - (iii) if sent by prepaid Express Post International airmail between countries, on the day that is ten (10) *Business Days* after the date of posting.

14.3 Relationship between Lessor and Lessee

The relationship between the *Lessor* and the *Lessee* is that of landlord and tenant only and nothing in this *Lease* is to be deemed or construed as

creating the relationship of partnership, of principal and agent, joint venture or any other ongoing relationship between the *Lessor* and the *Lessee*.

14.4 Exclusion of Statutory Provisions

The covenants, powers and provisions implied in leases by Sections 84, 84A, 85, 86, 133, 133A and 133B of the *Conveyancing Act 1919 (NSW)* do not apply to this *Lease* except to the extent required by *Law*.

14.5 Payment Free of Deduction

The *Lessee* must make all payments under this *Lease* without set-off or counterclaim and free from all deductions except as expressly permitted by this *Lease*.

14.6 No Demand Necessary

The *Lessee* acknowledges that the *Lessor* need not make any demand for any amount payable by the *Lessee* unless this *Lease* says that demand must be made.

14.7 Liquidated Debt

The *Lessee* acknowledges that the *Lessor* may recover from the *Lessee* in any court of competent jurisdiction any amount payable to the *Lessor* under this *Lease*, as a liquidated debt.

14.8 Interest on Unpaid Amounts

- (a) The *Lessee* must pay, on demand, to the *Lessor* interest on any amount payable by it under this *Lease* from the date being ten (10) *Business Days* after the date on which the amount becomes due for payment, during the period that it remains unpaid, calculated on daily balances.
- (b) The interest rate to be applied to each daily balance pursuant to Clause 14.8 of this *Lease* is the *Default Rate*.

14.9 No Merger

Nothing in this *Lease*, including anything done under this *Lease*, merges, extinguishes, postpones, lessens or prejudicially affects any of the rights, powers, authorities, discretions or remedies of the *Lessor* against the *Lessee*, all of which continue in full force and effect, except as otherwise expressly provided in this *Lease*.

14.10 Exclusion of Moratorium

To the extent permitted by the *Law* the application to this *Lease* of any moratorium or other Act whether State or Federal having the effect of extending the *Term*, reducing or postponing the payment of *Rent*, or otherwise affecting the operation of the terms of this *Lease* is expressly excluded and negated.

14.11 No Implied Terms

The parties agree that no terms are implied in this *Lease* or any agreement under which this *Lease* was entered into or arise between the parties by way of collateral or other agreement by reason of any promise, representation, warranty or undertaking by or on behalf of any party to any other party or anyone on behalf of any other party on or prior to the execution of this *Lease*. The *Lessee* warrants that it has not been induced to enter this *Lease* by any express or implied statement, warranty or representation.

14.12 Indirect Acts

- (a) If this *Lease* prohibits the *Lessee* from doing a thing the *Lessee* may not allow or cause any person to do that thing.
- (b) If this *Lease* prohibits the *Lessor* from doing a thing the *Lessor* may not allow or cause any person to do that thing.

14.13 Severability

The parties agree that if any term of this *Lease* is made void or unenforceable, the remaining terms will not be affected.

14.14 Governing Law

This *Lease* is governed by the *Law* of New South Wales.

14.15 Waiver and Variation

- (a) The parties acknowledge that a provision of or a right created under this *Lease* may not be:
 - (i) waived except in writing signed by the party granting the waiver; or
 - (ii) varied except by written agreement between the parties.
- (b) A waiver by the *Lessor* of a breach of any provision of this *Lease* does not operate as a waiver of another breach of the same type or of a breach of any other provision of this *Lease*.
- (c) The *Lessee* acknowledges that delay by the *Lessor* in exercising any of its rights under this *Lease* does not constitute a waiver of those rights or prevent the exercise of those or similar rights in the future or create an implication that those or similar rights will not be exercised in the future.

14.16 Acknowledgement

- (a) The *Lessee* acknowledges that it understands the terms of this *Lease*, including the *Lessee's* obligations to repair and maintain, to *Remove* the Improvements and *Lessee's Fixtures* unless directed by the *Lessor* to the contrary and to carry out *Work*.

- (b) The *Lessee* acknowledges that, prior to entering into this *Lease* it obtained or had the opportunity to obtain independent legal and financial advice in relation to its obligations under this *Lease*.

14.17 Contra Proferentem

The parties agree that in the interpretation of this *Lease*, no rules of construction will apply to the disadvantage of one party on the basis that the party put forward the *Lease* or any part of it.

14.18 No Caveat

The *Lessee* must not lodge a caveat over the *Leased Land* at any time. The *Lessee* acknowledges that this is an essential term of this *Lease*. If the *Lessee* lodges a caveat over the *Leased Land*, the *Lessor* may terminate this *Lease* in accordance with Clause 12.5 of this *Lease*.

14.19 Deed of Novation

The *Lessee* acknowledges that if the *Lessor* transfers its interest in the *Leased Land* during the *Term*, the *Lessee* must, if requested by the *Lessor*, enter into a Deed of Novation with the transferee of the *Leased Land* in a form reasonably acceptable to the transferee in which the *Lessee* covenants with the transferee that it will comply with the *Lessee's* rights and obligations under this *Lease* on and from the date the transferee becomes the registered proprietor of the *Leased Land*.

14.20 Requirement to Provide Information

The *Lessee* must, upon a written request from the *Lessor*, provide it with any information or documentation reasonably required by the *Lessor* for any purpose associated with the *Lease*.

15 DISPUTE RESOLUTION

15.1 Appointment of Expert

- (a) If a dispute arises between the parties in relation to any matter arising under this *Lease* other than a review under Clause 3.7 of this *Lease*, either party may refer the matter for determination by an independent expert ("Expert") of at least five (5) years current and consistent experience in dealing with disputes in respect of the particular matter in dispute, and as mutually agreed between the parties.
- (b) Where the parties fail to agree on an Expert in accordance with Clause 15.1(a) of this *Lease*, within ten (10) *Business Days* of the dispute arising, the dispute will be determined by an Expert nominated by the President for the time being of the Australian Property Institute (New South Wales Division).

15.2 Determination of Dispute

In determining a dispute under this *Lease*, the Expert must:

- (a) have regard to the terms and conditions of this *Lease*;
- (b) invite and consider and have due regard to any submissions made and/or any evidence provided by the parties supporting their contentions;
- (c) act as an Expert and not as an arbitrator; and
- (d) provide the parties with its determination of the dispute in writing, including details of the basis for the determination.

15.3 Expert's Determination of Dispute Final

Any determination of a dispute made by an Expert in accordance with this Clause 15 is final and binding on the parties.

15.4 Dispute Resolution Costs

The costs associated with the determination of a dispute by an Expert under this Clause 15 including any costs associated with the appointment of the Expert under Clause 15.1(b) of this *Lease* must be borne by the parties equally unless determined otherwise by the Expert.

16 TERMINATION

16.1 Right to Terminate

- (a) Subject to Clause 16.1(b), in the event the *Lessee* assigns or transfers the *Lessee's Land* to a person who is or is entitled to be the registered proprietor of the *Lessee's Land* (**Proposed Lessee**) and the Proposed *Lessee* does not wish to occupy or use the *Premises*, the *Lessee* may terminate this *Lease* upon giving the *Lessor* thirty (30) days written notice.
- (b) Upon termination of this *Lease* under Clause 16.1(a), the *Lessee* must comply with Clause 13 of this *Lease* (Removal of Improvements and Fixtures).
- (c) The right of termination under Clause 16.1(a) only applies if the *Lessee* is not in default of this *Lease* and is without prejudice to any of the *Lessor's* accrued rights as at the date of termination.

17 ELECTRONIC SIGNATURES

17.1 Execution and Counterparts

- (a) A party may execute this *Lease* as well as any modifications to it by electronic means (including by electronic signature or by email of a signed document in PDF or scanned format).
- (b) The parties agree and intend that such signature by electronic means or by email in PDF or scanned format shall bind the party so signing

with the same effect as though the signature were an original signature.

- (c) This *Lease* may be executed as set out above in two or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

SCHEDULE 1 DICTIONARY

1. Dictionary

In this *Lease* unless the context clearly indicates otherwise:

Administration Fee means a fee charged by the *Lessor* for occupation of the *Premises*.

Authorised Person means any person lawfully occupying the *Lessee's Land* and includes where relevant, its officers, agents, employees, representatives, contractors, licensees, tenants or invitees and any other person who may at any time be on the *Premises* in connection with the *Lessee* or in connection with any person lawfully occupying the *Lessee's Land*.

Berthing Area means the area of land shown in cross-hatching on the *Plan* attached to the *Reference Schedule*.

Borrowing Expenses has the same meaning as referred to in the Australian Taxation Office's publication of "Taxation statistics" for the most recent financial year available.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney.

Casual Berthing means the temporary berthing of a vessel for a reasonable period of time to load or unload goods or for the embarkation or disembarkation of persons for a continuous period not exceeding six (6) hours.

Climate Change means the changing global weather and climate patterns caused by natural processes and human activities, including but not limited to changing rainfall and temperature patterns, rising sea levels and an increase in intense weather events such as storms and cyclones.

Commencement Date means the date referred to in Item 4 of the *Reference Schedule*.

Contamination means the presence in, on or under the *Premises* (including soil and groundwater) of a substance at a concentration that presents a risk of harm to human health or any other aspect of the *Environment* and Contaminate, Contaminant and Contaminated each have a corresponding meaning.

Damage means any damage to the *Premises*, including:

- (a) structural or non-structural damage;
- (b) material or non-material damage;
- (c) the complete or partial destruction of the *Premises*;
- (d) the complete or partial destruction of or malfunctioning of any *Services*; and
- (e) the *Contamination* of the *Premises* or any part of the *Premises*,

and includes, without limitation, damage caused by civil commotion, riot, explosion, fire, flood, lightning, storm, tempest, earthquake, aircraft, act of God or war.

Default Rate means as at the relevant date the rate of interest per annum being two (2) percent greater than the rate charged by the Commonwealth Bank of Australia on that date on overdraft facilities of \$100,000 or more or if it is no longer published, any similar rate as determined by the *Lessor*.

Development Consent means any development consent or approval granted by a *Relevant Authority* in respect of the *Premises* that has not lapsed and is in force.

Encumbrance means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention arrangement; or
- (b) right of set-off, assignment of income, garnishee order or monetary claim; or
- (c) notice or direction under section 218 or section 255 of the *Income Tax Assessment Act 1936 (Cth)* or under Sections 260-265 of the *Taxation Administration Act 1953 (Cth)* or under any provision of any *Law* that has a similar effect,

or any agreement to create any of them or allow them to exist.

Environment means the components of the earth, including:

- (a) land, air and water; and
- (b) any layer of the atmosphere; and
- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs (a)–(c).

Environmental Law means any *Law* relating to the *Environment* or the protection of the *Environment* and any other *Law* relating to *Contamination* or *Pollution*.

Environmental Notice means any direction, order, demand, licence or other requirement from a *Relevant Authority* in connection with any *Environmental Law* to take any action or refrain from taking any action in respect of the *Premises* and any adjoining or neighbouring premises, land or waterway.

Environmental Site Assessment means an environmental assessment of the *Premises* generally in accordance with any relevant guidelines at any time issued by the Environmental Protection Authority (NSW) and current industry practice that so far as is possible:

- (a) identifies the nature and extent of *Contamination and Pollution*, if any; and
- (b) recommends a method of removing the *Contamination and Pollution* and *Remediating* and restoring the *Premises* or any adjoining or neighbouring premises, land or waterway.

Gross Rate of Return means the gross rate of return calculated using:

- (a) rental rates of return for residential non-strata properties; and
- (b) sales and rent data from *LRS* and Housing NSW or its successors; and
- (c) as a rolling three-year average, updated for each financial year to match the time period used to calculate *PSLVs*; and
- (d) for each *Precinct*, using the median rate of return for each postcode in the *Precinct* (i.e. median postcode rent divided by median postcode sales price), and then determining a weighted-average of these values by weighting each postcode's median rate of return according to the postcode's share of occupancies within the *Precinct*.

Hazardous Material means material that, because it is toxic, corrosive, flammable, explosive, or infectious or possesses some other dangerous characteristic, has the potential to present a risk of harm to people, including their health or to any other aspect of the *Environment*.

Insolvency Event means:

- (a) in relation to a Corporation:
 - (i) where an order is made or an effective resolution is passed for the winding up, insolvency, administration, reorganisation, reconstruction or dissolution of that Corporation; or
 - (i) where a liquidator, provisional liquidator, receiver or receiver and manager, trustee, agent for a mortgagee in possession or similar officer is appointed in respect of all or any part of the assets or undertaking of that Corporation and such appointment is not rescinded or revoked within a reasonable time; or
 - (ii) where pursuant to the provisions of the *Corporations Act 2001 (Cth)*, that Corporation enters or executes a deed of company arrangement; or
 - (iii) where that Corporation is unable, or admits its inability to pay its debts as they fall due or enters into or seeks to enter into any composition or other arrangement with its creditors; and
- (b) subject to section 301 of the *Bankruptcy Act 1966 (Cth)*, in relation to an individual, where that individual:
 - (i) is declared bankrupt; or
 - (ii) enters into a scheme of arrangement with its creditors; or

- (iii) makes any assignment for the benefit of its creditors; or
- (iv) becomes a mentally ill person or mentally disordered person in accordance with any relevant *Law* or the requirements of any *Relevant Authority*.

Interest On Loan(s) has the same meaning as referred to in the Australian Taxation Office's publication of "Taxation statistics" for the most recent financial year available.

IPART means the Independent Pricing and Regulatory Tribunal or its successors.

IPART's Review 2011 means the final report titled "Review of Method for Determining Rents for Domestic Waterfront Tenancies in NSW", published by *IPART* in December 2011.

Law means:

- (a) the common law; and
- (b) all statutes; and
- (c) all rules, regulations, proclamations, ordinances, by-laws, instruments, orders, consents, approvals, permits and licences made or issued under any Statute or by any *Relevant Authority*; and
- (d) all constitutional provisions, treaties, decrees and conventions.

Lease means and includes this document and the *Reference Schedule*, including any annexure.

Lease Year means each period of twelve (12) months commencing on each anniversary of the *Commencement Date*, the first such period commencing on the *Commencement Date*.

Leased Land means the area of land identified in the *Plan* and described in Item 2 of the *Reference Schedule*.

Lessee means the person referred to as such in Item 1 of the *Reference Schedule* and that person's assigns, executors, administrators and successors in title.

Lessee's Fixtures means all structures, buildings, piles (including free standing piles), pontoons, tidal baths, davits, dolphins and ramps at any time on the *Leased Land* together with any plant, equipment, *Services*, fire fighting equipment, of any kind that are located on, or added to the *Premises* by the *Lessee* for the purpose of carrying on the *Permitted Use*, except for any seawalls and *Reclamations*.

Lessee's Land means the land referred to as such in Item 2 of the *Reference Schedule*.

Lessor means the person or entity referred to in Item 1 of the *Reference Schedule* and the successors and assigns of that person or entity and

includes, where relevant, its officers, agents, employees, representatives, contractors, licensees or invitees.

Lessor's Improvements includes any seawalls and *Reclamations* on the *Leased Land* or any other structures on the *Leased Land* that the *Lessor* specifies as a *Lessor's Improvement* in Item 3 of the *Reference Schedule*.

Loss means any loss, claim, demand, action, suit, proceeding, cost, expense, penalty, payment, damage, liability or deficiency of any kind.

LRS means the Land Registry Services or its successors.

Minister means the Minister under whose control and direction the *Lessor* functions.

Net Rate of Return means, for each *Precinct*, the net rate of return calculated by subtracting outgoings from the Gross Rate of Return with:

- (a) each *Precinct's* outgoings calculated as a percentage of the *Gross Rate of Return*, using the Australian Taxation Office's "Taxation statistics" for relevant postcodes for the latest financial year available, weighted accordingly; and
- (b) the percentage share of *Precinct* outgoings calculated by dividing total *Precinct Rental Property Expenses*, excluding *Interest On Loan(s)* and *Borrowing Expenses*, by total *Precinct Rental Income*, as advised by the Australian Taxation Office; and
- (c) this percentage share updated for each financial year, as part of the annual update of the *Rate of Return*.

The *Net Rates of Return* will be calculated and updated by *IPART* on the *Rate of Return Review Date*, based on the methodology recommended in its 2011 report and provided to the *Lessor*.

Outgoings means the total of all amounts paid or payable in connection with the ownership, occupation, use, management and maintenance of the *Premises*, including any rates, taxes, charges, duties and insurances of any description that are assessed, levied, imposed or charged in respect of the *Premises* or the *Lessee's* use or occupation of the *Premises*.

Permitted Use means the use and activities set out in Item 3 of the *Reference Schedule* and includes any other use or activity which has been or is approved in writing by the *Lessor*.

Plan means the *plan(s)* annexed to this *Lease* and marked "D".

Pollution has the meaning given to it in the *Protection of the Environment Operations Act 1997* (NSW).

Port means the Port of Sydney.

Port Bed Clearance Report means a report confirming that all structures and/or debris have been satisfactorily removed, that there is no waste material on the port bed and any other matter usually included in a port bed clearance report.

Precinct means a defined area in which properties are grouped for the purpose of determining a m² land value (*Precinct* statutory land value, or *PSLV*) to use for calculating rents within the *Precinct* or as otherwise determined by the NSW Government.

Premises means the *Leased Land* together with the *Lessee's Fixtures* and *Lessor's Improvements* on the *Leased Land*.

PSLV means the median of the *Three Year Rolling Averages* (\$/m²) within the relevant *Precinct*.

Rate of Return means the percentage, as advised by *IPART* as being applicable to the *Precinct* which includes the *Leased Land*, as reviewed in accordance with Clause 3.7 of this *Lease*.

Rate of Return Review Date means the date *IPART* carries out a review of the rate of return, currently set at 1 July of each year.

Reclamation means submerged land which has been filled or drained for the purpose of reclaiming the land and/or for the purpose of supporting a building or structure being erected over the land.

Reference Schedule means the information schedule referred to as the *Reference Schedule* which forms part of this *Lease*.

Relevant Authority means any federal, state or local government, semi-government, quasi-government, administrative, fiscal or judicial department, or any entity, agency, or other body, statutory or otherwise, and any court or tribunal having jurisdiction or power in relation to the *Premises* or activities on or use made of the *Premises*.

Remediation has the meaning given to it in the *Contaminated Land Management Act 1997 (NSW)*.

Remove means, in relation to a *Lessor's Improvement* or *Lessee's Fixture*, the following works to be carried out by the *Lessee*, at the *Lessee's* expense, to the satisfaction of the *Lessor*, (acting reasonably) and in accordance with the *Law*:

- (a) the removal from the *Leased Land* of the *Lessor's Improvements* and/or *Lessee's Fixtures* ; and
- (b) the clearing of the bed of any submerged land and, in particular, the removal of all piles that are below or above the bed of any submerged land; and
- (c) the making good of any *Damage* incurred to the *Leased Land* as a result of the removal; and
- (d) providing the *Lessor* with a *Port Bed Clearance Report*.

Rent means the amount stated in Item 5(a) of the *Reference Schedule* and as calculated by use of the *Rent Formula*.

Rent Area means the area stated in Item 5 of the *Reference Schedule*.

Rent Formula means the *Wetland Rate* (\$/m²) x the *Rent Area* (m²) as reviewed in accordance with Clause 3.7 of this *Lease*.

Rent Formula Review Date means the date the *Lessor* carries out a review of the *Rent Formula* in accordance with Clause 3.7(a) of the *Lease*.

Rental Income has the same meaning as referred to in the Australian Taxation Office's publication of "Taxation statistics" for the most recent financial year available.

Rental Property Expenses has the same meaning as referred to in the Australian Taxation Office's publication of "Taxation statistics" for the most recent financial year available.

Serious Property Damage means *Damage* to the *Premises* or part of the *Premises* the occurrence of which results in it being:

- (a) unsafe; or
- (b) wholly or partially incapable of or unsuitable for occupation or for use for the purpose of carrying on the activities comprising and incidental to the *Permitted Use*.

Services means the total of all charges paid or payable in connection with the supply of all services and systems provided to the *Premises* or available for use including electricity, light, gas, oil, water, air conditioning, power, fuel, sewage, telephone services, cleaning and all other services furnished or supplied to the *Premises*.

SLV means the unimproved value of a property, as determined by the NSW Valuer-General in accordance with the *Valuation of Land Act 1916 (NSW)*.

Term means the term of this *Lease* as referred to in Item 4 of the *Reference Schedule* starting on the *Commencement Date* and ending on the *Termination Date* and includes any holding over period referred to in Clause 14.1 of this *Lease*

Termination Date means the earlier of the date of expiration of the *Term* as referred to in Item 4 of the *Reference Schedule* or the date on which the *Lease* is terminated.

Three Year Rolling Average (\$/m²) means the average of the three *SLVs*, with a 12 month lag, or less than three years if *SLVs* are not available, of the freehold waterfront property and its adjoining occupancy, divided by the total of areas of all land types valued by the Valuer-General.

Transport for NSW Engineering Standards and Guidelines for Maritime Structures means the policies, procedures and requirements of the *Lessor* that are in force from time to time in relation to the *Premises* which may be published by the *Lessor* on its website, or in such other way, if any, as the *Lessor* determines appropriate.

Transport for NSW Guidelines means the policies, procedures and requirements of the *Lessor* that are in force from time to time in relation to the

Premises which may be published by the *Lessor* on its website, or in such other way, if any, as the *Lessor* determines appropriate.

Vessel Length Overall means the vessel length including the full length of hull plus outboard motors, bowsprits and any other appendages.

Wetland Rate means the *PSLV* x *Rate of Return* x 50%.

WH & S Legislation means any *Law* that relates to the health and safety of employees, contractors or other persons at workplaces including the *Work Health and Safety Act 2011 (NSW)* and the *Work Health and Safety Regulation 2017 (NSW)*.

Work means any work in, on or to the *Premises* and includes, without limitation:

- (a) the erection, replacement, or reconstruction of any structure or part of any structure;
- (b) rebuilding any structure or part of any structure;
- (c) any alteration or addition made to the *Premises*, including the addition of any *Reclamation*, embankment, rubble earth or other filling;
- (d) the removal or demolition of any structure, *Reclamation*, embankment, rubble earth or other filling;
- (e) repairing, painting or chemically treating the *Premises*;
- (f) redecoration or refurbishment of the *Lessor's Improvements* or *Lessee's Fixtures* ;
- (g) the dredging or deepening of the seabed; or
- (h) any *Damage* or work required as a result of *Climate Change*.

2. Interpretation

In this *Lease*, the following rules of interpretation apply unless the context clearly indicates otherwise:

- (a) words importing the singular number include the plural number and vice versa;
- (b) words that are gender neutral or gender specific include each gender;
- (c) the Table of Contents and headings are inserted for convenience only and do not affect the interpretation of this *Lease*;
- (d) every agreement or undertaking expressed or implied by which more than one person agrees or undertakes any obligation or derives any benefit binds or enures for the benefit of such persons jointly and each of them severally;
- (e) a reference to:

- (i) a person includes a natural person, body corporate, statutory corporation, partnership, the Crown, *Relevant Authority* and any other entity or organisation recognised by *Law* and vice versa;
 - (ii) a party includes its executors, administrators, successors and permitted assigns;
 - (iii) the introduction, a clause, provision, term, exhibit, annexure, attachment or schedule is a reference to the introduction, clause, provision, term, exhibit, annexure, attachment or schedule to or of this *Lease*;
 - (iv) any *Law* includes any amendment, modification, re-enactment or replacement of that *Law*, and any *Law* substituted for that *Law*;
 - (v) a right or obligation of a party is a reference to a right or obligation of that party under this *Lease*;
- (f) any body, authority, association, society includes any entity established in lieu of or succeeding that body, authority, association or society with comparable powers or functions;
 - (g) a word or phrase in italics is a defined term with the meaning ascribed to it in this *Lease*;
 - (h) a word that is derived from a defined term has a corresponding meaning;
 - (i) the words “including”, “such as”, “particularly” and other similar expressions are not to be used as or interpreted as words of limitation;
 - (j) a requirement to do anything includes a requirement to cause that thing to be done;
 - (k) neither this *Lease* or any part of it is to be construed against a party on the basis that the party or its agents were responsible for the preparation of this *Lease* or any part of it; and
 - (l) where an obligation is imposed on the *Lessee*, the *Lessee* must observe and take reasonable steps to ensure that any *Authorised Person* observes that obligation; and
 - (m) where the *Lessee* is prohibited from doing anything, the *Lessee* must not do that thing and must take reasonable steps to ensure that any *Authorised Person* does not breach the prohibition.

3. Provisions to Apply throughout Term

The provisions of this *Lease* apply throughout the *Term*. The parties must comply with the provisions of this *Lease* at all times during the *Term*.

ANNEXURE "B" TO LEASE

REFERENCE SCHEDULE

Item 1

- | | | |
|-----|--|---|
| (a) | LESSOR | Transport for NSW |
| (b) | ADDRESS FOR SERVICE
(Clause 14.2) | Locked Bag 5100, Camperdown NSW 1450 or
DWFLeasing@transport.nsw.gov.au

Attention: Senior Portfolio Property Leasing
Manager
Property Asset Management
Infrastructure & Place |
| (c) | LESSEE | Lessee 1 and Lessee 2 |
| (d) | ADDRESS FOR SERVICE
(Clause 14.2) | Property Address |

Item 2

- | | | |
|-----|----------------------|--|
| (a) | LEASED LAND | All that area of land comprising //insert area in words// square metres (m ²) including a <i>Berthing Area</i> of //insert berthing area in words// square metres (m ²) as shown pink on the <i>Plan</i> , adjoining the <i>Lessee's Land</i> , being part of Certificate of Title Volume 5018 Folio 1 [OR insert relevant title particulars if subdivision registered] . |
| (b) | LICENSED AREA | Not Applicable |
| (c) | LESSEE'S LAND | Lot //lot number// in Deposited Plan //DP number// also known as //insert physical address (eg 20 Fortescue Street, Chiswick)// |

**Item 3 PERMITTED USE
(Clause 4.1)**

- (a) **LEASED LAND** Use and occupation of the *Leased Land* for the purposes of:
- Supporting and Maintaining a Reclamation
 - Seawall
 - Jetty
 - Ramp
 - Pontoon
 - Davit
 - Boatshed
 - Mooring Pen
 - Permanent Berthing
 - Slipway
 - Waterfront Access Stairs
- No permanent or *Casual Berthing* of any vessel is permitted.**
- (b) **LICENSED AREA** Not Applicable
- (c) **MAXIMUM VESSEL DIMENSIONS (CLAUSE 4.2)**
- | | |
|------------------------|----------------------|
| Vessel Length Overall: | //length in metres// |
| Draft: | //draft in metres// |
| Beam: | //beam in metres// |
| Laden Displacement: | //in tonnes// |
- (d) **LESSOR'S IMPROVEMENTS** Eg: Seawall
Eg: *Reclamation*

Item 4

- (a) **TERM** Number (#) Years
- (b) **COMMENCEMENT DATE**
- (c) **TERMINATION DATE**

Item 5

(a) **RENT FOR FIRST
LEASE YEAR OF
TERM (CLAUSE 3)**

The *Rent* due and payable, in advance, on the *Commencement Date*: **\$Rent Amount** inclusive of GST which is the current 2022/2023 rate.

(b) **RENT FOR
SUBSEQUENT
LEASE YEARS OF
TERM (CLAUSE 3)**

The *Rent* is the *Rent* due and payable yearly, in advance, on each anniversary of the *Commencement Date* calculated in accordance with the *Rent Formula*, subject to Clause 3.7 of the *Lease*. The *Rent* may be payable quarterly in advance with the written agreement of the *Lessor*.

Note: The *PSLV*, which is a component of the *Rent Formula*, is calculated annually which may result in annual adjustments to the *Rent*.

(c) **RENT AREA**

The area comprising //Enter area in words// square metres (m²).

**ANNEXURE "C" TO LEASE
SPECIAL CONDITIONS**

The clauses of this *Lease* are varied by inserting the following:

**ANNEXURE "D" TO LEASE
PLAN**