

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: if appropriate, specify the part or premises

The area shown shaded pink on the plan in Annexure C 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**

**(F)**

**TENANCY:**

- (G)**
1. **TERM** Three (3) 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 and C 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]

Signature of witness:

Name of witness:

Address of witness:

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

**SEE EXECUTION PAGE 3 ATTACHED**

Signature of lessor:

**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]

Signature of witness:

Name of witness:

Address of witness:

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

**SEE EXECUTION PAGE 3 ATTACHED**

Signature of lessee:

(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 **XXXXXXXX** in the  
presence of:

---

Signature of Witness

---

Signature of Lessee

---

Name of Witness (print)

---

Name of Lessee (print)

---

Address of Witness (print)

---

**EXECUTED** by **XXXXXXXX** in the  
presence of:

---

Signature of Witness

---

Signature of Lessee

---

Name of Witness (print)

---

Name of Lessee (print)

---

Address of Witness (print)

**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**)

**2** \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ NSW \_\_\_\_\_ (**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 Lease comprises:

- (a) the LRS cover page, this page and the execution page;
- (b) the Reference Schedule and clauses in Annexure A;
- (c) the special conditions in Annexure B; and
- (d) the Plan in Annexure C.

# ANNEXURE A TO LEASE

Between

Transport for NSW

and

\_\_\_\_\_ and \_\_\_\_\_

## Table of contents

<b>ANNEXURE A TO LEASE .....</b>	<b>5</b>
<b>1     DEFINITIONS AND INTERPRETATION .....</b>	<b>11</b>
1.1    Definitions .....	11
1.2    Interpretation .....	18
1.3    Provisions to apply throughout Term .....	19
<b>2     GRANT AND RESERVATIONS .....</b>	<b>19</b>
2.1    Grant .....	19
2.2    Reservations .....	19
2.3    Special conditions .....	19
2.4    Lessor may create easements .....	19
2.5    Statutory resumption .....	20
2.6    Lessor may subdivide and re-subdivide .....	20
2.7    Acknowledgements by Lessee .....	20
2.8    Registration of Lease .....	21
2.9    Plan .....	22
2.10   Agreed Items .....	22
<b>3     RENT AND OTHER PAYMENTS .....</b>	<b>23</b>
3.1    Rent .....	23
3.2    Costs .....	23
3.3    Outgoings .....	24
3.4    Goods and Services Tax .....	24
3.5    Lessee's obligation to continue to pay Rent .....	24
3.6    No abatement of Rent .....	24
3.7    Review of Rent Formula or Rate of Return .....	25
3.8    Administration Fee .....	26
<b>4     PREMISES .....</b>	<b>26</b>
4.1    Permitted Use .....	26
4.2    Berthing of Vessels .....	26

4.3	Compliance with the Law and Relevant Authorities .....	27
4.4	Lessee to provide copies of notices .....	27
4.5	Prohibition on certain use and behaviour.....	27
4.6	Signs .....	28
4.7	No Antennas .....	28
4.8	No chemicals .....	28
4.9	Premises to be kept clean.....	29
4.10	Lessee to give notice of accidents .....	29
4.11	No storage .....	29
<b>5</b>	<b>MAINTENANCE, REPAIRS, ALTERATIONS AND ADDITIONS .....</b>	<b>29</b>
5.1	Lessee's general repair obligation .....	29
5.2	Serious Property Damage.....	29
5.3	Notice to carry out Work .....	30
5.4	Lessor's right of entry and rectification .....	30
5.5	Approval for Work .....	31
5.6	Submission of plans and other documentation .....	31
5.7	Carrying out the Work.....	31
<b>6</b>	<b>RELEASE AND INDEMNITY .....</b>	<b>32</b>
6.1	Lessee as owner.....	32
6.2	Release by Lessee .....	32
6.3	Indemnity by Lessee .....	33
6.4	Continuation and independence of release and indemnity .....	33
<b>7</b>	<b>INSURANCE.....</b>	<b>33</b>
7.1	Insurance policies .....	33
7.2	Insurance policy requirements .....	34
7.3	Insurance policies and the Lessee's obligations.....	34
7.4	Copies of insurance to be provided to Lessor.....	35
7.5	Notification of claim or cancellation.....	35
<b>8</b>	<b>WORK HEALTH AND SAFETY (WH&amp;S) OBLIGATIONS.....</b>	<b>36</b>
8.1	Lessee's acknowledgments regarding WH&S Legislation.....	36
8.2	Lessee to perform obligations.....	36
8.3	Lessee to perform Lessor's obligations .....	36
<b>9</b>	<b>ENVIRONMENTAL OBLIGATIONS.....</b>	<b>36</b>
9.1	Compliance with the Law .....	36
9.2	Liability for Contamination and Pollution.....	37
9.3	Hazardous Material.....	37
9.4	Remediation.....	37

<b>10</b>	<b>ASSIGNMENT, SUBLETTING AND MORTGAGING .....</b>	<b>38</b>
10.1	Lessee not to assign without consent .....	38
10.2	Lessee not to sublet, mortgage or charge .....	38
10.3	Assignment .....	38
10.4	Surrender .....	39
<b>11</b>	<b>COVENANTS BY LESSOR.....</b>	<b>39</b>
11.1	Quiet enjoyment.....	39
11.2	Lessor may inspect and survey .....	39
11.3	Access to Premises .....	40
<b>12</b>	<b>TERMINATION OF LEASE .....</b>	<b>40</b>
12.1	Notice of default .....	40
12.2	Lessor may remedy default.....	40
12.3	Essential terms .....	40
12.4	Events of default .....	41
12.5	Remedies.....	41
12.6	Lessor's damages.....	42
12.7	Lessor's right to recover damages.....	42
12.8	Right to remedy default after expiry .....	42
12.9	Power of attorney.....	42
12.10	Early termination by Lessee.....	43
<b>13</b>	<b>REMOVAL OF LESSEE'S PROPERTY.....</b>	<b>43</b>
13.1	Removal of Lessee's Property by Lessee.....	43
13.2	Failure to remove .....	44
<b>14</b>	<b>HOLDING OVER .....</b>	<b>44</b>
14.1	Holding over.....	44
14.2	Partial refund.....	45
14.3	Termination on transfer of Lessee's Land.....	45
<b>15</b>	<b>GENERAL .....</b>	<b>45</b>
15.1	Notices.....	45
15.2	Relationship between Lessor and Lessee .....	46
15.3	Exclusion of statutory provisions.....	46
15.4	Payment free of deduction .....	47
15.5	No demand necessary .....	47
15.6	Liquidated debt .....	47
15.7	Interest on unpaid amounts .....	47
15.8	No merger .....	47
15.9	Exclusion of moratorium .....	47

15.10	No implied terms .....	47
15.11	Indirect acts.....	48
15.12	Severability .....	48
15.13	Governing Law .....	48
15.14	Waiver and variation .....	48
15.15	Acknowledgement.....	48
15.16	Contra proferentem.....	48
15.17	No caveat.....	49
15.18	Deed of novation.....	49
15.19	Requirement to provide information.....	49
<b>16</b>	<b>DISPUTE RESOLUTION .....</b>	<b>49</b>
16.1	Appointment of Expert .....	49
16.2	Determination of dispute .....	49
16.3	Expert's determination of dispute final .....	50
16.4	Dispute resolution costs.....	50
<b>17</b>	<b>ELECTRONIC SIGNATURES .....</b>	<b>50</b>
17.1	Electronic execution, exchange and print out .....	50
	<b>ANNEXURE B TO LEASE .....</b>	<b>51</b>
	<b>ANNEXURE C TO LEASE .....</b>	<b>52</b>



## REFERENCE SCHEDULE

### Item 1

- (a) **Lessor** **Transport for NSW**
- (b) **Address for Service** (clause 15.1) Address: Locked Bag 5100, Camperdown NSW 1450  
Email: DWFLeasing@transport.nsw.gov.au  
Attention: Senior Portfolio Property Leasing Manager
- (c) **Lessee**
- (d) **Address for Service** (clause 15.1) Address:  
Email:

### Item 2

- (a) **Leased Land** All that area of land comprising \_\_\_\_ square metres (\_\_\_\_m<sup>2</sup>) as shown shaded in pink on the Plan, adjoining the Lessee's Land, being part of Certificate of Title Volume 5018 Folio 1
- (b) **Licensed Area** Not applicable
- (c) **Lessee's Land** Lot \_\_\_\_ in Deposited Plan \_\_\_\_ also known as \_\_\_\_ (address)

### Item 3 **Permitted Use** (clause 4.1)

- (a) **Leased Land** Use and occupation of the Leased Land for the purposes of:  
\_\_\_\_\_  
Casual Berthing only  
No permanent berthing of any vessel is permitted
- (b) **Licensed Area** Not applicable

(c)	<b>Maximum vessel dimensions</b> (clause 4.2)	Vessel Length Overall:	Not applicable
		Draft:	Not applicable
		Beam:	Not applicable
		Laden displacement:	Not applicable

#### **Item 4**

(a) **Term** Three (3) years

(b) **Commencement Date** \_\_\_\_\_

(c) **Expiry Date** \_\_\_\_\_

#### **Item 5**

(a) **Rent for first Lease Year**  
(clause 2.10) The Rent due and payable, in advance, on the Commencement Date: \$\_\_\_\_\_ inclusive of GST which is the current \_\_\_\_\_ rate.

(b) **Rent for subsequent Lease Years**  
(clause 3) The Rent is the amount 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.

Note: The PSLV and Rate of Return, which are components of the Rent Formula, are calculated annually and may result in annual adjustments to the Rent.

(c) **Rent Area** The area comprising \_\_\_\_\_ square metres.

(d) **Administration Fee** \$545.49 per annum (plus GST)

---

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

The following words have these meanings unless the contrary intention appears:

**Administration Fee** means the fee charged by the Lessor in relation to the Lessor's costs of administering domestic waterfront occupancies in accordance with the IPART Report, being the initial amount specified in Item 5(d) of the Reference Schedule.

**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 shown in cross-hatching on the Plan.

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

**Casual Berthing** means the short term berthing of a vessel for the purpose of embarkation or disembarkation of persons and/or loading or unloading of goods, but does not include the berthing of an unattended vessel.

**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 specified in Item 4(b) 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 damage caused by civil commotion, riot, explosion, fire, flood, lightning, storm, tempest, earthquake, aircraft, act of God or war.

**Date of Termination** means:

- (a) the Expiry Date;
  - (b) the date on which this Lease is terminated; or
  - (c) the end of any period of holding over under clause 14,
- as the case may be.

**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.

**ECNL** means the Electronic Conveyancing National Law as adopted in New South Wales by the *Electronic Conveyancing (Adoption of National Law) Act 2012* (NSW).

**ELNO** means an electronic lodgement network operator under the ECNL.

**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;
- (b) right of set-off, assignment of income, garnishee order or monetary claim;
- (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
- (d) any agreement to create any of the above or allow them to exist.

**Environment** means the components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (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.

**Expiry Date** means the date specified in Item 4(c) of the Reference Schedule.

**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;
  - (ii) 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;
  - (iii) where pursuant to the provisions of the *Corporations Act 2001* (Cth), that corporation enters or executes a deed of company arrangement; or
  - (iv) 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;
  - (ii) enters into a scheme of arrangement with its creditors;
  - (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.

**IPART** means the Independent Pricing and Regulatory Tribunal or its successor.

**IPART Report** 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;
- (b) all statutes;
- (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 described in Item 2(a) of the Reference Schedule.

**Lessee** means the person specified in Item 1(c) of the Reference Schedule and that person’s assigns, executors, administrators and successors in title.

**Lessee’s Land** means the land specified in Item 2(c) of the Reference Schedule.

**Lessee’s Property** means all reclamation, structures, buildings, piles (including free standing piles), pontoons, tidal baths, davits, dolphins, ramps, plant, equipment (including fire fighting equipment), Services and any other property at any time on the Leased Land.

**Lessor** means the person or entity specified in Item 1(a) 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 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 (acting reasonably) appropriate.

**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.

**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 specified 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 in Annexure C.

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

**Port Bed Clearance Report** means a report prepared by a certified hydrographic surveyor (or any other independent professional approved by the Lessor (acting reasonably)) which must:

- (a) be addressed to and expressed to be for the benefit of both the Lessor and the Lessee;
- (b) be prepared following an inspection of the submerged land within and immediately surrounding the Premises;
- (c) include a description of the method used to conduct the survey;
- (d) include a plan (signed by the professional who prepared the survey) showing the area that was surveyed;
- (e) confirm that all structures and debris have been satisfactorily removed and that there is no waste material on the port bed; and
- (f) contain any other matters usually included in a port bed clearance report.

**Precinct** means a defined area in which properties are grouped for the purpose of determining a m<sup>2</sup> 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 Property.

**Proposed Lessee** means a person who is or is entitled to be the registered proprietor of the Lessee's Land.

**PSLV** means the median of the Three Year Rolling Averages (\$/m<sup>2</sup>) 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.

**Reference Schedule** means the reference schedule 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).

**Removal Works** means, in relation to the Lessee's Property, the following works to be carried out by the Lessee to the satisfaction of the Lessor (acting reasonably) and in accordance with the Law:

- (a) removing from the Leased Land the Lessee's Property;
- (b) clearing the bed of any submerged land and, in particular, removing all piles that are below or above the bed of any submerged land;
- (c) making good any Damage caused 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 specified in Item 5(a) of the Reference Schedule and as calculated by use of the Rent Formula, as reviewed under this Lease.

**Rent Area** means the area specified in Item 5(c) of the Reference Schedule.

**Rent Formula** means the Wetland Rate (\$/m<sup>2</sup>) x the Rent Area (m<sup>2</sup>), as reviewed in accordance with clause 3.7.

**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 specified in Item 4(a) of the Reference Schedule and includes any holding over period under clause 14.

**Three Year Rolling Average (\$/m<sup>2</sup>)** 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.

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

**Wetland Rate** means the rate calculated by multiplying PSLV by the Rate of Return and by 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:

- (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 Lessee's Property;
- (g) the dredging or deepening of the seabed; or
- (h) any Damage or work required as a result of Climate Change.

## 1.2 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 that is derived from a defined term has a corresponding meaning;
- (h) the words “including”, “such as”, “particularly” and other similar expressions are not to be used as or interpreted as words of limitation;
- (i) a requirement to do anything includes a requirement to cause that thing to be done;
- (j) 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;

- (k) where an obligation is imposed on a party, that party must comply with the obligation at its own cost;
- (l) where an obligation is imposed on the Lessee, the Lessee must comply with and take reasonable steps to ensure that any Authorised Person complies with 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.

### **1.3 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.

---

## **2 GRANT AND RESERVATIONS**

### **2.1 Grant**

The Lessor grants and the Lessee accepts a lease of 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, for itself and persons claiming through or authorised by the Lessor, the rights contained in clauses 2.3, 2.4, 2.5, 2.6, 2.7 and 11.2.

### **2.3 Special conditions**

This Lease is granted subject to any special conditions set out in the Annexure B.

### **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;
- (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;
- (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**

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

## **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 Development Act 2015* (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;
- (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;
- (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;
- (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* (NSW) 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 Property or use made of the Premises.

## **2.8 Registration of Lease**

- (a) The Lessee acknowledges that if the Term is more than three (3) years, this 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* (NSW) 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 not registering 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 this Lease;
  - (ii) pay, on demand, all legal costs and disbursements incurred by the Lessor in registering this Lease, including any revision of the documents, plans of subdivision, registration fees and ELNO fees; and
  - (iii) if LRS raises any requisition which cannot 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 as this Lease for

the remainder of the Term except for any necessary amendments to enable registration of the new lease.

## 2.9 Plan

[Drafting note: This is optional. It is required where the lease plan is not a plan of survey.]

- (a) The Lessee acknowledges that:
  - (i) the Lessor has prepared the Plan using survey data already held by the Lessor;
  - (ii) the Plan may not be strictly accurate; and
  - (iii) it has or had the opportunity to obtain independent surveying advice in relation to the Plan.
- (b) The Lessee releases the Lessor from any Loss incurred by the Lessee as a result of any inaccuracy in the Plan, except to the extent caused or contributed to by any wilful or negligent act or omission by the Lessor, its officers, agents or employees.

## 2.10 Agreed Items

[Drafting note: This is optional. It is required where the previous lease stated that TfNSW owned the seawall and reclamation and any other specified items, and where any of those items exist.]

- (a) In this clause, **Agreed Items** means the seawall, reclamation and XXXXXXXX on the Leased Land.
- (b) The parties acknowledge and agree that:
  - (i) in consideration of the Lessee entering into this Lease, ownership of the Agreed Items is transferred to the Lessee at 11.59pm on the day immediately before the Commencement Date; and
  - (ii) the Agreed Items form part of the Lessee's Property.
- (c) The Lessee acknowledges and accepts the Agreed Items in their existing state and condition.
- (d) The Lessee acknowledges and agrees that the Lessor has made no warranty, statement or representation in relation to the condition or repair of the Agreed Items or the fitness or suitability of the Agreed Items for any purpose.

---

### **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;
- (b) all registration fees and ELNO fees in connection with registration of this Lease at LRS, if applicable;
- (c) all costs in connection with any plan or other document required to be registered with this Lease at LRS;
- (d) the Lessor's reasonable costs and expenses in connection with:
  - (i) any discussion or correspondence, preparation, completion, execution and stamping of this Lease and all ancillary documents;
  - (ii) any action or dealing by or with the Lessee in relation to this Lease, including removal of the Lessee's Property from the Premises and associated assessments required under the *Environmental Planning and Assessment Act 1979* (NSW) or by the Lessor, and assignment of the Lease, whether or not such action or dealing proceeds;
  - (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);
  - (iv) any failure by the Lessee to comply with the Lessee's obligations under this Lease;
  - (v) 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 under 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(c) 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, on the Date of Termination, the Lessee has not complied with all its obligations under this Lease, the Lessee must continue to pay a fee equivalent to the aggregate of the Rent, the Outgoings and the applicable GST, divided by 365, for each day that the breach continues until the Lessee has complied with all of its obligations.

### 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;
- (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:
  - (i) the Lessor or any Relevant Authority carrying out its legislative functions, rights and obligations;
  - (ii) the act or omission of any third party;
  - (iii) the existence of any Contamination or Pollution; or
  - (iv) 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.
- (b) The Lessor must notify the Lessee in writing of the new Rent Formula varied under clause 3.7(a) at least sixty (60) days before the commencement of the new Rent Formula.
- (c) 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.
- (d) The Lessor must publish the new Rate of Return varied under clause 3.7(c) at least sixty (60) days before the commencement of the new Rate of Return on the Lessor's website.
- (e) If the new Rate of Return varied under clause 3.7(c) 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 the Rent payable under this Lease,

at least sixty (60) days before the commencement of the new Rate of Return.

- (f) 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 the Rent payable under this Lease,at least sixty (60) days before the commencement of the new PSLV.
- (g) The Lessee is deemed to have agreed to and accepted:
  - (i) the new Rent Formula stated in a notice given by the Lessor under clause 3.7(b);
  - (ii) the new Rate of Return stated in a notice given by the Lessor under clause 3.7(e); or
  - (iii) the new PSLV stated in a notice given by the Lessor under clause 3.7(f),

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, the Administration Fee.
- (b) The Administration Fee is increased on 1 July each year, by the same percentage as NSW Government public sector wages are increased.
- (c) The Administration Fee is 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 under clause 4.2(a) 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(c) of the Reference Schedule.
- (c) If the Lessee is not permitted to berth a vessel at the Premises on a permanent basis under clause 4.2(a), 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(c) 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 4.2 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 and Relevant Authorities**

- (a) The Lessee must at all times during the Term 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 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 effected under this Lease or any notice, order or direction referred to in clause 4.3(b).

#### **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;
- (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;

- (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;
- (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 under clause 4.2; 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 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 under 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:

- (a) the Lessee obtains the prior written approval of the Lessor, which must not be unreasonably withheld; and
- (b) the work 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 keep the Premises clean, free of rubbish and free and clear of pests, insects, rodents and vermin to a standard 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 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) includes:
  - (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) 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) 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) If 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 will repair and rectify the Damage in accordance with the requirements of 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 comply with a notice issued under clause 5.3(a).
- (c) The Lessee acknowledges that the failure of the Lessor to give notice under clause 5.3(a) 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) that has not been carried out by the Lessee within the time specified in that notice;
  - (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;
  - (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;
  - (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), 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), do all things reasonably practicable to minimise inconvenience and disruption to the Lessee's use and occupation of the Premises.
- (d) 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.
- (e) The Lessee acknowledges that the exercise of the Lessor's rights under this clause 5.4 is not a breach of clause 11.1.

## **5.5 Approval for Work**

The Lessee must not carry out any Work in, on or to the Premises unless it has:

- (a) notified the Lessor of the proposed Work and obtained the Lessor's prior written approval to carry out the Work other than work to be carried out pursuant to a notice issued under clause 5.3(a);
- (b) complied with the conditions, if any, of the Lessor's approval under clause 5.5(a) or a notice issued under clause 5.3(a); 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 under clause 5.5, 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, 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 requirements of the Lessor;
- (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;

- (c) act in a proper and workman like manner, using suitable and proper construction methods and materials;
  - (d) cause as little inconvenience, nuisance or damage of any kind to any occupier of adjoining property as is reasonably practicable;
  - (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;
  - (f) with all due expedition and within a reasonable time complete the Work at no cost to the Lessor;
  - (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 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 under this Lease.
- (b) The Lessee agrees that the release under clause 6.2(a) 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;
  - (ii) a breach by the Lessee of any of its obligations under this Lease;
  - (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 under this Lease.
- (b) The Lessee agrees that the indemnity under clause 6.3(a) 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**

- (a) The obligations of the Lessee under clauses 6.1, 6.2 and 6.3 are continuing obligations, separate and independent from the other obligations of the Lessee, and survive the expiry, termination or surrender of this Lease for a period of six (6) months.
- (b) 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:
  - (i) public liability insurance:
    - (A) for an amount of not less than \$20,000,000 (or any other amount the Lessor reasonably requires) for any one occurrence; and

- (B) that contains all provisions normally contained in public liability policies or as reasonably required by the Lessor;
  - (ii) any insurance policies required by Law; and
  - (iii) any other insurance policy or level of coverage that the Lessor reasonably requires.
- (b) The Lessee must:
- (i) ensure that any person or third party engaged to carry out any Work to or on the Premises has sufficient worker's compensation insurance in respect of job related injuries to their employees or subcontractors at any time in, on or in the vicinity of the Premises; and
  - (ii) provide evidence of the workers compensation insurance to the Lessor if and when requested.

## **7.2 Insurance policy requirements**

- (a) The Lessee must ensure that all insurances required to be effected and maintained under clause 7.1:
  - (i) are taken out with insurers which are authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business;
  - (ii) are on terms acceptable to the Lessor; and
  - (iii) name as interested parties the Lessor and any other person who has an insurable interest and who is nominated by the Lessor at any time.
- (b) Clause 7.2(a)(iii) does not apply to any workers compensation insurance.

## **7.3 Insurance policies and the Lessee's obligations**

In respect of the insurances required to be effected and maintained by the Lessee under clause 7.1, 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;
- (b) ensure that the insurances are maintained in force from the Commencement Date until the later of the Date of Termination and the date on which the Lessee vacates the Premises in accordance with this Lease;

- (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;
- (d) immediately rectify anything that might prejudice any insurance and reinstate the insurance if it lapses;
- (e) not vary, cancel or allow any insurance policy to lapse without the Lessor's prior written consent;
- (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;
- (g) at all times comply with the terms and conditions of any insurance;
- (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;
- (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, by the Commencement Date, 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 under clause 7.1, together with certificates of currency to evidence the existence of the insurances.

#### **7.5 Notification of claim or cancellation**

In respect of the insurances required to be effected and maintained by the Lessee under clause 7.1, 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;
- (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 AND 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, 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 Property, 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;
- (b) ensure that the Lessee does not by any act or omission cause the Lessor to be in breach of the WH & S Legislation;
- (c) put in place workplace systems, if applicable, to ensure compliance with the WH&S Legislation;
- (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.

---

## **9 ENVIRONMENTAL OBLIGATIONS**

### **9.1 Compliance with the Law**

- (a) The Lessee must comply with the Environmental Law applicable to the Premises.
- (b) The Lessee must 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 and Pollution**

- (e) 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 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.
- (f) 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.
- (g) Without limiting clause 6, 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, 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 to do all or any of the following:

- (a) engage an appropriately qualified environmental consultant to prepare an Environmental Site Assessment;
  - (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, SUBLETTING AND 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, 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 will 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 the Proposed Lessee, 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;
- (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;
- (c) pays to the Lessor the reasonable costs and expenses, including legal costs and disbursements 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;

- (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;
- (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 Lessor Guidelines, if any, in relation to the assignment.

#### **10.4 Surrender**

If the Lessee sells the Lessee's Land and does not enter into a deed of consent to assignment with the Lessor, then the Lessee must:

- (a) enter into a deed of surrender with the Lessor in the form required by the Lessor; and
- (b) pay the Lessor's reasonable costs and expenses in connection with the surrender.

---

### **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 Lessor may inspect and survey**

- (a) The Lessor may enter the Premises to:
  - (i) view and inspect the Premises, the Permitted Use and/or the performance of the Lessee's covenants and obligations under this Lease; or
  - (ii) survey the Premises.
- (b) 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.
  - (b) For the purpose of complying with clause 11.3(a), the Lessee must, where it is necessary, provide the Lessor with access to any adjoining land or premises, including the Lessee's Land, that are under the control of the Lessee.
- 

## **12 TERMINATION OF LEASE**

### **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 comply with a notice issued under clause 12.1(b).

### **12.2 Lessor may remedy default**

- (a) Where the Lessee has failed to comply with a notice issued under clause 12.1(b) 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) on demand.

### **12.3 Essential terms**

The essential terms of this Lease are as follows:

- (a) clause 3 ("Rent and 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 ("Termination of Lease");
- (g) clause 13 ("Removal of improvements and fixtures"); and



- (h) clause 15.17 ("No caveat").

## **12.4 Events of default**

- (a) The Lessee will be in default under this Lease if, 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;
  - (ii) the Lessee has failed to comply with a notice to carry out Work issued under clause 5.3(a) or a notice of default issued under clause 12.1(b) within the time specified in the notice;
  - (iii) the Lessee has not substantially commenced to carry out the Work specified in a notice to carry out Work issued under clause 5.3(a) or rectify the breach specified in a notice of default issued under clause 12.1(b) to the satisfaction of the Lessor;
  - (iv) the Lessee breaches an essential term of this Lease;
  - (v) an Insolvency Event occurs in relation to the Lessee;
  - (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 Proposed Lessee in accordance with clauses 10.1 and 10.3.
- (b) If the Lessee is in default under this Lease, clauses 12.5 and 12.6 will apply.

## **12.5 Remedies**

Where any event referred to in clause 12.4 or clause 15.17 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;
- (b) terminate this Lease by notice in writing to the Lessee;
- (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;
- (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 under clause 12.5, the Lessor may:
  - (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 money that would have been payable to the Lessor under 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) 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;
- (b) the Lessor electing to re-enter the Premises or to terminate the Lease;
- (c) the Lessor accepting repudiation of this Lease by the Lessee;
- (d) any surrender of this Lease by operation of Law, or
- (e) the failure of the Lessor to issue a notice of default issued under clause 12.1(b).

## **12.8 Right to remedy default after expiry**

If, on the Date of Termination, the Lessee has failed to comply with any of its obligations or covenants under this Lease, then notwithstanding that expiry or termination, the Lessor has the right to require the Lessee to remedy the default.

## **12.9 Power of attorney**

- (a) 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:
  - (i) giving full effect to that entitlement to terminate this Lease and to execute and procure the registration of a surrender of this Lease;

- (ii) recording and/or registering this power of attorney; and
  - (iii) doing anything that may be required to be done to give full effect to that entitlement to terminate this Lease according to any Law.
- (b) Everything the Lessor may lawfully do under the power of attorney granted by the Lessee under clause 12.9(a) is ratified and confirmed by this Lease.

## **12.10 Early termination by Lessee**

- (a) Subject to clauses 12.10(b) and 12.10(c), if the Lessee transfers the Lessee's Land to the Proposed Lessee and the Proposed Lessee does not wish to occupy or use the Premises, the Lessee may terminate this Lease by giving the Lessor at least thirty (30) days' written notice.
- (b) Upon termination of this Lease under clause 12.10(a), the Lessee must comply with clause 13.
- (c) The Lessee may only exercise the right of termination under clause 12.10(a) if the Lessee is not in default under this Lease.
- (d) The termination of this Lease under clause 12.10(a) is without prejudice to any of the Lessor's rights as at the date of termination.

---

## **13 REMOVAL OF LESSEE'S PROPERTY**

### **13.1 Removal of Lessee's Property by Lessee**

- (a) Subject to clause 13.1(d), the Lessee must:
  - (i) carry out the Removal Works to the Lessee's Property on the Date of Termination or within any other time period as agreed by the Lessor in writing; and
  - (ii) comply with any conditions of the Lessor in relation to the Removal Works, including any requirement to conduct an assessment of the environmental impact of the Removal Works.
- (b) The Lessee must comply with clause 13.1(a) and take any necessary steps to effect compliance including obtaining any approvals, consents and/or permits required by any Relevant Authority, including the obligation to commence legal proceedings including exhausting all appeal rights to any Relevant Authority if required by the Lessor.
- (c) If the Lessor agrees that the Lessee may carry out the Removal Works to the Lessee's Property after the Date of Termination:
  - (i) the Lessor grants to the Lessee, and the Lessee accepts, a non-exclusive licence of the Leased Land to carry out the Removal Works in accordance with this clause 13.1 and the other relevant provisions of this Lease;

- (ii) the licence will be on the same terms and conditions as are contained in this Lease so far as they are applicable to a licence; and
  - (iii) the Lessee must pay to the Lessor a fee equivalent to the aggregate of the Rent, the Outgoings and the applicable GST, divided by 365, for each day, until the Removal Works are completed.
- (d) The Lessee is not required to carry out any Removal Works to the Lessee's Property if:
- (i) the Lessee has entered into a new lease of the Leased Land (or an area which includes the Leased Land); or
  - (ii) the Proposed Lessee has entered into a new lease of the Leased Land and agreed to acquire from the Lessee the Lessee's Property.
- (e) The Lessee must ensure that any Removal Works under this clause 13.1 are carried out under the supervision of a suitably qualified engineer.

## **13.2 Failure to remove**

If the Lessee does not comply with clause 13.1, then:

- (a) the Lessor may carry out the Removal Works and dispose of the Lessee's Property in such manner and on such terms as the Lessor determines, acting reasonably;
- (b) the Lessee's Property left on the Leased Land will become the property of the Lessor if the Lessor so elects;
- (c) the Lessee must pay to the Lessor on demand the costs and expenses incurred by the Lessor in taking action under clause 13.2(a) or any costs and expenses incurred by the Lessor retaining the Lessee's Property; and
- (d) no compensation is payable by the Lessor to the Lessee in relation to the removal, disposal or retention of the Lessee's Property 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 under this clause 13.2.

---

## **14 HOLDING OVER**

### **14.1 Holding over**

If the Lessee continues to occupy the Premises after the expiry of this Lease with the consent of the Lessor, then:

- (a) the Lessee becomes a yearly tenant on the same terms and conditions as are contained in this Lease so far as they are applicable to a yearly tenancy;
- (b) the tenancy may be terminated by either party on the giving of at least two (2) months' prior notice in writing to the other party, which notice may end on any date;
- (c) the Lessee must pay the yearly rent to the Lessor in advance;
- (d) the rent at the commencement of the period of holding over will be a sum equivalent to either:
  - (i) the Rent payable by the Lessee to the Lessor as at the Expiry Date; or
  - (ii) the amount determined by the Lessor, it being agreed that the Expiry Date 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;
- (e) the rent during the period of holding over will be reviewed on the same basis and as frequently as this Lease provides; and
- (f) the Lessee must pay all Outgoings as provided in clause 3.3.

#### **14.2 Partial refund**

If this Lease is terminated by either party under clause 14.1(b), the Lessor must refund to the Lessee a proportionate amount of any Rent or Outgoings paid in advance under clause 14.1(c) or clause 14.1(f) within sixty (60) days of the date of the notice of termination.

#### **14.3 Termination on transfer of Lessee's Land**

- (a) The yearly tenancy under clause 14.1 is automatically terminated when the Lessee's interest in the Lessee's Land is transferred to another party.
- (b) Upon termination of the yearly tenancy under clause 14.3(a), the Lessee must comply with clause 13.
- (c) The termination of the yearly tenancy under clause 14.3(a) is without prejudice to any of the Lessor's rights as at the date of termination.

---

### **15 GENERAL**

#### **15.1 Notices**

- (a) In this clause, **Address for Service** means:
  - (i) in the case of the Lessor, the address specified in Item 1(b) of the Reference Schedule; and

- (ii) in the case of the Lessee, the address specified in Item 1(d) 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;
  - (ii) sent by email;
  - (iii) sent by prepaid ordinary mail within Australia; or
  - (iv) 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 email, on the day that the sending party's email server records that the email was successfully transmitted (unless the transmission is not received on a Business Day or is received after 5.00pm on a Business Day, in which case the notice is deemed to be given at 9.00am on the next Business Day);
  - (iii) if sent by prepaid ordinary mail within Australia, on the day that is five (5) Business Days after the date of posting; or
  - (iv) if sent by prepaid Express Post International airmail between countries, on the day that is ten (10) Business Days after the date of posting.

## **15.2 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.

## **15.3 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.

#### **15.4 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.

#### **15.5 No demand necessary**

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

#### **15.6 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.

#### **15.7 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 under clause 15.7(a) is the Default Rate.

#### **15.8 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.

#### **15.9 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.

#### **15.10 No implied terms**

- (a) 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.

- (b) The Lessee warrants that it has not been induced to enter this Lease by any express or implied statement, warranty or representation.

#### **15.11 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.

#### **15.12 Severability**

If any term of this Lease is made void or unenforceable, the remaining terms will not be affected.

#### **15.13 Governing Law**

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

#### **15.14 Waiver and variation**

- (a) 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 and agrees 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.

#### **15.15 Acknowledgement**

- (a) The Lessee acknowledges that it understands the terms of this Lease, including the Lessee's obligations to repair and maintain, to carry out Work and to carry out Removal Works.
- (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.

#### **15.16 Contra proferentem**

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.



### **15.17 No caveat**

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

### **15.18 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.

### **15.19 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.

---

## **16 DISPUTE RESOLUTION**

### **16.1 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, 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 16.1(a), 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).

### **16.2 Determination of dispute**

In determining a dispute under this Lease, the Expert must be instructed to:

- (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.

### **16.3 Expert's determination of dispute final**

Any determination of a dispute made by an Expert in accordance with this clause 16 is final and binding on the parties.

### **16.4 Dispute resolution costs**

The costs associated with the determination of a dispute by an Expert under this clause 16, including any costs associated with the appointment of the Expert under clause 16.1(b), are payable by the parties, equally unless determined otherwise by the Expert.

---

## **17 ELECTRONIC SIGNATURES**

### **17.1 Electronic execution, exchange and print out**

- (a) In this clause 17, **Electronic Signature** means a visual representation of a person's handwritten signature which is placed on this Lease using an electronic signing platform or any other means of electronically placing the person's signature on this Lease agreed by the parties in writing.
- (b) This Lease may be signed by or on behalf of a party using an Electronic Signature. For the purposes of all relevant Laws (including the *Electronic Transactions Act 1999 (Cth)* and *Electronic Transactions Act 2000 (NSW)*), the parties consent to the execution of this Lease electronically.
- (c) Where an Electronic Signature has been used by a party to sign this Lease, that party warrants that their Electronic Signature was used to:
  - (i) identify and authenticate the person signing;
  - (ii) where the party is an individual, indicate that the person intended to be bound by the terms of this Lease; and
  - (iii) where the party is a corporation or other body, indicate that the person or persons intended to bind the corporation or that other body to the terms of this Lease.
- (d) Each party consents to the exchange of this Lease by delivery by email or such other electronic means as may be agreed in writing.
- (e) Where this Lease is required by Law to be in physical form, the parties agree that a print out of an Electronically Signed copy of this Lease satisfies that requirement.

## **ANNEXURE B TO LEASE**

### **SPECIAL CONDITIONS**

The following special conditions form part of this Lease:

1.

DRAFT

**ANNEXURE C TO LEASE  
PLAN**

DRAFT