

**FOR RETAIL PURPOSES ONLY  
(NOT BASE BUILT)**

**INDICATIVE LAYOUT ONLY**

Dep. No. AD2000030  
 Date 13.08.14  
 Revision 04

Scale 1:300 @ B1 1:750 @ A3

Barangaroo South  
 STAGE 1  
 Retail Public Domain (Early Access) Plan (Clause 29A)  
 Early Access Area Relevant to Building R8 & R9

**Land Lease**

GRAHAM W JONES  
 PRINCIPAL ARCHITECT  
 FRIDA NEW ARR 4355

## Annexure W – Retail Leasing Strategy

## Retail Leasing Strategy

The retail strategy proposed must effectively serve the workers and residents on site, as well as within the identified primary and secondary trade areas, in addition to visitors as defined below.

The overall quality of the retail design and offer should compliment the aspiration and lifestyle for the residents and workers of a Global Financial Centre and mixed used inner city precinct adjacent to Millers Point and Walsh Bay as proposed for Barangaroo.

The components of retail should provide a diversity which will service the needs of the workers, residents and visitors consistent with the principles of the "City Life" recommendations made by Gehl Architects as Part of the 2030 Plan for the City of Sydney, being the requirement to service the catchments within a 6 and 12 minute walk of Barangaroo. (See Map 1.1)

The primary focus of the Retail Leasing Strategy should be on the following:

1. Food and Grocery retailing for the primary trade area workers and residents.
2. Retail services for the primary trade area workers and residents.
3. Food catering to serve the primary and secondary trade area workers and residents.
4. Providing a number of water facing restaurants to serve the primary and secondary trade area workers and residents as well as the visitors
5. Mid range and niche fashion to serve the primary and secondary trade area workers, residents and visitors.
6. Specialty non-retail floor space such as medical and childcare facilities, gymnasium, non-retail services (e.g. Australia Post, banks, a travel agent and tour operator) to serve the primary and secondary trade area workers and residents.
7. Bar and Tavern facilities to serve the primary trade area workers and residents and the visitors.
8. Providing a lively and vibrant ground plane which contributes to an activated 7 day water front environment.

## Definitions

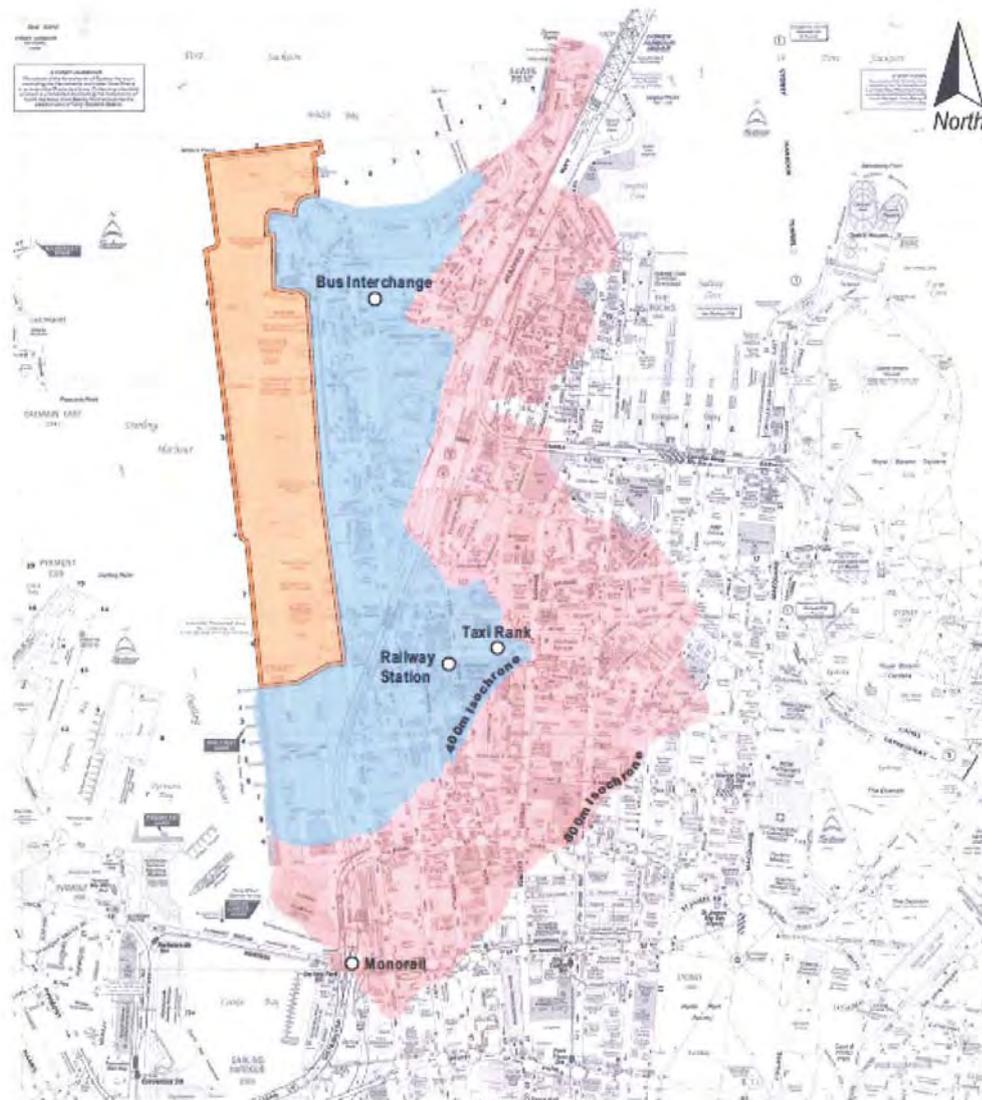
1. The **Primary Trade Area** encompasses the Barangaroo site and immediate surrounds bounded by the Sydney Harbour to the north; the Sydney Harbour Bridge approach and York Street to the east; King Street to the south; and Darling Harbour to the west.
2. The **Secondary Trade Area** encompasses an:
  - a) **East Sector** generally bounded by the Bradfield Highway and York Street to the west, and George Street to the east.
  - b) **South Sector** bounded by King Street to the north, George Street to the east, Market Street to the south and Darling Harbour to the west.
3. The **Visitors to Barangaroo** will include people from the wider Sydney Metropolitan area, as well as the tourists and visitors to the Darling Harbour and Rocks precincts which will now enjoy the different offer provided at Barangaroo.

(See Map 2.1)

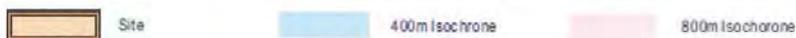


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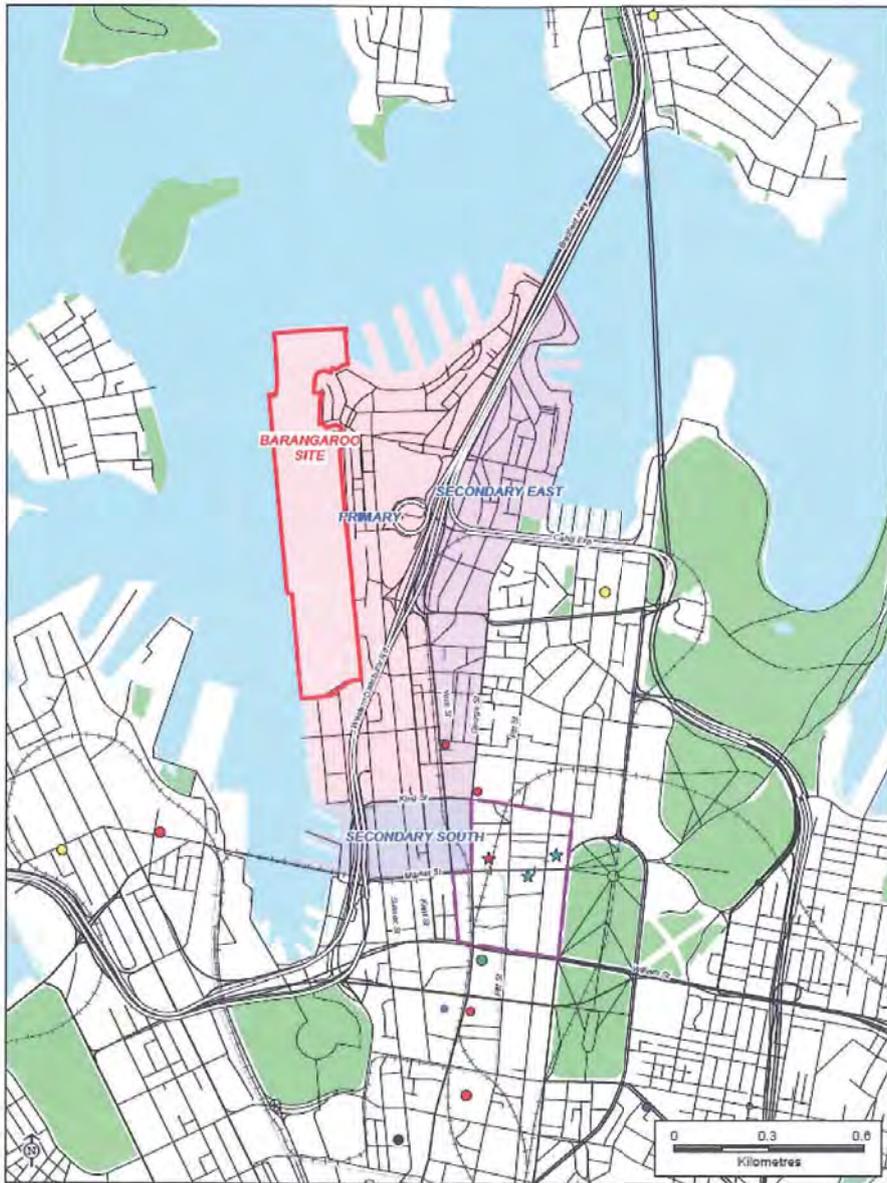


**Key**



**Map 1.1: Walking Distances**





**Map 2.1: Barangaroo Site**  
**Worker Main Trade Area**

- |                   |                           |
|-------------------|---------------------------|
| ○ Sub-regional SC | ● Woolworths              |
| ★ Myer            | ● Coles                   |
| ☆ David Jones     | ● Bi-Lo                   |
| ▲ Kmart           | ● IGA                     |
| △ Target          | ● Independent Supermarket |
- \* Main objects represent proposed stores

## Annexure X – Pro Forma Public Domain Licences

This Annexure X comprises:

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2. Annexure X2 - Public Domain Head Licence (Retail Category 2).....1239

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## Annexure X1 – Public Domain Licence (Category 1)

# Public Domain Head Licence (Retail Category 1)

Barangaroo Delivery Authority  
Licensor

**[insert]**  
Licensee

**[insert]**  
Guarantor

Clayton Utz  
Lawyers  
Level 15 1 Bligh Street  
Sydney NSW 2000  
GPO Box 9806 Sydney Sydney NSW 2001  
Tel +61 2 9353 4000  
Fax +61 2 8220 6700  
[www.claytonutz.com](http://www.claytonutz.com)

Our reference 170/18637/80104595

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**Annexure C – Early Access Area**

## Public Domain Head Licence (Retail Category 1)

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### Date

**Parties**            **Barangaroo Delivery Authority ABN 94 567 807 277** of AON Tower, Level 21, 201 Kent Street, Sydney NSW 2000 (**Licensor**)

[ insert ] of [ insert ] (**Licensee**)

[ insert ] of [ insert ] (**Guarantor**)

### Background

- A.        The Licensor owns the Land in which the Licenced Area is situated and on which the Building is erected.
- B.        The Licensor (as landlord) has granted a lease of the Building to the Licensee (as tenant).
- C.        The Licensee has asked the Licensor to grant the Licensee a licence of the Licenced Area.
- D.        The Licensor has agreed to grant the licence subject to this deed.
- E.        The Guarantor has agreed to guarantee the obligations of the Licensee under this deed.

### Operative provisions

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## 1. Definitions and interpretation

### 1.1 Definitions

In this deed:

**Annual Review Date** means each date in Item 10.

**Breach Notice** has the meaning given in clause 8(a).

**Building** means the building specified in Item 2.

**Building Lease** means the lease of the Building dated [insert] made between the Licensor (as landlord) and the Licensee (as tenant).

**Business Day** means a day on which banks are open for general banking business in Sydney (not being a Saturday, Sunday or public holiday).

**Commencing Date** means the date in Item 3.

**Conciliation Notice** has the meaning given in clause 8(b).

**Corporations Act** means the Corporations Act 2001 (Cth).

**CPI** means the Sydney (All Groups) index published by the Australian Statistician or the index substituted for it by the Australian Statistician or, if neither of those indexes is available, an index nominated by the Licensor (acting reasonably).

**Design Guidelines** mean the design guidelines published by the Barangaroo Delivery Authority from time to time, or any document replacing those guidelines.

**Expiry Date** means the date in Item 4.

**GST** includes amounts defined as "GST" under the GST law and:

- (a) amounts payable on account of a notional liability under Division 177 of the GST Act; and
- (b) "GST equivalents" payments under the Intergovernmental Agreement Implementation (GST) Act 2000 (NSW) (or similar payments under corresponding legislation of any other State or Territory).

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999.

**GST law** has the same meaning as in the GST Act.

**Guaranteed Obligations** mean all of the obligations of the Licensee under this deed (and any agreements, documents or other obligations arising from this deed).

**Insolvency Event** means the happening of any of these events:

- (a) a body corporate is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) a body corporate has a controller appointed, is under administration or wound up or has had a receiver appointed to any part of its property;
- (c) a body corporate is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Licensor);
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 40 Business Days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that body corporate, which:
  - (i) is preparatory to or could result in any of (a), (b) or (c) above; or
  - (ii) which results in the appointment of a liquidator or provisional liquidator in respect of a body corporate;
- (e) as a result of the operation of section 459(F)(1) of the Corporations Act a body corporate is taken to have failed to comply with a statutory demand;
- (f) a body corporate is, or it makes a statement from which the Licensor reasonably deduces that the body corporate is, the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the Licensor reasonably deduces it is so subject);
- (g) a body corporate is otherwise unable to pay its debts when they fall due;

- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- (i) something having a substantially similar effect to (a) to (h) happens in connection with that person under the law of any jurisdiction.

**Institute** means the Australian Property Institute Incorporated (New South Wales Division).

**Interest Rate** has the meaning given in the Building Lease.

**Land** means the land specified in Item 1.

**Licence Fee** means the yearly amount in Item 5 as changed under clause 3.

**Licensed Area** means that part of the Land specified in Item 7 as amended pursuant to clause 11.

**Licensee's Employees** means the Licensee's employees, officers, consultants, agents, contractors and invitees or any of them.

**Low Impact Activities** mean activities which, subject to the exclusion in paragraph (d):

- (a) are within the Permitted Use (including the consumption of food and beverages but not the service of food and beverages); and
- (b) are permitted under any relevant statutory conditions of consent or approval; and
- (c) may include:
  - (i) receiving trade related deliveries, cleaning the Licensed Area, setting up or packing away furniture related to the Permitted Use;
  - (ii) other activities as permitted under any relevant statutory conditions of consent or approval; and
- (d) in all circumstances (and despite any statutory conditions of consent or approval) excludes any activities which cause disruption to other users or occupiers of Barangaroo;

**Market Review Date** means the commencing date of the new licence to be granted under clause 14.1 (where the Licensee has given a Notice Exercising Option).

**Notice Exercising Option** has the meaning given in clause 14.1(a).

**NSW Government** means the Crown in right of the State of New South Wales and its agencies.

**Permitted Use** means the use specified in Item 8 or such other use as is permitted by the Licensor in its absolute discretion.

**Public Domain** means the areas of public domain within Barangaroo including the Southern Cove, the Headland Park and other parks, playing fields, streets and pedestrian connections.

**Shoulder Operating Hours** means each period of one hour immediately:

- (a) prior to the commencement of Trading Hours; and
- (b) after the end of Trading Hours.

**Term** means the term of the licence granted under this deed, beginning on the Commencing Date and ending on the Expiry Date.

**Trading Hours** mean the hours, times or periods specified in Item 9.

**Valuer** means a certified practising valuer with the Institute who is an associate member of at least 5 years' standing or a fellow of the Institute who has at least 5 years' experience in, and at the time of appointment is actively engaged in, valuing premises like the Licenced Area.

## 1.2 Definitions in Lease

Subject to clause 1.1, terms used in this deed that are defined in the Building Lease have the same meaning in this deed.

## 1.3 Interpretation

In this deed headings are for convenience only and do not affect interpretation.

Unless the context indicates a contrary intention:

- (a) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (b) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation, and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "**includes**" in any form is not a word of limitation;
- (j) a reference to "**\$**" or "**dollar**" is to Australian currency; and
- (k) a reference to an item is to an item in the reference schedule to this deed.

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## 2. The licence

### 2.1 Licence

The Licensor grants the Licensee a non-exclusive licence for the Term to use the Licenced Area:

- (a) for the Permitted Use during the Trading Hours;
- (b) for Low Impact Activities during Shoulder Operating Hours; and
- (c) subject to this deed.

### 2.2 No exclusive possession

This deed does not confer on the Licensee any right of exclusive possession of any part of the Licenced Area. Subject to the terms of this deed, the Licensor may at any time in its absolute discretion exercise all its rights including its right to enter the whole or any part of the Licenced Area. The Licensee must not restrict the Licensor's access to the Licenced Area in any way.

### 2.3 Personal rights only

The rights conferred on the Licensee by this deed are personal rights in contract only and do not create any tenancy or any estate or interest in the Licenced Area.

### 2.4 No dealing

- (a) Subject to clause 5, the Licensee cannot sublicense or part with or share possession of the Licenced Area or assign, novate or otherwise transfer any of its rights or obligations under this deed except in accordance with clause 2.4(b).
- (b) The Licensee may assign its interest in this deed with the prior written consent of the Licensor. The Licensor's consent must be given if the assignee of the Licensee's interest in this deed is the assignee of the Licensee's interest in the Building Lease in a simultaneous assignment of the Building Lease with this deed.

### 2.5 Holding over

If the Licensor has not granted the Licensee a new licence of the Licenced Area and the Licensee continues to occupy the Licenced Area after the Expiry Date with the Licensor's consent, the Licensee occupies the Licenced Area under a monthly licence that:

- (a) subject to clause 13.1, either party may terminate on 1 month's notice ending on any day; and
- (b) is on the terms of this deed (with the necessary changes being made) and at the licence fee being one twelfth of the Licence Fee which would have been payable under this deed if the date of commencement of the holding over period (and each anniversary of that date) were an Annual Review Date for the purpose of this deed.

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## 3. Licence Fee

### 3.1 Payment of Licence Fee

- (a) The Licensee must pay the Licence Fee to the Licensor free of all deductions (subject to clause 3.1(c)), annually in advance:
  - (i) with the first payment due on the Commencing Date; and

- (ii) each payment thereafter due on each anniversary of the Commencing Date.
- (b) The Licensee must pay the Licence Fee proportionately for any broken period that is less than a year.
- (c) If any Licence Fee Relief is specified in Item 6, the Licensee's obligation to pay the Licence Fee is reduced at the times and in the manner described in Item 6.

**3.2 Annual Review of Licence Fee**

On and from each date in Item 10, the Licence Fee increases to the greater of the Licence Fee as increased by:

- (a) CPI review (calculated pursuant to clause 3.3 as at that date); or
- (b) percentage review (calculated pursuant to clause 3.4 as at that date).

**3.3 CPI Review**

For the purposes of clause 3.2, the Licence Fee increased by CPI Review is calculated as follows:

$$\text{Reviewed Licence Fee} = \text{Existing Licence Fee} \times \frac{\text{Current CPI}}{\text{Previous CPI}}$$

Where:

- 'Reviewed Licence Fee' means: the Licence Fee increased by CPI Review for the purposes of clause 3.2
- 'Existing Licence Fee' means: the Licence Fee applicable immediately before the relevant Annual Review Date
- 'Current CPI' means: the CPI number for the quarter ending immediately before the relevant Annual Review Date
- 'Previous CPI' means: the CPI number for the quarter ending immediately before the last Annual Review Date before the relevant Annual Review Date (or if there has not been one, the Commencing Date)

**3.4 Percentage Review**

For the purposes of clause 3.2, the Licence Fee increased by Percentage Review is calculated as follows:

$$\text{Reviewed Licence Fee} = \text{Existing Licence Fee} + (\text{Existing Licence Fee} \times \text{Increase Factor})$$

Where:

- 'Reviewed Licence Fee' means: the Licence Fee increased by Percentage Review for the purposes of clause 3.2
- 'Existing Licence Fee' means: the Licence Fee applicable immediately before the relevant Annual Review Date
- 'Increase Factor' means: 2.5%

### 3.5 Interest

If the Licensee does not pay an amount when it is due, it must pay interest on that amount on demand from when the amount becomes due until it is paid in full. Interest is calculated on daily balances at the Interest Rate and is fully capitalised on the last day of each month if unpaid.

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## 4. Licensee's obligations

The Licensee must:

- (a) keep the Licenced Area in good repair;
- (b) keep the Licenced Area clean, tidy and free of rubbish and vermin;
- (c) not use the Licenced Area for any purpose except the Permitted Use;
- (d) not use the Licenced Area except during the Trading Hours and the Shoulder Operating Hours (and only for such uses as are permitted under this deed during those times);
- (e) comply on time with all laws and the requirements of authorities in connection with the Licenced Area and the Licensee's use and occupation of the Licenced Area;
- (f) comply with the Licensor's reasonable rules and regulations for the Licenced Area;
- (g) comply with any reasonable directions given by the Licensor to the Licensee in respect of:
  - (i) the usage, cleaning, maintenance, safety or security of the Licenced Area;
  - (ii) emergencies which occur in or affect the Public Domain;
- (h) pay all outgoings and costs in respect of the Licenced Area including the cost of any utilities supplied to the Licenced Area, any taxes, rates, levies and other costs assessed in respect of the Licenced Area whether charged directly to the Licensee or incurred by the Licensor as a result of the Licensee's specific use of the Licenced Area (but despite any other provision of this deed, the Licensee is not required to pay any estate levy in respect of or in connection with the Licenced Area);
- (i) maintain and manage the Licenced Area at its cost and to a standard reasonably required by the Licensor (having regard to comparable outdoor seating areas within other parts of the Sydney CBD as determined by the Licensor in its absolute discretion), including procuring at the Licensee's own cost the cleaning, maintenance, repair, security and servicing of the Licenced Area;
- (j) not do anything:
  - (i) on the Land or in the Licenced Area that the Licensor reasonably considers is dangerous, annoying, offensive, immoral or illegal;
  - (ii) to contaminate or pollute the Land or the Licenced Area or their environment;
  - (iii) that interferes with, obstructs access to, damages or overloads the Licenced Area's facilities, or any buildings, infrastructure or facilities which provide services to the Licenced Area; or

- (iv) in the Licenced Area, that interferes with, disturbs or causes a nuisance to users of the Public Domain outside the Licenced Area;
- (k) not keep or use inflammable, volatile or explosive materials on the Licenced Area without the Licensor's consent; and
- (l) not damage or destroy anything on the Land or in the Licenced Area.

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## 5. Sublicensing

The Licensee may grant non-exclusive sub-licences in respect of the Licenced Area to retail tenants of the Building provided that any such sub-licence must:

- (a) be made only in respect of that part of the Licenced Area which is adjacent to the premises the subject of the retail lease;
- (b) be granted for a term which is not longer than the term of the retail lease to which the sub-licence relates;
- (c) terminate on the expiry, earlier termination or surrender of the retail lease to which the sub-licence relates;
- (d) include provisions:
  - (i) prohibiting the sub-licensee from doing any thing which would cause the Licensee to be in breach of its obligations under this deed;
  - (ii) requiring the sub-licensee to comply with all relevant obligations of the Licensee under this deed;
  - (iii) requiring the sub-licensee to comply with any reasonable notices issued by the Licensor to the Licensee or to the sub-licensee in relation to any usage, cleaning, maintenance or safety issues arising from the use of the Licenced Area and the Public Domain;
  - (iv) requiring the sub-licensee to comply with any directions of the Licensor to the Licensee in respect of emergencies which occur in or which affect the Public Domain;
  - (v) requiring the sub-licensee to ensure that the Licensor is able to access the Licenced Area at all times and without prior notice;
  - (vi) acknowledging that the Licensor has the right to vary the Licenced Area and the Public Domain pursuant to clause 11; and
  - (vii) requiring the sub-licensee to comply with the Design Guidelines.

---

## 6. Major events

- (a) The Licensee acknowledges that the Licenced Area is situated within the Public Domain of Barangaroo South, parts of which may be used from time to time for the hosting of major events.
- (b) In relation to the area marked 'Major Events Area' in the Major Events Plan attached as Annexure B, if required by the Licensor for purposes in relation to the operation of a major event, the Licensee must vacate (and must procure that all sub-licensees and their invitees vacate) the Licenced Area and any other part of the

Public Domain for any reasonable period of time as determined by the Licensor (acting reasonably) having regard to the preparation time, duration and the nature of the event, and comply with any other reasonable direction given by the Licensor or anyone nominated by the Licensor from time to time.

- (c) In relation to the balance of the Licenced Area, if reasonably required by the Licensor for purposes in relation to the operation of a major event, the Licensee must:
- (i) cooperate to procure that the occupants of the Licenced Area assist in ensuring that the public can have access to the foreshore; and
  - (ii) comply with (and will procure that the occupants of the Licenced Area, comply with) the safety and crowd control measures or any other directions or requirements given by the Licensor acting reasonably or anyone nominated by the Licensor from time to time, having regard to the preparation time, duration and the nature of the event.
- (d) The Licensee is not entitled to any abatement of Licence Fee, set off or other compensation due to any disruption or temporary loss of amenity caused by a major event referred to in this clause and the Licensee must not make any claim against the Licensor in respect of any loss or damage suffered by the Licensee due to any unavailability of the Licenced Area during any such periods.

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## 7. Alterations to Licenced Area

- (a) The Licensee must not make any alterations (and must not permit or procure any alterations to be made) to the Licenced Area without the Licensor's prior written approval (such approval not to be unreasonably withheld).
- (b) The Licensee must comply with the Design Guidelines when proposing or carrying out any works (to the extent approved by the Licensor) within the Licenced Area.
- (c) In requesting the Licensor's approval for any proposed works, the Licensee must provide to Licensor on request, all information, designs and other materials necessary in order to enable the Licensor to evaluate the proposal and to confirm that the proposal satisfies the Design Guidelines. The Licensee must amend any proposal to incorporate the reasonable requirements of the Licensor (if any), including modifications to the design, location of the works or other specifications.
- (d) Subject to the Licensee satisfying the above requirements, the Licensor will not unreasonably withhold its consent to a proposal for the carrying out of works within the Licenced Area. The Licensor may provide its consent conditionally upon satisfaction of any number of requirements by the Licensee as specified by the Licensor acting reasonably.
- (e) The Licensee must carry out any works approved by the Licensor at the Licensee's own cost and risk and in accordance with any requirements specified by the Licensor (acting reasonably).

---

## 8. Access standards

- (a) If the Licensor has reasonable concerns regarding unsafe pedestrian traffic, unsatisfactory or unsafe congestion, lack of maintenance or other unsatisfactory outcomes for the public amenity in respect of the Licenced Area in relation to security, noise, permitted use, density, safety, crowd control or public health, resulting from (or substantially contributed to or connected with) the Licensee's use of the Licenced Area, the Licensor may give a notice to the Licensee requiring the

Licensee to take such action as is necessary to rectify the unsatisfactory condition within a period of 10 Business Days from the date of the notice (**Breach Notice**).

- (b) If the Licensor considers acting reasonably that an unsatisfactory condition has not been rectified within the timeframe specified in a Breach Notice given by the Licensor, the Licensor may give a notice requiring the senior management representatives of each party to meet within 5 Business Days of the date of the notice (**Conciliation Notice**) and to consult in good faith to resolve the concerns raised by the Licensor, or otherwise rectify the issues the subject of the Breach Notice within 20 Business Days of the date of the Conciliation Notice.
- (c) If the Licensor considers that an unsatisfactory condition has not been rectified within the period of 20 Business Days commencing from the date of a Conciliation Notice, the Licensor may terminate the Licence the subject of that Conciliation Notice, effective immediately upon notice from the Licensor and without compensation to the Licensee.

---

## 9. Insurances, indemnities and releases

### 9.1 Licensee accepts risk

The Licensee enters the Licenced Area and uses the Licenced Area at its own risk.

### 9.2 Insurance

The Licensee must:

- (a) not do anything that could:
  - (i) prejudice any insurance of the Licenced Area or the Building or property in them; or
  - (ii) increase the premium for that insurance, without the Licensor's consent;
- (b) keep current during the Term and any holding over period public risk insurance for at least the amount in Item 11 (or such other reasonable higher amount as notified by the Licensor (acting reasonably) to the Licensee from time to time) and all other insurances required by law or that the Licensor reasonably requires in connection with the Licenced Area (to a reasonable level of coverage) with all such policies naming the Licensee, the Licensor and the NSW Government as insured parties;
- (c) pay to the Licensor on demand any increase in insurance premiums payable by the Licensor in connection with additional risks caused or contributed to by the act, omission, negligence or default of the Licensee or the Licensee's Employees; and
- (d) give the Licensor on demand evidence that the Licensee has complied with clause 9.2(b).

### 9.3 Indemnity

The Licensee is liable for and indemnifies the Licensor and the NSW Government against all liability, loss, costs and expenses arising from or incurred in connection with:

- (a) anything (including damage, loss, injury and death) caused or contributed to by the act, omission, negligence or default of the Licensee or the Licensee's Employees or the Licensee's use of the Licenced Area (except to the extent the liability, loss, costs or expenses were caused or contributed to by the wrongful act, omission, negligence or default of the Licensor);

- (b) anything occurring on, originating in, or coming from, the Licenced Area, except to the extent the liability, loss, costs or expenses were caused or contributed to by the wrongful act, omission, negligence or default of the Licensor;
- (c) the Licensee's default under this deed (except to the extent the liability, loss, costs or expenses were caused or contributed to by the wrongful act, omission, negligence or default of the Licensor);
- (d) the termination of this deed (including the Licensor's loss of the benefit of the Licensee complying with the Licensee's obligations under this deed from the date this deed is terminated until the Expiry Date) if this deed is terminated:
  - (i) because of the Licensee's default under this deed or the Licensee's repudiation of this deed;
  - (ii) under clause 15 and:
    - A. an insurer refuses to pay a claim because of;
    - B. any insurance in connection with the Building is prejudiced because of; or
    - C. the destruction, damage or inaccessibility was caused or contributed to by,  
  
the act, omission, negligence or default of the Licensee or the Licensee's Employees,  
except to the extent the liability, loss, costs or expenses were caused or contributed to by the wrongful act, omission, negligence or default of the Licensor.

**9.4 Release**

The Licensee releases the Licensor and the NSW Government from all, and agrees that the Licensor is not liable for any, liability, loss, costs and expenses arising from or incurred in connection with:

- (a) anything (including damage, loss, injury and death) unless it is caused by the Licensor's negligence;
- (b) the Licensor doing anything the Licensor is permitted or obliged to do under this deed; and
- (c) the electricity service, or any other service, being interrupted, broken down or not being available,

except to the extent that the claim arises as a result of or is caused or contributed to by the wrongful act, omission, negligence or default of the Licensor.

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**10. Transfer of Public Domain**

- (a) The Licensee acknowledges and agrees that the Licensor may at any time transfer, assign or otherwise deal with its interest in the Land (including the Licenced Area) without prior reference to the Licensee.
- (b) If the Licensor transfers or assigns the Land, or any part of the Land comprising the Licenced Area (including by operation of law or statutory vesting):

- (i) the Licensor will use reasonable endeavours to ensure that the transferee or assignee enters into an agreement with the Licensee that preserves the Licensee's rights and obligations under this deed and under which the transferee or assignee agrees to comply with the terms of this deed as if it had been named in this deed as the Licensor;
- (ii) if requested by the Licensor, the Licensee must sign any document and must do any thing required in order to effect a transfer of the Licensor's interest in this deed.

## 11. Changes to the Public Domain

- (a) The Licensee acknowledges that changes to the Public Domain may be required by the Licensor from time to time.
- (b) The Licensor is not liable to the Licensee in respect of any cost, loss or damage suffered or incurred by the Licensee as a result of any change to the Public Domain.
- (c) If the Licensor, acting reasonably, considers that any part of the Licenced Area should no longer be used for the Permitted Use due to a matter of public interest or due to any operational necessity relating to the Public Domain, the Licensor may give notice to the Licensee specifying:
  - (i) the relevant part of the Licenced Area which the Licensor considers should not be used for the Permitted Use;
  - (ii) the reasons why such an area should not be used for the Permitted Use; and
  - (iii) the date on which the Licensor requires the Licensee to discontinue use of that part of the Licenced Area for the Permitted Use being the later of:
    - A. the latest occurring expiry date specified in respect of the fixed term of any of the registered retail leases which are in place (and which are benefitted by the Licenced Area) as at the date of the notice (not including any option to renew or period of holding over); or
    - B. any later date specified by the Licensor.
- (d) The Licensor will consult in good faith with the Licensee to minimise disruption to the leasing enterprise of the Licensee (as the lessee of the Building) and the retail operations of the sub-tenants of the Building (as the sub-licensees of the Licenced Area).
- (e) On and from the date on which the Licensor requires the Licensee to discontinue use of part of the Licenced Area for the Permitted Use:
  - (i) the Licenced Area is deemed to be amended to exclude that part nominated by the Licensor; and
  - (ii) the Licence Fee payable by the Licensee will be recalculated on a square metre basis to reflect the amended Licenced Area.
- (f) As soon as is practicable, the Licensor must pay to the Licensee an adjustment on account of any Licence Fee which has been paid in advance (or the extent that payment of any Licence Fee is in arrears, the Licensor must allow an adjustment to any such outstanding amount).

- (g) The Licensee must sign any document and must do any thing reasonably required by the Licensor to reflect any amendment to the Licenced Area.

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## 12. Default

The Licensee is in default under this deed and the Licensor may terminate this deed if:

- (a) the Licensee does not pay the Licence Fee as required by this deed and that default continues for at least 14 days; or
- (b) the Licensee does not comply with a Breach Notice or a Conciliation Notice; or
- (c) the Licensee does not comply with any other obligation under this deed and does not remedy that default within 14 days after the Licensor gives the Licensee a notice requiring the Licensee to remedy the default; or
- (d) the Licensee is in default under the Building Lease.

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## 13. Licence ends

### 13.1 Events

This deed ends on the earliest to occur of:

- (a) the Expiry Date (but if the Licensee holds over under this deed with the Licensor's consent, the date the holding over ends);
- (b) the date the Building Lease expires or is terminated;
- (c) the date on which the Licensee ceases to be the tenant under the Building Lease (except in the circumstances referred to in clause 2.4); and
- (d) the date this deed is terminated.

### 13.2 Licensee to vacate

When this deed ends, the Licensee must:

- (a) (subject to clause 13.2(b)) promptly remove all improvements, works, fixtures, services, infrastructure, materials, possessions and other items from the Licenced Area and the Land as directed by the Licensor, leaving the Licenced Area paved (or otherwise surfaced to the standard of surfacing of the area surrounding the Licenced Area) and in a clean, clear and safe condition;
- (b) if directed by the Licensor, not remove any improvements or fixtures nominated by the Licensor from the Licenced Area (and such items will become the property of the Licensor);
- (c) vacate the Licenced Area and leave it in good order and condition to the Licensor's reasonable satisfaction; and
- (d) make good, if requested by the Licensor, any damage caused to the Building by removing the Licensee's possessions and vacating the Licenced Area.

### 13.3 Failure to vacate

If the Licensee does not comply with its obligations under clause 13.2 on time, the Licensor may comply with these obligations (if necessary, in the Licensee's name) at the Licensee's risk

and expense. The Licensee must pay the Licensor on demand as liquidated damages a sum equal to the cost to the Licensor of complying with that clause.

## 14. Option for a new licence

### 14.1 Licensor to grant

The Licensor must grant a new licence of the Licenced Area to the Licensee for the term in the particulars for a new licence in Item 13 if:

- (a) the Licensee gives the Licensor a notice that it wants the new licence and the Licensor receives that notice in the period:
  - (i) starting on a day that is 12 months before the Expiry Date; and
  - (ii) ending on a day that is 6 months before the Expiry Date,
 (and in this regard time is of the essence) (**Notice Exercising Option**);
- (b) when the Licensee gives the notice and on the Expiry Date:
  - (i) the Licensee has not been more than 14 days late with a payment it must make under this deed; and
  - (ii) the Licensee is not in default under this deed or, if it is, that default has been waived by the Licensor.

### 14.2 Terms of new licence

The new licence is to be on the same terms as the licence granted under this deed is on at the Expiry Date except that:

- (a) particulars of the Term, the Commencing Date, the Expiry Date and the Annual Review Dates in this deed are to be replaced with those in the particulars for a new licence in Item 13;
- (b) the licence fee at the commencing date of the new licence is to be determined as set out clause 14.3; and
- (c) where, following the grant of the new licence under this this clause 14:
  - (i) a further option (or further options) to renew exist, Item 13 is updated by striking out those options which have been exercised (including that option giving rise to the new licence); or
  - (ii) no further option to renew will exist, this clause 14 and Item 13 are not to be included in the new licence.

### 14.3 Market Review of Licence Fee

- (a) If the Licensee gives a Notice Exercising Option, the Licensor may give the Licensee a notice, at any time during the period:
  - (i) starting on the date of that notice; and
  - (ii) ending on the Market Review Date,

increasing the Licence Fee to an amount that the Licensor considers is the current annual market licence fee at the relevant Market Review Date for the Licenced Area.

- (b) Unless the Licensee gives the Licensor a notice within 14 days after the Licensee receives the Licensor's notice, disagreeing with the amount in the Licensor's notice and nominating a Valuer, the Licence Fee from and including the relevant Market Review Date is the amount stated in the Licensor's notice.
- (c) If the Licensor and Licensee do not agree on the Licence Fee from and including the relevant Market Review Date within 14 days after the Licensor receives the Licensee's notice, the Licensor may nominate a Valuer within 21 days after the Licensor receives the Licensee's notice.
- (d) If the Licensor and Licensee have each nominated a Valuer, then within 7 days after the Licensor nominates a Valuer, they must each appoint their Valuers and instruct them:
  - (i) to determine jointly what is the current annual market licence fee that would be reasonably expected to be paid for the Licenced Area at the relevant Market Review Date if:
    - A. the Licenced Area was unoccupied and offered for licence for the Permitted Use (on the basis of the licence being offered together with a lease of the Building, or the licence being offered independently from the lease of the Building, whichever provides the greater value);
    - B. having regard to the terms of this deed; and
    - C. other matters relevant to the assessment of the current annual market licence fee;
  - (ii) to give a "speaking valuation" (that is, the Valuers must give detailed reasons for their determination and must specify the matters to which they had regard for the purposes of making their determination) within 28 days after being instructed; and
  - (iii) that the Valuers act as experts and not as arbitrators.
- (e) If an amount is determined jointly by the Valuers, that is the Licence Fee on and from the relevant Market Review Date and the determination is final and binding on the parties.
- (f) The Licensor and the Licensee must pay the Valuers' costs in equal shares.
- (g) If the Licensor does not nominate a Valuer under clause 14.3(c) on time, then the Licensee's Valuer alone is to determine the current annual market licence fee at the relevant Market Review Date and clause 14.3(d) applies as if reference to the Licensor and Licensee is to the Licensee alone and clauses 14.3(d), (e) and (f) apply as if reference to the Valuers is to the Licensee's Valuer alone.
- (h) If the Valuers cannot agree or, if the Licensor has not nominated a Valuer under clause 14.3(c) on time, the Licensee's Valuer cannot determine the current annual market licence fee on time, either the Licensor or the Licensee or both may request the President of the Institute to nominate a third Valuer and either the Licensor or the Licensee or both jointly may appoint the third Valuer and instruct the third Valuer as set out in clause 14.3(d).

- (i) If a third Valuer is appointed then, the amount decided on by the third Valuer is the Licence Fee on and from the relevant Market Review Date and the third Valuer's determination is final and binding on the parties.
- (j) The Licensor and the Licensee must pay the third Valuer's costs in equal shares.
- (k) If the Licence Fee to apply on and from the relevant Market Review Date has not been agreed or decided under this clause 14.3 by that Market Review Date:
  - (i) the Licensee must pay the Licence Fee current immediately prior to the relevant Market Review Date as and when the Licence Fee is normally due and payable (and as increased from time to time pursuant to this deed); and
  - (ii) within 1 month after the Licence Fee is agreed or decided under this clause 14.3 the parties must make an adjustment (by payment or offset to the Licence Fee as relevant) for the difference between what the Licensee has paid on account of the Licence Fee and the Licence Fee for the period beginning on the relevant Market Review Date and ending on the date of adjustment.
- (l) If the Licensor does not give a notice under clause 14.3(a), the Licence Fee at the Market Review Date is deemed to be the Licence Fee 3.2current immediately prior to the relevant Market Review Date.

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## 15. Destruction of or damage to the Building or Public Domain

### 15.1 Abatement and notice

- (a) If the Building or the Public Domain are destroyed or the whole or any part of the Building or the Public Domain is damaged so that the whole or part of the Licenced Area is unfit or substantially unfit for the Licensee to use, the Licensor must give the Licensee a notice, within 3 months after the destruction or damage occurs or the Licenced Area becomes inaccessible or substantially inaccessible, as the case may be, either:
  - (i) terminating this deed on a date that is at least 1 month after the date the Licensor gives the notice: or
  - (ii) stating that the Licensor intends to do what is necessary to make the Licenced Area fit for the Licensee to use or to make the Licenced Area accessible, as the case may be.
- (b) If the Licensor gives a notice under clause 15.1(a)(ii) but does not carry out the intention stated in it within a reasonable time in all the circumstances, the Licensee may give the Licensor a notice that the Licensee intends to terminate this deed if the Licensor does not do what is necessary to make the Licenced Area fit for the Licensee to use or to make the Licenced Area accessible, as the case may be, within a reasonable time after the Licensee gives its notice.
- (c) If the Licensor does not comply with clause 15.1(a) or with the Licensee's notice under clause 15.1(b), the Licensee may terminate this deed with not less than 1 month's notice to the Licensor.
- (d) If the Building is substantially damaged, even if the Licensee has access to and can use the Licenced Area, the Licensor may give the Licensee a notice terminating this deed on a date that is at least 1 month after the Licensor gives the notice.

- (e) The Licensee need not pay instalments of Licence Fee for the period during which the Licenced Area is unfit for the Licensee to use or during which the Licensee does not have access to it.
- (f) The Licensee may reduce instalments of Licence Fee for the period during which the Licenced Area is substantially unfit for the Licensee to use or is substantially inaccessible by a proportion equal to the Licensee's loss of amenity to the Licenced Area.
- (g) The Licensee must continue to pay, and not reduce instalments of Licence Fee, if there is a dispute under this clause 15 until that dispute is resolved or determined.
- (h) Despite the other provisions of this clause 15, the Licensee must not stop paying or reduce instalments of Licence Fee or terminate this deed if:
  - (i) an insurer refuses to pay a claim because of;
  - (ii) any insurance in connection with the Building is prejudiced because of; or
  - (iii) the destruction, damage or lack of accessibility was caused or contributed to by,
 

the act, omission, negligence or default of the Licensee or the Licensee's Employees.
- (i) Neither party may take action against or claim damages or compensation from the other because this deed is terminated under this clause 15, unless one or more of the events set out in clauses 15.1(h)(i), (ii) and (iii) occur (or, in the case of any action or claim by the Licensee against the Licensor, unless the damage or destruction was caused or contributed to by the wrongful or negligent act or omission of the Licensor).
- (j) The Licensor is not obliged by this clause 15 to rebuild or repair the Building or the Licenced Area.

## 15.2 Disputes

- (a) Any dispute under this clause 15 about the amount of the Licence Fee to be abated and the duration of that abatement must be determined by a Valuer agreed on between the Licensor and the Licensee.
- (b) If the Licensor and the Licensee cannot agree on a Valuer within 1 month after the date the dispute arises, then either the Licensor or the Licensee may ask the President of the Institute to appoint a Valuer to determine the amount by which the Licence Fee is to be abated and the duration of that abatement.
- (c) In making the determination the Valuer is to act as an expert and not as an arbitrator, and the Valuer's determination is final and binding on the parties.
- (d) The Licensor and the Licensee must pay the Valuer's costs of the determination in equal shares.

## 16. Guarantee and indemnity

**[Completion note – the Licensee will provide a corporate guarantee or other form of security acceptable to the Licensor if required by clause 29A of the PDA. If no guarantee is required, then optional clause 16.8 will apply, and the nominee's name inserted. If a guarantee is required, clause 16.8 will be deleted.]**

## 16.1 Guarantor

The Licensor may require the Licensee to procure a Guarantor to enter into and be bound by the provisions of clauses 16.2 to 16.7.

## 16.2 Consideration

The Guarantor acknowledges that the Licensor is acting in reliance on the Guarantor incurring obligations and giving rights under this clause 16.

## 16.3 Guarantee

The Guarantor unconditionally and irrevocably guarantees to the Licensor the due and punctual performance and observance by the Licensee of the Guaranteed Obligations.

## 16.4 Indemnity

- (a) The Guarantor unconditionally and irrevocably indemnifies the Licensor for all losses, costs, damages and liabilities which it incurs or suffers as a result of the Licensee failing to duly and punctually perform and observe any of the Guaranteed Obligations.
- (b) The liability of the Guarantor to the Licensor for failing to comply for any reason with its obligations under clause 16.3 is limited to the liability of the Guarantor to the Licensor under clause 16.4(a).
- (c) The remedies available to the Licensor against the Guarantor for failing to comply for any reason with its obligations under clause 16.3 are limited to the right of the Licensor to make a claim on the Guarantor under clause 16.4(a).

## 16.5 Additional indemnities

Whether or not the Licensor exercises any rights it may have under this deed, and without being affected by the exercise of any such rights, the Guarantor unconditionally and irrevocably indemnifies the Licensor against any loss the Licensor suffers because:

- (a) the liability to guarantee to the Licensor the due and punctual performance or observance of the Guaranteed Obligations is unenforceable in whole or in part as a result of lack of capacity, power or authority or improper exercise of power or authority;
- (b) the Guaranteed Obligations are rescinded or terminated by the Licensee or the Licensor for any reason other than by reason of the wrongful repudiation or default by the Licensor;
- (c) the Licensee disregards an order for specific performance of the Guaranteed Obligations;
- (d) an Insolvency Event occurs with respect to the Licensee but only to the extent of obligations or monies which form part of the Guaranteed Obligations; or
- (e) the Guaranteed Obligations are not or have never been enforceable against the Guarantor or are not capable of observance, performance or compliance in full because of any other circumstance whatsoever including any transaction relating to the Guaranteed Obligations being void, voidable or unenforceable and whether or not the Licensor knew or should have known anything about that transaction.

**16.6 Guarantor as principal debtor**

The Guarantor as principal debtor agrees to pay to the Licensor within 10 Business Days after a demand being made by the Licensor on the Guarantor a sum equal to the amount of any loss described in clauses 16.4 and 16.5.

**16.7 Extent of guarantee and indemnity**

The guarantee provided in clause 16.3 and the indemnities provided in clauses 16.4 and 16.5 are continuing obligations and extend to all of the Guaranteed Obligations and other money payable under this deed.

**16.8 Operation**

**[Completion note: this clause 16.8 only applies where the Authority (as Licensor) has agreed that a guarantor is not required in respect of a specific Nominee pursuant to clause 29A.7 of the PDA]**

This clause 16 does not apply while the Licensee is **[insert name of nominee]**. If the Licensee assigns this licence to any assignee, the Licensor may (acting reasonably) require that assignee to nominate a Guarantor for the purpose of providing the guarantee under clause 16.

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**17. General**

**17.1 Notices**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as shown in Item 12 (or as otherwise notified by that party to each other party from time to time);
- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 17.1(b); and
- (e) is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
  - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
  - (iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).