

Central Barangaroo Foreshore Retail Stratum Lease

Barangaroo Delivery Authority

Landlord

[Insert details of tenant]

Tenant

Clayton Utz
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Our reference 18637/16133/30128948

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

Folio Identifier [to be inserted] being Lot [to be inserted] in Deposited Plan [to be inserted].

(B) **LODGED BY**

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

CODE

L

Reference:

(C) **LESSOR**

BARANGAROO DELIVERY AUTHORITY ABN 94 567 807 277

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

(D)

Encumbrances (if applicable):

(E) **LESSEE**

[to be inserted]

(F)

TENANCY:

(G) 1. **TERM** 25 years

2. **COMMENCING DATE** [to be inserted]

3. **TERMINATING DATE** [to be inserted]

4. With an **OPTION TO RENEW** for a period of N.A.
set out in clause N.A. of N.A.

5. With an **OPTION TO PURCHASE** set out in clause N.A. of N.A.

6. Together with and reserving the **RIGHTS** set out in clause N.A. of N.A.

7. Incorporates the provisions or additional material set out in **ANNEXURE(S)** A hereto.

8. Incorporates the provisions set out in N.A.
No. N.A.

9. The **RENT** is set out in clause No. 1.1 of Annexure A

DATE _____

- (II) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company: SEE ANNEXURE A FOR EXECUTION

Authority: _____

Signature of authorised person: _____

Signature of authorised person: _____

Name of authorised person: _____

Name of authorised person: _____

Office held: _____

Office held: _____

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company: SEE ANNEXURE A FOR EXECUTION

Authority: _____

Signature of authorised person: _____

Signature of authorised person: _____

Name of authorised person: _____

Name of authorised person: _____

Office held: _____

Office held: _____

(I) **STATUTORY DECLARATION***

I

solemnly and sincerely declare that

1. The time for the exercise of option to _____ in expired lease No. _____ 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 New South Wales on _____

in the presence of _____ 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 covering; 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 _____ [Omit ID No.]

Signature of witness: _____

Signature of applicant: _____

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. # 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.

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

Annexure "A" to the lease between
 Barangaroo Delivery Authority ABN 94 567 807 277 (as Landlord) and
 [insert details of tenant] (as Tenant) of premises known as [address of premises]
 dated [date]

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Schedule 1 - Licensable Public Domain Area

Schedule 2 - Public Domain Licence

Schedule 3

Schedule 4

Schedule 5

Schedule 6 - Signage and Façade Policy

Schedule 7 - Notice of acceptance of Public Domain Licence

The Landlord and the Tenant agree as follows.

1. Definitions and interpretation

1.1 Definitions

The following words have these meanings in this lease unless the contrary intention appears.

Applicable Rates has the meaning given in a Public Domain Licence.

Application means any application for an Approval.

Approvals means all consents, approvals, major project approvals, modifications, registrations, certificates, licences and permits from any Authority necessary to carry out any proposed works to, or to use, any part of the Premises or the Land including (but not limited to) approvals under Part 4 of the EP&A Act and liquor licences.

Authorised Officer means:

- (a) in the case of the Landlord, the Chief Executive Officer of the Landlord or any other person appointed by the Landlord to act as an Authorised Officer for the purpose of this lease (which at the Commencement Date includes **[Completion note: update as necessary]**); and
- (b) in the case of the Tenant, a director or a secretary or a person performing the functions of either of them or a person appointed by the Tenant to act as an Authorised Officer for the purpose of this lease.

Authority means a government, semi government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other authority or body, but does not include the Landlord (in its capacity as landlord).

Building means the structures, improvements and all plant and equipment from time to time erected or placed on the Land.

Business Day means any day other than:

- (a) a Saturday, Sunday or public holiday in Sydney;
- (b) the days between 24 December and 2 January in each year; or
- (c) any days during the Christmas closedown period for the NSW government sector as described in Premier's Memorandum M2016-01 and each replacement memorandum.

Call Offer means the offer made by the Landlord to the Tenant to grant a Public Domain Licence under clause 26.2.

CENDA means the Central Barangaroo Development Agreement between the Barangaroo Delivery Authority, Grocon (CB) Developments Pty Limited ACN 614 118 642, Grocon Constructors Pty Ltd ACN 006 703 091 and **[redacted]** dated **[Completion note: insert date of CENDA]**.

Central Barangaroo means part of the land formerly comprised within Folio Identifier 101/1204946 **[Completion note: title references to be updated on entry into Lease to reflect the current titles into which 101/1204946 has been subdivided]**.

Claims Settlement Amount means an amount equivalent to \$50 million increased on each anniversary of the Commencement Date by an amount equivalent to 5% of the Claims Settlement Amount for the immediately preceding year.

Clearance Certificate means a valid certificate within the meaning of section 14-220 of Schedule 1 to the TA Act that covers a period that includes the Commencement Date.

Commencement Date has the meaning given on the coversheet.

Condemned means an order being made in respect of the Premises pursuant to section 121B of the EP&A Act due to the Premises being (or being likely to become) a danger to the public for a reason other than as a result of the Tenant's breach of any of its obligations under this lease and other than because of damage or destruction.

Consent Authority means, in relation to an Application, the Authority having the function to determine the Application.

Consumer Price Index 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 Landlord (acting reasonably).

Contamination means a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance of any kind on, in or under land or water which makes or may make land or water unsafe, unfit or harmful for habitation, use or occupation by any person or animal or is such that any part of the land or water does not satisfy the criteria or standards published, or adopted by the NSW Environment Protection Authority from time to time.

Control of a corporation includes the direct or indirect power to directly or indirectly:

- (a) direct the management or policies of the corporation; or
- (b) control the membership of the board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of the corporation or otherwise.

Controller has the meaning it has in the Corporations Act.

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

Costs include costs, charges and expenses, including those incurred in connection with external advisers and consultants.

CPI Adjustment Date means each anniversary of the Commencement Date.

Cultural Contribution means [REDACTED] per square metre per annum as applied to the Gross Floor Area of the Premises, subject to indexation in accordance with clause 3.3 (plus, without limiting any other provision of this lease, GST payable under clause 22).

[REDACTED]

[REDACTED]

Current CPI means in respect of any anniversary of the Commencement Date, the Consumer Price Index number for the quarter ending immediately before that anniversary of the Commencement Date.

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 or flawed deposit arrangement;
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off;
- (c) right that a person (other than the owner) has to remove something from land (known as a *profit a prendre*), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

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

Environment includes all aspects of the surroundings of human beings.

Environmental Law means any Law concerning the Environment and includes Laws concerning:

- (a) the carrying out of uses, works or development or the subdivision of land;
- (b) emissions of substances into the atmosphere, waters and land;
- (c) pollution and contamination of the atmosphere, waters and land;
- (d) production, use, handling, storage, transportation and disposal of:
 - (i) waste;
 - (ii) hazardous substances; and
 - (iii) dangerous goods;
- (e) threatened, endangered and other flora and fauna species; and
- (f) the health and safety of people,

whether made or in force before or after the date of this lease.

EP&A Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Estate Levy means the amount of \$[REDACTED] per square metre per annum as applied to the Gross Floor Area of the Premises, subject to indexation in accordance with clause 3.2 (plus, without limiting any other provision of this lease, GST payable under clause 22).

Event of Default means a Trigger Event has occurred which:

- (a) cannot be remedied or compensated for; or

- (b) has not been remedied or compensated for within the time period specified in a Trigger Notice.

Expiry Date has the meaning given on the coversheet. **[Completion note: the Expiry Date will be 25 years after the Commencement Date]**

Gross Floor Area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor:

- (a) including:
- (i) the area of a mezzanine;
 - (ii) habitable rooms in a basement or an attic; and
 - (iii) any shop, auditorium, cinema, and the like, in a basement or attic; and
- (b) excluding:
- (i) any area for common vertical circulation, such as lifts and stairs;
 - (ii) any basement:
 - A. storage;
 - B. vehicular access, loading areas, garbage and services;
 - (iii) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting;
 - (iv) car parking to meet any requirements of the Consent Authority (including access to that car parking);
 - (v) any space used for the loading or unloading of goods (including access to it);
 - (vi) terraces and balconies with outer walls less than 1.4 metres high; and
 - (vii) voids above a floor at the level of a storey or storey above.

GST has the meaning it has in the GST Act.

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

GST Amount has the meaning given to that term in clause 22.3(b).

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

Interest Rate means the rate which is 4% per annum above the 90 day Bank Bill Swap Reference Rate last published on or before the date from which interest is payable under this lease in The Australian Financial Review (or if no such rate has been published, another rate set by the Landlord in good faith).

Land means the land comprising folio identifier **[Completion note: to be inserted following subdivision to create separate lot]**.

Landlord is defined on the cover sheet of this lease.

Landlord's Employees and Agents means each of the Landlord's employees, officers, agents, contractors, invitees and those persons who at any time are under the control of, and in or on the Premises, with the consent (express or implied) of the Landlord but at all times excluding the Tenant and the Tenant's Employees and Agents.

Landlord's Property means all plant and equipment, fixtures, fittings which constitute improvements to land for the purpose of any law which is located on the Premises (but which are not the Tenant's Property).

Law includes all statutes, regulations, by-laws, ordinance and other delegated legislation and any rule of common law or equity and any statutory guidelines and environmental planning instruments.

Licensable Public Domain Area means the areas identified in the plan in Schedule 1 of this lease in respect of those parts of the Public Domain which the Tenant may nominate as 'Casual Licensed Area' and 'Permanent Licensed Area' in accordance with clause 26.3 and includes the structures, improvements and all plant and equipment within such areas from time to time.

Licensed Area means that part of the Licensable Public Domain Area nominated by the Tenant in accordance with clause 26.3.

Market Review means a review of the Applicable Rates in accordance with clause 26.10.

Material Adverse Effect means a material adverse effect on the ability of the Tenant to comply with its obligations under this lease.

Material Amount means an amount equivalent to \$1,000,000, increased on each anniversary of the Commencement Date by an amount equivalent to 2.75% of the Material Amount for the immediately preceding year.

Non-Routine Maintenance means one-off maintenance or repairs made necessary because of unplanned damage to, or breakage of, part of the Premises, and which is necessary to keep the Premises to the Required Standard.

Outgoings means the total of amounts and Costs paid or payable in connection with the Premises including:

- (a) Rates, Taxes and other charges imposed by any Authority;
- (b) supplying, renting, operating, maintaining, servicing, repairing and replacing Services and upgrading Services to comply with any laws or requirements of Authorities; and
- (c) charges for the supply (including charges for installation, connection and consumption) of Services to or on the Premises.

However, the amount of Outgoings will be reduced by the amount of any credit or refund of GST to which the Landlord is entitled as a result of incurring Outgoings.

Parent of a person means the person directly or indirectly exercising the decision making power of the first mentioned person including:

- (a) if the first mentioned person is a corporation, a person who:
 - (i) controls the composition of the board of directors of the first mentioned person; or

- (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the first mentioned person; or
 - (iii) holds or has a beneficial interest in more than one half of the issued share capital of the first mentioned person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) if the first mentioned person is a trustee of a unit trust and, in the case of the Tenant, its interest in this lease is property subject to that trust, a person who:
 - (i) controls the right to appoint the trustee;
 - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units; or
 - (iii) holds or has a beneficial interest in more than one half of the issued units of that trust (excluding any of the issued units that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (c) if the first mentioned person is a trustee of a trust and, in the case of the Tenant, its interest in this lease is property subject to that trust, a person who:
 - (i) is a beneficiary of that trust entitled directly or indirectly to more than one half of the corpus or profits of the trust; or
 - (ii) is entitled to or whose consent is required to:
 - A. appoint or change the trustee; or
 - B. give directions to the trustee; or
 - C. vary the constituent document of the trust; or
 - D. appoint or remove beneficiaries; or
 - E. decide to whom any distribution is made or the amount of any distribution.

A person is also a Parent of another person if a part of this definition is satisfied in respect of each trust and company in any chain of trusts or companies connecting that person and the other person.

Permitted Use means:

- (a) for the first 20 years of the Term:
 - (i) retail sale of food and beverages (including alcoholic beverages where permitted by law); and
 - (ii) such uses likely to increase patronage to Barangaroo as agreed by the Landlord in writing acting reasonably; and
- (b) thereafter, any use permitted by law.

Premises means the Land and the Building and includes the Landlord's Property.

Previous CPI means the Consumer Price Index number for the quarter ending immediately before the last CPI Adjustment Date before the relevant CPI Adjustment Date (or, if there has not been one, the Commencement Date).

Public Domain means parks, streets, pedestrian connections, laneways and any other areas dedicated for public use within Central Barangaroo.

Public Domain Licence means a licence of the Licensed Area granted on the terms and conditions set out in Schedule 2.

Public Domain Practical Completion means when all works necessary to deliver the Public Domain required to achieve Stage Practical Completion of the first Stage of the Block within which the Premises are situated are complete.

Quarter Date means each 1 January, 1 April, 1 July and 1 October during the Term.

Quarterly Period means each of:

- (a) the period from and including the Commencement Date to the day immediately before the next Quarter Date;
- (b) thereafter for the remainder of the Term each period commencing from and including each Quarter Date to the day immediately prior to the next Quarter Date; and
- (c) the period from and including the last Quarter Date in the Term to and including the Expiry Date.

Rates means rates, land taxes, levies, assessments and other charges (including charges for consumption and garbage and waste removal) together with any interest, fines and penalties in connection with them (except for the those fines and penalties imposed as a result of the Landlord's or the Landlord's Employees and Agents' wrongful act, default or negligence).

Receiver includes a receiver or receiver and manager.

Recipient has the meaning given to that term in clause 22.3.

Recipient Supply has the meaning given to that term in clause 22.5.

Related Lease means each lease granted by the Landlord to the Tenant in respect of any part of Central Barangaroo whether any such lease has commenced or is in existence before or after the Commencement Date.

Rent means the amount of \$1 per annum (exclusive of GST).

Replacement or Rebuilding Work has the meaning given in clause 7.4(c).

Required Standard means at the relevant date, the standard of environmental and social sustainability of the Premises as provided for in this lease.

Routine Maintenance means such repairs, maintenance and replacements as would routinely be conducted within premises similar to the Premises to keep the Premises in good repair and condition consistent always with the Required Standard.

Scentre Trust means any of the following:

- (a) the trusts being:
 - (i) Scentre Group Trust 1;

- (ii) Scentre Group Trust 2; or
- (iii) Scentre Group Trust 3; or
- (b) any other managed investment scheme, fund or trust (wherever constituted or situated) having a trustee, responsible entity or manager which is a Scentre Related Company and the majority of the beneficial interest in which is held, directly or indirectly, by a Scentre Related Company,

and for clarity, if a Scentre Related Company holds an indirect interest held through one or more interposed trusts, the interest of that Scentre Related Company in the underlying managed investment scheme, fund or trust must be a majority beneficial interest on a "look through" basis.

Scentre Group Member means any of the following:

- (a) any Scentre Related Company;
- (b) the trustee, responsible entity or manager of a Scentre Trust in its capacity as such trustee, responsible entity or manager;
- (c) any company the majority of the issued capital of which is beneficially owned, directly or indirectly, by a person or entity referred to in paragraph (a) or (b) of this definition; or
- (d) any trustee, responsible entity or manager of any trust, fund or managed investment scheme (as applicable) in its capacity as such trustee, responsible entity or manager, which trust, fund or managed investment scheme (as applicable) is managed by or the majority of the beneficial interest in which is held, directly or indirectly, by or for the benefit of a person or entity referred to in paragraph (a) or (b) of this definition,

and for clarity, if a person or entity holds an indirect interest held through one or more interposed trusts, the interest of that person or entity in the underlying managed investment scheme, fund or trust must be a majority beneficial interest on a "look through" basis.

Scentre Group Limited means Scentre Group Limited (ACN 001 671 496).

Scentre Group Trust 1 means the Scentre Trust Group 1 constituted by a Trust Deed dated 1 April 1982 made between Scentre Management Limited, Perpetual Trustee Company Limited and PT Limited (as amended).

Scentre Group Trust 2 means the Scentre Group Trust 2 constituted by a trust deed dated 28 November 2001 (as amended).

Scentre Group Trust 3 means the Scentre Group Trust 3 constituted by a trust deed dated 19 October 2010 (as amended).

Scentre Parent means each of Scentre Group Limited and Scentre Responsible Entity.

Scentre Related Company means:

- (a) the Scentre Parent and/or any body corporate related to the Scentre Parent within the meaning of Section 50 of the Corporations Act 2001 (Cth); and
- (b) the Scentre Parent and/or any trust, fund or managed investment scheme related to the Scentre Parent within the meaning of section 50 of the Corporations Act 2001 (Cth), interpreted on the basis that references to a "body corporate" are a reference to a trust, fund or managed investment scheme.

Scentre Responsible Entity means RE1 Limited ACN 145 743 862 as responsible entity for the Scentre Group Trust 2 (ABN 66 744 282 872).

Services means the services (such as water, drainage, gas, electricity, communications, fire fighting, air conditioning, lifts and escalators) running through or servicing the Premises and includes all plant, equipment, pipes, wires, cables, ducts and other conduits in connection with them.

Shipping Activities means:

- (a) commercial shipping and commercial vessel activities, including in the case of the wharves, the loading and unloading of cargo and passengers and the berthing of vessels; and
- (b) ferry activities and the operation of ferry terminals, including ticketing, the loading and unloading of cargo and passengers and the berthing of vessels.

Signage and Façade Policy means a signage and façade policy to be agreed between the parties acting reasonably and which entitles the Tenant to erect, at a minimum:

- (a) external signage that complies with the current Sydney Local Environment Plan;
- (b) for external facing tenancies which are visible from the Public Domain, one sign per tenancy which;
 - (i) may be illuminated;
 - (ii) must not be larger than 20% of the shopfront area; and
 - (iii) is consistent with all relevant Approvals.

Superannuation Fund means a 'superannuation entity' (other than a self-managed superannuation fund) as defined in the *Superannuation Industry (Supervision) Act 1993* (Cth).

Supplier has the meaning given to that term in clause 22.3.

Sydney Metro means, at the date of this lease, the metro railway network for Sydney running from Cudgong Road, through Chatswood and the Sydney CBD, to Bankstown.

TA Act means the *Taxation Administration Act 1953* (Cth).

Taxes means taxes, levies, imposts, deductions, charges, withholdings and duties imposed by any Authority (including stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them, except:

- (a) for the those fines and penalties imposed as a result of the Landlord's or the Landlord's Employees and Agents' wrongful act, default or negligence; or
- (b) if imposed on the overall net income or capital gains of the Landlord.

Tenant is defined on the cover sheet of this lease.

Tenant's Employees and Agents means each of the Tenant's employees, officers, agents, contractors, service suppliers, sub-tenants, licensees, concessionaires, invitees and those persons who at any time are under the control of, and in or on the Premises, with the consent (express or implied) of the Tenant and at all times excluding the Landlord and the Landlord's Employees and Agents.

Tenant's Property means property in the Premises not owned by the Landlord.

Term means the period:

- (a) from and including the Commencement Date; and
- (b) to and including the Expiry Date.

Totally Destroyed means destroyed or damaged so extensively that 80% or more of the net lettable area of the Building is unable to be used as contemplated by this lease or is otherwise in the reasonable opinion of the Tenant so destroyed or damaged that it would be impractical or not commercially viable to make good such damage. **Total Destruction** has a corresponding meaning.

A Trigger Event occurs if:

- (a) the Tenant fails to comply with an essential term of this lease listed in clause 15.1(a)(ii); or
- (b) an amount (or amounts in aggregate) of \$2 million or more has become owing and due to the Landlord under the provisions of this lease and has not been paid to the Landlord by the date which is the first anniversary of the date a judgement ordering payment of that amount has been granted by a Court in favour of the Landlord against the Tenant (and there is no injunction or other order granted in favour of the Tenant staying any action by the Landlord); or
- (c) the Tenant has failed to pay an amount (or amounts in aggregate) which is the equivalent of 4 instalments of the Estate Levy which have become owing and are due to the Landlord under the provisions of this lease and:
 - (i) a judgement ordering payment of that amount was granted by a Court in favour of the Landlord against the Tenant, and
 - (ii) the Tenant has not paid the outstanding amount for a period of 3 months from the date the Landlord gives a notice to the Tenant demanding payment.

Trigger Notice means a notice given under clause 15.3.

Trust means the unit established under the Trust Deed.

Trust Deed means the constitution of the **[insert]** dated **[insert]** (as amended) made between **[insert]** as settlor and the Tenant.

Trust Fund means the property held on trust by the Tenant under the Trust Deed.

Trustee Obligations mean all obligations and liabilities of whatsoever kind, undertaken or incurred by, or devolving upon the Tenant (as trustee of the Trust) under or in respect of this lease, agreement or other instrument collateral herewith or given or entered into pursuant hereto whether express or implied by statute or other legal requirements or arising otherwise howsoever.

Valuer means an independent 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 actually engaged in, valuing premises like the Building or in respect of any market review of the Applicable Rates has the equivalent experience in respect of the Licensed Area.

Withholding Amount means an amount payable to the Commissioner pursuant to section 14-200 of Schedule 1 to the TA Act.

Withholding Variation means a valid variation made under section 14-235 of Schedule 1 to the TA Act.

Wholesale Fund means a 'managed investment scheme' all of the 'members' (as those terms are defined in section 9 of the Corporations Act) of which are a 'wholesale client' as that term is defined in section 761A of the Corporations Act.

1.2 References to certain general terms

Unless the contrary intention appears, a reference in this lease to:

- (a) **(variations or replacement)** a document (including this lease) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this lease;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Authority;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) **(two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (i) **(severally)** an agreement, representation or warranty by two or more persons binds each of them individually in their respective proportions;
- (j) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (k) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (l) **(calculation of time)** if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (m) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (n) **(accounting terms)** an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (o) **(meaning not limited)** the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (p) **(next day)** if an act under this lease to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day;

- (q) **(next Business Day)** if an event under this lease must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day;
- (r) **(time of day)** time is a reference to Sydney time; and
- (s) **(reference to anything)** anything (including any amount) is a reference to the whole and each part of it.

1.3 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the construction or interpretation of this lease.

2. Term

2.1 Term of lease

Subject to the provisions of this lease the Landlord leases the Premises to the Tenant for the Term.

2.2 Nature of tenancy

The Landlord and the Tenant acknowledge and agree that this lease is for a term of 25 years and the Tenant:

- (a) without limiting clause 3, must pay all Costs in relation to the Premises and the Landlord has no responsibility or obligation in that regard except as expressly provided to the contrary in this lease; and
- (b) takes and is subject to the same responsibilities and liabilities in regard to the Premises including in respect of:
 - (i) persons, property, Costs and otherwise; and
 - (ii) capital or structural works repairs and maintenance,
 which the Tenant would take and be subject to if the Tenant were the freehold owner of the Premises,

and the provisions of this lease are to be read, interpreted and applied in the context of and incorporating those principles. The express provisions of this lease do not limit the scope of this clause 2.2.

2.3 Interdependency

This lease is interdependent with the Related Leases and despite any other clause:

- (a) this lease is only assignable to any assignee (and at the same time as an assignment is effected) under each Related Lease, the Public Domain Licences, if any, and the licence of the Additional Basement, if any, and the licence of the Additional Basement, if any, and the lease of the Underground Premises granted in accordance with clause 5.15, if any; and
- (b) in the event that a Related Lease is terminated due to the default of the tenant under the Related Lease, this lease will immediately terminate.

2.4

3. Rent and Outgoings

3.1 Rent

The Tenant must pay to the Landlord the Rent annually in advance with effect from the Commencement Date if demanded.

3.2 Estate Levy

- (a) [REDACTED] the Tenant must pay to the Landlord the Estate Levy by equal quarterly instalments in advance on the Commencement Date and thereafter on each Quarter Date. [REDACTED]
- (b) If an instalment is for a period of less than three months, then that instalment is that proportion of one quarter of the Estate Levy which the number of days in the period bears to the number of days in the Quarterly Period in which that period begins.
- (c) If, on any CPI Adjustment Date, the Current CPI exceeds the Previous CPI, then the Estate Levy from and including that CPI Adjustment Date is the amount of the Estate Levy payable immediately before that CPI Adjustment Date multiplied by the Current CPI and divided by the Previous CPI.

3.3 Cultural Contribution

(a)

(b)

(c)

(d)

3.4 Outgoings

- (a) The Tenant must:
- (i) pay as and when they become due for payment all Outgoings in respect of the Premises during the Term, whether assessed during the Term or not and whether or not imposed on the Landlord, the Tenant, the Land or the Premises; and
 - (ii) if required by the Landlord, produce to the Landlord the receipts for those payments within 28 days after the respective due dates for payment.
- (b) If the Tenant does not pay the Outgoings when they become due the Landlord may, if it thinks fit and after having given the Tenant not less than 14 days' written notice, pay the same and any sum or sums so paid may be recovered by the Landlord as if the sum or sums were Rent in arrears.
- (c) If the Landlord receives a notice, invoice or other demand for payment in respect of any Outgoings payable by the Tenant pursuant to this clause 3.4(a), the Landlord must provide a copy of that notice, invoice or demand to the Tenant as soon as is practicable after the date of receiving it and the Tenant will pay the amount specified in such notice, invoice or demand within 14 days of receipt of the notice, invoice or demand from the Landlord.

3.5 Landlord's right to reimbursement

The Tenant must repay to or reimburse the Landlord on demand an amount equivalent to any moneys paid by the Landlord in respect of any liability imposed on the Tenant under or by virtue of this lease, which liability has not already been complied with by the Tenant, notwithstanding that the liability is imposed on the Landlord under a law.

3.6 Payment despite termination

The Tenant must pay the Outgoings for the Term, or up until termination of this lease if terminated earlier in accordance with its terms, even if the Term has expired or been terminated before the Outgoings can be calculated. In that case, payment must be made by the Tenant promptly once the actual Outgoings are known and the parties must co-operate with each other and do all things reasonably required to ascertain and calculate the amounts payable by the Tenant pursuant to this clause.

4. Payments

4.1 Method of payment

The Tenant must make payments due to the Landlord under this lease by the method the Landlord reasonably requires without set off, including equitable set-off, or counterclaim and without deduction.

4.2 No demand necessary

The Landlord need not make demand for any amount required to be paid by the Tenant under this lease unless this lease says that demand must be made.

4.3 Adjustment of payments

If the Tenant pays an amount and it is found later that the amount payable:

- (a) should have been higher, then the Landlord may demand payment of the difference even though the Landlord has given the Tenant a receipt for payment of the lower amount (provided that the Landlord provides to the Tenant a tax invoice for the difference); or
- (b) should have been lower, then the Landlord must repay the difference even though the Landlord has given the Tenant a receipt for payment of the higher amount.

4.4 Obligations not affected

Expiry or termination of this lease does not affect the Tenant's obligations to make payments under this lease for periods before then or the Landlord's obligation to repay amounts under clause 4.3.

4.5 Interest on overdue money

The Tenant must pay interest at the Interest Rate on any amount payable to the Landlord under this lease which is not paid on the due date for payment. That interest:

- (a) accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days; and
- (b) is payable on demand from the Landlord or, if no such demand is made, on the last day of each calendar month.

4.6 Compounding

Interest payable under clause 4.5 which is not paid when due for payment may be added to the overdue amount by the Landlord monthly or the last day of each calendar month. Interest is payable on the increased overdue amount at the Interest Rate in the manner set out in clause 4.5 compounding daily.

4.7 Tender after termination

Money tendered by the Tenant after the termination of this lease and accepted by the Landlord may be applied in the manner the Landlord decides.

5. Use and occupation of Premises

5.1 Permitted Use

- (a) The Tenant may only use the Premises for the Permitted Use.
- (b) The Tenant may not use the Premises for any other use.
- (c) The Tenant must not carry out (or permit to be carried out) any sexually explicit or illegal business, occupation or practice from the Premises.

5.2 Defective facilities

The Tenant must not allow to be used any part of the Premises which the Tenant knows or has reason to suspect has become seriously defective, unsafe or faulty.

5.3 No warranty as to use

The Landlord does not warrant that the Premises are suitable, or may be used, for any purpose.

5.4 Improvements

- (a) The Landlord and Tenant agree that all assets and property which constitute improvements to land for the purposes of any law relating to the right of the Tenant to claim depreciation benefits and building allowances will be and remain always for all purposes owned by the Tenant.
- (b) The Landlord agrees it will:
 - (i) not seek to claim any depreciation entitlements or building allowances in relation to those assets or that property (including, without limitation, the Building);
 - (ii) not hinder the Tenant in seeking to claim such entitlements; and
 - (iii) provide such assistance as it is able and which the Tenant reasonably requires (including to sign such documents as the Tenant reasonably requires) for the Tenant to claim the benefits and allowances as referred to in clause 5.4(a).
- (c) The Tenant agrees to pay on request all Costs reasonably incurred by the Landlord in providing any assistance to the Tenant pursuant to clause 5.4(b).

5.5 Tenant may remove some property

The Landlord acknowledges and agrees that the Tenant will have the right subject to clause 16.4, but not the obligation to remove from the Premises on termination of this lease any assets and property which are Tenant's Property and not regarded as improvements to land for the purposes of any such law.

5.6 Surrounding activities

- (a) The Tenant acknowledges that it is aware that:
 - (i) the Premises are within a major event, entertainment and exhibition precinct;
 - (ii) entertainment and promotional events or activities and public festivals may be conducted within the precinct (including on adjoining land);
 - (iii) occupiers of land in the vicinity of the Premises may carry out other noisy activities;
 - (iv) roads in the vicinity of the Premises may be temporarily closed during periods when certain events or activities occur and for the purpose of carrying out maintenance and repair;
 - (v) the waterways surrounding Barangaroo and wharves in Darling Harbour, Cockle Bay, Jones Bay and Pyrmont Bay are used for Shipping Activities on a 24 hour-basis;
 - (vi) the events, activities, Shipping Activities or festivals may temporarily interfere with the Tenant's quiet enjoyment of the Premises;

- (vii) the Premises are situated in close proximity to the planned Sydney Metro which, if delivered, may:
- A. cause electrical currents to emanate from the Sydney Metro site;
 - B. cause potential increases in electrical currents in areas surrounding the Sydney Metro site;
 - C. cause electromagnetic emissions;
 - D. require the installation of cathodic protection equipment;
 - E. require the installation of high voltage electrical equipment; and
 - F. result in increased noise and vibration,
- both during construction of the Sydney Metro and operation of the Sydney Metro.
- (b) The Landlord must not prevent the Tenant or the Tenant's Employees and Agents from accessing the Premises any time, during any periods of closure or restricted access to the Premises as contemplated under clause 5.6(a)(iv) and 5.6(a)(vi). The Tenant acknowledges that this clause 5.6(b) will not apply where access is prevented or prohibited by an Authority.
- (c) The Tenant must procure that any sublease or sublicense which it grants pursuant to this lease contains the same disclosures as set out in this clause 5.6 and requires that any subtenant or sub-licensee releases the Landlord (being the head landlord under the sub-lease) from any claim in relation to the matters disclosed in this clause 5.6.

5.7 Further development

- (a) The Tenant acknowledges that after the commencement of the Term:
- (i) buildings and other improvements may be developed on surrounding land;
 - (ii) as part of that development excavation or construction works may be carried out;
 - (iii) roads in the vicinity of the Premises and Barangaroo may be temporarily closed for the purpose of carrying out that development; and
 - (iv) the Tenant's access to or enjoyment of the Premises may be affected by that development.
- (b) The Landlord does not warrant that any development will be completed.
- (c) The Landlord must not prevent the Tenant or the Tenant's Employees and Agents from accessing the Premises any time, during any periods of closure or restricted access to the Premises as contemplated under clause 5.7(a)(iii) and 5.7(a)(iv). The Tenant acknowledges that this clause 5.7(c) will not apply where access is prevented or prohibited at the request of an Authority.

5.8 NOT USED

5.9 No objection by the Tenant

Subject only to clause 5.10, Tenant is not entitled to:

- (a) object to the Landlord doing anything contemplated by;
- (b) obstruct the Landlord from properly carrying out anything in connection with;
- (c) seek injunctive or other relief as against the Landlord in respect of; or
- (d) claim compensation from the Landlord or an abatement of Rent or Outgoings in respect of

the matters disclosed in clauses 5.6 and 5.7. Nothing in this clause 5.9 is intended to prevent the Tenant from exercising any rights it has at law against a third party.

5.10 Circumstances for objection

- (a) The provisions of clause 5.9 do not apply to the extent that:

- (i) either:

- A. the Landlord has not complied with its obligations under clauses 5.6(b) or 5.7(c); or
 - B. the Landlord or Landlord's Employees and Agents have carried out any of the matters contemplated under clauses 5.6(a) or 5.7(a) in a reckless, wrongful or negligent manner; and

- (ii) as a result:

- A. there is a material adverse effect on the Tenant's use of the Premises which has caused (or is reasonably anticipated to cause) the Tenant to suffer loss, Costs or damages which are not *de minimis* in nature and either:
 - 1) any compensation or abatement sought by the Tenant is directly related to the relevant loss, Costs or damages suffered by the Tenant directly due to the Landlord not having complied with its obligations under clauses 5.6(b) or 5.7(c); or
 - 2) any compensation or abatement sought by the Tenant is directly related to the relevant loss, Costs or damages suffered by the Tenant due to the Landlord or the Employees and Agents carrying out any of the matters contemplated under clauses 5.6(a) or 5.7(a) in a reckless or negligent manner (as referred to in clause 5.9) including rectifying the circumstances resulting in those relevant loss, Costs or damages.

- (b) In all circumstances, the Tenant agrees that the matters referred to above will not constitute a breach of covenant by the Landlord under any express or implied term of this lease for breach of quiet enjoyment including clause 13.

5.11 Title

The Tenant must at all times observe and perform the restrictions, stipulations, easements and covenants referred to in the folio of the register for the Land as if the Tenant were the registered proprietor of the Land.

5.12 Branding

- (a) The Tenant must obtain the Landlord's consent (which must not be unreasonably withheld) before giving any name to the Premises or using or changing that name.
- (b) For so long as the Tenant is a Scentre Group Member, the Landlord hereby consents to the Premises together with each premises the subject of a Related Lease being collectively known as:
 - (i) Westfield Barangaroo; or
 - (ii) an alternative name in conjunction with the word Barangaroo, being the name to which the majority (or such lesser percentage as the Landlord may approve, acting reasonably, having regard to the nature and circumstances of the name change) of shopping centres owned by the Tenant or the Scentre Group Members have changed,

(in both cases, the **Approved Name**), and the Tenant must procure that on and from the Commencement Date, and thereafter, as soon as is practicable after a change of name contemplated by clause 5.12(b)(ii), the Premises and each premises the subject of a Related Lease will be known by and trade under the Approved Name.
- (c) Subject to clause 5.13, nothing in this clause 5.12 gives the Tenant the right to affix branding or other signage in respect of the Approved Name on the exterior of the Premises.

5.13 Signage and façade

- (a) No signs or advertisements are to be placed on any exterior part of the Premises, unless the Tenant has obtained the prior consent of the Landlord to the proposed signs or advertisements.
- (b) The Landlord's consent may not be unreasonably withheld if that sign:
 - (i) conforms with the Signage and Façade Policy; and
 - (ii) is consistent with the requirements of all relevant Authorities.
- (c) The Tenant agrees that all other signs or advertisements will be consistent with all Approvals and requirements of relevant Authorities.
- (d) If works are being undertaken by the Tenant in accordance with clause 7 of this lease and the works require the erection of hoardings or fencing, the parties agree that the Landlord may at its costs place signage on the hoardings or fencing to promote Barangaroo Precinct. The parties must determine and agree the content, design, location and extent of the proposed signage to be installed on any hoarding.

5.14 Consultation

- (a) If requested by the Landlord in accordance with clause 5.14(b), the Tenant must:
 - (i) provide a summary report outlining the current tenancy mix within the shopping centre, scheduling of any major events proposed to be carried

out in the next quarter and details of any significant pedestrian access issues through the shopping centre and to and from the Metro Station, noting that nothing in this clause 5.14(a) requires the Tenant to disclose any commercially sensitive or confidential information to the Landlord; and

- (ii) meet with the Landlord to discuss any matters in connection with the shopping centre and the interface with the Public Domain on a consultative basis without binding either party to the issues discussed in such consultations.
- (b) The Landlord may make a request under clause 5.14(a) not more than:
 - (i) once every three months during the first calendar year of the Term (subject to the provisions of clause 2.3); and thereafter
 - (ii) once per calendar year until the 20th anniversary of the Commencement Date

5.15 Tenant may propose extension

- (a) Provided that the Tenant is not in breach of any of its obligations under this lease, the Tenant may at any time during the period commencing 18 months prior to the Expiry Date and ending on the date which is 12 months prior to the Expiry Date give a notice to the Landlord:
 - (i) requesting the Landlord to vary this lease to extend the Term by a period of 25 years; and
 - (ii) specifying the consideration payable by the Tenant for the grant of the extension of the Term.
- (b) Within 90 days after receiving notice under clause 5.15(a), the Landlord must give a notice to the Tenant specifying if the Landlord:
 - (i) will grant an extension of the Term of 25 years on the basis of the Tenant's proposal given under clause 5.15(a); or
 - (ii) requires the Tenant to obtain a valuation in respect of the market value of the consideration payable for a lease of the Premises for a term of 25 years on the basis of such consideration being paid upfront.
- (c) If the Landlord gives a notice pursuant to clause 5.15(b)(ii):
 - (i) the Tenant must, (at the Tenant's cost), appoint a Valuer and together with the Landlord, instruct the Valuer to:
 - A. determine the then current market value of the consideration payable to extend the lease of the Premises for a term of 25 years less any market lease incentive for a lease of comparable premises for a term of 25 years on the basis of such consideration being paid upfront and the Premises being vacant and having regard to the Permitted Use of the Premises, the Building on the Premises as at the Expiry Date and any submissions made by the parties (which must be given to the Valuer no later than 10 Business Days after the date the Valuer is appointed);
 - B. give that determination to the Landlord and the Tenant, in writing, with reasons, no earlier than 15 Business Days after

the date the Valuer is appointed and no later than the date which is 20 Business Days after the Valuer is appointed;

- C. have regard to, and assume that the Tenant has complied with, the terms of this lease;
- D. disregard the goodwill of the Tenant's business and the value of any fit out to the Premises the Tenant has paid for and disregard the goodwill of any business carried on and from the Premises;
- E. disregard any subtenancy; and
- F. make that determination as an expert, not as an arbitrator and for the benefit of both the Tenant and the Landlord; and

(ii) within 20 Business Days after the date on which the Valuer makes its determination pursuant to clause 5.15(c)(i), the Tenant may give a notice to the Landlord:

- A. requesting an extension of the Term in consideration for paying to the Landlord the consideration determined by the Valuer pursuant to clause 5.15(c)(i); or
- B. advising that the Tenant does not propose an extension of the Term.

(d)

If the Landlord has accepted the Tenant's proposal in accordance with clause 5.15(b)(i) or if the Tenant has requested an extension in accordance with clause 5.15(c)(ii)A:

(i) the Tenant must as soon as is practicable and in all circumstances at least 30 Business Days prior to the Expiry Date, prepare (at its own cost) such documentation as required to vary this Lease to:

- A. increase the Term by a further period of 25 years; and
- B. delete this clause 5.15 with the intent that the Term can only be extended once and will not exceed a Term of 50 years,

and no other variations to the Lease will be made and deliver the above documentation, duly signed by the Tenant, to the Landlord together with payment of the consideration payable for the grant of the further period of 25 years as determined or agreed pursuant to this clause 5.15;

(ii) the Landlord must enter into all documentation required to effect the variation of lease referred to in clause 5.15(d)(i) within 20 Business Days after receipt of payment of the consideration payable for the grant of the variation of the lease to extend the Term for a further period of 25 years and the delivery of the relevant documentation from the Tenant in accordance with clause 5.15(d)(i). This Lease will be deemed to be varied in accordance with the terms of the documentation referred to in clause 5.15(d)(i) on and from the date that the Tenant has paid to the Landlord the consideration payable for the grant of the variation of lease to extend the Term for a further period of 25 years and has delivered to the Landlord the documentation referred to in clause 5.15(d)(i); and

(iii) if for any reason the documentation referred to in clause 5.15(d)(i) is not capable of being registered with the Land and Property Information, the Landlord will promptly do all things necessary (including granting the

Tenant a new Lease for a term of 25 years commencing on the date immediately following the Expiry Date and otherwise on the same terms as this Lease, except that any variations to this Lease which are necessary to give effect to clause 5.15(d)(i)(B) will be made) to allow the lease for the further period of 25 years to be documented and for such document to be registered with the Land and Property Information. The Tenant will (at its cost) prepare the new Lease (if applicable) and will deliver such documentation, duly signed by the Tenant, to the Landlord and the Landlord must sign and return such documentation to the Tenant within 20 Business Days after receipt of same. The new Lease will be deemed to be in full force and effect on and from the date that the Tenant has paid to the Landlord the consideration for the grant of the lease for the further term of 25 years and has delivered to the Landlord the new Lease as required by this clause 5.15.

6. Tenant's additional rights and obligations

6.1 General obligations

The Tenant must:

- (a) comply on time with all laws (including all Environmental Laws) and the requirements of Authorities in connection with the Premises, the Tenant's Property and the use or occupation of the Premises (including obtaining and maintaining all consents and Approvals);
- (b) inform the Landlord of any material damage to the Premises immediately when it becomes aware of it; and
- (c) give the Landlord a copy of any notice or order which may materially affect the Landlord or the Premises, or the use or occupation of the Premises, promptly after the Tenant receives the notice or order.

6.2 Prohibited acts

The Tenant may not:

- (a) do anything in or around the Premises which is illegal; or
- (b) do anything to contaminate, pollute or increase toxicity in the Premises or their Environment in breach of the Environmental Laws.

6.3 Securing of the Premises

The Tenant is responsible for:

- (a) arranging and maintaining the security for the Premises; and
- (b) protecting against any unauthorised entry to the Premises.

6.4 Supply failure

- (a) The Tenant may not terminate this lease, stop or reduce payments under it, or claim any compensation because a Service is not available or is interrupted or fails, except to the extent that the unavailability, interruption or failure of the Service is caused or materially contributed to by the Landlord's or the Landlord's Employees and Agents' negligent act or omission.

- (b) The Landlord agrees (at the Tenant's cost and risk) to assist the Tenant as and when reasonably required by the Tenant in dealing with service providers so as to rectify an interruption or failure.
- (c) The action taken by the Landlord under clause 6.4(b) will be at the Tenant's cost and risk, except to the extent that the unavailability, interruption or failure of the Service is caused by the Landlord's or the Landlord's Employees and Agents' negligent act or omission.
- (d) If requested by the Tenant, the Landlord will act reasonably in granting any easements for Services (where such easement would benefit the leasehold title of the Premises) to any Authority and which are necessary to facilitate the Tenant's use of the Premises for the Permitted Use on terms acceptable to the Landlord (acting reasonably) and will sign such documents as are required to effect such easements.

6.5 Indirect acts

If the Tenant may not do something in connection with this lease, then it may not do anything which may result in it happening.

6.6 Tenant's Employees and Agents to comply

The Tenant agrees to ensure, so far as it is legally able to do so, that the Tenant's Employees and Agents comply, if appropriate, with the Tenant's obligations under this lease.

6.7 Tenant's risk

The Tenant accepts all risks in connection with the use and occupation of the Premises, including that a law or a requirement of an Authority may affect the use or occupation of the Premises.

6.8 Consideration of nearby properties

The Tenant must:

- (a) reasonably consider the occupiers of nearby properties in the Tenant's use and occupation of the Premises; and
- (b) endeavour to minimise inconvenience to adjacent occupiers of land when it carries out any construction works on the Premises.

6.9 Use of external parts of Premises for aerials

- (a) The Tenant may not install aerials on the roof or walls of the Premises without the consent of the Landlord, such consent not to be unreasonably withheld or delayed if the Landlord, acting reasonably, considers the aerials:
 - (i) do not have an adverse visual impact on the Premises or the surrounding improvements; and
 - (ii) do not interfere with the development of surrounding land.
- (b) The Tenant must make good any damage caused to the Premises in installing and removing the aerials.
- (c) The Landlord acknowledges that its consent is not required under this clause 6.9 for the installation of aerials on the roof or walls of the Premises to the extent the details for the installation of aerials are the subject of an Approval the application for which was approved by the Landlord.

7. Maintenance, repair and alteration of Premises

7.1 Obligation to repair

The Tenant:

- (a) must keep the Premises in good repair and condition (having regard to the age of the Building) structurally sound and wind and water-proof, fair wear and tear excepted; and
- (b) acknowledges that the Landlord is not responsible for any structural and/or capital maintenance, replacement and repair in respect of the Premises, except to the extent that the structural or capital maintenance, replacement or repair arises as a result of:
 - (i) the Landlord's breach of this lease; or
 - (ii) the wrongful, reckless or negligent act of the Landlord or the Landlord's Employees and Agents.

7.2 Premises quality

The Tenant must undertake reasonable Routine Maintenance.

7.3 Non-Routine Maintenance

- (a) The Landlord may, at any time during the Term, notify the Tenant (in accordance with clause 21.2) of any necessary Non-Routine Maintenance item of which it has become aware, in respect of the external areas of the Building or areas of the Building accessed by the public.
- (b) On receipt of a notice from the Landlord in accordance with clause 7.3(a), the Tenant may either:
 - (i) notify the Landlord within 10 Business Days that it has conducted, or will within a reasonable period conduct, the Non-Routine Maintenance referred to in the Landlord's notice; or
 - (ii) notify the Landlord within 10 Business Days that it requires representatives of the Landlord to meet with its representatives to discuss the item in the Landlord's notice and the work which may reasonably be required to be undertaken by the Tenant to restore external areas of the Premises or areas of the Premises accessed by the public.
- (c) Where the Tenant notifies the Landlord in accordance with clause 7.3(b)(ii) the parties must meet and use their reasonable endeavours to agree the works that may reasonably be required to be undertaken and the Tenant must, upon agreeing such works, perform such works as soon as practicable.
- (d) If the parties fail to reach agreement under clause 7.3(c) then either party may issue a notice of dispute under clause 19.1.
- (e) In carrying out any Non-Routine Maintenance, the Tenant must use reasonable endeavours to:
 - (i) not inhibit access or alter to a substantial extent the flow of pedestrian movement to the Public Domain or take any action that would cause significant disruption to pedestrian movements to adjoining areas; and

- (ii) minimise noise, dust and vibration emanating from the Non-Routine Maintenance.

7.4 Replacement, rebuilding and refurbishment

- (a) Subject to the requirements of this clause, the Tenant will have the right to refurbish, replace or rebuild (more than once) the Building (or any part of it) during the Term without the Landlord's consent unless required by this clause 7.4 or clause 7.6.
- (b) Where the Tenant proposes to replace or rebuild the Building so that such rebuilding or replacing is to a standard not less than the Required Standard and the proposed new Building is the same (in the reasonable opinion of the Landlord) as the Building in existence immediately prior to the exercise of such right, subject to complying with clause 7.4(d), the Tenant may do so with the Landlord's consent (not to be unreasonably withheld). The Tenant must seek the Landlord's consent no later than 60 days before it lodges an Application with the Consent Authority with respect to the proposed replacement or rebuilding, and provide to the Landlord such details as the Landlord reasonably requires to confirm that this clause 7.4(b) applies to that proposal. Any dispute as to whether this clause 7.4(b) applies must be determined under clause 19.
- (c) Where the Tenant proposes to replace or rebuild the Building so that such replacing or rebuilding is at least to the Required Standard but the proposed new Building is not the same (in the reasonable opinion of the Landlord) as the Building in existence immediately prior to the exercise of such right (**Replacement or Rebuilding Work**) then:
 - (i) the Tenant must first obtain the consent of the Landlord (subject to clause 7.4(h) not to be unreasonably withheld);
 - (ii) the Landlord and the Tenant (both acting reasonably) must agree upon the plans and specifications for the proposed new Building prior to any Application being lodged with the Consent Authority;
 - (iii) at least three months prior to the date the Tenant proposes to lodge an Application with the Consent Authority for such Replacement or Rebuilding Work, the Tenant must first make a written submission to the Landlord outlining a proposal for the Landlord's consideration; and
 - (iv) any written submission made to the Landlord under this clause 7.4(c) must contain sufficient detail and information to enable the Landlord to determine:
 - A. whether it will consent to the Tenant carrying out the Replacement or Rebuilding Work; and
 - B. the amount or amounts payable to the Landlord in consideration of the Landlord consenting to Replacement or Rebuilding Work which results in an increase to the Gross Floor Area of the Premises,

and the Landlord must notify the Tenant of its determination within 60 days after it receives the Tenant's submission under clause 7.4(c)(iii). If the Tenant fails to furnish the Landlord with all the information that it requires to consider any submission made under clause 7.4(c)(iii), then the 60 day approval period will be extended taking into account the time it took for the Tenant to furnish that additional information to the Landlord.

- (d) Where the Tenant proposes to carry out work which the Tenant considers constitutes structural work which does not require the Landlord's approval pursuant to clause 7.6(a), the Tenant must, prior to carrying out the work, (at its own cost) procure and provide to the Landlord, a certificate prepared by an independent structural engineer given for the benefit of the Landlord, confirming that the works will not affect the structural integrity of the base building structure, any structure adjoining the Premises or the structure of any building above the Premises.
- (e) The Landlord acknowledges that for the purposes of clause 7.4(d), the Tenant may provide a certificate from an independent structural engineer which is valid for a period of up to 2 years from the date of the certification confirming that a scope of works wherever carried out within the Premises will not affect the structural integrity of the base building structure, any structure adjoining the Premises or the structure of any building above the Premises.
- (f) The Tenant shall provide the Landlord, on request, with such security for the completion or replacement or rebuilding works (including any Replacement or Rebuilding Work) which the Landlord shall reasonably require having regard to the nature, scope and anticipated cost of the replacement or rebuilding.
- (g) The requirements of this clause 7.4 do not apply to the rebuilding of the Building following damage or destruction, which is governed by clause 17.
- (h) The parties agree that the Landlord may withhold its consent in its absolute discretion under clause 7.4(c) if the proposed Replacement or Rebuilding Work increases the Gross Floor Area of the Building.
- (i) In carrying out the Replacement or Rebuilding Work, the Tenant must use reasonable endeavours to:
 - (i) not inhibit access or alter to a substantial extent the flow of pedestrian movement to the Public Domain or take any action that would cause significant disruption to pedestrian movements to adjoining areas unless the Tenant has obtained the Landlord's prior written consent; and
 - (ii) minimise noise, dust and vibration emanating from the Replacement or Rebuilding Work.

7.5 Tenant's works

The Tenant agrees to ensure that any works it does which affect or relate to Premises or any part of the Premises are done:

- (a) in a proper and workmanlike manner;
- (b) in accordance with all laws and the requirements of Authorities;
- (c) without unreasonably disturbing other occupiers of or visitors to Barangaroo or land located near the Premises; and
- (d) if they are works for which the Landlord's consent is required under clause 7.4(c) or 7.6:
 - (i) in accordance with any plans, specifications and schedule of finishes required and approved by the Landlord (such approval not to be unreasonably withheld or delayed); and
 - (ii) in accordance with the Landlord's reasonable requirements and directions.

7.6 Alterations to the Premises

Without limiting clause 7.4, the Tenant shall not make or suffer or permit to be made any alterations, additions or installations in or to the Premises affecting:

- (a) the structure of the Building to the extent that any such structural works will affect the structural integrity of the base building structure, structure adjoining the Premises or the structure of any building above the Premises;
- (b) any external part of the Premises (other than areas the subject of the Public Domain Licence and other than in accordance with the Signage and Façade Policy); or
- (c) in a material way, the Services to the Premises,

without the Landlord's prior approval (not to be unreasonably withheld or delayed).

7.7 Internal alterations

- (a) Subject to clause 8, the Tenant has the right to make alterations affecting the interior of the Building without requiring the consent of the Landlord, provided such alterations do not affect or relate to external appearance of the Premises or the interface between the Building and any publicly accessible areas.
- (b) Any alterations carried out pursuant to this clause must be done so in accordance with all applicable laws and Approvals.

7.8 Landlord's consent

If the Tenant requests the Landlord's approval to a proposed alteration, addition or installation referred to in clause 7.6:

- (a) the Tenant must submit plans and specifications of the proposed work to be carried out to the Premises together with details of any contractors proposed to be engaged to carry out the works (to the extent that such information is available at the time of requesting the Landlord's consent). The Landlord must keep confidential the information provided by the Tenant to the Landlord in accordance with this clause 7.8(a);
- (b) if any of the proposed works requires lodgement of an Application with the Consent Authority, prior to lodging the Application with the Consent Authority, the Tenant must seek the Landlord's consent to the lodgement of the Application (which must not be unreasonably withheld), and provide to the Landlord such details as the Landlord reasonably requires in relation to the proposed Application.
- (c) The Landlord must within 30 Business Days after it receives the Tenant's submission pursuant to this clause 7.8(b), notify the Tenant of its determination:
 - (i) confirming the Landlord's consent to the lodgement of the Application (and in such circumstances the Landlord must do all things reasonably necessary including signing any relevant documents to enable the Tenant to lodge the Application with the Consent Authority); or
 - (ii) withholding the Landlord's consent and providing reasons for doing so;

- (d) the Landlord will (unless it notifies the Tenant otherwise) require as a condition of its approval that:
 - (i) the Tenant demonstrates to the Landlord's reasonable satisfaction that any such work will be carried out in accordance with all relevant codes, standards and regulations;
 - (ii) the Tenant pays on demand all reasonable Costs incurred by the Landlord in considering (acting reasonably) the proposed works including the reasonable fees of architects or other building consultants employed by the Landlord (acting reasonably);
- (e) subject to the Landlord providing its consent to the carrying out of the works:
 - (i) the Tenant must obtain from any Authority all Approvals to enable such proposed work to be lawfully effected;
 - (ii) the Tenant shall on request by the Landlord produce for inspection to the Landlord copies of all such Approvals from any such Authority; and
 - (iii) the Tenant must not commence the works until all Approvals have been received from all relevant Authorities;
- (f) upon completion of the works the Tenant must obtain and produce to the Landlord any certificates of compliance issued by any such Authority; and
- (g) the Tenant shall reimburse the Landlord for any cost or expense as may be reasonably incurred by the Landlord as a result of any such alteration, addition or installation including any resulting modification of or variation to the Building.

For the avoidance of doubt, the Tenant and Landlord acknowledge and agree that this clause 7.6, does not give the Tenant any rights to redevelop, replace or rebuild the Building, being the rights contained in clause 7.4.

7.9 Landholder consent

- (a) Subject to the Tenant complying with the provisions of this clause 7 and the Landlord consenting to any proposed works or an Application for those works (where the Landlord has a right to do so under this clause 7), the Landlord, in its capacity as landowner, agrees to sign all documents and provide all authorisations, consents and approvals as may be reasonably required to enable the Tenant to lodge any Application with a Consent Authority within 14 days of being requested in writing to do so by the Tenant.
- (b) The Tenant acknowledges that in giving or withholding its authorisation, consent or approval under clause 7.9(a) to an Application, the Landlord is not acting in the capacity of a Consent Authority.

8. Sustainability / Green Lease Provisions

[Completion note: this clause and provisions in relation to sustainability are to be updated in accordance with the CENDA and the CPW during the development and construction of Central Barangaroo. The draft provisions set out below are indicative only and subject to finalisation or replacement subject to the refinement of the sustainability solution to be delivered by the Developer under the CENDA]

8.1 Defined terms and interpretation

Approved Waste Operator means:

- (a) a waste operator (or operators), approved by the Landlord, acting reasonably, which has the ability to comply with the Climate Positive Waste Principles; or
- (b) where there is no reputable, reasonable and solvent operator that has the ability to comply with a particular Climate Positive Waste Principle, an operator who is most closely able to satisfy the Climate Positive Waste Principles.

Carbon Limit Threshold means greenhouse gas emissions of **[insert]** kg CO_{2eq} per square metre of Gross Floor Area of the Premises per annum.

Carbon Neutral Position has the meaning given to it in clause 8.2(a).

Carbon Offset Allowance means, on the Commencement Date, the maximum amount of **[redacted]** per square metre of Gross Floor Area per annum from the Estate Levy, as updated in accordance with clause 8.2(c), to be applied by the Landlord towards the purchase of Carbon Neutral Instruments in accordance with clause 8.2(b).

Carbon Reporting means reporting and taking account of all greenhouse gas emissions associated with the operations of the Building, with such reporting to be carried out in accordance with the principles set out in the National Carbon Offset Standard.

Climate Positive Waste Principles means:

- (a) a process which is capable of dealing with recyclable materials and mixed waste streams from Central Barangaroo in a manner which maximises the recovery of recyclable material, minimises the diversion of non-recyclables to landfill so as to achieve a minimum 80% reduction in disposal of operational waste to landfill and minimises the net carbon emissions from the disposal of waste;
- (b) a process for accounting and reporting of all greenhouse gas emissions relating to waste management operations to ensure the offsetting requirements are accounted for; and
- (c) a willingness to work with the Landlord to establish and implement a commercially feasible strategy with the objective of establishing Barangaroo as a zero waste community.

Carbon Neutral Instrument means the purchase of an eligible carbon credit (in the form of Eligible Carbon Offsets or RECs) in accordance with the National Carbon Offset Standard for the compensation of greenhouse gas emissions generated during operations of the Building.

Eligible Carbon Offset means the purchase of an eligible carbon credit in accordance with the National Carbon Offset Standard for the compensation of greenhouse gas emissions generated during operations of the Building.

Energy Related Carbon Limit Threshold means operational greenhouse gas emissions of **[insert]** kg CO_{2eq} per square metre of Gross Floor Area per annum.

Excess Carbon Offset Quantity For Energy means the value of Carbon Neutral Instruments required to be acquired to offset all greenhouse gas emissions from the Building in excess of the Energy Related Carbon Limit Threshold.

Excess Waste-related greenhouse gas Quantity for a Financial Year is the amount if any by which the greenhouse gas emissions attributable to the removal, storage and disposal of waste from the Building in that Financial Year exceeds the greenhouse gas emissions which would have been attributable to the removal, storage and disposal of waste from the Building had the Tenant satisfied the requirements of the Climate Positive Waste Principles.

Financial Year means a period of 12 consecutive months, starting in 1 July and ending on 30 June.

Minimum Water Efficiency Standard means [Completion note: insert appropriate standards for appliances].

National Carbon Offset Standard means [Note: at the time of finalisation of the Lease, insert a reference to the standard determined in accordance with clause 23.14 of the CENDA and the definition of 'National Carbon Offset Standard' in the CENDA.]

RECs mean large generation certificates which:

- (a) if created under the Renewable Energy (Electricity) Act 2000 (Cth):
 - (i) were generated from assets which became operational after 5 March 2010, and:
 - A. have not been created from electricity produced from the burning of wood waste; and
 - B. have been originally sourced from an "Accredited Generator" (as defined in the *Renewable Energy (Electricity) Act 2000* (Cth)) operating in the National Electricity Market; and
 - (ii) where required in order to establish Carbon Neutrality under either the National Carbon Offset Standard or another standard adopted by the Landlord (acting reasonably):
 - A. have been approved by the GreenPower Program Manager under the GreenPower Rules; and
 - B. are not from a source to which a multiplier has been applied under the Commonwealth Solar Credits Scheme.
- (b) if created pursuant to any equivalent scheme or method of eligibility determination operated after the repeal or replacement of the *Renewable Energy (Electricity) Act 2000* (Cth):
 - (i) is a scheme or method which has been approved by the Landlord; and
 - (ii) satisfies all of the requirements of that relevant scheme or method.

Water Balancing Report means a report identifying the volume of potable water consumption; volume of waste water, and; volume of rain water available for collection.

8.2 Carbon Neutrality

- (a) The Landlord and Tenant acknowledge and agree that:
 - (i) their aspiration with regard to Central Barangaroo and the Building is the achievement of a carbon neutral position, where the greenhouse gas emissions associated with the operation of both Central Barangaroo and the Building, including through the acquisition of Carbon Neutral Instruments, are equal to zero (**Carbon Neutral Position**); and
 - (ii) the achievement of the Carbon Neutral Position requires the annual greenhouse gas emissions from the operation of the Building to be no greater than the Energy Related Carbon Limit Threshold.

- (b) To assist in achieving the Carbon Neutral Position the Landlord agrees to apply the Carbon Offset Allowance towards the purchase of Carbon Neutral Instruments.
- (c) If, on any CPI Adjustment Date, the Current CPI exceeds the Previous CPI, then the Carbon Offset Allowance from and including that CPI Adjustment Date is the amount of the Carbon Offset Allowance payable immediately before that CPI Adjustment Date multiplied by the Current CPI and divided by the Previous CPI.

8.3 Environmental Best Practice

The Tenant must:

- (a) use reasonable endeavours to:
 - (i) develop and implement strategies to reduce site energy and waste emissions attributable to the use and occupation of the Building through building and infrastructure efficiencies, the use of onsite renewable energy and other carbon reduction strategies in order to achieve a Carbon Neutral Position; and
 - (ii) reduce, to the extent that it is reasonably practicable to do so, the adverse environmental impact caused by the operation of the Building;
- (b) be proactive in the sustainable management of the Building; and
- (c) provide to the Landlord all information reasonably required by the Landlord pursuant to this clause 8 in relation to the achievement of the Carbon Neutral Position.

8.5 Metering

The Tenant must ensure that the Premises are separately metered for electricity and gas.

8.6 Reporting

- (a) The Tenant must by 30 September in each year of the Term, provide to the Landlord Carbon Reporting in respect of the operation of the Building for the previous Financial Year; and
- (b) The Landlord may, at its cost, undertake an audit of the Carbon Reporting provided by the Tenant under clause 8.6(a), and the Tenant must provide reasonable assistance to the Landlord with undertaking such audit.
- (c) The Landlord must keep confidential all information provided to it or to which it has access in connection with this clause 8.6.

8.7 Carbon Offset

- (a) If the Carbon Reporting provided by the Tenant in accordance with clause 8.6(a) shows that the Energy Related Carbon Limit Threshold has been exceeded for the relevant year of this lease, the Tenant will be deemed to be using reasonable endeavours for the purposes of clause 8.3(a) if within 6 months of the end of each Financial Year during the Term the Tenant either:
 - (i) purchases and surrenders to the Landlord Carbon Neutral Instruments sufficient for the Landlord to offset the Excess Carbon Offset Quantity For Energy to enable the Carbon Neutral Position to be achieved; or
 - (ii) provides to the Landlord the funding for the Landlord to purchase and retire Carbon Neutral Instruments having a value of not less than the Excess Carbon Offset Quantity For Energy to enable the Carbon Neutral Position to be achieved;.
- (b) Where the Tenant surrenders Carbon Neutral Instruments under clause 8.7(a)(i) to the Landlord for retirement, the Landlord must, as soon as reasonably practicable thereafter, provide evidence of such retirement of the surrendered Carbon Neutral Instrument to the Tenant by providing details of the individual serial numbers associated with the Carbon Neutral Instrument retired.
- (c) Where a Tenant provides funding to the Landlord to purchase and retire Carbon Neutral Instruments under clause 8.7(a)(ii), the Landlord must, as soon as reasonably practicable thereafter, purchase and retire the Carbon Neutral Instruments and provide evidence of such purchase and retirement of the Carbon Neutral Instruments by providing details of the individual serial numbers associated with the Carbon Neutral Instruments.

8.8 Waste

- (a) This clause 8.8 does not apply to the disposal of any specialist, confidential or commercially sensitive material.
- (b) The Tenant must use reasonable endeavours and must procure that the occupiers of the Building use reasonable endeavours to:

- (i) implement initiatives (including education, signage and operations to separate waste streams) to encourage recycling of waste generated from the Building; and
 - (ii) utilise the services of an Approved Waste Operator to provide waste management services for Central Barangaroo; and
 - (iii) otherwise procure compliance with the relevant waste management requirements of the BMS.
- (c) To the extent that the Tenant or any other occupier of the Building procures the services of an Approved Waste Operator as contemplated by clause 8.8(b)(ii), then the Tenant and the Landlord will meet to determine in good faith there is any Excess Waste-related greenhouse gas Quantity any and if so, how much Excess Waste-related greenhouse gas Quantity has been generated by the Building for that Financial Year (rounded to the nearest tonne).

8.9 Water Balancing Report

- (a) The Tenant must by 30 September in each year of the Term, procure and provide to the Landlord a Water Balancing Report in respect of the Building for the previous Financial Year.
- (b) The Landlord may, at its cost, undertake an audit of the Water Balancing Report provided by the Tenant under clause 8.9(a), and the Tenant must provide reasonable assistance to the Landlord with undertaking such audit.
- (c) The Landlord must keep confidential all information provided to it or to which it has access in connection with this clause 8.9.

8.10 Water Initiatives

- (a) The Tenant must:
 - (i) implement appropriate education, signage and operational initiatives and guidelines to encourage occupants and users of the Building to minimise water consumption (including guidelines for drought tolerant plant selection);
 - (ii) ensure that any sanitary fittings and fixtures installed or replaced at the Premises meet or exceed the relevant Minimum Water Efficiency Standards;
 - (iii) ensure that all appliances with a water connection installed or replaced in the Premises meet or exceed the Minimum Water Efficiency Standards; and
 - (iv) not use potable water for non-potable uses, to the satisfaction of the Landlord, acting reasonably.
- (b) Promptly upon reasonable request by the Landlord, the Tenant must provide evidence of compliance with the obligations in clause 8.10(a).

8.11 Overriding clause

Despite any other provision of this lease, the Landlord is not entitled to terminate this lease for a breach of this clause 8 by the Tenant.

9. Insurances

9.1 Building and other insurance

The Tenant must effect and maintain, or must procure to be effected and maintained throughout the Term:

- (a) public liability insurance written on an occurrence basis with a limit of indemnity of not less than \$50 million or any other amount reasonably required by the Landlord, for any one occurrence which covers liability (including to the Landlord) in respect of:
 - (i) damage to, loss or destruction of, or loss of use of, any real or personal property; and
 - (ii) the personal injury of, disease or illness (including mental illness) to, or death of, any person, occurring in and around the Premises and arising out of or in connection with the business carried on at the Premises;
- (b) insurance which insures against any liability for death of, or any injury, damage, expense, loss or liability suffered or incurred by any person employed by the Tenant at the Premises giving rise to a claim under any statute relating to workers' or accident compensation in New South Wales or at common law;
- (c) industrial special risks insurance covering the Premises and all contents which are material to the Tenant's ability to undertake its business conducted in the Premises (including plant and equipment, all external and internal glass and hazardous goods stored at the premises) of the Tenant against the risks of loss, damage or destruction by all insurable risks to the reasonable satisfaction of the Landlord for their full replacement or reinstatement value (including extra costs of reinstatement, consultant's fees and removal of debris);
- (d) other insurances required of it, or of a contractor or subcontractor of it, by the Landlord acting reasonably in connection with works carried out by the Tenant under clause 7; and
- (e) other insurances which, in the Landlord's reasonable opinion, a prudent tenant would affect over time having regard to the nature of the Premises and this lease and which are consistent with prudent industry practice at the time in New South Wales.

The Tenant must ensure that each insurance required by this lease is in force on the Commencement Date and is maintained during the Term.

9.2 The policy

The Tenant must ensure that:

- (a) the insurances referred to in clause 9.1(a) (relating to public liability) provide that:
 - (i) all insurance agreements name as insureds and operate as if there was a separate policy of insurance covering the Landlord and the Tenant;
 - (ii) failure by any insured to observe and fulfil the terms of the policy or to comply with the duty of disclosure or misrepresentation does not prejudice the insurance of any other insured; and

- (iii) the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against insureds;
- (b) the insurance referred to in clause 9.1(c) (relating to industrial special risks) provides that:
 - (i) all insurance agreements name as insureds and operate as if there was a separate policy of insurance covering the Landlord and the Tenant for their respective rights and interests;
 - (ii) failure by any insured to observe and fulfil the terms of the policy or to comply with the duty of disclosure or misrepresentation by any insured does not prejudice the insurance of any other insured; and
 - (iii) the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against insureds; and
- (c) each insurance required by this lease except for the insurance referred to in clause 9.1(b) (relating to workers compensation insurance) is effected:
 - (i) with reputable insurers with a rating of A- or better by Standard and Poor's or the equivalent rating with another rating agency;
 - (ii) on terms and conditions (including deductible amounts) approved in writing by the Landlord, which approval by the Landlord must not be unreasonably withheld; and
 - (iii) once approved by the Landlord, the terms of the insurance are not materially changed without the Landlord's prior written approval (not to be unreasonably withheld). The Tenant must pay the Landlord for its reasonable legal and other Costs (if any) associated with determining whether or not to approve any such requested change.

9.3 Evidence of policies

- (a) The Tenant must, in respect of each insurance required to be effected and maintained in accordance with this lease give the Landlord, not less than 30 days prior to each renewal date in respect of each policy, copies of the relevant cover notes, policies (other than policies that are effected under a global insurance program covering the primary insured's other business activities), certificates of currency and renewal certificates.
- (b) If the Tenant does not comply with its obligation to effect and maintain the insurances required by this lease, or if the Tenant fails to provide evidence that such insurances have been effected, the Landlord may, but is not obliged to, effect the relevant insurances and may recover the cost of doing so as a debt due from the Tenant.
- (c) The Landlord agrees to notify the Tenant prior to exercising its rights to effect the relevant insurances pursuant to clause 9.3(b).

9.4 Tenant duties

The Tenant must ensure that in relation to any insurance policy required to be effected and maintained by the Tenant in accordance with this lease it:

- (a) does not do anything or fail to do anything or (insofar as it is reasonably within its power) permit anything to occur which prejudices any insurance;
- (b) if necessary, rectifies anything which prejudices any insurance;

- (c) reinstates an insurance policy if it lapses;
- (d) does not cancel, materially vary or allow an insurance policy to lapse without the prior written consent of the Landlord, such consent not to be unreasonably withheld;
- (e) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which is likely to in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance; and
- (f) complies with the terms of each insurance policy.

9.5 Premiums and deductibles

The Tenant must punctually pay all premiums in respect of all insurances required by this lease. Any deductibles payable under any of the insurances required by this lease shall be the responsibility of the Tenant. Where a claim in respect of which a deductible is payable arises directly out of the Landlord's breach of this lease or wrongful, reckless or negligent act by the Landlord or the Landlord's Employees and Agents, the deductible must be paid by the Landlord except where the Landlord is complying with an obligation of the Tenant under this lease which the Tenant has not complied with.

9.6 Review of amount of public liability insurance

The Landlord may at four yearly intervals computed from the Commencement Date by notice require the Tenant to change the amount of public liability insurance required to be maintained by the Tenant to such amount as is adequate for a corporate with the same risk profile as the Tenant having regard to then current market practice for companies carrying on the same type of business as the Tenant or having similar assets.

9.7 Notices of cancellation

The Tenant must immediately give notice to the Landlord whenever an insurer of any of the insurances required by this lease gives the Tenant a notice of cancellation or any other notice in respect of the relevant policy of insurance or the Tenant serves a notice of cancellation on the insurer.

9.8 Reinstatement

All insurances required by this lease, except for workers compensation insurance referred to in clause 9.1, must be endorsed by the insurer to note and allow for the Tenant's obligations under clause 17 and clause 9.10, to the effect that compliance with the provisions of that clause will not prejudice the Tenant's or any other insured's rights to indemnity under the insurances.

9.9 Notifications relating to claims

The Tenant must notify the Landlord if an event occurs which gives rise, or may give rise, to:

- (a) a claim under any insurance policy required under clause 9.1 in excess of the Material Amount or any number of claims under any one such insurance policy in excess of the Material Amount;
- (b) such an insurance policy being cancelled, lapsing or being avoided; or
- (c) a claim under any insurance policy required under clause 9.1 is refused either in part or in full.

9.10 Use of claim proceeds

Subject to clause 17.3:

- (a) the Tenant must use the proceeds of any insurance under clause 9.1(c) (relating to industrial special risks) to replace or reinstate the Premises;
- (b) if the proceeds of an insurance under clause 9.1(c) are insufficient to replace or reinstate the Premises, the Tenant must, to the extent of the insufficiency, complete the replacement or reinstatement using its own funds; and
- (c) any proceeds which remain after the replacement or re-instatement of the Premises must be held by the Tenant in a separate account in the names of the Landlord, the Tenant and, if required by the Landlord, any other person who has an interest in such proceeds, and paid:
 - (i) first, to settle claims arising from or in connection with the event insured against; and
 - second, in equitable portions (having regard to their respective interests in the Premises or the effect on them of the event insured against) to the Landlord, the Tenant and, if required by the Landlord, any other person who has an interest in such proceeds.

However, if as a result of the application of clause 17.3, the Premises are not to be replaced or reinstated, then clause 9.10(c) will apply to any proceeds of an insurance under clause 9 as if they were proceeds which remain after the replacement or re-instatement of the Premises.

9.11 If reinstatement not completed at settlement of claim

- (a) Subject to clause 17.3, upon settlement of a claim under any insurance relating to damage or destruction required under this lease, if the Tenant has not completed reinstatement of the Premises, or any part, the Tenant agrees to pay proceeds of an insurance claim (even under a policy in the Tenant's name only in breach of clause 9.2) into a separate joint account in the names of the Tenant and the Landlord and, if required by the Landlord or the Tenant, any other person who has an interest in such proceeds. As the Tenant proceeds to reinstate the loss or damage, the Landlord will consent to moneys being progressively drawn from the joint account for the purpose of satisfying the Costs of such reinstatement, such Costs to be agreed by the Tenant and the Landlord and failing any agreement determined in accordance with the procedures set out in clause 19. Any money left in the account after the Premises has been re-instated when all Costs associated with the re-instatement have been paid (including any Costs owed to the Landlord by the Tenant) shall belong to and be paid solely to the Tenant.
- (b) The parties agree that amounts will not be withdrawn from the joint account (other than for the purpose of reinstatement) unless the Landlord is reasonably satisfied that the money remaining in that joint account is not less than the amount which the Landlord from time to time reasonably determines or otherwise accepts is sufficient to pay all Costs of completing all such reinstatement works.

9.12 Tenant to give information

The Tenant must give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

9.13 Settlement of claims

The Tenant may not compromise, settle, prosecute or enforce a claim under any insurance relating to damage or destruction, where the claim is in excess of the Claims Settlement Amount (or where there are a number of claims, the claims total in excess of the Claims Settlement Amount) without the prior consent of the Landlord (acting reasonably) or otherwise on such basis as the Landlord and the Tenant agree in writing from time to time.

9.14 Insurer requirements

The Tenant must comply with the requirements of any insurer in relation to:

- (a) anything placed or intended to be placed by the Tenant in the Premises; and
- (b) alarms, sprinklers and other fire warning or prevention equipment.

9.15 Landlord's rights

- (a) Subject to clause 9.3(c), the Landlord may but is not obliged to remedy at any time breach by the Tenant of its insurance obligations under this clause 9.
- (b) The Tenant must pay all Costs incurred by the Landlord (including legal Costs) in remedying a breach by the Tenant of its insurance obligations under this clause 9 within 30 Business Days of demand.

10. Alienation

10.1 Tenant not to alienate

- (a) The Tenant must not:
 - (i) subject to clauses 2.3(a) and 10.2, dispose of, deal with, assign its estate and interest in the Premises or its rights and powers as Tenant under this lease;
 - (ii) subject to clause 10.10, sublet, licence, part with possession of, or share possession of the Premises; or
 - (iii) subject to clause 10.6, create or allow to come into existence an Encumbrance which affects the Tenant's estate or interests in the Premises or its rights and powers as Tenant under this lease.
- (b) For the purposes of clause 10.1(a)(i), but subject to clauses 10.4 and 10.5, a person becoming or ceasing to be a Parent of the Tenant will be deemed to be a disposal of the Tenant's estate and interest in the Premises. This clause 10.1 does not apply to any Parent of the Tenant where any change in the Parent of the Tenant will not result in a change in the effective control of the Tenant.

10.2 Assignment

- (a) Despite clause 10.1, but subject to clause 2.3(a) the Tenant may assign its estate and interest in the Premises and its rights and powers as a Tenant under this lease with the consent of the Landlord, which must not be unreasonably withheld or delayed, provided that, before the proposed transaction takes effect:
 - (i) the Tenant gives to the Landlord not less than 15 Business Days' notice of its intention to assign or transfer which sets out:

- A. the name and address of the proposed assignee or transferee; and
- B. if the proposed assignee or transferee is a company, the names and addresses of its directors;
- (ii) the Tenant proves to the reasonable satisfaction of the Landlord that the proposed new tenant is a respectable, responsible and solvent person capable of duly and punctually observing and performing the obligations of the Tenant under this lease (including having regard to any guarantees offered by persons in respect of the obligations of the proposed assignee or transferee under this lease);
- (iii) the Landlord, the Tenant and the proposed new tenant (and, if required by the Landlord, any new guarantors) signs a deed relating to the transfer or assignment in a form reasonably required by the Landlord under which:
 - A. the Tenant and the Landlord each release the other from their respective obligations under this lease arising after the transfer or assignment;
 - B. the Tenant and the Landlord each release the other from all claims in respect of, or in any way arising from, this lease except in respect of any matter or thing which occurs before the date of transfer or assignment; and
 - C. the proposed new tenant agrees to comply with this lease as if it were the Tenant in respect of:
 - 1) all obligations of the Tenant under clauses 2.2 (Nature of tenancy), 3 (Rent and Outgoings), 5.1 (Permitted Use), 9 (Insurances), 10.1 (Tenant not to alienate), 15.2 (Trigger Events) and Schedule 2 - Public Domain Licence; and
 - 2) all obligations imposed on the Tenant which arise on or after the transfer or assignment; and
- (iv) any Event of Default by the Tenant has been remedied or compensated for by the Tenant or waived by the Landlord;
- (v) the proposed new tenant satisfies the Landlord that it has effected the insurances required under clause 9;
- (vi) the Tenant and the proposed new tenant pay the Landlord's reasonable Costs, including legal Costs, of considering the proposed assignment; and
- (vii) the Tenant assigns its estate and interest in each of the Related Leases and its rights and powers as a Tenant under each of the Related Leases to the proposed new tenant at the same time as it assigns its estate and interest in the Premises and its rights and powers as a Tenant under this lease.
- (b) The Tenant and the proposed new tenant are not to be taken to have complied with this clause 10.2 until a notice to that effect is given by the Landlord to the Tenant (and in this regard, the Landlord must provide notice of its determination within 15 Business Days after receiving a notice from the Tenant and all relevant

information which may be required to be provided to the Landlord in accordance with this clause 10.2).

10.3 Assignee to comply with Tenant's obligations

By taking an assignment or transfer, the assignee or transferee is taken to have agreed with the Landlord to comply with the obligations of the Tenant under this lease after the assignment or transfer takes effect.

10.4 Change of Control of Tenant

- (a) A person may become or cease to be a Parent of the Tenant if, before the proposed event occurs:
 - (i) the Tenant gives to the Landlord 15 Business Days' notice of the proposal for a person to become or cease to be a Parent of the Tenant which sets out:
 - A. the name and address of the proposed Parent; and
 - B. if the proposed Parent is a company, the names and addresses of its directors;
 - (ii) the Tenant proves to the reasonable satisfaction of the Landlord that the Tenant will continue to be financially substantial and financially capable of complying with the Tenant's obligations under this lease;
 - (iii) the Tenant has remedied or compensated the Landlord in respect of, or the Landlord has waived, any Trigger Event and any Event of Default which has occurred; and
 - (iv) the Tenant pays the Landlord's reasonable Costs, including legal Costs, in connection with considering the proposed change of Control.
- (b) The Tenant is not to be taken to have complied with this clauses 10.4 and 10.5 until a notice to that effect is given by the Landlord to the Tenant (and in this regard, the Landlord must provide notice of its determination within 15 Business Days after receiving a notice from the Tenant and all relevant information which may be required to be provided to the Landlord in accordance with this clause 10.4).

10.5 Permitted takeovers or corporate restructures

Clause 10.1 does not apply to any of the following transactions:

- (a) if the Parent of the Tenant is a company or trust listed on a recognised stock exchange or a Wholesale Fund or a Superannuation Fund, any change in the Parent of the Tenant or change in Control of the Parent;
- (b) the initial listing of:
 - (i) units of the Trust of which the Tenant is trustee; or
 - (ii) the securities of any Parent of the Tenant or any entity in the chain of ownership of securities between the Tenant and the Parent, on a recognised stock exchange;
- (c) any transaction involving securities of the Tenant or a Parent of the Tenant while the Tenant or Parent is a company listed on a recognised stock exchange or trust

listed on a recognised stock exchange or a Wholesale Fund or a Superannuation Fund; or

- (d) where the Tenant is a Scentre Group Member, a change of Control or disposal where as a result of the change or disposal, Control is held by one or more Scentre Group Member, provided that the Tenant has (before the proposed event occurs), given notice to the Landlord of the proposed change or disposal, containing evidence to the satisfaction of the Landlord (acting reasonably) that following the proposed change or disposal, Control remains held by one or more Scentre Group Members.

10.6 Tenant's right to grant a mortgage

The Landlord and the Tenant acknowledge that, subject to clause 10.7, nothing in this lease restricts the Tenant's right to grant a mortgage, charge or other Encumbrance over the Tenant's interest in this lease.

10.7 Financier's side deed

The Landlord acknowledges that:

- (a) the Tenant may want to obtain financial accommodation and grant a mortgage, charge or other encumbrance over the Tenant's interest in this lease; and
- (b) it may be a condition of that financing that the Landlord enters into a financier's side deed and, perhaps, other agreements with the financier.

10.8 Terms of financier's side deed

The Landlord agrees to be reasonable in negotiating the terms of, and entering into, the financier's side deed referred to in clause 10.7 if:

- (a) there is no material derogation of the Landlord's rights under this lease;
- (b) the Tenant pays all Costs reasonably incurred by the Landlord arising out of, or in connection with, those agreements (including negotiating them); and
- (c) the financier's side deed contains usually accepted terms required by financiers for a similar facility.

10.9 Leasing and charging Tenant's Property

The Tenant may not mortgage, charge, lease or otherwise deal with any Tenant's Property which requires the Landlord to sign a landlord's waiver without first obtaining the consent of the Landlord, which consent will not be unreasonably withheld or delayed if:

- (a) the Tenant uses the Landlord's standard form of waiver or, if relevant, the form of waiver previously agreed to by the Tenant; and
- (b) the Tenant pays the Landlord's reasonable Costs (including legal Costs).

10.10 Sublease conditions

Despite clause 10.1, the Tenant may sublet, licence, part with possession of, or share possession of part or all of the Premises for the Permitted Use and:

- (a) in respect of the initial letting up of the Premises following commencement of this lease, use reasonable endeavours to achieve the tenancy mix and standard set out in the 'Retail Strategy' as defined in the CENDA; and

- (b) in respect of any subsequent reletting, to tenants and occupiers to be consistent with the use of the Premises and the requirements of this lease regarding use and occupation of the Premises, at a rent and on terms reflecting market practice for the leasing of tenancies in premises of the nature of the Premises from time to time.

10.11 Costs

The Tenant must within 5 Business Days of demand pay the Landlord's Costs as required by this clause 10, whether or not (for any reason) the proposed event takes place.

11. Indemnities and releases

11.1 Indemnity

The Tenant must at all times indemnify the Landlord, its officers and employees (**those indemnified**) from and against any claim, action, damage, loss, liability, cost or expense incurred or suffered by any of those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified to the extent such loss was caused or contributed to by:

- (a) any loss, injury or death, or loss of or damage to property in or on the Premises or in the vicinity of the Premises caused or contributed to by the Tenant or those for whom the Tenant is responsible (including the Tenant's invitees onto the Premises);
- (b) any default by the Tenant under this lease;
- (c) the use or occupation of the Premises by the Tenant or Tenant's agents;
- (d) any Service not working properly, being unavailable or being interrupted, or the misuse of any Service provided to the Premises caused or contributed to by the Tenant;
- (e) the escape of any water from the Premises caused or contributed to by the Tenant or Tenant's agents;
- (f) the Landlord or the Landlord's Employees and Agents doing anything which the Tenant must do under this lease but has not done or which the Landlord considers (acting reasonably) the Tenant has not done properly; and
- (g) the Landlord or the Landlord's Employees and Agents exercising, or attempting to exercise, a right or remedy in connection with this lease after the Tenant defaults under this lease or in an emergency under clause 14.4(c),

except to the extent caused or materially contributed to by the wilful, reckless or negligent act of the Landlord or the Landlord's Employees and Agents or the Landlord's breach of this lease but only in relation to sub-clauses (a), (d), (e), (f) and (g).

The Tenant agrees that the Landlord may enforce the indemnity in favour of those indemnified for the benefit of each of such persons in the name of the Landlord or of such persons.

The Tenant agrees to pay amounts due under this indemnity on demand from the Landlord.

11.2 Environmental liabilities

Without limiting any other provision of this clause 11, the Tenant:

- (a) indemnifies the Landlord against; and
- (b) releases the Landlord from; and

- (c) agrees the Landlord is not liable for,

liability or loss arising from, and costs, charges and expenses in connection with, any Contamination occurring in or on the Premises except to the extent caused or materially contributed to by the Landlord or the Landlord's Employees and Agents.

11.3 Release

- (a) The Tenant releases and forever discharges the Landlord from all actions, suits, claims, demands, causes of actions, costs and expenses, equitable under statute and otherwise and all other liabilities of any nature (whether or not the parties were or could have been aware of them) against the Landlord in any way relating to or arising out of or in connection with:
- (i) any damage, loss, injury or death to or of any person or loss of or damage to property on or near the Premises;
 - (ii) any liability for loss of, loss of use of, or damage to the Tenant's Property or for loss of the Tenant's profits;
 - (iii) anything the Landlord is permitted or required to do under this lease to the extent that the Landlord complies with all relevant obligations under this lease;
 - (iv) a Service being interrupted, not being available or not working properly; and
 - (v) the Premises not complying with any law or the requirements of any Authority,

except to the extent caused or materially contributed to by the wilful, reckless or negligent act of the Landlord or the Landlord's Employees and Agents or the Landlord's breach of this lease.

- (b) The release in clause 11.3(a) applies in respect of which the Tenant:

- (i) now has;
- (ii) at any time had;
- (iii) may have now or in the future; or
- (iv) but for this lease, could or might have had.

11.4 Continuing indemnity

Each indemnity of the Tenant contained in this lease is:

- (a) a continuing obligation by the Tenant and remains in full force and effect after the termination of this lease; and
- (b) a separate and independent obligation of the Tenant.

12. Tenant's general covenants, representations and warranties

12.1 Representations and warranties

The Tenant represents and warrants that:

- (a) if it is a company it has been incorporated as a company in accordance with the laws of its jurisdiction of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted;
- (b) it has power to enter into and observe its obligations under this lease (and any transactions contemplated by this lease);
- (c) it has in full force and effect the authorisations necessary to enter into this lease (and any transactions contemplated by this lease), observe obligations under it, and allow it to be enforced;
- (d) its obligations under this lease (and any transactions contemplated by this lease) are valid and binding and are enforceable against it in accordance with its terms;
- (e) this lease (and any transactions contemplated by this lease) do not contravene its constituent documents or any laws or any of its obligations or undertakings by which it or any of its assets are bound or cause a limitation on its powers or the powers of its directors to be exceeded;
- (f) the Tenant does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (g) it has made its own appraisal of, and has satisfied itself in all respects in connection with, the suitability of the Premises for the Tenant's proposed use of the Premises and
- (h) it has had the opportunity to investigate, and has accepted this lease, with full knowledge of and subject to any prohibitions or restrictions applying to the Premises (including their use) under any laws or the requirements of Authorities.

12.2 Trustee warranties

If the Tenant enters into this lease as trustee of the Trust, the Tenant further represents and warrants to the Landlord that as at the date of this lease:

- (a) it is the only trustee of the Trust;
- (b) so far as it is aware, no action has been taken to remove it as trustee of the Trust;
- (c) the copies of the Trust Deed and other documents relating to the Trust which have been delivered to the Landlord (if requested by the Landlord) are true copies of those documents and disclose all the terms of the Trust;
- (d) it has power under the Trust Deed to enter into and observe its obligations under this lease (and any transactions contemplated by this lease) and it has entered into this lease in its capacity as trustee of the Trust;
- (e) it is to the commercial benefit of the Trust that the Tenant enters into this lease in its capacity as trustee of the Trust;
- (f) it has in full force and effect the authorisations necessary to enter into this lease (and any transactions contemplated by this lease), to perform obligations under them and to allow them to be enforced (including, without limitation, under the Trust

Deed, and its constitution);

- (g) subject to the terms of the Trust Deed and any other limitation that applies under any statute or at common law, it has a right to be fully indemnified out of the Trust Fund in respect of obligations incurred by it under this lease (and any transactions contemplated by this lease);
- (h) as at the date of this lease, the Trust Fund is sufficient to satisfy its right of indemnity under the Trust Deed;
- (i) in connection with the Tenant entering into this lease, it has not breached any of its obligations as trustee of the Trust under the Trust Deed;
- (j) no vesting date (as defined in the Trust Deed) for the Trust has been determined by it or any prior trustee of the Trust;
- (k) the Trust has been validly created and is in existence as at the date of this lease;
- (l) it has been validly appointed as trustee of the Trust;
- (m) except for provisions implied or incorporated mandatorily by Law, including under the Corporations Act, the Trust is solely constituted by the Trust Deed;
- (n) no proceedings of any description have been or so far as the Tenant is aware, are likely to be, commenced or threatened which would have a material adverse effect on the assets or financial position of the Trust or its trusteeship of the Trust;
- (o) it has not done, or failed to do, any act whereby any of the assets of the Trust have been acquired by any other person, no assets of the Trust are presently registered in the name of any other person, and no person other than the beneficiaries previously notified to the Landlord has acquired any right of any kind whether vested or contingent in any asset of the Trust;
- (p) it is to the commercial benefit of the Trust that the Tenant enters into this lease in its capacity, inter alia, as trustee of the Trust; and
- (q) so far as it is aware, it and its directors and other officers have complied with their respective obligations in connection with the Trust.

12.3 Trustee obligations

- (a) If the Tenant enters into this lease as trustee of the Trust, the Tenant will:
 - (i) promptly notify the Landlord in writing if it ceases to be the trustee of the Trust, and use its reasonable endeavours to procure that any new trustee executes in favour of the Landlord any documents or guarantees which the Landlord reasonably requires and which are no more onerous than those required or obtained by the Landlord under or in relation to this lease; and
 - (ii) notify the Landlord promptly in writing if the Trust is determined or for any reason ceases to exist or if it is required or directed by the beneficiaries of the Trust to do any act or thing in relation to the Trust or the Trust Fund which would result in the Trust being determined or otherwise ceasing to exist.
- (b) The Tenant acknowledges and agrees for the benefit of the Landlord that it enters into this lease in its capacity as Trustee of the Trust and in its personal capacity but subject to clause 25.

12.4 Head lease or other interests

The Tenant must permit persons having an estate or interest in the Premises superior to or concurrent with the Landlord's to exercise the Landlord's or that other person's rights and otherwise perform their obligations in connection with the Premises provided that such persons comply with the Landlord's obligations and recognises the Tenant's rights under this lease.

13. Quiet enjoyment

Subject to the Landlord's rights in connection with this lease, the Tenant may peaceably possess and occupy the Premises during the Term without interference by the Landlord.

14. Landlord's additional rights, representations and warranties

14.1 Right to deal with the Land

- (a) The Landlord may grant easements for services, support, access, drainage, minor encroachments, on-going construction of improvements on surrounding land or other rights over the Land (**Site Encumbrance**) provided that:
 - (i) the easements or rights would not materially adversely affect the use of the Premises or the Tenant's rights or obligations under this lease;
 - (ii) the Landlord notifies the Tenant of its intention to grant any such Site Encumbrance;
 - (iii) the Landlord consults with the Tenant with respect to the proposed Site Encumbrance (and the parties agree to act in good faith during such consultations); and
 - (iv) the Landlord obtains the Tenant's approval of the proposed Site Encumbrance which may not be unreasonably withheld or delayed where the proposed Site Encumbrance would not materially adversely affect the use of the Premises or the redevelopment potential of the Premises, or the Tenant's rights or obligations under this lease.
- (b) Notwithstanding clause 14.1(a), the Tenant agrees that where:
 - (i) the lot within which its Premises is constructed is within a stratum which is limited in height; and
 - (ii) in relation to which as at the Commencement Date, the Landlord notifies the Tenant that it is proposed that there will be development above the Premises,

the Tenant may not withhold its approval to any proposed Site Encumbrance on the grounds of adverse effect on the redevelopment potential of the Premises, where that Site Encumbrance is for the benefit of a stratum which is above the stratum in which the Premises is located.

14.2 Representations and warranties

The Landlord represents and warrants that:

- (a) it has power to enter into and observe its obligations under this lease (and any transactions contemplated by this lease);

- (b) it has in full force and effect the authorisations necessary to enter into this lease (and any transactions contemplated by this lease), observe obligations under them, and allow them to be enforced;
- (c) its obligations under this lease are valid and binding and are enforceable against it in accordance with its terms;
- (d) this lease (and any transactions contemplated by this lease) do not contravene its constituent documents or any laws or any of its obligations or undertakings by which it or any of its assets are bound or cause a limitation on its powers; and
- (e) the Landlord does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).

14.3 Compliance with laws and requirements

Subject to its obligations under this lease to the Tenant, the Landlord may do anything to comply with any Law or the requirements of Authorities.

14.4 Right to enter Premises

- (a) Subject to clause 14.4(b), the Landlord may enter the Premises at reasonable times on reasonable prior notice to see if the Tenant is complying with its obligations under this lease or to do anything the Landlord must or may do, under this lease.
- (b) On entering the Premises in the circumstances contemplated by clause 14.4(a), the Landlord must:
 - (i) use all reasonable endeavours to cause minimal disturbance to the use of the Premises by the Tenant and the Tenant's Employees and Agents;
 - (ii) comply with the Tenant's reasonable site specific workplace health and safety protocols; and
 - (iii) be accompanied by a representative of the Tenant (except in the case of an emergency), in which case the Tenant must use all reasonable endeavours to arrange for a representative to accompany the Landlord in the Premises, promptly after request by the Landlord.
- (c) If the Landlord, acting reasonably, decides there is an emergency, the Landlord may enter the Premises at any time without notice. Where in the circumstances it is reasonably practicable, the Landlord will comply with clause 14.4(b).

14.5 Prospective tenants or purchasers

After giving reasonable prior notice, the Landlord may during the last year of the Term:

- (a) enter the Premises at reasonable times to show prospective purchasers or tenants through the Premises; and
- (b) display for a reasonable time on the Premises a sign indicating that the Premises are available for purchase or lease.

14.6 Change of landlord

- (a) Prior to dealing in any way with its interest in the Premises, the Landlord must provide at least 10 Business Days' notice of such dealing to the Tenant.

- (b) If the Landlord deals with its interest in the Premises so that another person becomes the landlord:
- (i) subject to the Landlord delivering to the Tenant the deed referred to in clause 14.6(b)(ii) (if such deed is required), which has been executed by the Landlord and the other person referred to within clause 14.6(b)(ii), the Landlord is released from any obligation under this lease arising after it ceases to be the landlord but not from any antecedent breaches; and
 - (ii) (except where the transfer of the Landlord's interest in the Premises and the Public Domain Licence occurs by way of statutory vesting or otherwise through the operation of law) if asked by the Tenant, the Landlord must procure that the other person sign a deed with the Tenant under which:
 - A. the Tenant agrees with the other person to comply with this lease and the Public Domain Licence as if the other person was the Landlord;
 - B. the other person assumes the Landlord's obligations under this lease and the Public Domain Licence arising after the Landlord ceases to be landlord;
 - C. the Tenant and the Landlord each release the other from their respective obligations under this lease and the Public Domain Licence arising after the transfer or assignment; and
 - D. the Tenant and Landlord each release the other from all claims in respect of, or in any way arising from, this lease or the Public Domain Licence except in respect of any matter or thing which occurs before the date of transfer or assignment.

14.7 Agents

The Landlord may appoint agents or others to exercise any of its rights or perform any of its duties under this lease. Communications from the Landlord override those from the agents or others if they are inconsistent except to the extent the Tenant has already acted in reliance upon the communication from the agent or others.

14.8 Landlord may rectify

The Landlord may:

- (a) after giving the Tenant 60 Business Days prior notice or such longer period as is reasonable having regard to the breach, do anything which should have been done by the Tenant under this lease but which has not been done or which the Landlord reasonably considers has not been done properly; and
- (b) for that purpose, and for as long as it is necessary for that purpose, the Landlord and the Landlord's Employees and Agents may enter the Premises and remain there.

In exercising its rights under this lease the Landlord must use reasonable endeavours not to interfere with the Tenant's use of the Premises. For the avoidance of doubt, to the extent there is any inconsistency between clause 15.6 and this clause 14.8, the provisions of clause 15.6 prevail.

14.9 Landlord not liable

The exercise of the Landlord's rights under clause 14.8 is not a breach of clause 13.

14.10 Representatives

The Landlord and the Tenant may appoint representatives to exercise any of their rights or perform any of their duties under this lease. If either party notifies the other party of such an appointment and the scope of the representative's authority:

- (a) the representatives must be treated as if they were the Landlord or the Tenant, whichever is applicable, when they are exercising those rights or performing those duties;
- (b) matters within the knowledge of a representative will be taken to be within the knowledge of the Landlord or the Tenant, whichever is applicable;
- (c) communications from the Landlord and the Tenant override those from the representatives if they are inconsistent except to the extent to which the receiving party has acted in reliance upon communication from the other party's representatives; and
- (d) a direction of either party to this lease to a representative of the other party, prior to the receipt of notification that that person is no longer the party's representative, will be taken to have been given to the other party to this lease.

14.11 Change of representative

Each party agrees to promptly notify the other party of any changes in relation to, or the termination of the appointment of, a representative.

14.12 Landlord's position as an Authority

If the Landlord is an Authority nothing in this lease (and any transactions contemplated by this lease) operates to restrict or otherwise affect the Landlord's statutory discretion in exercising its powers as an Authority, as distinct from its powers as a landlord and owner of the Premises. If there is a conflict between the statutory discretion of the Landlord as to the exercise of powers as an Authority on the one hand and the satisfaction and performance of the Landlord's obligations as Landlord and owner of the Premises under this lease on the other, the former will prevail.

15. Default and termination

15.1 Essential terms

- (a) Subject always to clause 15.7, the following obligations of the Tenant are the essential terms of this lease:
 - (i) the obligations to pay money to the Landlord; and
 - (ii) the obligations under:
 - A. clause 5.1 (Use and occupation of the Premises);
 - B. clause 9.15(b) (regarding payment of insurance Costs); and
 - C. clause 10 (Alienation).
- (b) Despite this clause 15.1, the Landlord and the Tenant agree that the Landlord's termination rights (both pursuant to this lease and at general law) are limited to those contained in clause 15.7.

15.2 Trigger Events

The Tenant must notify the Landlord within 10 Business Days after it becomes aware that a Trigger Event has occurred giving the Landlord full details of the Trigger Event.

15.3 Trigger Notice

If a Trigger Event occurs, the Landlord may (whether or not the Tenant has given the Landlord a notice under clause 15.2) give notice to the Tenant setting out material details of the relevant Trigger Event and, if the Trigger Event is capable of remedy or can be compensated for, requiring the Tenant to remedy that Trigger Event or pay compensation within the time specified in that notice, which must time must be reasonable and must not be less than 30 Business Days.

15.4 Trigger Event not remedied

If the Tenant does not remedy a Trigger Event or pay compensation in accordance with clause 15.3 within the time specified in the Trigger Notice, or if the Trigger Event cannot be remedied or compensated for, the Landlord may give the Tenant a notice stating that an Event of Default has occurred.

15.5 Events of Default

The Tenant must ensure that no Event of Default occurs.

15.6 Landlord may remedy

- (a) The Landlord may but is not obliged to remedy at any time (including entering upon the Premises for the purpose of doing so) any Event of Default.
- (b) All Costs incurred by the Landlord (including legal Costs) in remedying an Event of Default or a breach by the Tenant of its insurance obligations under clause 9 will be payable by the Tenant to the Landlord on demand.

15.7 Landlord's right to terminate

- (a) In addition to its rights under clause 15.6, the Landlord may, if an Event of Default occurs terminate this lease by:
 - (i) re-entering the Premises; or
 - (ii) by notice.
- (b) The Tenant agrees that the Landlord is not liable for, and releases the Landlord from, liability or loss arising from, and Costs incurred in connection with, anything done by the Landlord under this clause 15.7 or clause 15.6.
- (c) The Landlord agrees that it may not terminate this lease if an Event of Default occurs if the Landlord has been notified that the Tenant has commenced proceedings to challenge that Event of Default or that the Tenant has referred the matter to the dispute resolution procedures contemplated by this lease, other than where the Event of Default results from the Tenant's failure to pay Rent or other money payable by the Tenant under this lease.

15.8 Indemnity for breach

The Tenant:

- (a) indemnifies the Landlord against any liability or loss arising from, and any Costs incurred in connection with:
 - (i) an Event of Default;
 - (ii) the Tenant's non-compliance with its obligations under this lease; and
 - (iii) any payment required to be made under this lease not being made on its due date.
- (b) agrees to pay the Landlord an amount equal to any liability, loss, and Costs of the kind referred to in clause 15.8 suffered or incurred by the Landlord including legal Costs on a full indemnity basis or solicitor and own client basis, whichever is the higher,

provided that this indemnity shall not cover any liability or loss to the extent it is caused by the wilful, reckless or negligent act or default of the Landlord or the Landlord's Employees and Agents of the Landlord's breach of this lease.

15.9 Indemnity in connection with termination

If an Event of Default occurs and as a consequence this lease is terminated, then the Tenant indemnifies the Landlord against any liability or loss arising from, and any Costs incurred:

- (a) in connection with the Landlord re-entering the Premises;
- (b) because the Landlord will not receive the benefit of the Tenant performing its obligations under this lease from the date of that termination until the Expiry Date; and
- (c) in connection with anything else relating to that termination including the Landlord attempting to mitigate its loss,

whether before or after termination of this lease including legal Costs on a full indemnity basis or solicitor and own client basis, whichever is the higher. The Landlord's rights under this clause 15.9 are in addition to its rights under clause 15.8 but are subject to the Landlord's obligation to mitigate its loss.

15.10 Calculation assumptions

Subject to the Landlord's obligation to mitigate its loss in accordance with clause 15.9, the benefit of the Tenant performing its obligations referred to in clause 15.9(b) is to be calculated:

- (a) on the assumption that this lease continues in force until the Expiry Date; and
- (b) having regard to the provisions in this lease relating to:
 - (i) Rent and the Tenant's contribution to Outgoings; and
 - (ii) the performance of the Tenant's obligations under clause 7; and
 - (iii) the performance of the Tenant's other obligations under this lease.

15.11 Waiver

The Landlord and the Tenant agree that:

- (a) the Landlord's failure to enforce any breach of covenant on the part of the Tenant is not to be construed as a waiver of that breach, nor shall any custom or practice which may arise between the parties in the course of administering this lease be construed to waive or to lessen the right of the Landlord to insist upon the performance by the Tenant of any term, covenant or condition of this lease, or to exercise any rights given to the Landlord on account of any such default;
- (b) a waiver by the Landlord of a particular breach shall not be deemed to be a waiver of the same or any other subsequent breach or default; and
- (c) the demand of or subsequent acceptance of Rent under this lease by the Landlord will not constitute a waiver of any preceding breach by the Tenant of any term, covenant or condition of this lease, other than the failure of the Tenant to make the particular payment or payments of Rent so accepted, regardless of the Landlord's knowledge of such preceding breach at the time of acceptance of such Rent.

15.12 Rights not affected

Subject to the Landlord's obligation to mitigate its loss contained in clause 15.9, the Tenant expressly acknowledges and agrees that the Landlord's entitlement to recover damages from the Tenant or any other person shall not be affected or limited by:

- (a) the Landlord re-entering the Premises or otherwise terminating this lease;
- (b) the Landlord accepting the Tenant's repudiation;
- (c) the Tenant abandoning or vacating the Premises; or
- (d) the conduct of either party (or that of any servant or agent of a party) constituting a surrender by operation of law.

15.13 Due date for payment

If the Tenant is obliged under this lease to pay to or reimburse the Landlord any cost, expense, charge, Outgoing or other moneys, that amount is payable on demand and recoverable as Rent and/or Outgoings in arrears, except as otherwise provided for in this lease.

16. Tenant's obligations on expiry or termination

16.1 Tenant to yield up

The Tenant must:

- (a) vacate the Premises on the earlier of the Expiry Date and the date this lease is terminated; and
- (b) leave the Premises in a condition consistent with the Tenant having complied with all its obligations under this lease.

16.2 Removal of Tenant's Property

The Tenant may (subject to clauses 5.4 and 16.4), remove furniture, loose equipment, goods and other items of Tenant's Property but which do not form part of the Premises or which are not affixed (or intended to be affixed) to the Premises from the Premises:

- (a) before the day when the Premises must be vacated; or
- (b) if this lease is terminated in accordance with clause 15, within 30 Business Days after such termination

16.3 Tenant to make good

The Tenant must promptly make good, to at least the standard existing before removal, any damage caused by any property being removed from the Premises.

16.4 Tenant may not remove certain property

The Tenant may not remove anything the removal of which will cause damage to the Premises which cannot be repaired.

16.5 Tenant's failure

- (a) If the Tenant fails to remove the Tenant's Property under clause 16.2, the Landlord may either:
 - (i) cause the Tenant's Property to be removed and stored at the risk and Cost of the Tenant; or
 - (ii) treat the Tenant's Property as abandoned and deal with it in such manner as the Landlord thinks fit without being liable in any way to account to the Tenant.
- (b) If the Tenant fails to make good any damage under clause 16.3, the Landlord may give notice to the Tenant specifying the work which the Landlord requires the Tenant to carry out in order to satisfy the Landlord's requirements under clause 16.3.
- (c) Within 20 Business Days of receipt of a notice from the Landlord in accordance with clause 16.5(b), the Tenant may (at its own cost and in accordance with the requirements of this lease) carry out the works referred to in the Landlord's notice and on completion of those works give written notice to the Landlord confirming that the Tenant has conducted the make good works referred to in the Landlord's notice.
- (d) If the Tenant does not give a notice (or gives a notice but fails to complete the make good works required pursuant to clause 16.3) the Landlord is entitled to carry out the relevant works the subject of the Landlord's notice under clause 16.5(b) (or any part of those works) at the Tenant's Cost. The Landlord will be entitled to recover from the Tenant any Costs reasonably incurred by it in carrying out such work on demand.
- (e) A certificate by the Landlord as to the amount of any Cost under this clause is prima facie evidence of the amount of such Cost and must be paid by the Tenant to the Landlord on demand.

17. Damage or destruction

17.1 Total Destruction

If the Building is Totally Destroyed the Tenant must, subject to clause 17.3:

- (a) promptly:
 - (i) make the Premises safe and secure;
 - (ii) give the Landlord a report from a structural engineer as to the structural stability of the Premises;
 - (iii) clear all debris from the Land; and
- (b) reinstate the Premises in accordance with clause 17.2.

17.2 Rebuilding alternatives

Subject to clause 17.3, the Tenant may, at its cost, either:

- (a) reinstate the Building in accordance with its original design subject to any modifications as may be required by any competent Authority and approved by the Landlord (such approval not to be unreasonably withheld); or
- (b) rebuild the Building to a different design, in which case the provisions of clause 7.4 will apply.

17.3 Tenant not proceeding

- (a) This clause 17.3 will apply if:
 - (i) the Tenant has not gained all appropriate Approvals for the rebuilding of the Building and has not commenced on site within:
 - A. 60 months from the date of the Building being Totally Destroyed so that completion will occur not more than 60 months later; or
 - B. if clause 17.2(b) applies and:
 - 1) the Landlord and Tenant have not agreed how the Building is to be rebuilt within 36 months from the date of the Building being Totally Destroyed; and
 - 2) the matter is the subject of a dispute in accordance with clause 19,
 - (ii) the Total Destruction occurs in the last 5 years of the Term.
- (b) Where 17.3(a) applies, then this lease will, at the option of either the Landlord or the Tenant, terminate on the date which is one month after the relevant party notifies the other of such termination, without compensation to the Tenant and without prejudice to the rights of either party in respect of any antecedent claim or any antecedent breach or non-observance of any covenant or provision of this lease.

- (c) If this lease is terminated pursuant to 17.3(b), the Tenant must, at its cost but using relevant insurance proceeds to the extent available, if (and to the extent) required by the Landlord, promptly demolish the Building and clear the Land and Licensed Area of all improvements, structures, rubbish and debris. Failing such demolition and clearance being carried out to the Landlord's satisfaction, the Landlord may provide the Tenant with a written notice to complete such work.
- (d) Within 20 Business Days of receipt of a notice from the Landlord in accordance with clause 17.3(b) the Tenant may (at its own cost and in accordance with this lease) carry out the works referred to in the Landlord's notice and on completion of those works give written notice the Landlord confirming that the Tenant has conducted the work referred to in the Landlord's notice.
- (e) If the Tenant does not give a notice (or gives a notice but fails to complete the works required pursuant to clause 17.3(c)) the Landlord will be entitled to carry out such demolition and clearance at the Tenant's cost. The Landlord will be entitled to recover from the Tenant any Costs reasonably incurred by it in carrying out such works as a liquidated debt due and payable by the Tenant to the Landlord on demand.

17.4 Partial Destruction

If the Building is partially destroyed or damaged at any time during the first 94 years of the Term, the Tenant must promptly at its cost obtain all necessary Approvals and repair, replace and make good the whole of the destroyed or damaged portion of the Building as nearly as possible to the condition required under this lease immediately prior to such damage or destruction, with such modifications as the Tenant may seek and the Landlord approve (such approval not to be unreasonably withheld) or as may be required by any Authority and approved by the Landlord (such approval not to be unreasonably withheld).

18. Costs, charges and expenses

18.1 What the Tenant must pay

Notwithstanding any other provision in this lease, the Tenant must pay or reimburse the Landlord on demand for:

- (a) the reasonable Costs of the Landlord in connection with any consent or approval (whether or not that consent or approval is given), exercise or non-exercise of rights by the Landlord arising from a breach by the Tenant of its obligations under this lease (including in connection with the actual enforcement or preservation of any rights under this lease), waiver, variation, release, surrender or discharge in connection with this lease;
- (b) unless already paid by the Tenant, Taxes and Rates (including registration fees) which may be payable or determined to be payable by the Landlord in connection with this lease or a payment or receipt or any other transaction contemplated by this lease excluding any fine or penalty incurred due to the default of the Landlord; and
- (c) stamp duty and registration fees and if applicable, fines and penalties in respect of them (except for those fines and penalties imposed as a result of the Landlord's or the Landlord's Employees and Agents' wrongful act, default or negligence) which may be payable or determined to be payable in connection with this lease,

including in each case reasonable legal Costs on a full indemnity basis or solicitor and own client basis, whichever is the higher. The Costs payable by the Tenant under this clause do not include any internal Costs of the Landlord including salaries and overhead expenses, or any Costs in connection with the negotiation and execution of this lease.

18.2 Independent consultants

The Tenant agrees that the Costs referred to in clause 18.1 include the reasonable Costs incurred by the Landlord with respect to any independent consultant or other person reasonably appointed to consider or determine any breach of the Tenant under this lease or to any matter arising from or in connection with a request for the Landlord's consent or approval made by the Tenant.

18.3 Obligations at Tenant's cost

Anything which the Tenant is required to do or may do under this lease must be done at the Tenant's cost unless expressly specified otherwise in this lease.

18.4 Consents obtained by Landlord

If the Landlord has agreed to obtain a person's consent before the Landlord gives its consent under this lease or to pay Costs incurred by that person in giving consent, then the consent from that person is a consent in connection with this lease.

18.5 Limitations

For the purpose of this clause 18, the Landlord agrees that it will act reasonably in considering using its internal resources without charge to the Tenant, having regard to the skills, expertise and capacities of the Landlord and its employees and agents, before going out to an external person for services where charges incurred by the Landlord will be charged to, and paid by, the Tenant.

19. Dispute resolution

19.1 Notice of dispute

If a dispute between the Tenant and the Landlord arises in connection with this lease or its subject matter, then the disputing party must give to the other a notice adequately identifying and providing details of the dispute.

19.2 Continuing to perform obligations

All parties to this lease must continue to perform their respective obligations under this lease if there is a dispute but will not be required to complete the matter the subject of the dispute, unless the party requiring that matter to be completed indemnifies the other party against reasonable Costs and losses suffered in completing that matter if the dispute is not resolved in favour of the indemnifying party.

19.3 Further steps required before proceedings

Any dispute between the parties arising in connection with this lease or its subject matter must, as a condition precedent to the commencement of litigation, first be discussed in good faith at a meeting of the senior managers and Chief Executive Officers of both the Landlord and the Tenant.

19.4 Disputes for expert determination

If the discussion referred to in clause 19.3 relates to a matter arising in connection with clauses 7.4, 8 or 17 and has not resulted in settlement of the dispute within one month (or such other period as the parties may agree) after that discussion, then either party may refer the matter to expert determination in accordance with clause 19.5.

19.5 Choice of expert

A dispute to be referred to an expert in accordance with clause 19.4 must be determined by an independent expert of at least five years immediate past experience in the relevant field:

- (a) agreed between and appointed jointly by the parties; or
- (b) in the absence of agreement within 5 Business Days after the matter is referred to expert determination, appointed by the President or other senior officer for the time being of the body administering the relevant field.

19.6 Agreeing the relevant field

If the parties cannot agree as to the relevant field, either party may refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the parties.

19.7 Expert

The expert appointed to determine a dispute:

- (a) must have a technical understanding of the issues in contest;
- (b) must not have a significantly greater understanding of one party's business or operations which might allow the other side to construe this greater understanding as a bias; and
- (c) must inform each disputing party before being appointed the extent of the expert's understanding of each party's business or operations. If that information indicates a possible bias, then that expert must not be appointed except with the approval of both parties.

19.8 Agreement with expert

The parties must enter into an agreement with the expert appointed under clause 19.5 setting out the terms of the expert's determination (including the time within which the expert must make the determination) and the expert's fees within 7 Business Days after the expert is appointed.

19.9 Directions to expert

In reaching a determination in respect of a dispute under clause 19.4, the expert must give effect to the intent of the parties entering into this lease and the purposes of this lease.

19.10 Role of expert

The expert must:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
- (c) not accept verbal submissions unless both parties are present and on receipt of a written submission from one party ensure that a copy of such submission is given promptly to the other party;
- (d) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;

- (e) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
- (f) if considered appropriate by the expert, appoint any third party consultants or experts to the extent required to determine the matter in dispute;
- (g) issue a draft certificate stating the expert's intended determination giving each party 10 Business Days to make further submissions;
- (h) issue a final certificate stating the expert's determination; and
- (i) act with expedition with a view to issuing the final certificate as soon as practicable.

19.11 Complying with directions of expert

The disputing parties must comply with all directions given by the expert in relation to the resolution of the dispute, and must within the time period specified by the expert, give the expert:

- (a) a short statement of facts;
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

19.12 Expert may convene meetings

The expert will hold a meeting with all the parties present to discuss the dispute and may commission reports from relevant advisers or consultants. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.

19.13 Meeting not a hearing

The parties agree that a meeting under clause 19.12 is not a hearing and is not an arbitration.

19.14 Confidentiality of information

The parties agree, and must procure that the expert agrees as a condition of its appointment:

- (a) subject to clause 19.14(b), to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination; and
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a party or adviser who has signed a confidentiality undertaking to the same effect as clause 19.14(a); or
 - (ii) if required by law to do so; and
- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination.

19.15 Confidentiality in proceedings

The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (a) views expressed or proposals or suggestions made by a party or the expert during the expert determination relating to a possible settlement of the dispute;
- (b) admissions or concessions made by a party during the expert determination in relation to the dispute; and
- (c) information, documents or other material concerning the dispute which are disclosed by a party during the expert determination unless such information, documents or facts shall have been otherwise discoverable in judicial or arbitral proceedings.

19.16 Final determination of expert

The parties agree that the final determination by an expert is final and binding upon them except in the case of manifest error of fact or law on the face of the determination.

19.17 Expert's costs

If any expert does not award costs, the disputing parties must each pay an equal share of the expert's costs in making the determination.

19.18 Expert generally not liable

The parties agree that other than where the expert has engaged in fraud, the expert will not be liable to them in any respect in connection with the carrying out of the expert's functions in accordance with this lease.

20. Compulsory acquisition and condemnation

20.1 Compulsory acquisition

Without prejudice to any statutory right of the Tenant to receive compensation for any compulsory acquisition, nothing contained in this lease is deemed to preclude or prevent the exercise of any statutory right of compulsory acquisition affecting the Land at any time during the Term.

20.2 Partial compulsory acquisition or partial Condemnation

If only a part of the Land or the Premises is compulsorily acquired or Condemned such that it is unreasonable or imprudent to operate the remainder, then, any compensation paid to the Landlord or the Tenant which is paid in respect of the reduction in the market value of the remainder (including payment for loss attributable to severance (as defined in section 58 of the *Land Acquisition (Just Terms Compensation) Act 1991*)) must be used for making alterations or modifications to the remaining Premises to a specification agreed between the Landlord and the Tenant and in the absence of such agreement, to a specification substantially the same as existing prior to such acquisition or Condemnation.

21. Notices

21.1 Form

Unless expressly stated otherwise in this lease, all notices, certificates, consents, Approvals, directions, requests, waivers and other communications in connection with this lease must be in writing, signed by an Authorised Officer of the sender and marked for attention as set out or referred to in clause 21.2 or, if the recipient has notified otherwise, then marked for attention in the way last notified.

21.2 Delivery

They must be:

- (a) left at the address set out or referred to below;
- (b) sent by prepaid post (airmail, if appropriate) to the address set out or referred to below;
- (c) sent by email to the email address set out or referred to below; or
- (d) given in any other way permitted by law.

Landlord

Name: Barangaroo Delivery Authority
 Address: 27/201 Kent Street
 SYDNEY NSW 2000
 Email: [insert]
 For the attention of: Chief Executive Officer

Tenant

Name: [insert]
 Address: [insert]
 Email: [insert]
 For the attention of: [insert]

However, if the intended recipient has notified a changed postal address or changed email address, then the communication must be to that address.

21.3 When effective

Notices take effect from the time they are received unless a later time is specified in them.

21.4 Receipt - post

If sent by post, notices are taken to be received 5 Business Days after posting (or 10 Business Days after posting if sent to or from a place outside Australia).

21.5 Communications by email

With respect to communications sent by email:

- (a) only the letter in .pdf format attached to the email and, subject to clause 21.5(b), any attachments to such letter which are referred to in the letter, will form part of the communication under this clause 21.5. Any text in the body of the email or the subject line will not form part of the communication;
- (b) an attachment to an email will only form part of a communication under this clause 21.5 if it is in *.pdf, *.xls, *.doc, *.vsd, *.mpp, *.mdb, *.xer or *.ppt format, or such other format as may be agreed between the parties from time to time; and
- (c) the parties agree, with respect to any communications under or in connection with this lease to ensure that their respective firewall and/or mail server (as applicable) allows messages of up to 20 MB to be received.

21.6 Receipt - general

Other than in the case of notices sent by post (in which case clause 21.4 applies), if notices are left at an address or received after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day.

22. GST

22.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 22 have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 22.
- (c) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

22.2 Reimbursements

Any payment or reimbursement required to be made under this lease that is calculated by reference to a Cost or other amount paid or incurred will be limited to the total Cost or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the Cost or amount relates.

22.3 Additional amount of GST payable

Subject to clause 22.5, if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this lease:

- (a) any amount payable or consideration to be provided under any provision of this lease (other than this clause 22), for that supply is exclusive of GST;
- (b) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
- (c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 22.3(b).

22.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 22.3 and clause 22.5), varies from the additional amount paid by the Recipient under clause 22.3, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 22.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 22.3.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this lease as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

22.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 22.3 applies is a taxable supply made by the Recipient in the same tax period (**Recipient Supply**), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 22.3 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 22.3 (or the time at which such GST Amount would have been payable in accordance with clause 22.3 but for the operation of clause 22.5(a)).

22.6 Indemnities

- (a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.
- (b) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).
- (c) A party may recover payment under an indemnity before it makes the payment in respect of which the indemnity is given.

22.7 No merger

This clause will not merge on termination of this lease.

23. General

23.1 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its approval or consent in any way it considers appropriate and in its absolute discretion (including by imposing conditions), unless this lease expressly states otherwise.

23.2 Partial exercising of rights

If a party does not exercise a right or remedy fully or at a given time, that party may still exercise it later.

23.3 Prompt performance

If this lease specifies when a party agrees to perform an obligation, that party agrees to perform it by the time specified.

23.4 Approvals and consents

By giving its approval or consent the Landlord does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

23.5 Remedies cumulative

The rights and remedies provided in this lease are in addition to other rights and remedies given by law independently of this lease.

23.6 Rights and obligations are unaffected

Rights given to the parties under this lease and the parties' liabilities under it are not affected by anything which might otherwise affect them by law.

23.7 Variation and waiver

A provision of this lease, or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

23.8 Indemnities

The indemnities in this lease are continuing obligations, independent from the other obligations of the parties under this lease and continue after this lease expires or is terminated in respect of any act, matter or thing done or omitted to be done before the date of expiry or termination of this lease. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this lease.

23.9 Construction

No rule of construction applies to the disadvantage of the Landlord because it was responsible for the preparation of, or seeks to rely on, this lease or any part of it.

23.10 Acceptance of money or other acts not a waiver

If the Landlord:

- (a) accepts money under this lease (before or after termination);
- (b) does not exercise or delays exercising any right under clause 14;
- (c) gives any concession to the Tenant; or
- (d) attempts to mitigate its loss,

it is not a waiver of any breach or of the Landlord's rights under this lease. An attempt by the Landlord to mitigate its loss is not a surrender of this lease.

23.11 Exclusion of statutory provisions

In this lease:

- (a) the covenants, powers and provisions implied in leases by sections 84, 84A, 85, 133A and 133B of the Conveyancing Act 1919 (NSW) do not apply; and
- (b) words used in any of the forms of words in the first column of part 2 of schedule 4 to the Conveyancing Act 1919 (NSW) do not imply a covenant under section 86 of that Act.

23.12 Prior breaches

Expiry or termination of this lease does not affect any rights in connection with a breach of this lease before then.

23.13 Warranties and undertakings

The Tenant warrants that it has relied only on its own enquiries in connection with this lease and not on any representation or warranty by the Landlord or any person acting or seeming to act on the Landlord's behalf, except as otherwise set out in this lease.

23.14 Inconsistent law

To the extent permitted by law, this lease prevails to the extent it is inconsistent with any law.

23.15 Supervening legislation

Any present or future legislation which operates to vary the obligations of a party in connection with this lease with the result that the other's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

23.16 Not used**23.17 Serving documents**

Without preventing any other method of service, any document in a court action may be served on a party by being delivered or left at that party's address for service of notice under clause 21.2.

23.18 Parties bound

Even if this document is found not to be a lease or is found to be a lease for a term less than the Term, the parties are bound in contract to carry out their obligations under this document for the Term, unless expressly released under this document from those obligations.

23.19 Entire agreement

This lease constitute the entire agreement of the parties about its subject matter and supersedes all previous agreements, undertakings and negotiations on that subject matter.

23.20 CGT Event F2 Election

The Landlord elects to apply section 104-115 of the *Income Tax Assessment Act 1997 (Cth)* to the grant of this lease.

23.21 Foreign Resident Capital Gain Withholding

- (a) The Landlord and Tenant acknowledge that the Tenant may be required to pay a Withholding Amount to the Commissioner on or before the Commencement Date.
- (b) At least 14 days prior to the Commencement Date the Landlord must provide to the Tenant one of the following:
 - (i) a Clearance Certificate; or
 - (ii) a Withholding Variation varying the Withholding Amount to nil.

23.22 Operation of Building Management Statement

The parties acknowledge and agree that:

- (a) a building management statement, strata management statement or other equivalent agreement governing the ongoing operation of the structure in which the Premises is situated may be entered into either before or after the Commencement Date (**Management Statement**);

- (b) the matters contemplated in clauses 7.4 ('Replacement, rebuilding and redevelopment'), 8 ('Sustainability / Green Lease Provisions'), 9 ('Insurances') and 17 ('Damage or destruction') may be addressed either partly or entirely within the terms of the Management Statement;
- (c) to the extent that an obligation of the Tenant under this lease may be discharged or satisfied by the operation of the Management Statement, that obligation will be taken to be discharged or satisfied for the purposes of this lease, provided that, if requested by the Landlord, the Tenant must provide evidence satisfactory to the Landlord to demonstrate that the Tenant's obligations have been met under this lease; and
- (d) nothing in this clause 23.22 operates to derogate from the Tenant's obligations under this lease or may be taken to constitute a waiver of the Landlord's rights under this lease.

23.23 Concurrent Lease

- (a) The Landlord may grant a concurrent lease in respect of the Premises or any land including the Premises during the Term.
- (b) The Tenant is not entitled to make, and must not make, any claim, raise any objection or take any action whatsoever in respect of the granting of any concurrent lease, or surrender or termination of this lease as a result of the granting of a concurrent lease in respect of the Premises or any land including the Premises.
- (c) The Tenant must procure that any sublease granted pursuant to this lease (and which must be granted in accordance with clause 10.10) includes provisions reflecting clause 23.23(b).

24. Governing law, jurisdiction and service of process

24.1 Governing law

This lease is governed by the law in force in New South Wales.

24.2 Submission to jurisdiction

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

25. Limitation of liability

[Completion note: limitation of liability clause to be deleted if tenant is not acting as a trustee]

- (a) The Tenant enters into this lease only in its capacity as trustee of the Trust and in no other capacity.
- (b) A liability arising under or in connection with this lease is limited to and can be enforced against the Tenant only to the extent to which it can be satisfied out of the assets of the Trust out of which the Tenant is actually indemnified for the liability.
- (c) This limitation of liability applies despite any other provision of this lease and extends to all Trustee Obligations of the Tenant in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this lease.

- (d) The parties may not sue the Tenant in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver (except in relation to the assets of the Trust), a liquidator, an administrator or any similar person to the Tenant or prove in any liquidation, administration or arrangement of or affecting the Tenant (except in relation to the assets of the Trust).
- (e) The Tenant is not obliged to do or refrain from doing anything under this lease (including, without limitation, incur any liability) unless the Tenant's liability is limited in the same manner as set out in sub-clauses (a) to (b).
- (f) No attorney, agent, receiver or receiver and manager appointed has authority to act on behalf of the Tenant in a way which exposes the Tenant to any liability.
- (g) The provisions of this clause shall not apply to any Trustee Obligations of the Tenant to the extent that it is not satisfied because, under the Trust Deed or by operation of law, there is a reduction in the extent of the Tenant's indemnification out of the assets of the Trust, as a result of the Tenant's fraud, negligence, breach of trust or acting in any manner which constitutes a breach of the Trust Deed.

26. Public Domain Licence

26.1 Licence

Subject to clause 26.2, the Landlord grants the Tenant Public Domain Licences on the terms and conditions set out in Schedule 2.

26.2 Public Domain Call Offer

The Landlord during the Term makes irrevocable offers to the Tenant to enter into Public Domain Licences of Licensed Areas.

26.3 Nomination of Licensed Area

Upon accepting a Public Domain Call Offer, the Tenant must nominate the Licensed Area (to be the subject of the Public Domain Licence) being an area which:

- (a) must be wholly situated within the Licensable Public Domain Area;
- (b) must specify those parts of the proposed 'Licensed Area' which are to comprise 'Permanent Licensed Area' for the purposes of the Public Domain Licence and provided that such areas must be wholly situated within the areas designated for 'Permanent Licensable Area' in the Licensable Public Domain Area as shown in the plan attached as Schedule 1;
- (c) must specify those parts of the proposed 'Licensed Area' which are to comprise 'Casual Licensed Area' for the purposes of the Public Domain Licence and provided that such area must be wholly situated within the areas designated for 'Casual Licensable Area' in the Licensable Public Domain Area as shown in the plan attached as Schedule 1;
- (d) must constitute a single area, contiguous with the Premises; and
- (e) must comply with the conditions of any Approval which applies to the Tenant's use of the proposed 'Licensed Area'.

26.4 Accepting the Public Domain Call Offer

A Call Offer may be accepted by the Tenant:

- (a) (if a Public Domain Licence has not previously been granted): during the Term of this lease with such Public Domain Licence granted pursuant to a valid acceptance of Call Offer under this clause 26.4(a) to commence on the date on which the Tenant accepts the Call Offer; or
- (b) (if a Public Domain Licence has been granted and has not expired at the time the Tenant purports to accept the Call Offer): during the period:
 - (i) commencing on the date which is 6 months prior to the Expiry Date of the then current Public Domain Licence; and
 - (ii) expiring on the Expiry Date of the then current Public Domain Licence, with such Public Domain Licence granted pursuant to a valid acceptance of Call Offer under this clause 26.4(b) to commence on the day immediately following the Expiry Date of the then current Public Domain Licence; or
- (c) (if a Public Domain Licence has previously been granted and has expired or been terminated, provided that any breach in respect of any part of the Licensed Area nominated by the Tenant under any previously expired or terminated Public Domain Licence has been rectified, or compensation paid, at the time the Tenant purports to accept the Call Offer): during the Term of this lease with such Public Domain Licence granted pursuant to a valid acceptance of Call Offer under this clause 26.4(c) to commence on the date on which the Tenant accepts the Call Offer; and
- (d) if the Tenant is not in breach of any of its obligations under this lease or has paid compensation to the Landlord in respect of a breach which cannot be rectified (and if a Public Domain Licence has been granted and is still current at the time a Call Offer is accepted by the Tenant, if no Suspension Notice in respect of any part of the Licensed Area nominated by the Tenant has been issued and which remains in effect due to the Tenant (as licensee) having not satisfied the conditions set out in the Suspension Notice in accordance with the requirements of the then current Public Domain Licence; and
- (e) if the Landlord is satisfied that the Public Domain has reached Public Domain Practical Completion; and
- (f) by delivering to the Landlord a notice of acceptance of the Call Offer (in the form attached as Schedule 7):
 - (i) including a plan of the nominated 'Licensed Area' in accordance with clause 26.3; and
 - (ii) evidence of the insurances (including copies of any insurance policies) as required to be provided under the Public Domain Licence; and
 - (iii) anything else the Landlord reasonably requires having regard to the obligations of the Tenant under this clause 26.4 (provided that reasonable prior notice has been given of any such requirement); and
- (g) the Applicable Rates and the Minimum Licence Fee which are to apply on the commencement of a Public Domain Licence are:
 - (i) (if a Public Domain Licence has not previously been granted): the figures determined pursuant to clause 26.7; or
 - (ii) (if a Public Domain Licence has previously been granted and has not expired as at the date on which the Tenant validly accepts a Call Offer): the figures determined pursuant to clause 26.8; or

- (iii) (if a Public Domain Licence has previously been granted and has expired or has been terminated at the date on which the Tenant validly accepts a Call Offer): the figures determined pursuant to clause 26.9.

26.5 Acknowledgements

The Tenant acknowledges that:

- (a) any Public Domain Licence prohibits the granting of any sublicense for a period that exceeds the Term; and
- (b) any Public Domain Licence will automatically terminate on the expiry or earlier termination of this lease.

26.6 Public Domain Licence binding

If the Tenant accepts a Call Offer then the Public Domain Licence is binding on the Landlord (as licensor) and the Tenant (as licensee).

26.7 Commencing Applicable Rates (where no Public Domain Licence has previously been granted)

If the Tenant accepts the Call Offer pursuant to clause 26.4(a):

- (a) the Applicable Rates which apply on the commencement of the Public Domain Licence are as follows:
 - (i) **Casual Licensed Area Rate:**
 - A. where the commencement date of the Public Domain Licence is on or before 1 January 2024: [REDACTED] per square metre of Casual Licensed Area; and
 - B. where the commencement date of the Public Domain Licence is after 1 January 2024: the rate in subclause (A) (above) increased by 2.5% on 1 January each year following 1 January 2024 on a compounding basis; and
 - (ii) **Permanent Licensed Area Rate:**
 - A. where the commencement date of the Public Domain Licence is on or before 1 January 2024: [REDACTED] per square metre of Permanent Licensed Area; and
 - B. where the commencement date of the Public Domain Licence is after 1 January 2024: the rate in subclause (A) (above) increased by 2.5% on 1 January each year following 1 January 2024 on a compounding basis; and
- (b) the Minimum Licence Fee which applies on the commencement of the Public Domain Licence is:
 - (i) where the commencement date of the Public Domain Licence is on or before 1 January 2024: \$[insert - see 'Completion note' below]; and
 - (ii) where the commencement date of the Public Domain Licence is after 1 January 2024: the rate in subclause (i) (above) increased by 2.5% on 1 January each year following 1 January 2024 on a compounding basis.

[Completion note: The Minimum Licence Fee in relation to each Block will be an amount representing:

- **the total area of the 'Permanent Licensable Area' (in square metres) as shown in the Licensable Public Domain Area plan, multiplied by 0.8, and multiplied further by the Permanent Licensed Area Rate; plus**
- **the total area of the 'Casual Licensable Area' (in square metres) as shown in the Licensable Public Domain Area plan, multiplied by 0.5, and multiplied further by the Casual Licensed Area Rate.]**

26.8 Commencing Applicable Rates (where an existing Public Domain Licence has not expired)

- (a) If the Tenant accepts the Call Offer pursuant to clause 26.4(b):
- (i) the Applicable Rates which apply on the commencement of the new Public Domain Licence are (subject to clause 26.8(b)) the Applicable Rates as determined pursuant to the Market Review process under clause 26.10; and
 - (ii) the Minimum Licence Fee which applies on the commencement of the new Public Domain Licence is the Minimum Licence Fee applicable under the then current Public Domain Licence as at the expiry of the then current Public Domain Licence increased by 2.5%.
- (b) If the Market Review process has not been concluded and the relevant Applicable Rates have not been determined at the commencement of the Public Domain Licence:
- (i) the Applicable Rates which apply on the commencement of the Public Domain Licence are the Applicable Rates under the then current Public Domain Licence as at the expiry of the then current Public Domain Licence until the date on which the Applicable Rates are so determined;
 - (ii) upon determination of the Applicable Rates pursuant to the Market Review process under clause 26.10, if those rates as determined are:
 - A. less than the rates as determined pursuant to clause 26.8(b)(i), the Applicable Rates will be the rates determined pursuant to clause 26.8(b)(i);
 - B. greater than the rates as determined pursuant to clause 26.8(b)(i) (subject to subclause (C) below), the Applicable Rates as determined pursuant to the Market Review process under clause 26.10 will apply on and from the commencement of the new Public Domain Licence; or
 - C. greater than the rates as determined pursuant to clause 26.8(b)(i) increased by a further 5%, the Applicable Rates are the rates as determined pursuant to clause 26.8(b)(i) as increased by a further 5% will apply on and from the commencement of the new Public Domain Licence; and
 - (iii) within 10 Business Days after the later of the determination of the Applicable Rates and the Landlord providing the Tenant with a tax invoice, the Tenant (as licensee) must pay to the Landlord (as licensor) the amount of any difference between:

- A. the Licence Fee paid by the Licensee from the commencement of the new Public Domain Licence to the date of the determination; and
- B. the actual Licence Fee payable by the Licensee from the commencement of the new Public Domain Licence to the date of the determination.

26.9 Commencing Applicable Rates (where previous Public Domain Licence has expired)

- (a) If the Tenant accepts the Call Offer pursuant to clause 26.4(c):
 - (i) the Applicable Rates which apply on the commencement of the new Public Domain Licence are (subject to clause 26.9(b)), are the Applicable Rates as determined pursuant to the Market Review process under clause 26.10; and
 - (ii) the Minimum Licence Fee which applies on the commencement of the new Public Domain Licence is the Minimum Licence Fee as at the expiry of the most recently expired or terminated Public Domain Licence as at the date on which the Tenant accepts the Call Offer increased by applying the formula in clause 26.9(b)(i) as if references to 'Applicable Rates' in that clause are references to 'Minimum Licence Fee'.
- (b) If the Market Review process has not been concluded and the relevant Applicable Rates have not been determined at the commencement of the new Public Domain Licence:
 - (i) the Applicable Rates which apply on the commencement of the Public Domain Licence are the Applicable Rates under the most recently expired or terminated Public Domain Licence as at the expiry of that Public Domain Licence increased by 2.5% per annum for each year (or part thereof) between the Expiry Date of that Public Domain Licence and the date on which the Tenant accepts the Call Offer;
 - (ii) upon determination of the Applicable Rates pursuant to the Market Review process under clause 26.10 if those rates as determined are:
 - A. less than the rates as determined pursuant to clause 26.9(b)(i), the Applicable Rates will be the rates determined pursuant to clause 26.9(b)(i);
 - B. greater than the rates as determined pursuant to clause 26.9(b)(i) (subject to subclause (C) below), the Applicable Rates as determined pursuant to the Market Review process under clause 26.10 immediately apply; or
 - C. greater than the rates as determined pursuant to clause 26.9(b)(i) increased by a further 5%, the Applicable Rates are the rates as determined pursuant to clause 26.9(b)(i) as increased by a further 5% and those rates immediately apply; and
 - (iii) within 10 Business Days after the later of the determination of the Applicable Rates and the Landlord providing the Tenant with a tax invoice, the Tenant (as licensee) must pay to the Landlord (as licensor) or the Landlord (as licensor) will credit to the Tenant (as licensee) by way of set-off to the amount of the Licence Fee payable on the next arising Payment Date under the new Public Domain Licence (in which

case the Landlord will not be required to provide a tax invoice to the Tenant) the amount of any difference between:

- A. the Licence Fee paid by the Licensee from the commencement of the new Public Domain Licence to the date of the determination; and
- B. the actual Licence Fee payable by the Licensee from the commencement of the new Public Domain Licence to the date of the determination.

26.10 Market Review

- (a) If the Tenant accepts a Call Offer pursuant to clause 26.4(b) or 26.4(c), the Landlord may give the Tenant a notice of the Landlord's assessment of the current market value of the Applicable Rates payable in respect of the 'Casual Licensable Area' and the 'Permanent Licensable Area' at any time within 6 months after the date on which the Tenant accepts the Call Offer.
- (b) If the Tenant accepts a Call Offer pursuant to clause 26.4(b), the Landlord's assessment of the current market value of the Applicable Rates must not be greater than the then Applicable Rates under the then current Public Domain Licence as at the expiry of the then current Public Domain Licence increased by 5%.
- (c) If the Tenant accepts a Call Offer pursuant to clause 26.4(c), the Landlord's assessment of the current market value of the Applicable Rates must not be greater than the Applicable Rates under the most recently expired Public Domain Licence as at the expiry of that Public Domain Licence increased by 2.5% per annum for each year (or part thereof) between the 'Expiry Date' of that Public Domain Licence and the date on which the Tenant accepts the Call Offer and increased by a further 5%.
- (d) Unless the Tenant gives the Landlord a notice within 10 Business Days after the Tenant receives the Landlord's assessment of the current market value of the Applicable Rates (and in this regard time is of the essence), disagreeing with the amounts in the Landlord's notice, the Applicable Rates on and from the next arising Payment Date are the amounts stated in the Landlord's notice.
- (e) If the Tenant gives a notice in accordance with clause 26.10(d) disagreeing with the Landlord's assessment of the current market value of the Applicable Rates, the Landlord and the Tenant must attempt to agree in writing on the Applicable Rates which are to apply on and from the next arising Payment Date within 10 Business Days after the Landlord receives the Tenant's notice.
- (f) If the Landlord and Tenant have not agreed on the Applicable Rates within the timeframe specified in clause 26.10(e), then the parties must attempt to agree in writing on a Valuer to determine the current market value of the Applicable Rates within 10 Business Days after the end of the 10 Business Days period referred to in clause 26.10(e) and appoint the Valuer jointly within 5 Business Days after agreeing who that Valuer is to be.
- (g) If the Landlord and the Tenant cannot agree on a Valuer within the timeframe specified in clause 26.10(f), either party may ask the President of the Institute to nominate a Valuer and the parties must appoint that Valuer jointly within 5 Business Days after the nomination is made.
- (h) The party or parties appointing the Valuer must instruct the Valuer at the time of the appointment to determine the current market value of the Applicable Rates in respect of the Licensed Area at the next arising Payment Date following the appointment of the Valuer as if the Licensed Area was unoccupied and offered for

licence for the 'Permitted Use' (as defined in the Public Domain Licence and on the basis of the licence being offered is interdependent on the lease, or the licence being offered independently from this lease whichever provides the greater value) and to:

- (i) give that determination to the parties, in writing, with reasons, within 20 Business Days after being appointed;
 - (ii) have regard to, and assume that the Tenant has complied with, the terms of then current Public Domain Licence (if the Tenant accepts the Call Offer pursuant to clause 26.4(b) or the terms of the most recently expired or terminated Public Domain Licence (if the Tenant accepts the Call Offer pursuant to clause 26.4(c)); and
 - (iii) act as an expert and not as an arbitrator.
- (i) The parties agree that except where the provisions of this lease expressly provide otherwise, the determination of the Valuer is final and binding on the parties.
- (j) The Landlord and the Tenant must pay the cost of appointing a Valuer for the purposes of this clause 26.10 in equal shares.

26.11 Definitions

Terms which are capitalised in this clause 26 which are not defined elsewhere in this Lease have the meaning given to those terms in a Public Domain Licence.





Schedule 2 - Public Domain Licence

Central Barangaroo Public Domain Licence [Block <insert> Retail]

Barangaroo Delivery Authority
Licensor

[Name of Tenant]
Licensee

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

Our reference 18637/170/80128948

Public Domain Licence made at _____ on _____

Parties

Barangaroo Delivery Authority ABN 94 567 807 277 of 27/201 Kent Street, Sydney NSW 2000 being a NSW government agency constituted under the Barangaroo Delivery Authority Act 2009 (NSW) (Licensor)

[insert] of [insert] (Licensee)

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this licence:

Annual Review Date means 1 January each year.

Applicable Rates means each of:

- (a) the Casual Licensed Area Rate; and
- (b) the Permanent Licensed Area Rate,

as relevant, and where the context permits, means both of the above rates.

Approved Compliance Report means a compliance report which has been approved by the Licensor pursuant to clause 8.3(a)(i)A or the determination of the relevant terms for an Approved Compliance Report made in accordance with the dispute resolution process under clause 19 of the Lease and arising pursuant to clause 8.3(a)(ii).

Casual Activities mean activities which, subject to the exclusion in paragraph (d):

- (a) are within the Permitted Use; and
- (b) are permitted under any relevant statutory conditions of consent or approval; and
- (c) may include:
 - (i) temporary tables, seating and other furniture to be used for the Permitted Use;
 - (ii) receiving trade related deliveries, cleaning the Licensed Area, setting up or packing away furniture related to the Permitted Use; and
 - (iii) 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:
 - (i) any activities which cause unreasonable disruption to other users or occupiers of Barangaroo; and
 - (ii) erecting and/or maintaining in place any permanent or semi-permanent structure, improvement or item.

Casual Licensed Area means those parts of the Licensed Area marked 'Casual Licensed Area' in Attachment 1 as varied pursuant to clause 7.2.

Casual Licensed Area Rate means \$[insert] per square metre of Casual Licensed Area as increased from time to time in accordance with clause 3.3. [Completion note: The Casual Licensed Area Rate will be the rate determined in accordance with clause 6 of the Retail Stratum Lease or the Foreshore Retail Stratum Lease (as applicable).]

Commencing Date means [insert]. [Completion note: the Commencing Date of this licence is to be inserted as in accordance with clause 26.4 of the Lease.]

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 attached as Attachment 4, as varied, amended or replaced by the Barangaroo Delivery Authority from time to time. [Completion note: Any change to the attached Design Guidelines dated 8 November 2017 is subject to consultation in accordance with clause 13.]

Draft Compliance Report has the meaning given in clause 8.2(a).

Expiry Date means the earlier of the date which is 10 years after the Commencing Date or the 'Expiry Date' under the Lease.

Lease means the lease made between the Barangaroo Delivery Authority (as landlord) and [insert] (as tenant) in respect of the Premises dated [insert] registered [insert].

Licence Fee means the amount calculated pursuant to clause 3.2 in respect of each Relevant Period.

Licensable Public Domain Area Plan means the plan attached as Attachment 3.

Licensed Area means the licensed area shown on the plan in Attachment 1 comprising both the Casual Licensed Area and the Permanent Licensed Area. [Completion note: The Licensed Area is to be completed pursuant to clause 26 of the Lease and clause 7.2 of this licence.]

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

Major Events Plan means the plan in Attachment 2.

[Completion note: The Major Events Plan is to be inserted pursuant to clause 37.2(a)(vi) or clause 38.2(d) (as relevant) of the CENDL.]

Make Good Works means one or more of the following:

- (a) repairing and rectifying any damage (including grinding out any bolts or other fixing points placed in the slab of the Public Domain and making good such damage) caused to any part of Central Barangaroo as a result of the Licensee's use of the Suspension Area or any area formerly comprising Licensed Area where the Licensee elects to vary the Licensed Area in accordance with clause 7.2 (as relevant);
- (b) works to make safe and remove property from the Suspension Area or any area formerly comprising Licensed Area where the Licensee elects to vary the Licensed Area in accordance with clause 7.2 (as relevant) as reasonably required by the Licensor, and

- (c) any other works within the Suspension Area or any area formerly comprising Licensed Area where the Licensee elects to vary the Licensed Area in accordance with clause 7.2 (as relevant) reasonably required by the Licensor, as specified in a notice given under clause 9(a).

Minimum Licence Fee means \$[insert] per annum in respect of the whole of the Licensed Area (and without regard to the actual area of the Licensed Area at the Payment Date) increased in accordance with clause 3.5 and for each Relevant Period means the then current Minimum Licence Fee (as increased in accordance with clause 3.5 from time to time) multiplied by the proportion which the number of days in the applicable Relevant Period bears to 365 days or 366 days in the case of a leap year. [Completion note: the amount of the Minimum Licence Fee will be determined in accordance with clause 26 of the Retail Stratum Lease or the Foreshore Retail Stratum Lease (as applicable)]

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

Payment Date means each of:

- (a) the Commencing Date;
- (b) 1 January each year; and
- (c) 1 July each year.

Permanent Licensed Area means those parts of the Licensed Area marked 'Permanent Licensed Area' in Attachment 1 as varied pursuant to clause 7.2.

Permanent Licensed Area Rate means \$[insert] per square metre of Permanent Licensed Area as increased from time to time in accordance with clause 3.3. [Completion note: The Permanent Licensed Area Rate will be determined in accordance with clause 26 of the Retail Stratum Lease or the Foreshore Retail Stratum Lease (as applicable)]

Permitted Use means the retail sale of food and beverages (including alcoholic beverages where permitted by law for on-site consumption) and seating for café and restaurants operated at the Premises under the Lease, or such other usage approved by the Licensor in its absolute discretion.

Premises means [insert details of the Premises under the Lease].

Relevant Period means:

- (a) the period from the Commencing Date until the next arising Payment Date;
- (b) each 6 month period commencing on each Payment Date thereafter; and
- (c) any period of less than 6 months commencing on a Payment Date and expiring on the Expiry Date.

Request to Demonstrate Compliance means a request given by the Licensor pursuant to clause 8.1.

Retail Tenant means a subtenant under the Lease which carries out the Permitted Use from any part of the Premises.

Suspension Area means the area specified in a Suspension Notice in accordance with clause 9(a)(ii) and subject to the requirements in clause 9(b).

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

Trading Hours means the hours permitted for trading in respect of the Permitted Use at the Licensed Area by all relevant Authorities.

Trust means [insert] constituted by a deed entered into by the Licensee (as trustee) dated [insert].

1.2 Definitions in Lease

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

1.3 Interpretation

In this licence:

- (a) headings are for convenience only and do not affect interpretation; and
- (b) unless the context indicates a contrary intention:
- (c) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (d) "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;
- (e) 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;
- (f) a reference to a document (including this licence) is to that document as varied, novated, ratified or replaced from time to time;
- (g) 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;
- (h) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (i) 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 licence, and a reference to this licence includes all schedules, exhibits, attachments and annexures to it;
- (j) 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;
- (k) "includes" in any form is not a word of limitation;
- (l) a reference to "\$" or "dollar" is to Australian currency; and
- (m) a reference to an item is to an item in the reference schedule to this licence.

2. The Licence

2.1 Licence

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

(a) the Permanent Licensed Area for the Permitted Use; and

(b) the Casual Licensed Area for the Casual Activities,

subject, at all times, to the terms and conditions of this licence.

2.2 No exclusive possession

This licence does not confer on the Licensee any right of exclusive possession of any part of the Licensed Area. The Licensee must not restrict the Licensor's access to the Licensed Area in any way.

2.3 Personal rights only

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

2.4 No dealing

(a) The Licensee cannot sublicense or part with or share possession of the Licensed Area or assign, novate or otherwise transfer any of its rights or obligations under this licence except in accordance with clause 2.4(b) and clause 5 of this licence.

(b) If the Licensee assigns its interest in the Lease in accordance with clause 10.2 (**Assignment**) of the Lease the Licensee must assign or novate this licence to the assignee or novatee of the Licensee's interest in the Lease and the Licensor must consent to such assignment or novation. The Licensee will procure that the assignee or novatee execute a deed with the Licensor on or before the date of assignment or novation which provides that:

- (i) the Licensor agrees with the assignee or novatee to comply with this licence as if the assignee or novatee was the Licensee; and
- (ii) the assignee or novatee assumes the Licensee's obligations under this licence arising after the date of assignment or novation.

(c) The Licensor agrees that it will execute the deed the subject of this clause 2.4 within 30 days of receiving such deed from the Licensee which has been executed by the Licensee and the assignee or novatee. The Licensee is released from any obligation under this licence arising after the date of assignment or novation provided that the assignee is bound to perform the obligations of the Licensee under this licence from the date of assignment or novation.

3. Licence Fee

3.1 Payment of Licence Fee

The Licensee must pay the Licence Fee in respect of each Relevant Period to the Licensor free of all deductions in advance on each Payment Date.

3.2 Calculation of Licence Fee

(a) The Licence Fee for each Relevant Period is the amount calculated as follows:

$$\text{Licence Fee} = \{(CA \times CR) + (PA \times PR)\} \times \frac{D}{X}$$

Where:

"**Licence Fee**" means the Licence Fee payable by the Licensee to the Licensor in respect of the Licensed Area for the Relevant Period commencing on the Payment Date;

"**CA**" means the total area of the Casual Licensed Area (in square metres) as at the relevant Payment Date;

"**CR**" means the Casual Licensed Area Rate as at the relevant Payment Date;

"**PA**" means the total area of the Permanent Licensed Area (in square metres) as at the relevant Payment Date;

"**PR**" means the Permanent Licensed Area Rate as at the relevant Payment Date;

"**D**" means the number of days in the Relevant Period; and

"**X**" means the number of days in the calendar year in which the Relevant Period occurs, being 365 days and 366 days in the case of a leap year.

- (b) If the amount of the Licence Fee calculated pursuant to clause 3.2(a) results in an amount which is less than the Minimum Licence Fee for the applicable Relevant Period, the Licence Fee payable by the Licensee for the Relevant Period is deemed to be the Minimum Licence Fee for the applicable Relevant Period.

3.3 Annual Review of Applicable Rates

On each Annual Review Date, the Applicable Rates are each increased to the greater of:

- (a) the Applicable Rates applicable immediately prior to the Annual Review Date which are each increased in accordance with the CPI review calculated pursuant to clause 3.4; and
- (b) the Applicable Rates applicable immediately prior to the Annual Review Date which are each increased by 2.5%.

3.4 CPI Review of Applicable Rates

For the purposes of clause 3.3(a), on each Annual Review Date the Applicable Rates are increased in accordance with the following formula:

$$\text{Reviewed Applicable Rates} = \text{Current Applicable Rates} \times \frac{\text{Current CPI}}{\text{Previous CPI}}$$

Where:

"**Reviewed Applicable Rates**" means the Applicable Rates which are applicable following the CPI review for the purposes of clause 3.3(a);

"**Current Applicable Rates**" means the Applicable Rates applicable 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); and

"**Current CPI**" means the CPI number for the quarter ending immediately before the relevant Annual Review Date.

3.5 Annual Review of Minimum Licence Fee

On and from each Annual Review Date, the Minimum Licence Fee is increased by the greater of:

- (a) the CPI review calculated pursuant to clause 3.4 as at that date and as if references to 'Applicable Rates' in that clause are references to 'Minimum Licence Fee'; and
- (b) the then current Minimum Licence Fee increased by 2.5%.

3.6 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.

4. Licensee's obligations

The Licensee must:

- (a) maintain and keep the Licensed Area in good repair;
- (b) keep the Licensed Area and immediately surrounding areas clean, tidy and free of rubbish and vermin;
- (c) not use the Licensed Area for any purpose except the Permitted Use;
- (d) not trade in the Licensed Area except during the Trading Hours (and only for such uses as are permitted under this licence during those times);
- (e) (despite any other provision of this licence and notwithstanding the Casual Licensed Area forms part of the Licensed Area) the Licensee must:
 - (i) only use the Casual Licensed Areas for Casual Activities; and
 - (ii) use all reasonable endeavours to ensure that the flow of pedestrian traffic is unimpeded within the Public Domain by the use of the Casual Licensed Areas for the Casual Activities due to congestion caused by customers, patrons, visitors or staff of the Licensee or any of the Licensee's sub licensees;
- (f) comply on time with all laws and the requirements of authorities in connection with the Licensed Area and the Licensee's use and occupation of the Licensed Area;
- (g) comply with the Licensor's reasonable rules and regulations for the Licensed Area which are given to the Licensee from time to time and which must not materially adversely derogate from the Licensee's rights under this licence;
- (h) 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 Licensed Area; or
 - (ii) emergencies which occur in or affect the Public Domain;
- (i) pay all outgoings and costs within 14 days of demand in respect of the Licensed Area, including the costs of any utilities supplied to the Licensed Area, any taxes

(including land tax) and rates assessed in respect of the Licensed Area whether charged directly to the Licensee or incurred by the Licensor as a result of the Licensee's specific use of the Licensed Area;

- (j) maintain and manage the Licensed Area at its cost and to a standard reasonably required by the Licensor, including procuring at the Licensee's own cost the cleaning, structural or capital repairs, maintenance, repair, security and servicing of the Licensed Area;
- (k) not do anything:
 - (i) in the Licensed Area or on any part of Central Barangaroo to be used for any illegal or sexually explicit business, occupation or practice;
 - (ii) to contaminate or pollute the Licensed Area or any part of Central Barangaroo or the surrounding environment;
 - (iii) that interferes with, obstructs access to, damages or overloads the Licensed Area facilities, or any buildings, infrastructure or facilities which provide services to the Licensed Area; or
 - (iv) in the Licensed Area, that interferes with, disturbs or causes a nuisance to users of the Public Domain outside the Licensed Area.
- (l) not keep or use inflammable, volatile or explosive materials on the Licensed Area without the Licensor's consent; or
- (m) not damage or destroy anything on the Licensed Area or any part of Central Barangaroo.

5. Sublicensing

The Licensee may grant non-exclusive sub-licences in respect of the Licensed Area to any Retail Tenant provided that any such sub-licence must:

- (a) be made only in respect of that part of the Licensed Area which is directly adjacent to the premises which is occupied by the relevant Retail Tenant;
 - (b) terminate immediately on the Expiry Date or earlier termination of this licence;
 - (c) 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 licence;
 - (ii) requiring the sub-licensee to comply with all relevant obligations of the Licensee under this licence;
 - (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 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;
- requiring the sub-licensee to ensure that the Licensor is able to access the Licensed Area at all times with prior notice;

- (vi) requiring the sub-licensee to comply with clause 7.1; and
- (vii) requiring the sub-licensee, to comply with clause 6.

6. Major Events, Surrounding Activities and Further Development

6.1 Surrounding Activities and Further Development

The Licensee acknowledges clause 5.6 and 5.7 of the Lease applies to this licence as if reference to:

- (a) 'Tenant' are references to the 'Licensee';
- (b) 'Premises' are references to the 'Licensed Area'; and
- (c) 'Landlord' are references to the 'Licensor'.

6.2 Major Events affecting Casual Licensed Area

In relation to those parts of the Casual Licensed Area which are situated within the area marked 'Major Events Area' in the Major Events Plan, if required by the Licensor for the operation of a major event not more than 10 times per calendar year and for not longer than a continuous period of 48 hours in respect of each major event, the Licensee must:

- (a) vacate (and must procure that all sub-licensees and their invitees vacate) the Casual Licensed Area, including clearing of all furniture, equipment, signage and any other items which are not affixed to the Casual Licensed Area and may reduce or restrict the flow of pedestrian traffic (or any part) 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
- (b) comply with any other direction given by the Licensor or anyone nominated by the Licensor from time to time.

6.3 Major Events affecting Permanent Licensed Area

In relation to those parts of the Permanent Licensed Area situated within the area marked 'Major Events Area' in the Major Events Plan, if required by the Licensor for purposes in relation to the operation of a major event, the Licensee must not more than 10 times per calendar year and for not longer than a continuous period of 48 hours in respect of each major event:

- (a) cooperate to procure that the occupants of the Licensed Area assist in ensuring that the public can have access to the foreshore; and
- (b) comply with (and will procure that the occupants of the Licensed 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.

6.4 Release in relation to major events

The Licensee is not entitled to any abatement of the 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 6 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 Licensed Area during any such periods or for any matters disclosed in this clause 6.

7. Licensed Area

7.1 Alterations to Licensed Area

- (a) The Licensee must not carry out works in the Licensed Area without the prior written approval of the Licensor.
- (b) The Licensee must not at any time cause or permit:
 - (i) the installation of any permanent structure on; or
 - (ii) the affixing of any item to,

the Casual Licensed Area and the Licensor is not required to consider any request submitted by the Licensee in relation to the installation of such structures or affixing of any such items.
- (c) Subject to clause 13(c), the Licensee must comply with the Design Guidelines when proposing or carrying out any works (to the extent the Licensor approves any works) within the Licensed Area.
- (d) The Licensee must ensure that any improvements installed by the Licensee within the Permanent Licensed Area (including furniture, fixtures or fittings within the Permanent Licensed Area) will be of a high standard commensurate with the Barangaroo precinct having regard to the fact that the Barangaroo precinct is a prime waterfront development for the NSW Government.
- (e) The Licensor must act reasonably in giving or withholding approval to the works. The Licensor may provide its consent conditionally upon satisfaction of any number of requirements by the Licensee as specified by the Licensor acting reasonably.
- (f) The Licensee must carry out any works approved by the Licensor at the Licensee's own cost and risk and in accordance with clause 7.1(c) and any requirements specified by the Licensor.

7.2 Variation of Licensed Area and reconciliation of Licence Fee

- (a) At any time during the Term the Licensee may vary the Licensed Area by giving not less than 10 Business Days written notice to the Licensor and specifying in such notice:
 - (i) the varied Licensed Area to apply on and from the date set out in the Licensee's notice (being not less than 10 Business Days after the date of the Licensee's notice) (**Effective Date**) by attaching an updated plan of the Licensed Area:
 - A. specifying a proposed Licensed Area which is wholly situated within the Licensable Public Domain Area as shown in the Licensable Public Domain Area Plan;
 - B. specifying those parts of the Licensed Area which are to comprise Permanent Licensed Area provided that such areas must be wholly situated within the areas designated for 'Permanent Licensable Area' as shown in the Licensable Public Domain Area Plan;
 - C. specifying those parts of the Licensed Area which are to comprise Casual Licensed Area provided that such areas must be wholly situated within the designated for 'Casual

- Licensable Area' as shown in the Licensable Public Domain Area Plan;
- D. specifying the Licensed Area as a single area, contiguous with the Premises; and
 - E. which must comply with the conditions of any Approval which relates to the Licensee's use of the Licensed Area;
- (ii) specifying (in writing) the change in the amount of increase or decrease (compared to the existing Licensed Area) to each of:
 - A. the Casual Licensed Area; and
 - B. the total Licensed Area;
 - (iii) attaching a certificate of currency of insurance for all insurances required under this license confirming that all relevant insurance policies are in effect in relation to all parts of the Licensable Public Domain Area as shown in the Licensable Public Domain Area Plan.
- (b) If the Licensee delivers a notice referred to in clause 7.2(a) (and provided that the Licensee has satisfied all of the requirements of that clause):
- (i) the Licensee must pay the Licence Fee calculated in respect of the varied Licensed Area (in accordance with clause 3.2(c)); and
 - (ii) the Licensed Area is deemed to be varied on and from the Effective Date;
 - (iii) the Licensee must prepare (at its cost) such documentation reasonably required to effect the variation of the Licensed Area and deliver the documentation to the Licensors; and
 - (iv) the Licensors will sign and return to the Licensee the documentation to effect the variation of the Licensed Area within 20 Business Days of receiving the same from the Licensee.
- (c) Any notice given by the Licensee for the purposes of clause 7.2(a) which does not satisfy each of the requirements of that clause is invalid and of no effect.
- (d) To the extent that any variation of the Licensed Area which is proposed by the Licensee pursuant to this clause 7.2 results in any part of land ceasing to form part of the Licensed Area, the Licensee must by the Effective Date remove all of the Licensee's property from that area and carry out and complete Make Good Works in respect of that relevant area and until such Make Good Works have been completed, the Licensee will be deemed to be using that relevant area as Licensed Area.
- (e) The Licensee will maintain a register detailing at any point in time the Licensed Area, the Casual Licensed Area and the Permanent Licensed Area licensed by the Licensee pursuant to this licence.
- (f) If during any Relevant Period the Licensee varies the Licensed Area in accordance with clause 7.2(a), the Licensee will within 20 Business Days of the end of the Relevant Period provide a statement to the Licensors:
- (i) attaching a copy of the then current version of the register referred to in clause 7.2(e);

- (ii) specifying the Licensee's calculation of the actual amount of the Licence Fee payable for the Relevant Period having regard to the actual area of the Casual Licensed Area licensed by the Licensee for the actual number of days in the Relevant Period and the actual area of the Permanent Licensed Area licensed by the Licensee for the actual number of days in the Relevant Period; and
- (iii) specifying the Licensee's calculation of the amount of any adjustment to be paid by the Licensee or credit to be allowed by the Licensor to reflect the difference between the amount of Licence Fee paid for the Relevant Period and the actual amount of the Licence Fee payable for the Relevant Period,

(Statement)

- (g) Subject to clause 7.2(i), if the amount of the Licence Fee payable for the Relevant Period in the Statement is more than the amount of the Licence Fee paid by the Licensee for the Relevant Period, the Licensee will pay to the Licensor the difference within 10 Business Days of the later of the date the Licensee delivers the Statement and the date the Licensor delivers to the Licensee a tax invoice for the amount of the difference.
- (h) Subject to clause 7.2(i), if the amount of the Licence Fee payable for the Relevant Period in the Statement is less than the amount of the Licence Fee paid by the Licensee for the Relevant Period, the Licensor will credit to the Licensee the difference by way of set-off to the amount of the Licence Fee payable on the next arising Payment Date, or the Licensor will reimburse to the Licensee the difference in the case of the Relevant Period which ends on the Expiry Date, within 10 Business Days of the date the Licensee delivers the Statement to the Licensor.
- (i) The Licensor may within 10 Business Days after the date on which the Licensor receives a Statement, give a notice to the Licensee rejecting the Statement and referring the matter for determination as a dispute in accordance with clause 19 ('Dispute resolution') of the Lease for the purposes of determining the calculation of the actual amount of the Licence Fee payable for the Relevant Period including determining the actual area of the Casual Licensed Area and the actual area of the Permanent Licensed Area used by the Licensee and if the Licensor refers the matter for determination, any adjustments pursuant to clauses 7.2(g) and 7.2(h) are postponed until the matter is determined.

8. Non-compliance

8.1 Request to Demonstrate Compliance

If at any time during the Term the Licensor reasonably considers that the Licensee:

- (a) is using the Licensed Area in a manner that is not in compliance with its obligations under this licence;
- (b) is using the Licensed Area other than as permitted under this licence; or
- (c) is otherwise in breach of the Licensee's obligations under this licence and the nature of the breach is capable of being remedied,

the Licensor may give a notice to the Licensee specifying the nature of the non-compliance and requesting the Licensee to show cause as to why the Licensee's rights to use the Licensed Area under this licence should not be suspended (**Request to Demonstrate Compliance**).

8.2 Draft Compliance Report

- (a) If the Licensor issues a Request to Demonstrate Compliance, the Licensee must, within 10 Business Days after the date on which that notice is received, provide a written response to the Licensor (**Draft Compliance Report**):
 - (i) setting out the Licensee's proposed plan to rectify the non-compliance specified in the Request to Demonstrate Compliance and which must include a program specifying the details of actions and timeframes within which those actions will be carried out by the Licensee (which must be reasonable having regard to the nature of the non-compliance) and in respect of any non-compliance which cannot be rectified, proposing an appropriate amount of compensation to be paid to the Licensor having regard to any loss, cost or liability which the Licensor has incurred (including any costs in relation to the enforcement or attempted enforcement of this licence);
 - (ii) confirming that the non-compliance specified in the Request to Demonstrate Compliance has been rectified and specifying the details of actions taken by the Licensee to rectify the matter; or
 - (iii) disputing that the non-compliance specified in the Request to Demonstrate Compliance constitutes a breach of this licence.
- (b) A failure of the Licensee to provide a Draft Compliance Report in accordance with clause 8.2(a) and within the timeframe specified in clause 8.2(a) constitutes a breach of this licence.

8.3 Review of Draft Compliance Report

- (a) Within 10 Business Days after the date on which the Licensor receives a Draft Compliance Report from the Licensee, the Licensor must give a notice to the Licensee either:
 - (i) accepting the Draft Compliance Report, and if the Draft Compliance Report was given:
 - A. pursuant to clause 8.2(a)(i), the Licensee must rectify the relevant non-compliance in accordance with the compliance report and within the timeframes specified in the compliance report (**Approved Compliance Report**) or, in respect of any non-compliance which cannot be rectified, pay the amount of compensation to the Licensor which is proposed by the Licensee in the Draft Compliance Report; or
 - B. pursuant to clause 8.2(a)(ii) or clause 8.2(a)(iii), no further action is required in respect of the Request to Demonstrate Compliance and the Licensee must continue to use the Licensed Area in accordance with this licence; or
 - (ii) rejecting the Draft Compliance Report and referring the matter for determination as a dispute in accordance with clause 19 ('Dispute resolution') of the Lease for the purposes of determining:
 - A. where a Draft Compliance Report has been given pursuant to clause 8.2(a)(i), whether the Licensee's proposed plan to rectify the non-compliance would in fact rectify the non-compliance, and whether the timeframe to rectify the non-compliance is reasonable having regard to the nature of the non-compliance and if the Licensee's proposed plan will

not rectify the non-compliance the actions or works the Licensee is required to procure in order to rectify the relevant non-compliance or, in respect of any non-compliance which cannot be rectified, whether the amount of compensation proposed by the Licensee is in fact appropriate compensation for the non-compliance having regard to any loss, cost or liability which the Licensor has incurred (including any costs in relation to the enforcement or attempted enforcement of this licence); or

- B. where a Draft Compliance Report has been given pursuant to clause 8.2(a)(ii) or clause 8.2(a)(iii), whether the non-compliance specified in the Request to Demonstrate Compliance is ongoing, and if the non-compliance is ongoing, the details of actions necessary to be carried out, and timeframes within which those actions must be carried out by the Licensee in order to rectify the non-compliance (which must be reasonable having regard to the nature of the non-compliance).
- (b) If the Licensor gives a notice pursuant to clause 8.3(a)(ii), that notice will constitute the 'notice of dispute' for the purposes of clause 19.1 ('Notice of dispute') of the Lease such that no further 'notice of dispute' is required to be given by the Licensor in regard to the matter to commence the dispute resolution process.

8.4 Satisfaction of Compliance Report conditions

- (a) As soon as is practicable after the Licensee considers that it has taken all necessary action in accordance with an Approved Compliance Report in order to rectify a non-compliance, the Licensee must give notice to the Licensor confirming that it has rectified the relevant non-compliance.
- (b) Within 10 Business Days after receiving a notice from the Licensee in accordance with clause 8.4(a), the Licensor must give a notice to the Licensee:
- (i) accepting that the Licensee has rectified the non-compliance in accordance with the Approved Compliance Report;
 - (ii) rejecting that the Licensee has rectified the non-compliance in accordance with the Approved Compliance Report and specifying the reasons why the Licensor considers that the Licensee has failed to rectify the non-compliance in accordance with the Approved Compliance Report which, for the avoidance of doubt, may be given in conjunction with a Suspension Notice under clause 9(a); or
 - (iii) rejecting that the Licensee has rectified the non-compliance in accordance with the Approved Compliance Report and referring the matter for determination as a dispute in accordance with clause 19 ('Dispute resolution') of the Lease.
- (c) If the Licensor gives a notice pursuant to clause 8.4(b)(i), no further action is required and the Licensee must continue to use the Licensed Area in accordance with this licence.
- (d) If the Licensor gives a notice pursuant to clause 8.4(b)(ii), the Licensee must either:
- (i) at its own cost take all further action required to satisfy those matters specified by the Licensor in its notice under clause 8.4(b)(ii) (and where that notice is given in conjunction with a Suspension Notice, comply with

the requirements of the Suspension Notice) and once completed, resubmit a notice to the Licenser in accordance with clause 8.4(a); or

- (ii) refer the matter for resolution as a dispute under clause 19 ('Dispute Resolution') of the Lease.
- (e) If the Licenser gives a notice pursuant to clause 8.4(b)(iii) or the Licensee gives a notice pursuant to clause 8.4(d)(ii), that notice will constitute the 'notice of dispute' for the purposes of clause 19.1 ('Notice of dispute') of the Lease such that no further 'notice of dispute' is required to be given by the relevant party in regard to the matter to commence the dispute resolution process.

9. Suspension

- (a) If at any time after the Licenser has given notice of an Approved Compliance Report in accordance with clause 8.3(a)(i)A or the terms of an Approved Compliance Report have been determined through a dispute resolution process arising pursuant to clause 8.3(a)(ii), the Licenser considers (acting reasonably) that the Licensee is not rectifying a non-compliance in accordance with that Approved Compliance Report, the Licenser may give a notice to the Licensee (**Suspension Notice**):
 - (i) specifying the reasons why the Licenser considers that the Licensee is not rectifying a non-compliance in accordance with the Approved Compliance Report;
 - (ii) nominating that part of the Licensed Area which the Licenser requires the Licensee to cease to use except for the purposes of carrying out the actions specified in and in accordance with the Approved Compliance Report (**Suspension Area**); and
 - (iii) specifying the date on which the suspension of the Licensee's rights under this licence is to commence.
- (b) The Licenser acknowledges and agrees that the Suspension Area nominated in a Suspension Notice must:
 - (i) be reasonable having regard to the nature of the non-compliance and the actions required to be carried out in that area by the Licensee in accordance with the Approved Compliance Report to rectify the non-compliance; and
 - (ii) must not include any part of the Licensed Area which is not affected by the relevant non-compliance the subject of the Approved Compliance Report.
- (c) If the Licenser gives a Suspension Notice, the Licensee must, at its own cost:
 - (i) on and from the date specified in the Suspension Notice, cease using the Suspension Area for any purpose other than in order to rectify the non-compliance in accordance with the Approved Compliance Report;
 - (ii) ensure that all parts of the Licensed Area which the Licensee ceases to use and access are made safe and secure; and
 - (i) as soon as is practicable after the Licensee considers that it has taken all necessary action in accordance with an Approved Compliance Report in order to rectify a non-compliance, give a notice to the Licenser confirming that it has rectified the relevant non-compliance.

- (d) Within 5 Business Days after receiving a notice pursuant to clause 9(c) the Licensors must give written notice to the Licensee either:
- (i) accepting that the conditions of the Approved Compliance Report have been satisfied; or
 - (ii) stating that the conditions of the Approved Compliance Report have not been satisfied and providing reasons why.
- (e) If the Licensors give a notice pursuant to clause 9(d)(i), the suspension of the Licensee's right to access and use the Licensed Area as specified in a Suspension Notice ceases to apply and the Licensee is permitted to access and use the Licensed Area in accordance with this licence (subject to any Suspension Notice being given in respect of any other continuing non-compliance of this licence).
- (f) If the Licensors give a notice pursuant to clause 9(d)(ii), the Licensee must within 5 Business Days after receiving the Licensors' notice either:
- (i) at its own cost take all further action required to satisfy the requirements of the Approved Compliance Report as specified by the Licensors; or
 - (ii) refer the matter for resolution as a dispute under clause 19 ('Dispute Resolution') of the Lease for the purposes of determining whether or not the Licensee has satisfied the requirements of the Approved Compliance Report so as to rectify the relevant non-compliance, and if the Licensee has not satisfied the requirements of the Approved Compliance Report, the additional actions or works the Licensee is required to procure in order to rectify the relevant non-compliance.
- (g) Upon the Licensee taking such further action or carrying out any relevant works in accordance with clause 9(f) the suspension of the Licensee's right to access and use the Licensed Area as specified in a Suspension Notice ceases to apply and the Licensee is permitted to access and use the Licensed Area in accordance with this licence (subject to any Suspension Notice being given in respect of any other continuing non-compliance of this licence).
- (h) A failure by the Licensee to comply with clause 9(f) including the timeframes specified constitutes a breach of this licence.
- (i) The Licensee must not recommence accessing and using the relevant part of the Licensed Area unless and until the Licensors give a notice pursuant to clause 9(d)(i) or it is otherwise determined pursuant to the dispute resolution process that the Licensee has satisfied the conditions set out in the Approved Compliance Report.

10. Insurances, indemnities and releases

10.1 Licensee accepts risk

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

10.2 Insurance

The Licensee must:

- (a) not do anything that could:
 - prejudice any insurance of the Licensed Area, the Building, any part of Central Barangaroo 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 \$20 million (or such other reasonable higher amount as notified by the Licensor to the Licensee from time to time) and all other insurances required by law or that the Licensor requires in connection with the Licensable Public Domain Area as shown in the Licensable Public Domain Area Plan (whether or not the Licensed Area comprises an area which is less than the whole of the Licensable Public Domain Area) 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 10.2(b) of this licence.

10.3 Indemnity

- (a) 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:
 - (i) 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 Licensed Area;
 - (ii) anything occurring on, originating in, or coming from, the Licensed Area;
- (b) the Licensee's default or the Licensee's repudiation; and
- (c) the termination of this licence (including the Licensor's loss of the benefit of the Licensee complying with the Licensee's obligations under this licence from the date this licence is terminated until the Expiry Date) if this licence is terminated.

10.4 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 licence; and
- (c) the electricity service, or any other service, being interrupted, broken down or not being available.

10.5 Survival

Clause 10 of this licence survives termination of this licence.

11. Default

11.1 Termination

If:

- (a) the Licensee has failed to rectify a breach of this licence in accordance with an Approved Compliance Report within the timeframe specified in the Approved Compliance report; and
- (b) the Lessor has given the Licensee a Suspension Notice in respect of that breach; and
- (c) the Licensee has failed to take the further action or carry out the relevant works required to satisfy the requirements of the Approved Compliance Report in accordance with clause 9(f)(i) within a reasonable time (having regard to the circumstances) of the Licensee receiving the Lessor's notice referred to within clause 9(d)(ii), or
- (d) if clause 9(f)(ii) applies and it has been determined that the Licensee has not satisfied the requirements of the Approved Compliance Report, the Licensee has failed to take the action or carry out the works to rectify the non-compliance in accordance with the determination and in accordance with the timeframe specified in the determination,

the Lessor may give notice to the Licensee specifying:

- (e) the Make Good Works which the Lessor requires the Licensee to carry out in respect of the Suspension Area; and
- (f) the date on which the Licensee's licence to use the Suspension Area terminates (being a date not less than 30 Business Days after the date of the Lessor's notice, and which the Lessor considers acting reasonably to be a reasonable period for completion of the Make Good Works prior to termination),

and the Licensee's licence to use the Suspension Area will terminate with immediate effect on the termination date set out in the Lessor's notice and the Licensed Area will be deemed to be varied to exclude the Suspension Area.

11.2 Non-Compliance Rectified

- (a) If the Lessor has terminated the Licensee's right to use the Suspension Area in accordance with clause 11.1, the Lessor agrees that Licensee may give notice that it has rectified the non-compliance the subject of the termination or paid compensation to the Lessor in relation to a non-compliance which is not capable of being rectified.
- (b) Within 10 Business Days after receiving a notice from the Licensee in accordance with clause 11.2(a), the Lessor must give a notice to the Licensee:
 - (i) accepting that the Licensee has rectified the non-compliance or that compensation has been paid to the Lessor; or
 - (ii) rejecting that the Licensee has rectified the non-compliance or that compensation has been paid to the Lessor and specifying the reasons why the Lessor considers that the Licensee has failed to rectify the non-compliance.
- (c) If the Lessor gives a notice pursuant to clause 11.2(b)(ii), the Licensee may (at its election):

- (i) at its own cost take all further action required to satisfy those matters specified by the Licensor in its notice under clause 11.2(b)(ii) and once completed, resubmit a notice to the Licensor in accordance with clause 11.2(a); or
 - (ii) refer the matter for resolution as a dispute under clause 19 ('Dispute Resolution') of the Lease.
- (d) If the Licensee gives a notice pursuant to clause 11.2(c)(ii), that notice will constitute the 'notice of dispute' for the purposes of clause 19.1 ('Notice of dispute') of the Lease such that no further 'notice of dispute' is required to be given in regard to the matter to commence the dispute resolution process.
- (e) If the Licensor gives a notice pursuant to clause 11.2(b)(i), the Licensee will on and from the date of the Licensor's notice again have the right to use that part of the Licensed Area which had been terminated (comprising the relevant Suspension Area) in accordance with the terms of this licence and the Licensed Area will on and from the date of the Licensor's notice be deemed to be varied to include the formerly terminated area (comprising the relevant Suspension Area).
- (f) Nothing in this clause 11 entitles the Licensee to recommence accessing and using the relevant part of the Licensed Area which has been terminated unless and until the Licensor gives a notice pursuant to clause 11.2(b)(i) or it is otherwise determined pursuant to the dispute resolution process that the Licensee has rectified the non-compliance or that compensation has been paid to the Licensor, in which case on and from the date of the determination, the Licensed Area will be deemed to be varied to include the formerly terminated area (comprising the relevant Suspension Area).

12. Licence ends

12.1 Events

This licence ends on the Expiry Date.

12.2 Licensee to vacate

On the earlier of the Expiry Date or the day this licence is terminated (except in the event that this Licence is renewed or to the extent that a further Licence is entered into between the parties with respect to the Licensed Area or any part of the Licensed Area), the Licensee must:

- (a) (subject to clause 12.2(b) of this licence) promptly remove all improvements, works, fixtures, services, infrastructure, materials, possessions and other items from the Licensed Area as directed by the Licensor, leaving the Licensed Area paved (or otherwise surfaced to the standard of surfacing of the area surrounding the Licensed 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 Licensed Area (and such items will become the property of the Licensor);
- (c) vacate the Licensed 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 by removing the Licensee's possessions and vacating the Licensed Area.

12.3 Failure to vacate

If the Licensee does not comply with its obligations under clause 12.2 of this licence on time, the Lessor may comply with these obligations (if necessary, in the Licensee's name) at the Licensee's risk and expense. The Licensee must pay the Lessor on demand as liquidated damages a sum equal to the cost to the Lessor of complying with that clause.

13. Design Guidelines

- (a) The Design Guidelines may be updated by the Lessor from time to time.
- (b) If the Lessor proposes to amend the Design Guidelines, the Lessor will consult with the Licensee in good faith to agree those amendments to the Design Guidelines to the extent that the amendments affect the Licensee's use of the Licensed Area.
- (c) The Lessor must not require the Licensee to comply with any amendments to the Design Guidelines to the extent that compliance with the amended Design Guidelines would materially adversely derogate from the Licensee's rights under this licence or would impose any obligations on the Licensee or any sub-licensee in relation to existing improvements or fitout which were compliant with the then current Design Guidelines (relevant as at the time those improvements or fitout were carried out).

14. GST

14.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 14 have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 14.
- (c) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

14.2 Reimbursements

Any payment or reimbursement required to be made under this licence that is calculated by reference to a Cost or other amount paid or incurred will be limited to the total Cost or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the Cost or amount relates.

14.3 Additional amount of GST payable

Subject to clause 14.5, if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this licence:

- (a) any amount payable or consideration to be provided under any provision of this Lease (other than this clause 14), for that supply is exclusive of GST;
- (b) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and

- (c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 14.3(b).

14.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 14.3 and clause 14.5), varies from the additional amount paid by the Recipient under clause 14.3, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 14.3(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 14.3.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this licence as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

14.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 14.3 applies is a taxable supply made by the Recipient in the same tax period (**Recipient Supply**), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 14.3 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 14.3 (or the time at which such GST Amount would have been payable in accordance with clause 14.3 but for the operation of clause 14.5(a)).

14.6 Indemnities

- (a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.
- (b) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).
- (c) A party may recover payment under an indemnity before it makes the payment in respect of which the indemnity is given.

14.7 No merger

This clause 14 will not merge on termination of this licence.

15. Limitation of liability

- (a) The Licensee enters into this licence only in its capacity as trustee of the Trust and in no other capacity.
- (b) A liability arising under or in connection with this licence is limited to and can be enforced against the Licensee only to the extent to which it can be satisfied out of the assets of the Trust out of which the Licensee is actually indemnified for the liability.

- (c) Subject to sub-clause (g), this limitation of liability applies despite any other provision of this licence and extends to all liabilities and obligations of the Licensee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this licence.
- (d) The parties may not sue the Licensee in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver (except in relation to the assets of the Trust), a liquidator, an administrator or any similar person to the Licensee or prove in any liquidation, administration or arrangement of or affecting the Licensee (except in relation to the assets of the Trust).
- (e) The Licensee is not obliged to do or refrain from doing anything under this licence (including, without limitation, incur any liability) unless the Licensee's liability is limited in the same manner as set out in sub-clauses (a) to (b).
- (f) No attorney, agent, receiver or receiver and manager appointed has authority to act on behalf of the Licensee in a way which exposes the Licensee to any liability.
- (g) The provisions of this clause shall not apply to any obligation or liability of the Licensee to the extent that it is not satisfied because, under the Trust Deed or by operation of law, there is a reduction in the extent of the Licensee's indemnification out of the assets of the Trust, as a result of the Licensee's fraud, negligence, breach of trust or acting in any manner which constitutes a breach of the trust deed.

[Completion Note: Insert relevant execution clauses.]

Public Domain Licence - Attachment 1: Licensed Area

Public Domain Licence - Attachment 2: Major Events Plan

Public Domain Licence - Attachment 3: Licensable Public Domain

Public Domain Licence - Attachment 4: Design Guidelines

Barangaroo

Public Domain Licensed Areas

Design Guidelines

Prepared by: **Barangaroo Delivery Authority**
Revision No.: **00**
Date Issued: **08.11.2017**

Contents:

- 1.0 Introduction**
- 2.0 General Principles**
- 3.0 Public Domain Licence**
- 4.0 Categories of Licensed Areas**
- 5.0 Permanent Licensed Areas**
- 6.0 Casual Licensed Areas**

1.0 Introduction

The Barangaroo Delivery Authority (Authority) is the landowner of the Barangaroo precinct. Development lots have been created for the purpose of development and lease with the Authority's approval.

All areas not incorporated within leased areas are classified as Public Domain and remain under the control of the Authority. Uses of Public Domain include roadways and streets, footpaths, pedestrian walkways, bicycle paths, pedestrian bridges, plazas, recreational parks and landscaped areas.

Areas of Public Domain may be licensed for occupation for periods of time.

Licences and permits may be granted to support temporary events that may include events of a recreational, entertainment or cultural nature or other uses as deemed appropriate by the Authority. Such events may incorporate uses of a commercial nature and associated licences may be granted by the Authority at its discretion.

Licences over areas of Public Domain may also be granted to lessees for uses to support operations within the leased areas. These Licensed Areas will generally be contiguous with or adjacent to related Premises used for food and beverage purposes.

2.0 General Principles

The Authority supports appropriate use of Public Domain areas to enhance public amenity through ground plane activation of the Public Domain and visual and physical connectivity with entertainment, recreation, community, cultural and retail uses.

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When determining whether new areas will be designated as Licensable Public Domain the Authority will include consideration of the following key issues:

- 2.1 The location and proposed use of the Licensed Area is beneficial to the amenity of the Public Domain locally and generally.
- 2.2 The Licensed Area and its use facilitate visual and physical connectivity from the Public Domain to the Premises and the Licensed Area.
- 2.3 The Licensed Area and use does not impede pedestrian, bicycle, service and emergency vehicle movements through the Public Domain as required by the Authority.
- 2.4 The Licensed Area does not adversely impact adjoining entries to retail, residential and commercial premises – these entries are to be clearly identifiable.
- 2.5 The Licensed Areas address pedestrian permeability considerations where appropriate.
- 2.6 The Licensed Areas are appropriately integrated within the urban elements zones and do not adversely affect or impair the use of public elements and pedestrian amenity
- 2.7 Unless the Authority otherwise agrees, the width of the Licensed Areas occupied by a sub-lessee may not exceed the width of the associated sub-let premises. The Authority will act reasonably when considering any application to extend the width of the Licensed Area occupied by a sub-lessee beyond the width of the associated sub-let premises.
- 2.8 The Licensed Areas do not include any building structural elements.
- 2.9 The Licensed Areas are consistent and are not in conflict with any easements that have been granted.
- 2.10 The terms of licence and hours of occupation of the Licensed Area are appropriate.
- 2.11 The maintenance and security of the Licensed Area is appropriately managed.

3.0 Public Domain Licence

Each Licensed Area will require a Public Domain Licence to be entered into by the Licensee and the Authority. These Design Guidelines are incorporated by reference within the Central Barangaroo Public Domain Licence. Responsibility for compliance with the Design Guidelines to the Authority's satisfaction lies solely with the Licensee.

The Authority may update the Design Guidelines from time to time. If the Authority proposes to amend the Design Guidelines, the Authority will consult with the Licensee in good faith to agree departures from the then current Design Guidelines to the extent that the amendments adversely affect the Licensee's use of the Licensed Area.

The Authority must not require the Licensee to comply with any amendments to the Design Guidelines to the extent that compliance with the amended Design Guidelines would materially adversely derogate from the Licensee's rights under its Public Domain Licence or would impose any obligations on the Licensee or any sub-licensees in relation to existing improvements or fitout which were compliant with the Design Guidelines (in the form current at the time those improvements or fitout were carried out).

4.0 Categories of Licensed Areas

Licensed Areas are classified as either Permanent or Casual. Key design and management principles have been established for each category of licence as part of these Design Guidelines.

5.0 Permanent Licensed Areas

- 5.1 Furniture and loose fixtures:

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Furniture and loose fixtures will, in addition to meeting the requirements within the Public Domain Licence, achieve the following standards:

- High standard commensurate with the Barangaroo precinct having regard to the fact that the Barangaroo precinct is a prime waterfront development for the NSW Government
- Be of a commercial grade, strong, durable and of quality design.
- Complement the overall fitout concept.
- Complement the precinct in which the Licensed Area is located.

5.2 External shade and sun protection:

External structures may be provided for the purpose of shade and weather protection. Structures shall be designed to appear lightweight in nature and not to read as a required component of the building within the Premises. The structure should be designed to facilitate the maximum visual and physical connectivity to the adjacent Public Domain. Shade and weather protection may be incorporated within the design of these structures but such protection in the vertical plane must be operable and only deployed when required.

5.3 Heating:

Heating to seating areas under the external structures and awning will be permitted although will be subject to assessment as being of appropriate design and specification.

5.4 Maintenance and cleaning:

All furniture and other items approved to be in the Licensed Area must be maintained in a clean, physically sound and aesthetically acceptable condition at all times. The area being licensed must be kept clean including any rubbish which falls onto the pavement.

5.5 Shopfront signage:

Signage to the shopfronts and within Licensed Areas will be assessed as part of Development Applications. Branding and advertising within Licensed Areas is not permitted.

5.6 Acoustics:

Licensed Areas will be designed and managed to maintain appropriate quiet enjoyment of adjacent spaces and properties.

6.0 Casual Licensed Areas

6.1 Furniture and loose fixtures:

Furniture and loose fixtures will, in addition to meeting the requirements within the Public Domain Licence, achieve the following standards:

- Be of a commercial grade, strong, durable, waterproof and weather resistant where appropriate.
- Complement the overall fitout concept.
- Ensure the selection and design has considered the procedure for removal and storage of furniture or other loose items outside of trading hours. Consideration should take into account folding, stacking, weight and movability.
- Complement the precinct.

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- Barriers will not be permitted of any kind (including the use of planters) to create barriers. Planters will only be permitted if they show design merit and do not create a barrier and are removed and stored outside of Licensed Area occupation hours.
- All items must not exceed 1.1 metres in height from the pavement and ensure sightlines to adjoining tenancies and the Public Domain generally are maintained
- All furniture and loose fixtures including planters must not have any branding or signage
- 'A-frame' signage, pedestal menu boards or the like, are not permitted.
- Furniture or any other fixtures must only be placed in the Licensed Area only.
- Comply with any relevant statutory and regulatory codes such as BCA, local authority requirements, or Australian Standards

6.2 External shade and sun protection:

Each precinct and building will have site specific approaches to external structures within the Licensed Area. Where the provision of umbrellas is deemed appropriate, it cannot be guaranteed that the entire area will receive coverage. Umbrella or other external structures attachments, or any other structures proposed for weather protection, will only be permitted if specifically described in the precinct specific guidelines. Should umbrella fixing sleeves be proposed as penetrations within the ground plane these will be constructed to the Authority's standard design detail and make good requirements.

6.3 Heating:

Heating to seating areas under the external structures and awning will be permitted provided it is to the precinct specific guidelines. All wiring and/or pipes will need to be concealed with the external structure or behind the shopfront structure. Pedestal movable heaters will be permitted in certain precincts and must not block pedestrian movement. Pedestal heaters must be stored within premises and not visible when they are not in use and outside of Licensed Area occupation hours.

6.4 Lighting:

General lighting will be supplied by the Licensee in the awning or building facade only. Hard wired or loose cords to external Licensed Areas for lighting or other purposes will not be permitted unless approved by the Authority.

6.5 Maintenance and cleaning:

All furniture and other items approved to be in the external Licensed Area must be maintained in a clean, physically sound and aesthetically acceptable condition at all times. The area of licensing must also be kept clean including any rubbish which falls onto the pavement. Rubbish from these areas must not be disposed of in the Public Domain bins.

6.6 Shopfront signage:

Signage to the shopfront will be assessed as part of Development Applications. Branding and advertising within Licensed Areas is not permitted.

6.7 Acoustics:

Licensed Areas will be designed and managed to maintain appropriate quiet enjoyment of adjacent spaces and properties.

Schedule 3







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Authority

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Schedule 4 -



Schedule 5 -















Schedule 6 - Signage and Façade Policy

Schedule 7 - Notice of acceptance of Public Domain Licence

TO: [Landlord]

[insert date]

Acceptance of Public Domain Licence

Premises: [insert details of premises]

Landlord: [insert details of Landlord]

Tenant: [insert details of Tenant]

The [Tenant] accepts the Landlord's offer to licence the Licensed Area to the Tenant made under clause 26.2 of the lease of the Premises dated [insert date] made between the Landlord and the Tenant.

Attached is:

- (i) a plan of the "Licensed Area" which the Tenant warrants has been prepared in accordance with clause 26.3 of the lease;
- (ii) evidence of the insurances (including copies of any insurance policies) as required to be provided under the Public Domain Licence; and
- (iii) [insert details of any other items the Landlord has required to be provided].

Executed by [Tenant] in accordance with section 127 of the Corporations Act 2001 (Cth):

 Signature of director

 Signature of company secretary/director

 Full name of director

 Full name of company secretary/director

Executed as a deed

Certified correct for the purposes of the Real Property Act 1900 and executed by the **Barangaroo Delivery Authority** the seal of which is affixed in the presence of:

Signature of witness

Full name of witness

Certified correct for the purposes of the Real Property Act 1900 and executed by [Tenant] ABN [number] in accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signature of Chief Executive Officer

Full name of Chief Executive Officer

Signature of Director or Sole Director and Secretary

Name of Director or Sole Director and Secretary in full