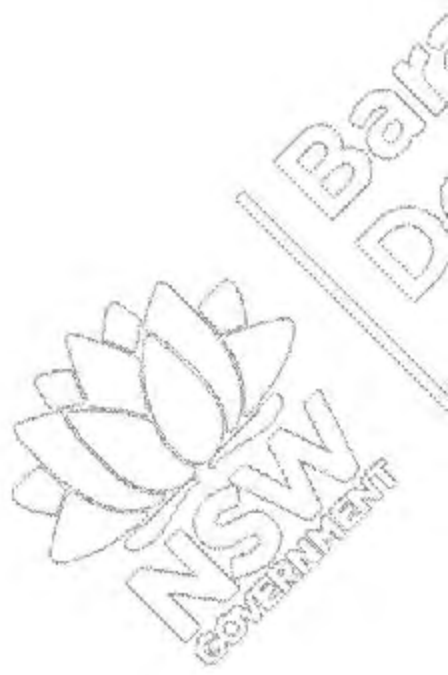
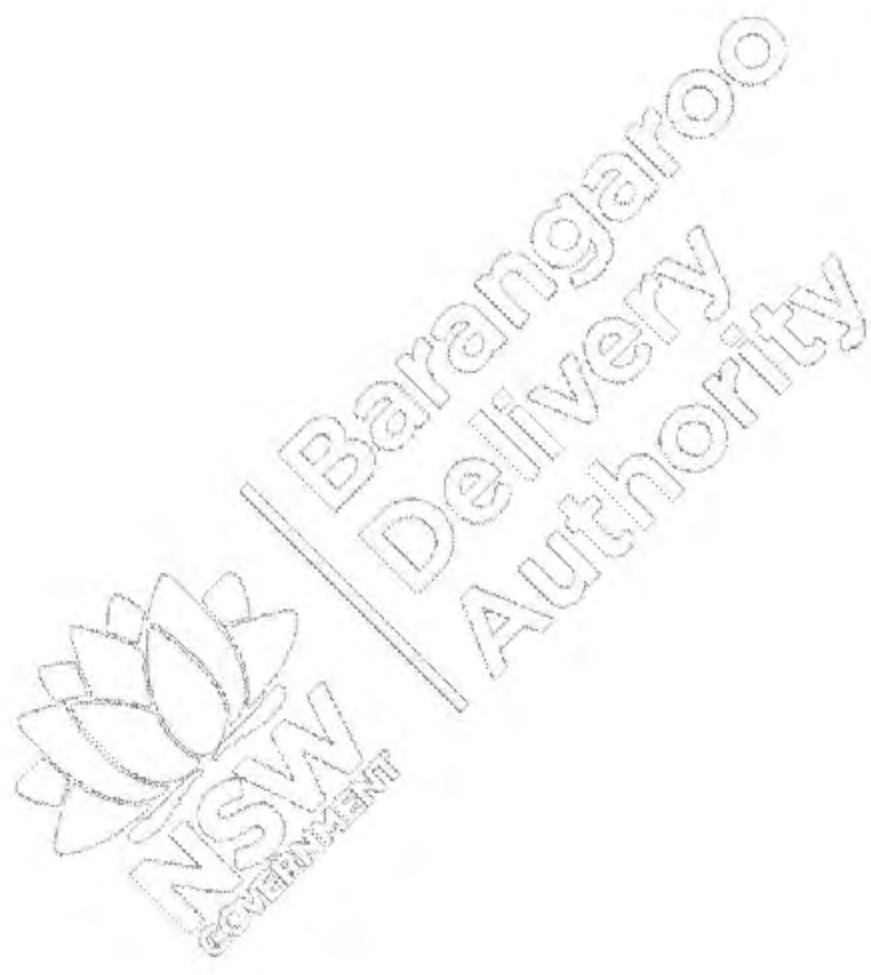




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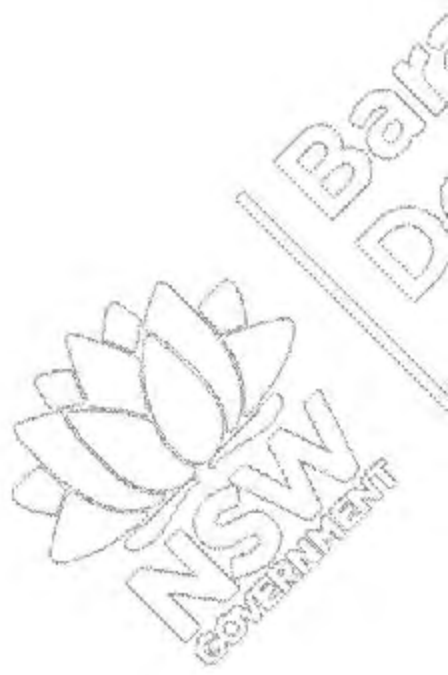
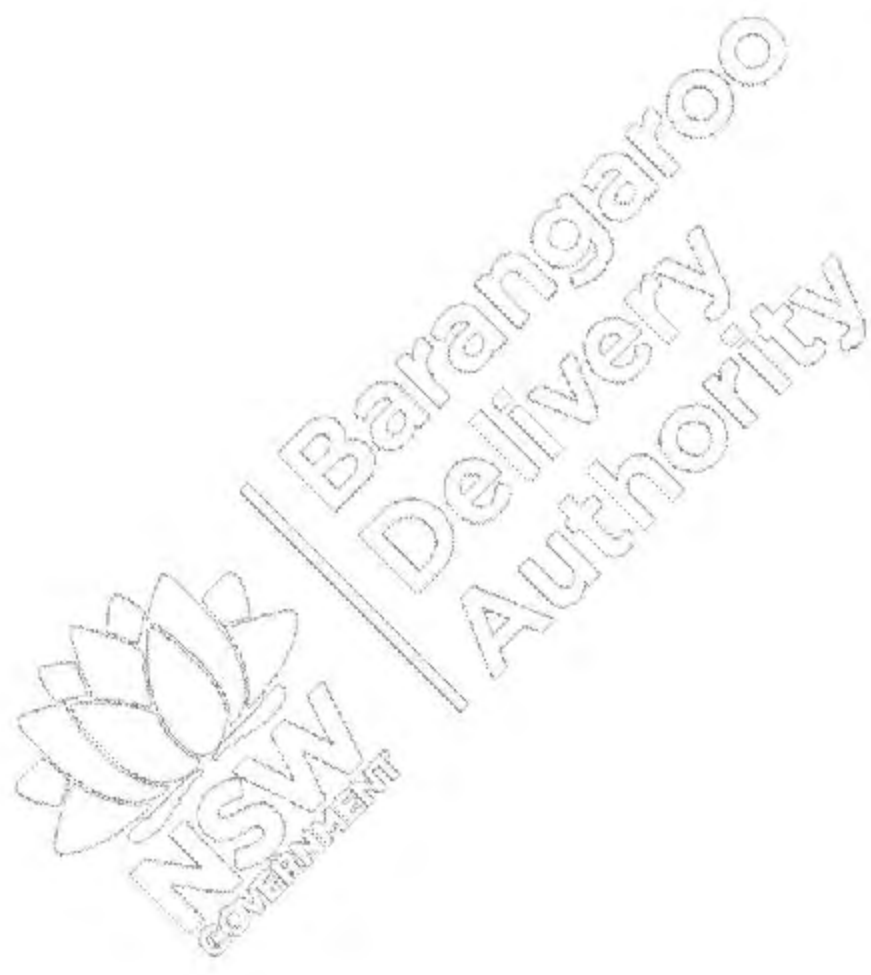
Annexure B - [REDACTED]



Annexure B [Redacted]

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Annexure C - [REDACTED]



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Annexure D - [REDACTED]



Annexure D - [REDACTED]

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Annexure E - Key Consultants and Key Personnel



Barangaroo
Delivery
Authority



Barangaroo
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Annexure E - Key Consultants and Key Personnel

Consultant	
Architectural Consultant Lead	
Architectural Sub-Consultant 2	
Architectural Sub-Consultant 1	
Sustainability Consultant 1	
Sustainability Consultant 2	

Consultant [Redacted]

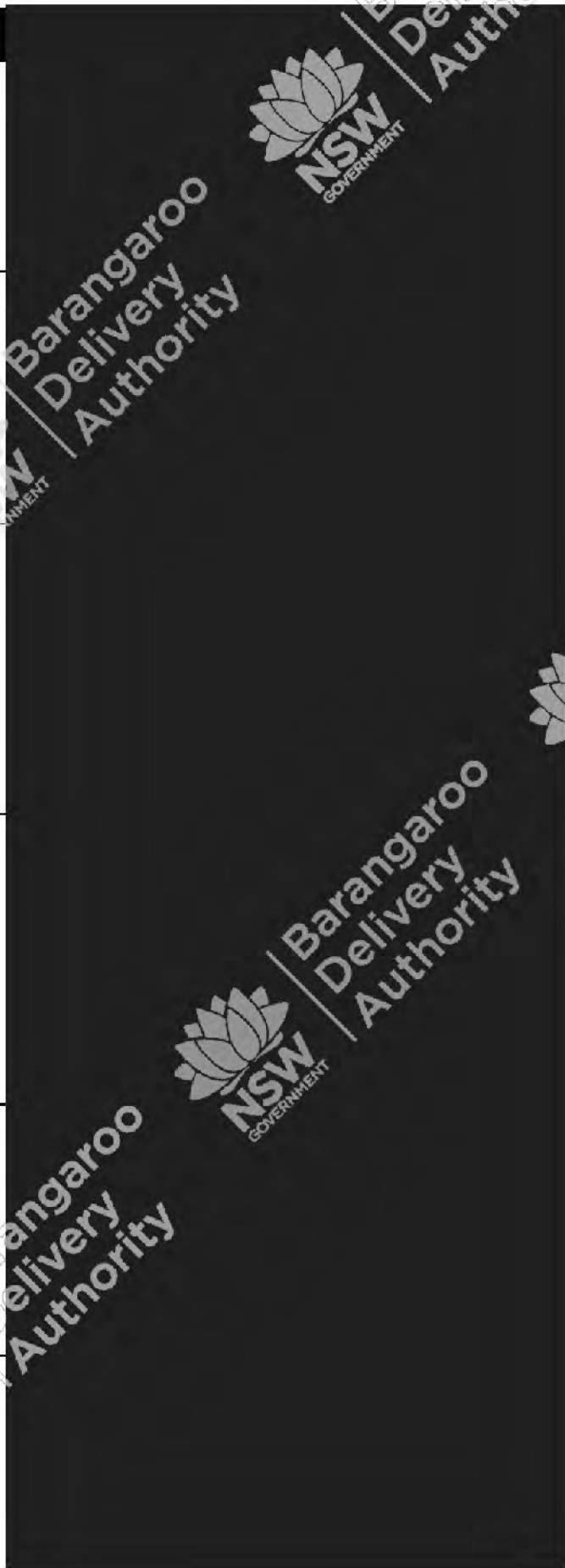
Structural Engineering [Redacted]

Civil / Hydraulic / Wet Fire Engineering [Redacted]

Building Services / Mechanical Engineering / Electrical Engineering / Communications / Security [Redacted]

Vertical Transport [Redacted]

Fire Engineer [Redacted]



Consultant		
Traffic Consultant		
Heritage Consultant		
Town Planning		
Cost Planning		
Legal		

Consultant

**Lead
Communications
Agency**

**Community
Consultation**

Art PR Agency

Key Personnel

Category			
Senior Grocon Executive Staff Members			
Grocon Development Resources			
Grocon Construction Resources			

Annexure F - Risk Allocation Table

Annexure F - Risk Allocation Table

The following table describes the Authority's allocation in relation to each risk identified. A risk not described is allocated to the Developer.

	Risk	Allocation	Clause Ref.
1.	Costs of preparation of Developer's Final Bid	Developer	Final Bid, clause 41.1 (Development Costs)
2.	Government decision not to proceed	Developer	Final Bid
3.	Government decision to proceed on a different basis	Developer	Final Bid
4.	Quality of design	Developer	Final Bid, clauses 2.2 (Central Barangaroo Project Objectives), 7.2 (Design Excellence), 7.3 (Developer's design obligations), 7.4 (Warranty regarding Design Documentation), [REDACTED], 7.11 Design Warranty regarding Approved Design Documents), 7.12 (Directions), 15.5 (Defective Work), 15.9 (Quality assurance), 16.4 (Benchmark for Public Domain Works), 16.8 (Quality of Public Domain Works), 29.6 (Quality Assurance systems in third party contracts and 52.1(a)-(c) (Representations and warranties)
5.	Developer is not selected	Developer	Final Bid
6.	Developer costs of negotiation	Developer	Final Bid and clause 41.3 (Legal and consultants costs)
7.	Sufficiency and accuracy of information disclosed to Developer	Developer	Clauses 6.5 (No reliance on Disclosure Material), 22.7 (Condition of Central Barangaroo), 26.1 (Developer's acknowledgments in relation to External Infrastructure) and 52.1(p) (Representations and warranties)
8.	FIRB This is the risk that:		
	(a) the Developer will require approval from the Foreign Investment Review Board before being allowed to develop the Project; and	(a) Developer	Clause 3.2 (Warranty as to FIRB)

Risk	Allocation	Clause Ref.
(b) the Developer will require approval from the Foreign Review Board before being allowed to sign the Development Agreement.	(b) Developer	Clause 3.1(b) (Requirement on execution of this Agreement)
9. Credit Capacity	Developer	Clause 3.1(a)(i) (Requirement on execution of this Agreement), 29.1 (Appointment of Builder) and 29.3 (Providing information about the Builder and Building Contract), 32.1 (Reporting obligations of Developer) and 52.1(j) (Representations and warranties)
10. Financing	Developer	Clauses 32.1 (Reporting obligations of Developer), 44.3 (Encumbering the Developer's interest in Central Barangaroo), 44.7 (Negotiating terms of financing documents), 49.1 (Occurrence of Default Event) and 49.2 (Financial Default)
11. Technical Capacity	Developer	Clauses 7.4 (Warranty regarding Design Documentation), 29.1 (Appointment of Builder) and 52.1(a)-(c) (Representations and warranties)
12. Leasehold title and access rights This is the risk that the Developer cannot be granted:		
(a) appropriate leasehold title to Central Barangaroo; and	(a) Authority	Clause 35.3 (Satisfaction of Fundamental Requirements)
(b) [REDACTED]	(b) Authority	[REDACTED]
13. Services and Easements		
(a) already in existence; and	(a) Developer	Clauses 15.3 (Site Conditions), 26.1 (Developer's acknowledgements in relation to External Infrastructure), 26.4 (Co-ordination of Internal Infrastructure), 27 (Relocation of Third Party Services) and 52.1(p) (Representations and warranties)

	Risk	Allocation	Clause Ref.
	(b) Services and easements required by Services and utilities providers.	(b) Developer	Clauses 27 (Relocation of Third Party Services, 35.8 (Authority's entitlement to grant easements over Central Barangaroo) and 35.9 (Authority's entitlement for easements to benefit the Public Domain)
14.	Roads and Maritime Services requirements	Developer	Clauses 11.7(a) (Activities in adjoining properties), 15.15 (Compliance with requirements of Government Agencies), 26.2 (Developer's obligations in relation External Infrastructure) and 32.1 (Reporting Matters)
15.	Environment - Contamination		
	(a) Risk of the works required to comply with the EPA Declaration.	(a) Authority	Clauses 6.1 (Acknowledgement) [REDACTED]
	(b) Risk in respect of all other Contamination which is not the subject of the EPA Declaration.	(b) Developer	Clause 15.3 (Site Conditions), 15.15 (Compliance with requirements of Government Agencies), 22.1 (Environmental Laws and Approvals), 22.3 (Environmental Risk), 22.7 (Condition of Barangaroo) and 22.9 (Remediation Works)
16.	Decision that key development or other planned or advertised activity will not proceed in any precinct.	Developer	Clauses 11.6 (Development within other projects), 11.7 (Activities in adjoining properties) and 25.1 (NSW Government - Sydney Metro proposal)

	Risk	Allocation	Clause Ref.
17.	Developer initiated design variations from submitted Final Bid This is the risk that the design proposals of the Developer under the Development Agreement differ from what was proposed in the Developer's Final Bid.	Developer	Clauses 2.5 (Final Bid), 7.3 (Developer's design obligations), [REDACTED], 7.11 (Design warranty regarding Approved Design Documents), 7.12 (Directions), 8.2 (Developer to prepare Applications), 10.3 (Obtaining other Approvals), 15.1 (Developer's general construction obligations), 15.7 (Developer's Variations), 15.8 (Authority's Variations) and 16.7 (Public Domain documents)
18.	Developer withdraws during negotiations	Developer	Clause 41.3 (Legal and consultants costs)
19.	Financing This is the risk that the Developer does not obtain the financing necessary for the development and construction of the project	Developer	Clauses 14 (Performance Security and Final Completion), 46 (General Guarantee and indemnity), 47 ([REDACTED] Guarantee and indemnity), 49 (Developer's Default Event and Termination)
20.	Other Payment Liabilities	Developer	Clauses 5 (Developer Payments), 11.5 (Outgoings and other liabilities), 15.12 (Reinstatement of damage), 16.9 (Liquidated Damages), [REDACTED], [REDACTED] 19 (Public Benefit Delivery Cashflow) clause 20.6 (Costs of taking action), 23 (Sustainability and Social Outcomes), 24 (Urban Art), 41 (Costs) and 45 (GST and other Taxes)
21.	Construction, Staging, Practical Completion, Milestone Dates/Schedule and Commissioning This is the risk that the project is not commenced, abandoned or not completed within a specified time for any reason including one or more of the matters listed below.		

Risk	Allocation	Clause Ref.
21.1 Necessary approvals, licences, consents (not planning), naming rights, intellectual property rights, other rights are not available or delayed.	Developer	Clauses 7.4 (Warranty regarding Design Documentations), 10 (Lodgement of Applications), , 11.3 (Use of Council Land and licence for Bridge Works), 12.2 (Developer to satisfy conditions), 15 (Construction), 21 (Timing), 22 (Environmental and native title obligations), [REDACTED] 40 (Intellectual Property), 49 (Developer Default Event and Termination) and 52.1 (f) (Representations and warranties)
21.2 Default by the Developer's sub-contractors.	Developer	Clauses 15.4 (Subcontracting the Works) and 49 (Developer Default Event and Termination)
21.3 Default by Developer, including as a result of delay to the Works.	Developer	Clauses 21 (Timing) and 49 (Developer Default Event and Termination)
21.4 Delay in transporting plant, machinery.	Developer	Clauses 2.3 (Risk Allocation Table), 21 (Timing) and 49 (Developer Default Event and Termination)
21.5 Failure of sophisticated unproven technology.	Developer	Clauses 2.3 (Risk Allocation Table), 21 (Timing) and 49 (Developer Default Event and Termination)
21.6 Damage/destruction/accident including damage which is so extensive that it is not commercially viable to complete the project.	Developer	Clauses 21 (Timing) and 49 (Developer Default Event and Termination)
21.7 Change in boundaries to Central Barangaroo, any other part of Barangaroo or to final plans and specifications:		
(a) initiated by the Authority; and	(a) Authority	Clause 15.8 (Authority's Variations) 21 (Timing) and 49 (Developer Default Event and Termination)
(b) initiated by Developer.	(b) Developer	Clauses 15.6 (Restrictions on Variations), 15.7 (Developer's Variations), 21 (Timing) and 49 (Developer Default Event and Termination)

Risk	Allocation	Clause Ref.
21.8 Import/export restrictions which deny entry/exit into/from the country of personnel or equipment required for the project	Developer	Clauses 2.3 (Risk Allocation Table), 21 (Timing) and 49 (Developer Default Event and Termination)
21.9 Additional remediation costs		
(a) Discovery during construction that Central Barangaroo or any other part of Barangaroo which may affect Central Barangaroo is contaminated (or in this case, contains further or new Contamination) and a clean up is required before construction is able to continue.	(a) Developer	Clauses 15.3 (Site Conditions), 15.15 (Compliance with requirements of Government Agencies), 21 (Timing), 22 (Environmental and native title obligations), 41 (Costs) and 49 (Developer Default Event and Termination)
(b) Any unforeseen pollution or Contamination which is created by the construction of the Project.	(b) Developer	Clauses 15.3 (Site Conditions), 15.15 (Compliance with requirements of Government Agencies), 21 (Timing), 22 (Environmental and native title obligations), 41 (Costs) and 49 (Developer Default Event and Termination)
(c) Contamination is discovered which was not disclosed by the tests.	(c) Developer	Clauses 15.3 (Site Conditions), 15.15 (Compliance with requirements of Government Agencies), 21 (Timing), 22 (Environmental and native title obligations), 41 (Costs) and 49 (Developer Default Event and Termination)
(d) Developer underestimates remediation costs; and/or	(d) Developer	Clauses 15.3 (Site Conditions), 15.15 (Compliance with requirements of Government Agencies), 21 (Timing), 22 (Environmental and native title obligations), 41 (Costs) and 49 (Developer Default Event and Termination)
(e) Remediation standards become more stringent after Development Agreement signed but before any work is started.	(e) Developer	Clauses 15.3 (Site Conditions), 15.15 (Compliance with requirements of Government Agencies), 21 (Timing), 22 (Environmental and native title obligations), 41 (Costs) and 49 (Developer Default Event and Termination)

Risk	Allocation	Clause Ref.
(f) Contamination discovered which should have been remediated by the Developer but was not.	(f) Developer	Clauses 15.3 (Site Conditions), 15.15 (Compliance with requirements of Government Agencies), 21 (Timing), 22 (Environmental and native title obligations), 41 (Costs) and 49 (Developer Default Event and Termination)
(g) if remediation process involves containment, containment fails because of defect.	(g) Developer	Clauses 15.3 (Site Conditions), 15.15 (Compliance with requirements of Government Agencies), 21 (Timing), 22 (Environmental and native title obligations), 41 (Costs) and 49 (Developer Default Event and Termination)
(h) if remediation process involves containment, containment fails because of interference by anyone other than the Authority.	(h) Developer	Clauses 15.3 (Site Conditions), 15.15 (Compliance with requirements of Government Agencies), 21 (Timing), 22 (Environmental and native title obligations), 41 (Costs) and 49 (Developer Default Event and Termination)
(i) Contamination subsequently discovered which requires remediation and did not form part of initial remediation work; and	(i) Developer	Clauses 15.3 (Site Conditions), 15.15 (Compliance with requirements of Government Agencies), 21 (Timing), 22 (Environmental and native title obligations), 41 (Costs) and 49 (Developer Default Event and Termination)
(j) the property is to be subsequently redeveloped and as a result requires to be remediated to a higher standard.	(j) Developer	Clauses 15.3 (Site Conditions), 15.15 (Compliance with requirements of Government Agencies), 21 (Timing), 22 (Environmental and native title obligations), 41 (Costs) and 49 (Developer Default Event and Termination)
21.10 Inter-governmental difference of opinion.	Developer	Clauses 15.3 (Site Conditions), 15.15 (Compliance with requirements of Government Agencies), 21 (Timing), 22 (Environmental and native title obligations), 41 (Costs) and 49 (Developer Default Event and Termination)

Risk	Allocation	Clause Ref.
21.11 The existence of subterranean storage tanks, walls or services or any other items below the surface of the land which may adversely impact on the construction of the Project.	Developer	Clauses 15.3 (Site Conditions), 15.15 (Compliance with requirements of Government Agencies), 21 (Timing), 22 (Environmental and native title obligations), 41 (Costs) and 49 (Developer Default Event and Termination)
22. Infrastructure construction:		
(a) delays in provision of External Infrastructure or Internal Infrastructure interferes with the construction programme for Central Barangaroo; and	(a) Developer	Clauses 11.6 (Development within other projects), 15.2 (Adjoining precincts and land), 15.3 (Site Conditions), 21 (Timing), 26 (Infrastructure) and 49 (Developer Default Event and Termination)
(b) failure to deliver External Infrastructure or Internal Infrastructure to Central Barangaroo.	(b) Developer	Clauses 11.6 (Development within other projects), 15.2 (Adjoining precincts and land), 15.3 (Site Conditions), 21 (Timing), 26 (Infrastructure) and 49 (Developer Default Event and Termination)
23. Development of Barangaroo outside Central Barangaroo interferes with the development programme	Developer	Clauses 11.6 (Development within other projects), 11.7 (Activities in adjoining properties), 15.2 (Adjoining precincts and land), 26 (Infrastructure)
24. Cost over-runs This is the risk that the costs of construction of the project exceed what was anticipated for any reason including one or more of the matters listed in preceding item and/or the reasons listed below:		

Risk		Allocation	Clause Ref.
(a)	higher than expected Prescribed Rates.	(a) Developer	Clause 41 (Costs)
(b)	other factors which permit price adjustment (i.e. increase) under the construction contract.	(b) Developer	Clause 41 (Costs)
(c)	increased cost of rights of way or any other obligation/right affecting the site.	(c) Developer	Clause 41 (Costs)
(d)	increased costs of insurance or unavailability of insurance.	(d) Developer	Clause 41 (Costs)
25.	Defects, Design Suitability, Performance & Operability This is the risk that the completed project is not of the design or quality intended for any reason including the following:		
(a)	completed project is not suitable for the purpose for which it was constructed.	(a) Developer	Clauses 14 (Performance Security and Final Completion) and 52.1 (b)-(c) (Representations and warranties)
(b)	completed project will not be able to achieve or perform the required/guaranteed performance levels (this will be most relevant if one of the developments involves the payment of a concession to the Authority).	(b) Developer	Clauses 14 (Performance Security and Final Completion) and 52.1 (b)-(c) (Representations and warranties)
(c)	latent defect in the completed project.	(c) Developer	Clauses 14 (Performance Security and Final Completion), clause 15.5 (Defective Work), 15.13 (Defects Liability Period) and 52.1 (b)-(c) (Representations and warranties)
26.	Performance levels This is the risk that the project is no longer suitable for the purpose for which it was constructed or is no longer able to achieve or perform at the required/guaranteed performance levels		
		Developer	Clauses 14 (Performance Security and Final Completion), 15, 16 and 21
27.	Operating costs This is the risk that operating costs of the completed project exceed the anticipated operating costs, for example, increased labour costs, maintenance, materials and technology costs, costs of borrowing (i.e. Prescribed Rate and currency changes), costs of insurance or unavailability of insurance or projected revenues not realised.		
		Developer	Clause 41 (Costs)

	Risk	Allocation	Clause Ref.
28.	Interruption to Operation		
	This is the risk that the operation of the project may be interrupted for any reason including a failure by the Developer/operator to meet any legal/regulatory requirements	Developer	Clauses 10.7 (Developer must comply with all Approvals), 10.8 (Authority not liable regarding Approvals), 15.2 (Adjoining precincts and land), 15.15 (Compliance with requirements of Government Agencies), 16 (Public Domain Works), 21 (Timing), 22 (Environmental and native title obligations), [REDACTED]
			[REDACTED] 26 (Infrastructure), Relocation of Third Party Services) and 49 (Developer Default Event and Termination)
29.	Maintenance, periodic replacement	Developer	Clause 15.5 (Defective Work), 15.13 (Defects Liability Period) and 41 (Costs)
30.	Infrastructure (including Services, utilities, etc.), public art and public areas		
	This is the risk that the provision of External Infrastructure or Internal Infrastructure is delayed, not delivered, uncoordinated, unfunded, poor quality and includes increased costs, cost overruns, delays, etc.	Developer	Clauses 11.6 (Development within other projects), 15.2 (Adjoining precincts and land), 15.3 (Site Conditions), 15.15 (Compliance with requirements of Government Agencies), 15.16 (Co-Ordination and integration of Developer's Project), 16 (Public Domain Works), [REDACTED], 18 (Other facilities and management office), 21 (Timing), [REDACTED], 26 (Infrastructure), Relocation of Third Party Services) 41 (Costs) and 49 (Developer Default Event and Termination)

Risk	Allocation	Clause Ref.
31. Suitability of site This is the risk that the site is unsuitable for the project because of, for example (and without limitation), geological/geotechnical reasons, archaeological reasons or flora or fauna reasons, the existence of subterranean storage tanks, walls or services which are known before construction or discovered during construction, other than in relation to the Declaration Works.	Developer	Clauses 15.3 (Site Conditions), 15.15 (Compliance with Government Agencies), 22 (Environmental and native title obligations) and 52.1(p)
32. Native Title Claim This is the risk that a native title claim has been or is made in relation to the site.	Authority	Clause 22.5 (Native title applications and Threatened Species Claims)
33. Authorisations, Permit, Planning This includes the risks set out below which may affect the cost or timing of the Project at any stage of the Project.		
33.1 Environment Impact Statement is required under the EP&A Act	Developer	Clauses 15.3 (Site Conditions), 15.15 (Compliance with Government Agencies), and 22.7 (Condition of Central Barangaroo)
33.2 Environment Impact Statement is required by the Commonwealth Government.	Developer	Clauses 15.3 (Site Conditions), 15.15 (Compliance with Government Agencies), and 22.7 (Condition of Central Barangaroo)
33.3 Any other authorisation, Approval or certificates for any Stage of the construction or operation of the Developer's Project (including air rights), support easements or Ministerial approval for plans (use, design and integration) is not obtained or is conditional.	Developer	Clauses 15.3 (Site Conditions), 15.15 (Compliance with Government Agencies), and 22.7 (Condition of Central Barangaroo)
33.4 [REDACTED]	Developer	[REDACTED]
34. Road Network This is the risk that the road network for Barangaroo is prejudicial to the operation or viability of the Project	Developer	Clause 11.7 (Activities in adjoining properties)

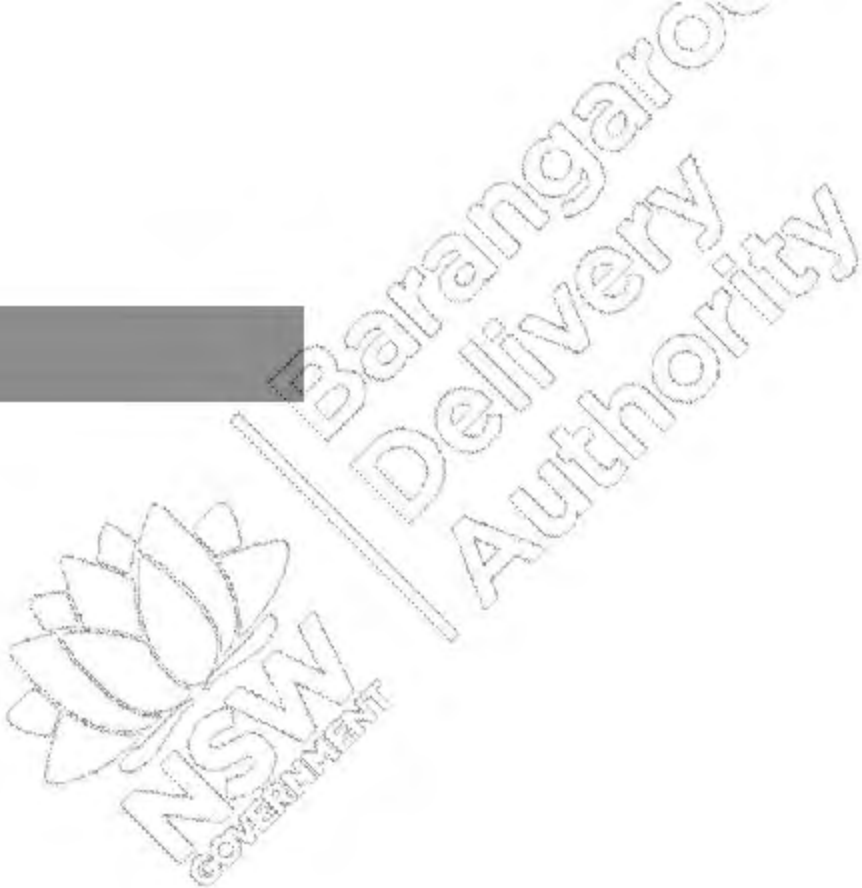
	Risk	Allocation	Clause Ref.
35.	Surrounding activities outside Barangaroo This is the risk that present and future activities in the areas surrounding Barangaroo have an effect on the Project. Such an activity would include the temporary or permanent closure of a facility or service surrounding Barangaroo which is considered integral to the development in Central Barangaroo.	Developer	Clauses 11.6 (Development within other projects), 11.7 (activities in adjoining properties), [REDACTED] , 15.2 (Adjoining precincts and land), 21 (Timing) and 49 (Developer Default Event and Termination)
36.	Pedestrian or road access to City	Developer	Clauses 15.15 (Compliance with requirements of Government Agencies) and 26 Infrastructure)
37.	Assignment or disposal of land, the development rights and/or change in effective management and control Developer This is the risk that the Developer may seek to assign its development rights	Developer	Clause 44.1 (Developer must not alienate)
38.	Market, Competition, Economic Conditions This includes such risks as those set out below: <ul style="list-style-type: none"> (a) the economic fluctuations and cycles which will span the duration of the entire Barangaroo project. (b) no local (or international) market for the product/service provided by the project. (c) market already contains strong competitors. (d) ACCC intervenes in relation to Developer's intended development. (e) volatile markets or price controls adversely affect supplies to the project and/or sales by the project. (f) a reduction in the customer base, and/or (g) currency fluctuations. 	(a) - (g) Developer	Clause 2.3 (Risk Allocation Table) and 15.3 (Site Conditions), 21 (Timing) and 49 (Developer Default Event and Termination)

	Risk	Allocation	Clause Ref.
39.	Change in beneficial ownership of project vehicle	Developer	Clause 44.1 (Developer must not alienate)
40.	Force Majeure Events This is the risk of event, such as war, terrorism, civil commotion, flood, drought and earthquake which would be typically defined as events of force majeure, during:		
	(a) the construction stage; and	(a) Developer	Clause 21 (Timing)
	(b) during operation	(b) Developer	Clause 21 (Timing)
41.	Insolvency This is the risk of the insolvency of the Developer, contractors, suppliers, purchasers or insurers.	Developer/Financier	Clauses 46 (General Guarantee and indemnity), 47 (██████████ Guarantee and indemnity) 49 (Developer's Default Event and Termination)
42.	Poor public perception	Developer	██████████ and 42 (Marketing and Communications)
43.	Any other risk not addressed in this Risk Allocation Table	Developer	Clause 2.3 (Risk Allocation Table)

Annexure G - [Redacted]

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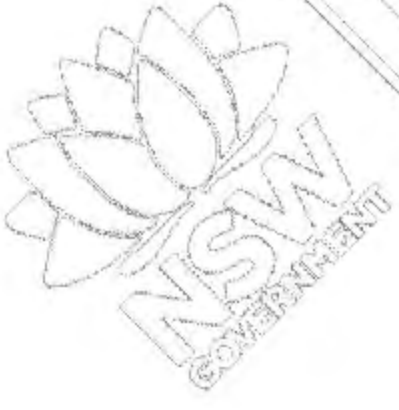
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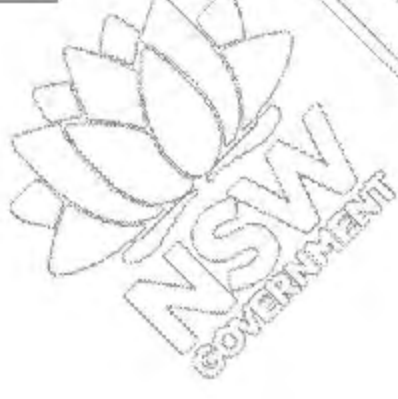
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■ [REDACTED]

■ [REDACTED]

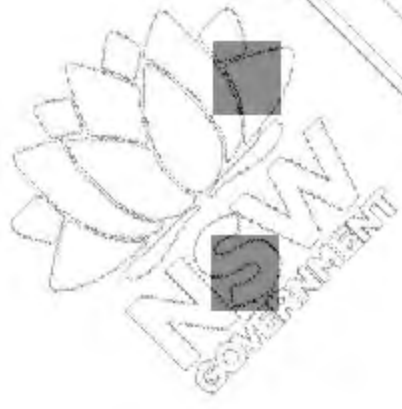
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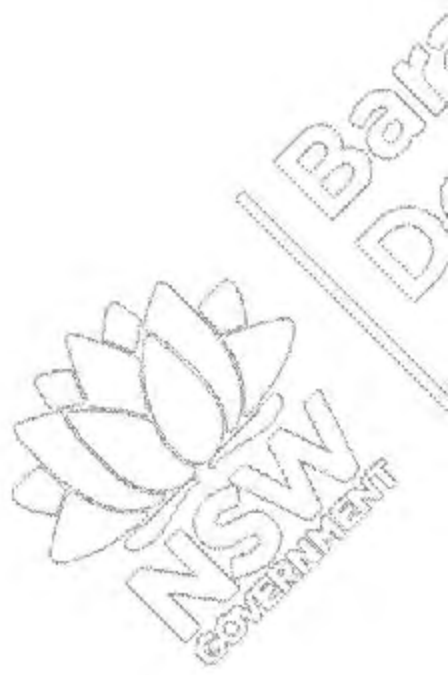
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■ [REDACTED]

■ [REDACTED]

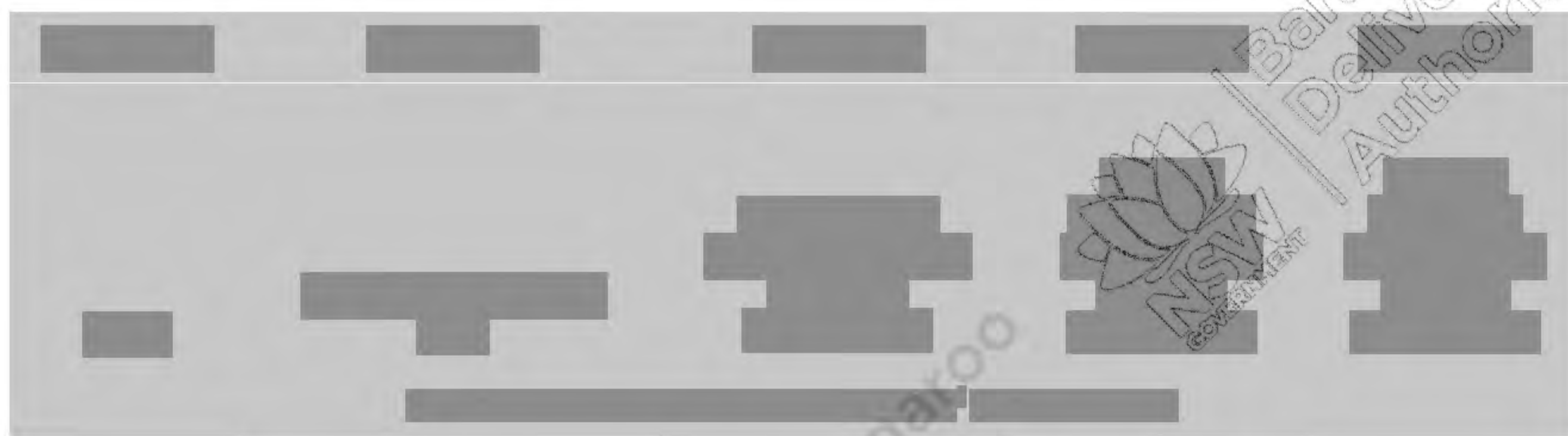
■ [REDACTED]





Barangaroo Delivery Authority

[illegible]



 <p>Barangaroo Delivery Authority</p>	 <p>Barangaroo Delivery Authority</p>	 <p>Barangaroo Delivery Authority</p>
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Annexure H - Insurance



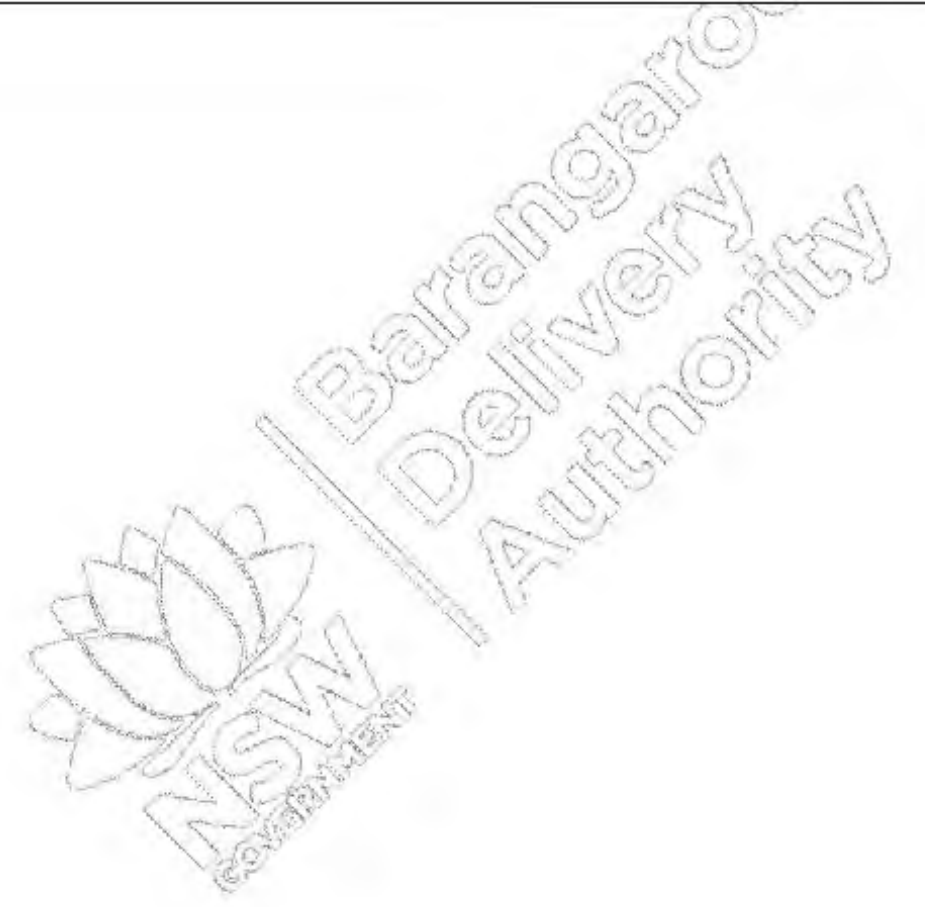
Annexure H - Insurance

Insurance Policy	Insured Sum
Public Liability	\$50,000,000
Workers' Compensation	As required by law
Professional Indemnity	\$20,000,000
Motor Vehicle Liabilities	\$20,000,000

Each insured sum must be increased by the amount of GST payable by the insured on the settlement of any claim.

**This Annexure I has been wholly
redacted from page 1 to 14**

Part 1 Annexure J - Standard Form Stratum Lease



Central Barangaroo [Standard Form Stratum Lease] Stage [■]

Barangaroo Delivery Authority

Landlord

[Insert details of tenant]

Tenant

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 18637/16133/80128948

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
Collection
Box

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

CODE

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** 99 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:

Name of authorised person:

Office held:

Signature of authorised person:

Name of authorised person:

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:

Name of authorised person:

Office held:

Signature of authorised person:

Name of authorised person:

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.

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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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.

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.

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.

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: the references to be updated on entry into Lease to reflect the current title 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.



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 à 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 \$[insert] 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). [Completion note: to be calculated in accordance with the CENDA.]

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.

Gross Floor Area or **GFA** 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).

Insolvency Event means the happening of any of these events:

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

section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the Landlord reasonably deduces it is so subject);

- (g) a body corporate is otherwise unable to pay its debts when they fall due;
- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- (i) something having a substantially similar effect to (a) to (h) happens in connection with that person under the Law of any jurisdiction.

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.

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.

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 commercial offices and ancillary retail uses or any other use permitted by the Authority, acting reasonably.

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 the licence of the Licenced 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 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.

Redevelopment Work has the meaning given in clause 7.4(c).

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

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 upgrades as would routinely be conducted within a premises similar to the Premises in good repair and condition consistent always with the Required Standard.

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 Policy means the Landlord's signage policy as at the Commencement Date and any replacement or variation of it by the Landlord acting reasonably which the Tenant receives at least two months' notice.

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.

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.

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 defaults in performing, observing, or fulfilling any provision of this lease (whether or not that provision is an essential term of this lease), other than for the payment of any money;
- (b) the Tenant repudiates this lease and the repudiation is accepted by the Landlord;
- (c) the Tenant does not pay within 30 days of a demand being made by the Landlord any money payable under this lease in the manner required under it;
- (d) an Insolvency Event occurs in respect of the Tenant which has a Material Adverse Effect;
- (e) a person is appointed under legislation to manage any part of the affairs of the Tenant which has a Material Adverse Effect;

- (f) this lease or a transaction in connection with it is or becomes wholly or partly void, voidable or unenforceable, or is claimed to be so by the Tenant or anyone on behalf of it; or
- (g) the Tenant fails to provide evidence to the Landlord's reasonable satisfaction of the insurances required under this lease.

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.

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 99 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.

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) 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.

(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.

3.4 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 on 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

The Tenant may only use the Premises for the Permitted Use. The Tenant may not use the Premises for any other use.

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 is 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 Developer 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 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 No objection by the Tenant

Subject only to clause 5.9, 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 or 5.7. Nothing in this clause 5.8 is intended to prevent the Tenant from exercising any statutory rights which it may have.

5.9 Circumstances for objection

- (a) The provisions of clause 5.8 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.

5.10 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.

5.11 Naming rights

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.

5.12 Signage and façade

- (a) No signs or advertisements are to be placed on any exterior part of the Premises which faces the Public Domain, without the prior consent of the Landlord. The Landlord's consent may not be unreasonably withheld if that sign conforms with the Signage Policy and is consistent with the requirements of all relevant Authorities.
- (b) The Tenant agrees that all other signs or advertisements will be consistent with all Approvals and requirements of relevant Authorities.

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 wilful, reckless or 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 wilful, reckless or 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 aerals

- (a) The Tenant may not install aerals 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 aerals:
 - (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 aerals.
- (c) The Landlord acknowledges that its consent is not required under this clause 6.9 for the installation of aerals on the roof or walls of the Premises to the extent the details for the installation of aerals 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 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.

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 (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;
 - B. the amount or amounts payable to the Landlord in consideration of the Landlord consenting to Redevelopment Work.

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) The Tenant shall provide the Landlord, on request, with such security for the completion of 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.
- (e) 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.

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;
- (b) any external part of the Premises;
- (c) any part of the Premises accessible to the general public (including foyers, car park entry or the colonnade); or
- (d) 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 a list of the persons (if any) from whom the Tenant proposes to call tenders for the proposed work. 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, then at least three months before the Tenant lodges an 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 Authority'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 Authority'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.

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 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 GFA 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

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 GFA 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 Authority (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 repeal or replacement of the *Renewable Energy (Electricity) Act 2000* (Cth):
 - (i) is a scheme or method which has been approved by the Authority; 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;
- (c) set and regularly review (and, if necessary, update) reasonable targets and benchmarks for the environmental management of the Building, having regard to best practice in the market from time to time; and
- (d) 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 fMetering

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(b).

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, 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
 - (ii) 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) 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) All Costs incurred by the Landlord (including legal Costs) in remedying a breach by the Tenant of its insurance obligations under this clause 9 will be payable by the Tenant to the Landlord on demand.

10. Alienation

10.1 Tenant not to alienate

The Tenant must not:

- (a) subject to clause 10.2, dispose of, deal with, assign its estate and interest in the Premises or its rights and powers as Tenant under this lease;
- (b) subject to clause 10.10, sublet, licence, part with possession of, or share possession of the Premises; or
- (c) 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.

For the purposes of clause 10.1(a), but subject to clause 10.4, unless the Tenant is a company listed on a publicly traded stock exchange or the trustee of a Wholesale Fund or a Superannuation Fund, 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

Despite clause 10.1, 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:

- (a) the Tenant gives to the Landlord not less than 15 Business Days' notice of its intention to assign or transfer which sets out:
 - (i) the name and address of the proposed assignee or transferee; and
 - (ii) if the proposed assignee or transferee is a company, the names and addresses of its directors;
- (b) 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);
- (c) 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:
 - (i) the Tenant and the Landlord each release the other from their respective obligations under this lease arising after the transfer or assignment;
 - (ii) 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
 - (iii) the proposed new tenant agrees to comply with this lease as if it were the Tenant in respect of:
 - A. all obligations of the Tenant under clauses 2.2 (Nature of tenancy), 3 (Rent and Outgoings), 5.1 (Permitted Use), 9 (Insurances), (Tenant not to alienate), 15.2 (Trigger Events) and 26 (Public Domain Licence); and
 - B. all obligations imposed on the Tenant which arise on or after the transfer or assignment; and
- (d) any Trigger Event or Event of Default by the Tenant has been remedied or compensated for by the Tenant or waived by the Landlord;
- (e) the proposed new tenant satisfies the Landlord that it has effected the insurances required under clause 9, and
- (f) the Tenant and the proposed new tenant pay the Landlord's reasonable Costs, including legal Costs, of considering the proposed assignment.

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;
 - (iv) the Tenant pays the Landlord's reasonable Costs, including legal Costs, in connection with considering the proposed change of Control; and
 - (v) the Tenant and the proposed Parent of the Tenant and the person proposing to cease being a Parent of the Tenant comply with all reasonable requirements of the Landlord.
- (b) The Tenant is not to be taken to have complied with this clause 10.4 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

This clause 10 does not prevent 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; or
- (c) if the Tenant is part of a restructure when solvent of the group of entities of which the Tenant forms part at that time (including any "top hat" restructure in the nature

of that described in section 124-784A of the Income Tax Assessment Act 1997 (Cth) or section 273D of the Duties Act 1997", de-merger or "spin out" of a member of that group), this clause 10.4 will not apply to any change in the Parent of the Tenant or change in Control of the Parent.

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 (but not all) of the Premises.

- (a) in respect of the initial letting up of the Premises following commencement of this lease, to tenants who generally conform to the use, tenancy mix and standard set out in the CENDA;
- (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) 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 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 as if the other person was the Landlord;
 - B. the other person assumes the Landlord's obligations under this lease 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 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 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 (Insurances); 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 be reasonable and must not be less than 40 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(a) 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 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, 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 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: 21/201 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 or number.

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 Counterparts

This lease may consist of a number of copies, each signed by one or more parties to this lease. If so, the signed copies are treated as making up the one document.

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.

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 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 a Public Domain Licence on the terms and conditions set out in Schedule 2.

26.2 Public Domain Call Offer

The Landlord during the Term makes an irrevocable offer to the Tenant to enter into the Public Domain Licence of the Licenced Area.

26.3 Nomination of Licensed Area

Upon accepting the Public Domain Call Offer, the Tenant may nominate the Licenced 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 include that part of the Licensable Public Domain Area marked "Minimum Retail Area" (as shown in the plan attached as Schedule 1);
- (c) may include any additional part of the Licensable Public Domain Area marked "Optional Retail Area" (as shown in the plan attached as Schedule 1); and
- (d) must constitute a single area, contiguous with the Premises.

26.4 Accepting the Public Domain Call Offer

The Call Offer may be accepted by the Tenant:

- (a) during the Term;
- (b) if the Tenant is not in breach of any of its obligations under this lease;
- (c) if the Landlord is satisfied that the Public Domain has reached Public Domain Practical Completion; and
- (d) by delivering to the Landlord a notice of acceptance of the Call Offer (in the form attached as Schedule 3):
 - (i) including a plan of the nominated "Licenced Area" in accordance with clause 26.3;
 - (ii) evidence of the insurances (including copies of any insurance policies) as required to be provided under the Public Domain Licence; and
 - (iii) any thing else the Landlord reasonably requires.

26.5 Acknowledgements

The Tenant acknowledges that the Public Domain Licence;

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

26.6 Public Domain Licence binding

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

Schedule 1 - Licensable Public Domain Area

Schedule 2 - Public Domain Licence

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

Barangaroo Delivery Authority

Landlord

[Name of Tenant]

Tenant

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 21/201 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 has the meaning given to it in clause 3.2.

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

Commencing Date means the date that the Tenant exercises the Call Option in accordance with clause 26.2 of the lease.

Conciliation Notice has the meaning given in clause 8.3(b).

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 means the design guidelines published by the Barangaroo Delivery Authority from time to time, or any document replacing those guidelines.

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

Licence Fee means \$[insert] plus GST per square metre of Licenced Area, per annum, being [insert] plus GST per annum (as increased by this licence).

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

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

- (a) are within the Permitted Use; and
- (b) are permitted under any relevant statutory conditions of consent or approval; and
- (c) may include:
 - (i) receiving trade related deliveries, cleaning the Licenced Area, setting up or packing away furniture related to the Permitted Use; and
 - (ii) other activities as permitted under any relevant statutory conditions of consent or approval; and
- (d) in all circumstances (and despite any statutory conditions of consent or approval) excludes any activities which cause disruption to other users or occupiers of Barangaroo.

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

Peak Hours mean:

- (a) between [insert] am and [insert] am on Business Days; and
- (b) between [insert] pm and [insert] pm on Business Days.

Peak Traffic Areas mean those parts of the Licenced Area which are shown as peak traffic areas on the plan in Attachment 1.

Permitted Use means [insert].

Shoulder Operating Hours means each period of one hour immediately:

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

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

Trading Hours mean:

- (a) between [insert] am and [insert] am on Business Days; and
- (b) between [insert] pm and [insert] pm on Business Days.

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

1.2 Definitions in Lease

Subject to clause 1.1 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 deed) 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 deed, and a reference to this deed 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 deed.

2. The Licence

2.1 Licence

The Licensors grant the Licensee a non-exclusive licence for the Term to use the Licenced Area:

- (a) for the Permitted Use during the Trading Hours;
- (b) for Low Impact Activities during Shoulder Operating Hours; and
- (c) at all times subject 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 Licenced Area. Subject to the terms of this licence, the Licensors may at any time in its absolute discretion exercise all its rights including its right to enter and use the whole or any part of the Licenced Area. The Licensee must not restrict the Licensors' access to the Licenced 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 Licenced Area.

2.4 No dealing

- (a) Subject to clause 5 of this licence, the Licensee cannot sublicense or part with or share possession of the Licenced Area or assign, novate or otherwise transfer any of its rights or obligations under this licence except in accordance with clause 2.4(b) of this licence.
- (b) The Licensee must assign this licence to any assignee of the assignor's interest in the lease which is permitted to occur and takes place in accordance with clause 10.2 of the lease.

3. Licence Fee

3.1 Payment of Licence Fee

- (a) The Licensee must pay the Licence Fee to the Licensor free of all deductions, annually in advance:
 - (i) with the first payment due on the Commencing Date; and
 - (ii) each payment thereafter due on the same day as "Rent" in accordance with clause 3.1 of the lease.
- (b) The Licensee must pay the Licence Fee proportionately for any broken period that is less than a year.

3.2 Annual Review of Licence Fee

Subject to clause 3.3 of this licence, on and from each anniversary of the lease Commencement Date (**Annual Review Date**), the Licence Fee increases to the greater of the Licence Fee as increased by:

- (a) CPI review (calculated pursuant to clause 3.4 of this licence as at that date); or
- (b) percentage review (calculated pursuant to clause 3.5 of this licence as at that date).

3.3 Market Review

On each **[10]** year anniversary of the lease Commencement Date (**Market Review Date**), the Licence Fee shall be determined by Market Review, provided that the Licence Fee following the market review cannot fall below the Market Review payable for the year immediately prior to the relevant Annual Review Date.

3.4 CPI Review

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

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

Where:

'Reviewed Licence Fee' means: the Licence Fee increased by CPI Review for the purposes of clause 3.2 of this licence.

'Existing Licence Fee' means: the Licence Fee applicable immediately before the relevant Annual Review Date.

'Current CPI' means: the CPI number for the quarter ending immediately before the relevant Annual Review Date.

'Previous CPI' means: the CPI number for the quarter ending immediately before the last Annual Review Date before the relevant Annual Review Date (or if there has not been one, the Commencing Date).

3.5 Percentage Review

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

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

Where:

- 'Reviewed Licence Fee' means: the Licence Fee increased by Percentage Review for the purposes of clause 3.2 of this licence.
- 'Existing Licence Fee' means: the Licence Fee applicable immediately before the relevant Annual Review Date.
- 'Increase Factor' means: [insert] %.

3.6 Market Review

For the purposes of clause 3.3 of this licence, the Licence Fee increased by Market Review is to be determined as follows:

- (a) The Licensors may give the Licensee a notice of the Licensors' assessment of the market licence fee of the Public Domain Licenced Area at any time, but not later than 6 months after the relevant Market Review Date.
- (b) Unless the Licensee gives the Licensors a notice within 14 days after the Licensee receives the Licensors' notice (and in this regard time is of the essence), disagreeing with the amount in the Licensors' notice, the Licence Fee from and including the relevant Market Review Date is the amount stated in the Licensors' notice.
- (c) If the Licensee gives a notice under clause 3.6(b) of this licence on time, the Licensors and Licensee must attempt to agree in writing on the Licence Fee from and including the relevant Market Review Date within 14 days after the Licensors receives the Licensee's notice.
- (d) If the Licensors and Licensee have not agreed on the Licence Fee on and from the relevant Market Review Date, then the parties must attempt to agree in writing on a Valuer to determine the current market licence fee within 14 days after the Licensors receives the Licensee's notice and appoint the Valuer jointly within 7 days after agreeing who that Valuer is to be.
- (e) If the Licensors and the Licensee cannot agree on a Valuer within 14 days after the Licensee gives its notice under clause 3.6(b) of this licence, either party may ask the President of the Institute to nominate a Valuer and the parties must appoint that Valuer jointly within 7 days after the nomination is made.
- (f) The party or parties appointing the Valuer must instruct the Valuer at the time of the appointment to determine the current annual market licence fee of the Licenced Area at the relevant Market Review Date as if the Licenced Area was unoccupied and offered for licence for the Permitted Use (on the basis of the licence being offered is interdependent on of 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 28 days after being appointed;
 - (ii) have regard to, and assume that the Licensee has complied with, the terms of this licence; and

- (iii) that the Valuer act as an expert and not as an arbitrator.
- (g) Subject to clause 3.6(j) of this licence, if an amount is determined by a Valuer that is appointed under this clause, then that is the Licence Fee on and from the relevant Market Review Date and the determination is final and binding on the parties. The Licensor and the Licensee must pay the Valuers' costs in equal shares.
- (h) The Licensee must pay the Licence Fee current immediately prior to the relevant Market Review Date as and when the Licence Fee is normally due and payable (as increased by this licence);
- (i) Within 1 month after the Licence Fee is agreed or decided under this clause 3.6 the parties must make an adjustment (by payment or offset to the Licence Fee as relevant) for the difference between what the Licensee has paid on account of the Licence Fee and the Licence Fee for the period beginning on the relevant Market Review Date and ending on the date of adjustment.
- (j) Despite the other provisions of this clause 3.6, the Licence Fee on and from the relevant Market Review Date must not be less than the Licence Fee immediately before that Market Review Date

3.7 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

4.1 Obligations

The Licensee must:

- (a) maintain and keep the Licenced Area in good repair;
- (b) keep the Licenced Area and surrounding areas clean, tidy and free of rubbish and vermin;
- (c) not use the Licenced Area for any purpose except the Permitted Use;
- (d) not use the Licenced Area except during the Trading Hours and the Shoulder Operating Hours (and only for such uses as are permitted under this licence during those times);
- (e) during Peak Hours (despite any other provision of this licence and notwithstanding the Peak Traffic Areas forming part of the Licenced Area):
 - (i) not use the Peak Traffic Areas for the Permitted Use or any other purpose;
 - (ii) keep the Peak Traffic Areas clear of all furniture, equipment, signage and any other items which may reduce or restrict the flow of pedestrian traffic; and
 - (iii) use all reasonable endeavours to ensure that the flow of pedestrian traffic is unimpeded within the Peak Traffic Areas (including 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 Licenced Area and the Licensee's use and occupation of the Licenced Area;
- (g) comply with the Licensor's rules and regulations for the Licenced Area;
- (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 Licenced 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 cost of any utilities supplied to the Licenced Area, any taxes, estate levy, cultural contribution, rates, levies and other costs assessed in respect of the Licensed Area or any part of Central Barangaroo whether charged directly to the Licensee or incurred by the Licensor as a result of the Licensee's specific use of the Licenced Area;
- (j) maintain and manage the Licensed Area at its cost and to a standard reasonably required by the Licensor (in its absolute discretion), including procuring at the Licensee's own cost the cleaning, structural or capital repairs, maintenance, repair, security and servicing of the Licenced Area;
- (k) not do anything:
 - (i) in the Licenced Area or on any part of Central Barangaroo that the Licensor reasonably considers is dangerous, annoying, offensive, immoral or illegal;
 - (ii) to contaminate or pollute the Licenced Area or any part of Central Barangaroo or the surrounding environment;
 - (iii) that interferes with, obstructs access to, damages or overloads the Licenced Area facilities, or any buildings, infrastructure or facilities which provide services to the Licenced Area; or
 - (iv) in the Licenced Area, that interferes with, disturbs or causes a nuisance to users of the Public Domain outside the Licenced Area.
- (l) not keep or use inflammable, volatile or explosive materials on the Licenced Area without the Licensor's consent; or
- (m) not damage or destroy anything on the Licenced Area or any part of Central Barangaroo.

5. Sublicensing

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

- (a) be made only in respect of that part of the Licenced Area which is the subject of the retail lease;
- (b) terminate immediately on the Expiry Date or earlier termination of this deed;
- (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 deed;
- (ii) requiring the sub-licensee to comply with all relevant obligations of the Licensee under this deed;
- (iii) requiring the sub-licensee to comply with any reasonable notices issued by the Licensor to the Licensee or to the sub-licensee in relation to any usage, cleaning, maintenance or safety issues arising from the use of the Public Domain;
- (iv) requiring the sub-licensee to comply with any directions of the Licensor to the Licensee in respect of emergencies which occur in or which affect the Public Domain;
- (v) requiring the sub-licensee to ensure that the Licensor is able to access the Licenced Area at all times and without prior notice;
- (vi) requiring the sub-licensee to comply with the Design Guidelines; and
- (vii) requiring the sub-licensee, during Peak Hours:
 - A not use the Peak Traffic Areas for any purpose;
 - B keep the Peak Traffic Areas clear of all furniture, equipment, signage and any other items which may reduce or restrict the flow of pedestrian traffic; and
 - C use all reasonable endeavours to ensure that the flow of pedestrian traffic is unimpeded within the Peak Traffic Areas, including due to congestion caused by customers, patrons, visitors or staff of the sub-licensee.

6. Major Events, Surrounding Activities and Further Development

- (a) The Licensee acknowledges clause 5.6 and 5.7 of the lease applies to this licence as if reference to:
 - (i) 'Tenant' are references to the 'Licensee';
 - (ii) 'Premises' are references to the 'Licenced Area'; and
 - (iii) 'Landlord' are references to the 'Licensor'.
- (b) In relation to the area marked 'Major Events Area' in the Major Events Plan attached as "Attachment 2" if required by the Licensor for purposes in relation to the operation of a major event, the Licensee must vacate (and must procure that all sub-licensees and their invitees vacate) the Licenced Area (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 comply with any other direction given by the Licensor or anyone nominated by the Licensor from time to time.
- (c) In relation to the balance of the Licenced Area, if required by the Licensor for purposes in relation to the operation of a major event, the Licensee must:
 - (i) cooperate to procure that the occupants of the Licenced Area assist in ensuring that the public can have access to the foreshore; and

- (ii) comply with (and will procure that the occupants of the Licenced Area, comply with) the safety and crowd control measures or any other directions or requirements given by the Licensor acting reasonably or anyone nominated by the Licensor from time to time, having regard to the preparation time, duration and the nature of the event.
- (d) The Licensee is not entitled to any abatement of the Licence Fee, set off or other compensation due to any disruption or temporary loss of amenity caused by a major event or further development referred to in this clause and the Licensee must not make any claim against the Licensor in respect of any loss or damage suffered by the Licensee due to any unavailability of the Licenced Area during any such periods or for any matters disclosed in this clause 6.

7. Alterations to the Licenced Area

- (a) Subject to clause 7(b) of this licence, the Licensee must not carry out any works in the Licenced Area comprising construction or installation of any improvements, embellishments or permanent structures in the Licenced Area without the prior written approval of the Licensor.
- (b) To the extent that the Licensee is required to carry out any works in the Licenced Area under the terms of this deed, the Licensee must not carry out those works without the prior written approval of the Licensor. The Licensor must act reasonably in giving or withholding approval to the works referred to in this clause 7(b). The Licensor may provide its consent conditionally upon satisfaction of any number of requirements by the Licensee as specified by the Licensor acting reasonably.
- (c) The Licensee must carry out any works approved by the Licensor at the Licensee's own cost and risk and in accordance with any requirements specified by the Licensor.
- (d) The Licensee must comply with the Design Guidelines when proposing or carrying out any works (to the extent approved by the Licensor) within the Licenced Area.

8. Access standards

- (a) If the Licensor has concerns regarding unsafe pedestrian traffic, unsatisfactory or unsafe congestion, lack of maintenance or other unsatisfactory outcomes for the public amenity in respect of the Licenced Area in relation to security, noise, permitted use, density, safety, crowd control or public health, resulting from (or substantially contributed to or connected with) the Licensee's use of the Licenced Area, the Licensor may give a notice to the Licensee requiring the Licensee to take such action as is necessary to rectify the unsatisfactory condition within a period of 10 Business Days from the date of the notice (**Breach Notice**).
- (b) If the Licensor considers acting reasonably that an unsatisfactory condition has not been rectified within the timeframe specified in a Breach Notice given by the Licensor, the Licensor may give a notice requiring the senior management representatives of each party to meet within 5 Business Days of the date of the notice (**Conciliation Notice**) and to consult in good faith to resolve the concerns raised by the Licensor, or otherwise rectify the issues the subject of the Breach Notice within 20 Business Days of the date of the Conciliation Notice.
- (c) If the Licensor considers that an unsatisfactory condition has not been rectified within the period of 20 Business Days commencing from the date of a Conciliation Notice, the Licensor may terminate this licence, effective immediately upon notice from the Licensor and without compensation to the Licensee.

9. Insurances, indemnities and releases

9.1 Licensee accepts risk

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

9.2 Insurance

The Licensee must:

- (a) not do anything that could:
 - (i) prejudice any insurance of the Licenced Area, the Building, any part of Central Barangaroo or property in them; or
 - (ii) increase the premium for that insurance, without the Licensors 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 Licenced 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 9.2(b) of this licence.

9.3 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 Licenced Area;
 - (ii) anything occurring on, originating in, or coming from, the Licenced 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 deed is terminated until the Expiry Date) if this deed is terminated.

9.4 Release

- (a) 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:
 - (i) anything (including damage, loss, injury and death) unless it is caused by the Licensor's negligence;

- (ii) the Licensor doing anything the Licensor is permitted or obliged to do under this deed; and
- (iii) the electricity service, or any other service, being interrupted, broken down or not being available.

9.5 Survival

Clause 9 of this licence survives termination of this licence.

10. Default

The Licensor may terminate this licence if:

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

11. Licence ends

11.1 Events

This licence ends on the earliest to occur:

- (a) the Expiry Date; and
- (b) the date this licence is terminated in accordance with clause 10 of this licence.

11.2 Licensee to vacate

On the earlier of the Expiry Date or the day this licence is terminated, the Licensee must:

- (a) (subject to clause 11.2(b) of this licence) promptly remove all improvements, works, fixtures, services, infrastructure, materials, possessions and other items from the Licenced Area and any part of Central Barangaroo as directed by the Licensor, leaving the Licenced Area paved (or otherwise surfaced to the standard of surfacing of the area surrounding the Licenced Area) and in a clean, clear and safe condition;
- (b) if directed by the Licensor, not remove any improvements or fixtures nominated by the Licensor from the Licenced Area (and such items will become the property of the Licensor);
- (c) vacate the Licenced Area and leave it in good order and condition to the Licensor's reasonable satisfaction; and
- (d) make good, if requested by the Licensor, any damage caused by removing the Licensee's possessions and vacating the Licenced Area.

11.3 Failure to vacate

If the Licensee does not comply with its obligations under clause 11.2 of this licence on time, the Licensor may comply with these obligations (if necessary, in the Licensee's name) at the Licensee's risk and expense. The Licensee must pay the Licensor on demand as liquidated damages a sum equal to the cost to the Licensor of complying with that clause.

12. Design Guidelines

The Design Guidelines may be updated by the Licensor from time to time. The Licensee may submit proposals to the Licensor in respect of the Design Guidelines in accordance with the relevant processes set out in the Design Guidelines.

13. GST

13.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 13 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 13.
- (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.

13.2 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.

13.3 Additional amount of GST payable

Subject to clause 13.5, 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 13), 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 13.3(b).

13.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 13.3 and clause 13.5), 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 13.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 13.3.
- (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.

13.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 13.3 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 13.3 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 13.3 (or the time at which such GST Amount would have been payable in accordance with clause 13.3 but for the operation of clause 13.5(a)).

13.6 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.

13.7 No merger

This clause 13 will not merge on termination of this licence.

14. Limitation of liability

- (a) The Licensee 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 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 Tenant is actually indemnified for the liability.
- (c) This limitation of liability applies despite any other provision of this licence 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 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 Trustee Obligations 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 Tenant'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.

Schedule 3 - 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 Licenced 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 "Licenced 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 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

The seal of **Barangaroo Delivery Authority** is affixed by authority of the Chief Executive Officer in the presence of:

Signature of authorised person

Signature of authorised person

Name of authorised person

Name of authorised person

Office held

Office held

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

Signature of Director or Sole Director and Secretary

Name of Secretary/other Director in full

Name of Director or Sole Director and Secretary in full