CITY OF SYDNEY

Licence Agreement

The Council of the City of Sydney ABN 22 636 550 790
and **[Licensee]** (ABN)

For [insert Licensed Area and term]

Reference: [insert TRIM number]

LICENCE AGREEMENT

DATED

PARTIES

THE COUNCIL OF THE CITY OF SYDNEY (ABN 22 636 550 790) of Town Hall House, 456 Kent Street, Sydney, New South Wales 2000

[insert name of party] **(**ABN) of [insert Licensee address]

RECITALS

A. We are the owner of the Licensed Area.

B. We have agreed to grant to you and you have agreed to accept a non-exclusive licence to use the Licensed Area in accordance with the terms of this Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 Purpose

The purpose of this Agreement is to set out the terms and conditions for the occupation and use of the Licensed Area.

1.2 Definitions

In this Agreement, certain words and phrases have defined meanings. They are indicated by initial capital letters. However, "we", "us", "our", "you" and "your" are not capitalised in this way.

In this Agreement, unless a contrary intention appears:

Agreement means this licence agreement including any Rules or other supporting documents.

Air Conditioning Plant means plant, machinery and equipment (if any) installed by us or installed in the Licensed Area prior to you entering into possession of the Licensed Area for heating, cooling or circulating air in the Licensed Area.

Business Day means any day other than a Saturday, Sunday or a public holiday in New South Wales;

Building means:

(a) the building for the time being erected on the Land of which the Licensed Area forms part; and

(b) any extension, modification, alteration, addition or replacement of the building.

Child Safety Law means the *Child Protection (Working with Children) Act 2012* (NSW), *Child Protection (Working with Children) Regulation 2013* (NSW), Children's *Guardian Act 2019* (NSW), and any other child protection law that applies to you, your business or the Permitted Use being carried out on the Licensed Area.

City Logo means the name, logo or other indices or intellectual property owned by or associated with the Council of the City of Sydney.

City Values means the City of Sydney values which can be viewed at https://www.cityofsydney.nsw.gov.au/council-governance-administration/vision-values.

Clean Up means any measure to:

(a) assess the nature and extent of any Contamination, Pollution or Hazardous Material;

(b) take any measurement, recording or sample or make any inspection, calculation, test or analysis in respect of any Contamination, Pollution or Hazardous Material;

(c) retain any consultant, contractor, expert, agency or other like person in the course of any of the activities referred to in paragraph (a) and paragraph (b) above;

(d) remove, disperse, destroy, contain, dispose of or treat any Contamination, Pollution or Hazardous Material;

(e) eliminate or reduce any hazard arising from the Contamination, Pollution or Hazardous Material;

(f) validate that the Contamination or Hazardous Material has been removed, disposed of, destroyed, contained or treated; or

(g) restore the property to a state which conforms with the requirements of the EPA or other Environmental Authority for the remediation of those sites for all current permitted uses at the date of this Licence or to such other state as may be necessary to satisfy a notice, demand or order issued by an Environmental Authority in relation to the Land.

Commencement Date means the date stated in Item 6(a) of Schedule 1.

Common Areas means any part of the Land or Building provided by us or the owner of the Land or Building for common use by you and other occupants of the Building and their invitees, including any lobby areas, corridors, toilets, Elevators, stairways, and any other common amenities and conveniences, other than those reserved to us.

Condition Report means the condition report described in Clause 11.1 and attached as Schedule 5.

Conservation Management Plan means a conservation management plan setting out maintenance and refurbishment requirements for the Building.

Contamination means the presence in, on or under land of a substance (whether a solid, liquid or gas) at a concentration above the concentration at which the substance is normally present on, in or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or to any other aspect of the Environment. For the purpose of this definition a substance may present a risk of harm either on its own or by reason of the presence of or interaction with another substance or aspect of the Environment, structure or other matter.

Elevators mean any lift, escalator, moving footway or the like in the Building.

Environment means all components of the earth, including:

(a) land, air and water;

(b) any layer of the atmosphere;

(c) any organic or inorganic matter;

(d) any living organism;

(e) natural or man-made or modified features or structures; and

(f) ecosystems and all elements of the biosphere.

Environmental Authority means any Government Authority responsible for the administration, implementation or enforcement of any Environmental Protection Law and includes the EPA and the relevant local councils.

Environmental Protection Law means any current or future Law or any directive, authority, policy, environmental plan, permit or licence issued by a Government Authority relating to Contamination, Pollution, use of land, protection or safety of the Environment, human health, or work health and safety matters.

EPA means the NSW Environment Protection Authority constituted under the *Protection of the Environment Administration Act 1991* (NSW).

Expiry Date means the dated stated in Item 6(c) of Schedule 1.

Face Licence Fee means the amount stated in Item 7(a) of Schedule 1 as varied from time to time under this Agreement

Government Authority means any:

(a) government, government department, government agency or government authority;

(b) governmental, semi-governmental, municipal, judicial, quasi-judicial, administrative or fiscal entity or person carrying out any statutory authority or function; or

other entity or person (whether autonomous or not) having powers or jurisdiction under any statute, regulation, ordinance, by-law, order or proclamation, or the common law.

Grants and Sponsorships Policy means the City of Sydney's Grants and Sponsorships Policy as Policy adopted and administered by us from time to time.

Insolvency Event means if you:

(a) become insolvent;

(b) make an assignment of your estate for the benefit of creditors;

(c) go into liquidation or a receiver or receiver and manager or mortgagee's or chargee's agent is appointed;

(d) become subject to any petition or proceedings in a court for compulsory winding-up;

(e) become subject to supervision of a court either voluntarily or otherwise; or

(f) enter into a scheme of arrangement with creditors.

Land means the land described in Item 1 of Schedule 1 and includes:

(a) any additional land which land (or improvements on that land from time to time) is managed, operated or used in conjunction with the land described in Item 1 (or the improvements on that land from time to time); and

(b) any land amalgamated from time to time with the land described in Item 1.

Licensed Area means that part of the Building described in Item 2 of Schedule 1 and shown in the Plan and includes any of Our Property.

Licence Fee means the yearly amount stated in Item 7(c) of Schedule 1 as varied from time to time under this Agreement.

Maintenance Obligations Matrix means the maintenance obligations matrix attached at Schedule 6.

Make Good means to:

(a) remove all Your Property from the Licensed Area (unless we agree otherwise); and

(b) remove any alteration you have made to the Services and reinstate the Services to the standard reasonably required by us (unless we agree otherwise); and

(c) repair any damage to the Building resulting from the removal and/or reinstatement of the things in accordance with the "make good" obligations stated in this Agreement to the standard reasonably required by us; and

(e) reinstate any Services and Our Property that you have removed or modified at any time during the occupation of the Licensed Area for any reason to their original condition as recorded in the Condition Report (unless we agree otherwise); and

(d) thoroughly clean the Licensed Area and remove all rubbish, waste and materials that you or Persons Under Your Control have brought onto or left in the Licensed Area and the Building;

(e) if requested by us, paint, stain or otherwise treat all interior surfaces of the Licensed Area in the manner reasonably required by us; and

(f) if requested by us, replace floor coverings to the Licensed Area which are, in our reasonable opinion, worn or damaged to an extent we considers beyond fair wear and tear.

Normal Building Hours means the hours stated in Item 9 of Schedule 1 other than on public holidays in New South Wales and any change to those hours which we determine by a Rule.

Our Property means all plant, equipment, fixtures, fittings, furniture, furnishings and other property installed or situated in or relevant to the Licensed Area and owned or controlled by us.

Permitted Use means the permitted use stated in Item 8 of Schedule 1.

Persons Under Your Control means your servants, agents, workmen, visitors, invitees, sublessees, licensees and any other person on or about the Licensed Area (with or without invitation) or under your control or discretion.

Plan means the plan attached as Schedule 4.

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

Principal Contractor means the position of principal contractor referred to in Chapter 6 of the *Work Health and Safety Regulation 2011* (NSW).

Public Health Order means an order made by the Minister for Health and Medical Research under section 7 of the *Public Health Act 2010* (NSW), as amended, updated, replaced or superseded.

Rules mean the rules of the Building (if any) as notified by us to you from time to time.

Security means an unconditional and irrevocable bank guarantee or a bond for the amount specified in Item 12 and for such additional amounts we may require time to time under clause 21 which must:

(c) be expressed to be in favour of 'The Council of the City of Sydney and its successors or assigns';

(d) not have an expiry date;

(e) cover all obligations of the Licensee under this Agreement;

(f) not be cancelled or suspended if an amount less than the amount in Item 12 is drawn against it, but remain in full force in relation to the balance; and

(g) contain other terms and conditions that we may reasonably require.

Services means services (which may include without limitation, water, sewerage, drainage, gas, electricity, communications, essential services, fire prevention, air conditioning and Elevators) to or of the Building or the Land provided by us, any governmental agencies or utility companies and which are intended to service, or are for the benefit of the Licensed Area.

Subsidy means the reduction in market licence fee given to you by us under the Grants and Sponsorships Policy for the amount stated in Item 7(b) of Schedule 1 which does not include relocation or other costs.

Term means the period from and including the Commencement Date to and including the Expiry Date stated in Item 6(b) of Schedule 1.

Waste Proportion means the proportion of waste charges for the Building to be paid by You as stated in Item 11.

We or **Us** (and grammatical variations such as **our**) means the Council of the City of Sydney and includes our employees and agents.

WHS Law means the *Work Health and Safety Act 2011* (NSW) and all Codes of Practice approved under Part 14 of that Act, the *Work Health and Safety Regulation 2017* (NSW), and any other applicable work health and safety Law.

You (and grammatical variations such as **your**) means the person set out in Item 4 of Schedule 1 and includes your employees and agents.

Your Application means your application for entry into the Accommodation Grants Program which sets out the proposed use of the Licensed Area, as attached at Schedule 7.

Your Property means all property (including any fittings, plant and equipment) in the Licensed Area which are not Our Property or Services.

1.3 Interpretation

The following rules of interpretation apply in this Agreement unless the context otherwise requires:

(a) headings and subheadings are for convenience only and do not affect interpretation;

(b) words denoting the singular number include the plural, and the converse also applies

(c) words denoting any gender include all genders;

(d) a reference to a person includes a natural person, company, corporation, trust, partnership, joint venture, or any other incorporated or unincorporated body, society, association or entity;

(e) a reference to a party in this Agreement includes its successors and permitted assigns and substitutes by way of assignment or novation;

(f) a reference to **legislation**, includes any State or Federal statute, enactment, ordinance, code or other legislation, or a section or provision of that legislation, includes any order, regulation, rule, bylaw, proclamation or statutory instrument made or issued under that legislation and any amendment, modification, consolidation, re-enactment or replacement of, or substitution for, that legislation from time to time;

(g) any term or expression defined in any legislation has the statutory meaning given to that term or expression in relevant legislation when used in this Agreement; and

(h) a reference to **governmental agency** means the Crown, any government, any governmental ministry or department, or any Crown, governmental, semi-governmental, statutory, parliamentary, administrative, fiscal, public, municipal, local, judicial or regulatory entity, agency, instrumentality, authority, court, commission, tribunal or statutory corporation having jurisdiction over or in respect of the Building and/or its use.

1.4 Liability

When two or more persons are named as a party to this Agreement, any agreement, representation or warranty expressed to be given or made by that party under this Agreement will be a joint and several liability of each named person.

1.5 Role as Public Authority

(a) Nothing in this Agreement in any way restricts or otherwise affects our unfettered discretion in the exercise of our statutory powers as a governmental agency.

(b) If there is any conflict between our unfettered discretion in the exercise of our statutory powers as a governmental agency and the performance of obligations under this Agreement, the former prevails.

2. ACCOMMODATION GRANTS PROGRAM

2.1 Terms of participation

The parties acknowledge that:

(a) you have made an application under the Grants and Sponsorships Policy and/or we have resolved to make available the Subsidy to you through the Grants and Sponsorships Policy;

(b) the Subsidy will be administered by us under the Grants and Sponsorships Policy and the terms of this Agreement;

(c) the Licence Fee payable under this Agreement is the amount stated in Item 7(c) of Schedule 1 (calculated by deducting the Subsidy from the Face Licence Fee).

2.2 Licensee Acknowledgements

(a) You acknowledge that at all times throughout the Term you must:

(i) meet the general performance criteria contained in Schedule 2;

(ii) meet the specific performance criteria contained in Schedule 3 (or as set by us from time to time) within the reporting timeframe specified;

(iii) submit an annual report and any other report requested including a self-assessment (if relevant) to us in accordance with Schedule 2;

(iv) submit any other reports or documentation reasonably required by us from time to time; and

(v) not act in a manner which we consider to be contrary to the City Values, or that could reasonably be expected to prejudice the City's interests or injure the City's reputation.

(b) In addition to our rights under clause 20, we may reduce or discontinue the Subsidy if:

(i) you fail to meet the general or specific performance criteria or the requirements of the Grants and Sponsorships Policy; or

(ii) your core services change so that our priorities and community needs are met on reduced levels or no longer reflect Your Application;

(c) any reduction or discontinuation of the Subsidy determined by us under 2.2(b) will operate from the date being no earlier than 10 Business Days after we give you a notice that sets out:

(i) the date on which the reduction or discontinuation of the Subsidy will operate from ('operative date');

(ii) the amount of the revised Licence Fee to apply on and from the operative date as a result of the reduction or discontinuation of the Subsidy.

(d) if the Subsidy is reduced or discontinued in accordance with 2.2(b), either party may bring this Agreement to an end by giving the other party at least one month's written notice. The notice must specify the date on which this Agreement will be at an end.

2.3 Acknowledgement of Licensor

(a) Our support must be acknowledged in accordance with item 13 of Schedule 1.

(b) All printed material must be in a form approved by us. You must provide us with samples of all materials on which the City Logo will appear for approval at least two weeks before the material is to be printed.

(c) Subject to clause 2.3(b), we grant you the right to use the City Logo and to refer to us as the "City of Sydney" where required to comply with your obligations under this clause.

(d) You must only use the City Logo in accordance with this Agreement.

(e) We may at any time direct you to remove the City Logo or any reference to the Council of the City of Sydney from any material published by the you. You must comply with any direction under this clause immediately.

3. GRANT OF LICENCE

3.1 Licence

In consideration of the payment of the Licence Fee and the performance of your obligations under this Agreement, we grant you a non-exclusive licence to use the Licensed Area for the Term.

3.2 Holding Over

(a) With our prior written consent, you may hold over after the Expiry Date. You will become a monthly licensee. You acknowledge that the Licensed Area may not be available for you to occupy after the Expiry Date.

(b) As a monthly licensee, you must pay a Licence Fee equal to a monthly proportion of the Licence Fee and any other monies payable by you under the Agreement at the Expiry Date (subject to an annual Licence Fee increase of 3% pa).

(c) The terms and conditions of this Agreement govern this monthly licence with such amendments as are necessary to make them applicable to a monthly licence.

(d) Either party may end this monthly licence by giving the other party at least 1 month written notice.

4. NATURE OF LICENCE

4.1 No Interest in the Licensed Area

(a) This Agreement does not create the relationship of landlord and tenant between the parties.

(b) You have a personal right of occupation on the terms and conditions contained in this Agreement and have no interest in the Licensed Area.

(c) The legal right to possession of and control over the Licensed Area remains vested in us at all time.

5. OUR OBLIGATIONS

5.1 Maintenance of Common Areas

Provided that we own or control the Common Areas, we will use our reasonable endeavours to keep and maintain the Common Areas in good order and repair and in a clean and tidy condition.

5.2 Use of Common Areas

You and Persons Under Your Control may use the Common Areas in common with us and other persons entitled to use the Common Areas.

5.3 Services

(a) Subject to paragraph (b), we must use reasonable endeavours to keep the Services available to the Licensed Area during the Normal Building Hours to the extent that we are capable of doing so.

(b) You release us from, and agree that we are not liable for, liability or loss arising from, or costs incurred in connection with:

(i) any Service being interrupted or not working properly; and

(ii) any failure in operation or defective operation of any facility, plant, machinery or equipment located or used in the Building (whether or not it comprises part of Our Property).

(c) You may not end this Agreement nor make any claim of any nature by reason of anything referred to in this clause 5.3.

5.4 Rates and Taxes

We must pay all applicable rates and taxes for the Licensed Area except those rates and taxes payable by you as a result of the grant of this licence to you or as a result of the performance of your obligations under this Agreement.

5.5 Building Repairs

Provided that we own or control the Building, we will use reasonable endeavours to keep the Building in good repair. Our obligation to repair the Building does not limit or otherwise affect your obligations under this Agreement.

6. OUR RESERVATIONS

6.1 Services

(a) We reserve the right:

(i) to install, maintain, use, repair, alter and replace; and

(ii) to pass or convey gas, water, sewerage, heat, oil, communications and data, electricity or other power and heated or cooled air through,

any pipes, ducts, conduits or wires passing through or leading into the Licensed Area.

(b) For the purposes of paragraph (a), we may enter the Licensed Area but must:

(i) give you reasonable notice; and

(ii) cause as little inconvenience to you as is reasonably practicable in the circumstances,

except in an emergency, when no notice of intended entry is required.

6.2 Our Rights

Provided that we own or control the Building, we are responsible for the management of the Building and may do all things we consider reasonably necessary for the management of the Building including (without limitation):

(a) carry out any works to the Building and to enter upon the Licensed Area for such purpose (including, but not limited to, alterations and redevelopment), or limit access to or close the Common Areas, if we take reasonable steps (except in emergencies) to minimise interference to your use and occupation of the Licensed Area; and

(b) exclude or remove any person from the Building; and

(c) restrict access to delivery and pick-up areas, if we take reasonable steps (except in emergencies) to minimise interference to your use and occupation of the Licensed Area; and

(d) permit functions, displays, parades, musical performances, exhibitions and other activities in Common Areas.

6.3 Easements

(a) We may grant easements to or enter into any arrangement or agreement with any owner, tenant, occupier or other person interested in any land adjacent to or near the Building or any governmental agency, for the purpose of providing:

(i) public or private access to and egress from the Building or the Licensed Area;

(ii) support of existing or future structures erected on or from adjoining land; or

(iii) services to the Building or land adjacent to or near the Building (including water, drainage, gas, electricity supply and communication services).

(b) For the purposes of this clause, we may dedicate land or transfer, grant or create any privilege or other right, in favour of any other party, any adjoining or neighbouring land or any governmental agency over or affecting the Building or the Licensed Area.

(c) When exercising our rights under this clause, we must not dedicate any land or create any easement, privilege or other right which substantially or permanently affects the enjoyment of any rights conferred on you by this Agreement other than in the case of resumption by a governmental agency.

6.4 We May Inspect

We may at any time after giving you reasonable notice (except in an emergency, when no notice of intended entry is required):

(a) enter the Licensed Area for the purpose of ascertaining whether you are complying with your obligations under this Agreement; and

(b) give you a notice requiring you, within a reasonable time, to carry out repairs or other work for which you are responsible.

6.5 We May Rectify

(a) At any time, we may enter and remain in the Licensed Area in order to:

(i) do anything which you should have done under this Agreement but which it has not done or which we consider you have not done properly; or

(ii) remedy any breach of this Agreement by you.

(b) No later than 10 Business Days after we request you to do so, you must promptly pay all expenses and costs incurred by us in exercising our rights under paragraph (a).

6.6 We May Repair

(a) At any time after giving you reasonable notice (except in an emergency when no notice of intended entry is required), we may enter upon the Licensed Area with any consultants, workmen, other persons or materials needed to:

(i) comply with any request, requirement, notification or order (for which you are not liable under this Agreement) of any governmental agency; or

(ii) carry out repairs, renovations, maintenance, modifications, extensions or alterations to the Licensed Area or the Building which we, in our absolute discretion, believe are necessary.

(b) When exercising our powers under paragraph (a), we must use reasonable endeavours to cause as little inconvenience to you as is possible in the circumstances.

6.7 Additions and Alterations to the Building

(a) We may make alterations and/or additions to the Building and/or develop or redevelop the Building by constructing, improving, extending, varying, amending, refurbishing, renovating or reducing any part of the Building, other than the Licensed Area

(b) Before commencing any works referred to in paragraph (a) we must first give you at least 1 months' notice of our intention to do so other than in the case of:

(i) an emergency where we must give you the maximum period of notice that is reasonably practicable in the circumstances; or

(ii) alterations to and the refurbishment of other shops in the Building and the fitting out of any other shops, whether by us or any other person, or

(iii) any change to the tenancy mix of the Building;

and for these purposes (without us incurring any liability to you) we may:

(iv) interrupt the Services to the Licensed Area but in such a manner as to minimise so far as is practicable any inconvenience to or interruption to the business; and

(v) alter, inhibit and obstruct to a substantial extent the access or the flow of customers to the Licensed Area or the Building or both.

(c) You must not end this Agreement nor take any action, or claim compensation, damages or abatement of the Licence Fee, because we did anything pursuant to this clause 6.7.

7. LICENCE FEE AND PAYMENT REQUIREMENTS

7.1 Payment of Licence Fee

(a) You agree to pay the Licence Fee to us during the Term.

(b) You must pay the Licence Fee in equal monthly instalments in advance on the first day of each month (and proportionately for any part of a month). The first such instalment must be paid on the Commencement Date.

(c) All payments of Licence Fee or other monies payable by you under this Agreement must be without deductions and free of any right of set off (unless we otherwise direct in writing).

(d) We are not required to make demand for any amount payable by you unless this Agreement says that demand must be made.

7.2 GST

(a) If a party to this Agreement (*Supplier*) makes a supply under or in connection with this Agreement and is liable by law to pay GST on that supply, the consideration otherwise payable by the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.

(b) If this Agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (*reimburseable expense*) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party is the amount of the reimburseable expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the reimburseable expense.

(c) If a party to this Agreement has the benefit of an indemnity for a cost, expense, loss or outgoing (*indemnified cost*) under this Agreement, the indemnity is for the indemnified cost net of any input tax credit or reduced input tax credit to which that party is entitled in respect of the indemnified cost.

(d) Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable for any supply under this Agreement.

(e) Subject to the operation of this clause 7.2, all amounts stated in this Agreement are GST exclusive.

8. LICENCE FEE REVIEW

8.1 Licence Fee Review

The Licence Fee will be increased by three percent (3%) on and from each anniversary of the Commencement Date. The adjusted Licence Fee at each anniversary of the Commencement Date during the Term is the Licence Fee in Item 7(c) of Schedule 1.

9. UTILITIES AND OTHER CHARGES

9.1 Electricity, Gas, Waste etc

(a) You must pay to the relevant governmental agencies or utility company all accounts and charges for utility and other Services (including water, gas, electricity and telephone) connected or supplied to the Licensed Area according to the meter reading.

(b) If you elect to use our contractor for waste removal, you will be responsible for your Waste Proportion as set out in Item 11. If you do not elect to engage our contractor for waste removal, you are responsible for your own waste management and all associated costs.

(c) If any utility or other Service is not separately metered or if any meter is defective you must pay the amounts assessed by the relevant governmental agencies or utility company supplying the service or reasonably assessed by us.

(d) If you default in paying such accounts and charges, we may (but is not obliged to) pay the same and immediately recover the amount paid as if it were Licence Fee in arrears payable by you.

9.2 Third Party Cleaners

If you wish to employ your own cleaner to clean the Licensed Area, you must first obtain our consent to the cleaning contractor and the cleaning specifications.

10. USE OF THE LICENSED AREA

10.1 Permitted Use

You must not use the Licensed Area otherwise than for the Permitted Use.

10.2 Exclusion of Warranty as to Use

(a) We do not in any way warrant that the Licensed Area is or will remain suitable or adequate for any of your purposes. To the fullest extent permitted by law all warranties as to suitability and as to adequacy otherwise applicable are expressly negatived.

(b) You acknowledge and agree that before signing this Agreement you have satisfied yourself by independent investigation as to the suitability of the Licensed Area for the Permitted Use and as to the requirements of any applicable legislation or any relevant governmental agency.

10.3 Non-Exclusive Use

(a) You acknowledge and agree that this is a non-exclusive licence to use the Licensed Area and you may be sharing the Licensed Area with our other licensees.

(b) You agree that you will work cooperatively with other licensees of the Licensed Area in the performance of your obligations under this Agreement, particularly in relation to the cleaning, repair and maintenance of the Licensed Area.

(c) We are not responsible for resolving any disputes between you and other licensees of the Licensed Area.

10.4 Positive Obligations

You must:

(a) keep the Licensed Area and everything in it clean and free of vermin and comply with our reasonable directions in that regard; and

(b) remove all rubbish from the Licensed Area regularly and comply with our directions regarding rubbish disposal; and

(c) obtain and maintain any licence, approval, permit or consent from any governmental agency required to enable you to use and occupy the Licensed Area; and

(d) comply on time with all laws and the requirements of all relevant governmental agencies in connection with your use or occupation of the Licensed Area; and

(e) inform us of any damage to the Building or the Licensed Area or of a faulty Service immediately after you become aware of it; and

(f) promptly, when asked by us, do anything necessary to enable us to exercise our rights under this Agreement; and

(g) put up signs in the Licensed Area prohibiting smoking (if we require you to do so); and

(h) participate in emergency fire or safety drills of which we give reasonable notice; and

(i) evacuate the Building immediately and in accordance with our directions when informed of any actual or suspected emergency; and

(j) secure the Licensed Area when it is unoccupied and comply with our directions about Building security.

10.5 Negative Obligations

You must not:

(a) smoke in the Building or Common Areas; or

(b) alter or interfere with Our Property or remove it from the Licensed Area; or

(c) store or use hazardous materials in the Licensed Area except to the extent reasonably necessary for the conduct of the Permitted Use; or

(d) do anything in or around the Building which in our reasonable opinion may be annoying, dangerous or offensive; or

(e) misuse or do anything to overload the Building's facilities, appurtenances or Services; or

(f) erect or install any:

(i) permanent signs without our prior approval; or

(ii) other signs, notices or advertisements in the Licensed Area and which are visible from outside without our prior approval; or

(g) install or operate vending or amusement machines on or about the Licensed Area; or

(h) hold auction, bankrupt or fire sales in the Licensed Area without our prior written approval; or

(i) use any method of heating, cooling or lighting the Licensed Area other than those provided or approved by us; or

(j) move heavy or bulky objects through the Building without our prior approval; or

(k) obstruct:

(i) windows in the Licensed Area or Building;

(ii) Air Conditioning Plant, skylights, sprinklers and fire equipment in the Licensed Area;

(iii) any emergency exits from the Building or the Licensed Area; or

(iv) the Common Areas; or

(l) interfere with any fire safety or alarm equipment installed in the Building or obstruct access to them; or

(m) use any part of the Building where access is not granted under this Agreement without our and/or the Building owner's prior written consent.

10.6 Child Safety

You agree that:

(a) you are solely responsible for determining your obligations under Child Safety Law with respect to the Licensed Area and the operation of your business;

(b) you have sole management and control of the Licensed Area and the operation of your business;

(c) any services, activities or other operations being delivered by you at the Licensed Area are delivered independently and not on behalf of us or as our agent;

(d) you must immediately notify us of any breach of Child Safety Law involving you or Persons Under Your Control or the Licensed Area;

(e) where requested by us, you must provide evidence to demonstrate compliance with your obligations under Child Safety Law, including information about your child abuse prevention systems to enable the us to audit and verify the your compliance with this clause 10.6.

10.7 Work Health and Safety

(a) For the purposes of the WHS Law, you agree that:

(i) you have sole management and control of the Licensed Area and sole responsibility for ensuring that the Licensed Area and the means of entering and leaving them are safe and without risks to health;

(ii) we:

(A) appoint you as Principal Contractor in respect of any works to be carried out by or on behalf of the Licensee on the Licensed Area to which a WHS Law applies; and

(B) authorises you to exercise whatever authority is necessary for you to discharge the responsibilities of that appointment;

(iii) you have management and control over those works, and must carry out those works in accordance with the requirements of the WHS Law; and

(iv) you must put in place adequate systems to assess and eliminate all hazards associated with those works and, if those hazards cannot be eliminated, you must do everything reasonably practicable to ensure that the risks involved are adequately controlled and minimised.

(b) You must:

(i) immediately comply with directions on safety issued by any relevant Government Authority or us;

(ii) participate in emergency training activities, including evacuation exercises;

(iii) give us written notice of any risks to the health and safety of any person using the Licensed Area or using the Our Property, immediately after becoming aware of those risks; and

(iv) give us written notice of any notifiable incident (as defined in the *Work Health and Safety Act 2011* (NSW)) that occurs in the Licensed Area, immediately after becoming aware of that incident.

(c) Unless otherwise advised by us, you will be responsible for:

(i) developing an emergency plan and evacuation diagram for the Licensed Area within one month of the Commencing Date;

(ii) forming an Emergency Planning Committee and Emergency Control Organisation to manage safety and emergency responsibilities and procedures for the Building;

(iii) reviewing the emergency plan annually and wherever a change has been made to the tenancy/building and updating as required;

(iv) reviewing the evacuation diagram at least every five years and wherever a change has been made to the tenancy/building and updating as required;

(v) providing details of any emergency plans, diagrams, training and evacuations to us annually or where changes have been made to the Licensed Are/Building or the emergency plans and/or evacuation diagrams; and

(vi) providing training on evacuation and fire safety as well as implementation of the emergency plan to your employees/invitees where required under WHS Law.

11. CONDITION OF THE LICENSED AREA

11.1 Condition Report

(a) The parties will complete a Condition Report setting out the condition of the Licensed Area at the Commencement Date or the date which you started occupying the Licensed Area, whichever is earlier.

(b) At the end of this Agreement, we will inspect the Licensed Area and the condition of the Licensed Area at that time will be compared to that stated in the Condition Report.

(c) You will be required to Make Good the Licensed Area to the condition recorded in the Condition Report.

11.2 Acceptance of Condition of the Licensed Area at Commencement Date

(a) You agree to occupy the Licensed Area in the condition that they are in at the Commencement Date as recorded in the Condition Report.

(b) Subject to our obligations under this Agreement, you will not require us to make any repairs or alterations to the Licensed Area.

12. MAINTENANCE, REPAIR AND ALTERATION

12.1 Repair and Maintenance

(a) You must keep the Licensed Area (and everything in it) in good repair and condition.

(b) Paragraph (a) does not apply to damage by:

(i) explosion, aircraft, riot, civil commotion, war; or

(ii) earthquake, fire, flood, lightning, storm, tempest; or

(iii) reasonable wear and tear,

unless such damage is due directly to any act, neglect, default or omission by you.

(c) You are not required to carry out any structural work or repairs of a structural nature unless the work or repairs are required:

(i) by any law or the requirement of any governmental agency; or

(ii) because of your use or occupation of the Licensed Area; or

(iii) because of any act, negligence or default by you or Persons Under Your Control.

(d) If structural work or repairs are required to be carried out by you pursuant to paragraph (c), you must obtain our prior written approval before undertaking such work or repairs. We will advise you of our requirements in relation to your obligation to Make Good.

(e) You acknowledge that any works performed to the Licensed Area must comply with any Conservation Management Plan applicable to the Building, where provided to you.

12.2 Maintenance of Our Property and Equipment

You must keep and maintain:

(a) Our Property; and

(b) all machinery, plant and equipment and fixtures, fittings and furnishing within and used exclusively in the Licensed Area,

in a clean, safe condition, and in good repair, working order and condition as set out in the Maintenance Obligations Matrix.

12.3 Maintenance Report

As part of our annual review you must provide documentation of your maintenance of the Licensed Area, such as service records, to ensure Our Property and equipment are being properly maintained.

12.4 Breakages

You must immediately rectify any breakage, defect or damage to the Licensed Area, the Common Areas, the Building or any facility or appurtenances of the Licensed Area or the Building arising out of any want of care, misuse or abuse or any breach of this Agreement by you and Persons Under Your Control.

12.5 Lighting

You must promptly replace at your own expense any globes or fluorescent tubes which give illumination to the Licensed Area and which cease to function for any reason.

12.6 Doors, Drains and Toilets

You must keep and maintain:

(a) the doors, locks, windows and window fittings of the Licensed Area in good and efficient working order and condition; and

(b) all water pipes, drains and conduits originating within the Licensed Area in a clean, clear and free-flowing condition.

12.7 Notification

In respect of anything to be done by you in order to comply with clauses 12.1, 12.2 and 12.4, you must:

(a) notify us of any work or task that you propose to carry out before undertaking the relevant work or task; and

(b) employ licensed tradesmen approved or nominated by us to carry out the relevant work or task.

12.8 Alterations to the Licensed Area

You must not install any of Your Property in the Licensed Area or make any alteration or addition to the Licensed Area or the Building without our prior written approval.

12.9 Alterations to Our Property

You must not install or make any connections:

(a) to existing water, gas, fire protection or electrical fixtures, equipment or appliances; or

(b) to any existing apparatus for illuminating, heating, cooling or ventilating the Licensed Area; or

(c) which interfere with any drains, water supply or other services connected to the Licensed Area,

without our prior written approval.

12.10 Compliance

You must ensure that all works carried out by you or your contractors comply with all relevant laws, including the *Work Health and Safety Act 2011*.

13. AIR CONDITIONING AND ELEVATORS

13.1 Air Conditioning Plant

(a) Provided we are the owner of the Building, we must use our reasonable endeavours to ensure that the Air Conditioning Plant (if any) is operational during Normal Building Hours.

(b) If you install any air conditioning equipment (which may be installed only with our prior written approval), you must at your own cost, service, maintain and repair such equipment to ensure that it is operational and in good working order. It is not our responsibility to service, maintain or repair any air conditioning equipment installed by you. Upon vacating the Licensed Area, you may remove the air conditioning equipment installed by you provided that you Make Good any damage to the Licensed Area caused by its removal.

13.2 Elevators

Provided we are the owner of the Building, we must use our reasonable endeavours to ensure that the Elevators (if any) are working and reasonably available for your use during Normal Building Hours.

13.3 Your General Obligations

(a) You must at all times:

(i) comply with and observe our reasonable requirements about; and

(ii) not do nor allow anything to be done which might interfere with or impair the efficient operation of,

the Air Conditioning Plant or the Elevators.

(b) You must allow us and our contractors at all times on reasonable notice to enter the Licensed Area at any time to examine, maintain and repair or install or replace all or any of the Air Conditioning Plant or the Elevators.

13.4 No Liability

(a) This clause 13 imposes no liability on us:

(i) to ensure the Air Conditioning Plant or the Elevators are working and reasonably available for your use outside Normal Building Hours; or

(b) if any delays or stoppages in the operation of the Air Conditioning Plant or the Elevators are due to repairs, maintenance, strikes, accidents or any other unavoidable cause.

(c) Provided we are using reasonable endeavours, you may not end this Agreement nor make any claims of any nature if the Air Conditioning Plant or the Elevators are not working during Normal Building Hours.

14. INDEMNITIES AND RELEASES

14.1 Risk

You agree to use and occupy the Licensed Area at your own risk. Any works carried out by you in or to the Licensed Area (including works carried out with our prior approval) are also at your own risk.

14.2 Release

You release us from any action, demand, liability or loss due to any injury, death, damage or loss occurring in or about the Licensed Area, except to the extent that we caused or contributed to this by our negligent act or omission.

14.3 Indemnity

You must indemnify and keep us indemnified from and against all liabilities, actions, claims, demands, losses, damages, costs, and expenses for which we become liable during the Term about or arising from:

(a) any act, omission, neglect or default by you or Persons Under Your Control; or

(b) your use and occupation of the Licensed Area or the Building; or

(c) any breach of this Agreement,

except to the extent that this was caused by our negligent act or omission.

15. INSURANCES

15.1 Insurance Policies – Public Risk

You must effect and maintain throughout the Term a public risk insurance policy:

(a) in the form of a standard public risk policy commonly used by reputable insurers in the State of New South Wales; and

(b) for the amount stated in Item 10 of Schedule 1 for any single event or accident or for such higher amount as we (acting reasonably) may require at any time; and

(c) relating to your liability for death, personal injuries and property damage arising from your occupancy of the Licensed Area and use of the Building, whilst entering, leaving, using and being in the Licensed Area or any part of the Building, in circumstances in which the you may incur liability for injury, loss or damage; and

(d) extended to include claims, risks and events covered under indemnities provided by you to us under this Agreement.

15.2 Insurance Policies – Other

Where relevant, you must effect and maintain throughout the Term an insurance policy for all plate and other glass in windows, doors, shop front, display cases and other fixed glass in or forming part of the Licensed Area.

15.3 Insurance Requirements

(a) Your insurances must be effected with one or more insurance companies which are respectable, reputable and financially sound and approved by us (such approval not to be unreasonably withheld).

(b) Your insurances relating to public risk, plate glass and Your Property:

(i) must name both parties as principal; and

(ii) must cover both parties' interests; and

(iii) if requested by us or the owner of the Building, must include the interest of any mortgagee of the Land; and

(iv) contain a cross liability clause.

(c) The conditions and exclusions of each insurance policy for each insurance effected by you must not be unusual for the type of insurance, and we may require you to

negotiate with the insurer for the deletion or amendment of unusual conditions or exclusions or to effect insurance with some other insurer (such alternative insurer must meet the requirements set out in paragraph (a)) which does not require such conditions or exclusions.

15.4 Payment of Premium

(a) You must pay punctually when due the insurance premiums and other monies payable to effect and maintain the insurances required under this clause 15.

(b) If you do not pay an insurance premium when due, we may make such payment on your behalf. You must reimburse us for any money paid by us.

15.5 Evidence

(a) No later than 10 Business Days after our request, you must give to us a certificate of currency (or such other evidence as we may reasonably require) for any insurance that must be effected and maintained under this Agreement:

(b) You must promptly give to us notice of:

(i) your intention to cancel, replace or alter any insurance effected by the you in accordance with this clause;

(ii) any notice or correspondence you received from an insurer indicating its intention to cancel or materially alter any of those insurances.

16. ASSIGNMENT OR OTHER DEALINGS

16.1 No Assignment or Other Dealing Permitted

(a) This Agreement is personal to you.

(b) You must not assign, transfer, sublicence, mortgage, charge or encumber your interest in this Agreement or otherwise deal with your interest in this Agreement.

(c) You must not grant any licence for part of the Licensed Area or otherwise part with possession of the whole or part of the Licensed Area without our prior consent.

17. DAMAGE AND DESTRUCTION

17.1 Abatement Upon Damage Occurring

If the Building or the Licensed Area is damaged or destroyed or if there is interruption to access to the Building or the Licensed Area so as to render the Licensed Area or any part of the Licensed Area wholly or substantially unfit for your occupation or use or inaccessible by any means of access, then:

(a) a proportionate part of the Licence Fee and other monies payable under this Agreement, according to the nature and extent of the damage or interruption to access sustained as reasonably determined by us, will abate; and

(b) until the Licensed Area has been restored or made fit for your occupation or access, as the case may be, all remedies will be suspended for recovery of the abated portion of the Licence Fee and other monies payable under this Agreement;

except:

(c) to the extent the damage or destruction or loss of access has been caused directly or contributed to by any act or omission by you or Persons Under Your Control; or

(d) where, in consequence of your act or omission any policy of insurance effected on the Building are voided or payment of monies under any policy of insurance effected on the Building is refused by the insurer, in which event we may recover damages from you for that damage, destruction, loss, act or omission even if this Agreement has ended.

17.2 Termination Upon Damage Occurring

(a) If the Building or the Licensed Area is damaged or destroyed or if there is interruption to access to the Building or the Licensed Area so as to render the Licensed Area or any part of the Licensed Area unfit for your occupation or use, or inaccessible by any means of access, then the Agreement may be ended by either party giving to the other end notice that states an end date which is not less than 1 month after the date on which the notice is given.

(b) Neither party is liable to the other for any end of this Agreement under this clause 17.2.

17.3 No Liability For Us To Reinstate

We will have no liability to reinstate the Building or the Licensed Area or such access.

18. EARLY TERMINATION

18.1 Our Right To End The Agreement Early

If we want to:

(a) demolish, substantially repair, renovate or reconstruct the Licensed Area in such a way that the works cannot be carried out practicably without vacant possession of the Licensed Area; or

(b) use the Licensed Area for our own or other purposes;

we may end this Agreement provided that we have given you at least 6 months written notice of termination.

19. EXPIRY OR TERMINATION OF THE TERM

19.1 Vacating The Licensed Area

(a) You must vacate the Licensed Area on the earlier of the Expiry Date and the date on which this Agreement is ended and, before vacating the Licensed Area, you must Make Good and leave the Licensed Area in the same condition (fair wear and tear excepted) as recorded in the Condition Report.

(b) The parties may agree in writing that any fitting, fixtures or other items of plant and equipment that you have installed in the Licensed Area are not to be removed in connection with the Make Good and that they are to remain in the Licensed Area and become Our Property.

19.2 You Do Not Make Good

(a) If you do not Make Good as required under clause 19.1, then without affecting any of our other rights, we may Make Good on your behalf. Where we exercise this right, you must pay us on demand:

(i) all costs and expenses incurred by us in carrying out the Make Good on your behalf; and

(ii) a fee equivalent to the Licence Fee and other monies payable under this Agreement as at the Expiry Date or the date of earlier termination of this Agreement divided by 365 for each day from the Expiry Date or the date of earlier termination of this Agreement until we notify you that the Make Good has been completed to our reasonable satisfaction.

19.3 Your Property Not Removed

(a) We may elect not to Make Good on your behalf in which case we will notify you that unless you complete the Make Good within 10 Business Days (unless we agree otherwise) of the date of the notice, then any of Your Property not removed from the Building will be forfeited to us.

(b) You acknowledge that any of Your Property not removed from the Building after we have given you a notice under paragraph (a) will at the end of the 10 Business Day period become Our Property.

20. DEFAULT

20.1 Essential Terms

Your obligation under this Agreement to pay money and your obligations under clauses 2, 7, 10, 12 and 15 are essential terms of this Agreement.

20.2 Default Events

It is a default under this Agreement if:

(a) you repudiate your obligations under this Agreement; or

(b) you do not comply with an essential term of this Agreement (; or

(c) you do not comply with an obligation under this Agreement (which is not an essential term) and, in our reasonable opinion:

(i) the non-compliance can be remedied, but you do not remedy it to our reasonable satisfaction within a reasonable time after we give you notice to remedy it; or

(ii) the non-compliance cannot be remedied or compensated for, or

(iii) the non-compliance cannot be remedied but we can be compensated and you do not pay compensation to our satisfaction for the breach within 10 Business Days after we give you notice to pay it; or

(d) an Insolvency Event occurs.

20.3 Our Rights After Default

We may do any one or more of the following:

(a) re-enter and take possession of the Licensed Area; and/or

(b) end this Agreement by giving you notice; and/or

(c) at any time treat the event giving rise to that end as a repudiation of this Agreement by you; and/or

(d) recover from you any cost, liability or loss suffered by us; and/or

(e) remove and dispose of or sell any of Your Property and apply the proceeds of sale in reduction of any money owing by you under this Agreement; and/or

(f) exercise any other legal rights.

20.4 We May Recover

If this Agreement is ended or we re-enter and take possession of the Licensed Area, we may recover from you:

(a) arrears up to the date of re-entry;

(b) our costs and expenses in relicensing or letting the Licensed Area (including any commission or similar charge);

(c) the difference between the money payable by you under this Agreement from the date of re-entry until the Expiry Date, and the money we actually receive or reasonably anticipate will be received as licence fee or rent from other licensees or lessees of the Licensed Area for the part of the Term that had not expired at the date of re-entry.

20.5 No Restriction or Waiver

The rights and entitlements conferred on us by this clause 20 or their exercise are not adversely affected by:

(a) granting you any concession, indulgence, forbearance or time to pay; or

(b) any acceptance of any monies by us whether paid by you or by any other person; or

(c) any postponement non-exercise or alteration of any right or remedy available to us.

21. SECURITY

21.1 Delivery

(a) You must deliver the Security to us prior to or on execution of this Agreement.

(b) You must at all times during the Term ensure that any Security required to be given is kept current and enforceable.

21.2 Demand under Security

(a) We may at any time and from time to time have recourse to the Security on account of the Rent or other amounts payable under the Agreement:

(i) whether the liability to pay those amounts arises or will arise by way of damages or otherwise; and

(ii) whether or not any judgement or other order of a court has been made in respect of them,

as we may determine, to compensate us for the loss suffered directly or indirectly by us as a result of a default by you.

(b) Our rights under this clause 21.2 do not derogate from other rights and remedies available to us under this Agreement, at law and in equity in relation to any breach of your obligations under this Agreement.

21.3 Requirement for a new Security

If we draw down on the Security you must provide a new Security to us within 10 Business Days of demand so that there is maintained during the Term Security for the amount required under this Agreement.

22. HEAD AGREEMENT AND OTHER SUPERIOR INTERESTS

22.1 Our and Superior Interest Holder's Right To View

You must at all times during the Term permit us and any person having any estate or interest in the Licensed Area or the Building superior to or concurrent with that of ours to:

(a) exercise our power to enter and view the Licensed Area; and

(b) carry out repairs, renovations, maintenance and other work authorised by this Agreement or any head Agreement; and

(c) otherwise to exercise or perform our lawful rights and obligations in respect of the Licensed Area or the Building.

22.2 Obligations to Benefit Our Successors

If anyone other than us becomes entitled to receive the Licence Fee (either by operation of law or otherwise), you agree that that person has the benefit of your obligations under this Agreement and, at your own cost, you must enter into any documents with that person as reasonably required by us.

23. RULES

23.1 Right to Make Rules

(a) You acknowledge that we or the owner of the Building may impose Rules for the good order and management of the Building.

(b) We will provide you with a copy of any applicable Rules at the Commencement Date or at any time upon request in writing.

23.2 Compliance with Rules

(a) You must comply with the Rules and must ensure that Persons Under Your Control comply with the Rules.

(b) You acknowledge that if you or Persons Under Your Control fail to comply with the Rules, it constitutes a breach of this Agreement as if the Rules were contained in it as covenants with us.

23.3 We Are Not Liable for Loss or Damage

(a) You acknowledge that we are not liable for any loss or damage caused by our failure to enforce the Rules against any other person who may be bound by them in the Building.

(b) You release us from all claims, demands or suits irrespective of any such loss or damage which may result from our failure to enforce the Rules.

23.4 Right to Amend Rules

(a) You acknowledge that we or the owner of the Building has the right at any time to amend, add to, cancel or suspend the Rules as they exist from time to time.

(b) You will not be bound by any change to the Rules until we give you notice of the change to the Rules.

24. COSTS AND EXPENSES

24.1 Legal Costs

(a) Subject to paragraph (b), each party is responsible for their own legal costs, charges and expenses in relation to the preparation, negotiation and completion of this Agreement.

(b) You must pay all reasonable legal costs, charges and expenses incurred by us in connection with any amendment to this Agreement requested by you.

(c) You must pay all other reasonable costs incurred by us in considering or acting on any other request by you in connection with this Agreement.

24.2 Default Costs

You must pay all costs incurred by us due to your default including our costs for enforcing our rights under this Agreement.

24.3 Stamp Duty

You must pay all stamp duty payable in regard to this Agreement (if applicable).

25. PUBLIC HEALTH ORDERS

25.1 Compliance with Public Health Orders

You must:

(a) at all times, comply with any Public Health Order issued that is applicable to the use and occupation of the Licensed Area and/or this Agreement; and

(b) comply with and follow any of our directions to enable us to comply with any Public Health Order.

25.2 Release

You:

(a) agree that we are not liable for and release us from all liabilities, actions, claims, demands, losses, damages, proceedings, costs, charges and expenses suffered or incurred by you in connection with the issue of a Public Health Order (including any losses or expenses incurred if the Licensed Area is required to be closed for any period of time under a Public Health Order); and

(b) must not, unless permitted by law, end this Agreement, nor take any action or claim compensation, damages or abatement of the Rent as a result of a Public Health Order being issued.

26. GREEN LICENSING PROVISIONS

The parties acknowledge agree that they will:

(c) co-operate to ensure the ongoing use and operation of the Licensed Area minimises environmental impacts and the Licensed Area is managed in a way which is as sustainable and efficient as is reasonably possible in respect of energy and water usage, greenhouse gas emissions and waste generation in accordance with the environmental targets contained within Sustainable Sydney 2030;

(d) consult with each other on issues and circumstances that may enhance the environmental performance of the Licensed Area and consider undertaking all such opportunities which are expected to have a positive impact on the work environment (subject to an analysis of the costs and benefits);

(e) constructively consult with each other on issues or circumstances that may detract from the improvement of the environmental performance of the Licensed Area;

(f) agree on targets and strategies to promote the efficient use of resources in the Licensed Area, to reduce energy and water use, improve waste management by maximising recycling and composting, and provide to us any information necessary or reasonably required by us to report on the environmental status of the Licensed Area.

27. NO ENTITLEMENT TO DAMAGES

(a) Subject to 27(b) and 27(c), the parties acknowledge that this clause 27 is intended to override all other terms of this Agreement and all rights, powers, obligations, warranties, undertakings and entitlements under this Licence must be read subject to the terms of this clause 27;

(b) This clause 27 operates and has effect in the event that any of the following circumstances apply:

i. we have provided you at any time during the term of this Agreement any form of grant or subsidy (whether in cash or kind) in relation to either the occupation of the Licensed Area by you or the operation of any enterprise from it;

ii. either you are paying no Rent in relation to the occupation of the Licensed Area or the Rent payable by you in relation to your occupation of the Licensed Area is subsidised in any way by or less than full market rent for the Licensed Area; or

iii. the Licensed Area have been provided to you pursuant to any form of program or scheme operated by us and rent is either subsidised by us or full market rent is not paid for the Licensed Area by you under the Agreement.

(c) To the fullest extent possible (and acknowledging that the circumstances set out in 27(b) may give rise to this event in circumstances where it may not otherwise arise)

this clause 27 is intended to override any rights, powers, obligations, warranties, undertakings and entitlements imposed under any law, statute or regulation. To the extent that any rights, powers, obligations, warranties, undertakings and entitlements imposed under any law, statute or regulation are not overridden this clause is to be altered only to the extent of any prohibited contravention but will otherwise have full force and effect.

(d) In consideration of the relevant circumstances set out in 27(b) and regardless of how any such matter arises and the conduct of us in relation to it, you release us from, and waives all rights in relation to, all liability, loss of profit, damages, claims and demands in any way relating to the Licensed Area, the occupation by you of the Licensed Area and any enterprise operated by you from the Licensed Area.

(e) You must not commence any action or make any demand for any matter for which we are released under 27(d) and we may plead this clause in defence of any such attempted action or demand.

28. LICENSEE'S ENVIRONMENTAL OBLIGATIONS

28.1 Comply with Environmental Protection Laws

You must comply with all Environmental Protection Laws.

28.2 Not permit Contamination

You must not spill or deposit, or carry out any activities on the Licensed Area which may cause any Contamination or Pollution at or from the Licensed Area, drainage or surrounding Environment.

28.3 Notify of and clean up Contamination

If any Contamination, Pollution or Hazardous Material is found at or from the Licensed Area, or the existing Contamination or Pollution is exacerbated during the Term, you must:

(a) immediately notify us, the EPA and any other appropriate Government Authority;

(b) Clean Up the Contamination, Pollution or Hazardous Material, and do everything necessary to minimise harm; and

(c) promptly comply with any notice, order, direction or requirement from us and from any Government Authority in relation to that Contamination, Pollution or Hazardous Material.

28.4 Indemnity

In addition to any other indemnity in this Agreement, you indemnify us against all liabilities, actions, claims, demands, losses, damages, proceedings, costs, charges and expenses, death or injury caused by or arising out of or otherwise in respect of:

(a) any Contamination, Pollution or Hazardous Material at or from the Premises to the extent caused or contributed to by you; and/or

(b) a breach of this clause by you or Persons Under Your Control.

28.5 Obtain reports, surveys or audits

You must:

(a) immediately obtain, at its cost, any reports, surveys or audits which we may reasonably require to enable us to determine whether a breach of this clause 28 has occurred; and

(b) pay us on demand the reasonable costs of any of those reports, surveys or audits we may obtain.

29. MISCELLANEOUS

29.1 Writing Required

A provision of or a right under this Agreement may not be waived or varied except in writing.

29.2 Approvals

We may withhold or give conditionally or unconditionally our approval in our absolute discretion unless this Agreement expressly says otherwise.

29.3 No Partnership, etc

Nothing contained in this Agreement will be taken or interpreted by the parties or by any third party as creating the relationship of partnership, principal and agent or joint venture.

29.4 Whole Agreement

This Agreement is the entire agreement between the parties about the subject matter.

29.5 Notices

(a) A notice or other communication required or permitted, under this Licence, may be given in accordance with section 170 of the Conveyancing Act 1919 (NSW).

(b) A party may specify an email address to be used for the purpose of serving notices under this Licence by confirming the email address in writing to the other party.

(c) If sent by mail, notice is taken to have been received 5 Business Days after it is posted. If sent by email, it is taken to have been received the same day the email was sent, provided that the sender has not received a delivery failure notice (or similar), unless the time of receipt is after 5pm in which case it is taken to be received on the next Business Day.

(d) A party may change their listed address or email address specified in accordance with clause 29.5(b) above by giving the other party at least 5 Business days' written notice of the changed details.

29.6 Severability

If any provision contained in this Agreement is or becomes legally ineffective under the general law or by force of legislation, the ineffective provision will be severed from this Agreement to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

29.7 Specific Performance Criteria

We may amend the Specific Performance Criteria, at any time during the Term of this Agreement. Any amendments to the Specific Criteria will be provided to you in writing and, once agreed, will be incorporated into this Agreement. For the purposes of this Agreement when new Specific Performance Criteria is agreed in accordance with this clause 29.7 the parties will comply with the new Specific Performance Criteria.

29.8 Electronic Signing

The parties agree to this Licence being signed electronically, and in counterparts, in accordance with the *Electronic Transactions Act 2000* (NSW).

SCHEDULE 1 – REFERENCE SCHEDULE

Item 1 **Land**

The land comprised in certificate of title folio identifier ## and known as [insert address]

Item 2 **Licensed Area**

The Licensed Area is that part of the Building known as [ ] on the Land, as identified in the area on the attached plan in Schedule 4, comprising an area of [xx]m^2.

Item 3 **Us**

The Council of the City of Sydney
ABN 22 636 550 790
Level 6, 456 Kent Street Sydney
SPAM/PAM

Item 4 **You**

[Legal name of entity]
[ABN:]
[Address]
[Contact Name/Position]
[Phone and Email]

Item 6 **Commencement Date, Term and Expiry Date**

(a) INSERT

(b) INSERT

(c) INSERT

Item 7 **Licence Fee**

Financial Year	Market Value	Rental Subsidy (%)*	Rental Subsidy Value	Rent Payable

Item 8 **Permitted Use**

Commercial and office space / community facility

Item 9 **Normal Building Hours**

9.00am to 5.00pm Monday to Friday

Item 10 **Public risk insurance**

Certificate of Currency is required for Public Liability Insurance in the amount of $20,000,000 to be provided annually, noting the Council of the City of Sydney as an interested party.

Item 11 **Waste Proportion**
[insert %]

Item 12 **Security**
[1 month's Face Rent]

Item 13 **Acknowledgements**
Insert or n/a

SCHEDULE 2

ACCOMMODATION GRANTS PROGRAM

General Performance Criteria

1. Work in partnership and cooperatively with the City and other community organisations in the delivery of services and programs. Work cooperatively with the City to meet identified needs.

2. Maintain professional, ongoing communication and a constructive relationship with the City to ensure the success of the program.

3. Deliver services and programs that meet the needs of the community as specified in the Specific Performance Criteria.

4. Promote positive interaction and understanding between people living / working / visiting the city.

5. Ensure services and programs are delivered in a manner that is inclusive and free of discrimination (including attitudinal barriers).

6. Meet obligations set out in the Agreement in relation to payment, maintenance and operational responsibilities.

7. Share the use of program delivery space/s within the Licensed Area. Allow other community groups to use program delivery space/s when not in use. Respect and communicate constructively with all others who use community spaces. The City acknowledges that some areas of service program and service delivery do not allow for this to occur (due to regulations).

8. Minimise environmental impact through reducing water use, energy use and pollution and maximising recycling.

Reporting Timeframe

Each January, the City will send an Annual Self-Assessment form and ask that it be completed within the given timeframe (usually six (6) weeks).

The assessment will document your achievements for the past year against the general and specific criteria as set out in this Licence.

SCHEDULE 3

SPECIFIC PERFORMANCE CRITERIA

The following Performance Criteria will apply to evaluate the success of the Project and to determine the payment of the Grant and Value in Kind.

[Please insert]

SCHEDULE 4 - PLAN

SCHEDULE 5 – CONDITION REPORT

SCHEDULE 6 – MAINTENANCE OBLIGATIONS MATRIX

SCHEDULE 7 – YOUR APPLICATION

EXECUTION

EXECUTED as a deed

Certified correct for the purposes of the Real Property Act, 1900 by the person(s) whose name and signature appear below

SIGNED SEALED and **DELIVERED** by **THE COUNCIL OF THE CITY OF SYDNEY** (ABN 22 636 550 790) in the presence of:

Signature of Witness

Full Name of Witness

Authorised Signatory:

SIGNED SEALED and **DELIVERED** by **[NAME OF ENTITY] (ABN)** by its duly authorised representatives in accordance with section 22 of the *Associations Incorporation Act 2009* (NSW) :

Signature of Authorised Representative:

Full Name of Signatory

Position

Signature of Authorised Representative:

Full Name of Signatory

Position