

## Accommodation Grants Program Lease - TEMPLATE

The Council of the City of Sydney

and – **TO BE INSERTED**

For the lease of 101-115 William Street, Darlinghurst  
Level 3 - Creative Hub (Suite 3.02 & 3.03)

THIS IS ANNEXURE A REFERRED TO IN THE LEASE BETWEEN COUNCIL OF THE CITY OF SYDNEY ABN 22 636 550 790 (AS LANDLORD) AND [NAME OF ORGANISATION] ABN [ABN FOR ORGANISATION] (AS TENANT)

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**1. Definitions and interpretation**

**1.1 Purpose**

The purpose of this Lease is to record the agreement reached between the Parties in relation to the leasehold interest in the Premises granted to the Tenant under this Lease.

**1.2 Reference Schedule**

The Reference Schedule for this Lease is set out below:

- Item 1. Land**  
The land comprised in Lot [ADD DETAILS] PART known as [NAME OF BUILDING AND ADDRESS]
- Item 2. Premises**  
The Premises are that part of the Building known as [NAME OF BUILDING AND ADDRESS] comprising the areas shown as Lease area [SUITE #], as shown in the Plan at Schedule 1 [comprising an area of ADD SIZE]
- Item 3. Landlord**  
Council of the City of Sydney ABN 22 636 550 790 of Level 6, Town Hall House, 456 Kent Street, Sydney, NSW
- Item 4. Tenant**  
TBA
- Item 5. Guarantor**  
TBC
- Item 6. Term**  
5 years
- Item 7. Commencing Date**  
Day Month 2025
- Item 8. Terminating Date**  
Day Month 2030
- Item 9. Rent**  
[ADD AMOUNT FULL OR PART SUBSIDY] per annum plus GST

**Item 10. Rent Review**

Review Date	Type of review
Each anniversary of the Commencing Date	Reviewed in accordance with Item 9 above
On commencement of any Holdover and any anniversary of the commencement of the Holdover period	3% Fixed Rent Review (see clause 6.2)

**Item 11. Permitted Use**

[ADD PERMITTED USE]

**Item 12. Security**

\$500.00

**Item 13. Normal Building Hours**

[ADD APPROVED HOURS OF OPERATION]

**Item 14. Public liability insurance amount**

\$20,000,000

**Item 15. Acknowledgments**

Refer to Schedule 5

**Item 16. Tenant's Waste Proportion**

[ADD PERCENTAGE OR N/A IF TENANT IS RESPONSIBLE FOR OWN WASTE REMOVAL]

Commented [CF1]: Can be inserted as set out in DA

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Commented [CF3]: Per DA

Commented [SA4R3]: Ok to leave in

Commented [CF5]: Has this been considered? Not set out in the EOI

Commented [SA6R5]: Agreed to leave in

**1.3 Definitions**

In this Lease unless a contrary intention appears:

**Air Conditioning Plant** means any plant, machinery and equipment installed in the Building for heating, cooling or circulating air in the Premises.

**Australian Standards** means the standards set and updated from time to time by Standards Australia.

**Building** means:

- (a) the building or buildings for the time being erected on the Land of which the Premises form part including any extension, modification, alteration, addition or replacement in respect of them; and
- (b) any Landlord's Property in them.

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

**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 the Tenant, the Tenant's business or the Permitted Use being carried out on the Premises.

**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 Lease, 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.

**Commencing Date** means the date stated in Item 7.

**Common Areas** means any part of the Building provided by the Landlord for common use and includes any forecourts, lobby areas, car parking areas, toilets and loading docks other than those reserved to the Landlord.

**Condition Report** means the condition report described in Clause 10.1 and attached at Schedule 3.

**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.

**Development Consent** means any development consent/s that may apply to the Premises referred to in clause 11.10.

**Elevators** means 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).

**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 Sponsorship Policy as adopted and administered by the Landlord from time to time.

**Hazardous Materials** includes all substances, materials, pollutants and contaminants capable of causing harm to human health, plants, animals or any other aspect of the Environment.

**Insolvency Event** means any of the following:

- (a) in the case of a body corporate:
  - (i) a Court order is made or a resolution is passed that a body corporate be wound up; or
  - (ii) an order is made or a meeting is called for the appointment of an administrator, provisional administrator, liquidator, provisional liquidator, receiver, receiver and manager or an inspector to a body corporate; or
  - (iii) an administrator, provisional administrator, liquidator, provisional liquidator, receiver, receiver and manager or an inspector is appointed to a body corporate; or
  - (iv) a body corporate becomes insolvent or under administration if any act or event mentioned in section 461(1)(a) to (k) of the *Corporations Act 2001* (Cth) occurs in relation to a body corporate; or
- (b) in the case of a natural person, they become a bankrupt.

**Land** means the land described in Item 1 and includes:

- (a) the Building;
- (b) any additional land (or improvements on that land from time to time) which 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
- (c) any land amalgamated from time to time with the land described in Item 1.

**Landlord** means the person noted as Lessor on the cover page of this Lease and described in Item 3 and, where the context so permits, includes the employees and agents of the Landlord (including, for the purpose of giving any notice, any managing agent appointed from time to time by the Landlord).

**Landlord's Property** means all plant, equipment, fixtures, fittings, furniture, furnishings and other property installed or situated in or relevant to the Premises and owned or controlled by the Landlord.

**Law** includes:

- (a) any law, statute, regulation, ordinance, by-law, order or proclamation, and the common law; and
- (b) any authorisation, ruling, judgment, order, decree or other requirement of any Government Authority.

**Lease** means this instrument of lease and any annexures or attachments to it.

**Lettable Area** means the area determined by the Landlord's surveyor according to the method of measurement adopted for the time being by the Property Council of Australia, or any equivalent method of measurement the Landlord may nominate.

**Maintenance Obligations Matrix** means the maintenance obligations matrix attached at Schedule 4.

**Make Good** means (regardless of the condition of the Premises or any fixtures, fittings, plant and equipment in them at the time they were made available to the Tenant) to return the Premises to the Landlord clean and in good repair and condition having regard to fair wear and tear and the Condition Report, with:

- (a) all fixtures, fittings, furnishings, plant and equipment and all Tenant's Property removed other than any items that the Landlord and the Tenant agree may remain;
- (b) finishes removed from all interior surfaces of the Premises to the standard reasonably required by the Landlord unless the Landlord directs to the contrary;
- (c) all alterations to the Services and/or the Landlord's Property reinstated to the standard reasonably required by the Landlord;
- (d) all alterations to the Premises and the Building (including any alterations to the structure of any part of the Building) reinstated to the standard reasonably required by the Landlord;
- (e) all base building services, such as hydraulic, mechanical and electrical services, to the original layout and standard that existed before any fitout work was carried out by the Tenant or the Tenant's Employees and Agents, or by the Landlord on their behalf. The

reinstated base building services must also comply with Building Code of Australia standards;

- (f) the ceiling grid to the Premises reinstated to an open plan layout and realigned as reasonably required by the Landlord; and
- (g) all damage to the Premises and Building resulting from compliance with clause 19.1.1 rectified to the standard required by the Landlord.

**Market Value Rent** means the amount payable to lease the Premises without any incentives or increases taken into account as stated in Item 9 and varied from time to time under this Lease.

**Normal Building Hours** means the hours stated in Item 13.

**Party** means each of the Landlord and the Tenant and **Parties** means both of them.

**Permitted Use** means the permitted use stated in Item 11.

**Premises** mean that part of the Building described in Item 2, and includes any Landlord's Property. The Premises extend to:

- (a) internal face of any concrete floor or ceiling slab or other structural floor or ceiling surface; and
- (b) internal face of external walls and of any internal structural walls of the Premises; and
- (c) the centre line of any inter-tenancy walls separating the Premises from other premises in the Building or from any Common Areas; and
- (d) the exterior face of any shop front (if any) or, if any shop front is not aligned on the Building but set back, the Building alignment.

**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.

**Reference Schedule** means the reference schedule set out in clause 1.2.

**Rent** means the yearly Rent calculated by deducting the Subsidy from the Face Rent as stated in Item 9 as varied from time to time under this Lease.

**Rent Review Date** means each date or dates stated in Item 10.

**Rules** means the rules of the Building notified by the Landlord to the Tenant 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 the Landlord may require time to time under clause 22 which must:

- (e) be expressed to be in favour of the Landlord and its successors and assigns;
- (f) not have an expiry date;

- (g) cover all obligations of the Tenant under this Lease and related agreements;
- (h) 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
- (i) contain other terms and conditions the Landlord may reasonably require.

**Services** means services (including, without limitation, water, waste, sewerage, drainage, gas, electricity, communications, services and fire prevention) to or of the Building or the Land provided by the Landlord or any governmental agencies and which are intended to service, or are for the benefit of, the Premises.

**Subsidy** means the reduction in market rent given to the Tenant by the Landlord under the Grants and Sponsorships Policy shown in Item 9.

**Tenant** means the person described as Lessee on the cover page of this Lease and in Item 4 and, where the context so permits, includes the employees and agents of the Tenant.

**Tenant's Application** means the tenant's application to the City for entry into the Accommodation Grants Program which sets out the Tenant's proposed use of the Premises as attached at Schedule 5.

**Tenant's Employees and Agents** means the Tenant and each of its employees, officers, agents, workmen, contractors, consultants, visitors, invitees, sublessees, licensees and any other person on or about the Premises (with or without invitation) or under the control or direction of the Tenant.

**Tenant's Business** means the business carried on by the Tenant from the Premises.

**Tenant's Obligations** means the obligations contained or implied in this Lease to be observed and performed by the Tenant.

**Tenant's Property** means all property (including any fittings, plant and equipment) in the Premises which are not Landlord's Property or Services.

**Tenant's Waste Proportion** means the proportion of waste charges for the Building to be paid by the Tenant as stated in Item 16.

**Term** means the period stated in Item 6.

**Terminating Date** means the date stated in Item 8.

**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 work health and safety Law that applies to work being carried out on the Premises.

#### 1.4 Interpretation

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

- 1.4.1 a heading may be used to assist interpretation, but is not legally binding;
- 1.4.2 a word or expression in the singular includes the plural and the converse also applies;
- 1.4.3 a word or expression denoting any gender include all genders;
- 1.4.4 writing includes writing in digital form;

- 1.4.5 a person includes an individual and a corporation;
- 1.4.6 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; and
- 1.4.7 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 Lease; and
- 1.4.8 a reference to any notice, claim, demand, consent, agreement, approval, authorisation, specification, direction, disclosure, notification, request, communication, appointment, or waiver being given or made by a party to this Lease is a reference to its being given or made in writing, and the expression **notice** includes any of the foregoing; and
- 1.4.9 the word right or power includes right, power, remedy, authority, discretion or option or right to make or give any request, requisition, notice or demand, and the word consent includes approval, agreement, permission or authorisation; and
- 1.4.10 a reference to **Item** means an item in the Reference Schedule; and
- 1.4.11 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body; and
- 1.4.12 anything to be done on a Saturday, Sunday or a public holiday in New South Wales may be done on the next Business Day, except obligations relating to trading hours.

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## 2. Landlord's Objective

The parties acknowledge that the Landlord's objective is to activate the Premises to encourage community development and enhance social, cultural and environmental programs that meet the needs identified in the strategic priorities set by Council.

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## 3. Accommodation Grants Program

### 3.1 Terms of Subsidy

The parties acknowledge that:

- (a) A Subsidy has been made available to the Tenant in accordance with:
- (i) The Tenant's Application; and
  - (ii) the City's Grants and Sponsorships Policy.
- (b) The Tenant must at all times throughout the Term:
- (i) meet the General Performance Criteria set out in Schedule 2;
  - (ii) meet the Specific Performance Criteria set out in Schedule 2;

- (iii) submit an annual report and any other report requested on an annual basis including a self assessment (if requested) to the Landlord in accordance with the Grants and Sponsorship policy;
  - (iv) submit any other reports or documentation reasonably required by the Landlord from time to time;
  - (v) not act in a manner which the Landlord considers is contrary to the Landlord's values, could reasonably be expected to prejudice the Landlord's interests or injure the Landlord's reputation;
  - (vi) comply with the reasonable directions of the Landlord; and
  - (vii) otherwise remain compliant with the terms of this Lease.
- (c) If the Tenant fails to meet any of the General Performance Criteria or Specific Performance Criteria as set out in Schedule 2, or any other requirements of the Grants and Sponsorships Policy or Lease, the Landlord may reduce or discontinue the Subsidy.
- (d) If the Tenant's services change or the Tenant is providing services outside the parameters of the Tenant's Application without the consent of the Landlord, the Landlord may reduce or discontinue the Subsidy.
- (e) Any reduction or discontinuation of the Subsidy determined by the Landlord will operate from the date being no earlier than 10 Business Days after the Landlord gives the Tenant a notice that sets out:
- (i) the date on which the reduction or discontinuation of the Subsidy will operate from (**operative date**); and
  - (ii) the amount of the revised Rent will apply on and from the operative date as a result of the reduction or discontinuation of the Subsidy.
- (f) If the Subsidy is reduced or discontinued in accordance with clause 3.1(c), either party may bring this Lease to an end by giving the other party at least one month's written notice. The notice must specify the date that the Lease will end.
- (g) If the Tenant fails to rectify any failure to meet the General Performance Criteria or Specific Performance Criteria within a reasonable timeframe once notified by the Landlord, the Landlord may elect to terminate this Lease giving no less than one month's written notice.
- (h) In addition to the above, the Tenant acknowledges that a rating system is used to evaluate and assess its performance against the general and specific criteria where the following ratings may be given:
- (i) A = meeting or exceeding performance criteria;
  - (ii) B = not meeting performance criteria - on notice (one year to improve performance); or
  - (iii) C = not meeting expectations.
- (i) Where the Tenant is rated a C the Landlord reserves the right to terminate this Lease in accordance with clause 20.3.

### **3.2 Acknowledgement**

- (a) The Landlord's support of the Tenant must be acknowledged in accordance with item 15 of clause 1.2.
- (b) All printed material must be in a form approved by the Landlord. The Tenant must provide the Landlord 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 3.2(b), the Landlord grants the Tenant the right to use the City Logo and to refer to the Landlord as the "City of Sydney" where required to comply with its obligations under this clause.
- (d) The Tenant must only use the City Logo in accordance with this Agreement.
- (e) The Landlord may at any time direct the Tenant to remove the City Logo or any reference to the Council of the City of Sydney from any material published by the Tenant. The Tenant must comply with any direction under this clause immediately.

### **3.3 Specific Performance Criteria**

- (a) The City may amend the Specific Performance Criteria at any time during the Term. Any amendments to the Specific Performance Criteria will be provided to the Tenant in writing and, once agreed, will be incorporated into this Lease.
- (b) Any changes to the Specific Performance Criteria agreed and incorporated into the Lease during the term will not be required to be registered as a variation to this Lease.

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## **4. Term and holding over**

### **4.1 Grant of Lease**

The Landlord leases the Premises to the Tenant for the Term on the terms, covenants and conditions contained in this Lease.

### **4.2 Holding Over**

- 4.2.1 If the Tenant remains in the Premises with the Landlord's prior consent after the Terminating Date or the earlier termination of this Lease, the Tenant will occupy the Premises as a monthly tenant and the Tenant must pay the following:
  - (a) one twelfth of the Rent increased (if applicable) in accordance with clause 6.2 paid monthly in advance adjusted in accordance with Item 10 of the Reference Schedule; and
  - (b) each amount payable under clause 7, due at the time specified.
- 4.2.2 Subject to clause 4.2.1, the monthly tenancy is on the same terms as this Lease but including any changes necessary to make the terms appropriate for a monthly tenancy.
- 4.2.3 The monthly tenancy may be terminated on any day by a Party giving to the other Party one month's written notice.
- 4.2.4 Where the holding over period continues for over twelve months from the Terminating Date, the Rent will be increased in accordance with Item 10 of the Reference Schedule on the annual anniversary of the commencement of the holding over period.

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## **5. Rent and payment requirements**

### **5.1 Payment of Rent**

- 5.1.1 The Tenant covenants to pay the Rent to the Landlord during the Term.
- 5.1.2 The Tenant must pay the Rent by 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 Commencing Date.
- 5.1.3 All payments of Rent or other moneys payable by the Tenant under this Lease must be without deductions and free of any right of set off to the Landlord (using a direct debit payment method or such other payment method as the Landlord reasonably requires) or as the Landlord may otherwise direct from time to time. For the purposes of the rent payment method, the Tenant must provide the Landlord with all authorisations required by the Landlord on or before the Commencing Date.
- 5.1.4 The Landlord need not make demand for any amount payable by the Tenant unless this Lease says that demand must be made.

### **5.2 Interest on overdue money**

- 5.2.1 If the Tenant does not pay the Rent or any other moneys payable under this Lease on time, the Tenant must pay interest (at the rate stated in clause 5.2.2) on the outstanding amount for the period from the day the unpaid money was due until it is paid. The interest must be paid to the Landlord by no later than 10 Business Days after the Landlord has given the Tenant a demand for any interest.
- 5.2.2 Interest is calculated on daily balances at the rate equal to that charged by the Landlord's bank from time to time on overdraft accommodation in excess of \$100,000.00 plus 2% per annum.

### **5.3 Dishonour fees**

The Tenant must reimburse the Landlord on demand for any dishonour fee or other charge the Landlord incurs as a result of any cheque or direct debit being dishonoured.

### **5.4 Adjustments, errors**

- 5.4.1 Where any Rent or other moneys payable by the Tenant under this Lease are calculated over a period, and the Commencing Date or the Terminating Date occurs during that period, the Landlord may make any necessary proportional adjustment on a daily rate basis.
- 5.4.2 If there is an error in any Rent or other moneys charged under this Lease, the Landlord may correct it and make any necessary adjustment in the next monthly tax invoice or as soon as practicable.

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## **6. Rent review**

### **6.1 Review**

The Rent payable by the Tenant during the Term is to be reviewed at each Rent Review Date in accordance with Item 10 of clause 1.2.



## **6.2 Fixed percentage review**

- 6.2.1 This clause 6.2 will apply if Item 10 states that a 'fixed percentage review' is to occur on the relevant Rent Review Date.
- 6.2.2 The Rent is to be adjusted on and from the relevant Rent Review Date to be the amount calculated by increasing the Rent payable immediately prior to the relevant Rent Review Date by the percentage referred to in Item 10 .

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## **7. Utilities and other charges**

### **7.1 Electricity, gas, waste etc**

- 7.1.1 The Tenant must pay to the Landlord or the relevant Government Authority as the context requires all charges for Services (including, without limitation, water, gas, waste removal, telephone and electricity) supplied to the Premises on the days fixed for payment of the relevant charge.
- 7.1.2 If Tenant elects to use the Landlord's contractor for waste removal, the Tenant will be responsible for the Tenant's Waste Proportion as set out in Item 16. If the Tenant does not elect to engage the Landlord's contractor for waste removal, the Tenant is responsible for their own waste management and all associated costs.
- 7.1.3 If the Premises are separately rated or charged, the Tenant must pay the relevant rate or charge to the relevant Government Authority on the day fixed for payment of that rate or charge.
- 7.1.4 If the Premises are separately metered, the Tenant must pay to the Landlord or the relevant Government Authority as the context requires the charge for the relevant separately metered Service according to the consumption of the relevant Service recorded by the separate meter. At the Landlord's request the Tenant must install separate meters for those services capable of being separately metered at the Tenant's cost.

### **7.2 Cleaning Charge**

- 7.2.1 If the Tenant wishes to employ its own cleaner to clean the Premises, the Tenant must first obtain the Landlord's consent to the cleaning contractor and the cleaning specifications.

### **7.3 Costs and duty**

- 7.3.1 The Tenant must pay the following costs and expenses (where applicable) incurred by the Landlord in connection with:
- (a) registration fees;
  - (b) any costs associated with the transfer or early surrender of the Lease (including penalties and fees);
  - (c) any assignment, sublease, licence, mortgage or other encumbrance permitted under this Lease, or any transactions or dealings that this Lease contemplates;
  - (d) any sublease, licence, mortgage or other encumbrance permitted under this Lease, or any transactions or dealings that this Lease contemplates;

- (e) any works or alterations carried out by the Tenant or the Tenant's Employees and Agents, including:
  - (i) the Landlord's architect's or consultant's fees;
  - (ii) costs and expenses incurred by the Landlord in considering and approving those works; and
  - (iii) costs and expenses incurred by the Landlord in modifying or varying the Building because of those works; and
- (f) any breach of this Lease by the Tenant or the Tenant's Employees and Agents, and the enforcement or protection, or attempted enforcement or protection, of any right under this Lease, including the Landlord's legal or consultant's fees

including the Landlord's legal or consultant's fees.

7.3.2 Each party otherwise pays its own costs of entering into this Lease.

#### **7.4 Tenant's taxes**

- 7.4.1 The Landlord will pay all applicable rates and taxes for the Premises except those rates and taxes payable by the Tenant as a result of the grant of this lease to the Tenant or as a result of the performance of the Tenant's obligations under the Lease.
- 7.4.2 For the avoidance of doubt, any land tax assessed by Revenue NSW under section 21C of the *Land Tax Management Act 1956* (NSW) because the Tenant is a tenant of the Landlord is payable by the Tenant. Any request for exemption or concession because the Tenant is a not for profit organisation must be made to Revenue NSW and not the Landlord. The Landlord is not liable for and will not pay land tax as it is a tax charged directly to the Tenant by Revenue NSW because the Tenant is a tenant of a local government authority.
- 7.4.3 The Tenant acknowledges that for the purposes of section 21CA of the *Land Tax Management Act 1956* (NSW), a land tax disclosure statement was provided to the Tenant in writing before the Tenant entered into this Lease.

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### **8. Use of the Premises**

#### **8.1 Permitted use**

The Tenant must not use the Premises otherwise than for the Permitted Use in accordance with the Tenant's Application.

#### **8.2 Exclusion of warranty as to use**

- 8.2.1 The Landlord does not in any way warrant that the Premises are or will remain suitable or adequate for any of the purposes of the Tenant. To the fullest extent permitted by law all warranties as to suitability and as to adequacy otherwise applicable are expressly negated.
- 8.2.2 The Landlord may permit other premises in the Building to be used for the same or a similar use without reference to the Tenant or to the impact of that use on the Tenant's Business.
- 8.2.3 The Tenant acknowledges and agrees that prior to signing this Lease it has satisfied itself by independent investigation as to the suitability of the Building for the Permitted

Use and as to the requirements of any applicable legislation or any relevant Government Authority.

### 8.3 Positive Obligations

The Tenant must:

- 8.3.1 **(Tenant's Business)** conduct the Tenant's Business at all times in a proper, orderly and businesslike manner;
- 8.3.2 **(keep clean)** keep the Premises and everything in them clean and free of vermin and comply with the Landlord's reasonable directions in that regard;
- 8.3.3 **(comply with laws)** comply on time with all laws and the requirements of all relevant governmental agencies in connection with the Tenant's Business, the Tenant's Property and the Tenant's use or occupation of the Premises (including obtaining all permits);
- 8.3.4 **(notify damage)** inform the Landlord of damage to the Building or the Premises or of a faulty Service immediately after it becomes aware of it;
- 8.3.5 **(maximum loading)** be aware of and observe the maximum load weights throughout the Premises and the Building;
- 8.3.6 **(exercise of rights)** promptly, when asked by the Landlord, do anything necessary to enable the Landlord to exercise its rights under this Lease;
- 8.3.7 **(no smoking signs)** put up signs in the Premises prohibiting smoking, if required by the Landlord;
- 8.3.8 **(business name)** if the Landlord approves the Tenant's use of a business name which is connected with the Building, terminate any right it has to use that business name on the date it must vacate the Premises;
- 8.3.9 **(fire drills)** participate in any of the following after having received reasonable prior notice from the Landlord:
  - (a) fire or safety drills;
  - (b) environmental safety procedures;
  - (c) pollution control procedures; and
  - (d) workplace, health and safety inductions,of which the Landlord gives reasonable notice; and
- 8.3.10 **(emergency)** evacuate the Building immediately (and in accordance with the Landlord's directions where applicable) when informed of any actual or suspected emergency;
- 8.3.11 **(security)** secure the Premises when they are unoccupied and comply with the Landlord's directions about Building security;
- 8.3.12 **(illuminated signs)** keep the Premises and illuminated signs fully lit at all times during which the Tenant's Business is being conducted;
- 8.3.13 **(plan of management)** comply with any plan of management applicable to the Premises including any plans of management under the *Crown Lands Management Act*

(2016) NSW or any other plan of management as advised by the Landlord from time to time;

- 8.3.14 **(pest control)** keep the Premises free of pests and, if required by the Landlord, engage a pest exterminator approved by the Landlord to prevent or eliminate pest infestation; and
- 8.3.15 **(employees and agents)** use all reasonable endeavours to ensure that the Tenant's Employees and Agents observe and comply with the Tenant's Obligations under this Lease, where appropriate.

#### **8.4 Negative obligations – generally**

The Tenant must not, without the Landlord's prior written consent:

- 8.4.1 **(smoking)** permit smoking in the Building or in the immediate vicinity of the Building (including common areas);
- 8.4.2 **(Landlord's Property)** alter or interfere with the Landlord's Property or remove it from the Premises;
- 8.4.3 **(nuisance)** do anything in or around the Building which in the Landlord's reasonable opinion may be annoying, illegal, dangerous or offensive or cause a nuisance or interfere with any other person;
- 8.4.4 **(misuse)** misuse or do anything to overload the Building's facilities, appurtenances or Services;
- 8.4.5 **(lifts)** use any escalators or passenger lifts to carry goods or equipment;
- 8.4.6 **(heavy objects)** move heavy or bulky objects through the Building (except to the extent necessary for the conduct of the Permitted Use with the prior consent of the Landlord);
- 8.4.7 **(trade vehicles)** drive or park any trade vehicle in the Building, except at loading bays and at times specified by the Landlord;
- 8.4.8 **(obstruction)** obstruct:
  - (a) windows in the Premises or Building;
  - (b) any Service and all plant and equipment associated with the Services;
  - (c) any emergency exits from the Building or the Premises; or
  - (d) the Common Areas;
- 8.4.9 **(communication devices)** affix any telecommunications device to the Building or install any communications cabling in the Building; or
- 8.4.10 **(fire safety)** interfere with any fire safety or alarm equipment installed in the Building or obstruct access to them.

#### **8.5 Negative obligations – Premises**

The Tenant must not, without the Landlord's prior written consent:

- 8.5.1 **(signage)** erect or install any:

- (a) permanent signs; or
  - (b) other signs, notices or advertisements on the Premises and which are visible from outside;
- 8.5.2 **(vending machines)** install or operate vending or amusement machines on or about the Premises;
- 8.5.3 **(auction)** hold auction, bankrupt or fire sales in the Premises;
- 8.5.4 **(animals)** keep an animal or bird on the Premises (except where required for the Permitted Use);
- 8.5.5 **(defacing)** cut, make holes in, mark, deface, drill, damage or cause any such works to be effected to the floors, walls, ceilings or other parts of the Premises;
- 8.5.6 **(business name)** use a business name which includes words connected to the business name of the Building;
- 8.5.7 **(rubbish disposal)** dispose of refuse from the Premises in bins provided for public use;
- 8.5.8 **(heating, cooling and lighting)** use any method of heating, cooling or lighting the Premises other than those provided or approved by the Landlord;
- 8.5.9 **(television and radio)** operate a musical instrument, radio, television, flashing lights or other equipment that can be heard or (in the case of flashing lights) seen outside the Premises;
- 8.5.10 **(window coverings)** install any blinds, screens, awnings or other window coverings in or outside the Premises;
- 8.5.11 **(dangerous substances)** store or use any inflammable or explosive substances or any other Hazardous Materials in the Premises, unless required for the Permitted Use;
- 8.5.12 **(Tenant's Business)** carry on the Tenant's Business outside the Premises;
- 8.5.13 **(advertising)** spruik or allow any other form of advertising which can be heard outside the Premises; or
- 8.5.14 **(keys)** not copy any key or access device and must reimburse the Landlord for any costs incurred by the Landlord if it is lost.

## 8.6 Child Safety

The Tenant agrees that:

- (a) the Tenant is solely responsible for determining its obligations under Child Safety Law with respect to the Premises and the operation of its business;
- (b) the Tenant has sole management and control of the Premises and the operation of its business;
- (c) any services, activities or other operations being delivered by the Tenant at the Premises are delivered independently and not on behalf of, or as agent of, the City;
- (d) the Tenant must immediately notify the City of any breach of Child Safety Law involving the Tenant, the Tenant's Employees and Agents or the Premises;

- (e) where requested by the City, the Tenant will provide evidence to demonstrate compliance with its obligations under Child Safety Law, including information about its child abuse prevention systems to enable the City to audit and verify the Tenant's compliance with this clause 8.6.

**8.7 No caveat**

The Tenant must not cause or permit the lodgement of a caveat against the Land in relation to this Lease.

**8.8 Tenant's servants to comply**

The Tenant must use its best endeavours to ensure that the Tenant and the Tenant's Employees and Agents comply, if appropriate, with the Tenant's Obligations.

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**9. Tenant's environmental obligations**

**9.1 Comply with Environmental Protection Laws**

The Tenant must comply with all Environmental Protection Laws.

**9.2 Not permit Contamination**

The Tenant must not spill or deposit, or carry out any activities on the Premises which may cause any Contamination or Pollution at or from the Premises, drainage or surrounding Environment.

**9.3 Notify of and clean up Contamination**

If any Contamination, Pollution or Hazardous Material is found at or from the Premises, or the existing Contamination or Pollution is exacerbated during the Term, the Tenant must:

- 9.3.1 immediately notify the Landlord, the EPA and any other appropriate Government Authority;
- 9.3.2 Clean Up the Contamination, Pollution or Hazardous Material, and do everything necessary to minimise harm; and
- 9.3.3 promptly comply with any notice, order, direction or requirement of the Landlord and of any Government Authority in relation to that Contamination, Pollution or Hazardous Material.

**9.4 Indemnify the Landlord**

In addition to any other indemnity in this Lease, the Tenant indemnifies the Landlord 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:

- 9.4.1 any Contamination, Pollution or Hazardous Material at or from the Premises to the extent caused or contributed to by the Tenant; or
- 9.4.2 a breach of this clause by the Tenant or the Tenant's Employees and Agents.

**9.5 Obtain reports, surveys or audits**

The Tenant must:

- 9.5.1 immediately obtain, at its cost, any reports, surveys or audits which the Landlord may reasonably require to enable the Landlord to determine whether a breach of this clause 9 has occurred; and
- 9.5.2 pay the Landlord on demand the reasonable costs of any of those reports, surveys or audits the Landlord may obtain.

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## **10. Condition of the Premises**

### **10.1 Condition Report**

- (a) The parties will complete a Condition Report setting out the condition of the Premises at the Commencement Date or the date on which the Tenant started occupying the Premises, whichever is earlier.
- (b) At the end of this Lease, the Landlord will inspect the Premises and the condition of the Premises at that time will be compared to that stated in the Condition Report.
- (c) The Tenant will be required to Make Good the Premises in accordance with this Lease and to the condition recorded in the Condition Report.

### **10.2 Acceptance of Condition of the Premises at Commencement Date**

- (a) The Tenant agrees to occupy the Premises in the condition that they are in at the Commencement Date as recorded in the Condition Report.
- (b) Subject to the Landlord's obligations under this Lease, the Tenant will not require the Landlord to make any repairs or alterations to the Premises.

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## **11. Maintenance, repair and alteration**

### **11.1 Repair and maintenance**

- 11.1.1 Subject to clause 11.1.2, the Tenant must keep the Premises in good repair, order and in the same condition as it was in at the date the Tenant first occupied the Premises including repairing or replacing anything in the Premises (including all furnishings and floor coverings) which are damaged, worn or destroyed, with items of at least the same quality excluding fair wear and tear.
- 11.1.2 The Tenant is not obliged to carry out any repairs of a structural nature unless those repairs are required because:
- (a) of the Tenant's particular use or occupation of the Premises; or
- (b) any act, negligence or default of the Tenant, the Tenant's Employees and Agents or any sub-tenant.
- 11.1.3 The Tenant acknowledges that any works performed to the Premises or the Building must comply with any Conservation Management Plan applicable to the Premises where provided to the Tenant.

## **11.2 Maintenance of Tenant's equipment**

The Tenant must keep and maintain all its machinery, plant and equipment and fixtures, fittings and furnishing within and used exclusively in the Premises in a clean, safe condition and in good repair, working order and condition.

## **11.3 Maintenance of Landlord's Property**

The Tenant must:

- 11.3.1 repair and maintain the Landlord's Property in accordance with the Maintenance Obligations Matrix; and
- 11.3.2 comply with the Landlord's reasonable requirements concerning the use of the Landlord's Property, including air-conditioning and heating equipment.

## **11.4 Breakages**

The Tenant must immediately make good any breakage, defect or damage to the Premises, the Common Areas, the Building, or any facility or appurtenances of the Premises or the Building caused by the Tenant or the Tenant's Employees and Agents, or by a default under this Lease of the Tenant or the Tenant's Employees and Agents.

## **11.5 Lighting**

The Tenant must promptly replace at its own expense any globes or fluorescent tubes which give illumination to the Premises and which cease to function for any reason.

## **11.6 Doors, drains and toilets**

- 11.6.1 Where not otherwise provided for in the Maintenance Obligations Matrix, the Tenant must keep and maintain:
  - (a) the doors, locks, windows and window fittings of the Premises in good and efficient working order and condition; and
  - (b) all water pipes, drains and conduits originating within the Premises in a clean, clear and free flowing condition between their point of origin and their entry into any trunk drain.
- 11.6.2 The Tenant must immediately notify the Landlord of any blockage of which the Tenant is aware and employ licensed tradesmen nominated by the Landlord to clear any blockage which may occur.

## **11.7 Failure to repair and maintain**

- 11.7.1 If the Tenant does not carry out any repairs, maintenance or other works required under this Lease within 10 Business Days of receiving written notice from the Landlord, the Landlord may enter the Premises to carry out those repairs, maintenance and works at any reasonable time after giving the Tenant reasonable notice.
- 11.7.2 The Tenant must pay to the Landlord on demand the cost of all those repairs, maintenance and works.

## **11.8 Installations and alterations (if applicable)**

The Tenant must:



- 11.8.1 not install any Tenant's Property in the Premises or make any alteration or addition to the Premises, the Building without the Landlord's prior approval;
- 11.8.2 submit to the Landlord detailed drawings and specifications of any proposed works, installation or alteration and obtain the approval of the Landlord to those drawings and specifications. When approving the proposed works the Landlord may consider the manner and extent to which the proposed works may affect the Building and the Services within it; and
- 11.8.3 prior to installation of the Tenant's Property, obtain all necessary approvals (where required) from all relevant Government Authorities; and
- 11.8.4 install only those Tenant's Property which comply with the Landlord's requirements as to type, quality, colour and size; and
- 11.8.5 use a licensed builder, contractor or qualified tradesman approved by the Landlord to install the Tenant's Property:
  - (a) in a proper and workmanlike manner; and
  - (b) strictly in accordance with drawings and specifications approved by the Landlord; and
  - (c) in accordance with all rules and requirements of any Government Authority; and
  - (d) if required by the Landlord, under the supervision and to the satisfaction of the Landlord's consultant at the cost of the Tenant; and
  - (e) who has:
    - (i) a current public liability policy for an amount from time to time approved by the Landlord but in any case not less than \$20,000,000;
    - (ii) a workers' compensation insurance policy as required by law covering all persons employed by the Tenant or his contractor; and
    - (iii) a contractors all risk policy in respect of the Tenant's works to the full value of them for the time being; and
    - (iv) undertaken a City of Sydney site induction before undertaking any works on the Premises;
- 11.8.6 pay to the Landlord on demand the cost of the Landlord's architect relating to such approval (if applicable and whether the proposed works are approved or not) and supervision; and
- 11.8.7 if required by the Landlord on completion of the installation of the Tenant's Property, give the Landlord a certificate by a consultant approved by the Landlord at the cost of the Tenant that the work accords with:
  - (a) the drawings and specifications in respect of it; and
  - (b) the requirements of all relevant Government Authorities; and
  - (c) pay all costs in respect of the installation of the Tenant's Property and any alterations or additions to the Premises or the Building made necessary by their installation; and

11.8.8 at the Tenant's expense, keep and maintain the Tenant's Property in good repair and condition.

#### **11.9 Alterations or additions to Landlord's Property**

11.9.1 Despite any other provision in this Lease, the Tenant 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, air conditioning, heating, cooling or ventilating the Premises; or
- (c) which interfere with any drains, water supply or other services connected to the Premises,

without the Landlord's prior approval.

11.9.2 The Landlord may require as a condition of its approval that the Landlord or the Landlord's contractors will install or make the connection at the Tenant's cost and expense.

11.9.3 If the Tenant installs or makes any connections in breach of this clause, the Tenant must pay to the Landlord all costs incurred by the Landlord in repairing any damage caused by that installation or connection.

11.9.4 The Tenant must not use the Landlord's Property for anything other than its intended use.

#### **11.10 Development Consent**

The Tenant must at all times comply with the terms of any applicable Development Consent and acknowledges that a breach of the terms of the Development Consent will be a breach of this Lease.

#### **11.11 Work health and safety**

11.11.1 For the purposes of the WHS Law, the Tenant agrees that:

- (a) the Tenant has sole management and control of the Premises and has sole responsibility for ensuring that the Premises and the means of entering and leaving them are safe and without risks to health;
- (b) the Landlord:
  - (i) appoints the Tenant as Principal Contractor in respect of any works to be carried out by or on behalf of the Tenant on the Premises to which a WHS Law applies; and
  - (ii) authorises the Tenant to exercise whatever authority is necessary for the Tenant to discharge the responsibilities of that appointment;
- (c) the Tenant has management and control over those works, and must carry out those works in accordance with the requirements of the WHS Law; and
- (d) the Tenant must put in place adequate systems to assess and eliminate all hazards associated with those works and, if those hazards cannot be eliminated,

the Tenant must do everything reasonably practicable to ensure that the risks involved are adequately controlled and minimised.

11.11.2 The Tenant must:

- (a) immediately comply with directions on safety issued by any relevant Government Authority or the Landlord;
- (b) participate in emergency training activities, including evacuation exercises;
- (c) give the Landlord written notice of any risks to the health and safety of any person using the Premises or using the Landlord's Property, immediately after becoming aware of those risks; and
- (d) give the Landlord written notice of any notifiable incident (as defined in the *Work Health and Safety Act 2011* (NSW)) that occurs on the Premises, immediately after becoming aware of that incident.

11.11.3 Unless otherwise advised by the City, the Tenant will be responsible for:

- (a) developing an emergency plan and evacuation diagram for the Premises within one month of the Commencing Date;
- (b) forming an Emergency Planning Committee and Emergency Control Organisation to manage safety and emergency responsibilities and procedures for the Building;
- (c) reviewing the emergency plan annually and wherever a change has been made to the tenancy/building and updating as required;
- (d) reviewing the evacuation diagram at least every five years and wherever a change has been made to the tenancy/building and updating as required;
- (e) providing details of any emergency plans, diagrams, training and evacuations to the Landlord annually or where changes have been made to the Premises/Building or the emergency plans and/or evacuation diagrams; and
- (f) providing training on evacuation and fire safety as well as implementation of the emergency plan to its employees/invitees where required under WHS Law.

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## 12. Indemnities and releases

### 12.1 Risk

The Tenant occupies and uses the Premises and the Land at its own risk. All Tenant's Property which may be in the Premises or outside the Premises but used in conjunction with the Permitted Use is at the sole risk of the Tenant. Anything that the Tenant is obliged to do under this Lease is to be done by the Tenant at its own cost and risk.

### 12.2 Release

12.2.1 The Tenant agrees that the Landlord is not liable for and releases the Landlord from any liabilities, actions, claims, demands, losses, damages, proceedings, costs, charges and expenses suffered or incurred by the Tenant in connection with:

- (a) any fault with or damage to the Premises and any Landlord's Property in them;

- (b) the failure of the Landlord's Property or any plant and equipment (including the Air Conditioning Plant and Elevators) to operate properly;
- (c) the condition or state of repair of the Premises or the Building;
- (d) the requirement of any Government Authority;
- (e) leakage, condensation or water penetration into the Premises from any sprinkler device or other apparatus;
- (f) any defect in or interruption or damage to the any Service or plant and equipment contained in the Premises; or
- (g) any accident or unforeseen event.

12.2.2 The Tenant agrees that the Landlord is not responsible for and releases the Landlord and its contractors from liability in respect of the death of, injury to, loss of or damage to any property or persons in or about the Premises except to the extent that the relevant damage, injury or loss was caused by any negligence of the Landlord.

### 12.3 Indemnities

12.3.1 The Tenant must indemnify and keep the Landlord indemnified from and against all liabilities, actions, claims, demands, losses, damages, proceedings, costs, charges and expenses in respect of or arising from:

- (a) any loss, damage, death or injury to property or person inside or outside the Premises caused by the act, omission or negligence of the Tenant and the Tenant's Employees and Agents;
- (b) the use and occupation of the Premises by the Tenant or the Tenant's Employees and Agents;
- (c) the negligent or careless use, misuse, waste or abuse of the water, gas, electricity, lighting or other services and facilities of the Premises or the Building by the Tenant and the Tenant's Employees and Agents;
- (d) overflow or leakage or penetration of water (including rain water) of any kind originating from inside or outside the Premises caused or contributed to by the Tenant and the Tenant's Employees and Agents;
- (e) any faulty or defective Tenant's Property; or
- (f) any breach of this Lease or any related agreement by the Tenant or the Tenant's Employees and Agents (in particular, all of the essential terms stated in clause 20.1),

except to the extent that the relevant damage, injury or loss was caused by any negligence of the Landlord.

12.3.2 Clause 12.3.1 applies even if the liabilities, actions, claims, demands, losses, damages, proceedings, costs, charges and expenses result from anything that the Tenant or the Tenant's Employees and Agents may be authorised or obliged to do under this Lease, and even if the Landlord gave any waiver or indulgence in respect of that matter.

### 12.4 No Compensation

Subject to clause 18, the Tenant must not, by reason of anything referred to in clause 12.2:

- 12.4.1 terminate this Lease or any related agreement; or
- 12.4.2 claim any reduction in Rent or in any other amount payable under this Lease, or make any other claim.

### **12.5 Independence**

Each indemnity is independent from the Tenant's other obligations and continues during this Lease and after it expires or is terminated. The Landlord may enforce an indemnity before incurring expense.

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## **13. Insurances**

### **13.1 Insurance Policies – Public Liability**

The Tenant must have current throughout the Term a public liability insurance policy:

- 13.1.1 for the amount stated in Item 14 in respect of any single event or accident or for such higher amount as the Landlord (acting reasonably) may require at any time;
- 13.1.2 relating to the Tenant's liability for death, personal injuries and property damage arising from the Tenant's occupancy of the Premises and use of the Building, whilst entering, leaving, using and being in the Premises or any part of the Building, in circumstances in which the Tenant may incur liability for injury, loss or damage; and
- 13.1.3 extending to claims, risks and events covered under the indemnities provided to the Landlord by the Tenant; and
- 13.1.4 containing terms that are commonly used by reputable insurers in the State of New South Wales; and
- 13.1.5 including a cross liability clause.

### **13.2 Insurance Policies – other**

The Tenant must have current throughout the Term:

- 13.2.1 a plate glass insurance policy in respect of all plate glass forming part of the Premises (in windows, doors, shop front, display cases or other fixed glass) for its replacement value;
- 13.2.2 a policy covering all of the Tenant's Property and stock in trade in the Premises; and
- 13.2.3 a workers' compensation insurance policy required by law.

### **13.3 Insurance requirements**

- 13.3.1 All insurance policies (other than the workers' compensation insurance policy) the Tenant must have current throughout the Term must:
  - (a) be established with one or more insurance companies which are respectable, reputable and financially sound, approved by the Landlord (such approval not to be unreasonably withheld);
  - (b) name the Tenant as the insured;
  - (c) name the Landlord ('The Council of the City of Sydney') as an interested party;

- (d) cover the Landlord's and Tenant's interests;
- (e) not be varied or cancelled without the prior approval of the Landlord;
- (f) be on terms that are acceptable to the Landlord (acting reasonably); and
- (g) if requested by the Landlord, include the interest of any mortgagee.

13.3.2 The Tenant must ensure all premiums associated with insurances required under this Lease are paid punctually to ensure policies are maintained.

#### 13.4 Evidence

13.4.1 No later than 10 Business Days after any request by the Landlord, the Tenant must provide to the Landlord a certificate of currency (or such other evidence as the Landlord may reasonably require) in respect of any insurance that must be established and maintained under this Lease.

13.4.2 The Tenant must promptly give to the Landlord notice of:

- (a) the Tenant's intention to cancel, replace or alter any insurance effected by the Tenant in accordance with this clause;
- (b) any notice or correspondence received by the Tenant from an insurer indicating its intention to cancel or materially alter any of those insurances; and
- (c) the occurrence of any fact or event which may not be known to the Landlord and:
  - (i) may give rise to a claim against the Landlord or the Tenant, which may be covered by any one of those insurances;
  - (ii) may prejudice the entitlement to claim under any of those insurances; or
  - (iii) should be disclosed to the insurer and may affect its decision to continue to insure the Tenant or the risk.

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## 14. Dealing with Tenant's interest in the Premises

### 14.1 Dealings permitted with consent

The Tenant may grant a licence in respect of the Premises with the Landlord's prior written consent which may be given at the Landlord's absolute discretion.

### 14.2 General requirements

Prior to obtaining the Landlord's prior consent, the Tenant must satisfy all requirements specified below:

- (a) **(application for consent)** At least one month before the proposed sublease or licence commences, the Tenant must apply for the Landlord's consent and provide:
  - (i) details of the proposed transaction including the proposed permitted use;
  - (ii) names and contact details of the proposed party sublicensing the Premises or part of the Premises;

- (iii) a copy of the proposed documentation; and
  - (iv) all other relevant information required by the Landlord.
- (b) **(security)** The Landlord is given any guarantee, indemnity or other security it requires in relation to the proposed sublease or licence;
- (c) **(reputation)** The Tenant proves to the Landlord's reasonable satisfaction that any proposed tenant or subtenant is:
- (i) respectable;
  - (ii) not likely to pose a security risk; and
  - (iii) able to comply with its obligations under this Lease.

### **14.3 Sublicensing**

In addition to the requirements set out in clause 14.2, the Tenant and licensee must, if required by the Landlord, enter into an agreement in a form approved by the Landlord under which (among other things):

- 14.3.1 the licensee agrees not to grant a sublicense, transfer its sublicense, or part with or share possession of, the Premises;
- 14.3.2 the Tenant and licensee agree that the licence terminates immediately on termination of this Lease; and
- 14.3.3 the Tenant acknowledges its continuing obligations under this Lease.

### **14.4 Tenant Responsible**

- 14.4.1 The Tenant will be responsible for ensuring that any sublicensee complies with the terms of this Lease.
- 14.4.2 The Tenant must report any income associated with their use of the Premises, including but not limited to sublicensing the Premises, in their Annual Report.

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## **15. Landlord's obligations**

### **15.1 Quiet Enjoyment**

Subject to the Landlord's reservations in the Lease and the terms, covenants and conditions of this Lease, while the Tenant:

- 15.1.1 pays the Rent and all other moneys payable under this Lease; and
- 15.1.2 observes and performs all of the Tenant's Obligations,

the Landlord covenants that the Tenant may peaceably hold and enjoy the Premises during the Term without any interruption by the Landlord or any person rightfully claiming through the Landlord.

### **15.2 Maintenance and management**

The Landlord must:

- 15.2.1 keep and maintain the Building in a clean, tidy and good condition;
- 15.2.2 manage and operate the Building in a professional and competent manner; and
- 15.2.3 obey any law relating to the Building that the Tenant is not obliged to satisfy.

### **15.3 Services**

- 15.3.1 Subject to clauses 15.3.2 and 15.3.3, the Landlord must use reasonable endeavours to keep the Services available to the Premises to the extent that the Landlord is capable of doing so.
- 15.3.2 The Tenant releases the Landlord from, and agrees that the Landlord is not liable for, liability or loss arising from, or costs incurred in connection with:
  - (a) any Service being interrupted or not working properly;
  - (b) any failure in operation or defective operation of any facility, plant, machinery or equipment located or used in the Building including the Air Conditioning Plant and Elevators (whether or not it comprises part of the Landlord's Property); and
  - (c) any disruption attributable to any development (including, without limitation, construction works) being carried out on or around land adjoining or adjacent to the Building.
- 15.3.3 The Tenant may not terminate this Lease nor make any claim of any nature by reason of anything referred to in this clause 15.3.

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## **16. Landlord's reservations**

### **16.1 Services**

Subject to clause 16.5, the Landlord reserves the right:

- 16.1.1 to install, maintain, use, repair, alter and replace; and
- 16.1.2 to pass or convey any Service including (without limitation) 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 Premises.

### **16.2 Landlord's Rights**

The Landlord may:

- 16.2.1 carry out any works to the Building and enter upon the Premises for such purpose (including, without limitation, alterations and redevelopment), or limit access to or close the Common Areas, if the Landlord takes reasonable steps (except in emergencies) to minimise interference with the Tenant's Business;
- 16.2.2 exclude or remove any person from the Building;
- 16.2.3 restrict access to delivery and pick-up areas, if the Landlord takes reasonable steps (except in emergencies) to minimise interference with the Tenant's Business;
- 16.2.4 permit functions, displays, parades, musical performances, exhibitions and other activities in Common Areas;



- 16.2.5 install and use a public address system throughout the Common Areas;
- 16.2.6 change the direction or flow of pedestrian or vehicular traffic into, out of or through the Building;
- 16.2.7 use the exterior surfaces of the Building (including, without limitation, the roof of the Building) for such purposes as it thinks fit; and
- 16.2.8 advertise and promote the Building in a way it regards as appropriate including the erection or installation of signs on the exterior surfaces of the Building.

**16.3 Landlord may enter**

Subject to clause 16.5, the Landlord may enter the Premises together with all necessary workmen and equipment at any reasonable time to do the following:

- 16.3.1 inspect the condition of the Premises;
- 16.3.2 determine the Tenant's compliance with this Lease and rectify any default by the Tenant under this Lease;
- 16.3.3 show the Premises to the Landlord's consultants, insurance brokers, mortgagees or prospective mortgagees at any time;
- 16.3.4 ensure that the Premises are locked and secure; or
- 16.3.5 do anything which the Landlord or the Tenant must or may do under this Lease.

**16.4 Landlord may repair**

Subject to clause 16.5, the Landlord may enter upon the Premises with any consultants, workmen, other persons or materials needed to:

- 16.4.1 comply with any request, requirement, notification or order (for which the Tenant is not liable under the Lease) of any Government Authority; or
- 16.4.2 carry out repairs, renovations, maintenance, modifications, extensions or alterations to the Premises or the Building or any Services which the Landlord believes are necessary in its absolute discretion.

**16.5 Restriction on Landlord's rights of entry**

Unless otherwise provided, when exercising the Landlord's rights of entry under this Lease the Landlord must:

- 16.5.1 give reasonable notice to the Tenant; and
- 16.5.2 cause as little inconvenience to the Tenant as is reasonably practicable in the circumstances,

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

**16.6 Emergency and restricted access**

16.6.1 Despite any other provision of this Lease, if the Landlord decides that there is an emergency, the Landlord may, without giving notice to the Tenant:

- (a) enter the Premises at any time; and

- (b) stop the Tenant and any other person from entering the Building or the Common Areas.

16.6.2 The Landlord may exclude the Tenant and any other person from entering the Building or the Common Areas outside the Normal Building Hours.

16.6.3 Where there is a reference in this Lease to an emergency, the determination of the Landlord as to the existence of an emergency is conclusive.

#### **16.7 Additions and alterations to the Building**

16.7.1 The Landlord may cause the construction of alterations or additions to the Building or develop or redevelop the Building by constructing, improving, extending, varying, amending, refurbishing, renovating or reducing the Building or any part of it other than the Premises but must first give the Tenant not less than 3 months' notice of its intention to do so other than in the case of:

- (a) an emergency where the Landlord must give the Tenant the maximum period of notice that is reasonably practicable in the circumstances;
- (b) alterations to and the refurbishment of other shops in the Building and the fitting out of any other shops, whether by the Landlord or any other person, or
- (c) any change to the tenancy mix of the Building;

and for these purposes (without incurring any liability to the Tenant) the Landlord may:

- (d) interrupt the water, gas, electrical and other Services to the Premises but in such a manner as to minimise so far as is practicable any inconvenience to or interruption to the business of the Tenant; and
- (e) alter, inhibit and obstruct to a substantial extent the access or the flow of persons to the Premises or the Building or both.

16.7.2 If:

- (a) the Landlord carries out any works contemplated by this clause 16;
- (b) any Services to or from the Premises are interrupted;
- (c) access or the flow of persons who use the Premises or the Building or both is altered, inhibited or obstructed; or
- (d) there is any change in the occupiers or tenancy mix of the Building,

then the Tenant will not be entitled to terminate the Lease or take any action, or claim compensation, damages or abatement of the Rent or other moneys payable under this Lease by reason of the same.

#### **16.8 Prospective tenants and purchasers**

16.8.1 After giving reasonable notice, the Landlord may at any time show prospective purchasers of the Landlord's interest in the Premises through the Premises.

16.8.2 After giving the Tenant reasonable notice, the Landlord may show prospective tenants through the Premises and display from or outside the Premises a sign indicating that the Premises are available for lease.

## 16.9 Relocation

- 16.9.1 The Landlord may during the Term relocate the Tenant to alternative premises if:
- (a) the Landlord gives the Tenant details of a genuine proposal to carry out a refurbishment, redevelopment or extension of the Building within a reasonably practicable time after the relocation that cannot be carried out practicably without vacant possession of the Premises; and
  - (b) the Landlord gives the Tenant not less than 3 months' notice (**relocation notice**) containing details of an alternative premises, and offering the Tenant a new lease of those premises on the same terms as this Lease except that:
    - (i) the term of the new lease will begin at the earlier of 1 month after the alternative premises are made available to the Tenant for fitout purposes and the day on which the Tenant begins trading from the alternative premises, and will end on the Terminating Date; and
    - (ii) the rent will be adjusted (if necessary) to take into account the difference in commercial values between the Premises and the alternative premises.
- 16.9.2 The Landlord must notify the Tenant of the rent it thinks should be payable for the alternative premises when the relocation notice is given.
- 16.9.3 After receipt of the relocation notice, the Tenant may within 1 month of receipt of the relocation notice terminate this Lease by giving the Landlord termination notice and, in this case, the Lease will terminate 3 months after the date on which the relocation notice is given and the Tenant must:
- (a) vacate the Premises on the terminating date; and
  - (b) if required by the Landlord, sign a surrender of lease instrument.
- 16.9.4 The Tenant is deemed to have accepted the relocation notice if the Tenant gives the Landlord a notice accepting it or does not give a termination notice under clause 16.9.3 and by virtue of such acceptance the Tenant must:
- (a) sign a new lease of the alternative premises and pay any duty;
  - (b) fitout the alternative premises in accordance with the requirements of the new lease.
- 16.9.5 The Landlord must pay the Tenant's reasonable costs of relocation.

## 16.10 Demolition

- 16.10.1 The Landlord may terminate this Lease if it wishes to:
- (i) demolish, substantially repair, renovate or reconstruct the Building or Premises in such a way that the works cannot be carried out practicably without vacant possession of the Premises; or
  - (ii) use the Premises for its own or other purposes;
- provided that it has provided the Tenant with at least 6 months' written notice of termination.

#### **16.11 Subdividing and dealing with the Land**

- 16.11.1 The Landlord may grant easements or other rights over the Land or the Premises, or implement a subdivision or re-subdivision of the Land during the Term, any option term or holding over period in respect of the Land, including a subdivision of the Land pursuant to the *Strata Schemes Development Act 2015* (NSW). The Tenant must not object to any of the above except where it will unreasonably interfere with the Tenant's use and occupation of the Premises.
- 16.11.2 The Tenant must do anything the Landlord reasonably requires in connection with its exercise of those rights in 16.11.1, including:
- (a) signing and producing documents and providing consents; and
  - (b) varying or replacing this Lease, provided that the variation or replacement does not adversely affect the Tenant's rights under this Lease.

#### **16.12 Managing agent**

The Landlord may appoint an agent to exercise any of its rights or perform any of its obligations under this Lease, or to manage the day to day running of the Building or the Premises. Communications from the Landlord override those from any agents if they are inconsistent.

#### **16.13 Role as a Government Authority**

- 16.13.1 This Lease will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Landlord to exercise any of its functions and powers as a Government Authority.
- 16.13.2 In the event of any conflict between the unfettered discretion of the Landlord in the exercise of its statutory powers as a Government Authority and the performance of obligations under this Lease, the former prevails.

#### **16.14 Superior interests**

The Tenant must at all times during the Term permit the Landlord and any person having any estate or interest in the Premises superior to or concurrent with that of the Landlord to:

- 16.14.1 exercise the Landlord's powers to enter and view the Premises; and
- 16.14.2 carry out repairs, renovations, maintenance and other work authorised by the Lease or any head lease; and
- 16.14.3 otherwise exercise or perform their lawful rights and obligations in respect of the Premises.

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#### **17. No entitlement to damages**

- 17.1.1 Subject to 17.1.2 and 17.1.3, the parties acknowledge that this clause 17 is intended to override all other terms of this Lease and all rights, powers, obligations, warranties, undertakings and entitlements under this Lease must be read subject to the terms of this clause 17;
- 17.1.2 This clause 17 operates and has effect in the event that any of the following circumstances apply:

- a. the Landlord has provided to the Tenant at any time during the term of this Lease any form of grant or subsidy (whether in cash or kind) in relation to either the occupation of the Premises by the Tenant or the operation of any enterprise from it;
  - b. either the Tenant is paying no Rent in relation to the occupation of the Premises or the Rent payable by the Tenant in relation to its occupation of the Premises is subsidised in any way by or less than full market rent for the Premises; or
  - c. the Premises have been provided to the Tenant pursuant to any form of program or scheme operated by the Landlord and rent is either subsidised by the Landlord or full market rent is not paid for the Premises by the Tenant under the Lease.
- 17.1.3 To the fullest extent possible (and acknowledging that the circumstances set out in 17.1.2 may give rise to this event in circumstances where it may not otherwise arise) this clause 17 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.
- 17.1.4 In consideration of the relevant circumstances set out in 17.1.2 and regardless of how any such matter arises and the conduct of the Landlord in relation to it, the Tenant releases the Landlord from, and waives all rights in relation to, all liability, loss of profit, damages, claims and demands in any way relating to the Premises, the occupation by the Tenant of the Premises and any enterprise operated by the Tenant from the Premises.
- 17.1.5 The Tenant must not commence any action or make any demand for any matter for which the Landlord is released under 17.1.4 and the Landlord may plead this clause in defence of any such attempted action or demand.

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## **18. Damage or destruction**

### **18.1 Damage consequences**

If the Building or the Premises are damaged or destroyed and as a result the Tenant's ability to access or use the Premises are diminished, then subject to clause 18.4, the Landlord must reduce the Rent and other moneys payable under this Lease by a reasonable amount having regard to the nature and extent of the damage or destruction until this Lease comes to an end or the Premises are again fit for use (except to the extent that any damage, destruction or loss of access has been caused by the Tenant or persons under its control). The Landlord will notify the Tenant of the reduced amount, and:

- 18.1.1 the Tenant must continue to occupy and use any part of the Premises that remains useable, safe and accessible, and comply with this Lease to the extent possible; and
- 18.1.2 subject to clause 18.4, the Tenant may give a notice to the Landlord asking for the damage or destruction to be repaired.
- 18.1.3 Where, in consequence of the Tenant's act or omission any policy of insurance effected on the Building is voided or payment of monies under any policy of insurance effected on the Building is refused by the insurer, the Landlord may recover damages from the Tenant for that damage, destruction, loss, act or omission even if this Lease has ended.

### **18.2 Landlord entitlements**

- 18.2.1 If the Building or the Premises are damaged or destroyed the Landlord:

- (a) may (but is not obliged to) repair the damage or destruction;
- (b) may give the Tenant a notice that it proposes to repair the damage or destruction;  
or
- (c) may terminate the Lease by giving the Tenant not less than 1 month's notice expiring on any day where the Landlord forms the opinion that the repair of the damage or destruction is impracticable or undesirable.

18.2.2 The Landlord is not liable to pay any compensation to the Tenant if the Building or the Premises are damaged or destroyed or if the Lease is ended as a result.

### **18.3 Tenant's right to terminate**

Subject to clause 18.4, the Tenant may terminate this Lease by giving the Landlord not less than 1 month's notice expiring on any day if the Landlord gives the Tenant a notice under clause 18.2.1(c) and fails to repair the damage or destruction within a reasonable time after having given that notice.

### **18.4 Limitation on the Tenant's right to terminate**

Despite anything else contained in this Lease, the Tenant is not entitled to a reduction in Rent or other moneys payable under this Lease or give notices under clauses 18.1.2 and 18.3 if:

- 18.4.1 the damage or destruction or loss of access has been caused or contributed to by any act or omission of the Tenant or the Tenant's Employees and Agents; or
- 18.4.2 as a consequence of the act or omission of the Tenant any policy or policies of insurance relating to the Building are voided or payment of monies under any policy or policies of insurance effected on the Building is refused by the insurer, in which event the Landlord is entitled to recover damages from the Tenant in respect of that damage, destruction, loss, act or omission even if this Lease is terminated.

### **18.5 No compensation**

The Tenant acknowledges that if all or any part of the Premises or the Building is destroyed or damaged, the Tenant is not entitled to receive any compensation from the Landlord.

### **18.6 Resumption**

Either the Landlord or the Tenant may terminate this Lease by giving the other party not less than 1 month's notice expiring on any day if a Government Authority resumes the Premises or the Building (or any part of them) and in doing so makes the Premises unfit for the Tenant's use. The Landlord is not liable to pay the Tenant any compensation because of resumption.

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## **19. Expiry or termination of Term**

### **19.1 Tenant to vacate**

- 19.1.1 On the earlier of the Terminating Date and the date on which this Lease is terminated, the Tenant must vacate the Premises and Make Good.
- 19.1.2 In connection with the vacation of the Premises and their Make Good, the Tenant must:
  - (a) arrange for an inspection of the Premises by the Landlord before the Premises are vacated;

- (b) at or before the inspection referred to in clause 19.1.2(a) give to the Landlord an inspection report setting out what has been done by the Tenant in order to comply with the obligation to Make Good;
- (c) give to the Landlord all copies of keys, security passes and other mechanisms of access to the Premises to the Landlord;
- (d) ensure that all Rent and other amounts payable under the Lease are paid; and
- (e) give to the Landlord evidence that any trading name or business name connected to the name of the Building is terminated or surrendered in accordance with clause 8.3.8.

**19.2 Consequences of non-compliance**

If the Tenant does not vacate the Premises and Make Good on time:

- 19.2.1 the Landlord may allow the Tenant to have access to the Premises for the purposes of complying with clause 19.1 and the Tenant must pay to the Landlord on demand a fee equivalent to the Rent and other moneys payable under this Lease at a daily rate applicable immediately before the Terminating Date or the date of earlier termination for each day from the Terminating Date or the date of earlier termination until the Make Good has been completed to the Landlord's reasonable satisfaction; or
- 19.2.2 the Landlord may not permit the Tenant to have access to the Premises for the purposes of complying with clause 19.1 and Make Good on the Tenant's behalf and the Tenant must pay the Landlord on demand:
  - (a) the fee described in clause 19.2.1; and
  - (b) all costs and expenses incurred by the Landlord in carrying out the Make Good on the Tenant's behalf.

**19.3 Tenant's Property**

Anything left on the Premises (including any Tenant's Property) becomes property of the Landlord and the Landlord may:

- 19.3.1 keep and use any such property; or
- 19.3.2 remove and dispose of any such property at the Tenant's expense.

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**20. Default**

**20.1 Essential terms**

20.1.1 The following terms of this Lease are essential terms:

Clause number	Clause heading
3	Accommodation Grants Program
5.1	Payment of Rent

Clause number	Clause heading
7.3	Costs and duty
7.4	Tenant's taxes
8.1	Permitted Use
8.3.3	Compliance with Laws
8.6	Child Safety
9	Tenant's environmental obligations
11.1	Repairs and maintenance
11.3	Landlord's Property
11.8	Alterations to Premises
11.10	Work health and safety
12.3	Indemnity
13	Insurance
14	Dealing with Tenant's interest in the Premises
22	Security

20.1.2 Any other obligation of the Tenant under this Lease may also be an essential term.

## 20.2 Default events

It is default under this Lease if:

20.2.1 any part of the following is in arrears for 10 Business Days, whether or not the Landlord has demanded payment:

- (a) the Rent; or
- (b) any other amount payable by the Tenant under this Lease or any related agreement;

20.2.2 the Tenant repudiates any Tenant's Obligations under this Lease;

20.2.3 the Tenant commits a wilful or serious breach of an essential term of this Lease (which the Tenant agrees the Landlord may treat as the Tenant's repudiation of the Tenant's Obligations under this Lease); or



- 20.2.4 the Tenant does not comply with any Tenant's Obligations or any term of this Lease (other than a breach under clause 20.2.3) and, in the Landlord's reasonable opinion:
- (a) the non-compliance can be remedied, but the Tenant does not remedy it to the Landlord's reasonable satisfaction within a reasonable time after the Landlord gives the Tenant notice to remedy it; or
  - (b) the non-compliance cannot be remedied or compensated for; or
  - (c) the non-compliance cannot be remedied but the Landlord can be compensated and the Tenant does not pay the Landlord compensation satisfactory to the Landlord for the breach within 10 Business Days after the Landlord gives the Tenant notice to pay it; or
- 20.2.5 an Insolvency Event occurs in respect of the Tenant.

### **20.3 Consequences of default**

If there is default under this Lease, the Landlord may (in addition to any rights it otherwise has at law):

- 20.3.1 immediately terminate this Lease by notice to the Tenant or re-entering the Premises;
- 20.3.2 re-enter and take possession of the Premises;
- 20.3.3 institute proceedings against the Tenant for possession of the Premises;
- 20.3.4 remedy the breach at the Tenant's expense and enter and remain on the Premises for this purpose;
- 20.3.5 use any Security held by the Landlord to recover any loss suffered by the Landlord because of the default; or
- 20.3.6 recover from the Tenant any cost, loss or liability suffered by the Landlord because of the default.

### **20.4 Recovery of loss**

- 20.4.1 If the Landlord terminates this Lease and re-enters and takes possession of the Premises, the Landlord may recover from the Tenant:
- (a) all arrears of money payable by the Tenant up to the date of termination;
  - (b) interest owing on any money due but unpaid;
  - (c) all costs (including the Landlord's administration and legal costs) incurred by the Landlord in rectifying any default and/or enforcing any rights or security;
  - (d) all costs incurred by the Landlord in connection with any Make Good or locating a new tenant or both; and
  - (e) the difference between the money the Landlord would have been paid under this Lease from the date of termination until the Terminating Date, and any money the Landlord actually receives or reasonably anticipates that it is likely to receive as rent from another lessee of the Premises for that part of the Term that had not expired at the date of termination.

## **20.5 No restriction or waiver**

The rights and entitlements conferred on the Landlord by this clause 20 or otherwise at law or their exercise:

- 20.5.1 do not restrict or prevent the Landlord from recovering loss or damage from the Tenant or from any security provided by or on behalf of the Tenant or from exercising any other right or remedy which the Landlord has or may acquire; and
- 20.5.2 are not adversely affected by:
  - (a) granting the Tenant any concession, indulgence, forbearance or time to pay; or
  - (b) any compounding or compromise reached or attempted to be reached with the Tenant; or
  - (c) any acceptance of any moneys by the Landlord whether paid by the Tenant or by any other person; or
  - (d) any postponement, non-exercise or alteration of any right or remedy available to the Landlord; or
  - (e) any alteration to this Lease agreed by the Landlord; or
  - (f) the Landlord retaking possession of the whole or any part of the Premises by any means.

---

## **21. Rules**

### **21.1 Tenant to comply with the Rules**

- 21.1.1 The Tenant must comply with the Rules and cause the Tenant's Employees and Agents and invitees to comply with the Rules.
- 21.1.2 Any failure to comply with the Rules constitutes a breach of this Lease as if the Rules were contained in it as covenants with the Landlord.

### **21.2 Landlord's right to amend Rules**

- 21.2.1 The Landlord reserves the right at any time to amend, add to, cancel or suspend the Rules as they exist from time to time.
- 21.2.2 Any change to the Rules will not bind the Tenant until the Landlord gives notice of the change to the Rules to the Tenant. No Rules or any change to the Rules will bind the Tenant if they are inconsistent with or derogate in a material way from the Tenant's rights under this Lease.

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## **22. Security**

### **22.1 Delivery**

- 22.1.1 On or before the Commencing Date the Tenant must deliver the Security to the Landlord.

22.1.2 The Tenant must at all times during the Term ensure that any Security required to be given is kept current and enforceable.

## **22.2 Demand under Security**

22.2.1 The Landlord 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 Lease:

- (a) whether the liability to pay those amounts arises or will arise by way of damages or otherwise; and
- (b) whether or not any judgement or other order of a court has been made in respect of them,

as the Landlord may determine, to compensate the Landlord for the loss suffered directly or indirectly by the Landlord as a result of the default by the Tenant.

22.2.2 The rights of the Landlord under this clause 22.2 do not derogate from other rights and remedies available to the Landlord under this Lease, at law and in equity in relation to any breach of any of the Tenant's Obligations.

## **22.3 Requirement for a new Security**

If the Landlord draws down on the Security the Tenant must provide a new Security to the Landlord within 10 Business Days of demand so that there is maintained during the Term Security for the amount required under this Lease.

## **22.4 Increased Security**

If:

22.4.1 the Security in Item 12 is determined as a proportion of the Rent payable under this Lease; and

22.4.2 at any time during the Term, the Rent is adjusted or increased,

then within 5 Business Days of the adjustment or increase, the Tenant must deliver to the Landlord an additional or replacement Security to ensure that the amount of the Security held by the Landlord is the proportion specified in Item 12.

---

## **23. GST**

### **23.1 Definitions**

In this clause:

23.1.1 words and expressions that are not defined in this Lease but which have a defined meaning in the GST Law have the same meaning as in the GST Law;

23.1.2 **GST** means GST within the meaning of the GST Law and includes penalties and interest. If under or in relation to the *Intergovernmental Agreement Implementation (GST) Act 2000* (NSW) the supplier makes voluntary or notional payments, then:

- (a) the definition of GST includes those voluntary or notional payments; and
- (b) expressions containing the term 'GST' have a corresponding expanded meaning; and

23.1.3 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

#### **23.2 GST exclusive**

Except where specified to the contrary in this Lease, all consideration payable under this Lease in relation to any supply is exclusive of GST.

#### **23.3 Increase in consideration**

If GST is payable in respect of any supply made by a supplier under this Lease (**GST Amount**), the recipient must pay to the supplier an amount equal to the GST payable on the supply. Subject to clause 23.4, the recipient must pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Lease in full and without deduction, set off, withholding or counterclaim (unless otherwise provided in this Lease).

#### **23.4 Tax invoice**

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 23.3.

#### **23.5 Reimbursements**

If this Lease requires a party to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by another party, the amount which the first party must pay, reimburse or contribute is the sum of:

- 23.5.1 the amount of the payment, reimbursement or contribution, less any input tax credit in respect of the payment, reimbursement or contribution to which the other party is entitled; and
- 23.5.2 if the payment, reimbursement or contribution is subject to GST, an amount equal to that GST.

#### **23.6 Adjustment events**

If an adjustment event occurs in relation to a taxable supply under this Lease:

- 23.6.1 the supplier must issue an adjustment note to the recipient within 5 Business Days after becoming aware of the adjustment; and
- 23.6.2 any payment necessary to give effect to that adjustment must be made within 5 Business Days after the date of receipt of the adjustment note.

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### **24. General**

#### **24.1 Notices**

- 24.1.1 A notice or other communication required or permitted, under this Lease, may be given in accordance with section 170 of the *Conveyancing Act 1919* (NSW).
- 24.1.2 A party may specify an email address to be used for the purpose of serving notices under this Lease by confirming the email address in writing to the other party.
- 24.1.3 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.

- 24.1.4 A party may change their listed address or email address specified in accordance with clause 24.1.2 above by giving the other party at least 5 Business days' written notice of the changed details.

## **24.2 Amendment**

This Lease may only be varied or replaced by a deed duly executed by the Parties.

## **24.3 Counterparts**

This Lease may be executed in counterparts, all of which taken together constitute one document.

## **24.4 Entire understanding**

This Lease contains the entire understanding between the Parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Lease and have no effect.

## **24.5 Further assurance**

Each Party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Lease.

## **24.6 Waiver and exercise of rights**

24.6.1 The Landlord's failure at any time to insist on performance of any provision of this Lease or a related agreement is not a waiver of its right at any later time to insist on performance of that or any other provision of this Lease or a any related agreement.

24.6.2 Without limiting clause 24.6.1, the Landlord is not taken to have waived its rights under this Lease or any related agreement, or another party's breach of any of those documents, by accepting the Rent or any other payment under this Lease (before or after the end of this Lease).

## **24.7 No relationship**

No Party to this Lease has the power to obligate or bind any other Party. Nothing in this Lease will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the Parties.

## **24.8 Survival and enforcement of indemnities**

Each indemnity in this Lease is a continuing obligation, separate and independent from the other obligations of the Parties and survives termination of this Lease. It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by this Lease.

## **24.9 Governing law**

This Lease is governed by the law applying in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

#### 24.10 Liability

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

#### 24.11 Severability

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability, without invalidating the remaining provisions of this Lease or affecting the validity or enforceability of that provision in any other jurisdiction.

#### 24.12 Exclusion of statutory provisions

The covenants, powers and provisions implied in leases by virtue of sections 84, 84A, 85 and 86 of the *Conveyancing Act* 1919 (NSW) do not apply to this Lease and are expressly negated.

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### 25. Normal Building Hours

#### 25.1 Trading outside normal hours

25.1.1 If the Tenant trades outside Normal Building Hours, the Tenant must pay to the Landlord on demand the Tenant's share of the costs (as determined by the Landlord) of keeping the Building open at times other than the Normal Building Hours.

#### 25.2 Service charges for operation outside Normal Building Hours

If the Tenant uses the Premises outside Normal Building Hours and requests use of a Service provided by the Landlord during those hours the Landlord may:

- 25.2.1 use its reasonable endeavours to supply the requested Service; and
- 25.2.2 apportion to the Tenant any costs and expenses incurred by the Landlord in connection with the supply of the requested Service and give the Tenant an invoice for such costs and expenses. The Tenant must pay any such invoice according to its terms.

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### 26. Green Leasing Provisions

The parties acknowledge agree that they will:

- 26.1.1 co-operate to ensure the ongoing use and operation of the Premises minimises environmental impacts and the Premises are 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;
- 26.1.2 consult with each other on issues and circumstances that may enhance the environmental performance of the Premises 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);
- 26.1.3 constructively consult with each other on issues or circumstances that may detract from the improvement of the environmental performance of the Premises;

Commented [CF7]: We can remove these if not applicable

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- 26.1.4 agree on targets and strategies to promote the efficient use of resources in the Premises, to reduce energy and water use, improve waste management by maximising recycling and composting, and provide to the Landlord any information necessary or reasonably required by the Landlord to report on the environmental status of the Premises.

---

## **27. Public Health Orders**

### **27.1 Compliance with Public Health Orders**

The Tenant must:

- 27.1.1 at all times, comply with any Public Health Order issued that is applicable to the use and occupation of the Premises and/or this Lease; and
- 27.1.2 comply with and follow any of the Landlord's directions to enable the Landlord to comply with any Public Health Order.

### **27.2 Release**

The Tenant:

- 27.2.1 agrees that the Landlord is not liable for and release the Landlord from all liabilities, actions, claims, demands, losses, damages, proceedings, costs, charges and expenses suffered or incurred by the Tenant in connection with the issue of a Public Health Order (including any losses or expenses incurred if the Premises is required to be closed for any period of time under a Public Health Order); and
- 27.2.2 must not, unless permitted by law, end this Lease, nor take any action or claim compensation, damages or abatement of the Rent as a result of a Public Health Order being issued.

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## **28. Air Conditioning Plant and Elevators**

Unless otherwise stated in the Maintenance Obligations Matrix, if the Premises is in a multi-tenanted Building owned by the Landlord clauses 28.1-28.3 apply:

### **28.1 Operational**

- 28.1.1 The Tenant must at all times:
- (a) comply with and observe the Landlord's reasonable requirements in respect of the use of the Air Conditioning Plant or Elevators or both; and
  - (b) not do or allow anything to be done which might interfere with or impair the efficient operation of the use of the Air Conditioning Plant or Elevators or both.
- 28.1.2 After having been given reasonable notice (except in the case of an emergency when no notice is required), the Tenant must allow the Landlord and the persons authorised by the Landlord to enter the Premises at any time to examine, maintain and repair or install or replace all or any of the Air Conditioning Plant or the Elevators.

## **28.2 No Warranty**

The Landlord does not in any way warrant that the Air Conditioning Plant or the Elevators or both are or will remain suitable or adequate for any of the purposes of the Tenant. To the fullest extent permitted by law all warranties as to suitability and as to adequacy are expressly negated.

## **28.3 No liability**

This clause 28 imposes no liability on the Landlord to ensure that Air Conditioning Plant or Elevators are working and reasonably available:

- 28.3.1 for use outside Normal Building Hours; or
- 28.3.2 where 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 provided that the Landlord has used all reasonable endeavours to have the Air Conditioning Plant and the Elevators operational as soon as practicable.

## **28.4 Tenant responsible**

- 28.4.1 Unless otherwise stated in the Maintenance Obligations Matrix, if the Tenant is the sole tenant of the Building and/or any Air Conditioning Plant services only the Premises, clause 28.4 applies.
- 28.4.2 Where the Air Conditioning Plant only services the Premises, the Tenant must at its own cost, service, maintain and repair the Air Conditioning Plant to ensure it is operational and in good working order. The Tenant must provide annual evidence to the Landlord that the Air Conditioning Plant has been maintained to Australian Standards.
- 28.4.3 If the Tenant installs any air conditioning equipment (which may be installed only with the Landlord's prior written approval), the Tenant must at its own cost, service, maintain and repair such equipment to ensure that it is operational and in good working order. It is not the Landlord's responsibility to service, maintain or repair any air conditioning equipment installed by the Tenant.
- 28.4.4 Any air conditioning equipment installed under this clause 28.4 must follow the Landlord approval process for works set out in clause 11.8.

## **28.5 Service charges for operation outside Normal Building Hours**

If the Tenant occupies the Premises outside Normal Building Hours and requests use of the Air Conditioning Plant or the Elevators or both during those hours the Landlord may:

- 28.5.1 use its reasonable endeavours to make available for use the Air Conditioning Plant or the Elevators or both during these hours; and
- 28.5.2 charge the Tenant a fee for use of the Air Conditioning Plant or the Elevators or both during those hours and give the Tenant an invoice for such costs and expenses. The Tenant must pay any such invoice according to its terms.



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## Schedule 1 Plan of the Premises

**INSERT PLAN OF PREMISES**

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## 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, regular 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, free of discrimination (including attitudinal barriers) and reflective of the City's Values.
6. Meet obligations set out in the lease in relation to payment, maintenance and operational responsibilities.
7. Share the use of program delivery space/s within the leased facility. 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.
9. Where appropriate, work with the City on promoting your organisation or programs
10. Ensure that the Premises are used actively and efficiently utilised.
11. Build positive and productive working relationships with other tenants, local organisations and residents, to have a positive effect on the surrounding precinct.
12. Keep the City regularly updated and informed of significant activities, milestones and developments and where possible use the City's promotional channels, such as What's On of the City's social options, to promote your significant activities (as per the City's Marketing Kit).

### **Specific Performance Criteria**

1. The parties agree to use their best endeavours to determine the Specific Performance Criteria within two months of the date on which the City executes this Lease. The agreed Specific Performance Criteria will be provided to the Tenant in writing by the City and will be incorporated into this Lease on the date of the written notice.

### **Reporting Timeframe**

1. Each year, the Council of the City of Sydney will send the Tenant an Annual Self Assessment Form which must be completed within the given timeframe (usually 6 weeks). The assessment will document the Tenant's achievements for the past year against the General Performance Criteria and Specific Performance Criteria.
2. Tenants must complete the Creative City quarterly data surveys within 10 working days of receiving them

## Schedule 3 Condition Report

SITE AND CONSTRUCTION ASPECT		
<b>1. Area 1 : front office area</b>	<b>Good Condition</b>	<b>Comments/Condition</b>
1.1. Fit outs – condition of the premises	<input type="checkbox"/> T <input type="checkbox"/> CoS <input type="checkbox"/> Shell	
1.2. Area is in clean condition and not damaged	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1.3. Lighting in good condition and functional	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1.4. Walls are clean and not damaged	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1.5. Floor coverings in good and tenantable condition.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1.6. Windows and doors in good condition	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1.7. Locks in good condition.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1.8. Landlord assets on the premises	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1.9. OH&S issues	<input type="checkbox"/> Yes <input type="checkbox"/> No	
1.10. Other issues	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>2. Area 2 : Children play area indoor</b>	<b>Good Condition</b>	<b>Comments/Condition</b>
2.1. Fit outs – condition of the premises	<input type="checkbox"/> T <input type="checkbox"/> CoS <input type="checkbox"/> Shell	
2.2. Area is in clean condition and not damaged	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2.3. Lighting in good condition and functional	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2.4. Walls are clean and not damaged	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2.5. Floor coverings in good and tenantable condition.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2.6. Windows and doors in good condition	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2.7. Locks in good condition.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2.8. Landlord assets on the premises	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2.9. OH&S issues	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2.10. Other issues	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>3. Area 3 : Children play area - outdoor</b>	<b>Good Condition</b>	<b>Comments/Condition</b>
3.1. Fit outs – condition of the premises	<input type="checkbox"/> T <input type="checkbox"/> CoS <input type="checkbox"/> Shell	
3.2. Area is in clean condition and not damaged	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3.3. Lighting in good condition and functional	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3.4. Walls are clean and not damaged	<input type="checkbox"/> Yes <input type="checkbox"/> No	

3.5. Floor coverings in good and tenatable condition.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3.6. Windows and doors in good condition	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3.7. Locks in good condition.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3.8. Landlord assets on the premises	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3.9. OH&S issues	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3.10. Other issues	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>4. Other Areas</b>	<b>Good Condition</b>	<b>Comments/Condition</b>
5.1. Common areas	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5.2. Toilets and Amenities	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5.3. Garden/Backyard/Outdoor area	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5.4. Parking	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5.5 Storage area	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>5. Other Items</b>	<b>Good Condition</b>	<b>Comments/Condition</b>
5.1. Elevator	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5.2. Air Conditioner	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5.3. Emergency exist – unobstructed and clearly defined	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5.4. Electrical – switch rooms clearly identified and locked off	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5.5. Fire Control – fire fighting equipment serviced/tagged	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5.6. OH&S – are First-Aid kit(s) onsite and maintained appropriately	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5.7. Graffiti	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5.8. Other	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>6. Comments:</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Premises in good condition		

## Schedule 4 Maintenance Obligations Matrix

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Furniture		ū	Office equipment, rubbish bins, program/play equipment, meeting tables, lounges, mats
Fixtures and fittings (original fixtures)		ū	Blinds, fixed seating, cupboards, shelves, counters, cabinets/screens, clothes hooks and rails, handrails, fixed clocks, doors, change tables, soap and toilet paper holders, hand driers, hair dryers
General signage		ū	
Glass, windows		ū	Sashes/easements, louvers, balustrades
Graffiti removal		ū	
Gym Equipment		ū	
Hygiene		ū	Sanitary, nappy and mechanical disposal units
Information systems & equipment		ū	Computers, printers, scanners, turnstiles, gates, LCD TVs, internet connections
Intercom		ū	
Keys, locks, security passes/access control equipment		ū	ID system
Laundry Equipment		ū	Refrigerator, washing machine, clothes dryer, dishwasher, food processor etc
Lighting (Internal)		ū	Replacement of luminaires, lamps, tubes, globes
Lighting & controls (External)		ū	
Maintenance access equipment		ū	
PA system		ū	
Painting (External)		ū	
Painting (Internal)		ū	
Paths of travel		ū	
Permanent fixtures		ū	Hot water service, inbuilt cupboards, sinks, boiling water units, stoves, noticeboards, kitchen exhausts, shelving, bench tops, cable trays
Pest control		ū	Excludes termite treatment
Plaques (fixed)		ū	
Plumbing and fixtures		ū	Toilet seats, pans, cisterns, taps, basins, traps, pipes, shower heads, sewerage drains, waste and hot/cold water pipes, rainwater tanks, grease traps, pumps etc. Excludes water pipes and drains within the premises.
Roof access systems		ū	

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## **Schedule 5      Acknowledgements**

In recognition of its support for the Tenant, the Landlord requires the following acknowledgements during the Term.

The Tenant agrees to provide the following rights and benefits to the Landlord, or procure that such rights and benefits be provided to the Landlord:

1. acknowledgement of support on the Tenant's website including but not limited to reproduction of the City Logo and a link to the Council of the City of Sydney's website
2. acknowledgement of support in the Tenants annual report
3. signage acknowledging support to be displayed at the premises.
4. acknowledgement of support on the Tenant's newsletter and/or annual report including but not limited to reproduction of the City logo.
5. acknowledgement of support in media releases relating to the Tenant's organisation.
6. acknowledgement of support in all material promoting the Tenant, including but not limited to reproduction of the City of Sydney Logo in postcards, brochures and posters.
7. the Lord Mayor, Councillors, key staff and guests may be invited to any opening, launch or public event associated with the Tenant.

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## Signing Page

### Executed as a deed

#### Landlord's signature

**SIGNED** by **The Council of the City of Sydney**  
(ABN 22 636 550 790) in the presence of:

I certify I am an eligible witness and that the landlord's  
authorised officer signed this dealing in my presence.

Certified correct for the purposes of the Real  
Property Act 1900 by the authorised officer  
named below.

\_\_\_\_\_  
Signature of witness – electronic signature of

\_\_\_\_\_  
Signature of authorised representative – electronic  
signature of

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Name of authorised representative

\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Title of authorised representative

\_\_\_\_\_  
Affixed by me on (date)

\_\_\_\_\_  
Affixed by me on (date)

This document was signed in counterpart and witnessed  
over audio visual link in accordance with section 14G of the  
*Electronic Transactions Act 2000* (NSW).

#### Tenant's signature

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

**SIGNED** by **[ADD NAME OF ORGANISATION]**  
**ABN [ADD ABN]** in accordance with section 22 of the  
*Associations Incorporation Act 2009* (NSW):

\_\_\_\_\_  
Signature of authorised representative – electronic  
signature of

\_\_\_\_\_  
Signature of authorised representative – electronic  
signature of

\_\_\_\_\_  
Name of authorised representative

\_\_\_\_\_  
Name of authorised representative

\_\_\_\_\_  
Title of authorised representative

\_\_\_\_\_  
Title of authorised representative

\_\_\_\_\_  
Affixed by me on (date)

\_\_\_\_\_  
Affixed by me on (date)