

# Agreement for Lease

**BYRON SHIRE COUNCIL**

*(Landlord)*

**THE TECHNICAL AND FURTHER EDUCATION  
COMMISSION**

*(Tenant)*

**Date:**

# Table of Contents

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<b>PART</b>	<b>TITLE</b>	<b>PAGE NO</b>
	<b>COMMERCIAL TERMS SCHEDULE</b> .....	<b>3</b>
1.	<b>DEFINITIONS AND INTERPRETATION</b> .....	<b>4</b>
2.	<b>AGREEMENT FOR LEASE</b> .....	<b>9</b>
3.	<b>LANDLORD'S SITE WORKS</b> .....	<b>21</b>
4.	<b>LANDLORD OBLIGATIONS</b> .....	<b>23</b>
5.	<b>LICENCE TO CONSTRUCT</b> .....	<b>24</b>
7.	<b>SUBDIVISION</b> .....	<b>25</b>
8.	<b>WORKS GENERAL OBLIGATIONS</b> .....	<b>26</b>
9.	<b>WH &amp; S LEGISLATION</b> .....	<b>27</b>
10.	<b>RELEASE BY TENANT</b> .....	<b>28</b>
11.	<b>INDEMNITY BY TENANT</b> .....	<b>29</b>
12.	<b>DOCUMENTATION, COSTS AND EXPENSES</b> .....	<b>29</b>
13.	<b>GST</b> .....	<b>30</b>
14.	<b>DEFAULT</b> .....	<b>30</b>
15.	<b>TERMINATION RIGHTS</b> .....	<b>31</b>
16.	<b>DISPUTE RESOLUTION</b> .....	<b>31</b>
17.	<b>GENERAL</b> .....	<b>33</b>
	<b>ATTACHMENTS</b> .....	<b>37</b>
	<b>DRAFT SUBDIVISION PLAN</b> .....	<b>38</b>
	<b>CONSTRUCTION AREA PLAN</b> .....	<b>39</b>
	<b>DRAFT LEASE</b> .....	<b>40</b>

# Agreement for Lease

<b>Date</b>	
<b>Parties</b>	<p><b>BYRON SHIRE COUNCIL</b> ABN 14 472 131 473 70 Station Street, Mullumbimby, NSW, 2482 <b>(Landlord)</b></p> <p><b>THE TECHNICAL AND FURTHER EDUCATION COMMISSION</b> ABN 89 755 348 137 of Level 1, Building A, 19 Mary Ann Street, Ultimo NSW 2007 <b>(Tenant)</b></p>
<b>Background</b>	<p>The Landlord is the registered proprietor of the land comprising the Premises.</p> <p>A. The Landlord proposes to carry out the Site Works and subdivide the land to create a Lot for the Premises.</p> <p>B.</p> <p>C. The Tenant wishes to lease the Premises and construct on the Premises a Connected Learning Centre.</p> <p>D. The Landlord has agreed to grant and the Tenant has agreed to accept a Lease of the Premises on the terms and conditions set out in this Agreement.</p>

## COMMERCIAL TERMS SCHEDULE

Term	Meaning of term
<b>Premises</b>	Part Lot 12 in Deposited Plan 1189646, Bayshore Drive, Byron Bay 2481 being approximately [this many] square metres as shown in the Draft Plan
<b>Draft Plan</b>	The draft plan attached, identifying the Premises as 'Lot 9'.
<b>Construction Area</b>	The area shown on the Construction Area plan attached.
<b>Site Works</b>	Access Road Public parking 13 lots for TAFE students Services to site: sewer, stormwater drainage
<b>Site Works Completion Date</b>	<b>TBC</b>
<b>Site Works Sunset Date</b>	6 months after the Site Works Completion Date
<b>Tenant Works</b>	All works required to construct and establish a Connected Learning Centre on the Premises.
<b>Tenant Works Commencement Date</b>	The earlier of:  (a) a date nominated in writing by the Tenant after the Tenant has obtained any Approvals; and  (b) <b>TBC</b> .
<b>Tenant Works Completion Date</b>	<b>TBC</b>
<b>Lease Commencement Date</b>	The later of:  (a) the date of the Certificate of Completion; and  (b) the date the Landlord provides the Tenant with the Site Works Certificate of Completion.
<b>Rent Rate</b>	\$53.62 per square metre
<b>Sunset Date</b>	6 months after the Tenant Works Completion Date.

## 1. DEFINITIONS AND INTERPRETATION

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### 1.1. Definitions

In this Agreement:

**Agreement** means this agreement to lease including all schedules and annexures and any attachments, as varied from time to time.

**Approvals** means any consents, approvals, licences, authorisations or permits required by Laws for the Tenant Works.

**Australian Standards** means the standards published by Standards Australia International Limited trading as 'Standards Australia' as at the date of this Agreement.

**BCA Requirements** means the requirements under the edition of the Building Code of Australia last published before the date of this Agreement.

**Business Day** means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney.

**Certificate of Completion** means a certificate from the Tenant's architects or project manager stating that:

- (a) the Tenant Works are substantially complete; and
- (b) there are no construction materials, packaging or debris from the Tenant Works in or about the Construction Area; and
- (c) the Tenant Works have been constructed in a proper and workmanlike manner ; and
- (d) the Premises are in a condition that is safe and physically suitable for carrying on the Permitted Use as defined under the Draft Lease; and
- (e) the Tenant Works have been constructed in accordance with the Development Consent, Construction Certificate and any other applicable Approvals.

**Claims** means all or any claims, proceedings, actions, rights of action, liabilities, suits, notices, fines and demands.

**Commencement Rent** means the area of the Premises in the Subdivision Plan multiplied by the Rent Rate.

**Construction Certificate** means a certificate granted by the Development Consent Authority or accredited certifiers to carry out construction in respect of the Development Consent.

**Contamination** means the presence in, on or under land (including soil and ground water) of a substance above the concentration at which that substance is normally present in, on or under land in the same locality that presents a risk of harm to human health or any other aspect of the environment.

**Contamination Incident** means an incident or set of circumstances during or as a consequence of which there is likely to be a leak, spill or other escape or deposit of a substance, as a result of which Contamination has occurred, is occurring or is likely to occur.

**Contaminants** mean any substance or material (whether solid, liquid or gas) which has the potential to cause Contamination.

**Default Rate** means the rate prescribed from time to time under the Uniform Civil Procedure Rules 2005 as the rate of interest on judgement debts calculated daily and compounded on the last day of each month.

**Development Application** means the application for approval made to carry out the Tenant Works under the Planning Legislation.

**Development Consent** means the approval granted by the Development Consent Authority to the Development Application.

**Development Consent Authority** means the authority prescribed by the Planning Legislation to be the appropriate authority to consider and determine the Development Application.

**Draft Lease** means the form of Lease attached, as varied in writing by the parties from time to time.

**Employees and Agents** means each of the employees, officers, agents, contractors (including General Contractors), service suppliers and licensees of a party.

**Environment** means the components of the earth, including:

- (a) land, air and water; and
- (b) any layer of the atmosphere; and
- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs (a)-(c).

**Environmental Protection Legislation** means any statute, regulation, code, proclamation, ministerial directive, ordinance, by law, development consent, planning policy or subordinate legislation, relating to Contaminants, use of land, natural resource management, human health and safety or protection of the environment with respect to the Premises.

**Final Occupation Certificate** means a final occupation certificate under Part 6 of the *Environmental Planning and Assessment Act 1979*.

**Fire Control Authority** means the NSW Fire Brigades or any other authority or body responsible for fire safety, the certification of fire-fighting equipment or fire plans.

**General Contractor** means the building contractor or contractors with which the Tenant contracts to construct the Tenant Works.

**GST** means any form of goods and services tax or similar value added tax including notional GST payable by a State entity under the *Intergovernmental Agreement Implementation (GST) Act 2000* (NSW).

**Improvements** means all improvements to the Construction Area by or on behalf of the Tenant including any building, structure, equipment, wires, pipes, roads, paving, hard stands and other infrastructure installed or constructed on the Construction

Area.

**Insolvency Event** means:

- (a) in relation to a corporation:
  - (i) where that corporation becomes deregistered;
  - (ii) where an order made or an effective resolution is passed for the winding up, insolvency, administration, reorganisation, reconstruction or dissolution of that corporation; or
  - (iii) where a liquidator, provisional liquidator, receiver or receiver and manager, trustee, agent for a mortgagee in possession or similar officer is appointed in respect of all or any part of the assets or undertaking of that corporation and such appointment is not rescinded or revoked within a reasonable time; or
  - (iv) where pursuant to the provisions of the Corporations Act 2001 (Cth), that corporation enters or executes a deed of company arrangement; or
  - (v) where that corporation is unable, or admits its inability to pay its debts as they fall due or enters into or seeks to enter into any composition or other arrangement with its creditors; and
- (b) in relation to an individual, where that individual:
  - (i) is declared bankrupt; or
  - (ii) enters into a scheme of arrangement with its creditors; or
  - (iii) makes any assignment for the benefit of its creditors; or
  - (iv) becomes a mentally ill person or mentally disordered person in accordance with any relevant Laws or the requirements of any Relevant Authority

but excludes in the case of the Tenant (if a corporation) the occurrence of any of the events specified where undertaken as part of a solvent corporate restructure of the Tenant or any corporate group to which the Tenant belongs of which the Tenant has given prior notice to the Landlord.

**Laws** means all statutes, ordinances, regulations, subordinate legislation, by-laws industrial awards, development consents, environmental planning instruments and all orders, directions, codes of practice or requirements of any Relevant Authority.

**Lease** means the lease to be entered into pursuant to this Agreement.

**Loss** means any loss, damages, remedies, liabilities, expenses, fines, penalties and costs (including legal costs on a full indemnity basis and associated expenses) but excluding any indirect or consequential loss or damage, loss of profits, business opportunities, goodwill or likely savings (whether arising under statute, common law, tort (including negligence), breach of contract or otherwise).

**Planning Legislation** means the *Environmental Planning and Assessment Act 1979 (NSW)*, the environmental planning instruments made under that Act and its regulations.

**Pollution** has the meaning specified in the *Protection of the Environmental Operations Act 1997 (NSW)* other than noise pollution.

**Pollution Incident** means an incident or set of circumstances during or as a

consequence of which there is or there is likely to be a leak, spill or other escape or deposit of a substance, as a result of which Pollution has occurred, is occurring or is likely to occur.

**Premises** means the premises identified in the Commercial Terms Schedule.

**Rectification Notice** means a notice given in accordance with Part 14.

**Relevant Authority** means any federal, state or local government, semi-government, quasi-government, administrative, fiscal or judicial department, or any entity agency, or other body, statutory or otherwise, and any court or tribunal having jurisdiction or power in relation to the Construction Area, the Premises or surrounding land or activities on or use made of the Construction Area, the Premises or surrounding land or any aspect of the Environment relating to the Construction Area, the Premises or surrounding land.

**Subdivision Certificate** means a certificate that authorises the registration of a plan of subdivision under the *Conveyancing Act 1919 (NSW)*.

**Subdivision Plan** means a plan of subdivision that identifies the Premises as a lot, is substantially the same as the Draft Plan and is capable of being registered as a Deposited Plan by the Registrar General.

**Tenant's Property** means all plant, equipment, services, partitions, alterations, articles and chattels of any kind that are located on, or added to the Construction Area by the Tenant including any fire-fighting equipment, lights, hydraulic systems and any item pertaining to services including stock-in-trade but excluding the Improvements.

**Tenant's Visitors** means the Tenant's customers, clients, visitors, invitees and any other person who may at any time be on the Construction Area in connection with the Tenant (but not including the Tenant's Employees and Agents and others over whom the Tenant has control).

**WH & S Legislation** means any Laws that relates to the health and safety of employees, contractors or other persons at work places including the *Work Health and Safety Act 2011 (NSW)* and its regulation.

**Work Health and Safety Legislation** means *Work Health and Safety Act 2011 (NSW)* and *Work Health and Safety Regulation 2017 (NSW)*.

## 1.2. Interpretation

### Number, gender and corporation

Words importing the singular number include the plural and vice versa, words importing a person include a corporation and vice versa and each gender includes every other gender.

### Jointly and severally

Any provision of this Agreement to be performed by two or more persons binds those persons jointly and each of them severally.

### Bodies and Associations

References to authorities, institutes, associations and bodies, whether statutory or otherwise, will in the event of any such organisation ceasing to exist, being reconstituted, renamed or replaced or the powers or functions or any such organisation being transferred to any other organisation, be deemed to refer respectively to the organisation established or constituted in lieu of any such organisation.



## **Statutes and Regulations**

Reference to a statute or ordinance includes all regulations under and amendments to that statute or ordinance whether by subsequent statute or otherwise and a statute or ordinance passed in substitution for the statute or ordinance.

## **Parties**

A reference to a party includes any administrator, successor or permitted assignee of a party.

## **Headings and Parts**

Headings and any marginal notes have been inserted for convenience only and do not in any way limit or govern the construction of the terms of this Agreement. Each numbered section is a Part as specified in the Table of Contents.

## **Monthly, Yearly and Quarterly**

A reference to month and year means respectively calendar month and calendar year. A reference to a quarter means each consecutive 3 month period commencing on the Commencing Date.

## **Entire Agreement**

This Agreement constitutes the entire agreement of the parties on everything connected with the subject matter of this Agreement and supersedes all prior agreements, understandings and negotiations in relation to those matters, other than any prior agreement in relation to confidentiality.

## **Business Days**

Where under or pursuant to the Agreement the day on or by which any act, matter or thing is to be done is a Saturday, Sunday or public holiday in the city or town in which the Premises are situated, such act, matter or thing may be done on the next succeeding day which is not a Saturday, Sunday or public holiday.

## **Include**

The word include (in any form) when introducing one or more specific items does not limit the meaning of the general words to those items or to items of a similar kind.

## **Rule of Construction**

In the interpretation of this Agreement no rule of construction applies to the disadvantage of one party on the basis that that party put forward this Agreement.

## **Severance**

If a term of this Agreement is or becomes wholly or partly void, voidable, or unenforceable the Landlord may sever the offending term without affecting the enforceability or validity of the remainder of the Agreement.

## **Defined Terms**

Each term specified in the Commercial Terms Schedule has the meaning specified for it in the Commercial Terms Schedule. Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

### **Notices etc**

Any notices, notification, nomination, request, demand, authorisation, agreement, approval or consent must be in writing and will be properly executed if signed by an officer, manager or solicitor of the party giving it.

### **Service**

A document may be served by leaving it at or sending it by pre-paid post to the relevant officer or manager at the address of the party set out in this Agreement or such other address subsequently notified. A document sent by post will be deemed to be delivered at the time when it would be delivered in the ordinary course of post.

### **Further Assurance**

Each party must do, sign, execute and deliver and must procure that each of its employees, agents and contractors, does, signs, executes and delivers all deeds, documents, instruments and acts reasonably required of it or them by notice from the other party to effectively carry out and give full effect to this Agreement and the rights and obligations of the parties under it.

### **Obligations and Payments of Tenant**

The Tenant must perform the obligations of the Tenant under this Agreement at the expense and risk of the Tenant. Where an obligation is imposed on the Tenant under this Agreement, the Tenant must ensure that the Tenant's Employees and Agents and the Tenant's Visitors perform the obligation. Where the Tenant is prohibited from doing anything under this Lease, the Tenant must ensure that the Tenant's Employees and Agents and the Tenant's Visitors do not breach the prohibition.

An amount to be paid under this Agreement is due for payment on the earlier of demand or the date specified in the notice or invoice. Payments must be made to the Landlord or the Landlord's agent as the Landlord may direct including by bank cheque, direct deposit or electronic transfer.

## **2. AGREEMENT FOR LEASE**

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### **2.1. Grant of Lease**

The Landlord will grant the Lease to the Tenant and the Tenant will accept the Lease, commencing on the Lease Commencement Date, on the terms and conditions contained in the Draft Lease completed in accordance with this Agreement.

### **2.2. Completion of Lease**

Within a reasonable time after the Lease Commencement Date, the Landlord must and the Tenant authorises the Landlord to complete two copies of the Draft Lease by:

- (a) inserting as the commencement date of the Lease, the Lease Commencement Date; and
- (b) inserting as the land being leased a reference to the folio identifier applicable to the Premises from the registered Subdivision Plan;
- (c) inserting as the Base Rent in the Lease the Commencement Rent; and
- (d) inserting or attaching any other information or making any alterations that are required to complete the Lease as necessary for registration,

and forward them to the Tenant.

### **2.3. Execution by Tenant**

The Tenant must:

- (a) execute two copies of the Lease; and
- (b) return them promptly to the Landlord.

### **2.4. Execution by the Landlord**

Within a reasonable time after receiving two copies of the Lease executed by the Tenant, the Landlord must:

- (a) execute and date the two copies of the Lease; and
- (b) submit the executed copies of the Lease for registration by the Registrar General, at the Tenant's expense,

### **2.5. Lease to be forwarded to Tenant**

Within a reasonable time after the Lease has been registered, the Landlord must forward 1 original of the Lease to the Tenant.

### **2.6. Parties Bound**

As from the Lease Commencement Date, the Landlord and the Tenant are bound by the provisions of the Lease as if it had been completed in accordance with this Agreement, executed by the parties and registered.

### **2.7. Sunset Date**

- (a) Subject to the following subclause, if the Lease Commencement Date has not occurred prior to the Sunset Date then either party may at any time prior to the Lease Commencement Date being achieved by notice to the other party terminate this Agreement.
- (b) A party may not terminate this Agreement under the prior subclause while the party is in breach of an obligation of that party under this Agreement.

### **2.8 Extension Sunset Date**

The Tenant may by notice to the Landlord extend the Sunset Date from time to time by not more than 12 months in total if there is any delay by circumstances unexpected by the Tenant or for reasons beyond the control of the Tenant.

## **3. LANDLORD'S SITE WORKS**

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### **3.1. Site Works**

The Landlord must at the Landlord's expense undertake the Site Works and must use all reasonable endeavours to complete construction of the Site Works by the Site Works Completion Date. The Landlord acknowledges the completion of the Site Works is necessary for the use of the Premises by the Tenant.

### **3.2. Site Works Plans**

- (a) The Landlord must provide the Tenant with draft construction plans for the Site Works (**Draft Plans**) within **TBC** days of the date of this Agreement and

prior to commencing construction of the Site Works.

- (b) The Landlord will take into account any comments on the Draft Plans provided by the Tenant to ensure the Site Works are suitable for the use of the Premises by the Tenant within 10 Business Days of receipt of the plans.
- (c) The Landlord will provide revised plans for construction taking into account the comments of the Tenant and submit these to the Tenant as provided in subclause (a).
- (d) The Tenant will notify the Landlord when the plans are acceptable and these plans or plans on which the Tenant makes no comment under subclause (b) will be the **Site Works Plans**.

### **3.3. Construction of Site Works**

The Landlord must ensure the Site Works are carried out:

- (a) in a good and workmanlike manner;
- (b) by properly qualified and experienced contractors;
- (c) in accordance with all Laws and applicable standards (including Australian Standards and BCA Requirements); and
- (d) in accordance with the Site Works Plans.

### **3.4. Certificate of Completion**

Promptly after completion of the Site Works, the Landlord will give the Tenant a certificate from the Landlord's architects or project manager stating that:

- (a) the Site Works are completed;
- (b) there are no construction materials as debris in or around the Site Works;
- (c) the Site Works have been constructed in a good and workmanlike manner and in accordance with the applicable standards (including Australian Standards and BCA Requirements);
- (d) the Site Works have been constructed in accordance with the Site Works Plans; and
- (e) the relevant parts of the Site Works can be used as an access road or parking area,

**(Site Works Certificate of Completion).**

### **3.5. Site Works Sunset Date**

If the Site Works have not been completed and a Site Works Certificate of Completion issued to the Tenant in accordance with clause 5 prior to the Site Works Sunset Date then the Tenant may at any time prior to the Lease Commencement Date being achieved by notice to the Landlord terminate this Agreement.

### **3.6. Defects rectification**

The Landlord must repair or rectify, within a reasonable time after notice has been given by the Tenant, any defects or faults in the Site Works due to faulty materials or workmanship which are notified in writing to the Landlord within 12 months after the

Lease Commencement Date.

**3.7. No contamination or pollution**

The Landlord must not in undertaking the Site Works cause or permit:

- (a) any Contamination of the Construction Area or the surrounding environment;
- (b) any Pollution on or from the Construction Area or the surrounding environment;  
or
- (c) a Contamination Incident or Pollution Incident.

The Landlord must promptly remedy any breach of its obligations under this clause to the reasonable satisfaction of the Tenant.

**3.8. Comply with Environmental Protection Legislation**

The Landlord must, in undertaking the Site Works, comply with all Environmental Protection Legislation and any permit, approval, authority or licence issued pursuant to any Environmental Protection Legislation.

**4. LANDLORD OBLIGATIONS**

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**4.1. Early Access for Inspections**

- (a) From the date of this Agreement the Landlord grants the Tenant access to the Construction Area to remain on the Construction Area with its employees, contractors, vehicles and equipment for the following purposes:
  - (i) survey;
  - (ii) site Investigation including bores for soil testing; and
  - (iii) inspections.
- (b) The following clauses apply to the access to the Construction Area under this clause:
  - 9. *WH&S Legislation*
  - 10. *Release by Tenant*
  - 11. *Indemnity by Tenant*

**4.2. Vacant Site**

The Landlord must deliver the Construction Area to the Tenant on the date of this Agreement vacant and free of rubbish and debris.

**4.3. No easements and covenants**

The Landlord must ensure that the Premises is not burdened by any easements or covenants and the title of the lot for the Premises on registration of the Subdivision Plan does not have any easements or covenants registered burdening the lot.

**4.4. Landowner's Consent**

- (a) The Landlord must at the request of the Tenant provide consent as the landowner to:
  - (i) the Development Application;

- (ii) any modification, objection or appeal to the Development Consent;
  - (iii) any application for the Construction Certificate, any related application, objection or appeal;
  - (iv) any application, request or submission under the Planning Legislation or other legislation for any requirements, approval, authority or licence relating to the Tenant's Works, the Tenant's Property or the development and operation of the Premises as a Connected Learning Centre for the Tenant.
- (b) The Tenant acknowledges that consent provided by the Landlord as landowner under the previous subclause (a):
- (i) is not to be taken as approval or consent by the Landlord as a regulatory authority; and
  - (ii) does not in any way inhibit, fetter or prejudice the Landlord in the proper exercise of its functions, duties or powers,
- pursuant to or under any legislation including the *Local Government Act 1993* and the *Environmental Planning & Assessment Act 1979*.

## **5. LICENCE TO CONSTRUCT**

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### **5.1. Licence to Construct Tenant Works**

- (a) The Landlord grants to the Tenant a non-exclusive licence to occupy and use the Construction Area in accordance with this Agreement for the purposes of constructing the Tenant Works and associated uses (including inspecting and surveying the Construction Area), from the date of this Agreement until the Lease Commencement Date.
- (b) The Landlord must not authorise or allow any other person to do anything in the Construction Area that would, or be likely to, impede the Tenant's use of the Construction Area under licence or undertake or allow to be undertaken any activity in the Construction Area that is inconsistent with the purpose of the licence granted to the Tenant.

### **5.2. Notice of Intention to Construct**

The Tenant must give the Landlord at least 5 Business Days before the anticipated date of commencement of the construction of the Tenant Works:

- (a) written notice of its intention to commence construction of the Tenant Works;
- (b) a copy of the Construction Certificate; and
- (c) the plans approved under the Construction Certificate.

### **5.3. Delivery of Certificates of Currency before Construction**

Prior to commencing construction of the Tenant Works, the Tenant must provide to the Landlord certificates of currency or other evidence showing that the Tenant has effected or procured all insurance cover required by this Agreement in respect of the Tenant Works.

### **5.4. Time for Construction**

The Tenant must use all reasonable endeavours to complete construction of the Tenant Works at the Tenant's expense by the Tenant Works Completion Date.

#### **5.5. Compliance with Laws**

The Tenant must comply and must in carrying out the Tenant Works ensure compliance with the Laws, the requirements of any Relevant Authority and conditions imposed in the Development Consent and the Construction Certificate issued in relation to the Premises and the Construction Area.

#### **5.6. Construction of Tenant Works**

The Tenant must carry out or ensure the Tenant Works are carried out:

- (a) in a good and workmanlike manner;
- (b) by properly qualified and experienced contractors; and
- (c) in accordance with the plans approved under the Construction Certificate.

#### **5.7. Certificate of Completion**

Promptly after completion of the Tenant Works the Tenant must give the Landlord a Certificate of Completion.

#### **5.8. Occupation Certificate**

Promptly after completion of the Tenant Works the Tenant must give the Landlord a Final Occupation Certificate for the Premises.

#### **5.9. Occupation Licence**

From the date the Tenant has given the Landlord the last of the following:

- (a) Certificate of Completion for the Tenant Works; and
- (b) Final Occupation Certificate for the Tenant Works,

until the Commencement Date, the Landlord grants the Tenant a non-exclusive licence to occupy and use the Premises for the Permitted Use under the Draft Lease with no Rent payable provided the Tenant complies with the following Parts of the Draft Lease:

- 4. Outgoings and Expenses
- 6. Use of Premises
- 7. Improvements
- 8. Tenant's Environmental Obligations
- 9. Quiet Enjoyment and Access
- 11. Insurance, Release and Indemnity

## **7. SUBDIVISION**

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### **7.1. Landlord Responsibilities**

The Landlord is responsible to undertake the following:

- (a) engage a surveyor to prepare a Subdivision Plan;
- (b) finalise the Subdivision Plan in consultation with the Tenant;

- (c) obtain a Subdivision Certificate for the Subdivision Plan; and
- (d) submit the Subdivision Plan to be registered as a Deposited Plan by the Registrar General.

## **7.2. Survey and Registration fees**

The Landlord will be responsible to pay the following:

- (a) the fees of the surveyor preparing the Subdivision Plan;
- (b) the Landlord's reasonable lodgement costs and any registration fees; and
- (c) the fees for registering the Subdivision Plan charged by Land Registry Services.

## **7.3. Registration of Subdivision Plan**

The Landlord must arrange registration of the Subdivision Plan within 6 months after the Lease Commencement Date.

# **8. WORKS GENERAL OBLIGATIONS**

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## **8.1. Maintenance of Records**

The Tenant must maintain, for the term of the Lease, a comprehensive record of the matters relevant to the construction of the Tenant Works and including all plans, drawings, reports, applications to and consents from any Relevant Authority, licences and certificates and evidence of all payments made and make this record available to the Landlord when reasonably requested by the Landlord.

## **8.2. No Dealing without Consent**

The Tenant must not, without the prior written consent of the Landlord, assign, transfer, mortgage, dispose of, or otherwise deal with the licence of the Construction Area or, sublicense or grant any right of occupation or use in respect of the whole or any part of the Construction Area, other than to the Minister administering the *Technical and Further Education Commission Act 1999 (NSW)*.

## **8.3. Fire Safety Equipment**

The Tenant must:

- (a) provide and maintain at the Construction Area and keep readily available for use proper fire extinguishing appliances;
- (b) allow all persons authorised by the Fire Control Authority to enter the Construction Area to inspect the fire extinguishing appliances provided the Tenant has been given reasonable notice of same; and
- (c) keep all fire extinguishing appliances at the Construction Area in good and efficient working condition at all times.

## **8.4. Caveat**

- (a) The parties agree that upon execution of this Agreement by the parties, the Tenant has a caveatable interest in the Land and the Landlord will not do anything or omit to do anything that will impede those rights.



- (b) The Landlord agrees that the Tenant may lodge a caveat on title to the Land in respect of its interest under this Agreement.

#### **8.5. Artefacts**

Any artefacts discovered on or under the surface of the Construction Area are the absolute property of the Landlord and must be notified to the Landlord.

#### **8.6. Insurance**

The Tenant must ensure that the General Contractor effects and maintains for the duration of the Tenant Works the following insurances:

- (a) public liability insurance for an amount not less than \$20,000,000 (or any other amount the Landlord reasonably requires) for any one occurrence;;
- (b) workers compensation insurance for each person who is or may be engaged in the construction of the Tenant Works; and
- (c) contractors all risk insurance for the Tenant Works.

#### **8.7. No Contamination or Pollution**

The Tenant must not cause or permit:

- (a) any Contamination of the Construction Area or the surrounding environment; or
- (b) any Pollution on or from the Construction Area; or
- (c) a Contamination Incident or Pollution Incident.

The Tenant must promptly remedy any breach of its obligations under this clause to the reasonable satisfaction of the Landlord.

#### **8.8. Comply with Environmental Protection Legislation**

The Tenant must, in undertaking the Tenant Works and occupying the Construction Area, comply with all Environmental Protection Legislation and any permit, approval, authority or licence issued pursuant to any Environmental Protection Legislation.

### **9. WH & S LEGISLATION**

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#### **9.1. Tenant's Acknowledgments**

The Tenant acknowledges that:

- (a) as the owner of the Construction Area, the Landlord has obligations under the WH& S Legislation;
- (b) as occupier of the Construction Area for the Tenant Works, the Tenant has obligations under the WH & S Legislation and, in particular, the Tenant has control of:
  - (i) the Tenant Works;

- (ii) the Construction Area; and
  - (iii) plant and substances of the Tenant in the Tenant Works site,
- for the purposes of the *Work Health and Safety Act 2011* (NSW).

## **9.2. Tenant to Perform Landlord's Obligations**

To the extent permitted by law, in respect of the Tenant Works the Tenant must:

- (a) perform the obligations of the Landlord under the WH & S Legislation; and
- (b) be liable for the non-performance of the obligations of the Landlord under the WH & S Legislation, except where the non-performance results from the negligence or wrongful act or omission of the Landlord or the Landlord's Employees and Agents.

## **9.3. Tenant to Perform Obligations**

The Tenant must in respect of the Tenant Works:

- (a) ensure that the Tenant does not by any act or omission cause the Landlord to be in breach of the Landlord's obligations under the WH & S Legislation; and
- (b) put in place emergency procedures for invitees, licensees and employees of the Tenant and adequate provisions with regard to:
  - (i) information for invitees and licensees of the Tenant; and
  - (ii) information and training for employees of the Tenant,in relation to the emergency procedures; and
- (c) minimise risk to the general public from its occupation of the Construction Area.

## **9.4. Principal Contractor**

The Landlord appoints the Tenant, and the Tenant accepts the appointment, as principal contractor for the purposes of the WH & S Legislation in relation to the Tenant Works. The Landlord accepts that the Tenant may to the extent permitted by Law appoint and require a relevant General Contractor to comply with the Landlord's obligations under the WH & S Legislation to effect the Tenant's compliance with its obligations under this Part.

# **10. RELEASE BY TENANT**

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## **10.1. Tenant uses Construction Area at own Risk**

The Tenant uses and occupies the Construction Area at the Tenant's own risk.

## **10.2. Tenant's Release of Landlord**

The Landlord is not liable to the Tenant for and the Tenant releases the Landlord from any Loss or Claim, including in connection with death or injury:

- (a) paid, suffered or incurred by the Tenant, the Tenant's Employees and Agents and the Tenant's Visitors; or
- (b) for which the Tenant may be or become liable,

to the extent that it is wholly or partly due to or arising out of the Tenant's occupation and use of the Construction Area or as a result of the Tenant Works.

This release does not apply to the extent that the Loss or Claim is caused or contributed to by the negligence or wilful act or breach or omission of the Landlord or the Landlord's Employees and Agents or as a result of the Site Works.

## **11. INDEMNITY BY TENANT**

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### **11.1. Indemnity by Tenant**

The Tenant indemnifies and agrees to keep indemnified the Landlord at all times for any Loss or Claim paid, suffered or incurred by the Landlord for which the Landlord may be or become or would except for this indemnity have been liable to the extent that it is due to or arises out of:

- (a) any damage (including Contamination) to the Land, or damage to any property in or about the Land caused or contributed to by the Tenant or the Tenant's Employees and Agents.
- (b) any breach of the Law by the Tenant, the Tenant's Employees and Agents or the Tenant's Visitors in connection with the Tenant's occupation and use of the Premises, including any failure of the Tenant to perform the Tenant's obligations under the WH & S Legislation or the Environmental Law in relation to the Premises the death or injury of any person in or about the Premises or arising from the Tenant Works;
- (c) any damage or Loss suffered by any person in or about the Premises or directly arising from the Tenant Works;
- (d) the construction of the Tenant Works; or
- (e) any breach of this Agreement by the Tenant.

This indemnity is full and absolute except to the extent that the Loss or Claim is caused or contributed to by the negligence or wrongful act or omission of the Landlord or the Landlord's Employees and Agents, or the Site Works, or a breach of this Agreement by the Landlord in respect of the cause of the Loss or Claim.

### **11.2. Continuation and independence of Indemnities**

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

## **12. DOCUMENTATION, COSTS AND EXPENSES**

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### **12.1. Documentation Costs**

The parties will pay their own costs of preparing, negotiating and entering into this Agreement and the Lease.

### **12.2. Registration Fees**

The Tenant must pay to the Landlord registration fees in connection with registration of the Lease at Land Registry Services.

## **13. GST**

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### **13.1. Payments exclude GST**

Any payments under this Agreement do not (unless otherwise expressly stated) include GST.

### **13.2. Recipient to pay GST**

If a supply made under this Agreement is subject to GST, the recipient of the supply must pay to the supplier an additional amount equal to the GST payable in respect of that supply at the prevailing GST rate.

### **13.3. Payment of GST**

The GST amount is payable at the same time and in the same manner as the consideration for the supply to which the GST amount relates.

### **13.4. Tax Invoice**

A party's right to payment of the GST amount is subject to a valid tax invoice being delivered to the party who is the recipient of the taxable supply.

### **13.5. Reimbursement**

To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

## **14. DEFAULT**

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### **14.1. Notice of Default**

(a) If at any time a party breaches any provision of this Agreement, the other party may (but is not required to) give to the defaulting party a notice in writing requiring the defaulting party:

(i) to, within the time specified in the notice being a reasonable time having regard to the breach, rectify the breach; or

(ii) if the breach is not capable of rectification in the reasonable opinion of the party giving the notice, then to pay compensation within 10 Business Days after service of notice on the defaulting party,

**(Rectification Notice).**

(b) In this clause compensation will be the amount reasonably determined by the party giving the notice as the loss arising from the breach plus the costs, reasonable expenses for consultants properly incurred and reasonable legal costs and disbursements on an indemnity basis. The parties acknowledge that the loss arising from the breach may be nominal.

### **14.2. Landlord may Remedy Default**

Where the defaulting party has failed to comply with a Rectification Notice, the other party may at the cost and risk of the defaulting party remedy the breach.

## **15. TERMINATION RIGHTS**

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### **15.1. Termination for Breach**

Either party may terminate this Agreement by giving notice to the other party if:

- (a) the defaulting party repudiates its obligations under this Agreement; or
- (b) an Insolvency Event occurs in relation to the defaulting party provided however, a winding up of the defaulting party does not constitute a default if it is for the purpose of reconstruction or amalgamation of the defaulting party and the defaulting party obtains the prior written consent of the other party, which must not be unreasonably withheld; or
- (c) the defaulting party does not comply with a Rectification Notice; or
- (d) the defaulting party fails to perform or observe an obligation under this Agreement within 7 days after the other party gives the defaulting party notice requiring compliance.

### **15.2. Certain rights not affected**

Termination of this Agreement does not affect either party's right to claim for damages, costs or expenses arising out of a breach of this Agreement before the date of termination;

### **15.3. After Termination**

After termination of the Agreement:

- (a) the Landlord may re-enter and take possession of the Construction Area;
- (b) either party may sue to recover damages for any Loss arising out of a breach of this Agreement; and
- (c) both parties are discharged from their obligations under this Agreement and the Lease and from any action, claim or demand arising in respect of this Agreement or the Lease.

## **16. DISPUTE RESOLUTION**

### **16.1. Notification**

If any dispute or difference between the parties arises out of or in connection with this Agreement, or the subject matter of this Agreement, and is unable to be resolved by the management of the parties, then either party may give the other party a notice of dispute identifying and providing details of the dispute (**Dispute Notice**).

### **16.2. Meeting of Directors, Chief Executive Officer**

Within 15 Business Days after service of a Dispute Notice the persons designated as a Director or Chief Executive Officer (or equivalent if no such position exists) of both parties must meet and, acting in good faith, seek to resolve the dispute or difference.

### **16.3. Determination Notice**

If a dispute or difference remains unresolved 20 Business Days after service of the Dispute Notice, then either party may give the other a notice calling for the determination

of the dispute (**Determination Notice**). If this dispute relates to a technical claim or question the Determination Notice must specify the technical issue in dispute (**Technical Dispute**) and nominate an expert to determine the dispute. A technical claim or question is a matter that can be determined by an expert. If the dispute is not a Technical Dispute the Determination Notice must nominate a mediator.

16.4. **Appointment of Expert**

- (a) Where a Determination Notice is issued for a Technical Dispute the expert will be the expert nominated in the Determination Notice unless the other party objects, in which case the expert will be the expert agreed between the parties.
- (b) Where the parties fail to agree on an expert in accordance with sub-clause (a), within 10 Business Days after service of the Determination Notice, the dispute will be determined by an expert nominated at the request of either party by:
- (c) in relation to a matter connected with the construction, maintenance or repair of the Facilities, or Contamination or Pollution relating to the Facilities, the President for the time being of Engineers Australia;
- (d) in relation to a legal issue (including if the dispute is a technical claim or question), the President of the NSW Bar Association;
- (e) in relation to a financial or accountancy matter, the President of the Institute of Chartered Accountants in Australia; and
- (f) in any other case, the President for the time being of the Australian Property Institute (New South Wales Division).

The expert must have at least 5 years current and consistent experience in dealing with disputes in respect the particular matter in dispute and be independent to the parties.

16.5. **Expert Determination**

- (a) In determining a dispute under this Agreement, the expert must:
  - (i) have regard to the terms and conditions of this Agreement;
  - (ii) invite and consider and have due regard to any submissions made and any evidence provided by the parties supporting their contentions;
  - (iii) act as an expert and not as an arbitrator; and
  - (iv) provide the parties with its determination of the dispute in writing, including details of the basis for the determination.
- (b) Any determination of a dispute made by an expert in accordance with this clause is final and binding on the parties.
- (c) The costs associated with the determination of a dispute by an expert, including any costs associated with the appointment of the expert must be borne by the parties equally unless determined otherwise by the expert.

16.6. **Appointment of Mediator**

- (a) Where a Determination Notice is issued calling for mediation, the mediator will be the mediator nominated in the Determination Notice unless the other party

objects, in which case it will be the mediator agreed between the parties.

- (b) If the parties fail to agree on a mediator in accordance subclause (a) within 10 Business Days after service of the Determination Notice, the dispute will be mediated by a mediator nominated at the request of either party by the Chair of the Resolution Institute (or the Chair's designated representative).
- (c) The mediator appointed must:
  - (i) have reasonable qualifications and practical experience in the area of the dispute;
  - (ii) have no interest or duty which conflicts or may conflict with the mediator; and
  - (iii) disclose any conflict of interest before appointment.
- (d) The mediator must give both parties an undertaking to keep confidential all matters coming to the knowledge of the mediator in determining the dispute.

#### **16.7. Mediation**

- (a) The mediation must be undertaken in accordance with the current mediation rules of the Resolution Institute.
- (b) The parties must within 15 Business Days after service of the Determination Notice nominate to the other party the names and contact details of their representatives who will be involved in the mediation.
- (c) In engaging in the mediation each party must act in good faith and cooperate with the other party and the mediator to seek to resolve the dispute.
- (d) Any agreement reached in mediation must be formally agreed by the parties and this agreement will be final and binding of both parties in respect of the dispute.
- (e) The cost associated with the mediation of the dispute by the mediator, including any costs associated with the appointment of the mediator, must be borne by the parties equally, unless the mediator determines a party has engaged in vexatious or unconscionable behaviour and requires full payment of the cost of the mediation to be borne by that party.

#### **16.8. Litigation**

If a dispute is not resolved within 40 Business Days after service of the Determination Notice, either party is at liberty litigate the dispute.

#### **16.9. Summary relief**

Nothing in this Part will prejudice the right of a party to institute proceedings to enforce payment due under this Deed or to seek injunctive or urgent declaratory relief in respect of a dispute under this Part or any other matter under this Agreement.

### **17. GENERAL**

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#### **17.1. Laws and Jurisdiction**

This Agreement is governed by the Laws in force in New South Wales. The parties

irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Agreement.

**17.2. Preservation of existing rights**

The termination of this Agreement does not affect any right that has accrued to a party before the date of such termination.

**17.3. Joint and Several Liability**

Every covenant or provision in this Agreement applying to or binding, or a right conferred on, more than one person will bind or benefit each of them jointly and severally.

**17.4. Amendment**

This Agreement may only be amended, varied or supplemented in writing signed by the parties.

**17.5. Assignment**

Neither party may assign its rights under this Agreement without the prior consent of the other party.

**17.6. Waiver**

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

**17.7. No Merger**

Any right or obligation of any party that is intended to operate or have effect on or after the completion or termination of this Agreement (as the case may be) for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

**17.8. Government Information (Public Access) Act 2009 (NSW)**

If a party (**Recipient**) makes a request pursuant to the *Government Information (Public Access) Act 2009* which requires the Recipient to disclose information or documents relating to:

- (a) this Agreement; or
- (b) any transaction related to or contemplated by this Agreement,

prior to responding to the request the Recipient must notify the other party of the request.

**17.9. Privacy and Personal Information Protection Act 1998 (NSW)**

The parties:

- (a) acknowledge the provisions of Section 5 of the *Privacy and Personal Information Protection Act 1998 (NSW)* (**Privacy Act**);



- (b) shall raise no objection, claim or make any application under the Privacy Act in relation to the collection and use of information by the other party in accordance with this Agreement;
- (c) agree that the terms of this Agreement accurately reflect and document the agreed terms between the parties;
- (d) undertake, for the purposes of Section 15 and 16 of the Privacy Act, to notify the other party of any amendments to any information required to be provided by a party in accordance with this Agreement; and
- (e) warrant that the information provided in accordance with this clause directly relates to the purpose it was collected as specified in this Agreement and is relevant accurate, up to date, complete and not misleading.

**Executed as an Agreement**

**EXECUTED by BYRON SHIRE  
COUNCIL ABN 14 472 131 473** by its  
authorised officer in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of authorised officer

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Name of authorised officer

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Position of authorised officer

**EXECUTED by THE TECHNICAL AND  
FURTHER EDUCATION COMMISSION**  
by its delegate (but not so as to incur any  
personal liability) in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Delegate

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Name of Delegate

\_\_\_\_\_  
Address of Witness

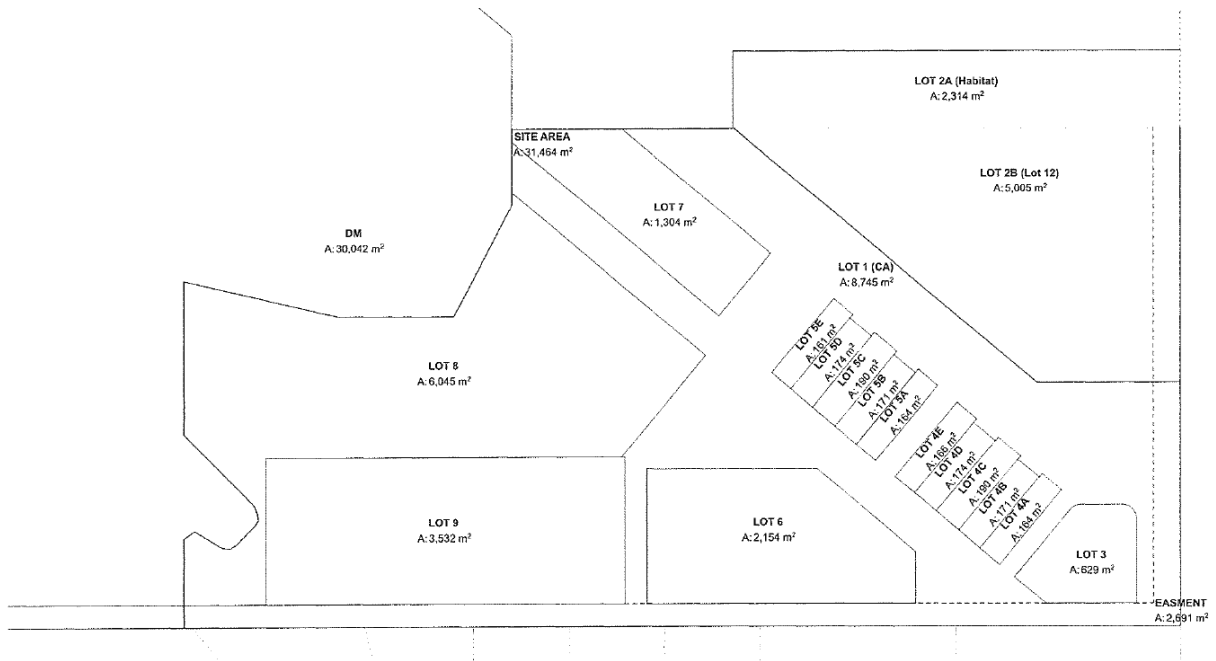
\_\_\_\_\_  
Position of Delegate

## ATTACHMENTS

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1. Draft Plan
2. Construction Area Plan
3. Draft Lease

**DRAFT PLAN**



## CONSTRUCTION AREA PLAN

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TBC

**DRAFT LEASE**

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[See lease document]