

# Agreement for Lease

**BYRON SHIRE COUNCIL**

*(Landlord)*

**THE TECHNICAL AND FURTHER EDUCATION  
COMMISSION**

*(Tenant)*

**Date:**

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# Agreement for Lease

|                   |   |
|-------------------|---|
| <b>Date</b>       |   |
| <b>Parties</b>    | <p><b>BYRON SHIRE COUNCIL</b> ABN 14 472 131 473<br/>70 Station Street, Mullumbimby, NSW, 2482<br/><b>(Landlord)</b></p> <p><b>THE TECHNICAL AND FURTHER EDUCATION COMMISSION</b> ABN 89 755 348 137<br/>of Level 1, Building A, 19 Mary Ann Street, Ultimo NSW 2007<br/><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

| <b>Term</b>                           | <b>Meaning of term</b>  |
|---------------------------------------|---|
| <b>Premises</b>                       | Part Lot 12 in Deposited Plan 1189646, Bayshore Drive, Byron Bay 2481 being approximately 5260 square metres as shown as the Lot 112 in the Draft Subdivision Plan          |
| <b>Draft Subdivision Plan</b>         | The draft subdivision plan attached   |
| <b>Construction Area</b>              | The area shown on the Construction Area plan attached   |
| <b>Site Works</b>                     | <ol style="list-style-type: none"><li>1. Access road to the North of the Construction Area</li><li>2. Parking area to the South of the Construction Area</li></ol>          |
| <b>Site Works Completion Date</b>     | 1 June 2021   |
| <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:<br><br>(a) a date nominated in writing by the Tenant after the Tenant has obtained any Approvals; and<br><br>(b) 30 June 2020.                              |
| <b>Tenant Works Completion Date</b>   | 24 August 2021  |
| <b>Lease Commencement Date</b>        | The later of:<br><br>(a) the date of the Certificate of Completion; and<br><br>(b) the date the Landlord provides the Tenant with the Site Works Certificate of Completion. |
| <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.

**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 Subdivision 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 the Rent; and
- (b) inserting as the land being leased a reference to the folio identifier applicable to the Premises from the registered Subdivision Plan; and
- (c) 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 45 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 carry out or 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, except the following easements shown in the Draft Subdivision Plan:

- (a) Easement for Services 7 Wide (DP 1008947);
- (b) Easement for Drainage of Sewerage 7 Wide (DP 1008947);
- (c) Easement for Water Supply 7 Wide (DP 1008947); and
- (d) Easement for Sewer Rising Main 7 Wide (DP 1008947).

**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

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**7. SUBDIVISION**

### **7.1. Landlord Responsibilities**

The Landlord is responsible to undertake the following:

- (a) engage a surveyor to prepare the 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 is 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.

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

#### **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**

---

### **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

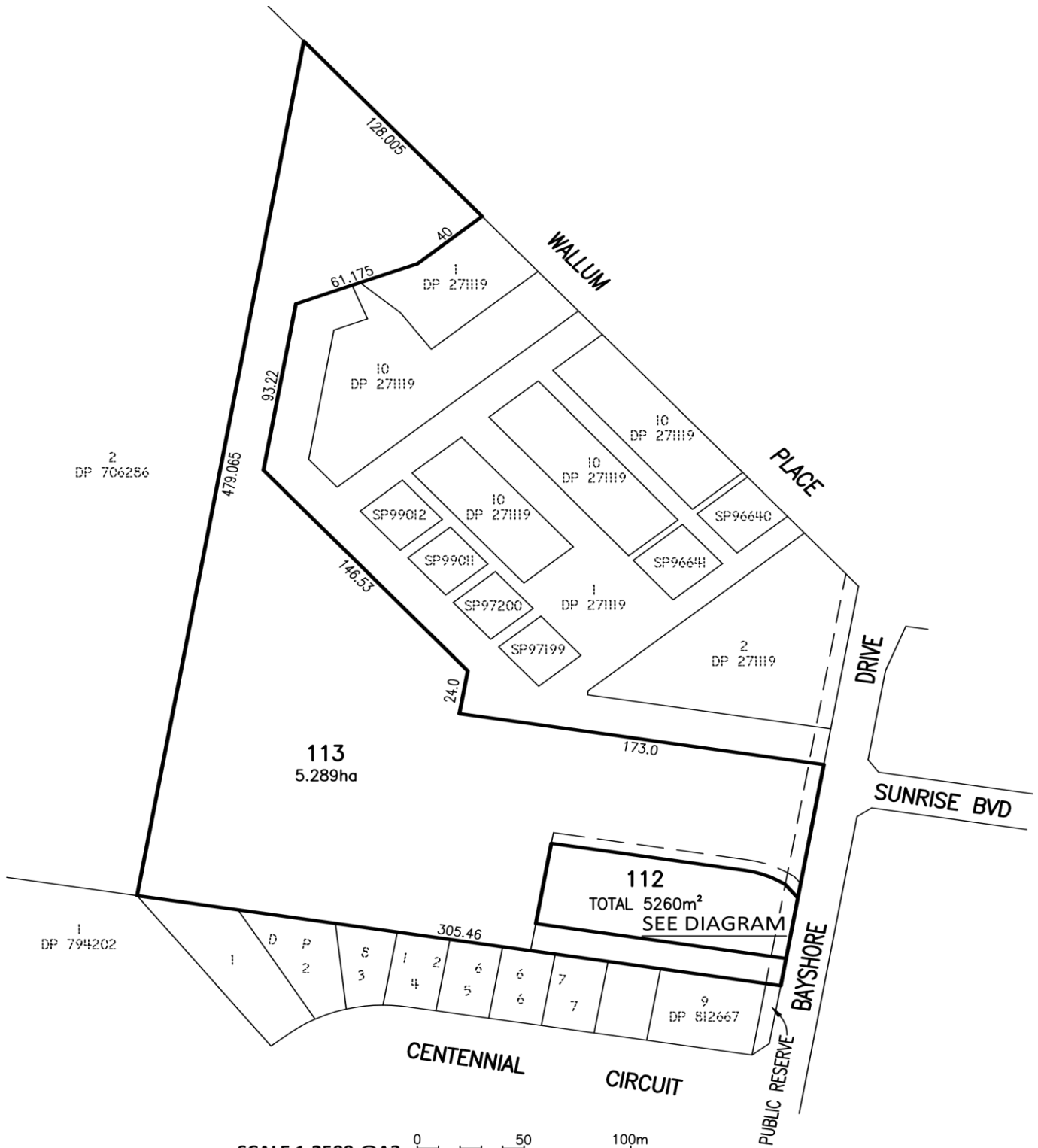
\_\_\_\_\_  
Position of Delegate

## **ATTACHMENTS**

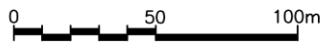
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1. Draft Subdivision Plan
2. Construction Area Plan
3. Draft Lease

**DRAFT SUBDIVISION PLAN**



SCALE 1:2500 @A3

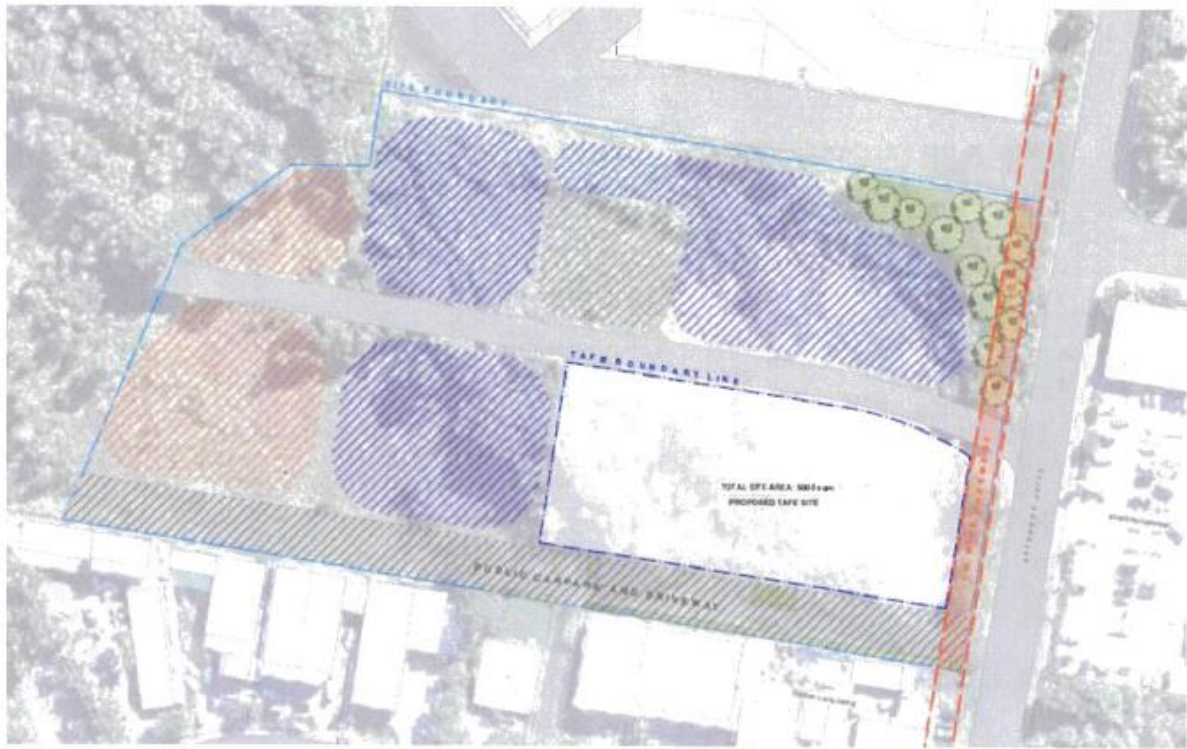


PROJECT: Proposed Subdivision  
CLIENT: TAFE NSW

DATE: 27th February 2020  
DWG. No. 19104-01DA

SCALE 1:1000 at A3

# CONSTRUCTION AREA PLAN





**LEASE**  
New South Wales  
Real Property Act 1900

**PRIVACY NOTE:** Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

**STAMP DUTY**

Revenue NSW use only

(A) **TORRENS TITLE** Property leased: if appropriate, specify the part or premises

(B) **LODGED BY**

Document  
Collection  
Box

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

Reference (optional):

**CODE**

**L**

(C) **LESSOR**

BYRON SHIRE COUNCIL ABN 14 472 131 473

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

(D) Encumbrances (if applicable):

(E) **LESSEE**

MINISTER ADMINISTERING THE TECHNICAL AND FURTHER EDUCATION COMMISSION ACT  
1990 ABN 89 755 348 137

(F) **TENANCY:**

(G) 1. **TERM** 10 YEARS

2. **COMMENCING DATE**

3. **TERMINATING DATE**

4. With an **OPTION TO RENEW** for a period of 2 X 5 YEARS  
set out in clause 2 of ANNEXURE A

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

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

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

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

9. The **RENT** is set out in clause 3 of ANNEXURE A

DATE ..... / ..... / .....

(H) I certify I am an eligible witness and that an authorised officer of the lessor signed this dealing in my presence. [See note\* below]

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

Signature of witness:

Signature of authorised officer: SEE PAGE 3, ANNEXURE A

Name of witness:

Authorised officer's name:

Address of witness:

Authority of officer:

Signing on behalf of:

I certify I am an eligible witness and that an authorised officer of the lessee signed this dealing in my presence. [See note\* below]

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

Signature of witness:

Signature of authorised officer: SEE PAGE 3, ANNEXURE A

Name of witness:

Authorised officer's name:

Address of witness:

Authority of officer:

Signing on behalf of:

(I) STATUTORY DECLARATION #

I, .....

solemnly and sincerely declare that -

- 1. The time for the exercise of option to renew/purchase in expired lease No. .... has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900. I certify this dealing to be correct for the purposes of the Real Property Act 1900.

Made and subscribed at ..... in the State of New South Wales on .....

in the presence of ..... of .....

[ ] Justice of the Peace (J.P. Number ..... ) [ ] Practising Solicitor

[ ] Other qualified witness [specify] .....

\*\* who certifies the following matters concerning the making of this statutory declaration by the person who made it:

- 1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person has a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was ..... [Omit ID No.]

Signature of witness: ..... Signature of applicant: .....

# As the services of a qualified witness cannot be provided at lodgment, the statutory declaration should be signed and witnessed prior to lodgment. \*\* If made outside NSW, cross out witness certification. If made in NSW, cross out the text which does not apply.

\* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.



## Annexure A

---

This and the following pages constitute Annexure A of the Lease made between BYRON SHIRE COUNCIL ABN 14 472 131 473 (**Landlord**) and THE TECHNICAL AND FURTHER EDUCATION COMMISSION ABN 89 755 348 137 (**Tenant**).

Date:

We certify this dealing correct for the purposes of the Real Property Act 1900.

**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

## **COMMERCIAL TERMS SCHEDULE**

| <b>Term</b>                | <b>Meaning of term</b>   |
|----------------------------|--|
| <b>Landlord</b>            | <b>BYRON SHIRE COUNCIL</b> ABN 14 472 131 473 of 70 Station Street, Mullumbimby, NSW, 2482 and its successors and assigns  |
| <b>Tenant</b>              | <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 and its successors and permitted assigns  |
| <b>Land</b>                | Lot [     ] in Deposited Plan [     ].   |
| <b>Improvements</b>        | The Connected Learning Centre building, structure and other improvements on the Land at the Commencing Date as modified and extended from time to time.  |
| <b>Premises</b>            | The Land   |
| <b>Term</b>                | 10 years from [     ] ( <b>Commencing Date</b> ) to [     ] ( <b>Terminating Date</b> )  |
| <b>Further Term</b>        | 5 years commencing on the day after the Terminating Date   |
| <b>Second Further Term</b> | 5 years commencing on the day after the terminating date of the Further Term   |
| <b>Base Rent</b>           | \$382,800.00 per year  |
| <b>CPI Review Date</b>     | On each anniversary of the Commencing Date   |
| <b>Permitted Use</b>       | Learning centre, training, education, community events and ancillary activities including offices or uses otherwise consistent with the functions and objectives of the Tenant in accordance with the <i>Technical and Further Education Commission Act 1990</i> |

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## 1. DEFINITIONS AND INTERPRETATIONS

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### 1.1. Definitions

In this Lease, unless the contrary intention appears:

**Authority** means any governmental, statutory, public, local government or other authority or body having jurisdiction over any part of the Premises or relating to its use.

**Base Rent** means the rent identified as the base rent in the Commercial Terms Schedule and includes the base rent as re-determined from time to time in accordance with the terms of this Lease.

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

**Commencing Date** is the date specified in Commercial Term Schedule.

**Consumer Price Index** means:

- (i) the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics; or
- (ii) if this price index is discontinued or abolished or if the items or weighting of the items whose prices are considered vary so as to change the basis of the price index then such price index as the Landlord may select that, as nearly as practicable, serves the same purpose.

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

**Dispute Notice** means the notice given by the Tenant disputing the Market Rent nominated in the Market Review Notice.

**Environmental Notice** means any direction, order, demand, licence or other requirement from a relevant Authority in connection with any Environmental Protection Legislation to take any action or refrain from taking any action in respect of the Premises and any adjoining or neighbouring premises, land or waterway.

**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 while in force during the Term.

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

**Further Term** means the period specified in the Commercial Terms Schedule.

**Government Entity** means the Crown and any government department, authority or agency or any state owned corporation or other government or state government entity.

**GST** means the goods and services tax payable under the GST Legislation and notional GST payable by a State entity under the *Intergovernmental Agreement Implementation (GST) Act 2000 (NSW)*

**GST Legislation** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and related Acts and Regulations.

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

**Lease** means this document comprising the *Real Property Act 1900 (NSW)* form, Annexure A and any attachments, as varied from time to time.

**Loss** means any loss, damages, remedies, liabilities, expenses, fines, penalties and costs (including legal costs on a full indemnity basis and associated expense) 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).

**Market Rent** means the best rent that can reasonably be obtained for the Premises (which is the Land only and does not include the Improvements which are the property of the Tenant) taking into account the market rent criteria specified in this Lease at the relevant Market Review Date.

**Market Review Notice** means the notice given by the Landlord nominating the Market Rent.

**Outgoings** means all outgoings payable in respect of the Land (whether invoiced to the Landlord or the Tenant) including:

- (a) *Rates, taxes and assessments*: all rates taxes charges assessments

duties impositions and fees payable to any government, local government, semi government or other competent authority excluding land tax;

- (b) *Water, sewerage and waste*: all charges for and costs in relation to the supply of water, sewerage and drainage and the removal of all waste and other garbage; and
- (c) *Insurances*: all amounts payable in respect of insurances effected from time to time by the Landlord relating to the Land and the use and occupancy of the Land such as public risk insurance.

**Permitted Use** means the use identified as such in the Commercial Terms Schedule.

**Planning Approval** means an approval or development consent for the development or use of land or a structure on land including Works.

**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.

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

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

**Tenant's Invitees** means the:

- (a) Tenant's sublessees and licensees;
- (b) the employees, agents, consultants, contractors, members, clients, customers, visitors of the Tenant; and
- (c) other persons on the Premises with the consent of the Tenant or the Tenant's sublessees or licensees.

**Term** means the term specified in the Commercial Terms Schedule.

**Terminating Date** means the date specified in the Commercial Terms Schedule.

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

**Works** means any building or construction works (other than maintenance or repairs) making an alteration or addition to the Premises by or on behalf of the Tenant.

## **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 Lease 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 Lease. 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 Lease constitutes the entire agreement of the parties on everything connected with the subject matter of this Lease 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 Lease 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 Lease no rule of construction applies to the disadvantage of one party on the basis that that party put forward this Lease.

## **Severance**

If a term of this Lease 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 Lease.

## **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 Lease 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 Lease and the rights and obligations of the parties under it.



## **Lease ends**

A reference to the end of this Lease is a reference to the expiration of the Term (or where occupation continues under a holding over, the end of the holding over tenancy) or the earlier determination of the Term by default or otherwise. If this Lease ends as a result of a right of termination under a clause in this Lease without default of either party then the obligations of the parties under this Lease will cease on the date of termination except Claims and Losses arising from a prior breach of this Lease which continue and the continuing obligations such as those under clause 13 *Termination* and clause 2.3 *Holding Over*.

## **Continuing Obligations**

The obligations of the parties arising prior to the end of this Lease continue until they are fulfilled.

## **Obligations and Payments of Tenant**

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

An amount to be paid under this Lease is due for payment on the earlier of demand or the date specified in the notice or invoice except Base Rent which is payable without demand, 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.

## **Implied Covenants**

- (a) The covenants, powers and provisions implied in Leases by virtue of Sections 84, 84A, 85 and 133 of the *Conveyancing Act 1919* (NSW) do not apply to this Lease.
- (b) The employment in this Lease of words in any of the forms or words contained in the first column of Part 2 of Schedule 4 of the *Conveyancing Act 1919* (NSW) does not imply any covenant under Section 86 of that Act.
- (c) Any present or future legislation or any implied term (including a duty of good faith or anything similar) which operates to vary the obligations of the Tenant in connection with this Lease with the result that the Landlord's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded, except to the extent that its exclusion is prohibited or rendered ineffective by law.

## **2. TERM AND FURTHER TERMS**

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### **2.1. Term**

The Landlord leases the Premises to the Tenant for the Term.

### **2.2. Further Term**

The Tenant can renew this Lease for the Further Term only if the Tenant:

- (a) gives the Landlord a notice requesting a lease for the Further Term at least 6 months before the Terminating Date; and
- (b) is not in material default under this Lease (or such default has been waived or rectified) at the date of the notice and the Terminating Date,

and then the Landlord must grant and the Tenant must accept a lease of the Premises for the Further Term on the same terms as this Lease except:

- (c) the front page and the Commercial Terms Schedule will be amended to reflect the new term, commencing date, terminating date and further term (if any);
- (d) the Rent will be determined as provided in this Lease on the basis that the date of commencement of the Further Term is a Market Review Date; and
- (e) the reference to "Second Further Term" in the Commercial Terms Schedule is amended to be "Further Term", the reference to "Further Term" in the Commercial Terms Schedule is deleted and this paragraph (d) is replaced by the following:

'(d) this option clause will be deleted'.

### **2.3. Holding Over**

If the Tenant continues to occupy the Premises after the Term ends with the Landlord's consent then:

- (a) the Tenant occupies the Premises under a monthly tenancy which either party may end by giving 3 months' notice expiring on any day; and
- (b) this tenancy will be on the same terms as this Lease so far as they apply to a periodic tenancy.

## **3. RENT**

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### **3.1. Payment of Base Rent**

The Tenant must pay to the Landlord without deduction or set off the Base Rent annually in advance, if demanded, with the first payment due on the Commencing Date.

### 3.2. Consumer Price Index Review

On each CPI Review Date the Base Rent will be adjusted to the amount calculated in accordance with the following formula:

$$R = A \times B/C$$

Where:

R = the amount to be calculated;

A = the Rent payable immediately prior to the CPI Review Date;

B = the Consumer Price Index for the quarter last published immediately prior to the CPI Review Date; and

C = the Consumer Price Index for the quarter last published 12 months prior to the CPI Review Date.

### 3.3. Market Rent Review

On each Market Review Date the Base Rent will be the Market Rent as notified in the Market Review Notice or as determined in the following clauses.

The Landlord must issue a Market Review Notice not less than 3 months before the Market Review Date. If the Landlord has not issued a Market Review Notice by the Market Review Date then the Tenant may issue the Market Review Notice.

### 3.4. Market Rent Dispute Notice and Valuation Procedure

The Market Rent from the Market Review Date will be the amount specified in the Market Review Notice given by the Landlord to the Tenant unless the Tenant gives the Landlord a Dispute Notice within 14 days after service of the Market Review Notice, in which respect time is of the essence. If a Dispute Notice is given in accordance with this clause the following procedure applies:

- (a) Within 14 days after service of the Dispute Notice (**Nomination Period**), in which respect time is of the essence, the parties will each nominate in writing to the other a valuer. If the parties nominate the same valuer, the party making the later nomination must nominate a different valuer.
- (b) If one party fails to nominate a valuer within the Nomination Period, the valuer nominated will determine the Market Rent and the party nominating the valuer must instruct the valuer to make the determination within 21 days after the expiration of the Nomination Period (**Valuation Period**).

- (c) If both parties fail to nominate a valuer within the Nomination Period then the procedure set out in this clause lapses and the Market Rent is the amount stated in the Market Review Notice.
- (d) If 2 valuers are nominated, the valuers will jointly determine the Market Rent and each party must instruct the valuer nominated by it to make the determination within the Valuation Period.
- (e) If the valuers are unable within the Valuation Period to agree on the amount of the Market Rent then either party may request the President of the Institute to nominate a valuer to act as a determining expert valuer (**Determining Expert Valuer**). The Determining Expert Valuer must be engaged by the party requesting the nomination and must be instructed to make his determination within 21 days after the expiration of the Valuation Period. The Determining Expert Valuer will, after taking into consideration any written submissions by the valuers as to their assessment of the Market Rent and any other matters the Determining Expert Valuer considers relevant, determine the Market Rent.
- (f) All valuers appointed pursuant to this clause must:
  - (i) act as experts and not as arbitrators;
  - (ii) give a written determination with reasons; and
  - (iii) be full members of not less than 5 years standing of the Institute and holders of a licence to practice as a valuer for the kind of premises demised by this Lease and be active in this market at the time of their appointment.
- (g) The costs incurred in the determination pursuant to this clause will be borne by the parties in the following manner:
  - (i) the cost for each valuer nominated by a party - by the party so nominating the valuer (other than where one valuer is appointed in which case the cost of the valuer will be apportioned equally); and
  - (ii) the costs of the Determining Expert Valuer - by the parties equally,
- (h) The determination of one valuer pursuant to sub-clause (b) above, the joint valuers pursuant to sub-clause (d) above or the Determining Expert Valuer pursuant to sub-clause (e) above is final and binding on the parties.

The parties may at any time agree in writing the Market Rent and then this valuation procedure will cease to apply.

### **3.5. Market Rent Criteria**

In determining the Market Rent a valuer must:

- (a) assume the area of the Premises is 5,000 sqm and exclude the area of the Premises in excess of 5,000 sqm;
- (b) exclude the value of any goodwill attributable to the Tenant's business and the value of the Improvements and the Tenant's fixtures and fittings;
- (c) have regard to any Contamination of the Land existing prior to the Commencing Date of this Lease or any prior lease to the Tenant (or an assignor of the Tenant);
- (d) have regard to the provisions of this Lease including payment of outgoings by the Landlord and the rent reviews;
- (e) have regard to the current rent of comparable premises;
- (f) assume that all obligations of the Landlord and the Tenant in the Lease have been performed and observed; and
- (g) not take into account any rent free periods, fit-out contribution or other incentives given to secure the Tenant in this Lease or a lease of comparable premises.

### **3.6. Adjustment of Base Rent on Market Rent Review**

Any variation of the Base Rent pursuant to a Market Rent review takes effect on and from the relevant Market Review Date. A delay in issuing a Market Review Notice does not prevent the Landlord from effecting or enforcing a Market Rent review. Pending the determination of the reviewed Rent, the Tenant must pay on account of Base Rent, the Market Rent notified in the Market Review Notice. When the reviewed Base Rent has been determined, any necessary adjustment will be made between the parties.

## **4. OUTGOINGS AND EXPENSES**

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### **4.1. Payment of Outgoings**

The Landlord must pay all Outgoings as they become due for payment.

### **4.2. Tenant's Expenses**

The Tenant must pay on time all charges for electricity, gas, water, sewage use, telephone and other services where they are separately metered or supplied to the Premises and requested or used by the Tenant, and where appropriate install any necessary meters.

### **4.3. Lease Costs**

The Tenant must pay the registration of this Lease and any renewal.

## **5. GOODS AND SERVICES TAX**

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### **5.1. Payments Exclusive of GST**

All payments or other consideration paid or payable under this Lease are exclusive of GST.

### **5.2. Payment of GST**

In addition to payment for a supply in connection with this Lease (including rent and outgoings contributions) on which GST is paid or payable, the Tenant must pay, at the same time and in the same manner, the amount of the GST which is paid or payable in respect of that supply.

### **5.3. Tax Invoice**

The Landlord will at the request of the Tenant provide the Tenant with a tax invoice as prescribed in the GST Legislation.

### **5.4. Late Payment**

If the Landlord becomes subject to penalties or interest resulting from late payment of GST because of the Tenant's failure to comply with this Part, the Tenant must pay on demand an additional amount equal to the amount of those penalties and interest.

### **5.5. Outgoings Net of GST**

Notwithstanding anything else to the contrary, in calculating Outgoings, any GST forming part of those Outgoings on which the Landlord is entitled to claim an input tax credit under the relevant GST Legislation cannot be included in the Outgoings payable by the Tenant.

## **6. USE OF PREMISES**

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### **6.1. Permitted Use**

The Tenant must only use the Premises for the Permitted Use.

### **6.2. Tenant's Operation**

The Tenant may terminate this Lease for any reason by giving the Landlord not less than 90 days' notice.

### **6.3. No Warranty as to Use**

The Landlord does not warrant that the Premises are suitable for or may be used for the Permitted Use.

#### **6.4. Restrictions on Use**

The Tenant must not and must not permit the Tenant's Invitees to use the Premises for any activity that is dangerous, offensive, noxious or illegal or a nuisance for any neighbouring property.

#### **6.5. Requirements of Authorities**

- (a) The Tenant must comply and ensure the Tenant's Invitees comply with all Laws and all notices, orders and directives from any Authority relating to the use or occupation of the Premises, obtain the consents or licences needed, comply with any conditions of consent and keep current any licences or registrations needed for the use of the Premises by the Tenant.
- (b) The Tenant must provide promptly to the Landlord a copy of any notice, order or directive from any Authority relating to the Premises received by the Tenant.

### **7. IMPROVEMENTS**

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#### **7.1. Ownership of Improvements**

The Landlord and the Tenant acknowledge and agree that the Improvements were constructed by the Tenant and are the property of the Tenant.

#### **7.2. Maintenance and Repair**

- (a) The Tenant must keep the Improvements in a condition suitable for the Permitted Use including ensuring that they are structurally sound and waterproof, safe and in working order.
- (b) The Tenant must keep the Improvements and the Premises:
  - (i) tidy, clean and free of rubbish and debris;
  - (ii) free from pests including rodents, cockroaches and termites;  
and
  - (iii) fenced, as reasonably required by the Landlord.

#### **7.3. Works**

- (a) The Tenant may from time to time demolish, remove, extend, construct and undertake Works to the Improvements and the Premises.
- (b) The Landlord must at the request of the Tenant co-operate to enable the Tenant to demolish, remove, extend, construct and undertake Works to the Improvements and the Premises as proposed by the Tenant including:

- (i) providing such information and assistance as is reasonably requested by the Tenant; and
  - (ii) providing landowner's consent for any Planning Approval.
- (c) If Planning Approval is required for the Works, the Tenant must obtain the Planning Approval and provide a copy to the Landlord.

#### **7.4. Insurance for Works**

Subject to clause 11.3, prior to commencing the Works and at all times until the Works are completed, the Tenant must keep current insurance policies covering:

- (a) contractors risk in respect of the Works and any damage to the Premises for the replacement value (including demolition and removal of debris);
- (b) public risk in respect of the Works on the Premises for at least \$20,000,000 for each accident or event or for such higher amount as the Landlord may reasonably require; and
- (c) worker's compensation insurance for each person who is or may be engaged in the construction of the Works.

The required insurance policies must otherwise comply with the requirements set out in Part 11 *Insurance, Premises and Indemnity*.

#### **7.5. Undertaking Works**

The Tenant must ensure that the Works are carried out:

- (a) in a good and workmanlike manner;
- (b) by properly qualified and experienced contractors;
- (c) in accordance with the applicable standards (including Australian Standards published by 'Standards Australia' and requirements under the National Construction Code current at the time of commencement of the Works);
- (d) in compliance with the Planning Approval for the Works; and
- (e) in compliance with all relevant Laws and all professional, licensing and legislative requirements in relation to Work, Health and Safety and all the rules, regulations, policies or guidelines issued by SafeWork NSW, the Tenant's insurer or any relevant Authority in respect of the Works.

#### **7.6. Principal Contractor**

The Landlord appoints the Tenant, and the Tenant accepts the appointment, as principal contractor for the purposes of the *Work Health and Safety Act 2011* (NSW). The Landlord accepts that the Tenant may, to the extent permitted by Law, appoint and require a building contractor to comply with the



Work, Health and Safety requirements under the *Work Health and Safety Act 2011* (NSW) and its regulation.

#### **7.7. Works Information**

The Tenant must ensure that the Landlord is notified of the commencement and practical completion of the Works and promptly responds to any request to provide information, documents, or other materials in relation to the Works required by the Landlord.

#### **7.8. Maintenance of Records**

The Tenant must maintain for the Term and 1 year after the Lease ends a comprehensive record of the matters relevant to the construction of the Works, including all plans, drawings, reports, applications to and consents from any Authority, licences and certificates and evidence of all payments. The Tenant must make these records available to the Landlord when requested.

#### **7.9. Damage and Destruction**

If the Improvements are substantially damaged then the Tenant may, but is not obliged to:

- (a) reinstate the Improvements by undertaking the necessary Works as provided in this Part; or
- (b) by notice to the Landlord, terminate this Lease.

### **8. TENANT'S ENVIRONMENTAL OBLIGATIONS**

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#### **8.1. No Contamination or Pollution**

The Tenant must not cause or permit:

- (a) any Contamination of the Premises or the surrounding environment; or
- (b) any Pollution on or from the Premises; 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.

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

The Tenant must, in its use of the Premises, comply with all Environmental Protection Legislation and any permit, approval, authority or licence issued pursuant to any Environmental Protection Legislation.

## **9. QUIET ENJOYMENT AND ACCESS**

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### **9.1. Quiet Enjoyment**

The Tenant may use and occupy the Premises during the Term without interference by or through the Landlord, subject to the Landlord's rights reserved under this Lease.

### **9.2. Access by Landlord**

The Tenant must, upon receiving reasonable notice, except in an emergency when no notice is required, give the Landlord or anyone authorised in writing by the Landlord access to the Premises at any reasonable time for the purpose of:

- (a) inspecting the condition of the Premises;
- (b) doing anything that the Landlord can or must do under this Lease or must do by law;
- (c) assisting in any emergency or for security or safety; or
- (d) undertaking any environmental investigations, assessments and audits.

## **10. ASSIGNMENTS AND MORTGAGES**

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### **10.1. Prohibited Dealings**

The Tenant must not:

- (a) assign; or
- (b) create or allow to come into existence any charge, mortgage or a security interest affecting the Tenant's estate or interest in the Premises.

### **10.2. Assignment**

Notwithstanding the previous clause, the Tenant may assign this Lease only with the prior consent of the Landlord which will not be unreasonably withheld or refused if, before the Tenant assigns:

- (a) the Tenant is not in breach of this Lease;
- (b) the proposed new lessee is shown to the satisfaction of the Landlord to be respectable, responsible and financially sound;

- (c) on an assignment, the proposed new lessee is shown to the satisfaction of the Landlord to be capable of adequately carrying on the business permitted under the Lease;
- (d) the proposed new lessee signs a deed in a form required by the Landlord agreeing to be bound by this Lease;
- (e) any personal or corporate guarantee including a guarantee by directors or shareholders of the proposed new lessee required by the Landlord is provided;
- (f) on an assignment, any bank guarantee required by the Landlord is provided;
- (g) the Tenant pays the Landlord's costs of giving the consent.

### **10.3. Mortgage of Lease**

Notwithstanding the first clause in this Part, the Tenant may mortgage the Lease only with the prior consent of the Landlord which will not be unreasonably withheld or refused if before the Tenant grants the mortgage of the Lease:

- (a) the Tenant is not in breach of the Lease;
- (b) the proposed mortgagee is an Australian bank or other financial institution acceptable to the Landlord;
- (c) the mortgage is acceptable to the Landlord and subsequently registered by the Registrar-General; and
- (d) the Tenant pays the Landlord's cost of giving the consent.

When the mortgage of the Lease is discharged, the Tenant must inform the Landlord and arrange for the discharge of the registered mortgage.

### **10.4. Change of control of Tenant**

- (a) Where the Tenant is a corporation other than a listed public company a change in shareholding (including any variation in the beneficial ownership of the shares) of the Tenant or its holding company (unless the holding company is a listed public company) that gives control of the Tenant to a different person or group of persons will be deemed to be an assignment of this Lease with the proposed new shareholders, beneficial owners or management treated as the proposed new lessee.
- (b) Where the Tenant is a trustee other than a trustee of a unit trust listed on an Australian Stock Exchange any change in the beneficiaries of the trust, the appointor or other similar position effectively altering the control of the trust to a different person or group of persons will be deemed to be an assignment of this Lease with the proposed new

beneficiaries, appointor or other person treated as the proposed new lessee.

#### **10.5. Government entity**

Notwithstanding the first clause in this Part, the Tenant may without the prior consent of the Landlord assign, sublet, licence, or share occupation of the Premises with another Government Entity or one or more Government Entities. The Tenant must notify the Landlord of any assignment of the Lease to a Government Entity.

### **11. INSURANCE, RELEASE AND INDEMNITY**

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#### **11.1. Tenant's Insurance**

The Tenant must keep current insurance policies covering:

- (a) public risk in respect of the Premises for at least \$20,000,000 for each accident or event or for such higher amount as the Landlord may reasonably require noting the Landlord's interest under the policy;
- (b) workers compensation insurance including any Claims or breach of statutory duty, damages, loss, injury or death caused by or arising out of any activity undertaken on, or around the Premises by any work engaged or caused to be engaged, by the Tenant or any work or activities influenced or directed by the Tenant;
- (c) the Improvements and Tenant's Fixtures for their replacement value and for removal of debris, fees of architects and consultants necessary for reinstatement,

and must produce at the request of the Landlord evidence of this insurance.

#### **11.2. Insurance Terms**

All insurance policies must:

- (a) be with a reputable insurer acceptable to the Landlord;
- (b) be for such amounts and cover such risks as are reasonably required by the Landlord and contain such conditions as are reasonably acceptable to the Landlord;
- (c) have no exclusions, endorsements or alterations added to the insurance during the Term unless consented to by the Landlord;
- (d) have endorsed upon them all relevant rights and interests of the Landlord;
- (e) be in the joint names of the Tenant and the Landlord and any other person who has an insurable interest and who is nominated by the Landlord at any time as an interested party; and

- (f) provide that the insurer will not cancel the insurance without first giving the Landlord at least 10 days' notice.

All premiums in respect of all such policies and renewals of policies are to be paid punctually by the Tenant and the receipt for each premium payable in respect of each policy (or other proof of payment to the Landlord's satisfaction) is to be produced by the Tenant to the Landlord at the request of the Landlord. The Tenant will use all reasonable endeavours to ensure that the company or office which issues a policy advises the Landlord to renew any policy or pay any premium in respect thereof.

### **11.3. Insurance for TAFE**

Any obligation of the Tenant under this Lease to take out policies of insurance does not apply while:

- (a) the Tenant is the TECHNICAL AND FURTHER EDUCATION COMMISSION or any other government entity; and
- (b) either:
  - (i) the Tenant is a member agency of the NSW Government's risk management self-insurance scheme known as the Treasury Managed Fund; or
  - (ii) the Tenant otherwise self-insures on the basis that its liability in respect of any insured event will be satisfied out of the assets of the NSW Government.

### **11.4. Assumption of Risk by Tenant**

The Tenant occupies the Premises and carries out building work in the Premises at its own risk. All property of the Tenant in the Premises is at the sole risk of the Tenant.

### **11.5. Tenant's Release and Indemnity**

The Tenant cannot make a Claim against the Landlord and releases the Landlord from and indemnifies it against all Claims for breach of statutory duty, Loss, injury or death which:

- (a) occur in or around the Premises;
- (b) arise from the use of the Premises by the Tenant or the Tenant's Invitees;
- (c) occur in connection with any building work undertaken by or on behalf of the Tenant or the Tenant's Invitees on or for the Premises; or

- (d) occur in connection with any action, payment or works by the Landlord in remedying any breach of this Lease by the Tenant,

except to the extent that it is caused by the act or omission or negligence of the Landlord, its employees, agents or contractors. The indemnity in this clause applies notwithstanding that this Lease authorised or required the Tenant to undertake or perform the activity giving rise to any claim for injury, Loss or damage.

The Tenant expressly agrees that the Landlord will have no responsibility or liability for any loss of or damage to fixtures or the personal property of the Tenant.

The Tenant expressly agrees that the obligations of the Tenant under this clause continue after the expiration or sooner determination of this Lease in respect of any act, deed matter or thing occurring before such expiration or determination.

#### **11.6. Work Health and Safety**

The Tenant must comply with all professional, licensing and legislative requirements in relation to work health and safety and all rules, regulations, policies or guidelines issued by SafeWork NSW, the Tenant's insurer or any relevant authority in respect of any activity undertaken on the Premises by the Tenant.

#### **11.7. Work Health and Safety release and indemnity**

In addition to any other release and indemnity in this Lease, the Tenant cannot make a Claim against the Landlord and releases the Landlord from and indemnifies it against all Claims for breach of statutory duty, Loss, injury or death caused by or arising out of or otherwise in respect of:

- (a) any activity undertaken in or around the Premises by any worker engaged, or caused to be engaged, by the Tenant and any worker whose activities are influenced or directed by the Tenant; and
- (b) any activity undertaken on the Premises by any worker engaged, or caused to be engaged, by the Tenant and any worker whose activities are influenced or directed by the Tenant,

except to the extent that it is caused by the act or omission or negligence of the Landlord, its employees, agents or contractors.

#### **11.8. Continuation of indemnities**

The indemnities contained in this Lease apply after the end of this Lease in respect of any act occurring before the end of this Lease. The indemnities apply notwithstanding that the Landlord or the Lease authorised or required the Tenant to undertake or perform the activity giving rise to the Claim.

## **12. DEFAULT**

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### **12.1. Default and termination**

The Tenant will be in default under this Lease if:

- (a) the Tenant has repudiated this Lease;
- (b) rent or any other money payable by the Tenant under this Lease is more than 30 days' overdue for payment;
- (c) the Tenant fails to comply with any obligation of the Tenant under this Lease within a reasonable time after the Landlord gives the Tenant notice requiring compliance; or
- (d) the Tenant:
  - (i) being a corporation – becomes deregistered, resolves to or enters into any arrangement for the benefit of creditors, resolves to or is wound up or internally reconstructed, takes any step to obtain protection or is granted protection from its creditors, becomes an externally administered body corporate, becomes insolvent or anything analogous or having a substantially similar effect occurs; or
  - (ii) being an individual – enters into an assignment or arrangement for the benefit of creditors, becomes bankrupt or dies,

Where the Tenant is in default under this Lease and the Tenant fails to rectify the default within 3 months after receiving a notice from the Landlord requiring the default to be rectified or the Lease will be terminated, then the Landlord may enter and take possession of the Premises or by notice to the Tenant terminate the Lease.

### **12.2. Insolvency or bankruptcy**

The Tenant must ensure that:

- (a) being a company, it does not resolve or enter into any arrangement for the benefit of creditors, resolve to or be wound up or internally reconstructed, take any step to obtain protection from creditors, become an externally administered body corporate, become insolvent or anything analogous or having a substantially similar effect; or
- (b) being an individual he or she does not enter into an assignment or arrangement for the benefit of creditors or become bankrupt.

### **12.3. Damages**

The essential terms of this Lease include the Tenant's obligations:

- (a) to pay rent, contributions to outgoings and GST;

- (b) concerning the use of the Premises;
- (c) to repair and maintain the Premises;
- (d) relating to the assignment of or dealing with the Lease; and
- (e) to maintain insurance in accordance with the Lease.

If there is a breach of an essential term, the Landlord can recover damages for all Losses over the entire period of the Lease up to the Terminating Date but must do every reasonable thing to mitigate those losses and try to lease the Premises to another lessee on reasonable terms.

The Landlord can recover damages even if:

- (a) the Landlord accepts the Tenant's repudiation of this Lease;
- (b) the Landlord ends this Lease by entering and taking possession of any part of the Premises or terminates this Lease by notice;
- (c) the Tenant abandons possession of the Premises; or
- (d) a surrender of this Lease occurs.

#### **12.4. Waiver**

A provision or a right created under this Lease may not be waived or varied except in writing signed by the party to be bound. No failure to exercise and no delay in exercising any right, power or remedy under this Lease or any custom or practice existing between the parties in relation to this Lease operates as a waiver. No single or partial exercise of any right, power or remedy precludes any other or further exercise of that or any other right, power or remedy. No waiver by a party of one breach of a provision under this Lease by the other party is a waiver of another breach of that provision or any other.

The demand of or subsequent acceptance of any money under this Lease by a party is not to be deemed a waiver of any preceding breach of this Lease by the other party, except only in relation to the failure to make that particular payment when due.

Money tendered by the Tenant and accepted by the Landlord may be applied in the manner the Landlord decides.

#### **12.5. Landlord May Rectify**

The Landlord may remedy at any time, provided that the Landlord not less than 30 days' prior notice except in the event of an emergency, without notice, any breach of this Lease by the Tenant as the agent of the Tenant and at the risk of the Tenant. The Tenant must pay all reasonable costs incurred by the Landlord in remedying any breach of this Lease by the Tenant.



## **12.6. Costs on Default**

The Tenant must pay the Landlord's reasonable expenses including legal fees and disbursements on an indemnity basis directly caused by any breach of a provision of this Lease or default by the Tenant.

## **12.7. Interest on Overdue Payments**

The Tenant must pay interest on any money due to the Landlord but not paid within 30 days' from the date payment was due at the Prescribed Rate.

# **13. TERMINATION**

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## **13.1. Tenant to Yield Up and Remove its Property**

When this Lease ends (unless the Tenant becomes a lessee of the Premises under a new lease) the Tenant must:

- (a) vacate the Premises;
- (b) demolish and remove the Improvements if notified by the Landlord in writing at least 90 days' prior to the end of the Lease;
- (c) remove all property of the Tenant and the Tenant's Invitees and anything the Tenant fixed to the Premises during the Term of this Lease or a prior lease and have made good any damage caused by the removal; and
- (d) ensure the Premises are in the condition they are required to be under this Lease, including keeping the Premises free from rubbish and debris.

## **13.2. Abandoned Property**

Anything not removed from the Premises at the end of the Lease (or within 90 days of the earlier determination of the Lease by the Landlord), at the election of the Landlord by notice to the Tenant, becomes the property of the Landlord who can keep it or remove and dispose of it and recover from the Tenant the cost of removal, making good and disposal. The Tenant indemnifies the Landlord against all claims for Loss or repossession in connection with the acquisition of this property by the Landlord.

# **14. RIGHT OF FIRST REFUSAL**

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## **14.1. Landlord's Offer**

If the Landlord proposes to sell the Land, the Landlord must first offer to sell the Land to the Tenant by submitting the following to the Tenant:

- (a) a contract for sale of land for the Land to the Tenant or the Tenant's nominee in the current standard form for such a contract properly completed signed by the Landlord (**Sale Contract**); and
- (b) the price the Landlord is willing to accept for the sale of the Land (**Sale Price**).

The Tenant or the Tenant's nominee may accept the Offer by inserting the Sale Price or such other price as may be agreed with the Landlord and executing a counterpart of the Sale Contract and returning it to the Landlord within 60 days after receipt of the Sale Contract (**Offer Period**).

#### **14.2. No sale or transfer**

The Landlord must not sell, transfer or otherwise dispose of the Land or grant a lease or otherwise give possession of the Land without first giving the Tenant a right to purchase the Land as provided in the previous clause.

#### **14.3. Subsequent Sale**

If the Tenant notifies the Landlord that it rejects the offer in the Sale Contract or fails to accept the Offer in the Offer Period in accordance with this Part, then the Landlord may sell or otherwise dispose of the Land at a price no less than the Sale Price and on terms no more favourable than in the Sale Contract provided to the Tenant within the period which is 6 months from the end of the Offer Period.

**EXECUTED** by the parties on the \_\_\_\_\_ day of \_\_\_\_\_

We certify this dealing correct for the purposes of the Real Property Act 1900.

**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