



# *Government Gazette*

of the State of

New South Wales

**Number 532–Crown Land**

**Friday, 17 November 2023**

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**ROADS ACT 1993**

**ORDER**

**Transfer of Crown Road to a Council**

In pursuance of the provisions of Section 152I of the *Roads Act 1993*, the Crown road specified in Schedule 1 is transferred to the roads authority specified in Schedule 2 hereunder as from the date of publication of this notice and as from that date the road specified in Schedule 1 ceases to be a Crown road.

The Hon. Stephen Kamper MP  
Minister for Lands and Property

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**SCHEDULE 1**

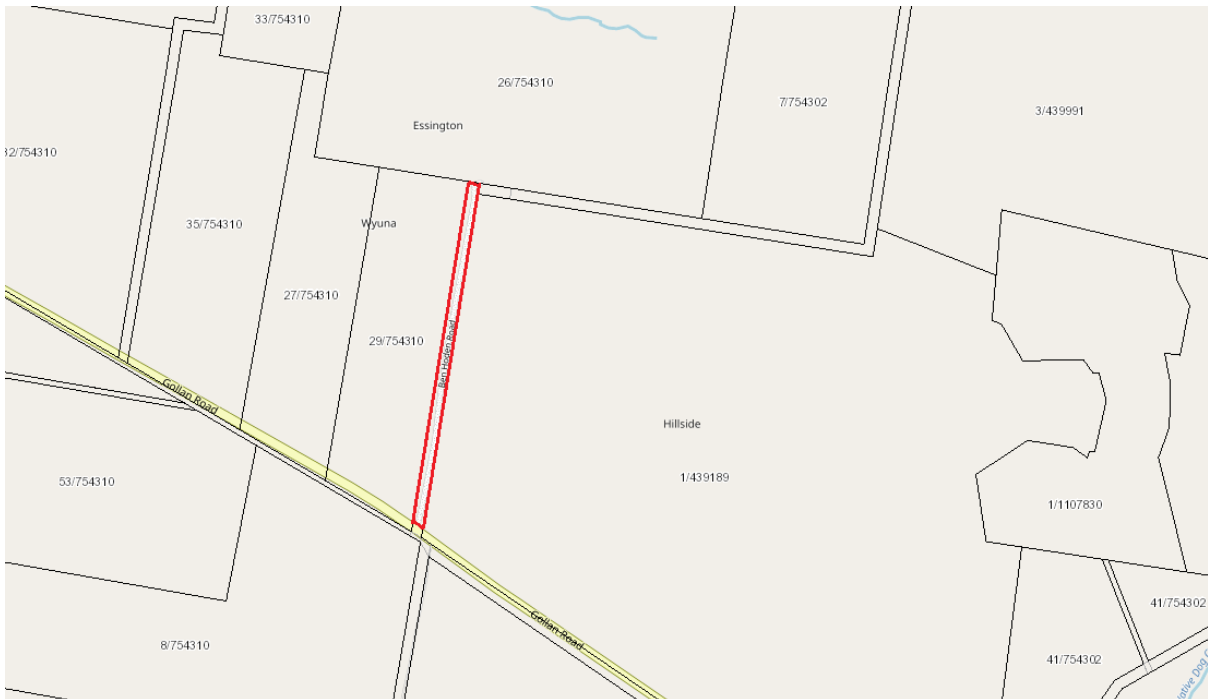
Parish: Elong Elong  
County: Lincoln  
Land District: Elong Elong  
LGA: Dubbo Regional Council

DESCRIPTION: Crown Road east of Lot 29 DP 754310 separating an area of 5.3056ha classified non-urban as shown in red outline in the diagram.

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**SCHEDULE 2**

Roads Authority: Dubbo Regional Council  
DPIE Ref: 23/08204



**ADDITION OF LANDS TO A WESTERN LANDS LEASE  
CROWN LAND MANAGEMENT ACT 2016**

It is hereby notified that in pursuance of Section 7.15 of the *Crown Land Management Act 2016*, the land particularised in Column 3, being the road closed in Column 4, has been added to the Western Lands Leases identified in Column 1.

The Hon. Stephen Kamper, MP  
Minister for Lands and Property

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Description

Parish: Gundawarra / Tarcoon / Wanalta / Pink Hills  
County: Cowper  
Land District: Bourke  
LGA: Brewarrina

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Western Lands Lease No.</i>	<i>Folio ID</i>	<i>Area Addition (ha)</i>	<i>Former WDR No.</i>	<i>Total Area following Addition (ha)</i>
192	5467/768377	61.91	15	4042
713	5452/768362	17.8	15	4117
2916	968/762218	79.32	15	6855.32
2916	968/762218	17	156	6872
4238	2064/764007	32.78	15	4135

File Ref.: 17/10329

**ROADS ACT 1993**  
**TRANSFER OF CROWN ROAD TO ROADS AUTHORITY**

In pursuance of the provisions of Section 152I of the *Roads Act 1993*, the Crown road specified in Schedule 1 is transferred to the Roads Authority specified in Schedule 2 hereunder, and as from the date of publication of this notice, the road specified in Schedule 1 ceases to be Crown road.

The Hon. Stephen Kamper, MP  
Minister for Lands and Property

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**Schedule 1**

Parish – Breeza; County – Pottinger  
Land District – Gunnedah; Locality – Breeza  
Local Government Area – Gunnedah

Description: Transfer of Crown Road to Gunnedah Shire Council. Transfer of roads adjacent to lots 1-5/6/758160 and 6-10/6/758160, roads known as Brainard, Rose and Birch Streets and an un-named lane, as shown in yellow outline on the diagram below and comprising an area of approximately 1.5366 ha



**Schedule 2**

Roads Authority: 23/06588  
File Ref:mw

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**ROADS ACT 1993**  
**ORDER**  
Transfer of Crown Road to Council

IN pursuance of the provisions of Section 152I, Roads Act 1993, the Crown public road specified in Schedule 1 is transferred to the Roads Authority specified in Schedule 2 hereunder, and as from the date of publication of this notice, the road specified in Schedule 1 ceases to be Crown public road.

The Hon. Stephen Kamper, MP  
Minister for Lands and Property

**SCHEDULE 1**

Parish – Torrens; County – Bathurst

Land District – Blayney; Locality – Kings Plains

Local Government Area – Blayney Shire Council

Description: Parts of Dungeon Road at Kings Plains as denoted by red colour on the diagram below and comprising of approx. 3.493 ha.



**SCHEDULE 2**

Roads Authority: Blayney Shire Council

Council Ref: Jacob Hogan

File Ref: 23/08205, W643153

**CROWN LAND MANAGEMENT ACT 2016**  
**NOTICE - CROWN LAND TO BE USED OR OCCUPIED FOR OTHER PURPOSE UNDER S 2.18(2)(b)**

Pursuant to section 2.18(2)(b) of the Crown Land Management Act 2016, the Crown land specified in Column 2 of the following Schedule is proposed to be used or occupied under a relevant interest granted for the purpose(s) specified in Column 1 of the following Schedule.

The Hon. Stephen Kamper MP  
Minister for Lands and Property

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<b>Column 1</b>	<b>Column 2</b>
Jetty (relevant interest - Licence 638768)	Reserve No. 56146
Concrete Ramp (relevant interest - Licence 638768)	Public Purpose: Generally
Reclamation (relevant interest - Licence 638768)	Notified: 11-May-1923
Seawall (relevant interest - Licence 638768)	File Reference: R56146/PURP790/001

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<b>Column 1</b>	<b>Column 2</b>
Jetty (relevant interest - Licence 638768)	Reserve No. 1011268
Concrete Ramp (relevant interest - Licence 638768)	Public Purpose: Future Public Requirements
Reclamation (relevant interest - Licence 638768)	Notified: 3-Feb-2006
Seawall (relevant interest - Licence 638768)	File Reference: R1011268/PURP860/001

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<b>Column 1</b>	<b>Column 2</b>
Jetty (relevant interest - Licence 627486)	Reserve No. 56146
Sliprails (relevant interest - Licence 627486)	Public Purpose: Generally
	Notified: 11-May-1923
	File Reference: R56146/PURP791/001

---

<b>Column 1</b>	<b>Column 2</b>
Jetty (relevant interest - Licence 627486)	Reserve No. 1011268
Sliprails (relevant interest - Licence 627486)	Public Purpose: Future Public Requirements
	Notified: 3-Feb-2006
	File Reference: R1011268/PURP861/001

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<b>Column 1</b>	<b>Column 2</b>
Jetty (relevant interest - Licence 640628)	Reserve No. 56146
Reclamation (relevant interest - Licence 640628)	Public Purpose: Generally
Seawall (relevant interest - Licence 640628)	Notified: 11-May-1923
Sliprails (relevant interest - Licence 640628)	File Reference: R56146/PURP792/001

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<b>Column 1</b>	<b>Column 2</b>
Jetty (relevant interest - Licence 640628)	Reserve No. 1011268
Reclamation (relevant interest - Licence 640628)	Public Purpose: Future Public Requirements
Seawall (relevant interest - Licence 640628)	Notified: 3-Feb-2006
Sliprails (relevant interest - Licence 640628)	File Reference: R1011268/PURP862/001

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<b>Column 1</b>	<b>Column 2</b>
Berthing Area (relevant interest - Licence 640698)	Reserve No. 56146
Jetty (relevant interest - Licence 640698)	Public Purpose: Generally
Piles (relevant interest - Licence 640698)	Notified: 11-May-1923
Pontoon (relevant interest - Licence 640698)	File Reference: R56146/PURP793/001

Ramp (relevant interest - Licence 640698)  
Reclamation (relevant interest - Licence 640698)  
Seawall (relevant interest - Licence 640698)

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<b>Column 1</b>	<b>Schedule</b>	<b>Column 2</b>
Berthing Area (relevant interest - Licence 640698)		Reserve No. 1011268
Jetty (relevant interest - Licence 640698)		Public Purpose: Future Public Requirements
Piles (relevant interest - Licence 640698)		Notified: 3-Feb-2006
Pontoon (relevant interest - Licence 640698)		File Reference: R1011268/PURP863/001
Ramp (relevant interest - Licence 640698)		
Reclamation (relevant interest - Licence 640698)		
Seawall (relevant interest - Licence 640698)		

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<b>Column 1</b>	<b>Schedule</b>	<b>Column 2</b>
Seawall (relevant interest - Licence 643538)		Reserve No. 56146
Reclamation (relevant interest - Licence 643538)		Public Purpose: Generally
Ramp (relevant interest - Licence 643538)		Notified: 11-May-1923
Pontoon (relevant interest - Licence 643538)		File Reference: R56146/PURP794/001
Jetty (relevant interest - Licence 643538)		

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<b>Column 1</b>	<b>Schedule</b>	<b>Column 2</b>
Seawall (relevant interest - Licence 643538)		Reserve No. 1011268
Reclamation (relevant interest - Licence 643538)		Public Purpose: Future Public Requirements
Ramp (relevant interest - Licence 643538)		Notified: 3-Feb-2006
Pontoon (relevant interest - Licence 643538)		File Reference: R1011268/PURP864/001
Jetty (relevant interest - Licence 643538)		

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<b>Column 1</b>	<b>Schedule</b>	<b>Column 2</b>
Seawall (relevant interest - Licence 641093)		Reserve No. 56146
Jetty (relevant interest - Licence 641093)		Public Purpose: Generally
Reclamation (relevant interest - Licence 641093)		Notified: 11-May-1923
		File Reference: R56146/PURP795/001

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<b>Column 1</b>	<b>Schedule</b>	<b>Column 2</b>
Seawall (relevant interest - Licence 641093)		Reserve No. 1011268
Jetty (relevant interest - Licence 641093)		Public Purpose: Future Public Requirements
Reclamation (relevant interest - Licence 641093)		Notified: 3-Feb-2006
		File Reference: R1011268/PURP865/001

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**CROWN LAND MANAGEMENT ACT 2016**  
**NOTICE - CROWN LAND TO BE USED OR OCCUPIED FOR OTHER PURPOSE UNDER S 2.18(2)(b)**

Pursuant to section 2.18(2)(b) of the Crown Land Management Act 2016, the Crown land specified in Column 2 of the following Schedule is proposed to be used or occupied under a relevant interest granted for the purpose(s) specified in Column 1 of the following Schedule.

The Hon. Stephen Kamper MP  
Minister for Lands and Property

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<b>Column 1</b>	<b>Schedule</b>
Mooring Site (relevant interest - Licence 84334) Pontoon (relevant interest - Licence 84334) Walkway (relevant interest - Licence 84334)	<b>Column 2</b> Reserve No. 84334 Public Purpose: Generally Notified: 22-Mar-1963 File Reference: R84334/PURP066/001

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<b>Column 1</b>	<b>Schedule</b>
Mooring Site (relevant interest - Licence 642627) Pontoon (relevant interest - Licence 642627) Walkway (relevant interest - Licence 642627)	<b>Column 2</b> Reserve No. 1011268 Public Purpose: Future Public Requirements Notified: 3-Feb-2006 File Reference: R1011268/PURP866/001

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<b>Column 1</b>	<b>Schedule</b>
Grazing (relevant interest - Licence 619315)	<b>Column 2</b> Reserve No. 1109 Public Purpose: Travelling Stock, Camping Notified: 14-Jun-1880 File Reference: R1109 (1002652)/PURP001/001

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<b>Column 1</b>	<b>Schedule</b>
Pump Site (relevant interest - Licence 642741)	<b>Column 2</b> Reserve No. 2419 Public Purpose: Water Notified: 25-Jul-1881 File Reference: R2419/PURP008/001

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<b>Column 1</b>	<b>Schedule</b>
Pump Site (relevant interest - Licence 642741)	<b>Column 2</b> Reserve No. 1032388 Public Purpose: Environmental Protection, Public Recreation Notified: 21-Apr-2011 File Reference: R1032388/PURP009/001

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<b>Column 1</b>	<b>Schedule</b>
Pipeline (relevant interest - Licence 642741)	<b>Column 2</b> Reserve No. 1011549 Public Purpose: Tourist Facilities And Services, Community Purposes, Environmental Protection, Rural Services, Public Recreation Notified: 5-May-2006 File Reference: R1011549/PURP010/001

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**Column 1**

Access (relevant interest - Licence 642741)  
Road Construction (relevant interest - Licence 642741)  
Storage (relevant interest - Licence 642741)

**Schedule****Column 2**

Reserve No. 81412  
Public Purpose: Public Recreation  
Notified: 20-Feb-1959  
File Reference: R81412/PURP007/001

---

**Column 1**

Access (relevant interest - Licence 642707)  
Road Construction (relevant interest - Licence 642707)  
Storage (relevant interest - Licence 642707)

**Schedule****Column 2**

Reserve No. 1014548  
Public Purpose: Access And Public Requirements, Rural Services,  
Tourism Purposes And Environmental And Heritage Conservation  
Notified: 30-May-2008  
File Reference: R1014548/PURP005/001

---

**Column 1**

Jetty (relevant interest - Licence 642021)  
Pontoon (relevant interest - Licence 642021)  
Ramp (relevant interest - Licence 642021)  
Ramp (relevant interest - Licence 642021)  
Walkway (relevant interest - Licence 642021)

**Schedule****Column 2**

Reserve No. 56146  
Public Purpose: Generally  
Notified: 11-May-1923  
File Reference: R56146/PURP796/001

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**Column 1**

Jetty (relevant interest - Licence 642021)  
Pontoon (relevant interest - Licence 642021)  
Ramp (relevant interest - Licence 642021)  
Ramp (relevant interest - Licence 642021)  
Walkway (relevant interest - Licence 642021)

**Schedule****Column 2**

Reserve No. 1011268  
Public Purpose: Future Public Requirements  
Notified: 3-Feb-2006  
File Reference: R1011268/PURP867/001

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**Column 1**

Access (relevant interest - Licence 638070)

**Schedule****Column 2**

Reserve No. 754444  
Public Purpose: Future Public Requirements  
Notified: 29-Jun-2007  
File Reference: R754444/PURP001/001

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**Column 1**

Access (relevant interest - Licence 638070)

**Schedule****Column 2**

Reserve No. 1012048  
Public Purpose: Access And Public Requirements, Tourism Purposes  
And Environmental And Heritage Conservation  
Notified: 4-Aug-2006  
File Reference: R1012048/PURP017/001

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**ROADS ACT 1993**  
**TRANSFER OF CROWN ROAD TO ROADS AUTHORITY**

In pursuance of the provisions of Section 152I of the *Roads Act 1993*, the Crown Road specified in Schedule 1 is transferred to the Roads Authority specified in Schedule 2 hereunder, and as from the date of publication of this notice, the road specified in Schedule 1 ceases to be Crown Road.

The Hon. Stephen Kamper, MP  
Minister for Lands and Property

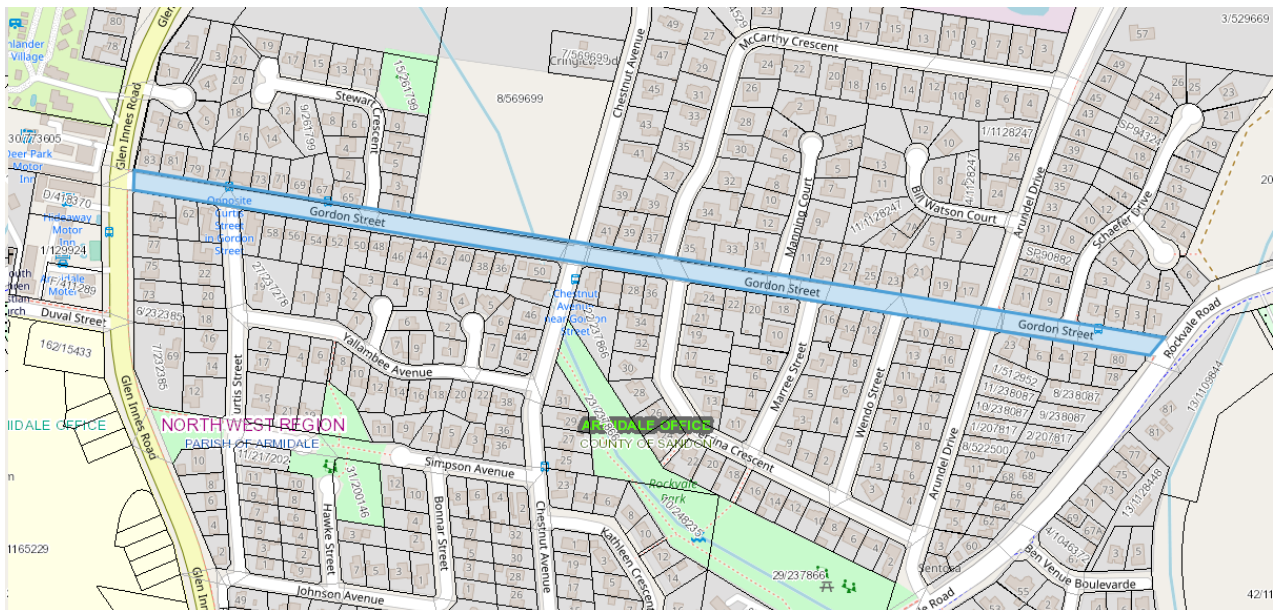
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**Schedule 1**

Parish – Armidale; County – Sandon  
Land District – Armidale; Locality – Armidale  
Local Government Area – Armidale Regional

Description: Transfer of Crown Road to Armidale Regional Council. Gordon Street Armidale. Area to transfer is 1.9968ha

See diagram below, road for transfer highlighted in blue.



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**Schedule 2**

Roads Authority: Armidale Regional Council  
File Ref: W643511 and 23/08543#02

## GRANTING OF WESTERN LANDS LEASES CROWN LAND MANAGEMENT ACT 2016

It is hereby notified that in pursuance of Section 5.16(2) of the *Crown Land Management Act 2016*, the conditions and preamble set out below attach to any perpetual Western Lands Lease granted under those same provisions for the purpose of “Business” over specified lands located at White Cliffs known as Dugouts.

The Hon. Stephen Kamper, MP  
Minister for Lands and Property

File Ref: DOC23/219504

### Preamble

The land on which this Lease is being granted is Barkandji land. Barkandji and Malyangapa People, and their ancestors for millennia before them, have looked after and maintained their lands and waters. Barkandji and Malyangapa People’s ongoing laws and customs have been recognised by the Federal Court of Australia which has determined that they hold native title rights and interests in the land subject to this Lease.

### AUTHORITY FOR GRANT OF LEASE

You acknowledge that:

- (a) the Land is Crown land within the meaning of the *Crown Land Management Act 2016* (NSW) (**Act**);
- (b) The State of New South Wales is recorded as registered proprietor of the Land by virtue of the provisions of section 13D of the *Real Property Act 1900* (NSW);
- (c) the Minister is authorised by section 5.16(2) of the Act to grant a lease of Crown land on behalf of the Crown;
- (d) the Minister has executed this Lease on behalf of the State of New South Wales as authorised by section 13L of the *Real Property Act 1900* (NSW);
- (e) this Lease is a “holding” for the purposes of the Act, and the provisions of the Act relating to holdings apply to this Lease subject to clause 1.8;
- (f) You are a “holder” for the purposes of the Act, and the provisions of the Act relating to holders apply to the holder; and
- (g) this Lease may be forfeited pursuant to the provisions of section 7.9 of the Act in the circumstances set out in that section.

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## 1. RISK WARNING

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You acknowledge that:

- (a) The Premises was constructed by persons unknown on an unknown date prior to there being any legal requirement for occupants to obtain approval from the Minister or any other NSW Government agency or local government body;
- (b) The Minister does not hold any records of any approval for construction or development of the Premises and is unable to provide any guarantee or warranty as to their structural integrity or safety, or for any hazards or risks associated with the Premises being located underground; and
- (c) If you wish to proceed with the Lease you will need to arrange any inspection of the Premises before signing this Lease.

## 2. DEFINITIONS AND INTERPRETATIONS

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### 2.1. Definitions

In this Lease, unless the contrary intention appears:

**Access Requirements** means those items specified in writing by the Landlord to You, that You need to provide prior to the Commencing Date including but not limited to a Bank Guarantee and any relevant insurance required under clauses 9 and 14.

**Act** means the *Crown Land Management Act 2016 (NSW)*.

**Address for Service of Notices** means:

**Landlord**

Name: The State of New South Wales ABN 20 770 707 468 as represented by NSW Department of Planning and Environment

Address: 6 Stewart Avenue, Newcastle West NSW 2302

For the attention of: Crown Lands

Email: cl.western.region@crowland.nsw.gov.au

**You**

Address: as notified in writing by You to the Landlord prior to the Commencing Date in the Application for Perpetual Western Lands Lease at White Cliffs and as updated from time to time.

Email: as notified in writing by You to the Landlord prior to the Commencing Date in the Application for Perpetual Western Lands Lease at White Cliffs and as updated from time to time.

**Application for Perpetual Western Lands Lease at White Cliffs** means the form titled "Application for Perpetual Western Lands Lease at White Cliffs" completed and signed by You prior to the Commencing Date which includes details of Your Address for Service of Notices and discloses the Statement of Acknowledgement.

**Approvals** means all consents, approvals, major project approvals, modifications, registrations, certificates, licences and permits from any Authority:

- (a) necessary for the development or use of the Premises including the carrying out of any proposed works to any part of the Premises; and

(b) required for the purpose of this Lease,

including any approvals required under Part 4 of the EP&A Act.

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

**Bank Guarantee** means an irrevocable and unconditional undertaking issued by an Australian bank with no expiry date and in a form acceptable to the Landlord in its absolute discretion to pay the Bank Guarantee Amount to the Landlord on demand and otherwise on terms and conditions acceptable to the Landlord.

**Bank Guarantee Amount** means the amount required by the Landlord to secure the Tenant's obligations under this Lease as notified by the Landlord in writing (if any) and as updated from time to time in accordance with clause 18.1.

**Barkandji Corporation** means Barkandji Native Title Group Aboriginal Corporation RNTBC (ICN 4740).

**Base Rent** means the rent, exclusive of GST, calculated in accordance with Part 5, Division 4, Clause 53 of the Regulations includes the rent as re-determined from time to time in accordance with the terms of this Lease.

**BCA** means the Building Code of Australia.

**Business Day** means a day on which banks are open for general business in New South Wales other than a Saturday, a Sunday or a public holiday.

**Certificate of Completion** means any certificate required to be obtained under Part 6 of the EP&A Act.

**Claims** means all or any claims, demands, remedies, injuries, damages, losses, Costs, claim for compensation, claim for abatement of rent obligations, proceedings, actions, rights of action, liabilities, suits, notices, fines, demands and requirements (including orders).

**Commencing Date** is the date that this Lease is granted by the Minister to You.

**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.

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

**Control** means the capacity (directly or indirectly), whether or not having statutory, legal or equitable force, and whether or not based on statutory legal or equitable rights, to:

- (a) appoint, determine or control the composition of the board of directors of You;
- (b) exercise more than 50% of the votes entitled to be cast at any general meeting of You; or
- (c) hold more than 50% of the issued share capital of the Tenant (You) (other than shares issued with no rights other than to receive a specified amount in distribution).

**Costs** means any cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid).

**Dugout** means any and all improvements in the subsurface of the Land including but not limited to any recessed or depressed holes, excavated caves or other subterranean structures on the Land identified in the Lease Exhibit.

**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.

**EP&A Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**Essential Term** means those terms referred to in clause 16.2.

**Event of Default** means any of the events referred to in clause 16.1.

**Financial Year** means 1 July to 30 June.

**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.

**Guarantor** means the shareholders and directors of Your company unless waived in writing by the Landlord.

**Hazardous Building Materials** means any substance present in building fabric that has the potential to pose risks to human health or the environment including asbestos containing materials, combustible cladding, lead based paint, synthetic mineral fibres and polychlorinated biphenyl.

**Hazardous Chemicals** has the meaning specified in the Work Health and Safety Legislation.

**Improvements** means the buildings, structure and other improvements on the Land at the Commencing Date as modified and extended from time to time in accordance with the terms of this Lease but excluding Your Fixtures.

**Insolvent** means:

- (a) for a corporation, co-operative or association:
  - (i) becomes de-registered;
  - (ii) resolves to or enters into any arrangement for the benefit of creditors;
  - (iii) resolves to or is wound up or internally reconstructed;

- (iv) takes any step to obtain protection or is granted protection from its creditors;
  - (v) becomes an externally administered body corporate including but not limited to liquidation, provisional liquidation or voluntary administration;
  - (vi) a receiver, manager, receiver and manager, controller, administrator (as defined under section 9 of the *Corporations Act 2001* (Cth) or similar office is appointed;
  - (vii) becomes insolvent or is presumed insolvent under the *Corporations Act 2001* (Cth); or
  - (viii) anything analogous or having a substantially similar effect occurs; and
- (b) for an individual, sole trader or partnership:
- (i) stops payment to that person's creditors;
  - (ii) enters into an assignment or arrangement for the benefit of creditors;
  - (iii) becomes bankrupt or commits an act of bankruptcy or brings her/his estate within the operation of any law relating to bankruptcy; or
  - (iv) dies.

**Land** means the whole of the land comprised in the folio identifier the subject of the grant of this Lease.

**Landlord** means the State of New South Wales ABN 20 770 70 468 as represented by the Department of Planning and Environment and its successors and assigns on behalf of the Minister.

**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 these terms and conditions, the Lease Exhibit, the execution page and any annexures as varied from time to time.

**Lease Exhibit** means the lease exhibit executed by the Landlord and You on or about the date of this Lease identifying the Dugout.

**Lease Year** means each period of 12 months from the Commencing Date.

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

**Material Harm to the Environment** has the meaning specified in the *Protection of the Environmental Operations Act 1997* (NSW).

**Mining Act** means the *Mining Act 1992* (NSW).

**Minister** means the Minister for the time being administering the Act, and any power, authority, duty or function conferred or imposed upon the Minister by or



under those conditions may be exercised or performed either by the Minister or by such officers, employees or agents of the Department of Planning and Environment as the Minister may from time to time approve.

**Outgoings** has the meaning given to it in clause 5.1(a).

**Personal Property** has the same meaning as under the PPS Act.

**Permitted Use** means the use being “Urban (Business)”.

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

**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, or Contamination has been caused.

**PPS Act** means the *Personal Property Securities Act 2009* (Cth).

**Premises** means the Land, the Dugout and the Improvements.

**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 plus 2%, calculated daily and compounded on the last day of each month.

**Property and Stock Agents Legislation** means the *Property and Stock Agents Regulation 2022* (NSW) and the *Property and Stock Agents Act 2002* (NSW)

**Public Risk Insurance Amount** means the market standard for the Permitted Use from time to time during the Term and which as at the Commencing Date is equal to \$20,000,000 for each incident or event or for such higher amount as the Landlord may reasonably require.

**Redecorate** includes:

- (a) the cleaning of the whole of the interior of the Premises by washing down, steam cleaning or other appropriate method;
- (b) the treatment, as previously treated, of all internal surfaces of the Premises by painting, staining, polishing or otherwise to a specification approved by the Landlord (acting reasonably); and
- (c) replacing all floor coverings and furnishings with new items of a similar style and standard to those being replaced, if worn beyond fair, wear and tear.

**Redecoration Dates** means each 10<sup>th</sup> anniversary of the Commencing Date.

**Regulations** means the *Crown Land Management Regulation 2018* (NSW).

**Remediation** has the meaning specified in the *Contaminated Land Management Act 1997* (NSW).

**Requirement** includes any requirement, notice, order, direction, recommendation, consent, stipulation or similar notification received from or given by any Authority or under any Law, whether in writing or otherwise.

**Services** means all services or systems of any nature from time to time provided or available for use to the Premises including:

- (a) any electronic medium, energy source, lighting, electricity, gas, fuel, power, water, sewerage, drainage and air-conditioning, heating and cooling, fire protection;
- (b) fittings, fixtures, appliances, plant and equipment utilised for any of the services specified in clause (a) above; and
- (c) any services or systems from time to time utilised for access to the Premises.

**Sign** means a sign, billboard, advertisement, notice or similar thing.

**Statement of Acknowledgement** means the risk warning providing in clause 1 and disclosed and acknowledged by You in the Application for Perpetual Western Lands Lease at White Cliffs.

**Term** means the term commencing on the Commencing Date and terminating on the Terminating Date.

**Terminating Date** means the date being the earlier of the date that this Lease is:

- (a) forfeited by the Minister in accordance with Division 7.4 of the Act; or
- (b) surrendered by You.

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

**Works** means any alteration, addition or installation in or to the Premises and/or Your Fixtures which already exist including building or construction works (other than maintenance or repairs).

**Works Bank Guarantee** means an irrevocable and unconditional written guarantee issued by an Australian bank with an expiry date not earlier than 12 months after the date on which the Works are expected to be completed and, in a form acceptable to the Landlord in its absolute discretion.

**You or Your** means the person(s) identified in the first schedule of the folio of the register of the Land and includes Your permitted assigns of this Lease.

**Your Fixtures** means all improvements including any building, structure, fitout, fittings, fixtures, wires, pipes, roads, paving and other infrastructure or property on the Premises constructed, installed or otherwise effected by or for You or Your predecessors and Your Invitees during the Term or which are in or on the Premises during the Term and are not owned by the Landlord.

**Your Invitees** means:

- (a) Your permitted sub-tenants and licensees;
- (b) Your employees, agents, consultants, contractors, members, clients, customers, visitors; and
- (c) other persons on or in the Premises with or without Your consent.

## 2.2. Interpretation

### (a) 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.

(b) **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.

(c) **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.

(d) **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.

(e) **Parties**

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

(f) **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.

(g) **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.

(h) **Entire Agreement**

This Lease and the Statement of Acknowledgement signed by You 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.

(i) **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 is situated, such act, matter or thing may be done on the next succeeding day which is not a Saturday, Sunday or public holiday.

(j) **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.

(k) **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.

(l) **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.

(m) **Defined Terms**

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.

(n) **Notices etc**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Lease:

- (i) must be in writing;
- (ii) must be addressed:
  - (A) as set out in the Address for Service of Notices (or as otherwise notified by that party to each other party from time to time); or
  - (B) where You are a corporation, at Your registered office or at the Premises;
- (iii) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (iv) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, or sent by email to the email address, of the addressee, in accordance with clause 2.1(n)(ii); and
- (v) is taken to be received by the addressee:
  - (A) (in the case of prepaid post sent to an address in the same country) two Business Days after the date of posting;
  - (B) (in the case of prepaid post sent to an address in another country) four Business Days after the date of posting by airmail;
  - (C) (in the case of email) at the time in the place to which it is sent equivalent to the time shown on the email from which it was sent (unless the sender receives an automated message that the email has not been delivered); and
  - (D) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5:00pm, it is taken to be received at 9:00 am on the next Business Day.

(o) **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.

(p) **Lease ends**

A reference to the end of this Lease is a reference to the determination of the Term by default or otherwise. If this Lease ends as a result of a right of forfeiture 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 forfeiture except Claims and Losses arising from a prior breach of this Lease which continue and the continuing obligations such as those under clause 17.

(q) **Continuing Obligations**

The obligations of the parties arising prior to the end of this Lease will not merge on the Terminating Date or earlier determination of this Lease until they are fulfilled.

(r) **Your Obligations and Payments**

- (i) You must perform Your obligations under this Lease at Your own expense and risk. Where an obligation is imposed on You under this Lease, You must ensure that You and Your Invitees perform the obligation. Where You are prohibited from doing anything under this Lease, You must ensure that You and Your Invitees do not breach the prohibition.
- (ii) 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.

(s) **Implied Covenants**

- (i) 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.
- (ii) 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.
- (iii) Any present or future legislation or any implied term (including a duty of good faith or anything similar) which operates to vary Your obligations 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.

**2.3. Public Authority**

This Lease or anything done or to be done under this Lease:

- (a) is not to be taken as approval or consent by the Landlord as a regulatory authority; and
- (b) does not in any way inhibit, deter, or prejudice the Landlord in the proper exercise of its functions, duties or powers,

pursuant to or under any legislation including the Act.

**2.4. Opinion of the Minister or Landlord**

An opinion to be formed by the Landlord or the Minister for the purposes of this Lease may be formed on such grounds and material as the Landlord or the Minister deem to be sufficient.

**2.5. Reservations**

In addition to any other provision in this Lease, the Landlord reserves the following:

- (a) all rights to metals, gems, precious stones, coal, mineral oils and minerals within the meaning of the Mining Act together with all rights necessary for ingress, egress, search, prosecution, and removal and any incidental rights and powers, subject to compliance with the *Mining Act 1992 (NSW)* (including provisions relating to access and compensation); and
- (b) all rights to timber and forest products as defined in the *Forestry Act 2012 (NSW)* together with all necessary rights for ingress, egress and removal together with any incidental rights and powers, except where the use of timber is permitted under this Lease.

**2.6. No right to purchase etc**

You expressly acknowledge that the grant of this Lease does not confer a right to purchase the Land or to the grant of a further lease or to the grant of any licence, unless specifically set out in this Lease.

**2.7. Reviews and inspections**

You acknowledge that a review, inspection or approval of any plans or works by the Landlord under this Lease is not a review or approval for any other purpose and it is not a warranty that the plans or work comply with any legislation, are fit for their purpose, are current, accurate or otherwise in order.

**2.8. Crown Land Management Act 2016 (NSW)**

You expressly acknowledge that:

- (a) while the Land is Crown land, this Lease is a holding under the Act, and the Minister has the rights and powers specified under that Act including the right to withdraw a holding under section 7.8;
- (b) this Lease may be forfeited pursuant to the provisions of section 7.9 of the Act, and the provisions of Division 7.4 will apply, in the circumstances set

out in that section, including where:

- (i) You contravene a provision of the Act or another act applying to this Lease;
  - (ii) You contravene a condition of this Lease;
  - (iii) You fail to make a payment due under the Act, the regulations or this Lease within 3 months of that payment becoming due;
  - (iv) You give up or part with possession of all or part of the Premises, except as authorised by the Act, regulations or this Lease; or
  - (v) the Lease otherwise becomes subject to forfeiture under the Act.
- (c) nothing in this Lease fetters, restricts or affects the Minister's discretion as to the use of the Minister's statutory powers.

#### 2.9. **Landlord Execution**

Where the signatory to this Lease is the Minister or a delegate of the Minister, You may not require evidence of the authority to sign, including the appointment of, or delegation to, the Minister or delegate.

#### 2.10. **Electronic Execution, Counterpart and Exchange**

This Lease may be executed in any number of counterparts each counterpart constitutes an original of this Lease all of which together constitute one instrument. For the purposes of electronic execution and exchange of this Lease such execution can take place via DocuSign or AdobeSign whilst witnessed via audio visual link (whether that be through Microsoft Teams, Skype, FaceTime or Zoom or similar). Where execution takes place in this form You and the Landlord agree that such execution is legally binding and enforceable in accordance with the *Electronic Transactions Act 2000* (NSW). A party who has executed a counterpart of this Lease may exchange it with another party by emailing a PDF (portable document format) copy of the executed counterpart to that other party.

#### 2.11. **Access Requirements**

As a condition of access, You must deliver the Access Requirements to the Landlord on or before the Commencing Date.

### **3. TERM**

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#### 3.1. **Term**

The Landlord leases the Premises to You for the Term and You accept the Lease of the Premises subject to the terms of this Lease.

#### 3.2. **Nature of Tenancy**

You acknowledge and agree that You:

- (a) must pay all Costs in relation to the Premises and the Landlord has no responsibility or obligation in this regard unless expressly stated in this Lease; and
- (b) take and are subject to the same responsibilities and liabilities in regard to the Premises including in respect of:

- (i) persons, property, costs and otherwise; and
- (ii) capital or structural works, repairs and maintenance, (which may only be carried out in accordance with the terms of this Lease),

which You would take and be subject to if You were the owner of the Premises.

- (c) The express provisions of this Lease do not limit the scope of this clause 3.

#### **4. BASE RENT AND RENT REVIEW**

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##### **4.1. Payment of Base Rent**

You must pay to the Landlord (or to the relevant body or person as nominated in writing by the Landlord from time to time and unless the Landlord directs otherwise under Section 12.16 of the Act) the Base Rent without demand, without any deduction, counterclaim or right of set-off at all, by equal annual instalments in advance with the first payment due on the Commencing Date and on the first day of July for each year thereafter during the Term.

##### **4.2. Assessment of Base Rent**

The Landlord must assess the Base Rent payable by the Tenant for each Financial Year during the Term in accordance with Part 5 Division 4, Clause 54 of the *Crown Land Management Regulation 2018* (NSW).

#### **5. OUTGOINGS, SERVICES AND EXPENSES**

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##### **5.1. Payment of Outgoings, Rates and Taxes**

- (a) **Outgoings** means the total of the following amount paid or incurred by the Landlord for a Financial Year in connection with the Premises and/or the Land:

- (i) rates, assessments, levies, charges or other fees (for example, council rates and charges, water rates, electricity, gas, sewerage and drainage, car parking levies, fire services levies and emergency services levies); and
- (ii) taxes (including any land tax payable under section 21C of the *Land Tax Management Act 1956* (NSW)).

- (b) You acknowledge that payment of all Outgoings in respect of the Premises is Your sole responsibility, including any late payment fees, interest or penalties.

- (c) You must arrange for all Outgoings to be invoiced directly to You and paid by the due date specified on the invoice.

- (d) You must at the request of the Landlord provide the Landlord with a copy of the invoices and payment confirmation.

- (e) You acknowledge that for the purposes of section 21CA of the *Land Tax Management Act 1956* (NSW), this clause constitutes a land tax disclosure statement to You.

##### **5.2. Services**

- (a) You must pay on time all costs for all Services including:



- (i) for all sources of energy, electricity, gas, telephone, oil, data and water; and
  - (ii) any assessment for trade waste or other costs incurred as a result of Your particular use or occupation of the Premises.
- (b) You must arrange for all Services to be invoiced directly to You and paid by the due date specified on the invoice.

### 5.3. **Roads**

- (a) Where the Landlord has paid a contribution under section 217-219 of the *Roads Act 1993 (NSW)* in respect of the Premises, You must pay to the Landlord the amount of that contribution within 3 months of receipt of written notice from the Landlord requesting payment.
- (b) You must pay to the Landlord the proportional part of the costs of road construction as notified by the Department of Planning and Environment within 3 months of the date of gazettal of the granting.

### 5.4. **Lease Costs and Cost of Consents and Litigation**

You must pay:

- (a) all registration fees and stamp duty payable on this Lease.
- (b) the Landlord's reasonable Costs (including reasonable legal costs, stamp duty and disbursements) in relation to any assignment, transfer, sublease, breach or default by You or Your Invitees under this Lease, and the exercise of any right, power or remedy of the Landlord under this Lease, in law or in equity.
- (c) the Landlord's reasonable expenses, including reasonable legal costs and disbursements, architect's fees and consultant's charges incurred in relation to:
  - (i) any consent or approval sought by You, whether or not the consent or approval is granted, including a consent to assign the Lease;
  - (ii) any request by You which includes the surrender of this Lease; and
  - (iii) any litigation or dispute resolution procedure involving the Landlord commenced by or against You in which no judgement or order is recorded against the Landlord.

## **6. GOODS AND SERVICES TAX**

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### 6.1. **Payments Exclusive of GST**

All payments or other consideration paid or payable under this Lease are exclusive of GST unless those payments are exempt from GST.

### 6.2. **Payment of GST**

In addition to payment for a supply in connection with this Lease (including the Base Rent and Outgoings) on which GST is paid or payable, You 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.

**6.3. Tax Invoice**

At Your request, the Landlord will provide You with a tax invoice as prescribed in the GST Legislation.

**6.4. Late Payment**

If the Landlord becomes subject to penalties or interest resulting from late payment of GST because of Your failure to comply with this clause 6, You must pay on demand an additional amount equal to the amount of those penalties and interest.

**6.5. Indemnities and Reimbursements**

If a party is obliged to make a payment under an indemnity or is required to reimburse a party for a cost (e.g., a party's obligation to pay another party's legal costs) on which that other party must pay GST, the indemnity or reimbursement is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).

**6.6. Adjustments**

If an adjustment of GST is required as a result of an adjustment event in respect of a supply made under or in connection with this Lease, then:

- (a) a corresponding adjustment of the GST amount payable under this Lease must be made between the parties within 21 days after the end of the tax period in which the adjustment is attributable;
- (b) the supplier, if obligated to do so under the GST Legislation, must issue an adjustment note within 21 days after the end of the tax period in which the adjustment is attributable; and
- (c) where the Landlord is required to pay an amount under clause 6.6(a), the amount will be limited to the amount of the input tax credit or decreasing adjustment (if any) to which the Landlord determines it is entitled for the Landlord's acquisition of the supply to which the payment relates. The amount will be payable within 10 Business Days after the Landlord has received the benefit of the input tax credit or decreasing adjustment.

**7. USE OF PREMISES**

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**7.1. Permitted Use**

You must only use the Premises for the Permitted Use. You may not use the Premises for any other use.

**7.2. Requirement to Carry on Permitted Use**

- (a) You must conduct Your business and all the activities comprising and incidental to the Permitted Use (including without limitation continuing to trade and operate the facilities and Improvements on the Premises) continuously throughout the Term in a competent and businesslike manner.
- (b) You must use the whole of the Premises for the highest and best use provided that such use is consistent with the Permitted Use and complies with the terms of this Lease.
- (c) You must open for trade at all times usual and lawful for a business of the kind conducted by You on the Premises.

**7.3. Operation**

- (a) You must ensure that You are not involved in any conduct or activity (including by use of the Premises), which, in the Landlord's opinion:
  - (i) will or may directly or indirectly materially harm the name or reputation of the Landlord or the Minister; or
  - (ii) brings the Landlord or the Minister into disrepute, contempt, scandal or ridicule.
- (b) If You:
  - (i) wilfully abandon the Premises;
  - (ii) cease the Permitted Use in favour of a use not permitted by the Landlord;
  - (iii) cease to use the Premises continuously during the Term for the Permitted Use, or
  - (iv) cease to use the Premises in accordance with clause 7.3(a),then the Landlord may forfeit the Lease by providing 10 Business Days written notice to You.

**7.4. No Warranty as to Use**

The Landlord does not warrant (either presently or in the future) that the Premises is suitable for, or may be used for the Permitted Use or any purpose. You accept this Lease with the full knowledge of and subject to any prohibitions or restrictions on the use of the Premises from time to time under any Law or Requirement.

**7.5. Restrictions on Use**

You must not and must not permit Your Invitees to:

- (a) use the Premises for any activity that is dangerous, offensive, noxious or illegal or that may become a nuisance for any neighbouring property;
- (b) overload the ceilings, floors, walls, the electrical system or any other services to the Premises;
- (c) damage the Premises;
- (d) do anything to contaminate, pollute or increase toxicity in the Premises or the environment;
- (e) allow illegal drugs or illegal substances to be sold from, consumed or used on the Premises;
- (f) do or permit any person to do any act, matter or thing which results in nuisance, damage or disturbance to the Minister or owners or occupiers of adjoining or neighbouring lands or buildings; or
- (g) burn, clear or remove standing or fallen timber or permit any other person to undertake the same without the prior written consent of the Minister and subject to such conditions as the Minister may determine.

## 8. YOUR ADDITIONAL OBLIGATIONS

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### 8.1. General Obligations

You must:

- (a) comply and ensure Your Invitees comply with:
  - (i) all Laws and all notices, orders and directives from any Authority relating to the use or occupation of the Premises;
  - (ii) obtain the consents or licences needed;
  - (iii) comply with any conditions of consent; and
  - (iv) keep current any Approvals, consents, licences or registrations needed for the use of the Premises by You;
- (b) promptly provide to the Landlord a copy of any notice, order or directive from any Authority relating to the Premises You receive; and
- (c) give notice to the Landlord promptly of any damage to or accident upon the Premises or any circumstances likely to cause any damage or injury.

### 8.2. Reporting Obligations

You acknowledge and agree that:

- (a) the Landlord may require You to complete a self-reporting questionnaire in respect of You, Your obligations under this Lease and Your use and occupation of the Premises (**Self-Reporting Questionnaire**);
- (b) You may be required to complete the Self-Reporting Questionnaire on or prior to the Commencing Date and thereafter annually or quarterly or at any other periods of time, throughout the Term of the Lease, as notified by the Landlord;
- (c) in completing the Self-Reporting Questionnaire, You may be required to submit documents to evidence Your compliance with Your obligations under this Lease and the Landlord's additional requirements in relation to Your use and occupation of the Premises, including but not limited to You providing:
  - (i) Your historical company extract;
  - (ii) evidence of insurances required under the Lease;
  - (iii) evidence of payment of Outgoings and Services;
  - (iv) evidence of Your solvency;
  - (v) evidence of compliance with Laws;
  - (vi) consents and approvals required for Your use and occupation of the Premises including the use of Your Fixtures;
  - (vii) fire safety certifications (including but not limited to an annual fire safety statement);

- (viii) pest inspection reports;
  - (ix) schedule of maintenance and repair works undertaken in respect of the Premises;
  - (x) flood emergency response plans for the Premises;
  - (xi) emergency evacuation plans in respect of the Premises;
  - (xii) any other documents and information reasonably required by the Landlord from time to time; and
- (d) You must comply with and complete any Self-Reporting Questionnaire, within the time specified by the Landlord and in the form required by the Landlord, as notified by the Landlord from time to time.

### 8.3. **Applications to Authorities**

You must not and must not permit Your Invitees to lodge any application to any Authority in respect of the Premises without first obtaining the Landlord's consent.

### 8.4. **Title**

- (a) You must at all times observe and perform the restrictions, stipulations, easements (including those granted or permitted pursuant to clause 12.5) and covenants referred to in the folio of the register for the Landlord as if You were the registered proprietor of the Land.
- (b) You acknowledge that You are bound by the terms of any easements and covenants referred to in clause 8.4(a), and any lease, licence, or other right of occupation granted by the Landlord in respect of the Premises, to which this Lease is subject or which is concurrent to this Lease.
- (c) You further acknowledge that You indemnify and release the Landlord against, any Claim brought against, or Loss incurred by the Landlord or the Minister arising from Your or Your Invitees' use or obligations in respect to any easement benefitting or burdening the Premises.

### 8.5. **Securing of the Premises**

You are responsible for:

- (a) arranging and maintaining the security of the Premises; and
- (b) protecting against any unauthorised entry to the Premises.

### 8.6. **Infectious Diseases**

You must:

- (a) ensure that regular, preventative maintenance is carried out by properly qualified persons to minimise the risk of infectious diseases occurring within the Premises;
- (b) if any infectious disease occurs or is reasonably believed to have occurred within the Premises:
  - (i) immediately notify the Landlord as soon as You become aware of the infectious disease;

- (ii) give all the necessary notices and any other information which may be required in respect of the infectious disease to the relevant Authorities;
- (iii) take remedial action as required by the Landlord or any relevant Authority.

#### 8.7. **Fire Safety Equipment**

You must:

- (a) provide and maintain on the Premises and keep readily available for use proper fire extinguishing appliances;
- (b) take all necessary steps to obtain from the Fire Control Authority all necessary certifications (including but not limited to any annual fire safety statement) confirming that the fire extinguishing appliances provide, in their nature, number and location, a reasonable standard of fire protection of the Premises;
- (c) provide the certificates referred to above in clause 8.7(b) to the Landlord:
  - (i) prior to the first day of July in each year during the Term;
  - (ii) after an alteration or additional to the Premises and/or Your Fixtures; and
  - (iii) after a change in use of the Premises.

#### 8.8. **Aboriginal objects and Artefacts**

You acknowledge and agree that:

- (a) unless authorised to do so by a permit under Part 6, Division 2 *Aboriginal heritage impact permits* of the *National Parks and Wildlife Act 1974* (NSW) and with the prior written consent of Barkandji Corporation and subject to observance and compliance with any conditions imposed on the grant of such permit or consent, You must not knowingly disturb, destroy, deface or damage any Aboriginal object or place or other item of archaeological significance on the Land, and must take every precaution in drilling, excavating or carrying out of other operations or works against any such disturbance, destruction, defacement or damage;
- (b) upon becoming aware of any Aboriginal object or place or other item of archaeological, significance on the Land, You will notify within 24 hours the Secretary responsible to the minister administering the *National Parks and Wildlife Act 1974* (NSW) of the existence of such relic, place or item;
- (c) You must not continue any operations or works on the Land likely to interfere with or disturb any Aboriginal object, place or other item of archaeological significance without the approval of the Secretary responsible to the minister administering the *National Parks and Wildlife Act 1974* (NSW) (which will not be provided without the prior written consent of Barkandji Corporation) and You must observe and comply with all reasonable requirements of the Director-General in relation to the carrying out of the operations or works;
- (d) all fossils, artefacts, coins, articles of value, articles of antiquity, structure and other remains or things of geological historical or archaeological interest (**Artefacts**) discovered in or under the surface of the Land will as

between You and the Landlord be deemed to be the absolute property of the Landlord, held by the Landlord on trust for and on behalf of the Crown; and

- (e) the Landlord shall be authorised by You to take every precaution to prevent the Artefacts being removed or damaged. You must immediately upon discovery of the Artefacts notify the Minister of such discovery and carry out at Your reasonable expense the Landlord's orders as to the delivery up of or disposal of the Artefacts.

**8.9. Eradication of Noxious Plants, Animals etc**

You must take steps to eradicate or control all noxious plants, noxious animals and noxious insects on the Land as required by law.

**8.10. Removal of Materials and Improvements**

- (a) You acknowledge and agree that except where there is an imminent and immediate risk of serious harm to persons or property You or Your Invitees will not remove, extract, dig up or excavate any sandstone, gravel, clay, loam, shell or similar substance or permit any other person to undertake any such action without the prior written consent of the Landlord (which will not be provided without the prior written consent of Barkandji Corporation) and subject to such conditions as the Landlord may determine in its absolute discretion.
- (b) If the Landlord consents to the removal or alteration of an Improvement, that Improvement must be reinstated when the Lease ends, and You must undertake the necessary works to place the Premises in the condition it was in prior to the Improvement or alteration.

**8.11. No Holding Out**

You will not in connection with the Premises or otherwise:

- (a) directly or indirectly hold out or permit to be held out to any member of the public any statement, act, deed, matter or thing indicating that the Premises is being used or managed or supervised by the Landlord or the Minister;
- (b) act as or represent Yourself to be the servant or agent of the Landlord or the Minister.

**8.12. Signage**

- (a) You agree that before displaying a Sign on the outside of the Premises or anywhere that can be seen from the outside of the Premises, You must obtain the approval of any relevant Authority (if required by such relevant Authority).
- (b) You must:
  - (i) not erect any Sign which will or may directly or indirectly materially harm the name or reputation of the Landlord or the Minister or bring the Landlord or the Minister into disrepute, contempt, scandal or ridicule;
  - (ii) ensure You maintain and repair the approved signage during the Term of the Lease; and

- (iii) make good any damage to the Premises caused by the Sign or by any act or omission by You (or Your Invitees) in connection with the installation, maintenance, testing or removal of the Sign.

**8.13. Roads and Reserves**

- (a) You must not obstruct or interfere with any roads, reserves or tracks on the Land existing at the date of this Lease or subsequently created under a Law or the use of them by any person.
- (b) You must erect gates on roads within the Premises when and where directed by the Landlord for public use and must maintain those gates together with approaches in good order to the satisfaction of the Landlord.

**8.14. Fencings**

You must, within 1 year from the Commencing Date or such further period as the Landlord may allow, enclose the Premises, either separately or conjointly with other lands held in the same interest, with a suitable fence to the reasonable satisfaction of the Landlord.

**8.15. Land Management Matters**

- (a) You must, at Your cost take all reasonable steps to maintain and the keep the Premises free and clean of pests, insects, vermin, birds and animals.
- (b) You must not, and must not permit Your Invitees to:
  - (i) cut any timber, including under-storey vegetation unless required to comply with other obligations under this Lease;
  - (ii) burn off any vegetation without the prior approval of the relevant Fire Control Authority;
  - (iii) agist stock or graze animals and all related activities on the Premises;
  - (iv) clear any native vegetation; or
  - (v) through grazing or otherwise cause, aggravate or accelerate soil erosion.
- (c) You must undertake all works reasonably necessary to prevent soil erosion arising from or contributed to by Your use of the Premises including:
  - (i) stabilisation of soil structures; and
  - (ii) fostering and cultivating ground cover and landscape amenity.

**8.16. Local Amenity**

You must take all reasonable steps to prevent interference with the amenity of the locality comprising the Premises and surrounding area caused by noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products, grit, oil or otherwise.

**8.17. Flood Damage**

You must conduct Your operations and works on the Premises in such a manner to



prevent any risk of danger, injury or damage from floods or storms and must observe and perform any directions given by the Landlord with a view to minimising or preventing any flood or storm damage.

**8.18. Outbreak of Fire**

You must:

- (a) take all precautions against causing an outbreak of fire; and
- (b) comply with the *Rural Fires Act 1997* (NSW) and its regulations.

**8.19. Blasting**

You or Your Invitees must not use any explosives on the Premises without the prior written consent of the Landlord (which will not be provided without the prior written consent of Barkandji Corporation) and subject to such conditions as the Landlord may determine in its absolute discretion.

**8.20. Vehicle Access**

- (a) You acknowledge the geology and landscape of the Premises and the surrounding area and agree that:
  - (i) there may be service conduits located in and around the Premises;
  - (ii) neither the Landlord nor the Minister make any warranties or representations regarding the location of any service conduits in or around the Premises;
  - (iii) You are responsible for Your and Your Invitees' vehicular access to the Premises at Your own risk;
  - (iv) You are liable for and must indemnify and release the Landlord and the Minister against any Loss incurred by the Landlord or the Minister arising from any Claims arising from Your or Your Invitees' use of vehicles within the Premises; and
  - (v) You and Your Invitees must promptly remove any vehicle located within 5 metres of any service conduits upon request by a representative of any Authority.
- (b) You acknowledge the geology and landscape of the Premises and the existence of subterranean cavities and agree that:
  - (i) vehicular access within 50 metres of the Premises may cause instability to the Premises;
  - (ii) neither the Minister nor the Landlord make any warranties or representations as to the load bearing capacity of any part of the Premises;
  - (iii) Your use of heavy vehicles (exceeding a gross weight of 2 tonnes) within the 50-metre buffer zone at the rear of the Premises will be kept to a minimum;
  - (iv) You are responsible for Your and Your Invitees' vehicular access to the Premises at Your own risk; and
  - (v) You are liable for and must indemnify and release the Minister from

any Loss incurred by the Minister arising from any Claims arising from Your or Your Invitees' use of vehicles within 50 metres of the Premises.

- (c) You agree and acknowledge that any vehicle used to gain access to the Premises must be registered in accordance with applicable Laws, including but not limited to requirements to obtain compulsory third party insurance.

#### 8.21. **Unrestricted Access to Supply Lines**

You must ensure that unrestricted access is available to Central Darling Shire Council and Australian Inland Energy for repair and maintenance of any supply line.

### **9. YOUR WORKS OBLIGATIONS**

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#### 9.1. **Proposed Works**

You must not carry out or permit the carrying out of any Works without the Landlord's prior written approval which may be granted or refused in the Landlord's absolute discretion in consultation with Barkandji Corporation.

#### 9.2. **Approval for Proposed Works**

In seeking the Landlord's written approval pursuant to clause 9.1 (which may be given with or without conditions in the Landlord's absolute discretion in consultation with Barkandji Corporation) for any Works carried out during the Term of this Lease, You must first:

- (a) submit plans and specifications to the Landlord in such form as the Landlord may require; and
- (b) obtain the Landlord's consent to the lodgement of an application for any required Approvals.

#### 9.3. **Carrying out of Works**

If the Landlord approves any Works, the Landlord requires (unless it notifies You otherwise and without limiting the Landlord's right to impose further conditions) as a condition of the Landlord's approval that:

- (a) You must pay on demand all reasonable costs incurred by the Landlord in considering the Works, and its supervision, including the fees of architects or other consultants properly engaged by or on behalf of the Landlord;
- (b) Unless otherwise waived by the Landlord, prior to commencing any Works, You must provide the Landlord with a Works Bank Guarantee in an amount equivalent to 5% of the cost of the relevant Works. You agree:
  - (i) the Landlord may draw on such Works Bank Guarantee if You fail to comply with Your obligations in respect of any Works under this Lease; and
  - (ii) the Landlord will return the Works Bank Guarantee (to the extent it has not be drawn on by the Landlord) to You promptly after the relevant Works are completed to the satisfaction of the Landlord (including providing to the Landlord all documents required under clause 9.7).

- (c) You must ensure that all Works are carried out:
  - (i) promptly and without delay;
  - (ii) in accordance with plans and specifications approved by the Landlord;
  - (iii) at Your cost;
  - (iv) in a good and workmanlike manner by properly qualified and experienced contractors;
  - (v) in accordance with the applicable standards (including Australian Standards, the BCA and Work Health and Safety Legislation);
  - (vi) in compliance with all Approvals; and
- (d) in carrying out any Works, You must at Your cost:
  - (i) comply with all Environmental Protection Legislation and any permit, approval, authority or licence issued pursuant to such Legislation;
  - (ii) keep the Premises and any permanent or temporary buildings or structures on it reasonably clean and tidy;
  - (iii) endeavour to minimise inconvenience to adjacent occupiers of land;
  - (iv) regularly remove from the Premises all waste, rubbish, and debris, wrappings, containers and residue materials which result from any Works;
  - (v) properly supervise the activities of Your consultants and sub-contractors;
  - (vi) ensure that any consultants and sub-contractors comply with Your obligations under this Lease;
  - (vii) except as required by any Approval or as may be reasonably necessary to properly conduct the Works, take all reasonable measures to protect the Premises and, at the option of the Landlord, You must either:
    - (A) promptly repair and make good to the reasonable satisfaction of the Landlord any damage caused to the Premises; or
    - (B) if You fail to do so, reimburse the Landlord for the proper and reasonable costs incurred by the Landlord in having damage made good by the Landlord;
  - (viii) remove, demolish, re-execute, reconstruct or replace defective material or work and make good any defect in the Works as the Landlord reasonably directs where those materials or the workmanship are not in accordance with the requirements of the Lease; and
  - (ix) keep the Landlord informed of the progress of the Works and promptly respond to any reasonable request to provide information, documents and instructions and provide copies of all certificates

issues or required by any Authority.

#### 9.4. **Insurance for Works**

Prior to commencing any Works and at all times until they are completed, You must keep, or ensure that any builder or other contractor engaged, keep current insurance policies covering:

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

The required insurance policies must otherwise comply with the requirements set out in clause 14 of this Lease.

#### 9.5. **Principal Contractor**

The Landlord appoints You, and You accept the appointment, as principal contractor for the purposes of the *Work Health and Safety Act 2011* (NSW). The Landlord accepts that You 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.

#### 9.6. **Works Information**

You must ensure that the Landlord is notified of the commencement and practical completion of the Works, and You must promptly respond to any request to provide information, documents, or other material required by the Landlord.

#### 9.7. **Completion Documents**

If the Landlord approves any Works, on completion of those Works, You must immediately obtain and provide to the Landlord evidence of completion of the Works, including:

- (a) Works-as-executed plans in a form satisfactory to the Landlord; and
- (b) a copy of any certificates of compliance or satisfactory completion (including any Certificate of Completion) issued by the appropriate Authority or necessary to use or occupy the Works or required by any Laws.

#### 9.8. **Maintenance of Records**

You 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. You must make these records available to the Landlord when requested.

### **10. YOUR ENVIRONMENTAL OBLIGATIONS**

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#### 10.1. **Your Inspection**

You acknowledge and agree that:

- (a) prior to the Commencing Date You had access to the Premises and an opportunity to investigate the environmental aspects of the Premises; and
- (b) neither the Minister nor the Landlord warrants or represents that the Premises is free of Contamination or Hazardous Building Materials.

**10.2. No Contamination or Pollution**

You must not cause, exacerbate or permit any Pollution or Contamination of the Premises or the surrounding environment.

**10.3. Comply with Environmental Protection Legislation**

- (a) You must comply with all Environmental Protection Legislation and any permit, approval, authority or licence issued pursuant to such Environmental Protection Legislation.
- (b) You must comply with every Environmental Notice issued during the Term in respect of the Premises and ensure that copies are provided to the Landlord as soon as practicable after receiving them from the relevant Authority.

**10.4. Notification of Pollution**

In the event of a Pollution Incident or a breach or potential breach of Environmental Protection Legislation or an Environmental Notice relating to Pollution, You must:

- (a) where the Pollution Incident causes or threatens Material Harm to the Environment, immediately notify the required authorities in accordance with the Environmental Protection Legislation, and then notify the Landlord as soon as practicable; and
- (b) in all other situations, notify the Landlord as soon as practicable.

**10.5. Notification of Contamination**

If You become aware of Contamination on the Premises, whether or not that Contamination was caused by You:

- (a) You must notify the Landlord as soon as practicable after becoming aware of the Contamination; and
- (b) the Landlord will perform an assessment of the requirements to notify Contamination to the required Authorities in accordance with the Environmental Protection Legislation.

**10.6. Responsibility for Contamination**

You are responsible for all Contamination on the Premises that You cause, exacerbate or fail to prevent.

**10.7. Remediation of Contamination**

You must perform Remediation of Contamination for which You are responsible and any other reasonable requirements of the Landlord to deal with that Contamination.

**10.8. Indemnity and Release**

- (a) You release the Landlord from any Claim for which You are liable, or Loss incurred by You that arises out of or in connection with any Contamination or Pollution of the Premises.
- (b) In addition to any other indemnity in this Lease, You indemnify the Landlord against all Claims for Loss, injury or death in connection with or as a consequence of activities undertaken on the Premises by You, or Your Invitees, that result in Contamination or Pollution of the Premises or the surrounding environment or a breach of this clause 10.
- (c) The release referred to in clause 10.8(b) and the indemnity referred to in clause 10.8(c) do not apply to the extent that the Loss, liability, injury or death is caused by the wilful negligence of the Landlord.

**10.9. No Hazardous Chemicals**

You must not:

- (a) use or store any Hazardous Chemicals in or around the Premises other than those directly required for the Permitted Use except with the written consent of the Landlord;
- (b) comply with all obligations under the Work Health and Safety Legislation in respect to Hazardous Chemicals in or around the Premises or used as part of the Permitted Use including the maintenance of a Hazardous Chemicals register, production of a manifest of Hazardous Chemicals, installation of signage, emergency plans and equipment; and
- (c) in relation to Hazardous Chemicals on the Premises, where required by the Work Health and Safety Legislation provide the regulatory authority with health monitoring reports and notify the regulatory authority if Hazardous Chemicals exceed the quantities in the manifest of Hazardous Chemicals.

**10.10. Hazardous Building Materials**

You acknowledge and agree that You:

- (a) must rely on your own enquires and inspections regarding Hazardous Building Material on or forming part of the Premises;
- (b) are responsible for the management of any Hazardous Building Materials on or forming part of the Premises; and
- (c) release the Landlord and the Minister from any liability as to the presence of any Hazardous Building Materials on or forming part of the Premises.

**11. MAINTENANCE, REDECORATION AND REPAIR**

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**11.1. Acknowledgement as to condition of Premises**

- (a) You acknowledge that as at the Commencing Date of this Lease, the Landlord has not inspected the Premises. You accept the Premises as is subject to all defects (latent or patent) and all dilapidation and infestation.
- (b) You:
  - (i) cannot terminate this Lease; or

- (ii) make any Claim against the Landlord or the Minister; and
- (iii) are not entitled to an abatement of the Base Rent or any other amount payable under this Lease,

as a result of any defects (latent or patent) to the Premises, and You indemnify and release the Landlord and the Minister in respect of any Claim as a result of any defects (latent or patent) to the Premises.

#### 11.2. **Your Obligation to Maintain**

You must, at Your cost:

- (a) subject to the terms of this Lease, maintain and repair (including repairs of a structural or capital nature), replace, paint, renew and keep the whole and each part of the Premises and Your Fixtures structurally sound, waterproof, windproof, safe and in good substantial repair, order and condition except for fair wear and tear;
- (b) keep the Premises and Your Fixtures tidy, clean and free of all rubbish and debris;
- (c) keep, maintain and repair the Premises and Your Fixtures as good quality premises for the Permitted Use; and
- (d) keep, maintain, replace and repair all Services, fixtures and fittings exclusively servicing the Premises and Your Fixtures.

#### 11.3. **Your Further Obligations**

In addition to Your obligations under clause 11.2, You must at Your Cost:

- (a) keep the Premises and Your Fixtures free from pests including rodents, cockroaches and termites;
- (b) promptly repair or replace any stained, worn or damaged carpet;
- (c) immediately replace broken or faulty light bulbs and tubes;
- (d) immediately replace all broken, cracked or damaged glass;
- (e) keep all ground areas of the Improvements and any other landscaped areas, maintained, landscaped and in good order and condition; and
- (f) make good any damage caused to the Improvements or the Premises or Your Fixtures caused or contributed by You and Your Invitees.

#### 11.4. **Your Obligation to Maintain Equipment**

You must maintain, at its cost:

- (a) all equipment on the Premises (including Your Fixtures); and
- (b) all working parts of the fixtures and fittings in any Improvements,

in good repair and working order, clean and maintained in accordance with the manufacturer's instructions, including engaging contractors for regular maintenance where appropriate and replacing any damaged or broken parts or items.

11.5. **Acknowledgement**

You acknowledge that neither the Landlord nor the Minister is responsible or liable for any structural repair, maintenance or replacement of any part of the Premises, or any capital expenditure in respect of the Improvements, and that You are wholly responsible and liable in respect of those matters.

11.6. **Redecoration**

Despite any other provision in this Lease, You must Redecorate the Premises and Your Fixtures to the reasonable satisfaction of the Landlord at each Redecoration Date.

11.7. **Interruption of Services**

You:

- (a) cannot terminate this Lease; or
- (b) make any Claim against the Landlord; and
- (c) are not entitled to an abatement of the Base Rent or any other amount payable under this Lease,

as a result of any failure to function properly (including an interruption by the Landlord for inspection or repairs) of the Services and facilities for the Premises including water, electricity and blockages of sewers and drains.

11.8. **Notice to Carry Out Work**

- (a) The Landlord may give You a notice (**Works Notice**) requiring You to carry out any work on or to the Premises or to Your Fixtures that:
  - (i) is necessary to ensure Your obligations under this Lease are satisfied; or
  - (ii) the Landlord believes, acting reasonably, is necessary or standard industry practice in connection with the carrying on of the Permitted Use.
- (b) You must, at Your own expense, promptly comply with each Works Notice.

**12. QUIET ENJOYMENT, ACCESS AND LANDLORD GENERAL RIGHTS**

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12.1. **Quiet Enjoyment**

You 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.

12.2. **Access to and from the Premises**

You acknowledge and agree that:

- (a) it is Your responsibility to arrange safe access to and from the Premises for You and Your Invitees; and
- (b) the Landlord is not liable or responsible in any way whatsoever to arrange or provide any access to the Premises.



**12.3. Access by Landlord**

You 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 (including but not limited to Barkandji Corporation) access to the Premises at any reasonable time for the purpose of:

- (a) inspecting the repair, condition or value of the Premises or Your Fixtures or to determine if You are in breach;
- (b) doing anything that the Landlord can or must do under this Lease or must do by law;
- (c) undertaking surveys, undertaking maintenance, repairs and reinstatement of any buildings, structures or other improvements on the Premises including Your Fixtures;
- (d) assisting in any emergency or for security or safety;
- (e) undertaking any environmental investigations, assessments and audits; and
- (f) to remedy a non-monetary breach of this Lease.

**12.4. Landlord's rights to remedy defaults**

- (a) If You fail to comply with an obligation under this Lease, the Landlord may comply with that obligation as if the Landlord were You and recover the Cost of complying with that obligation from You. This clause does not affect the Landlord's other rights and remedies.
- (b) Prior to the Landlord exercising this right in clause 12.4(a) (except in the case of an emergency or perceived emergency where the Landlord will use its reasonable endeavours to notify You), the Landlord will provide You with written notice specifying the default, and requiring You to remedy the default within a reasonable period to be specified in the notice, having regard to the nature, extent, duration, impact and any recurrence of the default.
- (c) The Landlord may enter and remain on the Premises to do or effect anything referred to in clause 12.4(a) and You must pay to the Landlord the Landlord's reasonable costs and expenses incurred or paid in doing or effecting that thing.

**12.5. Subdivision, Easements and Other Rights**

- (a) The Landlord may subdivide the Land in any configuration alone or together with any other land adjoining the Land and may grant, transfer or create any space, easement, licence or other right or restrictions benefitting or burdening the Land or dedicate any part of the Land in favour of any person, any nearby land or any Authority for any purpose including access, support or services, if required by any Laws or in the case of emergencies.
- (b) You must, at the request of the Landlord, provide any consent or sign any document reasonably required by the Landlord to give effect to any right or arrangement granted or entered into by the Landlord under clause 12.5(a).

- (c) This Lease will be interpreted as being subject to any such right or arrangement granted or entered into by the Landlord under clause 12.5(a).

#### 12.6. Resumption

If the Land or any part of it is resumed or acquired by any Authority, the Lease of the Premises forfeits on the date on which the Authority requires vacant possession. The Landlord is not liable to pay You any compensation in this case. If only part of the Land is resumed or acquired then a new lease may be entered into on similar terms to this Lease for the remaining part of the Land subject to consent of the parties and any relevant consent of the Minister.

#### 12.7. Existing easements and reservations

- (a) Your rights under this Lease (including the right to quiet enjoyment) are subject to:
  - (i) all easements over the Land including easements for services (including but not limited to electricity, water, drainage, internet), access and rights of way;
  - (ii) all reservations affecting the Land including travelling stock routes, road and camping reserves; and
  - (iii) any other restriction or encumbrance registered on the title to the Land prior to the registration of this Lease.
- (b) You acknowledge and agree that no fences can be erected that may impede the use of a reservation.

### 13. FIRST RIGHT OF REFUSAL, ASSIGNMENTS, SUBLEASES

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#### 13.1. Additional Definitions

**Agreement to Purchase Form** means the agreement to purchase form published on the Crown Lands website accepting the offer in the Intent to Sell Form or the Second Intent to Sell Form (as the case may be).

**Intent to Sell Form** means the intent to sell form published on the Crown Lands website and includes requirements to disclose to Barkandji Corporation the sale price, deposit, settlement period and any special conditions of the sale.

**More Favourable Terms** means:

- (a) a lower purchase price;
- (b) a longer or shorter settlement period;
- (c) a lesser deposit; or
- (d) any variation to the terms and conditions set out in the Intent to Sell Form.

**Proposed Auction Form** means the proposed sale form published on the Crown Lands website and includes requirements to disclose to Barkandji Corporation the time, date and place for auction and to provide a copy of the marketing draft contract for sale.

**Relative** means a spouse, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendent or adopted child of that person, or of that person's spouse or the spouse of any of those listed persons including beyond couples and children

and their parents' by treating any couple (whether of the same sex or different sexes) as a married couple and treating any child as a natural child and any grandparent, parent, sibling, child, grandchild, niece, nephew, uncle or aunt as either related by blood or adoption.

**Second Intent to Sell Form** means the second intent to sell form published on the Crown Lands website and includes requirements to disclose to Barkandji Corporation the sale price, settlement period and any special conditions of the sale.

### 13.2. **First Right of Refusal Triggers**

You must not, without first obtaining the prior written consent of the Landlord and complying with the provisions of this clause 13:

- (a) assign, licence, sublease, sell (either by expression of interest, public auction or private treaty), transfer or otherwise part with possession of Your interest in this Lease; or
- (b) effect a change of Control of the corporation where You are a corporation ; or
- (c) alter the Control of the trust where You are a trustee ; or
- (d) propose any other dealing or action which would result in a third party occupying the Premises,

("each a **First Right of Refusal Trigger**").

### 13.3. **Exceptions to the First Right of Refusal Triggers**

- (a) Where You propose to assign, licence, sublease, sell, transfer or otherwise part with possession of Your interest in this Lease in the following manners a First Right of Refusal Trigger **will not apply**:
  - (i) where the proposed transferee/assignee/licensee/sublessee is a Relative; or
  - (ii) where the proposed transferee/assignee/licensee/sublessee is a beneficiary of the Tenant's deceased estate; or
  - (iii) where You propose to licence this Tenure for the purposes of short term rental accommodation arrangements within the meaning of section 54A of the Fair Trading Act 1987 (NSW),

("each a **First Right of Refusal Exceptions**").

- (b) Where a First Right of Refusal Exception takes place, You are only required to comply with the conditions contained in clause 13.10 (Standard Assignment and Subleasing Provisions).

### 13.4. **First Right of Refusal – Notice to Barkandji Corporation**

- (a) Prior to a First Right of Refusal Trigger taking place, You must first give Barkandji Corporation and the Landlord twenty (20) Business Days prior written notice in the form of the Intent to Sell Form offering to sell Your interest in the Lease to Barkandji Corporation on terms and conditions acceptable to You;
- (b) if after twenty (20) Business Days of service of the Intent to Sell Form to Barkandji Corporation and the Landlord, You:

- (i) **have** received an Agreement to Purchase Form from Barkandji Corporation then You must dispose of Your interest in this Lease to Barkandji Corporation in accordance with clause 13.7; or
- (ii) **have not** received an Agreement to Purchase Form from Barkandji Corporation then You may dispose of Your interest in this Lease subject to the conditions contained in clause 13.8.

**13.5. First Right of Refusal – Notice of Public Auction**

Where You propose to sell Your interest in this Lease by public auction, You are required to give Barkandji Corporation and the Landlord fifteen (15) Business Days prior written notice in the form of the Proposed Auction Form inviting Barkandji Corporation to attend the public auction and the Property and Stock Agents Legislation will apply (see regulation 18 of the Property and Stock Agents Regulation 2022 (NSW)).

**13.6. First Right of Refusal – Unsolicited Offer**

- (a) Where You receive an unsolicited offer to purchase Your interest in this Lease and those terms and conditions are acceptable to You, You must prior to accepting that offer, give Barkandji Corporation and the Landlord twenty (20) Business Days prior written notice in the form of the Intent to Sell Form offering to sell the Tenant's interest in this Tenure on those identical terms and conditions;
- (b) if after twenty (20) Business Days of service of the Intent to Sell Form to Barkandji Corporation and the Landlord, You:
  - (i) **have** received an Agreement to Purchase Form from Barkandji Corporation then the Tenant must dispose of the Tenant's interest in this Tenure to Barkandji Corporation in accordance with clause 13.7; or
  - (ii) **have not** received an Agreement to Purchase Form from Barkandji Corporation then the Tenant may dispose of the Tenant's interest in this Tenure to the same person or entity that submitted the unsolicited proposal subject to compliance with the conditions contained in clause 13.8.

**13.7. First Right of Refusal – Agreement to Purchase**

Where You **have** received an Agreement to Purchase Form from Barkandji Corporation then You must transfer Your interest in the Lease to Barkandji Corporation in accordance with the terms of the Intent to Sell Form.

**13.8. First Right of Refusal – No Agreement to Purchase**

Where You **have not** received an Agreement to Purchase Form from Barkandji Corporation then You may dispose of Your interest in this Lease subject to the following conditions:

- (a) You must not dispose of Your interest in the Lease to any other person or entity whatsoever on More Favourable Terms than those contained in the Intent to Sell Form; and
- (b) You must comply with the conditions under clause 13.10 (Standard Assignment and Sublease Provisions).

**13.9. First Right of Refusal – More Favourable Terms**

Where You are willing to accept More Favourable Terms than the terms and conditions offered to Barkandji Corporation under clause 13.4(a) or 13.6(a) the Tenant must re-offer those More Favourable Terms to Barkandji Corporation in accordance with the conditions set out in clauses 13.4 and 13.6. For the avoidance of doubt, this clause does not apply in circumstances where the Tenant proposes to sell the Tenant's interest in this Tenure by public auction (see clause 13.5).

**13.10. Standard Assignment and Sublease Provisions**

Consent to any proposed assignment, transfer or sublease (as the case may be) is subject to satisfaction of the following conditions:

- (a) You must not be in breach of this Lease;
- (b) You must have complied with clauses 13.1 to 13.9 (inclusive) as applicable;
- (c) You must show to the satisfaction of the Landlord that the proposed new tenant or sub-tenant:
  - (i) in the case of a sublease:
    - (A) is respectable, responsible and financially sound;
    - (B) will, in the Landlord's reasonable opinion, be able to fulfill Your obligations under this Lease;
    - (C) the new tenant or sub-tenant's proposed occupation and business would involve no higher security risk or loss of amenity within the Premises than Your occupation;
    - (D) is shown to the satisfaction of the Landlord to be capable of adequately carrying on the obligations contained in the Lease; and
    - (E) provides any personal or corporate guarantee including a guarantee by directors or shareholders of the proposed new tenant or sub-tenant required by the Landlord and the Lease is varied accordingly.
  - (ii) in the case of an assignment:
    - (A) is respectable, responsible and financially sound;
    - (B) will, in the Landlord's reasonable opinion, be able to fulfill Your obligations under this Lease;
    - (C) the new tenant's proposed occupation would involve no higher security risk or loss of amenity within the Premises than Your occupation; and
    - (D) provides any personal or corporate guarantee including a guarantee by directors or shareholders of the proposed new tenant required by the Landlord and the Lease is varied accordingly.
- (d) the proposed new tenant or sub-tenant signs a deed in a form reasonably

required by the Landlord which includes provisions that the incoming tenant or sub-tenant:

- (i) if a new tenant (in the case of assignment), will comply with all of Your obligations under this Lease on and from the date of assignment; or
- (ii) if a sub-tenant (in the case of a sublease):
  - (A) will not cause or contribute to a breach of this Lease;
  - (B) will comply with the terms of this Lease in so far as they affect the subleased premises;
  - (C) will only use the subleased premises for the Permitted Use; and
  - (D) acknowledges that the sublease will end automatically without any liability to the Landlord if this Lease ends for any reason, and the term of the sublease ends at least one day before the Terminating Date (unless the Landlord otherwise determines);
- (e) You pay to the Landlord, upon written notice, the Landlord's reasonable costs (including legal costs) and disbursements of and incidental to any proposed dealing under this clause 13.10, even if You (or the other party) does not comply with those clauses or if the proposed dealing does not proceed; and
- (f) You and the proposed new tenant or sub-tenant complies with any other conditions of consent required by the Landlord acting reasonably.

**13.11. Not Used**

**13.12. Change of Your control**

- (a) Where You are a corporation (other than a listed public company), a change in shareholding (including any variation in the beneficial ownership of the shares) of You or Your holding company (unless the holding company is a listed public company) that gives Your Control 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 tenant, and You must have complied with clauses 13.1 – 13.9 (inclusive) as applicable, provided that You are not in breach of this Lease.
- (b) Where You are 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 appointer 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, appointer or other person treated as the proposed new lessee, and You must have complied with clauses 13.1 – 13.9 (inclusive) as applicable, provided that You are not in breach of this Lease.

**13.13. Change of Landlord**

If the Landlord transfers its interest in the Land or grants a concurrent lease over the Land:

- (a) You and the Guarantor must within 21 days from the Landlord's request:
  - (i) enter into any documents the Landlord may reasonably require to enable the transferee or landlord in its name to enforce the benefit of Your obligations under this Lease;
  - (ii) vary this Lease to include the trust or other limitation of liability clause required by the transferee or landlord; and
  - (iii) provide a replacement Bank Guarantee for the Bank Guarantee Amount in favour of the transferee or landlord as nominated by the Landlord.
- (b) On transfer of the Land, the Landlord will be released from its obligations arising after it ceases to be Landlord.

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

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### **14.1. Your Insurance**

On or before the Commencing Date, You must take out and produce to the Landlord, evidence of each of the following insurance policies on or before the Commencing Date, and thereafter on each anniversary of the Commencing Date, covering:

- (a) public risk in respect of the Premises and Your Fixtures for the Public Risk Insurance Amount 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 You or any work or activities influenced or directed by You;
- (c) any loss of business revenues, arising from any cause whatsoever, that prevents or impedes You from fulfilling Your continuing obligation to pay the Base Rent in accordance with clause 4 of this Lease;
- (d) insurance to cover the full replacement value of the Premises including cover for loss, destruction or damage by flood, fire, lightening, storm, tempest, earthquake or other disabling cause; and
- (e) any other insurances required by Law or which the Landlord reasonably requires for at least the amounts the Landlord reasonably requires.

### **14.2. Insurance Terms**

All insurance policies required to be taken out under clause 14.1 must:

- (a) be held with an insurer authorised by the Australian Prudential Regulation Authority under section 12 of the *Insurance Act 1973* (Cth) to conduct new or renewal insurance business in Australia;
- (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) be held and kept current throughout the Term of the Lease and any period of holding over;
- (e) have endorsed upon them all relevant rights and interests of the Landlord and any mortgagee of the Premises; and
- (f) are on an occurrence, not a claim made, basis.

#### 14.3. **Premiums and deductibles**

All premiums in respect of all such policies and renewals of policies are to be paid punctually by You 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 You to the Landlord at the request of the Landlord. Any deductibles payable under any of the insurances required by this Lease shall be Your responsibility.

#### 14.4. **Your Duties**

You must ensure that, in relation to any insurance policy required to be effected and maintained by You in accordance with this Lease, You:

- (a) do not do anything or fail to do anything (insofar as it is reasonably within Your power) or permit anything to occur which prejudices any insurance;
- (b) if necessary, rectify anything which might prejudice any insurance;
- (c) reinstate any insurance policy if it lapses;
- (d) do not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Landlord;
- (e) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance; and
- (f) comply with the terms of each insurance policy.

#### 14.5. **Increased Risk**

- (a) You will not at any time during the Term do or bring upon the Premises anything whereby any insurance relating to the Premises against damage by fire and other risks may be rendered void or voidable.
- (b) If You bring anything onto the Premises whereby the rate or premium on such insurance shall be liable to be increased, You will obtain insurance cover for such increased risk and pay all additional premiums (if any) required on account of the additional risk caused by You use of the Premises.

#### 14.6. **Proceeds of Insurance**

- (a) In the event of damage or destruction of the Premises or Your Fixtures (including under clause 15) covered by insurance that You are required to maintain under this Lease, You must without delay, lodge a claim under the relevant insurance policy.



- (b) All moneys received by You in settlement of any claim under an insurance policy in respect of the damage or destruction of the Premises shall be paid into a bank agreed by the Landlord and You (or, in default of agreement a bank nominated by the Landlord) in an account (the Trust Account), in the name of the Landlord and paid in the following order of priorities:
- (i) firstly, in payment to the Landlord on account of expenditure by the Landlord in respect of any work required under this Lease to be undertaken by You but not commenced and completed within a reasonable time and as to any balance;
  - (ii) secondly, in payment progressively to You in reimbursement of Your costs in the reinstating, rebuilding or repairing (including demolishing or clearing), as the case may be, of the Premises, and as to any balance;
  - (iii) thirdly, an amount shall be credited to Your instalment of Base Rent falling due and any other amounts owing by You to the Landlord under the provisions of this Lease, and as to any balance; and
  - (iv) fourthly, such balance shall be equitably apportioned between the Landlord and You having regard to each parties' respective interests in the Premises at the day immediately prior to the incident giving rise to the insurance claim.
- (c) You must supplement, to the extent necessary to enable You to fulfil Your obligation under clause 15.1, the proceeds of the insurance claim with Your own funds.
- (d) You expressly agree that the provisions of this clause shall continue after the expiration or sooner determination of this Lease.

#### **14.7. Landlord may Claim Insurance**

The Landlord in its own name or as Your attorney in Your name shall be entitled to institute all proceedings against any office or company which issues a policy of insurance required by this Lease to recover from it any amount for Loss, damage or injury or other money payable under any indemnity in favour of the Landlord. You hereby appoint the Landlord as Your attorney for such purpose.

#### **14.8. Notification of Claim or Cancellation**

In respect of the insurances required to be effected and maintained by You pursuant to clause 14.1 of this Lease, You must immediately notify the Landlord, and in any event, within 48 hours of:

- (a) any occurrence or event that gives rise or may give rise to a claim under or which could prejudice any policy of insurance; or
- (b) any occurrence or event that may result in any insurance policy lapsing or being cancelled; or
- (c) the cancellation of any policy of insurance.

#### **14.9. Your Full Disclosure**

You will use all reasonable endeavours to ensure that full, true and particular information is given to Your insurer of all matters and things, the non-disclosure

of which might in any way prejudice or affect any such policy or policies of insurance or the payment of all or any moneys thereunder.

**14.10. Assumption of Risk by You**

Any act, matter or thing which You are obliged, required or permitted to do or effect under this Lease (including without limitation, reading and acting on the Risk Warning in clause 1, the signing of this Lease or the carrying out of any Works), Your Fixtures and the use and occupation of the Premises by You are all at Your sole risk, Cost and expense (including that a Law or Requirement of an Authority may affect the use or occupation of the Premises). You take the Premises and will be subject to the same responsibilities in regard to persons, property and otherwise in respect of the Premises to which You would be subject as if You were the owner of freehold of the Land.

**14.11. Your Release and Indemnity**

For the purposes of this clause “Landlord” includes the Minister and the employees, agents or contractors of the Landlord and the Minister. You cannot make a Claim against the Landlord. You release and indemnify (to the fullest extent permitted by Law) the Landlord from and against all Claims, including (but not limited to) claims for breach of statutory duty, Loss, injury or death which:

- (a) occurs on or around the Premises;
- (b) occurs from access to and from the Premises;
- (c) arises from the use of the Premises by You or Your Invitees;
- (d) occurs in connection with any Works undertaken by or on behalf of You or Your Invitees on or for the Premises (whether or not approved by the Landlord);
- (e) occurs in connection with any action, payment or works by the Landlord in remedying any breach of this Lease by You;
- (f) arises from the use of the Services in the Premises;
- (g) arises from the overflow or leakage of water from the Premises; or
- (h) arises from any act, default, misconduct, neglect, negligence or omission of any kind of You or Your Invitees,

except to the extent that it is caused by the wilful negligence of the Landlord. The indemnity in this clause applies notwithstanding that this Lease authorised or required You to undertake or perform the activity giving rise to any Claim for injury, Loss or damage.

**14.12. No Landlord Liability**

You expressly agree that the Landlord will have no responsibility or liability for any loss of or damage to Your Fixtures or personal property including but not limited to Your Fixtures.

**14.13. Your Continuing Obligation**

You expressly agree that Your obligations under this clause 14 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.

**14.14. Work Health and Safety**

You 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 (or its successors or assigns), Your insurer or any relevant authority in respect of any activity undertaken on the Land by You.

**14.15. Work Health and Safety release and indemnity**

In addition to any other release and indemnity in this Lease, You cannot make a Claim against the Landlord or the Minister and release the Landlord and the Minister from and indemnify them against all Claims for breach of statutory duty, Loss, injury or death caused by or arising out of or otherwise in respect of any activity undertaken on or around the Premises by any worker engaged, or caused to be engaged, by You and any worker whose activities are influenced or directed by You, except to the extent that it is caused by the wilful negligence of the Landlord, its employees, agents and contractors.

**14.16. 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 Minister or the terms of the Lease authorised or required You to undertake or perform the activity giving rise to the Claim.

**14.17. No Liability**

You must not by any act, matter, deed, failure or omission cause or permit to be imposed on the Minister any of Your liability under or by virtue of this Lease.

**15. DAMAGE OR DESTRUCTION**

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**15.1. Obligation to reinstate**

- (a) If the Premises or Your Fixtures are destroyed or damaged at any time during the Term so that it is unfit or substantially unfit for You to use or are inaccessible or substantially inaccessible, You must, within a reasonable period of time having regard to the nature and extent of the damage or destruction:
  - (i) promptly reinstate, rebuild or repair the Premises and Your Fixtures to nearly as possible the design immediately prior to the damage or destruction (or such other different design as the Landlord may reasonably approve) and to at least the standard they were required to be in prior to the damage or destruction, with such modification as approved by the Landlord, acting reasonably;
  - (ii) obtain all necessary approvals for undertaking and completing the works including complying with Your obligations under clause 9; and
  - (iii) apply proceeds received or received by or on behalf of You under an insurance policy in accordance with clause 14.6(b).
- (b) For the avoidance of doubt, nothing in this Lease obligates the Landlord to reinstate the Premises or the means of access to the Premises.

- (c) You must continue to pay all payments under this Lease for the period during which the Premises is unfit or substantially unfit for You to use or are inaccessible or substantially inaccessible, unless and to the extent any damage or destruction is caused by the Landlord, its employees, agents or contractors.
- (d) You must, having regard to the extent of damage or destruction, continue to perform and comply with Your obligations under this Lease.

## **16. DEFAULT**

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### **16.1. Default and forfeiture**

Each of the following is an event of default (whether or not it is in Your control):

- (a) You have demonstrated an intention to no longer be bound by the terms of this Lease (**Repudiation**);
- (b) the Base Rent or any other money payable by You under this Lease is more than 3 months overdue for payment;
- (c) You fail to comply with an Essential Term of this Lease;
- (d) You fail to comply with any other obligation under this Lease within 28 days (or such shorter period as provided for in this Lease) after the Landlord gives You notice requiring compliance; or
- (e) You are Insolvent.

### **16.2. Essential Terms of Lease**

The Essential Terms of this Lease include each of Your obligations:

- (a) to pay Base Rent, all Outgoings, Services and GST;
- (b) under clause 7 (Use of Premises);
- (c) under clause 8 (Your Additional Obligations);
- (d) under clause 9 (Your Works Obligations);
- (e) under clause 11 (Maintenance, Redecoration and Repair);
- (f) under clause 13 (First Right of Refusal, Assignments, Subleases); and
- (g) under clause 14 (Insurance, Release and Indemnity).

### **16.3. Landlord's rights in default**

- (a) If an Event of Default occurs, the Landlord without prejudice to any other Claim which the Landlord has or may have or could otherwise have against You or any other person in respect of that default, may:
  - (i) prior to any demand or notice as is required by Law, re-enter into and take possession of the Premises or any part of it (by force if necessary) and eject You and all other persons from the Premises, in which event this Lease will be at an end; or
  - (ii) by notice to You forfeit this Lease, and from the date specified in that notice this Lease will be at an end.

- (b) Should the Landlord re-enter the Premises under this clause 16.3, it may, at its discretion remove from the Premises, any of Your property and store such property at Your risk and expense.

**16.4. Recovery of Damages**

The Landlord can recover damages even if:

- (a) the Landlord accepts Your Repudiation of this Lease;
- (b) the Landlord ends this Lease by entering and taking possession of any part of the Premises or forfeits this Lease by notice; or
- (c) You abandon or vacate the Premises.

**16.5. Compensation**

If the Landlord forfeits this Lease following an Event of Default, breach of an Essential Term, the acceptance of a Repudiation of this Lease or otherwise, then without prejudice to the Landlord's other rights, powers or remedies, the Landlord is entitled to recover loss of bargain damages from You subject to the Landlord's obligation to mitigate its loss.

**16.6. Recovery of Money**

- (a) In addition to the Landlord's other rights and remedies, if this Lease is forfeited under clause 16.3, the Landlord, upon providing You with written notice, may in its absolute discretion recover from You:
  - (i) all arrears of money payable by You and any interest on that money calculated at the Prescribed Rate from the due date of that money to the date of forfeiture; and
  - (ii) all reasonable Costs (including the Landlord's administration costs and legal costs) incurred by the Landlord in rectifying any of Your breaches of this Lease and interest on that amount calculated at the Prescribed Rate from when it becomes due for payment until it is paid in full; and
  - (iii) all reasonable Costs incurred by the Landlord in recovering any money and interest on that amount calculated at the Prescribed Rate from when it becomes due for payment until it is paid in full; and
  - (iv) all amounts resulting from the loss of bargain damages and interest on that amount calculated at the Prescribed Rate from and when it becomes due for payment until it is paid in full; and
  - (v) where applicable, all Costs incurred by the Landlord in having a determination made in relation to the loss of bargain damages and Interest on that amount from when it becomes due for payment until it is paid in full; and
  - (vi) the reasonable costs and expenses of the Landlord in relation to reletting the Premises (including any commission or similar charge); and
  - (vii) any money which would have been received or recovered by the Landlord from You under this Lease for the period of the Term

remaining after forfeiture of this Lease had it been fully performed by You,

provided that the Landlord does all things reasonable to mitigate its loss.

- (b) If the Landlord serves a notice on You pursuant to clause 16.5(a), You must pay to the Landlord within 10 Business Days of receiving the notice, the damages claimed by the Landlord.
- (c) To the extent permitted by Law, You acknowledge that the Landlord may disclose items of Your personal information to a debt collector (including without limitation, Revenue NSW) for the purposes of collecting any overdue amounts payable by You under this Lease. The information that may be disclosed for the purposes of this clause 16.6(c) includes, without limitation, identifying information about You, information about overdue payments and information in respect of court judgments and bankruptcy orders in relation to You.

#### 16.7. **Waiver**

- (a) 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.
- (b) The Landlord's failure to take advantage of any default or breach of covenant on Your part will not be construed as a waiver of it, nor will any custom or practice which may grow between any of the parties in the course of administering this Lease be construed to waive or to lessen the right of the Landlord to insist upon the timely performance or observance by You of any covenant or condition of this Lease or to exercise any rights given to the Landlord in respect of any such default.
- (c) A waiver by the Landlord of a particular breach or default will not be deemed to be a waiver of the same or any other subsequent breach or default.
- (d) The demand by the Landlord for, or subsequent acceptance by or on behalf of the Landlord of Base Rent or any other moneys payable under this Lease will not constitute a waiver of any earlier breach by You of any covenant or condition of this Lease, other than Your failure to make the particular payment or payments of Base Rent or other moneys so accepted, regardless of the Landlord's knowledge of any earlier breach at the time of acceptance of such Base Rent or other moneys.
- (e) Money tendered by You and accepted by the Landlord may be applied in the manner the Landlord decides.

#### 16.8. **Power of Attorney**

You irrevocably appoint the Landlord to be Your attorney to do on behalf of You (only if You are in default under the Lease and the Landlord has legally entered into possession of the Premises) anything You may lawfully authorise an attorney to do including anything which confers a benefit on the Landlord.

#### 16.9. **Landlord may Rectify**

The Landlord may remedy at any time, without notice, any breach of this Lease by You as Your agent and at Your risk. You must pay on demand all reasonable costs incurred by the Landlord in remedying any breach of this Lease by You.

**16.10. Costs on Default**

You must pay the Landlord's Costs including management costs and legal fees and disbursements on an indemnity basis in connection with any breach of a provision of this Lease or default by You.

**16.11. Interest on Overdue Payments**

You must pay interest on any money due to the Landlord but not paid on the due date from the date payment was due at the Prescribed Rate until the date that the payment was made (inclusive).

**17. YOUR OBLIGATIONS ON EXPIRY OR FORFEITURE**

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**17.1. You are to Yield Up and Remove Your Property**

When this Lease ends You must, unless otherwise agreed in writing:

- (a) vacate the Premises;
- (b) remove at Your expense any items of personal property and repair any damaged caused by removal;
- (c) if directed and only if directed by the Landlord in writing, remove the Works, Improvements, and Your Fixtures installed during the Term of this Lease or a prior lease or licence, and make good any damage caused by the removal;
- (d) thoroughly clean the Premises and Your Fixtures and remove all rubbish, waste and materials brought onto or left in or about the Premises;
- (e) undertake any Remediation of any Contamination of the Premises;
- (f) Redecorate the Premises and Your Fixtures;
- (g) ensure the obligations under clause 10 and 11 at the end of the Lease are completed; and
- (h) return to the Landlord all copies of keys and other mechanisms of access to the Premises.

**17.2. Your Fixtures**

- (a) Your Fixtures (including any Works installed by You during the Term of this lease or a prior lease or licence) must, when this Lease ends, remain in place on the Premises in the condition they are required to be kept under this Lease, unless otherwise directed by the Landlord in writing.
- (b) In consideration of the grant of this Lease:
  - (i) Your Fixtures will become the property of the Landlord on the date this Lease ends;
  - (ii) You must transfer ownership of Your Fixtures to the Landlord, or any other person nominated by the Landlord (free from all mortgages, security, interest, encumbrances etc); and
  - (iii) You must sign any documents required by the Landlord to give effect to the transfer of ownership.

**17.3. Abandoned Property**

- (a) Anything not removed from the Premises at the end of this Lease, at the election of the Landlord by notice to You, becomes the property of the Landlord who can keep it or remove and dispose of it and recover from You the cost of removal, make good and disposal.
- (b) You indemnify the Landlord against all Claims for Loss or repossession in connection with the acquisition of this property by the Landlord.
- (c) No compensation is payable by the Landlord or the Minister in respect of any Works, Your Fixtures or other improvements left on the Premises.

**17.4. Your Failure**

If You fail to comply with Your obligations under this clause 17 (in which respect time is of the essence) the Landlord may at Your expense perform these obligations.

**17.5. Your Obligation to Continue to Pay Rent**

If, upon the expiration or earlier determination of this Lease, You have not performed and observed all of Your obligations under this Lease, You must continue to pay the Base Rent and all other money payable under this Lease until You have performed and observed all of Your obligations to the satisfaction of the Landlord or the failure has been rectified by the Landlord.

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**18. BANK GUARANTEE**

**18.1. Provision of Bank Guarantee**

- (a) You must, prior to the Commencing Date, provide to the Landlord a Bank Guarantee for the Bank Guarantee Amount in favour of the Landlord to secure performance of Your obligations under this Lease, if required by notice in writing by the Landlord.
- (b) You agree to increase that part of the Bank Guarantee that is the Bank Guarantee Amount immediately, so that the Bank Guarantee Amount at all times represents the equivalent of the number of months of Base Rent.

**18.2. Call on Bank Guarantee**

In the event of any failure by You to perform or observe the terms and conditions of this Lease, the Landlord may, without further notice to You, call upon the Bank Guarantee for any amount outstanding.

**18.3. Replacement Bank Guarantee**

If at any time any money is paid under a Bank Guarantee or the Bank Guarantee Amount increases, You must at the request of the Landlord provide the Landlord with a supplementary or replacement Bank Guarantee within 21 days, so that the amount of the Bank Guarantees held by the Landlord is the Bank Guarantee Amount (as varied under clause 18.1(b)).

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**19. GUARANTEE AND INDEMNITY**

**19.1. Consideration**

In consideration of the Landlord entering into this Lease or granting You possession of the Premises at the request of the Guarantor, the Guarantor gives the Landlord



the guarantees, indemnities and covenants set out in this clause 19.

**19.2. Guarantee**

The Guarantor unconditionally and irrevocably guarantees the performance of all Your obligations and liabilities under this Lease, including:

- (a) punctual payment by You of the Base Rent, interest and all monies payable under this Lease;
- (b) payment of damages for a breach of any provision of the Lease including Essential Terms;
- (c) Loss in the event of You Repudiating the Lease or abandoning or vacating the Premises;
- (d) Loss arising from disclaimer of the Lease as if the Lease had not been disclaimed;
- (e) payment of damages or compensation for any Loss or damage to the Premises or the Landlord's Fixtures or occupation of the Premises; and
- (f) the Landlord's reasonable legal and other expenses of enforcing these obligations against You and the Guarantor, terminating the Lease or recovering possession of the Premises on a full indemnity basis.

This guarantee continues in full force and effect until the Landlord is reasonably satisfied that all of Your obligations and liabilities under this Lease have been fully performed and paid.

**19.3. Indemnity**

The Guarantor unconditionally and irrevocably indemnifies the Landlord against all Losses incurred by the Landlord as a direct or indirect result of:

- (a) any failure by You to perform Your obligations under this Lease;
- (b) any breach of this Lease by You;
- (c) Your obligations under this Lease being unenforceable;
- (d) any money payable by You under this Lease being irrecoverable; or
- (e) the guarantee or covenants in this clause 19 being unenforceable.

**19.4. Covenants**

The Guarantor must on demand by the Landlord:

- (a) pay all moneys including the Base Rent payable by You under this Lease which are not paid by You within the time prescribed for payment; and
- (b) observe and perform all of Your other obligations and liabilities under this Lease that You have failed to observe or perform within the time prescribed for observance or performance,

whether or not the Landlord has demanded payment, observance or performance from You.

**19.5. Your Insolvency**

The Guarantor agrees that if You become insolvent, bankrupt, are wound up or otherwise enter into any formal or informal arrangements with creditors:

- (a) the Guarantor must not claim or receive the benefit of any distribution, dividend or payment or claim to be subrogated to the Landlord's position so as to lessen the amount the Landlord would otherwise receive;
- (b) the Guarantor must hold on trust for the Landlord any money received by the Guarantor in connection with Your insolvency until the Landlord's claim against You and the Guarantor have been fully paid;
- (c) the Guarantor may only recover money from You to reimburse the Guarantor for payments made to the Landlord when the Landlord has been paid in full; and
- (d) the Guarantor must not claim a debt in the bankruptcy or winding up of You for any amount which the Landlord has demanded from the Guarantor or otherwise prove or claim in competition with the Landlord.

The Landlord is under no obligation to marshal in favour of the Guarantor any security, funds or assets.

**19.6. No Discharge of Guarantee**

The Guarantor agrees that the obligations under this clause 19 including the guarantees, indemnities and covenants are not discharged and the Landlord's rights against the Guarantor are not affected by any of the following:

- (a) the granting of any indulgence or extension of time by the Landlord to You or to the Guarantor;
- (b) the Landlord's neglect or failure to enforce any provision of the Lease against You or waiver of any breaches or defaults under the Lease;
- (c) the failure of the Landlord to first claim or institute proceeding against You;
- (d) the total or partial release of Your liability or of a Guarantor by the Landlord;
- (e) any arrangement or compromise entered into between You and the Landlord including payment of Your debts by instalment or acceptance of less than the full amount in satisfaction of Your debt;
- (f) the variation of any provision of this Lease;
- (g) the mental incapacity, death, bankruptcy, winding up, liquidation, external administration or official management of You or the Guarantor;
- (h) the fact that this Lease is not registered;
- (i) re-entry by the Landlord or forfeiture or assignment of this Lease;
- (j) the taking, discharge, impairment or release wholly or partly of any additional or substituted security (including a guarantee or indemnity) in respect of Your obligations or neglect or failure to enforce any other security;
- (k) Your liability under this Lease, or the Lease becoming invalid, illegal or unenforceable, including through any act, omission or legislation; or

- (l) the disclaimer of the Lease.

The Landlord is under no obligation to marshal in favour of the Guarantor any security, funds or assets.

#### 19.7. **Multiple Guarantors**

The Guarantor agrees that where there is more than one Guarantor under this Lease:

- (a) the term 'Guarantor' refers to each of the Guarantors and to all of them;
- (b) the obligations of the Guarantors are joint and several and the Landlord may enforce this guarantee against all or any of them;
- (c) any notice or demand may be served on all of the Guarantors by serving any one of them; and
- (d) the guarantee remains binding on the other Guarantors even if any Guarantor fails to sign this Lease, or this guarantee is not binding on any Guarantor or the Landlord releases any Guarantor from liability under this guarantee.

## **20. YOUR PERSONAL PROPERTY**

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### 20.1. **Interpretation**

In this clause words and expressions that are not defined in this Lease, but which have a defined meaning in the PPS Act have the same meaning as in the PPS Act.

### 20.2. **Your Personal Property – Security Interest**

You:

- (a) charge Your interest in Your Personal Property in favour of the Landlord, as security for the performance of Your obligations under this Lease;
- (b) acknowledge and agree that the charge granted by You under clause 20.2(a) above constitutes the grant of a Security Interest which the Landlord is entitled to register; and
- (c) must do all things required by the Landlord from time to time (including signing any documents required by the Landlord) to enable the Landlord to register its Security Interest in Your Personal Property.

### 20.3. **Your Personal Property – Default**

If You breach an Essential Term of this Lease, the Landlord may take possession of any item of Your Personal Property, dispose of that item and apply the proceeds of the disposal less the cost of the disposal to pay any money owed to the Landlord under this Lease.

### 20.4. **Security Interest**

You:

- (a) warrant that You have not granted a Security Interest in Your Personal Property on or prior to execution of this Lease; and

- (b) must not create or allow to exist a Security Interest in respect of any of Your Personal Property in favour of any person other than the Landlord without the Landlord's prior written consent, which consent may be granted or withheld in the Landlord's absolute discretion.

**20.5. Notices and Discharge**

You acknowledge and agree that:

- (a) You have no right and waive any entitlement under the PPS Act to receive a copy of any verification statement or financing change statement from the Landlord; and
- (b) at the end of the Lease, You must sign (and procure any holder of a registered Security Interest to sign) any document that the Landlord considers necessary or desirable under or as a result of the PPS Act to discharge any registered Security Interests in Your Personal Property.

**21. NO CAVEAT**

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You must not lodge a caveat on any title to the Land or allow a caveat lodged by a person claiming through You to be lodged against or remain on any title to the Land.

**22. LEASE EXHIBIT**

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You and the Landlord acknowledge and agree that the Lease Exhibit forms part of the Premises the terms and conditions of this Lease are deemed to apply to area identified in the Lease Exhibit by this clause.

**CROWN LAND MANAGEMENT ACT 2016**  
**AUTHORISATION OF USE FOR ADDITIONAL PURPOSE UNDER S 2.14**

Pursuant to section 2.14 of the Crown Land Management Act 2016, the Crown land specified in Column 2 of the following Schedule is authorised to be used for the additional purpose(s) specified opposite in Column 1 of the Schedule.

The Hon. Stephen Kamper MP  
Minister for Lands and Property

---

**Column 1**

Community And Sporting Club Facilities  
Community Purposes  
Government Purposes

**Schedule**

**Column 2**

Reserve No. 96536  
Public Purpose: Future Public Requirements  
Notified: 31-Dec-1982  
File Reference: R96536/PURP001/001

---

**CROWN LAND MANAGEMENT ACT 2016**  
**REVOCATION OF RESERVATION OF CROWN LAND**

Pursuant to Section 2.11 of the *Crown Land Management Act 2016*, the reservation of Crown land specified in Column 1 of the Schedule hereunder is revoked to the extent specified in Column 2 of the Schedule hereunder.

The Hon. Stephen Kamper, MP  
Minister for Lands and Property

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**Schedule**

**Column 1**

Reserve No: 2680  
Land District: Hillston North  
Local Government Area: Cobar  
Locality: Euabalong

Public Purpose: Camping and Water Supply  
Notified: 6 November 1882  
File Reference: 10/17196#01

**Column 2**

The parts of reserve 2680 in the south eastern part of Lot 2 DP 1014462.  
Parishes Euabalong and Moora, County Blaxland.  
Area: about 70 ha

The part of reserve 2680 in the south western part of Lot 5098 DP 46648.  
Parishes Euabalong and Moora, County Blaxland.  
Area: about 2.6 ha

These parts co-exist with Western Lands Leases 13519 and 13521

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**Schedule**

**Column 1**

Reserve No: 3114  
Land District: Hillston North  
Local Government Area: Cobar  
Locality: Euabalong

Public Purpose: Travelling Stock  
Notified: 17 November 1884  
File Reference: 10/17196#01

**Column 2**

The part of reserve 3114 in the north western part of Lot 2 DP 1014462.  
Parish Moora, County Blaxland.  
Area: about 21 ha

This part co-exists with Western Lands Leases 13519

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**Schedule**

**Column 1**

Reserve No: 67867  
Land District: Hillston North  
Local Government Area: Cobar  
Locality: Euabalong

Public Purpose: Travelling Stock  
Notified: 2 September 1938  
File Reference: 10/17196#01

**Column 2**

The part of reserve 67867 in the south eastern part of Lot 2 DP 1014462.  
Parishes Euabalong and Moora, County Blaxland.  
Area: about 7 ha

The part of reserve 67867 in the southern part of Lot 5098 DP 46648.  
Parishes Euabalong and Moora, County Blaxland.  
Area: about 74 ha

These parts co-exist with Western Lands Leases 13519 and 13521

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**Schedule**

**Column 1**

Reserve No: 67868  
Land District: Hillston North  
Local Government Area: Cobar  
Locality: Euabalong

Public Purpose: Camping  
Notified: 2 September 1938  
File Reference: 10/17196#01

**Column 2**

The part of reserve 67868 in the south western part of Lot 5098 DP 46648.  
Parishes Euabalong and Moora, County Blaxland.  
Area: about 6 ha

This part co-exists with Western Lands Lease 13521

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**Schedule**

**Column 1**

Reserve No: 85750  
Land District: Hillston North  
Local Government Area: Cobar  
Locality: Euabalong

Public Purpose: Travelling Stock  
Notified: 15 April 1966  
File Reference: 10/17196#01

**Column 2**

The part of reserve 85750 in the south western part of Lot 2 DP 1014462.  
Parishes Euabalong and Moora, County Blaxland.  
Area: about 166 ha

This part co-exists with Western Lands Lease 13519

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**CROWN LAND MANAGEMENT ACT 2016**  
**NOTICE - CROWN LAND TO BE USED OR OCCUPIED FOR OTHER PURPOSE UNDER S 2.18(2)(b)**

Pursuant to section 2.18(2)(b) of the Crown Land Management Act 2016, the Crown land specified in Column 2 of the following Schedule is proposed to be used or occupied under a relevant interest granted for the purpose(s) specified in Column 1 of the following Schedule.

The Hon. Stephen Kamper MP  
Minister for Lands and Property

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<b>Column 1</b>	<b>Schedule</b>
Dugout (relevant interest - Licence 632570)	<b>Column 2</b> Reserve No. 1013834 Public Purpose: Future Public Requirements Notified: 29-Jun-2007 File Reference: R1013834/PURP025/001

---

<b>Column 1</b>	<b>Schedule</b>
Dugout (relevant interest - Licence 640455)	<b>Column 2</b> Reserve No. 1013834 Public Purpose: Future Public Requirements Notified: 29-Jun-2007 File Reference: R1013834/PURP026/001

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<b>Column 1</b>	<b>Schedule</b>
Dugout (relevant interest - Licence 639301)	<b>Column 2</b> Reserve No. 1013834 Public Purpose: Future Public Requirements Notified: 29-Jun-2007 File Reference: R1013834/PURP027/001

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<b>Column 1</b>	<b>Schedule</b>
Tree Planting (relevant interest - Licence 635104)	<b>Column 2</b> Reserve No. 66711 Public Purpose: Shelter Notified: 30-Apr-1937 File Reference: R66711/PURP002/001

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<b>Column 1</b>	<b>Schedule</b>
Tree Planting (relevant interest - Licence 635104)	<b>Column 2</b> Reserve No. 8 Public Purpose: Forest Notified: 18-Nov-1885 File Reference: R8 (1003818)/PURP003/001

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# GRANTING OF WESTERN LANDS LEASES CROWN LAND MANAGEMENT ACT 2016

It is hereby notified that in pursuance of Section 5.16(2) of the *Crown Land Management Act 2016*, the conditions and preamble set out below attach to any perpetual Western Lands Lease granted under those same provisions for the purpose of “Residence” over specified lands located at White Cliffs known as Dugouts.

The Hon. Stephen Kamper, MP  
Minister for Lands and Property

File Ref: DOC23/219498

## Preamble

The land on which this Lease is being granted is Barkandji land. Barkandji and Malyangapa People, and their ancestors for millennia before them, have looked after and maintained their lands and waters. Barkandji and Malyangapa People’s ongoing laws and customs have been recognised by the Federal Court of Australia which has determined that they hold native title rights and interests in the land subject to this Lease.

## AUTHORITY FOR GRANT OF LEASE

You acknowledge that:

- (a) the Land is Crown land within the meaning of the *Crown Land Management Act 2016* (NSW) (**Act**);
- (b) The State of New South Wales is recorded as registered proprietor of the Land by virtue of the provisions of section 13D of the *Real Property Act 1900* (NSW);
- (c) the Minister is authorised by section 5.16(2) of the Act to grant a lease of Crown land on behalf of the Crown;
- (d) the Minister has executed this Lease on behalf of the State of New South Wales as authorised by section 13L of the *Real Property Act 1900* (NSW);
- (e) this Lease is a “holding” for the purposes of the Act, and the provisions of the Act relating to holdings apply to this Lease subject to clause 1.8;
- (f) You are a “holder” for the purposes of the Act, and the provisions of the Act relating to holders apply to the holder; and
- (g) this Lease may be forfeited pursuant to the provisions of section 7.9 of the Act in the circumstances set out in that section.

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## 1. RISK WARNING

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You acknowledge that:

- (a) the Premises was constructed by persons unknown on an unknown date prior to there being any legal requirement for occupants to obtain approval from the Minister or any other NSW Government agency or local government body;
- (b) the Minister does not hold any records of any approval for construction or development of the Premises and is unable to provide any guarantee or warranty as to their structural integrity or safety, or for any hazards or risks associated with the Premises being located underground; and
- (c) if you wish to proceed with the Lease you will need to arrange any inspection of the Premises before signing this Lease.

## 2. DEFINITIONS AND INTERPRETATIONS

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### 2.1. Definitions

In this Lease, unless the contrary intention appears:

**Act** means the *Crown Land Management Act 2016 (NSW)*.

**Address for Service of Notices** means:

**Landlord**

Name: The State of New South Wales ABN 20 770 707 468 as represented by NSW Department of Planning and Environment

Address: 6 Stewart Avenue, Newcastle West NSW 2302

For the attention of: Crown Lands

Email: cl.western.region@crowmland.nsw.gov.au

**You**

Address: as notified in writing by You to the Landlord prior to the Commencing Date in the Application for Perpetual Western Lands Lease at White Cliffs and as updated from time to time.

Email: as notified in writing by You to the Landlord prior to the Commencing Date in the Application for Perpetual Western Lands Lease at White Cliffs and as updated from time to time.

**Application for Perpetual Western Lands Lease at White Cliffs** means the form titled "Application for Perpetual Western Lands Lease at White Cliffs" completed and signed by You prior to the Commencing Date which includes details of Your Address for Service of Notices and discloses the Statement of Acknowledgement.

**Approvals** means all consents, approvals, major project approvals, modifications, registrations, certificates, licences and permits from any Authority:

- (a) necessary for the development or use of the Premises including the carrying out of any proposed works to any part of the Premises; and
- (b) required for the purpose of this Lease,

including any approvals required under Part 4 of the EP&A Act.

**Authority** means any governmental, statutory, public, local government or other

authority or body having jurisdiction over any part of the Land and the Premises or relating to its use.

**Barkandji Corporation** means Barkandji Native Title Group Aboriginal Corporation RNTBC (ICN 4740).

**Base Rent** means the rent, exclusive of GST, calculated in accordance with Part 5, Division 4 Clause 53 of the Regulations includes the rent as re-determined from time to time in accordance with the terms of this Lease.

**BCA** means the Building Code of Australia.

**Business Day** means a day on which banks are open for general business in New South Wales other than a Saturday, a Sunday or a public holiday.

**Certificate of Completion** means any certificate required to be obtained under Part 6 of the *EP&A Act*.

**Claims** means all or any claims, demands, remedies, injuries, damages, losses, Costs, claim for compensation, claim for abatement of rent obligations, proceedings, actions, rights of action, liabilities, suits, notices, fines, demands and requirements (including orders).

**Commencing Date** is the date that this Lease is granted by the Minister to You.

**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.

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

**Control** means the capacity (directly or indirectly), whether or not having statutory, legal or equitable force, and whether or not based on statutory legal or equitable rights, to:

- (a) appoint, determine or control the composition of the board of directors of You;
- (b) exercise more than 50% of the votes entitled to be cast at any general meeting of You; or
- (c) hold more than 50% of the issued share capital of the Tenant (You) (other than shares issued with no rights other than to receive a specified amount in distribution).

**Costs** means any cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid).

**Dugout** means any and all improvements in the subsurface of the Land including but not limited to any recessed or depressed holes, excavated caves or other subterranean structures on the Land identified in the Lease Exhibit.

**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.

**EP&A Act** means the *Environmental Planning and Assessment Act 1979* (NSW).

**Essential Term** means those terms referred to in clause 16.2.

**Event of Default** means any of the events referred to in clause 16.1.

**Financial Year** means 1 July to 30 June.

**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.

**Hazardous Building Materials** means any substance present in building fabric that has the potential to pose risks to human health or the environment including asbestos containing materials, combustible cladding, lead based paint, synthetic mineral fibres and polychlorinated biphenyl.

**Hazardous Chemicals** has the meaning specified in the Work Health and Safety Legislation.

**Improvements** means the buildings, structure and other improvements on the Land at the Commencing Date as modified and extended from time to time in accordance with the terms of this Lease but excluding Your Fixtures.

**Insolvent** means:

- (a) for a corporation, co-operative or association:
  - (i) becomes de-registered;
  - (ii) resolves to or enters into any arrangement for the benefit of creditors;
  - (iii) resolves to or is wound up or internally reconstructed;
  - (iv) takes any step to obtain protection or is granted protection from its creditors;
  - (v) becomes an externally administered body corporate including but not limited to liquidation, provisional liquidation or voluntary administration;
  - (vi) a receiver, manager, receiver and manager, controller, administrator (as defined under section 9 of the *Corporations Act 2001* (Cth) or similar office is appointed;
  - (vii) becomes insolvent or is presumed insolvent under the *Corporations Act 2001* (Cth); or
  - (viii) anything analogous or having a substantially similar effect occurs; and

- (b) for an individual, sole trader or partnership:
  - (i) stops payment to that person's creditors;
  - (ii) enters into an assignment or arrangement for the benefit of creditors;
  - (iii) becomes bankrupt or commits an act of bankruptcy or brings her/his estate within the operation of any law relating to bankruptcy; or
  - (iv) dies.

**Land** means the whole of the land comprised in the folio identifier the subject of the grant of this Lease.

**Landlord** means the State of New South Wales ABN 20 770 70 468 as represented by the Department of Planning and Environment and its successors and assigns on behalf of the Minister.

**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 these terms and conditions, the Lease Exhibit, the Signage Page and any annexures as varied from time to time.

**Lease Exhibit** means the lease exhibit executed by the Landlord and You on or about the date of this Lease identifying the Dugout.

**Lease Year** means each period of 12 months from the Commencing Date.

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

**Material Harm to the Environment** has the meaning specified in the *Protection of the Environmental Operations Act 1997* (NSW).

**Mining Act** means the *Mining Act 1992* (NSW).

**Minister** means the Minister for the time being administering the Act, and any power, authority, duty or function conferred or imposed upon the Minister by or under those conditions may be exercised or performed either by the Minister or by such officers, employees or agents of the Department of Planning and Environment as the Minister may from time to time approve.

**Outgoings** has the meaning given to it in clause 5.1(a).

**Permitted Use** means the use being "Urban (General) Residential".

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

**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, or Contamination has been caused.

**Premises** means the Land, the Dugout and the Improvements.

**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 plus 2%, calculated daily and compounded on the last day of each month.

**Property and Stock Agents Legislation** means the *Property and Stock Agents Regulation 2022* (NSW) and the *Property and Stock Agents Act 2002* (NSW)

**Regulations** means the *Crown Land Management Regulation 2018* (NSW).

**Remediation** has the meaning specified in the *Contaminated Land Management Act 1997* (NSW).

**Requirement** includes any requirement, notice, order, direction, recommendation, consent, stipulation or similar notification received from or given by any Authority or under any Law, whether in writing or otherwise.

**Services** means all services or systems of any nature from time to time provided or available for use to the Premises including:

- (a) any electronic medium, energy source, lighting, electricity, gas, fuel, power, water, sewerage, drainage and air-conditioning, heating and cooling, fire protection;
- (b) fittings, fixtures, appliances, plant and equipment utilised for any of the services specified in clause (a) above; and
- (c) any services or systems from time to time utilised for access to the Premises.

**Sign** means a sign, billboard, advertisement, notice or similar thing.

**Statement of Acknowledgement** means the risk warning providing in clause 1 and disclosed and acknowledged by You in the Application for Perpetual Western Lands Lease at White Cliffs.

**Term** means the term commencing on the Commencing Date and terminating on the Terminating Date.

**Terminating Date** means the date being the earlier of the date that this Lease is:

- (a) forfeited by the Minister in accordance with Division 7.4 of the Act; or
- (b) surrendered by You.

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

**Works** means any alteration, addition or installation in or to the Premises and/or Your Fixtures which already exist including building or construction works (other than maintenance or repairs).

**You or Your** means the person(s) identified in the first schedule of the folio of the register of the Land and includes Your permitted assigns of this Lease.

**Your Fixtures** means all improvements including any building, structure, fitout, fittings, fixtures, wires, pipes, roads, paving and other infrastructure or property on the Premises constructed, installed or otherwise effected by or for You or Your predecessors and Your Invitees during the Term or which are in or on the Premises during the Term and are not owned by the Landlord.

**Your Invitees** means:

- (a) Your permitted sub-tenants and licensees;
- (b) Your employees, agents, consultants, contractors, members, clients, customers, visitors; and
- (c) other persons on or in the Premises with or without Your consent.

## 2.2. Interpretation

(a) **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.

(b) **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.

(c) **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.

(d) **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.

(e) **Parties**

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

(f) **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.

(g) **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.

(h) **Entire Agreement**

This Lease and the Statement of Acknowledgement signed by You 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.

(i) **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 is situated, such act, matter or thing may be done on the next succeeding day which is not a Saturday, Sunday or public holiday.

(j) **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.

(k) **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.

(l) **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.

(m) **Defined Terms**

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.

(n) **Notices etc**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Lease:

- (i) must be in writing;
- (ii) must be addressed:
  - (A) as set out in the Address for Service of Notices (or as otherwise notified by that party to each other party from time to time); or
  - (B) where You are a corporation, at Your registered office or at the Premises;
- (iii) must be signed by the party making it or (on that party’s behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (iv) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, or sent by email to the email address, of the addressee, in accordance with clause 2.1(n)(ii); and

- (v) is taken to be received by the addressee:
  - (A) (in the case of prepaid post sent to an address in the same country) two Business Days after the date of posting;
  - (B) (in the case of prepaid post sent to an address in another country) four Business Days after the date of posting by airmail;
  - (C) (in the case of email) at the time in the place to which it is sent equivalent to the time shown on the email from which it was sent (unless the sender receives an automated message that the email has not been delivered); and
  - (D) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5:00pm, it is taken to be received at 9:00 am on the next Business Day.

(o) **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.

(p) **Lease ends**

A reference to the end of this Lease is a reference to the determination of the Term by default or otherwise. If this Lease ends as a result of a right of forfeiture 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 forfeiture except Claims and Losses arising from a prior breach of this Lease which continue and the continuing obligations such as those under clause 17.

(q) **Continuing Obligations**

The obligations of the parties arising prior to the end of this Lease will not merge on the Terminating Date or earlier determination of this Lease until they are fulfilled.

(r) **Your Obligations and Payments**

You must perform Your obligations under this Lease at Your own expense and risk. Where an obligation is imposed on You under this Lease, You must ensure that You and Your Invitees perform the obligation. Where You are prohibited from doing anything under this Lease, You must ensure that You and Your 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.

(s) **Implied Covenants**

- (i) 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.
- (ii) 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.
- (iii) Any present or future legislation or any implied term (including a duty of good faith or anything similar) which operates to vary Your obligations 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.

2.3. **Public Authority**

This Lease or anything done or to be done under this Lease:

- (a) is not to be taken as approval or consent by the Landlord as a regulatory authority; and
- (b) does not in any way inhibit, deter, or prejudice the Landlord in the proper exercise of its functions, duties or powers,

pursuant to or under any legislation including the Act.

2.4. **Opinion of the Minister or Landlord**

An opinion to be formed by the Landlord or the Minister for the purposes of this Lease may be formed on such grounds and material as the Landlord or the Minister deem to be sufficient.

2.5. **Reservations**

In addition to any other provision in this Lease the Landlord reserves the following:

- (a) all rights to metals, gems, precious stones, coal, mineral oils and minerals within the meaning of the *Mining Act* together with all rights necessary for ingress, egress, search, prosecution, and removal and any incidental rights and powers, subject to compliance with the *Mining Act 1992* (NSW) (including provisions relating to access and compensation); and
- (b) all rights to timber and forest products as defined in the *Forestry Act 2012* (NSW) together with all necessary rights for ingress, egress and removal together with any incidental rights and powers, except where the use of timber is permitted under this Lease.

2.6. **No right to purchase etc**

You expressly acknowledge that the grant of this Lease does not confer a right to purchase the Land or to the grant of a further lease or to the grant of any licence, unless specifically set out in this Lease.

## 2.7. **Reviews and inspections**

You acknowledge that a review, inspection or approval of any plans or works by the Landlord under this Lease is not a review or approval for any other purpose and it is not a warranty that the plans or work comply with any legislation, are fit for their purpose, are current, accurate or otherwise in order.

## 2.8. **Crown Land Management Act 2016 (NSW)**

You expressly acknowledge that:

- (a) while the Land is Crown land, this Lease is a holding under the Act, and the Minister has the rights and powers specified under that Act including the right to withdraw a holding under section 7.8;
- (b) this Lease may be forfeited pursuant to the provisions of section 7.9 of the Act, and the provisions of Division 7.4 will apply, in the circumstances set out in that section, including where:
  - (i) You contravene a provision of the Act or another act applying to this Lease;
  - (ii) You contravene a condition of this Lease;
  - (iii) You fail to make a payment due under the Act, the regulations or this Lease within 3 months of that payment becoming due;
  - (iv) You give up or part with possession of all or part of the Premises, except as authorised by the Act, regulations or this Lease; or
  - (v) the Lease otherwise becomes subject to forfeiture under the Act.
- (c) nothing in this Lease fetters, restricts or affects the Minister's discretion as to the use of the Minister's statutory powers.

## 2.9. **Landlord Execution**

Where the signatory to this Lease is the Minister or a delegate of the Minister, You may not require evidence of the authority to sign, including the appointment of, or delegation to, the Minister or delegate.

## 2.10. **Electronic Execution, Counterpart and Exchange**

This Lease may be executed in any number of counterparts each counterpart constitutes an original of this Lease all of which together constitute one instrument. For the purposes of electronic execution and exchange of this Lease such execution can take place via DocuSign or AdobeSign whilst witnessed via audio visual link (whether that be through Microsoft Teams, Skype, FaceTime or Zoom or similar). Where execution takes place in this form You and the Landlord agree that such execution is legally binding and enforceable in accordance with the *Electronic Transactions Act 2000* (NSW). A party who has executed a counterpart of this Lease may exchange it with another party by emailing a PDF (portable document format) copy of the executed counterpart to that other party.

# 3. **TERM**

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## 3.1. **Term**

The Landlord leases the Premises to You for the Term and You accept the Lease of the Premises subject to the terms of this Lease.

### 3.2. **Nature of Tenancy**

You acknowledge and agree that You:

- (a) must pay all Costs in relation to the Premises and the Landlord has no responsibility or obligation in this regard unless expressly stated in this Lease; and
- (b) take and are subject to the same responsibilities and liabilities in regard to the Premises including in respect of:
  - (i) persons, property, costs and otherwise; and
  - (ii) capital or structural works, repairs and maintenance, (which may only be carried out in accordance with the terms of this Lease),which You would take and be subject to if You were the owner of the Premises.
- (c) The express provisions of this Lease do not limit the scope of this clause 3.

## 4. **BASE RENT AND RENT REVIEW**

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### 4.1. **Payment of Base Rent**

You must pay to the Landlord (or to the relevant body or person as nominated in writing by the Landlord from time to time and unless the Landlord directs otherwise under Section 12.16 of the Act) the Base Rent without demand, without any deduction, counterclaim or right of set-off at all, by equal annual instalments in advance with the first payment due on the Commencing Date and on the first day of July for each year thereafter during the Term.

### 4.2. **Assessment of Base Rent**

The Landlord must assess the Base Rent payable by the Tenant for each Financial Year during the Term in accordance with Part 5 Division 4, Clause 54 of the *Crown Land Management Regulation 2018* (NSW).

## 5. **OUTGOINGS, SERVICES AND EXPENSES**

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### 5.1. **Payment of Outgoings, Rates and Taxes**

- (a) **Outgoings** means the total of the following amount paid or incurred by the Landlord for a Financial Year in connection with the Premises and/or the Land:
  - (i) rates, assessments, levies, charges or other fees (for example, council rates and charges, water rates, electricity, gas, sewerage and drainage, car parking levies, fire services levies and emergency services levies); and
  - (ii) taxes (including any land tax payable under section 21C of the *Land Tax Management Act 1956* (NSW)).
- (b) You acknowledge that payment of all Outgoings in respect of the Premises is Your sole responsibility including any late payment fees, interest or penalties.
- (c) You must arrange for all Outgoings to be invoiced directly to You and paid

by the due date specified on the invoice.

- (d) You must at the request of the Landlord provide the Landlord with a copy of the invoices and payment confirmation.
- (e) You acknowledge that for the purposes of section 21CA of the *Land Tax Management Act 1956* (NSW), this clause constitutes a land tax disclosure statement to You.

**5.2. Services**

- (a) You must pay on time all costs for all Services including:
  - (i) for all sources of energy, electricity, gas, telephone, oil, data and water; and
  - (ii) any assessment for trade waste or other costs incurred as a result of Your particular use or occupation of the Premises.
- (b) You must arrange for all Services to be invoiced directly to You and paid by the due date specified on the invoice.

**5.3. Roads**

- (a) Where the Landlord has paid a contribution under section 217-219 of the Roads Act 1993 (NSW) in respect of the Premises, You must pay to the Landlord the amount of that contribution within 3 months of receipt of written notice from the Landlord requesting payment
- (b) You must pay to the Landlord the proportional part of the costs of road construction as notified by the Department of Planning and Environment within 3 months of the date of gazettal of the granting.

**5.4. Lease Costs and Cost of Consents and Litigation**

You must pay:

- (a) all registration fees and stamp duty payable on this Lease.
- (b) the Landlord's reasonable Costs (including reasonable legal costs, stamp duty and disbursements) in relation to any assignment, transfer, sublease, breach or default by You or Your Invitees under this Lease, and the exercise of any right, power or remedy of the Landlord under this Lease, in law or in equity.
- (c) the Landlord's reasonable expenses, including reasonable legal costs and disbursements, architect's fees and consultant's charges incurred in relation to:
  - (i) any consent or approval sought by You, whether or not the consent or approval is granted, including a consent to assign the Lease;
  - (ii) any request by You which includes the surrender of this Lease; and
  - (iii) any litigation or dispute resolution procedure involving the Landlord commenced by or against You in which no judgement or order is recorded against the Landlord.

## **6. GOODS AND SERVICES TAX**

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### **6.1. Payments Exclusive of GST**

All payments or other consideration paid or payable under this Lease are exclusive of GST unless those payments are exempt from GST.

### **6.2. Payment of GST**

In addition to payment for a supply in connection with this Lease (including the Base Rent and Outgoings) on which GST is paid or payable, You 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.

### **6.3. Tax Invoice**

At Your request, the Landlord will provide You with a tax invoice as prescribed in the GST Legislation.

### **6.4. Late Payment**

If the Landlord becomes subject to penalties or interest resulting from late payment of GST because of Your failure to comply with this clause 6, You must pay on demand an additional amount equal to the amount of those penalties and interest.

### **6.5. Indemnities and Reimbursements**

If a party is obliged to make a payment under an indemnity or is required to reimburse a party for a cost (e.g., a party's obligation to pay another party's legal costs) on which that other party must pay GST, the indemnity or reimbursement is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).

### **6.6. Adjustments**

If an adjustment of GST is required as a result of an adjustment event in respect of a supply made under or in connection with this Lease, then:

- (a) a corresponding adjustment of the GST amount payable under this Lease must be made between the parties within 21 days after the end of the tax period in which the adjustment is attributable;
- (b) the supplier, if obligated to do so under the GST Legislation, must issue an adjustment note within 21 days after the end of the tax period in which the adjustment is attributable; and
- (c) where the Landlord is required to pay an amount under clause 6.6(a), the amount will be limited to the amount of the input tax credit or decreasing adjustment (if any) to which the Landlord determines it is entitled for the Landlord's acquisition of the supply to which the payment relates. The amount will be payable within 10 Business Days after the Landlord has received the benefit of the input tax credit or decreasing adjustment

## **7. USE OF PREMISES**

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### **7.1. Permitted Use**

You must only use the Premises for the Permitted Use. You may not use the Premises for any other use.

**7.2. Operation**

- (a) You must ensure that You are not involved in any conduct or activity (including by use of the Premises), which, in the Landlord's opinion:
  - (i) will or may directly or indirectly materially harm the name or reputation of the Landlord or the Minister; or
  - (ii) brings the Landlord or the Minister into disrepute, contempt, scandal or ridicule.
- (b) If You:
  - (i) wilfully abandon the Premises; or
  - (ii) cease the Permitted Use in favour of a use not permitted by the Landlord,

then the Landlord may forfeit the Lease by providing 10 Business Days written notice to You.

**7.3. No Warranty as to Use**

The Landlord does not warrant (either presently or in the future) that the Premises is suitable for, or may be used for the Permitted Use or any purpose. You accept this Lease with the full knowledge of and subject to any prohibitions or restrictions on the use of the Premises from time to time under any Law or Requirement.

**7.4. Restrictions on Use**

You must not and must not permit Your Invitees to:

- (a) use the Premises for any activity that is dangerous, offensive, noxious or illegal or that may become a nuisance for any neighbouring property;
- (b) carry on any business purpose or trade or permit any person to carry any business purpose or trade or permit on the Premises;
- (c) overload the ceilings, floors, walls, the electrical system or any other services to the Premises;
- (d) damage the Premises;
- (e) do anything to contaminate, pollute or increase toxicity in the Premises or the environment;
- (f) allow illegal drugs or illegal substances to be sold from, consumed or used on the Premises;
- (g) do or permit any person to do, any act, matter or thing which results in nuisance, damage or disturbance to the Minister or owners or occupiers of adjoining or neighbouring lands or buildings; or
- (h) burn, clear or remove standing or fallen timber or permit any other person to undertake the same without the prior written consent of the Minister and subject to such conditions as the Minister may determine.



## **8. YOUR ADDITIONAL OBLIGATIONS**

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### **8.1. General Obligations**

You must:

- (a) comply and ensure Your Invitees comply with:
  - (i) all Laws and all notices, orders and directives from any Authority relating to the use or occupation of the Premises;
  - (ii) obtain the consents or licences needed;
  - (iii) comply with any conditions of consent; and
  - (iv) keep current any Approvals, consents, licences or registrations needed for the use of the Premises by You;
- (b) promptly provide to the Landlord a copy of any notice, order or directive from any Authority relating to the Premises You receive; and
- (c) give notice to the Landlord promptly of any damage to or accident upon the Premises or any circumstances likely to cause any damage or injury.

### **8.2. Applications to Authorities**

You must not and must not permit Your Invitees to lodge any application to any Authority in respect of the Premises without first obtaining the Landlord's consent.

### **8.3. Title**

- (a) You must at all times observe and perform the restrictions, stipulations, easements (including those granted or permitted pursuant to clause 12.5) and covenants referred to in the folio of the register for the Landlord as if You were the registered proprietor of the Land.
- (b) You acknowledge that You are bound by the terms of any easements and covenants referred to in clause 8.3(a), and any lease, licence, or other right of occupation granted by the Landlord in respect of the Premises, to which this Lease is subject or which is concurrent to this Lease.
- (c) You further acknowledge that You indemnify and release the Landlord against, any Claim brought against, or Loss incurred by the Landlord or the Minister arising from Your or Your Invitees' use or obligations in respect to any easement benefitting or burdening the Premises.

### **8.4. Securing of the Premises**

You are responsible for:

- (a) arranging and maintaining the security of the Premises; and
- (b) protecting against any unauthorised entry to the Premises.

### **8.5. Aboriginal objects and Artefacts**

You acknowledge and agree that:

- (a) unless authorised to do so by a permit under Part 6, Division 2 *Aboriginal heritage impact permits* of the *National Parks and Wildlife Act 1974* (NSW)

and with the prior written consent of Barkandji Corporation and subject to observance and compliance with any conditions imposed on the grant of such permit or consent, You must not knowingly disturb, destroy, deface or damage any Aboriginal object or place or other item of archaeological significance on the Land, and must take every precaution in drilling, excavating or carrying out of other operations or works against any such disturbance, destruction, defacement or damage;

- (b) upon becoming aware of any Aboriginal object or place or other item of archaeological, significance on the Land, You will notify within 24 hours the Secretary responsible to the minister administering the *National Parks and Wildlife Act 1974* (NSW) of the existence of such relic, place or item;
- (c) You must not continue any operations or works on the Land likely to interfere with or disturb any Aboriginal object, place or other item of archaeological significance without the approval of the Secretary responsible to the minister administering the *National Parks and Wildlife Act 1974* (NSW) (which will not be provided without the prior written consent of Barkandji Corporation) and You must observe and comply with all reasonable requirements of the Director-General in relation to the carrying out of the operations or works;
- (d) all fossils, artefacts, coins, articles of value, articles of antiquity, structure and other remains or things of geological historical or archaeological interest (**Artefacts**) discovered in or under the surface of the Land will as between You and the Landlord be deemed to be the absolute property of the Landlord, held by the Landlord on trust for and on behalf of the Crown; and
- (e) the Landlord shall be authorised by You to take every precaution to prevent the Artefacts being removed or damaged. You must immediately upon discovery of the Artefacts notify the Minister of such discovery and carry out at Your reasonable expense the Landlord's orders as to the delivery up of or disposal of the Artefacts.

#### 8.6. **Eradication of Noxious Plants, Animals etc**

You must take steps to eradicate or control all noxious plants, noxious animals and noxious insects on the Land as required by law.

#### 8.7. **Removal of Materials and Improvements**

You acknowledge and agree that:

- (a) except where there is an imminent and immediate risk of serious harm to persons or property You or Your Invitees You will not remove, extract, dig up or excavate any sandstone, gravel, clay, loam, shell or similar substance or permit any other person to undertake any such action without the prior written consent of the Landlord (which will not be provided without the prior written consent of Barkandji Corporation) and subject to such conditions as the Landlord may determine in its absolute discretion.
- (b) if the Landlord consents to the removal or alteration of an Improvement, that Improvement must be reinstated when the Lease ends, and You must undertake the necessary works to place the Premises in the condition it was in prior to the Improvement or alteration.

#### 8.8. **No Holding Out**

You will not in connection with the Premises or otherwise:

- (a) directly or indirectly hold out or permit to be held out to any member of the public any statement, act, deed, matter or thing indicating that the Premises is being used or managed or supervised by the Landlord or the Minister;
- (b) act as or represent Yourself to be the servant or agent of the Landlord or the Minister.

**8.9. Roads and Reserves**

- (a) You must not obstruct or interfere with any roads, reserves or tracks on the Land existing at the date of this Lease or subsequently created under a Law or the use of them by any person.
- (b) You must erect gates on roads within the Premises when and where directed by the Landlord for public use and must maintain those gates together with approaches in good order to the satisfaction of the Landlord.

**8.10. Fencings**

You must, within 1 year from the Commencing Date or such further period as the Landlord may allow, enclose the Premises, either separately or conjointly with other lands held in the same interest, with a suitable fence to the reasonable satisfaction of the Landlord.

**8.11. Land Management Matters**

- (a) You must, at Your cost take all reasonable steps to maintain and the keep the Premises free and clean of pests, insects, vermin, birds and animals.
- (b) You must not, and must not permit Your Invitees to:
  - (i) cut any timber, including under-storey vegetation unless required to comply with other obligations under this Lease;
  - (ii) burn off any vegetation without the prior approval of the relevant Fire Control Authority;
  - (iii) agist stock or graze animals and all related activities on the Premises;
  - (iv) clear any native vegetation; or
  - (v) through grazing or otherwise cause, aggravate or accelerate soil erosion.
- (c) You must undertake all works reasonably necessary to prevent soil erosion arising from or contributed to by Your use of the Premises including:
  - (i) stabilisation of soil structures; and
  - (ii) fostering and cultivating ground cover and landscape amenity.

**8.12. Local Amenity**

You must take all reasonable steps to prevent interference with the amenity of the locality comprising the Premises and surrounding area caused by noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products,

grit, oil or otherwise.

**8.13. Flood Damage**

You must conduct Your operations and works on the Premises in such a manner to prevent any risk of danger, injury or damage from floods or storms and must observe and perform any directions given by the Landlord with a view to minimising or preventing any flood or storm damage.

**8.14. Outbreak of Fire**

You must:

- (a) take all precautions against causing an outbreak of fire; and
- (b) comply with the *Rural Fires Act 1997* (NSW) and its regulations.

**8.15. Blasting**

You or Your Invitees must not use any explosives on the Premises without the prior written consent of the Landlord (which will not be provided without the prior written consent of Barkandji Corporation) and subject to such conditions as the Landlord may determine in its absolute discretion.

**8.16. Vehicle Access**

- (a) You acknowledge the geology and landscape of the Premises and the surrounding area and agree that:
  - (i) there may be service conduits located in and around the Premises;
  - (ii) neither the Landlord nor the Minister make any warranties or representations regarding the location of any service conduits in or around the Premises;
  - (iii) You are responsible for Your and Your Invitees' vehicular access to the Premises at Your own risk;
  - (iv) You are liable for and must indemnify and release the Landlord and the Minister against any Loss incurred by the Landlord or the Minister arising from any Claims arising from Your or Your Invitees' use of vehicles within the Premises; and
  - (v) You and Your Invitees must promptly remove any vehicle located within 5 metres of any service conduits upon request by a representative of any Authority.
- (b) You acknowledge the geology and landscape of the Premises and the existence of subterranean cavities and agree that:
  - (i) vehicular access within 50 metres of the Premises may cause instability to the Premises;
  - (ii) neither the Minister nor the Landlord make any warranties or representations as to the load bearing capacity of any part of the Premises;
  - (iii) Your use of heavy vehicles (exceeding a gross weight of 2 tonnes) within the 50-metre buffer zone at the rear of the Premises will be kept to a minimum;

- (iv) You are responsible for Your and Your Invitees' vehicular access to the Premises at Your own risk; and
  - (v) You are liable for and must indemnify and release the Minister from any Loss incurred by the Minister arising from any Claims arising from Your or Your Invitees' use of vehicles within 50 metres of the Premises.
- (c) You agree and acknowledge that any vehicle used to gain access to the Premises must be registered in accordance with applicable Laws, including but not limited to requirements to obtain compulsory third party insurance.

**8.17. Unrestricted Access to Supply Lines**

You must ensure that unrestricted access is available to Central Darling Shire Council and Australian Inland Energy for repair and maintenance of any supply line.

**9. YOUR WORKS OBLIGATIONS**

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**9.1. Proposed Works**

You must not carry out or permit the carrying out of any Works without the Landlord's prior written approval which may be granted or refused in the Landlord's absolute discretion in consultation with Barkandji Corporation.

**9.2. Approval for Proposed Works**

In seeking the Landlord's written approval pursuant to clause 9.1 (which may be given with or without conditions in the Landlord's absolute discretion in consultation with Barkandji Corporation) for any Works carried out during the Term of this Lease, You must first:

- (a) submit plans and specifications to the Landlord in such form as the Landlord may require; and
- (b) obtain the Landlord's consent to the lodgement of an application for any required Approvals.

**9.3. Carrying out of Works**

If the Landlord approves any Works, the Landlord requires (unless it notifies You otherwise and without limiting the Landlord's right to impose further conditions) as a condition of the Landlord's approval that:

- (a) You must pay on demand all reasonable costs incurred by the Landlord in considering the Works, and its supervision, including the fees of architects or other consultants properly engaged by or on behalf of the Landlord;
- (b) You must ensure that all Works are carried out:
  - (i) promptly and without delay;
  - (ii) in accordance with plans and specifications approved by the Landlord;
  - (iii) at Your cost;
  - (iv) in a good and workmanlike manner by properly qualified and experienced contractors;

- (v) in accordance with the applicable standards (including Australian Standards, the BCA and Work Health and Safety Legislation);
  - (vi) in compliance with all Approvals; and
- (c) in carrying out any Works, You, must at Your cost:
- (i) comply with all Environmental Protection Legislation and any permit, approval, authority or licence issued pursuant to such Legislation;
  - (ii) keep the Premises and any permanent or temporary buildings or structures on it reasonably clean and tidy;
  - (iii) endeavour to minimise inconvenience to adjacent occupiers of land;
  - (iv) regularly remove from the Premises all waste, rubbish, and debris, wrappings, containers and residue materials which result from any Works;
  - (v) properly supervise the activities of Your consultants and sub-contractors;
  - (vi) ensure that any consultants and sub-contractors comply with Your obligations under this Lease;
  - (vii) except as required by any Approval or as may be reasonably necessary to properly conduct the Works, take all reasonable measures to protect the Premises and, at the option of the Landlord, You must either:
    - (A) promptly repair and make good to the reasonable satisfaction of the Landlord any damage caused to the Premises; or
    - (B) if You fail to do so, reimburse the Landlord for the proper and reasonable costs incurred by the Landlord in having damage made good by the Landlord;
  - (viii) remove, demolish, re-execute, reconstruct or replace defective material or work and make good any defect in the Works as the Landlord reasonably directs where those materials or the workmanship are not in accordance with the requirements of the Lease; and
  - (ix) keep the Landlord informed of the progress of the Works and promptly respond to any reasonable request to provide information, documents and instructions and provide copies of all certificates issues or required by any Authority.

#### 9.4. **Insurance for Works**

Prior to commencing any Works and at all times until they are completed, You must keep, or ensure that any builder or other contractor engaged, keep current insurance policies covering:

- (a) contractors' risk in respect of the Works and any damage to the Premises for the full replacement value (including demolition and removal of debris);
- (b) public risk in respect of the Works for at least \$20,000,000 for each

incident or event or for such higher amount as the Landlord may reasonably require; and

- (c) workers' compensation insurance for each person who is or may be engaged in construction.

**9.5. Principal Contractor**

The Landlord appoints You, and You accept the appointment, as principal contractor for the purposes of the *Work Health and Safety Act 2011* (NSW). The Landlord accepts that You 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.

**9.6. Works Information**

You must ensure that the Landlord is notified of the commencement and practical completion of the Works and You must promptly respond to any request to provide information, documents, or other material required by the Landlord.

**9.7. Completion Documents**

If the Landlord approves any Works, on completion of those Works, You must immediately obtain and provide to the Landlord evidence of completion of the Works, including:

- (a) Works-as-executed plans in a form satisfactory to the Landlord; and
- (b) a copy of any certificates of compliance or satisfactory completion (including any Certificate of Completion) issued by the appropriate Authority or necessary to use or occupy the Works or required by any Laws.

**9.8. Maintenance of Records**

You 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. You must make these records available to the Landlord when requested.

**10. YOUR ENVIRONMENTAL OBLIGATIONS**

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**10.1. Your Inspection**

You acknowledge and agree that:

- (a) prior to the Commencing Date You had access to the Premises and an opportunity to investigate the environmental aspects of the Premises; and
- (b) neither the Minister nor the Landlord warrants or represents that the Premises is free of Contamination or Hazardous Building Materials.

**10.2. No Contamination or Pollution**

You must not cause, exacerbate or permit any Pollution or Contamination of the Premises or the surrounding environment.

**10.3. Comply with Environmental Protection Legislation**

- (a) You must comply with all Environmental Protection Legislation and any

permit, approval, authority or licence issued pursuant to such Environmental Protection Legislation.

- (b) You must comply with every Environmental Notice issued during the Term in respect of the Premises and ensure that copies are provided to the Landlord as soon as practicable after receiving them from the relevant Authority.

#### 10.4. **Notification of Pollution**

In the event of a Pollution Incident or a breach or potential breach of Environmental Protection Legislation or an Environmental Notice relating to Pollution, You must:

- (a) where the Pollution Incident causes or threatens Material Harm to the Environment, immediately notify the required authorities in accordance with the Environmental Protection Legislation, and then notify the Landlord as soon as practicable; and
- (b) in all other situations, notify the Landlord as soon as practicable.

#### 10.5. **Notification of Contamination**

If You become aware of Contamination on the Premises, whether or not that Contamination was caused by You:

- (a) You must notify the Landlord as soon as practicable after becoming aware of the Contamination; and
- (b) the Landlord will perform an assessment of the requirements to notify Contamination to the required Authorities in accordance with the Environmental Protection Legislation.

#### 10.6. **Responsibility for Contamination**

You are responsible for all Contamination on the Premises that You cause, exacerbate or fail to prevent.

#### 10.7. **Remediation of Contamination**

You must perform Remediation of Contamination for which You are responsible and any other reasonable requirements of the Landlord to deal with that Contamination.

#### 10.8. **Indemnity and Release**

- (a) You release the Landlord from any Claim for which You are liable, or Loss incurred by You that arises out of or in connection with any Contamination or Pollution of the Premises.
- (b) In addition to any other indemnity in this Lease, You indemnify the Landlord, against all Claims for Loss, injury or death in connection with or as a consequence of activities undertaken on the Premises by You, or Your Invitees, that result in Contamination or Pollution of the Premises or the surrounding environment or a breach of this clause 10.
- (c) The release referred to in clause 10.8(b) and the indemnity referred to in clause 10.8(c) do not apply to the extent that the Loss, liability, injury or death is caused by the wilful negligence of the Landlord.



**10.9. No Hazardous Chemicals**

You must not use or store any Hazardous Chemicals in or around the Premises other than those directly required for the Permitted Use except with the written consent of the Landlord.

**10.10. Hazardous Building Materials**

You acknowledge and agree that You:

- (a) must rely on your own enquires and inspections regarding Hazardous Building Material on or forming part of the Premises;
- (b) are responsible for the management of any Hazardous Building Materials on or forming part of the Premises; and
- (c) release the Landlord and the Minister from any liability as to the presence of any Hazardous Building Materials on or forming part of the Premises.

**11. MAINTENANCE AND REPAIR**

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**11.1. Acknowledgement as to condition of Premises**

- (a) You acknowledge that as at the Commencing Date of this Lease, the Landlord has not inspected the Premises. You accept the Premises as it is subject to all defects (latent or patent) and all dilapidation and infestation.
- (b) You:
  - (i) cannot terminate this Lease; or
  - (ii) make any Claim against the Landlord or the Minister; and
  - (iii) are not entitled to an abatement of the Base Rent or any other amount payable under this Lease,

as a result of any defects (latent or patent) to the Premises and You indemnify and release the Landlord and the Minister in respect of any Claim as a result of any defects (latent or patent) to the Premises.

**11.2. Your Obligation to Maintain**

You must, at Your cost:

- (a) subject to the terms of this Lease, maintain and repair (including repairs of a structural or capital nature), replace, paint, renew and keep the whole and each part of the Premises and Your Fixtures structurally sound, waterproof, windproof, safe and in good substantial repair, order and condition except for fair wear and tear;
- (b) keep the Premises and Your Fixtures tidy, clean and free of all rubbish and debris;
- (c) keep, maintain and repair the Premises and Your Fixtures as good quality premises for the Permitted Use; and
- (d) keep, maintain, replace and repair all Services, fixtures and fittings exclusively servicing the Premises and Your Fixtures.

### 11.3. **Your Further Obligations**

In addition to Your obligations under clause 11.2, You must, at Your Cost:

- (a) keep the Premises and Your Fixtures free from pests including rodents, cockroaches and termites;
- (b) promptly repair or replace any stained, worn or damaged carpet;
- (c) immediately replace broken or faulty light bulbs and tubes;
- (d) immediately replace all broken, cracked or damaged glass;
- (e) keep all ground areas of the Improvements and any other landscaped areas, maintained, landscaped and in good order and condition; and
- (f) make good any damage caused to the Improvements or the Premises or Your Fixtures caused or contributed by You and Your Invitees.

### 11.4. **Acknowledgement**

You acknowledge that neither the Landlord nor the Minister is responsible or liable for any structural repair, maintenance or replacement of any part of the Premises, or any capital expenditure in respect of the Improvements and that You are wholly responsible and liable in respect of those matters.

### 11.5. **Interruption of Services**

You:

- (a) cannot terminate this Lease; or
- (b) make any Claim against the Landlord; and
- (c) are not entitled to an abatement of the Base Rent or any other amount payable under this Lease,

as a result of any failure to function properly (including an interruption by the Landlord for inspection or repairs) of the Services and facilities for the Premises including water, electricity and blockages of sewers and drains.

### 11.6. **Notice to Carry Out Work**

- (a) The Landlord may give You a notice (**Works Notice**) requiring You to carry out any work on or to the Premises or to Your Fixtures that is necessary to ensure Your obligations under this Lease are satisfied.
- (b) You must, at Your own expense, promptly comply with each Works Notice.

## **12. QUIET ENJOYMENT, ACCESS AND LANDLORD GENERAL RIGHTS**

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### 12.1. **Quiet Enjoyment**

You 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.

### 12.2. **Access to and from the Premises**

You acknowledge and agree that:

- (a) it is Your responsibility to arrange safe access to and from the Premises for You and Your Invitees; and
- (b) the Landlord is not liable or responsible in any way whatsoever to arrange or provide any access to the Premises.

### 12.3. **Access by Landlord**

You 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 (including but not limited to Barkandji Corporation) access to the Premises at any reasonable time for the purpose of:

- (a) inspecting the repair, condition or value of the Premises or Your Fixtures or to determine if You are in breach;
- (b) doing anything that the Landlord can or must do under this Lease or must do by law;
- (c) undertaking surveys, undertaking maintenance, repairs and reinstatement of any buildings, structures or other improvements on the Premises including Your Fixtures;
- (d) assisting in any emergency or for security or safety;
- (e) undertaking any environmental investigations, assessments and audits; and
- (f) to remedy a non-monetary breach of this Lease.

### 12.4. **Landlord's rights to remedy defaults**

- (a) If You fail to comply with an obligation under this Lease, the Landlord may comply with that obligation as if the Landlord were You and recover the Cost of complying with that obligation from You. This clause does not affect the Landlord's other rights and remedies.
- (b) Prior to the Landlord exercising this right in clause 12.4(a) (except in the case of an emergency or perceived emergency where the Landlord will use its reasonable endeavours to notify You), the Landlord will provide You with written notice specifying the default, and requiring You to remedy the default within a reasonable period to be specified in the notice, having regard to the nature, extent, duration, impact and any recurrence of the default.
- (c) The Landlord may enter and remain on the Premises to do or effect anything referred to in clause 12.4(a) and You must pay to the Landlord the Landlord's reasonable costs and expenses incurred or paid in doing or effecting that thing.

### 12.5. **Subdivision, Easements and Other Rights**

- (a) The Landlord may subdivide the Land in any configuration alone or together with any other land adjoining the Land and may grant, transfer or create any space, easement, licence or other right or restrictions benefitting or burdening the Land or dedicate any part of the Land in favour of any person, any nearby land or any Authority for any purpose including access, support or services, if required by any Laws or in the case of

emergencies.

- (b) You must, at the request of the Landlord, provide any consent or sign any document reasonably required by the Landlord to give effect to any right or arrangement granted or entered into by the Landlord under clause 12.5(a).
- (c) This Lease will be interpreted as being subject to any such right or arrangement granted or entered into by the Landlord under clause 12.5(a).

#### 12.6. **Resumption**

If the Land or any part of it is resumed or acquired by any Authority, the Lease of the Premises forfeits on the date on which the Authority requires vacant possession. The Landlord is not liable to pay You any compensation in this case. If only part of the Land is resumed or acquired then a new lease may be entered into on similar terms to this Lease for the remaining part of the Land subject to consent of the parties and any relevant consent of the Minister.

#### 12.7. **Existing easements and reservations**

- (a) Your rights under this Lease (including the right to quiet enjoyment) are subject to:
  - (i) all easements over the Land including easements for services (including but not limited to electricity, water, drainage, internet), access and rights of way;
  - (ii) all reservations affecting the Land including travelling stock routes, road and camping reserves; and
  - (iii) any other restriction or encumbrance registered on the title to the Land prior to the registration of this Lease.
- (b) You acknowledge and agree that no fences can be erected that may impede the use of a reservation.

### **13. FIRST RIGHT OF REFUSAL, ASSIGNMENTS, SUBLEASES**

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#### 13.1. **Additional Definitions**

**Agreement to Purchase Form** means the agreement to purchase form published on the Crown Lands website accepting the offer in the Intent to Sell Form or the Second Intent to Sell Form (as the case may be).

**Intent to Sell Form** means the intent to sell form published on the Crown Lands website and includes requirements to disclose to Barkandji Corporation the sale price, deposit, settlement period and any special conditions of the sale.

**More Favourable Terms** means:

- (a) a lower purchase price;
- (b) a longer or shorter settlement period;
- (c) a lesser deposit; or
- (d) any variation to the terms and conditions set out in the Intent to Sell Form.

**Proposed Auction Form** means the proposed sale form published on the Crown

Lands website and includes requirements to disclose to Barkandji Corporation the time, date and place for auction and to provide a copy of the marketing draft contract for sale.

**Relative** means a spouse, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendent or adopted child of that person, or of that person's spouse or the spouse of any of those listed persons including beyond couples and children and their parents' by treating any couple (whether of the same sex or different sexes) as a married couple and treating any child as a natural child and any grandparent, parent, sibling, child, grandchild, niece, nephew, uncle or aunt as either related by blood or adoption.

**Second Intent to Sell Form** means the second intent to sell form published on the Crown Lands website and includes requirements to disclose to Barkandji Corporation the sale price, settlement period and any special conditions of the sale.

### 13.2. **First Right of Refusal Triggers**

You must not, without first obtaining the prior written consent of the Landlord and complying with the provisions of this clause 13:

- (a) assign, licence, sublease, sell (either by expression of interest, public auction or private treaty), transfer or otherwise part with possession of Your interest in this Lease; or
- (b) effect a change of Control of the corporation where You are a corporation ;; or
- (c) alter the Control of the trust where You are a trustee; or
- (d) propose any other dealing or action which would result in a third party occupying the Premises,

("each a **First Right of Refusal Trigger**").

### 13.3. **Exceptions to the First Right of Refusal Triggers**

- (a) Where You propose to assign, licence, sublease, sell, transfer or otherwise part with possession of Your interest in this Lease in the following manners a First Right of Refusal Trigger **will not apply**:
  - (i) where the proposed transferee/assignee/licensee/sublessee is a Relative; or
  - (ii) where the proposed transferee/assignee/licensee/sublessee is a beneficiary of the Tenant's deceased estate; or
  - (iii) where You propose to licence this Tenure for the purposes of short term rental accommodation arrangements within the meaning of section 54A of the Fair Trading Act 1987 (NSW),

("each a **First Right of Refusal Exceptions**").

- (b) Where a First Right of Refusal Exception takes place, You are only required to comply with the conditions contained in clause 13.10 (Standard Assignment and Subleasing Provisions).

### 13.4. **First Right of Refusal – Notice to Barkandji Corporation**

- (a) Prior to a First Right of Refusal Trigger taking place, You must first give

Barkandji Corporation and the Landlord twenty (20) Business Days prior written notice in the form of the Intent to Sell Form offering to sell Your interest in the Lease to Barkandji Corporation on terms and conditions acceptable to You;

- (b) if after twenty (20) Business Days of service of the Intent to Sell Form to Barkandji Corporation and the Landlord, You:
  - (i) **have** received an Agreement to Purchase Form from Barkandji Corporation then You must dispose of Your interest in this Lease to Barkandji Corporation in accordance with clause 13.7; or
  - (ii) **have not** received an Agreement to Purchase Form from Barkandji Corporation then You may dispose of Your interest in this Lease subject to the conditions contained in clause 13.8.

**13.5. First Right of Refusal – Notice of Public Auction**

Where You propose to sell Your interest in this Lease by public auction, You are required to give Barkandji Corporation and the Landlord fifteen (15) Business Days prior written notice in the form of the Proposed Auction Form inviting Barkandji Corporation to attend the public auction and the Property and Stock Agents Legislation will apply (see regulation 18 of the *Property and Stock Agents Regulation 2022* (NSW)).

**13.6. First Right of Refusal – Unsolicited Offer**

- (a) Where You receive an unsolicited offer to purchase Your interest in this Lease and those terms and conditions are acceptable to You, You must, prior to accepting that offer, give Barkandji Corporation and the Landlord twenty (20) Business Days prior written notice in the form of the Intent to Sell Form offering to sell the Tenant's interest in this Tenure on those identical terms and conditions;
- (b) if after twenty (20) Business Days of service of the Intent to Sell Form to Barkandji Corporation and the Landlord, You:
  - (i) **have** received an Agreement to Purchase Form from Barkandji Corporation then the Tenant must dispose of the Tenant's interest in this Tenure to Barkandji Corporation in accordance with clause 13.7; or
  - (ii) **have not** received an Agreement to Purchase Form from Barkandji Corporation then the Tenant may dispose of the Tenant's interest in this Tenure to the same person or entity that submitted the unsolicited proposal subject to compliance with the conditions contained in clause 13.8.

**13.7. First Right of Refusal – Agreement to Purchase**

Where, You **have** received an Agreement to Purchase Form from Barkandji Corporation then You must transfer Your interest in the Lease to Barkandji Corporation in accordance with the terms of the Intent to Sell Form.

**13.8. First Right of Refusal – No Agreement to Purchase**

Where, You **have not** received an Agreement to Purchase Form from Barkandji Corporation then You may dispose of Your interest in this Lease subject to the following conditions:

- (a) You must not dispose of Your interest in the Lease to any other person or entity whatsoever on More Favourable Terms than those contained in the Intent to Sell Form; and
- (b) You must comply with the conditions under clause 13.10 (Standard Assignment and Sublease Provisions).

**13.9. First Right of Refusal – More Favourable Terms**

Where, You are willing to accept More Favourable Terms than the terms and conditions offered to Barkandji Corporation under clause 13.4(a) or 13.6(a) the Tenant must re-offer those More Favourable Terms to Barkandji Corporation in accordance with the conditions set out in clauses 13.4 and 13.6. For the avoidance of doubt, this clause does not apply in circumstances where the Tenant proposes to sell the Tenant's interest in this Tenure by public auction (see clause 13.5).

**13.10. Standard Assignment and Sublease Provisions**

Consent to any proposed assignment, transfer or sublease (as the case may be) is subject to satisfaction of the following conditions:

- (a) You must not be in breach of this Lease;
- (b) You must have complied with clauses 13.1 to 13.9 (inclusive) as applicable;
- (c) You must show to the satisfaction of the Landlord that the proposed new tenant or sub-tenant:
  - (i) in the case of a sublease:
    - (A) is respectable, responsible and financially sound;
    - (B) will, in the Landlord's reasonable opinion, be able to fulfill Your obligations under this Lease;
    - (C) the new tenant or sub-tenant's proposed occupation and business would involve no higher security risk or loss of amenity within the Premises than Your occupation;
    - (D) is shown to the satisfaction of the Landlord to be capable of adequately carrying on the obligations contained in the Lease; and
    - (E) provides any personal or corporate guarantee including a guarantee by directors or shareholders of the proposed new tenant or sub-tenant required by the Landlord and the Lease is varied accordingly.
  - (ii) in the case of an assignment:
    - (A) is respectable, responsible and financially sound;
    - (B) will, in the Landlord's reasonable opinion, be able to fulfill Your obligations under this Lease;
    - (C) the new tenant's proposed occupation would involve no higher security risk or loss of amenity within the Premises than Your occupation; and
    - (D) provides any personal or corporate guarantee including a

guarantee by directors or shareholders of the proposed new tenant required by the Landlord and the Lease is varied accordingly.

- (d) the proposed new tenant or sub-tenant signs a deed in a form reasonably required by the Landlord which includes provisions that the incoming tenant or sub-tenant:
  - (i) if a new tenant (in the case of assignment), will comply with all of Your obligations under this Lease on and from the date of assignment; or
  - (ii) if a sub-tenant (in the case of a sublease):
    - (A) will not cause or contribute to a breach of this Lease;
    - (B) will comply with the terms of this Lease in so far as they affect the subleased premises;
    - (C) will only use the subleased premises for the Permitted Use; and
    - (D) acknowledges that the sublease will end automatically without any liability to the Landlord if this Lease ends for any reason, and the term of the sublease ends at least one day before the Terminating Date (unless the Landlord otherwise determines);
- (e) You pay to the Landlord, upon written notice, the Landlord's reasonable costs (including legal costs) and disbursements of and incidental to any proposed dealing under this clause 13.10, even if You (or the other party) does not comply with those clauses or if the proposed dealing does not proceed; and
- (f) You and the proposed new tenant or sub-tenant complies with any other conditions of consent required by the Landlord acting reasonably.

**13.11. Not Used**

**13.12. Change of Your control**

- (a) Where You are a corporation other than a listed public company a change in shareholding (including any variation in the beneficial ownership of the shares) of You or Your holding company (unless the holding company is a listed public company) that gives Your Control 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 tenant, and You must have complied with clauses 13.1 – 13.9 (inclusive) as applicable, provided that You are not in breach of this Lease..
- (b) Where You are 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 appointer 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, appointer or other person treated as the proposed new lessee, and You must have complied with clauses 13.1 – 13.9 (inclusive) as applicable, provided that You are not in breach of this Lease..



### 13.13. **Change of Landlord**

If the Landlord transfers its interest in the Land or grants a concurrent lease over the Land:

- (a) You and the Guarantor must within 21 days from the Landlord's request:
  - (i) enter into any documents the Landlord may reasonably require to enable the transferee or landlord in its name to enforce the benefit of Your obligations under this Lease;
  - (ii) vary this Lease to include the trust or other limitation of liability clause required by the transferee or landlord; and
- (b) on transfer of the Land, the Landlord will be released from its obligations arising after it ceases to be Landlord.

## 14. **RELEASE AND INDEMNITY**

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### 14.1. **Assumption of Risk by You**

Any act, matter or thing which You are obliged, required or permitted to do or effect under this Lease (including without limitation, reading and acting on the Risk Warning in clause 1, the signing of this Lease or the carrying out of any Works), Your Fixtures and the use and occupation of the Premises by You are all at Your sole risk, Cost and expense (including that a Law or Requirement of an Authority may affect the use or occupation of the Premises). You take the Premises and will be subject to the same responsibilities in regard to persons, property and otherwise in respect of the Premises to which You would be subject as if You were the owner of freehold of the Land.

### 14.2. **Your Release and Indemnity**

For the purposes of this clause "Landlord" includes the Minister and the employees, agents or contractors of the Landlord and the Minister. You cannot make a Claim against the Landlord. You release and indemnify (to the fullest extent permitted by Law) the Landlord from and against all Claims, including (but not limited to) claims for breach of statutory duty, Loss, injury or death which:

- (a) occurs on or around the Premises;
- (b) occurs from access to and from the Premises;
- (c) arises from the use of the Premises by You or Your Invitees;
- (d) occurs in connection with any Works undertaken by or on behalf of You or Your Invitees on or for the Premises (whether or not approved by the Landlord);
- (e) occurs in connection with any action, payment or works by the Landlord in remedying any breach of this Lease by You;
- (f) arises from the use of the Services in the Premises;
- (g) arises from the overflow or leakage of water from the Premises; or
- (h) arises from any act, default, misconduct, neglect, negligence or omission of any kind of You or Your Invitees

except to the extent that it is caused by the wilful negligence of the Landlord. The indemnity in this clause applies notwithstanding that this Lease authorised or required You to undertake or perform the activity giving rise to any Claim for injury, Loss or damage.

**14.3. No Landlord Liability**

You expressly agree that the Landlord will have no responsibility or liability for any loss of or damage to Your Fixtures or personal property including but not limited to Your Fixtures.

**14.4. Your Continuing Obligation**

You expressly agree that Your obligations under this clause 14 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.

**14.5. 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 Minister or the terms of the Lease authorised or required You to undertake or perform the activity giving rise to the Claim.

**14.6. No Liability**

You must not by any act, matter, deed, failure or omission cause or permit to be imposed on the Minister any of Your liability under or by virtue of this Lease.

**15. DAMAGE OR DESTRUCTION**

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**15.1. Obligation to reinstate**

- (a) If the Premises or Your Fixtures are destroyed or damaged at any time during the Term so that it is unfit or substantially unfit for You to use or are inaccessible or substantially inaccessible, You must, within a reasonable period of time having regard to the nature and extent of the damage or destruction:
  - (i) promptly reinstate, rebuild or repair the Premises and Your Fixtures to nearly as possible the design immediately prior to the damage or destruction (or such other different design as the Landlord may reasonably approve) and to at least the standard they were required to be in prior to the damage or destruction, with such modification as approved by the Landlord, acting reasonably; and
  - (ii) obtain all necessary approvals for undertaking and completing the works including complying with Your obligations under clause 9.
- (b) For the avoidance of doubt, nothing in this Lease obligates the Landlord to reinstate the Premises or the means of access to the Premises.
- (c) You must continue to pay all payments under this Lease for the period during which the Premises is unfit or substantially unfit for You to use or are inaccessible or substantially inaccessible, unless and to the extent any damage or destruction is caused by the Landlord, its employees, agents or contractors.
- (d) You must, having regard to the extent of damage or destruction continue

to perform and comply with Your obligations under this Lease.

## **16. DEFAULT**

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### **16.1. Default and forfeiture**

Each of the following is an event of default (whether or not it is in Your control):

- (a) You have demonstrated an intention to no longer be bound by the terms of this Lease (**Repudiation**);
- (b) the Base Rent or any other money payable by You under this Lease is more than 3 months overdue for payment;
- (c) You fail to comply with an Essential Term of this Lease;
- (d) You fail to comply with any other obligation under this Lease within 28 days (or such shorter period as provided for in this Lease) after the Landlord gives You notice requiring compliance; or
- (e) You are Insolvent.

### **16.2. Essential Terms of Lease**

The Essential Terms of this Lease include each of Your obligations:

- (a) to pay Base Rent, all Outgoings, Services and GST;
- (b) under clause 7 (Use of Premises);
- (c) under clause 8 (Your Additional Obligations);
- (d) under clause 9 (Your Works Obligations);
- (e) under clause 11 (Maintenance and Repair);
- (f) under clause 13 (First Right of Refusal, Assignments, Subleases); and
- (g) under clause 14 (Release and Indemnity).

### **16.3. Landlord's rights in default**

- (a) If an Event of Default occurs the Landlord, without prejudice to any other Claim which the Landlord has or may have or could otherwise have against You or any other person in respect of that default, may:
  - (i) prior to any demand or notice as is required by Law, re-enter into and take possession of the Premises or any part of it (by force if necessary) and eject You and all other persons from the Premises, in which event this Lease will be at an end; or
  - (ii) by notice to You forfeit this Lease, and from the date specified in that notice this Lease will be at an end.
- (b) Should the Landlord re-enter the Premises under this clause 16.3, it may, at its discretion remove from the Premises, any of Your property and store such property at Your risk and expense.

**16.4. Recovery of Damages**

The Landlord can recover damages even if:

- (a) the Landlord accepts Your Repudiation of this Lease;
- (b) the Landlord ends this Lease by entering and taking possession of any part of the Premises or forfeits this Lease by notice; or
- (c) You abandon or vacate the Premises.

**16.5. Compensation**

If the Landlord forfeits this Lease following an Event of Default, breach of an Essential Term, the acceptance of a Repudiation of this Lease or otherwise, then, without prejudice to the Landlord's other rights, powers or remedies, the Landlord is entitled to recover loss of bargain damages from You subject to the Landlord's obligation to mitigate its loss.

**16.6. Recovery of Money**

- (a) In addition to the Landlord's other rights and remedies, if this Lease is forfeited under clause 16.3, the Landlord, upon providing You with written notice, may in its absolute discretion recover from You:
  - (i) all arrears of money payable by You and any interest on that money calculated at the Prescribed Rate from the due date of that money to the date of forfeiture; and
  - (ii) all reasonable Costs (including the Landlord's administration costs and legal costs) incurred by the Landlord in rectifying any of Your breaches of this Lease and interest on that amount calculated at the Prescribed Rate from when it becomes due for payment until it is paid in full; and
  - (iii) all reasonable Costs incurred by the Landlord in recovering any money and interest on that amount calculated at the Prescribed Rate from when it becomes due for payment until it is paid in full,

provided that the Landlord does all things reasonable to mitigate its loss.

- (b) If the Landlord serves a notice on You pursuant to clause 16.5(a), You must pay to the Landlord within 10 Business Days of receiving the notice, the damages claimed by the Landlord.
- (c) To the extent permitted by Law, You acknowledge that the Landlord may disclose items of Your personal information to a debt collector (including without limitation, Revenue NSW) for the purposes of collecting any overdue amounts payable by You under this Lease. The information that may be disclosed for the purposes of this clause 16.6(c), includes, without limitation, identifying information about You, information about overdue payments and information in respect of court judgments and bankruptcy orders in relation to You.

**16.7. Waiver**

- (a) 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.
- (b) The Landlord's failure to take advantage of any default or breach of

covenant on Your part will not be construed as a waiver of it, nor will any custom or practice which may grow between any of the parties in the course of administering this Lease be construed to waive or to lessen the right of the Landlord to insist upon the timely performance or observance by You of any covenant or condition of this Lease or to exercise any rights given to the Landlord in respect of any such default.

- (c) A waiver by the Landlord of a particular breach or default will not be deemed to be a waiver of the same or any other subsequent breach or default.
- (d) The demand by the Landlord for, or subsequent acceptance by or on behalf of the Landlord of, Base Rent, or any other moneys payable under this Lease will not constitute a waiver of any earlier breach by You of any covenant or condition of this Lease, other than Your failure to make the particular payment or payments of Base Rent or other moneys so accepted, regardless of the Landlord's knowledge of any earlier breach at the time of acceptance of such Base Rent or other moneys.
- (e) Money tendered by You and accepted by the Landlord may be applied in the manner the Landlord decides.

#### 16.8. **Power of Attorney**

You irrevocably appoint the Landlord to be Your attorney to do on behalf of You (only if You are in default under the Lease and the Landlord has legally entered into possession of the Premises) anything You may lawfully authorise an attorney to do including anything which confers a benefit on the Landlord.

#### 16.9. **Landlord may Rectify**

The Landlord may remedy at any time, without notice, any breach of this Lease by You as Your agent and at Your risk. You must pay, on demand, all reasonable costs incurred by the Landlord in remedying any breach of this Lease by You.

#### 16.10. **Costs on Default**

You must pay the Landlord's Costs including management costs and legal fees and disbursements on an indemnity basis in connection with any breach of a provision of this Lease or default by You.

#### 16.11. **Interest on Overdue Payments**

You must pay interest on any money due to the Landlord but not paid on the due date from the date payment was due at the Prescribed Rate until the date that the payment was made (inclusive).

### 17. **YOUR OBLIGATIONS ON EXPIRY OR FORFEITURE**

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#### 17.1. **You are to Yield Up and Remove Your Property**

When this Lease ends You must, unless otherwise agreed in writing:

- (a) vacate the Premises;
- (b) remove, at Your expense, any items of personal property and repair any damaged caused by removal;
- (c) if directed and only if directed by the Landlord in writing, remove the Works, Improvements, and Your Fixtures installed during the Term of this Lease or

a prior lease or other licence, and make good any damage caused by the removal;

- (d) thoroughly clean the Premises and Your Fixtures and remove all rubbish, waste and materials brought onto or left in or about the Premises;
- (e) undertake any Remediation of any Contamination of the Premises;
- (f) ensure the obligations under clause 10 and 11 at the end of the Lease are completed; and
- (g) return to the Landlord all copies of keys and other mechanisms of access to the Premises.

**17.2. Your Fixtures**

- (a) Your Fixtures (including any Works installed by You during the Term of this lease or a prior lease or licence) must, when this Lease ends, remain in place on the Premises in the condition they are required to be kept under this Lease, unless otherwise directed by the Landlord in writing.
- (b) In consideration of the grant of this Lease:
  - (i) Your Fixtures will become the property of the Landlord on the date this Lease ends;
  - (ii) You must transfer ownership of Your Fixtures to the Landlord, or any other person nominated by the Landlord (free from all mortgages, security, interest, encumbrances etc); and
  - (iii) You must sign any documents required by the Landlord to give effect to the transfer of ownership.

**17.3. Abandoned Property**

- (a) Anything not removed from the Premises at the end of this Lease, at the election of the Landlord by notice to You, becomes the property of the Landlord who can keep it or remove and dispose of it and recover from You the cost of removal, make good and disposal.
- (b) You indemnify the Landlord against all Claims for Loss or repossession in connection with the acquisition of this property by the Landlord.
- (c) No compensation is payable by the Landlord or the Minister in respect of any Works, Your Fixtures or other improvements left on the Premises.

**17.4. Your Failure**

If You fail to comply with Your obligations under this clause 17 (in which respect time is of the essence) the Landlord may at Your expense perform these obligations.

**17.5. Your Obligation to Continue to Pay Rent**

If, upon the expiration or earlier determination of this Lease, You have not performed and observed all of Your obligations under this Lease, You must continue to pay the Base Rent and all other money payable under this Lease until You have performed and observed all of Your obligations to the satisfaction of the Landlord or the failure has been rectified by the Landlord.

**18. NO CAVEAT**

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You must not lodge a caveat on any title to the Land or allow a caveat lodged by a person claiming through You to be lodged against or remain on any title to the Land.

**19. LEASE EXHIBIT**

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You and the Landlord acknowledge and agree that the Lease Exhibit forms part of the Premises the terms and conditions of this Lease are deemed to apply to area identified in the Lease Exhibit by this clause.

**CROWN LAND MANAGEMENT ACT 2016**

**NOTICE - CROWN LAND TO BE USED OR OCCUPIED FOR OTHER PURPOSE UNDER S 2.18(2)(b)**

Pursuant to section 2.18(2)(b) of the Crown Land Management Act 2016, the Crown land specified in Column 2 of the following Schedule is proposed to be used or occupied under a relevant interest granted for the purpose(s) specified in Column 1 of the following Schedule.

The Hon. Stephen Kamper MP  
Minister for Lands and Property

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**Column 1**

Extraction Of Sand (12.7ha) – Licence 626287  
Jetty with 4x piles (unauthorised, 5.27m<sup>2</sup>)  
Pontoon with 2x posts (unauthorised, 33.2m<sup>2</sup>)  
Ramp (unauthorised, 224m<sup>2</sup>)  
Pipelines (unauthorised)  
Reclamation (224m<sup>2</sup>)  
Berthing area (unauthorised)

**Schedule**

**Column 2**

Part Shoalhaven Regional Crown Reserve No 1011528  
Public Purpose: Access Public Requirements, Rural Services,  
Tourism Purposes, Environmental and Heritage Conservation  
Notified: 9 June 2006  
Folio 4010  
Part Reserve 1011268  
Public Purpose: Future Public Requirements  
Notified: 3 February 2006  
File Number 13/10150

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