LEASE
New South Wales
Real Property Act 1900

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

STAMP DUTY
Office of State Revenue use only

(A) TORRENS TITLE
Property leased
The area shown pink on the attached plan marked "D" being part of the land in Certificate of Title Volume 5018 Folio 1

(B) LODGED BY
Document Collection Box
Name, Address or DX, Telephone and Customer Account Number if any
Reference: 
CODE L

(C) LESSOR
ROADS AND MARITIME SERVICES ABN 76 236 371 088

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

(D) Encumbrances (if applicable):

(E) LESSEE

(F)

(TENANCY:

(G)

1. TERM ( ) years
2. COMMENCING DATE
3. TERMINATING DATE
4. With an OPTION TO RENEW for a period of N/A set out in N/A
5. With an OPTION TO PURCHASE set out in N/A
6. Together with and reserving the RIGHTS set out N/A
7. Incorporates the provisions or additional material set out in Annexures A, B, C and D hereto.
8. Incorporates the provisions set out in N/A No(s). N/A
9. The RENT is set out in item 5 of Annexure B.
I certify I am an eligible witness and that the lessor signed this dealing in my presence.
[See note* below]

Signature of witness:
Name of witness:
Address of witness:

Certified correct for the purposes of the Real Property Act 1900 by the lessor.

SEE EXECUTION PAGE 3 ATTACHED
Signature of lessor:

Note: where applicable, the lessor must complete the statutory declaration below.

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

Signature of witness:
Name of witness:
Address of witness:

Certified correct for the purposes of the Real Property Act 1900 by the lessee.

SEE EXECUTION PAGE 3 ATTACHED
Signature of lessee:

**(I)**

**STATUTORY DECLARATION**

I solemnly and sincerely declare that –

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

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at ...................................... in the state of ....................................................................................
on ........................................................................ in the presence of –

☐ Justice of the Peace (J.P. Number )
☐ Practising Solicitor
☐ Other qualified witness [specify]........................................................................................................................................

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

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the cover; and
2. I have known the person for at least 12 months OR I have confirmed the person’s identity using an identification document and the document I relied on was a

Signature of witness: Signature of applicant:
**Execution Page**

**Executed as a Deed in New South Wales**

**EXECUTED** by a delegate of *Roads and Maritime Services (ABN 76 236 371 088)* who hereby certifies that he or she has no notification as to the revocation of such delegation, in the presence of:

<table>
<thead>
<tr>
<th>Signature of Witness</th>
<th>Signature of Delegate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Witness (print)</td>
<td>Name of Delegate (print)</td>
</tr>
<tr>
<td>Address of Witness (print)</td>
<td>Title of Delegate (print)</td>
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</tbody>
</table>

**EXECUTED** by //Lessee Full Name// in the presence of:

<table>
<thead>
<tr>
<th>Signature of Witness</th>
<th>Signature of Lessee</th>
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<tbody>
<tr>
<td>Name of Witness (print)</td>
<td>Name of Lessee (print)</td>
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<tr>
<td>Address of Witness (print)</td>
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</table>

**EXECUTED** by //Lessee Full Name// in the presence of:

<table>
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<tr>
<th>Signature of Witness</th>
<th>Signature of Lessee</th>
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<td>Name of Witness (print)</td>
<td>Name of Lessee (print)</td>
</tr>
<tr>
<td>Address of Witness (print)</td>
<td></td>
</tr>
</tbody>
</table>
EXECUTED by //Lessee Full Name//
in accordance with section 127(1) of
the Corporations Act 2001

________________________________________
Signature of Director

________________________________________
Signature of Director/Secretary

________________________________________
Name of Director (print)

________________________________________
Name of Director/Secretary (print)
THIS DEED OF LEASE is dated

PARTIES:

1 ROADS AND MARITIME SERVICES (ABN 76 236 371 088) a NSW Government agency and corporation incorporated under section 46 of the Transport Administration Act 1988 (NSW) of Level 11, 27-31 Argyle Street, Parramatta NSW 2150 (“Lessor”) and

2 //Lessee Full Name// & //Lessee Full Name// of //Enter address// (“Lessee”).

INTRODUCTION:

A The Lessor is the registered proprietor of the Leased Land.

B The Lessor has agreed to grant to the Lessee and the Lessee has agreed to accept from the Lessor a lease of the Leased Land subject to the terms and conditions of this Deed of Lease.

IT IS AGREED that this Deed of Lease comprises:

(a) the LPI cover page, this page and the execution page;
(b) the Terms and Conditions of the Lease, annexed and marked “A”;
(c) the Reference Schedule, annexed and marked “B”;
(d) the Special Conditions annexed and marked “C”; and
(e) the Plan of the Leased Land annexed and marked “D”.

JUMP1RCHEF
ANNEXURE "A" TO LEASE

BETWEEN
ROADS AND MARITIME SERVICES
AND

//ENTER LESSEE FULL NAME//

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1 DEFINED TERMS AND INTERPRETATION

1.1 Definitions in the Dictionary
A term or expression in italics is a defined term with the meaning ascribed to it in Schedule 1 (“Dictionary”) of this Lease.

1.2 Interpretation
The interpretation clause in Schedule 1 (“Dictionary”) of this Lease sets out the rules of interpretation that apply to this Lease.

2 GRANT AND RESERVATIONS

2.1 Grant
The Lessor grants and the Lessee accepts a lease of the Leased Land and Lessor’s Improvements on the Leased Land for the Term subject to the reservations, covenants, conditions, stipulations and provisos contained in this Lease.

2.2 Reservations
The Lessor reserves from the grant contained in Clause 2.1 of this Lease, for itself and persons claiming through or authorised by the Lessor the rights contained in Clause 2.3, Clause 2.4, Clause 2.5, Clause 2.6, Clause 2.7 and Clause 11.2 of this Lease.

2.3 Special Conditions
This Lease is granted subject to any Special Conditions set out in the Annexure that is annexed to this Lease and marked “C”.

2.4 Lessor may Create Easements
The Lessor acting reasonably may at any time dedicate its land or be a party to the creation of easements, restrictions or covenants benefiting or burdening its land or enter into any arrangements or agreements with any person for purposes including the following:

(a) to provide access to and egress from the Leased Land only in the event of an emergency; or

(b) for the support of structures erected or to be erected on any land adjoining the Leased Land if the grant of the easement, restriction or covenant or the entering into of the arrangement or agreement is required by any Relevant Authority or under any Law; or

(c) to comply with the requirements of any Relevant Authority or with any Law, including where such compliance relates to the provision of a service, including water, sewerage, drainage, gas, electricity and telephonic or electronic communications; or
for any purpose that the Lessor determines, acting reasonably, is appropriate,

but in doing so, the Lessor must not dedicate land or be party to the creation of any easement, restriction or covenant or enter into any arrangement or agreement that materially derogates from the enjoyment of rights conferred on the Lessee by this Lease.

2.5 Statutory Resumption
Clause 2.4 of this Lease does not affect the power of resumption of the Lessor or any Relevant Authority under any Law. The Lessor acknowledges that in the event of a compulsory acquisition of the Leasehold interest the Lessee would be entitled to submit a claim for compensation in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

2.6 Lessor may Subdivide and Re-subdivide
The Lessor, acting reasonably, may subdivide and re-subdivide the Leased Land including under the Strata Schemes (Freehold Development) Act 1973 (NSW) and the Community Land Development Act 1989 (NSW) and, if necessary, to reflect changes because of the subdivision or re-subdivision, require the Lessee to vary this Lease or replace this Lease with another if:

(a) the Lessor notifies the Lessee that the Lessor wishes to do these things; and

(b) after the subdivision or re-subdivision the Premises are substantially the same and the amounts payable by the Lessee in respect of the Premises are not substantially greater than before the subdivision or re-subdivision; and

(c) the Lessor pays, in respect of the variation or replacement of this Lease, the Lessee’s reasonable legal costs and disbursements.

2.7 Acknowledgements by Lessee
The Lessee acknowledges:

(a) that the Lessor is a Relevant Authority that has responsibility for marine safety functions and other functions under the Law; and

(b) the obligations of the Lessor under this Lease in no way alter or restrict its role, functions and obligations as a Relevant Authority and no exercise of any function by the Lessor as a Relevant Authority will constitute a breach of this Lease; and

(c) the obligations under this Lease do not reduce or affect the powers of the harbour master of the Port in which the Premises are located;

(d) the Lessor has made no warranty, statement or representation in relation to the condition or repair of the Premises, the fitness or suitability of the Premises for any purpose, whether any proposed use is permissible or whether the Premises or use of the Premises will be affected by Climate Change. The Lessee relies solely on its own
enquiries and investigations in determining whether to enter into this Lease; and

(e) in granting this Lease, the Lessor makes no warranty, statement or representation as to:

(i) the existence and/or extent (if any) of “existing use” rights or “continuing use” rights within the meaning of the Environmental Planning and Assessment Act 1979 applying to the Premises, including whether or not those rights have been abandoned. The Lessee relies on its own enquiries; and

(ii) the lawfulness of any Lessee’s Fixtures and/or Lessor’s Improvements or use made of the Premises.

2.8 Registration of Lease

(a) The Lessee acknowledges that if the Term of this Lease is more than three (3) years, the Lease needs to be registered to create a legal interest in land and to confer indefeasibility of title on the Lessee.

(b) The Lessee acknowledges that it is aware of the provisions of the Real Property Act 1900 and other Law relevant to leases and that prior to making a decision not to register this Lease the Lessee:

(i) has or had the opportunity to obtain independent legal and financial advice in relation to the consequences of not registering the Lease;

(ii) fully understands the consequences of not registering the Lease; and

(iii) releases the Lessor from any Loss incurred by the Lessee as a result of non-registration of this Lease.

(c) The Lessee acknowledges that if the Lessee decides to register the Lease during the Term, the Lessee must:

(i) notify the Lessor in writing of its request to register the Lease;

(ii) pay, on demand, any legal costs and disbursements incurred by the Lessor in registering the Lease, including but not limited to any revision of the documents, plans of subdivision and registration fees; and

(iii) in the event that the Land and Property Information raises any requisition which can not be rectified and which would prevent this Lease from being registered, the Lessee agrees to surrender this Lease and simultaneously enter into a new lease on the same terms and conditions of this Lease for the remainder of the Term except for any necessary amendments to enable registration of the new lease.
3 RENT AND OTHER PAYMENTS

3.1 Rent
The Lessee must pay the Rent without demand and without set-off or counterclaim and free from any deductions, to the Lessor during the Term.

3.2 Costs
The Lessee must pay, on an indemnity basis, to the Lessor or as the Lessor directs:

(a) all stamp duty, including any fines or penalties, payable in connection with this Lease; and

(b) all registration fees in connection with registration of this Lease at the Land and Property Information, if applicable; and

(c) all costs in connection with any plan or other document required to be registered with this Lease at the Land and Property Information; and

(d) the Lessor’s reasonable costs, legal costs and disbursements in connection with:
   (i) any discussion or correspondence, preparation, completion, execution and stamping of this Lease and all ancillary documents; and
   (ii) any action or dealing by or with the Lessee in relation to this Lease, including but not limited to removal of the Lessee’s Fixtures or the Lessor’s Improvements from the Premises and associated assessments required under the Environmental Planning and Assessment Act 1979 or by the Lessor, and assignment of the Lease, whether or not such action or dealing proceeds; and
   (iii) the consideration of any request made by the Lessee for the Lessor’s consent or approval under this Lease (whether or not it is given); and
   (iv) any failure by the Lessee to perform and observe the Lessee’s obligations under this Lease;
   (v) any costs associated with the redefinition of the boundaries of the Lessee’s Land; and
   (vi) any assessment, report, survey or investigation reasonably required in the circumstances, commissioned or carried out by or on behalf of, or at the request or direction, of the Lessor for the purposes of this Lease; and

(e) all reasonable costs and expenses in connection with any action taken by the Lessor to recover Rent or other money payable by the Lessee to the Lessor pursuant to this Lease that remains unpaid for a period of thirty (30) Business Days from the due date for payment.
3.3 Outgoings
(a) The Lessee is liable for and must pay all Services and Outgoings in connection with the Premises on or before the due date for payment to the relevant persons or the Relevant Authorities or, if required, to the Lessor.

(b) The Lessee agrees that where the Lessee has failed to pay for any Services or Outgoings by the due date for payment, the Lessor may, in its absolute discretion, elect to pay the amount due in respect of the Services or Outgoings to the relevant person or the Relevant Authority, and that amount will constitute a debt payable to the Lessor and the Lessee must reimburse the Lessor for the debt within ten (10) Business Days of written demand from the Lessor.

3.4 Goods and Services Tax
(a) In this Clause 3.4, the terms “GST”, “Input Tax Credit”, “Supply”, and “Tax Invoice” have the same meanings given to them in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

(b) Rent and any other payments under this Lease do not (unless expressly stated otherwise) include GST.

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

(d) The GST amount is payable at the same time and in the same manner as the consideration for the Supply to which the GST amount relates.

(e) The Lessor must provide the Lessee with a tax invoice for the GST amount for each payment made by the Lessee under Clause 3.4(b) of this Lease in accordance with the requirements of the Law.

(f) If the Lessor is entitled to be reimbursed or indemnified for any cost, expense or liability by the Lessee the amount payable by the Lessee in respect of such cost, expense or liability will not include any amount in respect of GST for which the Lessor is entitled to an Input Tax Credit.

3.5 Lessee’s Obligation to Continue to Pay Rent
If, upon the expiration or earlier determination of this Lease, the Lessee has not performed and observed all its obligations under this Lease, the Lessee must continue to pay Rent and all other money payable by the Lessee under this Lease until the Lessee has performed and observed all of its obligations to the reasonable satisfaction of the Lessor.

3.6 No Abatement of Rent
To the extent permitted by Law and except to the extent any damage, loss or inability to use the Premises is caused or contributed to by any intentional or wilful or negligent act or omission by the Lessor, its officers, agents or employees, the Lessee will not be entitled to any abatement of Rent or Outgoings, damages or compensation:
(a) if Damage or Serious Property Damage occurs to the Premises or part of the Premises even if the Lessee is denied access to the Premises; or

(b) during any period in which the Lessee, Lessor, any Relevant Authority or third party as agent for the Lessor is carrying out any Work to or in the vicinity of the Premises; or

(c) if any other interruption, disruption or Loss is incurred by the Lessee as a result of the Lessor or any Relevant Authority carrying out its legislative functions, rights and obligations; the act or omission of any third party; the existence of any Contamination or Pollution; or by the proximity of the Premises to a working harbour,

provided however, that the Lessor must use its reasonable endeavours to minimise any Loss or inconvenience incurred by the Lessee to the extent that it has been caused or contributed to by the Lessor.

3.7 Review of Rent Formula or Rate of Return

(a) The Lessor must vary the Rent Formula to implement the recommendation of IPART or its successors (as accepted by the Minister) in relation to the rent for such a lease. The Lessor must notify the Lessee in writing of the new Rent Formula varied in accordance with this Clause 3.7(a) at least sixty (60) days before the commencement of the new Rent Formula.

(b) The Lessor must vary the Rate of Return each year in accordance with the Rate of Return (if any) specified by IPART or its successors which is applicable to this Lease. The Lessor must publish the new Rate of Return varied in accordance with this Clause 3.7(b) at least sixty (60) days before the commencement of the new Rate of Return via the Lessor’s internet website.

(c) If the new Rate of Return varied under Clause 3.7(b) of this Lease results in an increase in the rent payable under this Lease, the Lessor must notify the Lessee in writing of:

(i) the new Rate of Return; and

(ii) the increase in rent payable under the Lease,

at least sixty (60) days before the commencement of the new Rate of Return.

(d) If the new PSLV calculated annually in accordance with the terms of this Lease results in an increase in the rent payable under this Lease, the Lessor must notify the Lessee in writing of:

(i) the new PSLV; and

(ii) the increase in rent payable under the Lease,

at least sixty (60) days before the commencement of the new PSLV.

(e) The Lessee is deemed to have agreed to and accepted:
(i) the new Rent Formula stated in a notice given by the Lessor pursuant to Clause 3.7(a) of this Lease;

(ii) the new Rate of Return stated in a notice given by the Lessor pursuant to Clause 3.7(c) of this Lease; or

(iii) the new PSLV stated in a notice given by the Lessor pursuant to Clause 3.7(d) of this Lease,

unless the Lessee gives the Lessor a notice in writing terminating this Lease on the basis that it does not accept the new Rent Formula, the new Rate of Return, or the new PSLV (as applicable) within one hundred and twenty (120) days of the date of the Lessor’s notice.

3.8 Administration Fee

(a) The Lessee must pay without demand and without set-off or counterclaim and free from any deductions to the Lessor during the Term, an administration fee for occupation of the Premises in relation to the Lessor’s costs of administering domestic waterfront occupancies. The administration fee is currently set at $441.25 (plus GST) per annum.

(b) The administration fee is to be increased on 1 July each year, the current annual increase being set at 2.5%.

(c) The administration fee is to be reviewed and updated every four (4) years and published on the Lessor’s website, in accordance with recommendations from IPART.

4 PREMISES

4.1 Permitted Use

The Lessee must not use or permit the use of the Premises otherwise than for private purposes:

(a) in accordance with the Permitted Use; and

(b) in connection with the residential use of the Lessee’s Land.

4.2 Berthing of Vessels

(a) The Lessee may only permanently berth a vessel at the Premises if “Permanent Berthing” is specified as a Permitted Use in Item 3 of the Reference Schedule and then only in accordance with the conditions, if any, of the Development Consent and the Law.

(b) Any vessel permanently berthed at the Premises pursuant to Clause 4.2(a) of this Lease must be berthed in the Berthing Area identified on the Plan and must not exceed the maximum dimensions, or other conditions, if any, specified in Item 3 of the Reference Schedule.
(c) If the Lessee is not permitted to berth a vessel at the Premises on a permanent basis pursuant to Clause 4.2(a) of this Lease, the Lessee must ensure that any vessel berthed in connection with the Premises does not exceed the maximum dimensions (if any) specified in Item 3 of the Reference Schedule and is only berthed for the purpose and for the period of time necessary to embark or disembark passengers or to load or unload goods.

(d) Any vessel berthed at the Premises in accordance with this Clause 4 must be berthed in a safe manner, which the Lessee acknowledges is its responsibility, and no fee or any other form of consideration may be received by the Lessee for the berthing.

4.3 Compliance with the Law & Relevant Authorities

(a) The Lessee must at all times during the Term observe, perform, fulfil and comply with the requirements of the Law, including the Development Consent, that relate or apply to the Premises or the use of or occupation of the Premises.

(b) The Lessee must observe, perform, fulfil and comply with the requirements of all Relevant Authorities, including any notice, order or direction given by any Relevant Authority.

4.4 Lessee to provide Copies of Notices

The Lessee must, as soon as reasonably practicable, provide the Lessor with a copy of any notice received from any Relevant Authority, other than for payment of statutory outgoings, that relates to the Premises, the Permitted Use of the Premises, the condition of the Premises, the insurances to be affected under this Lease or any notice, order or direction referred to in Clause 4.3(b) of this Lease.

4.5 Prohibition on Certain Use and Behaviour

The Lessee must not at any time during the Term:

(a) use, permit or carry on, or permit to be used, exercised or carried on in, upon or in the vicinity of the Premises, any noxious, nuisance or offensive act, activity, trade, business, occupation or calling; or

(b) use, permit or carry on, or permit to be used, exercised or carried on in, upon or in the vicinity of the Premises, any illegal or dangerous activity; or

(c) do, or omit to do, or permit or cause to be done any act, matter or thing in, on, upon, or in the vicinity of the Premises that is or may be a breach of the Development Consent or any Law or for which Development Consent is required but has not been obtained; or

(d) reside on the Premises, or permit or cause any person to reside on the Premises, or in any vessel permitted to be berthed at the Premises pursuant to Clause 4.2 of this Lease; or
(e) cause or permit any auction sale or public meeting to be held in or on the Premises, unless the Lessor’s prior written approval has been obtained.

4.6 Signs

(a) The Lessee must not erect, display, affix or exhibit any sign, embellishment, advertising, name or notice on or to the Premises or that is visible from the Premises unless:

   (i) Required by the Lessor, the Law or any Relevant Authority; or

   (ii) the Lessor’s prior written approval has been sought and obtained and the requirements of any Law, Relevant Authority or Development Consent have been satisfied.

(b) The Lessee must, at its expense, ensure that all the mooring piles that form part of the Premises have white markings on the top of the pile, painted or capped, for navigational purposes, in accordance with the Lessor’s requirements.

(c) The Lessee is responsible for the installation, maintenance and removal costs associated with any signage or markings installed pursuant to this Clause 4.6, including any signage or markings required by the Lessor, any Relevant Authority or under the Law.

4.7 No Antennas

The Lessee must not affix any aerial, antenna, flag pole or wind vane to the Premises for any purpose unless the Lessee obtains the prior written approval of the Lessor, which must not be unreasonably withheld, and complies with the Law.

4.8 No Chemicals

The Lessee must not use or store chemicals, burning fluids, gas or alcohol on or in the Premises except where the Lessor has given its prior written approval to such use or storage and the Lessee has obtained the approval of any other Relevant Authority.

4.9 Premises to be Kept Clean

The Lessee must, at its own expense, keep the Premises clean, free of rubbish and free and clear of pests, insects, rodents and vermin to a standard deemed acceptable by the Lessor.

4.10 Lessee to give Notice of Accidents

The Lessee must, as soon as practicable, give notice to the Lessor and to any Relevant Authority of any accident, incident, or circumstance that occurs in, on or in the vicinity of the Premises that causes or is likely to cause injury, damage, danger, risk or hazard to the Premises or any person.
4.11 No Storage

The Lessee must ensure that no vessels, materials or equipment is or are stored in or on the Premises at any time unless such storage is permitted in accordance with the Permitted Use.

5 MAINTENANCE, REPAIRS, ALTERATIONS AND ADDITIONS

5.1 Lessee’s General Repair Obligation

(a) The Lessee must at all times, at its own expense, keep and maintain the Premises, and the Services to the Premises in good order, repair and condition, and in a condition that is safe and physically suitable for carrying on the Permitted Use.

(b) The Lessee’s obligation under Clause 5.1(a) of this Lease includes, without limitation:

(i) repair, maintenance, Work, rectification, reconstruction, Remediation or replacement to the Premises or any part of the Premises; and

(ii) the rectification of any Damage to the Premises or part of the Premises, to the standard and extent necessary to ensure the Lessee’s compliance with Clause 5.1(a) of this Lease and in accordance with the requirements of the Lessor, if any, the Law, and any Relevant Authority.

5.2 Serious Property Damage

(a) Except to the extent Serious Property Damage is caused or contributed to by any intentional or wilful or negligent act or omission of the Lessor, its officers, agents or employees, if Serious Property Damage occurs to the Premises or part of the Premises, the Lessee must:

(i) immediately provide the Lessor with full written details of the Damage, and in any event, within 48 hours; and

(ii) at its expense, promptly rectify the Damage and repair, replace and/or reinstate the Premises, or part of the Premises affected by the Damage to the standard and extent necessary to ensure the Lessee’s compliance with this Clause 5.2 and in accordance with the requirements of the Lessor, if any, the Law and any Relevant Authority.

(b) In the event Serious Property Damage occurs to the Premises which is caused or contributed to by any intentional or wilful or negligent act or omission by the Lessor, its officers, agents or employees, the Lessor shall at its cost repair and rectify the Damage in accordance with any Relevant Authority or Law.
5.3 Notice to Carry Out Work

(a) The Lessor may (but is not required to) give to the Lessee a notice requiring the Lessee, within a reasonable time as specified in the Lessor's notice, to carry out any Work in, on or to the Premises that is necessary to ensure the Lessee's proper performance of its obligations under this Lease except to the extent Work is necessary because of any intentional or wilful or negligent act or omission by the Lessor, its officers, agents or employees.

(b) The Lessee must, at its own expense, comply with a notice issued under Clause 5.3(a) of this Lease.

(c) The Lessee acknowledges that the failure of the Lessor to give notice pursuant to Clause 5.3(a) of this Lease does not prejudice the Lessor's rights under this Lease.

5.4 Lessor's Right of Entry and Rectification

(a) The Lessor may, on giving the Lessee reasonable notice (except in the case of a reasonably perceived emergency when no notice is required) enter the Premises with workmen and others and all necessary materials for the purposes of:

(i) carrying out any Work in, on or to the Premises in respect of which the Lessor has given a notice under Clause 5.3(a) of this Lease that has not been carried out by the Lessee within the time specified in that notice; or

(ii) carrying out any Work in, on or to the Premises that in the opinion of the Lessor, acting reasonably, needs to be carried out immediately; or

(iii) viewing the state of repair and condition of the Premises and/or to ascertain whether there has been any breach of the Lessee's covenants or obligations under this Lease; or

(iv) carrying out any of its obligations or exercising any of its powers or authorities under this Lease; or

(v) carrying out any of its obligations under any Law, including complying with any request, requirement, notification or order of any Relevant Authority having jurisdiction or authority over or in respect of the Premises for which the Lessee is not responsible under this Lease.

(b) The Lessee must provide the Lessor with access to the Premises, and must otherwise cooperate with the Lessor, for the purpose of Clause 5.4(a) of this Lease, including where it is necessary, providing the Lessor with access to any adjoining land that is under the control of the Lessee.

(c) The Lessor must, in the exercise of any power under Clause 5.4(a) of this Lease, do all things reasonably practicable to minimise inconvenience and disruption to the Lessee's use and occupation of
the Premises, and the Lessor must leave the Premises or that part of the Premises used in the exercise of the Lessor’s power, clean and free of rubbish.

(d) The Lessee acknowledges that the exercise of the Lessor’s rights pursuant to this Clause 5 is not a breach of Clause 11.1 (“Quiet Enjoyment”) of this Lease.

5.5 Approval for Work
The Lessee must not carry out any Work in, on or to the Premises unless it has, at its own expense:

(a) notified the Lessor of the proposed Work and obtained its prior written approval to carry out the Work other than work to be carried out pursuant to a notice issued under Clause 5.3;

(b) complied with the conditions, if any, of the Lessor’s approval pursuant to Clause 5.5(a) of this Lease or a notice issued under Clause 5.3; and

(c) complied with the requirements of any Law and any Relevant Authority in relation to the proposed Work, including obtaining all necessary approvals, consents and permits required by any Relevant Authority.

5.6 Submission of Plans and other Documentation
The Lessee must, in seeking the consent of the Lessor pursuant to Clause 5.5 of this Lease, provide such documentation as the Lessor reasonably requires, including detailed drawings, plans and specifications of the proposed Work.

5.7 Carrying out the Work
In carrying out any Work approved by the Lessor under Clause 5.5 of this Lease, the Lessee must:

(a) comply with the conditions, if any, of the Lessor’s approval and comply with any reasonable direction (either written or oral) and/or requirements of the Lessor; and

(b) comply with the conditions and requirements of any Law including all applicable Australian Standards, and any Relevant Authority, including the conditions and requirements in respect of any approval, consent and permit issued by any Relevant Authority; and

(c) act in a proper and work-man like manner, using suitable and proper construction methods and materials; and

(d) cause as little inconvenience, nuisance or damage of any kind to any occupier of adjoining property as is reasonably practicable; and

(e) not cause or permit the storage of any Hazardous Material in, on or in the vicinity of the Premises except as is reasonably necessary for the Work being carried out and must not allow any Hazardous Material to escape or enter into any waterway; and
(f) with all due expedition and within a reasonable time complete the Work at no expense to the Lessor; and

(g) promptly remove all waste material and rubbish resulting from the Work and not cause or permit any waste material or rubbish to escape or enter into any waterway; and

(h) promptly repair and make good any Damage that is caused by anything done or omitted to be done in connection with carrying out any Work.

6 RELEASE AND INDEMNITY

6.1 Lessee as Owner

The Lessee agrees to be subject to the same responsibilities in respect of persons and property in, on, under, over, or near the Premises as those to which it would be subject to if, during the Term, it was the registered proprietor and occupier of the freehold of the Premises.

6.2 Release by Lessee

(a) The Lessee agrees that it uses and occupies the Premises at its own risk and releases the Lessor, the Minister and the State of New South Wales to the full extent permitted by Law from any Loss, including any Loss in connection with the death or injury of any person or damage to any property that is paid, suffered, incurred or that has arisen out of or in connection with (directly or indirectly) this Lease, including without limitation, the Lessee’s use and occupation of the Premises, a breach by the Lessee of any of its obligations under this Lease and any action taken by the Lessor pursuant to this Lease.

(b) The Lessee agrees that the release under Clause 6.2(a) of this Lease is full and absolute except to the extent the Loss is caused by any wilful or negligent act or omission of the Lessor.

6.3 Indemnity by Lessee

(a) The Lessee indemnifies and agrees to keep indemnified the Lessor, the Minister and the State of New South Wales at all times for any Loss, including any Loss in connection with the death or injury of any person or damage to any property, that is paid, suffered or incurred by the Lessor, the Minister or the State of New South Wales or for which the Lessor, the Minister or the State of New South Wales may be or become liable or would except for this indemnity have been liable, and that is wholly or partly due to, arising out of, in connection with (directly or indirectly), in the course of, caused by or contributed to by all or any of the following:

(i) the occupation or use of the Premises by the Lessee even if the Loss is caused by an incident or event which takes place outside the boundaries of the Leased Land; and
(ii) a breach by the Lessee of any of its obligations under this Lease; and

(iii) any negligence, act or omission of the Lessee which might impose on or increase any liability of the Lessor in respect of the Premises; and

(iv) any action taken by the Lessor pursuant to this Lease.

(b) The Lessee agrees that the indemnity under Clause 6.3(a) of this Lease is full and absolute except to the extent the Loss is caused by any wilful or negligent act or omission of the Lessor.

6.4 Continuation and Independence of Release and Indemnity
The obligations of the Lessee pursuant to Clauses 6.1, 6.2 and 6.3 of this Lease are continuing obligations, separate and independent from the other obligations of the Lessee, and survive the expiration, termination or surrender of this Lease for a period of six (6) months. It is not necessary for the Lessor to incur expense or make any payment before enforcing a right of indemnity conferred by this Lease.

7 INSURANCE

7.1 Insurance Policies
(a) The Lessee must effect and maintain, from the Commencement Date and for the duration of the Term, insurance against all foreseeable risks relating to the Premises or relating to the occupation or use of the Premises, including, without limitation:

(i) public liability insurance in respect of its liability pursuant to Clause 6 (“Release and Indemnity”) of this Lease:

(A) for an amount of not less than $20,000,000 for any one occurrence or for any other amount the Lessor reasonably requires;

(B) that contains all provisions normally contained in public liability policies or as reasonably required by the Lessor; and

(C) that covers all of the Lessee’s obligations under this Lease, including the obligation to indemnify the Lessor; and

(ii) worker’s compensation insurance in respect of job related injuries to the Lessee’s employees or contractors at any time in, on or in the vicinity of the Premises; and

(iii) any insurance policies required by Law; and

(iv) any other insurance policy or level of coverage that the Lessor reasonably requires.
7.2 Insurance Policy Requirements

The Lessee must ensure that all insurances required to be effected and maintained pursuant to Clause 7.1 of this Lease:

(a) are taken out with insurers which are members of the Insurance Council of Australia and on terms that are acceptable to the Lessor; and

(b) note the interests of the Lessor and any other person who has an insurable interest and who is nominated by the Lessor at any time as an interested party.

7.3 Insurance Policies and the Lessee’s Obligations

In respect of the insurances required to be effected and maintained by the Lessee pursuant to Clause 7.1 of this Lease, the Lessee must:

(a) properly disclose to the insurer full, true, and particular information of all matters and things known or ought to be known to the Lessee and which the non-disclosure of which may prejudice or affect the insurance or any payments or benefits under the insurance; and

(b) ensure that the insurances are maintained in force from the Commencement Date until the later of the expiration or earlier determination of this Lease, or the date on which the Lessee vacates the Premises in accordance with this Lease; and

(c) not do or permit anything to be done or omit to do anything that could potentially prejudice any insurance or vitiate or render void or voidable any insurance; and

(d) immediately rectify anything that might prejudice any insurance and reinstate the insurance if it lapses; and

(e) not vary, cancel or allow any insurance policy to lapse without the Lessor’s prior written consent; and

(f) not do or permit anything to be done or omit to do anything that could potentially conflict with the requirements of any Law or Relevant Authority, including any Law relating to fire or fire safety or any insurance policy; and

(g) at all times comply with the terms and conditions of any insurance; and

(h) pay the premium of any insurance at least five (5) Business Days before the due date for payment and provide receipts evidencing payment to the Lessor if requested by the Lessor; and

(i) keep accurate and up to date records of any occurrence which may give rise to a claim under the insurances; and

(j) comply with the requirements of the Insurance Council of Australia Limited and of any insurer in relation to anything placed or intended to be placed by the Lessee in the Premises and alarms, sprinklers and other fire prevention equipment.
7.4 Copies of Insurance to be Provided to Lessor

The Lessee must, upon the commencement of this Lease, before any Work is carried out to the Premises if required by the Lessor and at any other time during the Term upon the written request of the Lessor, provide the Lessor with a copy of all insurances required to be effected and maintained pursuant to Clause 7.1 of this Lease, together with certificates of currency to evidence the existence of same.

7.5 Notification of Claim or Cancellation

In respect of the insurances required to be effected and maintained by the Lessee pursuant to Clause 7.1 of this Lease, the Lessee must immediately notify the Lessor, 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.

8 WORK HEALTH & SAFETY (WH & S) OBLIGATIONS

8.1 Lessee’s Acknowledgments regarding WH & S Legislation

The Lessee acknowledges that:

(a) as the owner of the Leased Land and the Lessor’s Improvements, the Lessor has obligations under the WH & S Legislation; and

(b) as occupier and controller of the Premises and owner or occupier of the Lessee’s Fixtures, the Lessee has obligations under the WH & S Legislation.

8.2 Lessee to Perform Obligations

The Lessee must:

(a) perform all the Lessee’s Obligations under the WH & S Legislation; and

(b) ensure that the Lessee does not by any act or omission cause the Lessor to be in breach of the WH & S Legislation; and

(c) put in place workplace systems, if applicable, to ensure compliance with the WH & S Legislation; and

(d) ensure its systems include emergency procedures and adequate provisions for information and training for staff, contractors, invitees and visitors in relation to them; and

(e) minimise risk from its operations to the general public.
8.3 Lessee to Perform Lessor’s Obligations

To the extent permitted by Law, the Lessee agrees that the Lessee will perform and be liable for the non-performance of the obligations of the Lessor under the WH & S Legislation, except for works carried out or supervised by the Lessor.

8.4 Principal Contractor

The Lessor appoints the Lessee, and the Lessee accepts the appointment, as principal contractor for the purposes of the WH & S Legislation in relation to Work carried out to the Premises except for works carried out or supervised by the Lessor.

9 ENVIRONMENTAL OBLIGATIONS

9.1 Compliance with the Law

(a) The Lessee must, at its expense, comply with the Environmental Law applicable to the Premises.

(b) The Lessee must, at its expense, promptly comply with any Environmental Notice.

(c) The Lessee must not carry out the Permitted Use in an environmentally unsatisfactory manner for the purposes of section 95 of the Protection of the Environment Operations Act 1997 (NSW).

(d) The Lessee must notify the Relevant Authority and the Lessor of any Pollution incident as defined in the Protection of the Environment Operations Act 1997 (NSW).

9.2 Liability for Contamination & Pollution

(a) The Lessee acknowledges and accepts:

(i) the Premises in its existing state and condition on the date that the Lessee takes possession of the Premises, including but not limited to, any existing Contamination or Pollution of the Premises and the existence on or in the Premises of Hazardous Materials; and

(ii) that the Lessor makes no representation or warranty as to whether the Premises or adjoining or neighbouring premises, land or waterway owned by the Lessor is contaminated or affected by Pollution or the suitability of the Premises for the Permitted Use.

(b) The Lessee is responsible for any Contamination or Pollution of the Premises which is identified in any Environmental Site Assessment provided however the Lessee is not responsible for any Contamination or Pollution that has migrated to the Leased Land from any adjoining or neighbouring premises, land or waterway not in the possession of the
Lessee unless the Lessee caused or contributed to the Contamination or Pollution.

(c) Without limiting Clause 6 of this Lease, the Lessee indemnifies the Lessor in respect of all claims, judgments, fines, orders, costs (including legal costs on a full indemnity basis) and expenses for which the Lessor is or may become liable in respect of or arising from the Lessee’s breach of any of its obligations under this Clause 9.

9.3 Hazardous Material

The Lessee must not:

(a) use, keep or handle in, on or in the vicinity of the Premises, any Hazardous Material without the prior written consent of the Lessor;

(b) cause or permit any Hazardous Material to emanate from the Premises or spill into any waterway; or

(c) generate or dispose of any Hazardous Material, including any sewage or waste, in or from the Premises or any adjoining or neighbouring premises, land or waterway without the prior written consent of the Lessor.

9.4 Remediation

If, at any time during the Term of this Lease, the Lessor reasonably considers that the Premises are or may be affected by Contamination or Pollution caused by the Lessee, the Lessor, may require the Lessee, at its own expense to do all or any of the following:

(a) engage an appropriately qualified environmental consultant to prepare an Environmental Site Assessment; and

(b) promptly implement and carry out all recommendations made in the Environmental Site Assessment; and

(c) provide a certificate from an appropriately qualified environmental consultant to the effect that the recommendations in that assessment have been satisfactorily carried out.

10 ASSIGNMENT, SUBLETTING & MORTGAGING

10.1 Lessee not to Assign without Consent

The Lessee may not, without the written consent of the Lessor, which will not be unreasonably withheld, at any time dispose of, deal with or, subject to Clause 10.3 of this Lease, assign its estate or interest in the Premises or this Lease or its rights and powers as Lessee under this Lease.

10.2 Lessee not to Sublet, Mortgage or Charge

(a) The Lessee may sublet the Premises without the Lessor’s consent to an Authorised Person who is lawfully occupying the Premises.
(b) Notwithstanding any agreement between the Lessee and the Authorised Person, the terms of this Lease shall prevail to the extent of any inconsistency or conflict with the terms of any agreement.

(c) The Lessee must not create or allow to come into existence any Encumbrance that affects the Lessee’s estate or interest in the Premises or its rights and powers as Lessee under this Lease.

10.3 Assignment

The Lessee may only assign its estate and interest in the Premises and its rights and powers as Lessee under this Lease to a person who is or is entitled to be the registered proprietor of the Lessee’s Land PROVIDED THAT before the proposed assignment takes effect, the Lessee:

(a) gives at least twenty-eight (28) Business Days’ notice to the Lessor of its intention to assign its estate and interest in the Premises and its rights and powers under the Lease; and

(b) is not in breach of any of the Lessee’s covenants and obligations under this Lease, including that all Rent and other money due and payable by the Lessee to the Lessor under this Lease has been paid; and

(c) pays to the Lessor the proper costs, charges and expenses, including legal costs, fees and expenses incurred by the Lessor in connection with the proposed assignment:

(i) in connection with the giving of the Lessor’s approval to the assignment; and

(ii) in connection with any document required for the proposed assignment,

whether or not the proposed assignment proceeds to completion; and

(d) enters into, and procure that the proposed assignee enters into, a Deed of Consent to Assignment with the Lessor in the form required by the Lessor; and

(e) complies with the Lessor’s requirements in relation to the documentation, and the stamping and registration of any documentation required to effect the proposed assignment; and

(f) complies with the Roads and Maritime Services Guidelines, if any, in relation to the assignment.

11 COVENANTS BY LESSOR

11.1 Quiet Enjoyment

Subject to the Lessor’s rights and reservations under this Lease, the Lessee, paying the Rent and other money payable by the Lessee to the Lessor under this Lease and otherwise complying with the provisions of this Lease, may peaceably possess, use and enjoy the Premises during the Term without any
interruption or disturbance from the Lessor or any other person lawfully claiming by, from or under the Lessor or having power over the Lessor.

11.2 The Lessor may Inspect and Survey

The Lessor may, at its own expense, enter the Premises to view and inspect the Premises, the Permitted Use and/or the performance of the Lessee’s covenants and obligations under this Lease or to survey the Premises. The Lessor may give the Lessee notice of its intention to enter the Premises, where deemed appropriate but is not obliged to give the Lessee prior notice at any time.

11.3 Access to Premises

(a) The Lessee must provide the Lessor with access to the Premises for the purpose of Clause 11.2 of this Lease.

(b) For the purpose of complying with Clause 11.3(a) of this Lease, the Lessee must also, where it is necessary, provide the Lessor with access to any adjoining land or premises, including but not limited to the Lessee’s Land, that are under the control of the Lessee.

12 LESSEE’S DEFAULT

12.1 Notice of Default

(a) The Lessee must notify the Lessor as soon as practicable after becoming aware of any breach by the Lessee of any provision of this Lease.

(b) If at any time the Lessee breaches any provision of this Lease, the Lessor must give the Lessee a notice in writing requiring the Lessee, to rectify the breach within a reasonable time, which cannot be less than a period of ten (10) Business Days, as specified in the Lessor’s notice.

(c) The Lessee must, at its own expense, comply with a notice issued under Clause 12.1 of this Lease.

12.2 Lessor may Remedy Default

(a) Where the Lessee has failed to comply with a notice issued under Clause 12.1(b) of this Lease within the specified time period or where the Lessee has not substantially commenced to rectify the breach to the satisfaction of the Lessor within the specified time period, the Lessor may itself remedy the breach.

(b) The Lessee must pay the Lessor’s reasonable costs in remedying any breach under Clause 12.2(a) of this Lease on demand.

12.3 Essential Terms

The essential terms of this Lease are as follows:

(a) Clause 3 (“Rent & Other Payments”);
Clause 6 (“Release and Indemnity”);  
Clause 7 (“Insurance”);  
Clause 9 (“Environmental Obligations”);  
Clause 10 (“Assignment, Subletting and Mortgaging”);  
Clause 12 (“Lessee’s Default”);  
Clause 13 (“Removal of Improvements and Fixtures”);  
Clause 14.18 (“No Caveat”); and  
the Reference Schedule.

12.4 Events of Default  
(a) The Lessee will be in default under this Lease in the event that, at any time during the Term:

(i) the Rent or any other money payable by the Lessee under this Lease remains unpaid for thirty (30) Business Days after the date appointed for payment, with demand; or 
(ii) the Lessee has failed to comply with a notice to carry out Work issued under Clause 5 of this Lease or a notice of default issued under Clause 12.1(b) of this Lease within the time specified in the notice; or 
(iii) the Lessee has not substantially commenced to carry out the Work specified in a notice to carry out Work issued under Clause 5 of this Lease or rectify the breach specified in a notice of default issued under Clause 12.1(b) of this Lease to the satisfaction of the Lessor; or 
(iv) the Lessee breaches an essential term of this Lease; or 
(v) an Insolvency Event occurs in relation to the Lessee; or 
(vi) the Lessee repudiates this Lease, or 
(vii) the Lessee ceases to be the registered proprietor of the Lessee’s Land and this Lease has not been assigned to the person who is or is entitled to be the registered proprietor of the Lessee’s Land in accordance with Clauses 10.1 and 10.3 if this Lease.  

THEN the provisions of Clauses 12.5 and 12.6 of this Lease will apply.

12.5 Remedies  
Where any event referred to in Clause 12.4 or Clause 14.18 of this Lease occurs, the Lessor may, in its absolute discretion:

(a) terminate this Lease by re-entering and taking possession of the Premises with or without notice; or
(b) terminate this Lease by notice in writing to the Lessee; or

(c) by notice in writing to the Lessee, convert this Lease into a tenancy that may be terminated at the will of either party on the terms of this Lease with any changes or variations necessary to convert this Lease to a tenancy at will; or

(d) by notice in writing to the Lessee, reduce the Term to the period specified in the notice; or

(e) do anything else that the Lessor is entitled to do under or in connection with this Lease or under the Law.

12.6 Lessor's Damages

(a) Upon the termination of this Lease by the Lessor pursuant to Clause 12.5 of this Lease, the Lessor is entitled to:

   (i) recover from the Lessee any and all Losses, damages, costs and expenses reasonably incurred or suffered by the Lessor before and after the termination, either directly or indirectly as a consequence of the termination, including, without limitation, money that would have been payable to the Lessor pursuant to this Lease for the unexpired residue of the Term; and

   (ii) recover any and all money due but unpaid to the Lessor under this Lease up to the date of termination.

(b) The Lessor's right to damages under Clause 12.6(a) of this Lease is without prejudice to any other claim the Lessor has against the Lessee in respect of any breach of this Lease.

12.7 Lessor's Right to Recover Damages

The Lessor's right to recover any Loss, damages, costs or expenses incurred or suffered as a result of any breach by the Lessee of any provision of this Lease is not affected or limited in any way by:

(a) the Lessee abandoning or vacating the Premises; or

(b) the Lessor electing to re-enter the Premises or to terminate the Lease; or

(c) the Lessor accepting repudiation of this Lease by the Lessee; or

(d) any surrender of this Lease by operation of Law, or

(e) the failure of the Lessor to issue a Notice of Default under Clause 12.1(b) of this Lease.

12.8 Right to Remedy Default after Expiry

If, on the date of expiration or termination of this Lease, the Lessee has failed to perform or observe any of its obligations or covenants under this Lease, then notwithstanding that expiration or termination, the Lessor has the right to require the Lessee to remedy the default.
12.9 Power of Attorney

If the Lessor becomes entitled to terminate this Lease, the Lessee hereby irrevocably appoints the Lessor to be the attorney of the Lessee for the Lessee in the Lessee’s name and to perform the Lessee’s acts and deeds from time to time if and when such attorney thinks fit for the purpose of:

(a) giving full effect to that entitlement to terminate this Lease and to execute and procure the registration of a surrender of this Lease; and

(b) recording and/or registering this power of attorney and to do anything that may be required to be done to give full effect to that entitlement to terminate this Lease according to any Law and everything the Lessor may lawfully do pursuant to such power of attorney is ratified and confirmed by this Lease.

13 REMOVAL OF IMPROVEMENTS AND FIXTURES

13.1 Removal of Lessee’s Fixtures by Lessee

(a) If notified by the Lessor in writing, the Lessee must, at the Lessee’s cost, Remove the Lessee’s Fixtures from the Leased Land upon the expiration or earlier determination of this Lease or within any other time period as agreed by the Lessor in writing and comply with any conditions of the Lessor in relation to the removal, including any requirement to conduct an assessment of the environmental impact of the removal.

(b) The Lessee must comply with Clause 13.1(a) of this Lease and take any necessary steps to effect compliance including, without limitation, obtaining any approvals, consents and/or permits required by any Relevant Authority at the Lessee’s cost, including the obligation to commence legal proceedings including exhausting all appeal rights to any Relevant Authority if required by the Lessor.

(c) If the Lessee has not removed the Lessee’s Fixtures prior to the expiry of the Term, the Lessor grants the Lessee a non-exclusive licence of the Premises to Remove the Lessee’s Fixtures in accordance with this Clause 13 and the provisions of this Lease, including the requirement to pay Rent apply until removal is effected.

(d) The Lessee acknowledges that should the Lessor issue the notification referred to in Clause 13.1(a) of this Lease the Lessor is not required to pay any compensation, or make any other payment to the Lessee in relation to the Lessee’s Fixtures.

(e) The Lessee may, within the period of six (6) months before the expiry of this Lease, request the Lessor in writing to either give a notice pursuant to Clause 13.1 of this Lease requiring removal of the Lessee’s Fixtures or alternatively, confirm in writing that no notice pursuant to Clause 13.1(a) of this Lease will be given.
13.2 Removal of Lessor’s Improvements at Request of Lessor

(a) Upon, or prior to the expiration or earlier determination of this Lease, the Lessor may give notice in writing to the Lessee of the requirement for the Lessee, at its cost, to Remove or partially Remove any or all Lessor’s Improvements from the Leased Land by the date specified in the notice and in accordance with the Law and any other conditions, if any, specified in the notice. The notice will continue to have effect, despite expiry of the date specified in the notice, until the Lessee complies with such notice.

(b) The Lessee must use its best endeavours to comply with any notice issued pursuant to Clause 13.2(a) of this Lease and take any necessary steps to effect compliance including, without limitation, obtaining any approvals, consents and/or permits required by any Relevant Authority at the Lessee’s cost, including the obligation to make an appeal to any Relevant Authority if required by the Lessor.

(c) The parties agree that the date specified in the notice issued pursuant to Clause 13.2(a) of this Lease may be a date before or after the Termination Date of the Lease. If the date is after the Termination Date, the Lessor grants the Lessee a non-exclusive licence to carry out the removal works only in accordance with the notice and the provisions of this Lease, including the requirement to pay Rent apply until removal is effected.

(d) The Lessee acknowledges that should the Lessor issue the notice referred to in Clause 13.2(a) of this Lease, the Lessor is not required to pay any compensation, or make any other payment to the Lessee in relation to the Lessor’s Improvements whether or not the Lessee has constructed or otherwise incurred any expenses in relation to the Lessor’s Improvements.

(e) The Lessee may, within the period of six (6) months before the expiry of this Lease, request the Lessor in writing to either give a notice pursuant to Clause 13.2(a) of this Lease requiring removal of the Lessor’s Improvements or alternatively, confirm in writing that no notice pursuant to Clause 13.2(a) of this Lease will be given.

(f) Any Work done pursuant to this clause should be done under the supervision of a suitably qualified engineer at the Lessee’s expense.

13.3 Failure to Remove Improvements and Fixtures

If the Lessee does not comply with Clause 13.1 or Clause 13.2 of this Lease then:

(a) the Lessor may Remove or partially Remove and dispose of the Lessor’s Improvements and/or Lessee’s Fixtures on the Leased Land in such manner and on such terms as the Lessor determines, acting reasonably; and

(b) the Lessee must pay to the Lessor on demand the costs and expenses incurred by the Lessor in taking action under Clause 13.3(a) of this Lease or any costs and expenses incurred by the Lessor retaining the
Lessor’s Improvements and/or Lessee’s Fixtures in the event the Lessee does not comply with Clause 13.1 or Clause 13.2 of this Lease; and

(c) the Lessee agrees that no compensation is payable by the Lessor to the Lessee in relation to the removal, disposal or retention of the Lessor’s Improvements and/or Lessee’s Fixtures and the Lessee indemnifies the Lessor against any Loss that is paid, suffered, incurred or that has arisen out of or in connection with (directly or indirectly) any action taken by the Lessor pursuant to this Clause 13.3 of this Lease; and

(d) the Lessee must observe and comply with the terms, conditions, covenants and agreements contained in this Lease which will remain in full force and effect and binding on the Lessee until the Lessor’s Improvements and/or Lessee’s Fixtures are removed in accordance with this Clause 13 or the requirement for the Lessee to comply with Clause 13.1 and/or Clause 13.2 of this Lease is waived by the Lessor in writing, whichever is the earlier date; and

(e) any Work done pursuant to this clause should be done under the supervision of a suitably qualified engineer at the Lessee’s expense.

14 GENERAL COVENANTS AND AGREEMENTS

14.1 Holding Over

(a) If the Lessee continues to occupy the Premises after the expiration or earlier determination of this Lease with the consent of the Lessor, then the Lessee:

(i) becomes a yearly tenant upon the same terms and conditions as are contained in this Lease so far as they are applicable to a yearly tenancy and the tenancy will be determinable by either party on the giving of at least two (2) month’s prior notice in writing to the other party which notice may be given to expire at any time; and

(ii) must pay the Rent in advance quarterly to the Lessor under the yearly tenancy and must be a sum equivalent to either:

(A) the quarterly Rent payable by the Lessee to the Lessor at the date of the expiration or sooner determination of this Lease, to be reviewed on the same basis and as frequently as this Lease provides;

(B) the amount determined by the Lessor, it being agreed that the date of expiration of the Term will be deemed to be the rent review date and a date upon which the Lessor will be entitled to determine the Rent in accordance with the Lease; and
(iii) must pay all Outgoings and Services in relation to the Premises as provided in Clause 3 of this Lease.

(b) If this Lease is terminated by either party pursuant to Clause 14.1(a), the Lessor must refund to the Lessee a proportionate amount of any Rent, Outgoings or Services paid in advance in accordance with Clause 14.1(a)(ii) or Clause 14.1(a)(iii) within 60 days of the date of the notice of termination.

14.2 Notices

(a) In this Clause “Address for Service” means:

(i) in the case of the Lessor, the address and fax number specified in Item 1 of the Reference Schedule; and

(ii) in the case of the Lessee, the address and fax number specified in Item 1 of the Reference Schedule,

or if the addressee notifies another address or fax number, then that address or fax number.

(b) Any notice, demand, consent, approval, request or other communication to be given or made under this Lease must be in writing and must be given or made to the recipient at its Address for Service by being:

(i) hand delivered; or

(ii) sent by fax; or

(iii) sent by prepaid ordinary mail within Australia; or

(iv) sent by prepaid Express Post International airmail if the Address for Service of the sender and the recipient are in different countries.

(c) A notice is deemed to have been given:

(i) if hand delivered, as at the time and date that the notice is handed or delivered to an officer or representative of the recipient; and

(ii) if sent by fax, on the day that the sending party's fax machine records that the fax was successfully transmitted, unless the transmission is not received on a Business Day or is received after 5.00 pm on a Business Day, when the notice is deemed to be given on the next Business Day; or

(iii) if sent by prepaid ordinary mail within Australia, on the day that is two (2) Business Days after the date of posting; or

(iv) if sent by prepaid Express Post International airmail between countries, on the day that is ten (10) Business Days after the date of posting.
14.3 Relationship between Lessor and Lessee
The relationship between the Lessor and the Lessee is that of landlord and tenant only and nothing in this Lease is to be deemed or construed as creating the relationship of partnership, of principal and agent, joint venture or any other ongoing relationship between the Lessor and the Lessee.

14.4 Exclusion of Statutory Provisions
The covenants, powers and provisions implied in leases by Sections 84, 84A, 85, 86, 133, 133A and 133B of the Conveyancing Act 1919 (NSW) do not apply to this Lease except to the extent required by Law.

14.5 Payment Free of Deduction
The Lessee must make all payments under this Lease without set-off or counterclaim and free from all deductions except as expressly permitted by this Lease.

14.6 No Demand Necessary
The Lessee acknowledges that the Lessor need not make any demand for any amount payable by the Lessee unless this Lease says that demand must be made.

14.7 Liquidated Debt
The Lessee acknowledges that the Lessor may recover from the Lessee in any court of competent jurisdiction any amount payable to the Lessor under this Lease, as a liquidated debt.

14.8 Interest on Unpaid Amounts
(a) The Lessee must pay, on demand, to the Lessor interest on any amount payable by it under this Lease from the date being ten (10) Business Days after the date on which the amount becomes due for payment, during the period that it remains unpaid, calculated on daily balances.

(b) The interest rate to be applied to each daily balance pursuant to Clause 14.8 of this Lease is the Default Rate.

14.9 No Merger
Nothing in this Lease, including anything done under this Lease, merges, extinguishes, postpones, lessens or prejudicially affects any of the rights, powers, authorities, discretions or remedies of the Lessor against the Lessee, all of which continue in full force and effect, except as otherwise expressly provided in this Lease.

14.10 Exclusion of Moratorium
To the extent permitted by the Law the application to this Lease of any moratorium or other Act whether State or Federal having the effect of extending the Term, reducing or postponing the payment of Rent, or
otherwise affecting the operation of the terms of this Lease is expressly excluded and negatived.

14.11 No Implied Terms
The parties agree that no terms are implied in this Lease or any agreement under which this Lease was entered into or arise between the parties by way of collateral or other agreement by reason of any promise, representation, warranty or undertaking by or on behalf of any party to any other party or anyone on behalf of any other party on or prior to the execution of this Lease. The Lessee warrants that it has not been induced to enter this Lease by any express or implied statement, warranty or representation.

14.12 Indirect Acts
(a) If this Lease prohibits the Lessee from doing a thing the Lessee may not allow or cause any person to do that thing.
(b) If this Lease prohibits the Lessor from doing a thing the Lessor may not allow or cause any person to do that thing.

14.13 Severability
The parties agree that if any term of this Lease is made void or unenforceable, the remaining terms will not be affected.

14.14 Governing Law
This Lease is governed by the Law of New South Wales.

14.15 Waiver and Variation
(a) The parties acknowledge that a provision of or a right created under this Lease may not be:
   (i) waived except in writing signed by the party granting the waiver; or
   (ii) varied except by written agreement between the parties.
(b) A waiver by the Lessor of a breach of any provision of this Lease does not operate as a waiver of another breach of the same type or of a breach of any other provision of this Lease.
(c) The Lessee acknowledges that delay by the Lessor in exercising any of its rights under this Lease does not constitute a waiver of those rights or prevent the exercise of those or similar rights in the future or create an implication that those or similar rights will not be exercised in the future.

14.16 Acknowledgement
(a) The Lessee acknowledges that it understands the terms of this Lease, including the Lessee's obligations to repair and maintain, to Remove the Improvements and Lessee’s Fixtures unless directed by the Lessor to the contrary and to carry out Work.
(b) The Lessee acknowledges that, prior to entering into this Lease it obtained or had the opportunity to obtain independent legal and financial advice in relation to its obligations under this Lease.

14.17 Contra Proferentem

The parties agree that in the interpretation of this Lease, no rules of construction will apply to the disadvantage of one party on the basis that the party put forward the Lease or any part of it.

14.18 No Caveat

The Lessee must not lodge a caveat over the Leased Land at any time. The Lessee acknowledges that this is an essential term of this Lease. If the Lessee lodges a caveat over the Leased Land, the Lessor may terminate this Lease in accordance with Clause 12.5 of this Lease.

14.19 Deed of Novation

The Lessee acknowledges that if the Lessor transfers its interest in the Leased Land during the Term, the Lessee must, if requested by the Lessor, enter into a Deed of Novation with the transferee of the Leased Land in a form reasonably acceptable to the transferee in which the Lessee covenants with the transferee that it will comply with the Lessee's rights and obligations under this Lease on and from the date the transferee becomes the registered proprietor of the Leased Land.

14.20 Requirement to Provide Information

The Lessee must, upon a written request from the Lessor, provide it with any information or documentation reasonably required by the Lessor for any purpose associated with the Lease.

15 DISPUTE RESOLUTION

15.1 Appointment of Expert

(a) If a dispute arises between the parties in relation to any matter arising under this Lease other than a review under Clause 3.7 of this Lease, either party may refer the matter for determination by an independent expert ("Expert") of at least five (5) years current and consistent experience in dealing with disputes in respect of the particular matter in dispute, and as mutually agreed between the parties.

(b) Where the parties fail to agree on an Expert in accordance with Clause 15.1(a) of this Lease, within ten (10) Business Days of the dispute arising, the dispute will be determined by an Expert nominated by the President for the time being of the Australian Property Institute (New South Wales Division).

15.2 Determination of Dispute

In determining a dispute under this Lease, the Expert must:
(a) have regard to the terms and conditions of this *Lease*;

(b) invite and consider and have due regard to any submissions made and/or any evidence provided by the parties supporting their contentions;

(c) act as an Expert and not as an arbitrator; and

(d) provide the parties with its determination of the dispute in writing, including details of the basis for the determination.

### 15.3 Expert’s Determination of Dispute Final

Any determination of a dispute made by an Expert in accordance with this Clause 15 is final and binding on the parties.

### 15.4 Dispute Resolution Costs

The costs associated with the determination of a dispute by an Expert under this Clause 15 including any costs associated with the appointment of the Expert under Clause 15.1(b) of this *Lease* must be borne by the parties equally unless determined otherwise by the Expert.

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### 16 TERMINATION

#### 16.1 Right to Terminate

(a) Subject to Clause 16.1(b), in the event the Lessee assigns or transfers the Lessee’s *Land* to a person who is or is entitled to be the registered proprietor of the Lessee’s *Land* (*Proposed Lessee*) and the Proposed Lessee does not wish to occupy or use the *Premises*, the Lessee may terminate this *Lease* upon giving the Lessor thirty (30) days written notice.

(b) Upon termination of this *Lease* under Clause 16.1(a), the Lessee must comply with Clause 13 of this *Lease* (Removal of Improvements and Fixtures).

(c) The right of termination under Clause 16.1(a) only applies if the Lessee is not in default of this *Lease* and is without prejudice to any of the Lessor’s accrued rights as at the date of termination.
SCHEDULE 1 DICTIONARY

1. Dictionary

In this Lease unless the context clearly indicates otherwise:

Administration Fee means a fee charged by the Lessor for occupation of the Premises.

Authorised Person means any person lawfully occupying the Lessee’s Land and includes where relevant, its officers, agents, employees, representatives, contractors, licensees, tenants or invitees and any other person who may at any time be on the Premises in connection with the Lessee or in connection with any person lawfully occupying the Lessee’s Land.

Berthing Area means the area of land shown in cross-hatching on the Plan attached to the Reference Schedule.

Borrowing Expenses has the same meaning as referred to in the Australian Taxation Office’s publication of “Taxation statistics” for the most recent financial year available.

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

Casual Berthing means the temporary berthing of a vessel for a reasonable period of time to load or unload goods or for the embarkation or disembarkation of persons for a continuous period not exceeding six (6) hours.

Climate Change means the changing global weather and climate patterns caused by natural processes and human activities, including but not limited to changing rainfall and temperature patterns, rising sea levels and an increase in intense weather events such as storms and cyclones.

Commencement Date means the date referred to in Item 4 of the Reference Schedule.

Contamination means the presence in, on or under the Premises (including soil and groundwater) of a substance at a concentration that presents a risk of harm to human health or any other aspect of the Environment and Contaminate, Contaminant and Contaminated each have a corresponding meaning.

Damage means any damage to the Premises, including:

(a) structural or non-structural damage;
(b) material or non-material damage;
(c) the complete or partial destruction of the Premises;
(d) the complete or partial destruction of or malfunctioning of any Services; and
(e) the Contamination of the Premises or any part of the Premises,
and includes, without limitation, damage caused by civil commotion, riot, explosion, fire, flood, lightning, storm, tempest, earthquake, aircraft, act of God or war.

**Default Rate** means as at the relevant date the rate of interest per annum being two (2) percent greater than the rate charged by the Commonwealth Bank of Australia on that date on overdraft facilities of $100,000 or more or if it is no longer published, any similar rate as determined by the Lessor.

**Development Consent** means any development consent or approval granted by a Relevant Authority in respect of the Premises that has not lapsed and is in force.

**Encumbrance** means any:

(a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention arrangement; or

(b) right of set-off, assignment of income, garnishee order or monetary claim; or

(c) notice or direction under section 218 or section 255 of the Income Tax Assessment Act 1936 (Cth) or under Sections 260-265 of the Taxation Administration Act 1953 (Cth) or under any provision of any Law that has a similar effect,

or any agreement to create any of them or allow them to exist.

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

(a) land, air and water; and

(b) any layer of the atmosphere; and

(c) any organic or inorganic matter and any living organism; and

(d) human-made or modified structures and areas,

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

**Environmental Law** means any Law relating to the Environment or the protection of the Environment and any other Law relating to Contamination or Pollution.

**Environmental Notice** means any direction, order, demand, licence or other requirement from a Relevant Authority in connection with any Environmental Law 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 Site Assessment** means an environmental assessment of the Premises generally in accordance with any relevant guidelines at any time issued by the Environmental Protection Authority (NSW) and current industry practice that so far as is possible:
(a) identifies the nature and extent of Contamination and Pollution, if any; and

(b) recommends a method of removing the Contamination and Pollution and Remediating and restoring the Premises or any adjoining or neighbouring premises, land or waterway.

**Gross Rate of Return** means the gross rate of return calculated using:

(a) rental rates of return for residential non-strata properties; and

(b) sales and rent data from LPI and Housing NSW or its successors; and

(c) as a rolling three-year average, updated for each financial year to match the time period used to calculate PSLVs; and

(d) for each Precinct, using the median rate of return for each postcode in the Precinct (i.e. median postcode rent divided by median postcode sales price), and then determining a weighted-average of these values by weighting each postcode’s median rate of return according to the postcode’s share of occupancies within the Precinct.

**Hazardous Material** means material that, because it is toxic, corrosive, flammable, explosive, or infectious or possesses some other dangerous characteristic, has the potential to present a risk of harm to people, including their health or to any other aspect of the Environment.

**Insolvency Event** means:

(a) in relation to a Corporation:

(i) where an order is made or an effective resolution is passed for the winding up, insolvency, administration, reorganisation, reconstruction or dissolution of that Corporation; or

(ii) where a liquidator, provisional liquidator, receiver or receiver and manager, trustee, agent for a mortgagee in possession or similar officer is appointed in respect of all or any part of the assets or undertaking of that Corporation and such appointment is not rescinded or revoked within a reasonable time; or

(iii) where pursuant to the provisions of the Corporations Act 2001 (Cth), that Corporation enters or executes a deed of company arrangement; or

(iv) where that Corporation is unable, or admits its inability to pay its debts as they fall due or enters into or seeks to enter into any composition or other arrangement with its creditors; and

(b) subject to section 301 of the Bankruptcy Act 1966 (Cth), in relation to an individual, where that individual:

(i) is declared bankrupt; or

(ii) enters into a scheme of arrangement with its creditors; or
(iii) makes any assignment for the benefit of its creditors; or
(iv) becomes a mentally ill person or mentally disordered person in accordance with any relevant Law or the requirements of any Relevant Authority.

*Interest On Loan(s)* has the same meaning as referred to in the Australian Taxation Office’s publication of “Taxation statistics” for the most recent financial year available.

*IPART* means the Independent Pricing and Regulatory Tribunal or its successors.


*Law* means:

(a) the common law; and

(b) all statutes; and

(c) all rules, regulations, proclamations, ordinances, by-laws, instruments, orders, consents, approvals, permits and licences made or issued under any Statute or by any Relevant Authority; and

(d) all constitutional provisions, treaties, decrees and conventions.

*Lease* means and includes this document and the *Reference Schedule*, including any annexure.

*Lease Year* means each period of twelve (12) months commencing on each anniversary of the *Commencement Date*, the first such period commencing on the *Commencement Date*.

*Leased Land* means the area of land identified in the *Plan* and described in Item 2 of the *Reference Schedule*.

*Lessee* means the person referred to as such in Item 1 of the *Reference Schedule* and that person’s assigns, executors, administrators and successors in title.

*Lessee’s Fixtures* means all structures, buildings, piles (including free standing piles), pontoons, tidal baths, davits, dolphins and ramps at any time on the *Leased Land* together with any plant, equipment, Services, fire fighting equipment, of any kind that are located on, or added to the *Premises* by the Lessee for the purpose of carrying on the *Permitted Use*, except for any seawalls and Reclamations.

*Lessee’s Land* means the land referred to as such in Item 2 of the *Reference Schedule*.

*Lessor* means the person or entity referred to in Item 1 of the *Reference Schedule* and the successors and assigns of that person or entity and
includes, where relevant, its officers, agents, employees, representatives, contractors, licensees or invitees.

*Lessor’s Improvements* includes any seawalls and *Reclamations* on the *Leased Land* or any other structures on the *Leased Land* that the *Lessor* specifies as a *Lessor’s Improvement* in Item 3 of the *Reference Schedule*.

*Loss* means any loss, claim, demand, action, suit, proceeding, cost, expense, penalty, payment, damage, liability or deficiency of any kind.

*LPI* means the Land and Property Information or its successors.

*Minister* means the Minister under whose control and direction the *Lessor* functions.

*Net Rate of Return* means, for each *Precinct*, the net rate of return calculated by subtracting outgoings from the *Gross Rate of Return* with:

(a) each *Precinct’s* outgoings calculated as a percentage of the *Gross Rate of Return*, using the Australian Taxation Office’s “Taxation statistics” for relevant postcodes for the latest financial year available, weighted accordingly; and

(b) the percentage share of *Precinct* outgoings calculated by dividing total *Precinct Rental Property Expenses*, excluding *Interest On Loan(s)* and *Borrowing Expenses*, by total *Precinct Rental Income*, as advised by the Australian Taxation Office; and

(c) this percentage share updated for each financial year, as part of the annual update of the *Rate of Return*.

The *Net Rates of Return* will be calculated and updated by *IPART* on the *Rate of Return Review Date*, based on the methodology recommended in its 2011 report and provided to the *Lessor*.

*Outgoings* means the total of all amounts paid or payable in connection with the ownership, occupation, use, management and maintenance of the *Premises*, including any rates, taxes, charges, duties and insurances of any description that are assessed, levied, imposed or charged in respect of the *Premises* or the *Lessee’s* use or occupation of the *Premises*.

*Permitted Use* means the use and activities set out in Item 3 of the *Reference Schedule* and includes any other use or activity which has been or is approved in writing by the *Lessor*.

*Plan* means the plan(s) annexed to this *Lease* and marked “D”.

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

*Port* means the Port of Sydney.

*Port Bed Clearance Report* means a report confirming that all structures and/or debris have been satisfactorily removed, that there is no waste material on the port bed and any other matter usually included in a port bed clearance report.
**Precinct** means a defined area in which properties are grouped for the purpose of determining a m² land value (Precinct statutory land value, or PSLV) to use for calculating rents within the Precinct or as otherwise determined by the NSW Government.

**Premises** means the Leased Land together with the Lessee’s Fixtures and Lessor’s Improvements on the Leased Land.

**PSLV** means the median of theThree Year Rolling Averages ($/m²) within the relevant Precinct.

**Rate of Return** means the percentage, as advised by IPART as being applicable to the Precinct which includes the Leased Land, as reviewed in accordance with Clause 3.7 of this Lease.

**Rate of Return Review Date** means the date IPART carries out a review of the rate of return, currently set at 1 July of each year.

[Optional clause delete if not required]

**Reclamation** means submerged land which has been filled or drained for the purpose of reclaiming the land and/or for the purpose of supporting a building or structure being erected over the land. [#]

**Reference Schedule** means the information schedule referred to as the Reference Schedule which forms part of this Lease.

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

**Remediation** has the meaning given to it in the Contaminated Land Management Act 1997 (NSW).

**Remove** means, in relation to a Lessor’s Improvement or Lessee’s Fixture, the following works to be carried out by the Lessee, at the Lessee’s expense, to the satisfaction of the Lessor, (acting reasonably) and in accordance with the Law:

(a) the removal from the Leased Land of the Lessor’s Improvements and/or Lessee’s Fixtures; and

(b) the clearing of the bed of any submerged land and, in particular, the removal of all piles that are below or above the bed of any submerged land; and

(c) the making good of any Damage incurred to the Leased Land as a result of the removal; and

(d) providing the Lessor with a Port Bed Clearance Report.

**Rent** means the amount stated in Item 5(a) of the Reference Schedule and as calculated by use of the Rent Formula.

**Rent Area** means the area stated in Item 5 of the Reference Schedule.
Rent Formula means the Wetland Rate ($/m²) x the Rent Area (m²) as reviewed in accordance with Clause 3.7 of this Lease.

Rent Formula Review Date means the date the Lessor carries out a review of the Rent Formula in accordance with Clause 3.7(a) of the Lease.

Rental Income has the same meaning as referred to in the Australian Taxation Office’s publication of “Taxation statistics” for the most recent financial year available.

Rental Property Expenses has the same meaning as referred to in the Australian Taxation Office’s publication of “Taxation statistics” for the most recent financial year available.

Roads and Maritime Services Engineering Standards and Guidelines for Maritime Structures means the policies, procedures and requirements of the Lessor that are in force from time to time in relation to the Premises which may be published by the Lessor on its website, or in such other way, if any, as the Lessor determines appropriate.

Roads and Maritime Services Guidelines means the policies, procedures and requirements of the Lessor that are in force from time to time in relation to the Premises which may be published by the Lessor on its website, or in such other way, if any, as the Lessor determines appropriate.

Serious Property Damage means Damage to the Premises or part of the Premises the occurrence of which results in it being:

(a) unsafe; or

(b) wholly or partially incapable of or unsuitable for occupation or for use for the purpose of carrying on the activities comprising and incidental to the Permitted Use.

Services means the total of all charges paid or payable in connection with the supply of all services and systems provided to the Premises or available for use including electricity, light, gas, oil, water, air conditioning, power, fuel, sewage, telephone services, cleaning and all other services furnished or supplied to the Premises.

SLV means the unimproved value of a property, as determined by the NSW Valuer-General in accordance with the Valuation of Land Act 1916 (NSW).

Term means the term of this Lease as referred to in Item 4 of the Reference Schedule starting on the Commencement Date and ending on the Termination Date and includes any holding over period referred to in Clause 14.1 of this Lease

Termination Date means the earlier of the date of expiration of the Term as referred to in Item 4 of the Reference Schedule or the date on which the Lease is terminated.

Three Year Rolling Average ($/m²) means the average of the three SLVs, with a 12 month lag, or less than three years if SLVs are not available, of the
freehold waterfront property and its adjoining occupancy, divided by the total of areas of all land types valued by the Valuer-General.

**Vessel Length Overall** means the vessel length including the full length of hull plus outboard motors, bowsprits and any other appendages.

**Wetland Rate** means the $PSLV \times Rate\ of\ Return \times 50\%$.

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

**Work** means any work in, on or to the *Premises* and includes, without limitation:

(a) the erection, replacement, or reconstruction of any structure or part of any structure;

(b) rebuilding any structure or part of any structure;

(c) any alteration or addition made to the *Premises*, including the addition of any *Reclamation*, embankment, rubble earth or other filling;

(d) the removal or demolition of any structure, *Reclamation*, embankment, rubble earth or other filling;

(e) repairing, painting or chemically treating the *Premises*;

(f) redecoration or refurbishment of the *Lessor’s Improvements* or *Lessee’s Fixtures*;

(g) the dredging or deepening of the seabed; or

(h) any *Damage* or work required as a result of *Climate Change*.

2. **Interpretation**

In this *Lease*, the following rules of interpretation apply unless the context clearly indicates otherwise:

(a) words importing the singular number include the plural number and vice versa;

(b) words that are gender neutral or gender specific include each gender;

(c) the Table of Contents and headings are inserted for convenience only and do not affect the interpretation of this *Lease*;

(d) every agreement or undertaking expressed or implied by which more than one person agrees or undertakes any obligation or derives any benefit binds or enures for the benefit of such persons jointly and each of them severally;

(e) a reference to:
(i) a person includes a natural person, body corporate, statutory corporation, partnership, the Crown, Relevant Authority and any other entity or organisation recognised by Law and vice versa;

(ii) a party includes its executors, administrators, successors and permitted assigns;

(iii) the introduction, a clause, provision, term, exhibit, annexure, attachment or schedule is a reference to the introduction, clause, provision, term, exhibit, annexure, attachment or schedule to or of this Lease;

(iv) any Law includes any amendment, modification, re-enactment or replacement of that Law, and any Law substituted for that Law;

(v) a right or obligation of a party is a reference to a right or obligation of that party under this Lease;

(f) any body, authority, association, society includes any entity established in lieu of or succeeding that body, authority, association or society with comparable powers or functions;

(g) a word or phrase in italics is a defined term with the meaning ascribed to it in this Lease;

(h) a word that is derived from a defined term has a corresponding meaning;

(i) the words “including”, “such as”, “particularly” and other similar expressions are not to be used as or interpreted as words of limitation;

(j) a requirement to do anything includes a requirement to cause that thing to be done;

(k) neither this Lease or any part of it is to be construed against a party on the basis that the party or its agents were responsible for the preparation of this Lease or any part of it; and

(l) where an obligation is imposed on the Lessee, the Lessee must observe and take reasonable steps to ensure that any Authorised Person observes that obligation; and

(m) where the Lessee is prohibited from doing anything, the Lessee must not do that thing and must take reasonable steps to ensure that any Authorised Person does not breach the prohibition.

3. Provisions to Apply throughout Term

The provisions of this Lease apply throughout the Term. The parties must comply with the provisions of this Lease at all times during the Term.
ANNEXURE "B" TO LEASE

REFERENCE SCHEDULE

Item 1

(a) LESSOR Roads and Maritime Services

(b) ADDRESS FOR SERVICE
    PO Box 973, Parramatta CBD NSW 2124
    Facsimile: (02) 8588 4113
    Attention: Senior Manager Customer and Property Management

(c) LESSEE //Insert Lessee's Name//

(d) ADDRESS FOR SERVICE
    //Insert Lessee's Address//

Item 2

(a) LEASED LAND
    All that area of land comprising //insert area in words// square metres //(//insert area in figures//m²)
    including a Berthing Area of //insert berthing area in words// square metres //(//insert berthing area in figures//m²) as shown pink on the Plan, adjoining the Lessee's Land, being part of Certificate of Title Volume 5018 Folio 1. [OR insert relevant title particulars if subdivision registered].

(b) LICENSED AREA
    Not Applicable

(c) LESSEE'S LAND
    Lot //lot number// in Deposited Plan //DP number// also known as //insert physical address (eg 20 Fortescue Street, Chiswick) //

Item 3

PERMITTED USE

(a) LEASED LAND
    Use and occupation of the Leased Land for the purposes of:
    INSERT LESSEE'S FIXTURES AND LESSOR'S IMPROVEMENTS
    No permanent or Casual Berthing of any vessel is permitted.

(b) LICENSED AREA
    Not Applicable
(c) **MAXIMUM VESSEL DIMENSIONS (CLAUSE 4.2)**

Vessel Length Overall: //length in metres//
Draft: //draft in metres//
Beam: //beam in metres//
Laden Displacement: //in tonnes//

(d) **LESSOR’S IMPROVEMENTS**

Eg: Seawall
Eg: Reclamation

**Item 4**

(a) **TERM** //How Many Years//

(b) **COMMENCEMENT DATE** //DD Month YYYY//

(c) **TERMINATION DATE** //DD Month YYYY//

**Item 5**

(a) **RENT FOR FIRST LEASE YEAR OF TERM (CLAUSE 3)**

The Rent due and payable, in advance, on the Commencement Date: $//Enter Amount// inclusive of GST which is the current 2016/2017 rate. The rent is to be amended when the 2018 rates are determined.

(b) **RENT FOR SUBSEQUENT LEASE YEARS OF TERM (CLAUSE 3)**

The Rent is the Rent due and payable yearly, in advance, on each anniversary of the Commencement Date calculated in accordance with the Rent Formula, subject to Clause 3.7 of the Lease. The Rent may be payable quarterly in advance with the written agreement of the Lessor.

Note: The PSLV, which is a component of the Rent Formula, is calculated annually which may result in annual adjustments to the Rent.

(c) **RENT AREA**

The area comprising //Enter area in words// square metres (/Enter area in figures//m²).
ANNEXURE "C" TO LEASE
SPECIAL CONDITIONS

The clauses of this *Lease* are varied by inserting the following: