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

Leave this space clear. Affix additional pages to the top left-hand corner.

**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
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(A) TORRENS TITLE	Property leased: if appropriate, specify the part or premises Part Folio Identifier 2/586768 being premises known as 'Griffith Regional Art Gallery' 167 Banna Avenue, Griffith, New South Wales
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(B) LODGED BY	Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any	CODE  L
		Reference:	

(C) LESSOR	GRIFFITH WAR MEMORIAL MUSEUM RESERVE TRUST
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The lessor leases to the lessee the property referred to above.

(D)	Encumbrances (if applicable):
(E) LESSEE	GRIFFITH CITY COUNCIL
(F)	TENANCY:

- |     |   |
|-----|---|
| (G) | 1. TERM: Ten (10) Years   |
|     | 2. COMMENCING DATE: 1 July 2014   |
|     | 3. TERMINATING DATE: 30 June 2024   |
|     | 4. With an <b>OPTION TO RENEW</b> for a period of ten (10) years set out in Special Condition 6 of Annexure A |
|     | 5. With an <b>OPTION TO PURCHASE</b> set out in clause NA of NA   |
|     | 6. Together with and reserving the <b>RIGHTS</b> set out in clause NA of NA                                   |
|     | 7. Incorporates the provisions or additional material set out in <b>ANNEXURE(S)</b> A hereto.                 |
|     | 8. Incorporates the provisions set out in N/A No.   |
|     | 9. The <b>RENT</b> is set out in item No 5 of Annexure A  |

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

Signature of authorised person:

Name of authorised person:  
Office held:

Company: Griffith City Council  
Authority: Council Resolution dated  
Signature of authorised person:

Signature of authorised person:

Name of authorised person: Brett Stonestreet  
Office held: General Manager

I solemnly and sincerely declare that—

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

☐ Practising Solicitor

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

- Signature of witness: \_\_\_\_\_ Signature of lessor: \_\_\_\_\_

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

**ANNEXURE "A"**

This and the following 21 pages comprise Annexure "A" referred to in the Lease between the **GRIFFITH WAR MEMORIAL MUSEUM RESERVE TRUST** as Lessor and **GRIFFITH CITY COUNCIL** as Lessee.

**Ministerial Consent\***

under authority of Section 102 of the Crown Lands Act 1989.

Dated this                      day of

**SIGNED** by ..... under delegation

\_\_\_\_\_  
Print Name

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

**\*Notes on Minister's Consent to a lease**

A. Before consenting to a lease by a reserve trust, the delegated departmental officer should consider whether the proposed lease:

- ☐ conforms with the Lands template as appropriate in the circumstances
- ☐ purpose is compatible with the reserve purpose
- ☐ is in the public interest and in particular whether special or exclusive rights should be granted to the proposed lessee
- ☐ is compatible with the plan of management (if applicable)
- ☐ is for an appropriate term
- ☐ was or is proposed to be selected by public competition or, if not, the circumstances relating to the selection of the proposed lessee
- ☐ proposed rent represents a proper return to the public for the use of the public land
- ☐ contains provisions for the periodic updating or review of the rent
- ☐ has no native title impacts
- ☐ contains clauses relating to:
  - the termination of the lease in the event of a revocation of the reserve
  - the indemnification of the Reserve Trust, the Crown and the NSW Government against claims for compensation
  - appropriate insurance provisions.
- ☐ has been advertised (if the lease term exceeds 5 years) with respect to the Minister's intention to give consent in accordance with Section 102(2) of the *Crown Lands Act 198* ; a fee for advertising costs has been received; and the results of advertising are acceptable.

**B. If Ministerial consent is not required under Section 102 of the Crown Lands Act, please attach evidence of authorisation.**

\_\_\_\_\_  
Griffith War Memorial Museum Reserve Trust

\_\_\_\_\_  
Griffith City Council

The Lessor and the Lessee hereby covenant and agree the one with the other as follows:

**1. INTERPRETATION DEFINITIONS AND ADMINISTRATION**

**1.1 Authority for Grant of Lease**

The Lessor warrants

- (a) that the Premises comprise the whole or part of a Reserve within the meaning of Part 5 of the Crown Lands Act 1989;
- (b) that the Lessor was established and appointed as trustee of the Reserve under Section 92 of the Crown Lands Act 1989;
- (c) that the Lessor has power under Section 102 of the Crown Lands Act 1989 to grant a lease of the Reserve or part thereof subject to the Minister's consent

**1.2 Effect of Instrument**

The Lessor and the Lessee expressly acknowledge that no rights or interests are conferred on either Party by the provisions of this instrument unless the Minister has granted consent under Section 102 of the CL Act to the grant of this Lease;

**2. DEFINITIONS**

In this Lease unless the contrary intention appears:

**Business Day** means any day which is not a Saturday, Sunday or Public Holiday in New South Wales;

**CL Act** means the Crown Lands Act 1989;

**Commencing Date** means the date specified in Column 2 of Item 1 of Schedule 1;

**Environmental Law** means any Law or State protection policy incorporated by reference to or being part of any Law relating to protection of the Environment;

**Terminating Date** means the date on which the Term expires, as specified in Column 2 of Item 3 of Schedule 1;

**Hazardous Substance** means a substance that because of its quantity, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, flammability, or physical, chemical or infectious characteristics, may pose a hazard to property, human health or the environment when improperly treated, stored, disposed of or otherwise managed;

**Improvements** means any structure or work of a permanent nature attached to the land;

**this Lease** means this Lease Agreement including the Schedules, and all Annexures hereto;

**Local Council** means the council established under the Local Government Act 1993 for the Local Government Area in which the Premises are situated;

**Minister** means the Minister for the time being administering the CL Act or any act consolidating or replacing that Act;

**Party** means a party to this Lease;

**Premises** means the land and/or buildings described in Part 2 of Schedule 2;

**Regulations** means the Crown Lands Regulation 2006 and successors;

**Rent** means the rent reserved under Clause 9 of this Lease;

**Reserve** means the Reserve described in Part 1 of Schedule 2;

**Revocation** means the revocation of a Reserve under Sections 83, 84, 89 or 90 of the CL Act;

**Sub-Lessee** means a person who holds a sub-lease of any part of the Premises from the Lessee in accordance with a provision of this Lease;

**Tenant Fixtures** means any plant equipment fittings or improvements in the nature of fixtures brought onto the Premises by, on behalf of, or at the request of the Lessee;

**Term** means the period specified in Column 2 of Item 2 of Schedule 1;

**Termination** means a termination of this lease as a consequence of the expiration of the Term (or any extension thereof), a termination by virtue of Section 109 of the CL Act or a termination under Clause 23.

**3. CONSTRUCTION**

**3.1 Construction in accordance with this Clause**

This Lease shall be construed in accordance with this clause unless the context requires otherwise.

**3.2 Plurals**

Words importing the singular include the plural and vice versa.

**3.3 Genders**

Words importing any gender include the other genders.

**3.4 Persons**

A reference to a person includes:

- (a) an individual, a firm, unincorporated association, corporation and a government or statutory body or authority; and
- (b) the legal personal representatives, successors and assigns of that person.

**3.5 Headings**

Headings (including any headings described as parts and sub-headings within clauses) wherever appearing shall be ignored in construing this Lease.

**3.6 Clauses and Sub-clauses**

- (a) A reference to a clause includes all sub-clauses, paragraphs, subparagraphs and other components which form part of the clause referred to.
- (b) A reference to a sub-clause includes any sub-paragraphs and other components of the sub-clause referred to.

**3.7 Time**

A reference to time is a reference to local time in Sydney.

**3.8 Money**

A reference to \$ or "dollars" is a reference to the lawful currency of Australia.

**3.9 Defined Terms**

If a word or phrase is defined cognate words and phrases have corresponding definitions. A defined term, unless inconsistent with the context of its use, is denoted by the appearance of that word using a capital letter at the beginning of that word.

**3.10 Writing**

A reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form.

**3.11 Contra Preferentum**

No rules of construction shall apply to the disadvantage of any party responsible for preparation of this Lease or any part of it.

**3.12 Statutes**

A reference to a statute, legislation, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority.

**3.13 Lease**

A reference to this Lease shall include any extension or variation of this Lease.

**3.14 Priority**

If an inconsistency occurs between the provisions of this Lease and the provisions of a lease granted in accordance with this Lease, the provisions of this Lease shall prevail.

**3.15 Warranties and Undertakings**

- (a) The Lessee warrants that it:
  - (i) has relied only on its own inquiries about this Lease; and
  - (ii) has not relied on any representation or warranty by the Lessor or any person acting or seeming to act on the Lessor's behalf.
- (b) The Lessee must comply on time with undertakings given by or on behalf of the Lessee.

**3.16 Further assurances**

Each Party must do everything necessary to give full effect to this Lease.

**3.17 Relationship of Lessor and Lessee**

Nothing contained or implied in this Lease will be deemed or construed to create the relationship of partnership or of principal and agent or of joint venture between the Lessor and the Lessee. Specifically, the Parties understand and agree that neither the method of computation of Rent, nor any other provision, nor any acts of the Lessee and the Lessor or either of them will be deemed to create any relationship between them other than the

relationship of Lessor and Lessee upon the terms and conditions only as provided in this Lease.

**3.18 Time to be of the essence**

Where in any provision of this Lease a party is given or allowed a specified time within which to undertake or do any act or thing or any power is conferred or any event occurs after the lapsing of a specified time, time shall be the essence of the contract in that regard.

**4. SEVERABILITY**

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or inability to enforce without invalidating the remaining provisions of such provisions in any other jurisdiction.

**5. ESSENTIAL TERMS OF LEASE**

The Lessor and the Lessee agree that the clauses specified in Column 2 of Item 15 of Schedule 1 are essential conditions of this Lease.

**6. SECTIONS OF LEGISLATION NOT TO APPLY**

(a) The covenants and powers implied in every lease by virtue of Sections 84, 84A, 132, 133, 133A and 133B of the Conveyancing Act 1919 do not apply or are not implied in this Lease and are expressly negated except in so far as the same or some part or parts of it are included in the covenants hereinafter contained. The employment in this Lease of any words in any of the forms of words contained in the first column of Part II of the Fourth Schedule to the Conveyancing Act 1919 shall not imply any covenant under Section 86 of that Act.

(b) Part 4 of the Civil Liability Act 2002 (NSW) does not apply to this Lease.

**TERM AND PERMITTED USE**

**7. TERM OF LEASE**

The Lessor grants to the Lessee a lease of the Premises for the Term specified in Column 2 of Item 2 of Schedule 1. The Term shall commence on the Commencing Date specified in Column 2 of Item 1 of Schedule 1.

**8. PERMITTED USE**

- (a) The Lessee will not use the Premises or allow the Premises to be used for any purpose other than the Permitted Use specified in Column 2 of Item 4 of Schedule 1.
- (b) Unless expressly permitted under a provision of this Lease the Lessee will not reside on the Premises or permit any other person to reside on the Premises.

**LESSEES RENT AND OUTGOINGS**

**9. PAYMENT OF RENT**

**9.1 Definitions**

For the purposes of this clause:

**Base Annual Rent** means:

- (a) the Initial Rent where the Rent has not been adjusted or redetermined in accordance with sub-clauses 9.3 or 9.4; or
- (b) in any other case - the Rent as last redetermined or adjusted in accordance with the provisions of sub-clauses 9.3 or 9.4;

**Due Date** means the date for payment of Rent under this Lease as is specified in Column 2 of Item 7 of Schedule 1 and thereafter each anniversary of that date;

**Initial Rent** means the Rent payable under this Lease in respect of the Premises as is specified in Column 2 of Item 5 of Schedule 1 expressed as an annual amount;

**Market Rent** means the Rent that would reasonably be expected to be paid for the Premises if it were offered for the same or a substantially similar use to which the Premises may be put under this lease and on similar terms and conditions;

**Market Rent Review Date** means the date specified in Column 2 of Item 8 of Schedule 1;

**Rent** means the greater of:

- (a) the Base Annual Rent payable upon each Due Date less any Rent Rebate granted to the Lessee by the Lessor; or
- (b) the statutory minimum Rent payable in respect of a lease granted under the CL Act which is not subject to any rebate;

**Rent Adjustment** means an adjustment of Rent made under sub-clause 9.3.

**Rent Rebate** means such amount as specified in Column 2 of Item 6 of Schedule 1 granted to the Lessee by the Lessor under Clause 9.5 and expressed either as an absolute dollar value or a percent of the Base Annual Rent.

**9.2 Lessee to Pay Rent**

The Lessee covenants with the Lessor that the Lessee will on the Commencing Date and thereafter during the whole of the Term on the Due Date pay the Rent to the Lessor in accordance with the provisions of this clause without demand free of exchange and without deduction whatsoever.

**9.3 Calculation of Rent Adjustment**

- (a) On each Anniversary of the Due Date the Rent will be adjusted in accordance with the following formula:

$$R = B \times \frac{C}{D}$$

where:

- R represents the Base Annual Rent following adjustment under this Clause;  
B represents the Base Annual Rent before adjustment under this Clause;  
C represents the Consumer Price Index number for the last quarter for which such a number was published before the due date; and  
D represents the Consumer Price Index number for the last quarter of the last adjustment of rent for which such a number was published.
- (b) In this clause "Consumer Price Index number" in relation to a quarter means the number for that quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician. In the event that such index be discontinued or abolished the Minister may at his absolute discretion nominate another Index.
- (c) If the reference base for the Consumer Price Index is changed regard shall be had only to Index numbers published in terms of the new reference base or to Index numbers converted to the new reference base in accordance with an arithmetical conversion factor specified by the Australian Statistician.
- (d) Any Rent adjusted under this sub-clause must be adjusted to the nearest whole dollar.
- (e) An adjustment of Rent made under this clause shall take effect on its Due Date notwithstanding that any Rent notice to the Lessee is not issued until after that date.

**9.4 Market Rent Review**

- (a) In addition to the Rent adjustment provided for in clause 9.3 the Rent may, subject to the following provisions of this clause, be redetermined to an amount that is the market Rent on that date with effect on and from each Market Rent Review Date by the Lessor.
- (b) A redetermination of Rent for the purposes of sub-clause 9.4(a) will be taken to have been made on the Market Rent Review Date if it is made at any time within the period of six months before and up to six months after that Market Rent Review Date.
- (c) Where the Lessor does not redetermine the Rent as provided for in clause 9.4(a) it may subsequently redetermine the Rent at any time before the next Market Rent Review Date. No succeeding Market Rent Review Date will be postponed by reason of the operation of this clause.
- (d) An adjustment of Rent made under sub-clause 9.4(c) will take effect and be due and payable on the next due date following the date of issue of the notice of adjustment (or where the said due date and the date of issue of the notice of redetermination are the same, then that date) even if the Lessee wishes to dispute the redetermination.

**9.5 Rent Rebate for Charitable or Non Profit Organisations**

At the absolute discretion of the Lessor, the Lessor may determine that the Lessee is entitled to a Rent Rebate as specified in Column 2 of Item 6 of Schedule 1 on the basis that the Lessee is a recognised charitable or non profit organisation.

**10. CONTINUING OBLIGATION**

The obligation of the Lessee to pay the Rent is a continuing one during the Term of this Lease and any extension of it and shall not abate in whole or in part or be affected by any cause whatsoever.

**11. NO REDUCTION IN RENT**

Subject to this Lease the Lessee will not without the written consent of the Lessor by any act, matter or deed or by failure or omission impair, reduce or diminish directly or indirectly the Rent required to be paid under this Lease. However, if at any time during the Lease:

- (a) some natural disaster or other serious event occurs which is beyond the reasonable control of the Lessee; or
- (b) as a result of the damage, the Lessee is not able to use the Premises in a reasonable manner,
- (c) the Lessee's obligations to pay Rent will abate to the extent proportional to the effect on the Lessee's ability to occupy and use the Premises until the Premises are restored to a condition in which the Lessee is able to conduct the Lessee's activities and/or occupy the Premises in a reasonable manner.

**12. ~~LESSEE TO PAY RATES~~**

- ~~(a) The Lessee will when the same become due for payment pay all (or in the first and last year of the Term the appropriate proportionate part) rates, taxes (including Land Tax), assessments, duties, charges and fees whether municipal, local government, parliamentary or otherwise which are at any time during the currency of this Lease separately assessed and lawfully charged upon, imposed or levied in respect of the Lessee's use or occupation of the Premises to the extent referable to the Lessee's use or occupation of the Premises.~~
- ~~(b) The Lessee will if required by the Lessor produce to the Lessor evidence for such payments within 10 business days after the respective due dates for payment and in case such rates, taxes, duties and fees so covenanted to be paid by the Lessee are not paid when they become due the Lessor may if it thinks fit pay the same and any such sum so paid may be recovered by the Lessor from the Lessee.~~

**13. ~~LESSEE TO PAY OTHER CHARGES~~**

~~The Lessee will pay all other fees, charges and impositions not referred to in clause 12 for which it may properly be liable and which are at any time during the Term payable in respect of the Premises or on account of the use and occupation of the Premises by the Lessee.~~

**14. ~~LESSEE TO PAY FOR SERVICES~~**

~~The Lessee will as and when the same become due for payment pay to the Lessor or to any other person or body authorised to supply the same all proper charges for gas, electricity, water or other services supplied to the Lessee or consumed in or on the Premises, by the Lessee.~~

**15. ~~LESSEE TO PAY COST OF WORK~~**

~~Whenever the Lessee is required under this Lease to do or effect any act, matter, work or thing then the doing of such act matter or thing will unless this Lease otherwise provides be at the sole risk, cost and expense of the Lessee.~~

**16. ~~COSTS PAYABLE~~**

**16.1 ~~Costs Payable to Lessor~~**

~~Except where a law limits costs being incurred by a Lessee being recovered from the Lessor, the Lessee will pay in full the Lessor's reasonable legal costs, the fees of all consultants and all duties fees, charges and expenses incurred reasonably, properly and in good faith by the Lessor in consequence of or in connection with or incidental to:~~

- ~~(a) the preparation, completion, stamping and registration of this Lease;~~
- ~~(b) any variation of this Lease made otherwise than at the request of the Lessor;~~
- ~~(c) any application for the consent of the Lessor and the Minister if applicable under this Lease;~~
- ~~(d) any and every failure to comply, breach or default by the Lessee under this Lease;~~
- ~~(e) the exercise or attempted exercise of any right power privilege authority or remedy of the Lessor under or by virtue of this Lease;~~
- ~~(f) the examination of plans, drawings and specifications of any improvement erected or constructed or to be erected or constructed on the Premises by the Lessee and the inspection of it, in this case the costs to be mutually agreed;~~
- ~~(g) any entry, inspection, examination, consultation or the like which discloses a breach by the Lessee of any provision of this Lease;~~



- (h) the Lessee requiring the Lessor to do any act, matter or thing under this Lease, unless otherwise provided for in this Lease, the Lessee will reimburse the Lessor for all reasonable costs and expenses incurred in complying with that requirement.

**16.2 Costs payable by Lessor**

The Lessor will pay its own direct and external consultants costs in relation to any rental redetermination matter without reimbursement from the Lessee.

**17. INTEREST ON OVERDUE MONEYS**

The Lessee will pay interest to the Lessor on any moneys due and payable under the Lease or on any judgment in favour of the Lessor in an action arising from the Lease until all outstanding moneys including interest are paid in full. The rate of interest applicable is the rate set by the Lessor's Bank for the time being as its benchmark rates for overdrafts of one hundred thousand dollars (\$100,000.00) or more. Interest will accrue and be calculated daily.

**18. MANNER OF PAYMENT OF RENT AND OTHER MONEYS**

The Rent and other moneys payable in accordance with this Lease must be paid to the address or bank account specified in Column 2 of Item 9 of Schedule 1 or to such other person or at such other address as the Lessor may from time to time direct by notice in writing served on the Lessee.

**19. GOODS AND SERVICES TAX**

- (a) For the purposes of this Lease, "GST", "taxable supply", "consideration" and "tax invoice" have the meanings given to those terms in A New Tax System (Goods and Services Tax) Act 1999.
- (b) All payments to be made or other consideration to be provided under this Lease are GST exclusive unless otherwise expressly stated. If any payment or consideration to be made or provided by the Lessee to the Lessor is for a taxable supply under the Lease on which the Lessor must pay GST and the Lessor gives the Lessee a tax invoice, the Lessee must pay to the Lessor an amount equal to the GST payable (the "GST Amount") by the Lessor for that taxable supply upon receipt of that tax invoice.
- (c) The Parties agree that they are respectively liable to meet their own obligations under the GST Law. The GST Amount must not include any amount incurred in respect of penalty or interest or any other amounts payable by the Lessor as a result of default by the Lessor in complying with the GST Law.

**20. SUBLEASING, ASSIGNMENT AND PARTING WITH POSSESSION**

- (a) The Lessee may not sublet, assign this Lease or part with possession of the Premises or any part of them without the consent of the Lessor. The Lessor will not unreasonably withhold its consent.
- (b) The Lessee agrees that consent will be taken not to have been "unreasonably withheld" if the Lessor has been served with a notice by the Minister requiring the Minister's consent to any assignment or sub lease or parting with possession of the Premises and the Minister has been requested to give consent but has not given that consent.
- (c) If the Lessee is a corporation, it will be treated as assigning this Lease, for the purposes of clause 20(a), if the person or persons who beneficially own or control a majority of its voting shares at the commencement of this Lease cease to do so, except as a result of transmission on the death of a shareholder. This clause will not apply if the Lessee is a corporation, the voting shares of which are listed on a Stock Exchange in Australia.
- (d) The Lessee is to pay the Lessor's reasonable legal and other costs relating to considering and giving consent, including any costs which the landlord incurs in making inquiries as to the respectability, solvency, responsibility, stature, experience and capability of any proposed subtenant or assignee or the person to whom possession is to be transferred.
- (e) The Lessee may not mortgage or charge this Lease or any estate or interest in the leased Premises.

**21. TERMINATION OF LEASE**

Subject to Clauses 22 and 23 this Lease terminates on the date specified in Column 2 of Item 3 of Schedule 1.

**22. TERMINATION OF LEASE UNDER SECTION 109 OF CL ACT**

- (a) The Lessor and Lessee acknowledge that, subject to clause 22(b), this Lease will terminate under Section 109 of the CL Act if the Reserve is revoked or that part of the

Reserve is revoked that comprises the whole or part of the Premises unless the revocation notification otherwise provides.

- (b) Where only part of Premises is affected by a revocation or proposed revocation the Lessor undertakes to consult with the Lessee and the Lessee undertakes to consult with the Lessor to determine if an agreement under Section 109(3) can be reached for the continuation of this Lease in respect to that part of the Premises not affected by the revocation.
- (c) The Lessee expressly acknowledges that as provided by Section 109(5) of the CL Act no compensation is payable in respect of the Termination of this Lease by the operation of Section 109 and no compensation shall be payable.

## **23. TERMINATION OF LEASE ON DEFAULT**

23.1 The Lessor may end the Lease in the manner set out below in the following circumstances:

- (a) if the Rent or any part of it or any other moneys owing to the Lessor under the Lease is or are in arrears for one month, whether formally demanded or not;
- (b) if the Lessee breaches an essential condition of this Lease or any rule or regulation made under this Lease;
- (c) if defects notified under a provision of this Lease are not remedied within the time specified in the notice;
- (d) if the Lessee is a corporation and an order is made or a resolution is passed for its winding up except for reconstruction or amalgamation;
- (e) if the Lessee is a company and ceases or threatens to cease to carry on business or goes into liquidation, whether voluntary or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed;
- (f) if the Lessee is a company and is placed under official management under the corporations law or enters a composition or scheme of arrangement;
- (g) if the interest of the Lessee under this Lease is taken in execution;
- (h) if the Lessee or any person claiming through the Lessee conducts any business from the leased Premises after the Lessee has committed an act of bankruptcy.

23.2 In the circumstances set out in sub clause 23.1, the Lessor may end the Lease by:

- (a) notifying the Lessee that it is ending the Lease; or
- (b) re-entering the Premises, with force if necessary, and ejecting the Lessee and all other persons from the Premises and repossessing them; or
- (c) doing both.

23.3 If the Lessor ends this Lease under this clause, the Lessee will not be released from liability for any prior breach of this Lease and other remedies available to the Lessor to recover arrears of Rent or for breach of this Lease will not be prejudiced.

23.4 If the Lessor ends this Lease under this clause or under clause 22, it may remove the Lessee's property and store it at the Lessee's expense without being liable to the Lessee for trespass, detain, conversion or negligence. After storing it for at least one month, the Lessor may sell or dispose of the property by auction or private sale. It may apply any proceeds of the auction or sale towards any arrears of Rent or other moneys or towards any loss or damage or towards the payment of storage and other expenses.

23.5 If the Lessor ends this Lease under this clause, it may, besides any other rights and remedies that it might have, recover from the Lessee damages for the loss of the benefit of the rest of this Lease.

## **24. ACCEPTANCE OF RENT NOT WAIVER**

Demand for, or acceptance of Rent or any other moneys due under this Lease by the Lessor after forfeiture does not operate as a waiver of forfeiture.

## **25. HOLDING OVER BY LESSEE**

- (a) On and from the Terminating Date of this Lease, the Lessee shall be entitled with the consent of the Lessor and the Minister to remain in possession of the Premises on the following terms and conditions:
  - (i) the Lessee shall become a monthly tenant of the Lessor at a monthly rental equivalent to one twelfth of the annual Rent payable at the time of expiration of this Lease;

- (ii) the Lessee shall comply with and be bound by the terms and conditions of this Lease insofar as the terms and conditions are applicable, provided that the Lessor may from time to time by notice in writing served on the Lessee direct that any particular condition not apply or be amended in the manner set out in the notice.
- (b) The Lessor and the Lessee expressly agree that where any provision of this Lease confers any right, duty, power or obligation on a Party upon the expiration of this Lease and the Lessee is authorised to remain in possession of the Premises pursuant to a consent granted under this clause the emergence of the right, duty, power or obligation shall be postponed until such time as the Lessee ceases to be entitled to possession pursuant to this clause.
- (c) The tenancy created by operation of this clause may be determined by the Lessor serving on the Lessee a notice to quit. The notice shall take effect at the expiration of the period of one month from the date of service of the notice or such further period as may be specified in the notice.
- (d) The tenancy created by operation of this clause may be determined by the Lessee serving on the Lessor a notice stating that as from a date specified in the notice the tenancy is surrendered.

**26. LESSEE TO YIELD UP**

- (a) The Lessee will forthwith upon the expiry or determination of this Lease or any extension of it peaceably vacate the Premises at the Lessee's expense.
- (b) The Lessee must:
  - (i) unless otherwise provided for in this Lease, remove the Tenant Fixtures and must remove any signs, names, advertisements, notices or hoardings erected, painted, displayed, affixed or exhibited upon, to or within the Premises by or on behalf of the Lessee (other than a notice displayed by the Lessor); and
  - (ii) unless otherwise provided for in this Lease, rehabilitate the Premises, (to the extent to which it has been altered or affected by the Lessee's occupation and use of the Premises) as nearly as practicable to the original condition before the installation of the Tenant Fixtures to the reasonable satisfaction of the Lessor; and
  - (iii) ensure that when it vacates the Premises, the Premises comply with any Environmental Law to the extent that it did so at the time of granting of this Lease; and
  - (iv) leave the Premises in a clean and tidy condition.
- (c) Clause 26(b) does not apply unless the Lessor permits the Lessee to carry out any works on the Premises reasonably required in order to comply with the clause.

**OBLIGATIONS AND RESTRICTIONS RELATING TO PREMISES**

**27. ADDITIONS AND ALTERATIONS**

The Lessee shall not make any additions or alterations to the Premises without first obtaining the written consent of the Lessor, the Minister and the local Council (in its role as the statutory planning authority). Any additions or alterations consented to by the Lessor and the Minister shall be carried out at the Lessee's expense and in a workmanlike manner.

**28. MAINTENANCE OF PREMISES AND ENCLOSED AREAS**

The Lessee will keep the Premises clean and tidy and in good order and condition.

**29. LESSEE TO ERECT BARRICADES ETC.**

Where the Premises or any part of the Premises become to the knowledge of the Lessee (or which ought reasonably to be in the knowledge of the Lessee) unsafe, hazardous or dangerous the Lessee will forthwith erect such warning signs, fences and barricades as may be necessary until the Premises are rendered safe.

**30. LESSEE NOT TO REMOVE MATERIALS**

- (a) The Lessee will not mine, remove, extract, dig up or excavate any sand, stone, gravel, clay, loam, shell or similar substance from, on or in the Premises or permit any other person to undertake such action without the prior consent in writing of the Lessor and the Minister and subject to such conditions as the Lessor or the Minister may determine.
- (b) Sub clause 30(a) does not apply to any removal, digging up or excavation as may be necessary to construct or undertake any improvement authorised by or under this Lease provided that any such removal, digging up or excavation is undertaken in accordance with the requirements of that authorisation.

- (c) A failure by the Lessee to comply with any condition imposed pursuant to sub clause 30(a) constitutes a failure by the Lessee to comply with a provision or covenant of this Lease.

**31. ADVERTISING**

- (a) The Lessee must not permit to be displayed or placed on the Premises or any part of them any sign, advertisement or other notice without first obtaining the Lessor's written consent other than safety signs, in respect of which the Lessor's consent will not be required; and
- (b) The Lessor may at any time by notice in writing require the Lessee to discontinue to use any piece or mode of advertising to which the Lessor has granted consent under sub-clause 31(a) which in the opinion of the Lessor has ceased to be suitable or has become unsightly or objectionable and the Lessee on receipt of the notice must comply accordingly.

**32. NOTIFICATION OF ACCIDENT**

The Lessee will give to the Lessor prompt notice in writing of any serious accident to any person or accident to the Premises or serious defect at or to the Premises unless that defect or accident is capable of being and is promptly remedied by the Lessee.

**33. RODENTS AND VERMIN**

The Lessee will take all reasonable precautions to keep the Premises free of rodents, vermin, insects and pests and will in the event of failing to do so if required by the Lessor but at the cost of the Lessee employ from time to time a duly certified pest exterminator approved by the Lessor whose approval will not be unreasonably withheld. In performing its obligations pursuant to this clause the Lessee and any person acting on the Lessee's behalf will not use any substance or undertake any activity prohibited by any law.

**34. LESSEE NOT TO BURN OFF**

If applicable, the Lessee will not carry out any burning off on the Premises except with the prior consent of the Lessor in writing, which consent shall not be unreasonably withheld, and after compliance with the requirements of the Rural Fires Act 1997. Any consent granted in accordance with this condition shall be subject to such reasonable conditions as the Lessor may impose.

**35. LESSEE NOT TO COMMIT NUISANCE ETC**

The Lessee will not:

- (a) carry on or permit to be carried on at the Premises any noxious, nuisance or offensive trade or business; or
- (b) do or permit to be carried on at the Premises any act, matter or thing which results in nuisance damage or disturbance to the Lessor or owners or occupiers of adjoining or neighbouring lands or buildings; or
- (c) use the Premises for any illegal activity.

**36. HAZARDOUS SUBSTANCES**

The Lessee must not bring on to the Premises or keep any Hazardous Substance on the Premises without the prior consent of the Lessor, which consent shall not be unreasonably withheld.

**37. RELICS**

- (a) Unless authorised to do so by a permit under section 87 or a consent under section 90 of the National Parks and Wildlife Act 1974 and subject to observance and compliance with any conditions imposed on the grant of such permit or consent the Lessee will not knowingly disturb, destroy, deface or damage any aboriginal relic or place or other item of archaeological significance within the Premises and will take reasonable precautions in drilling excavating or carrying out other operations or works on the Premises against any such disturbance, destruction, defacement or damage.
- (b) If the Lessee becomes aware of any aboriginal relic or place or other item of archaeological significance within the Premises the Lessee will within 24 hours notify the Lessor and the Director-General of the Department of Environment and Conservation of the existence of such relic, place or item.
- (c) The Lessee will not continue any operations or works on the Premises likely to interfere with or disturb any relic, place or item referred to in sub clause 37(b) without the approval of the Director-General of the Department of Environment and Conservation and the Lessee will observe and comply with all reasonable requirements of the said Director-General in relation to carrying out the operations or works.

**38. ARTEFACTS**

All fossils, artefacts, coins, articles of value, articles of antiquity, structure and other remains or things of geological historical or archaeological interest discovered on or under the surface of the Premises shall be deemed to be the absolute property of the Lessor and the Lessee will be authorised by the Lessor to watch or examine any excavations and the Lessee will take all reasonable precautions to prevent such articles or things being removed or damaged and will as soon as practicable after discovery thereof notify the Lessor of such discovery and carry out the Lessor's orders as to the delivery up to or disposal of such articles or things at the Lessor's expense.

**IMPROVEMENTS AND PLANT**

**39. OWNERSHIP AND REMOVAL OF IMPROVEMENTS AND TENANT FIXTURES**

- (a) Upon expiry or sooner determination of this Lease all Improvements undertaken by the Lessee become the property of the Lessor.
- (b) During the Term and any extension of it, ownership of Tenant Fixtures vests in the Lessee. Notwithstanding anything contained in this Lease, so long as any Rent or other moneys are due by the Lessee to the Lessor or if the Lessee has committed any breach of this Lease which has not been made good or remedied and whether the Lessee is still in possession or not, the Lessee shall not be entitled to remove any of the Tenant Fixtures, fittings or equipment from the leased property.

**~~40. GENERAL REQUIREMENT TO REPAIR~~**

~~Without prejudice to any specific obligations contained in this Lease the Lessee will to the satisfaction of the Lessor at all times keep the Premises in good repair and properly maintained in all respects.~~

**41. BREAKAGES**

The Lessee will immediately at the Lessee's expense make good any breakage defect or damage to the Premises (including but not limited to broken glass) or to any adjoining premises or to any facility or appurtenance of the Lessor occasioned by want of care, misuse or abuse on the part of the Lessee, the Lessee's agents, servants, invitees or licensees.

**42. LESSOR'S RIGHT TO ENTER INSPECT AND REPAIR**

The Lessor, the Lessor's agents, the Minister and the Minister's delegates may at all reasonable times upon giving to the Lessee reasonable notice (except in the case of emergency when no notice shall be required) and accompanied by the Lessee or an employee or agent of the Lessee enter upon the Premises and view the state of repair of the Premises and may serve upon the Lessee a notice in writing of any defect (the repair of which is the Lessee's obligation under this Lease to undertake) requiring the Lessee within two months to repair the same.

**43. INDEMNITIES AND INSURANCE**

**Definition**

For the purposes of clauses 44, 45, 46, 47, 48, 49, 57 and 58 –

Lessor means the Lessor, Her Majesty the Queen Her Heirs and Successors, the State of New South Wales, the Minister and the agents, servants, employees and contractors of Her Majesty, Her Majesty's Heirs and Successors, the State of New South Wales and the Minister.

Claim/s means actions, suits, claims, demands, proceedings, losses, damages, compensation, costs, legal costs, charges and expenses.

**44. INDEMNITIES**

**44.1 Indemnity for use of Premises**

- (a) The Lessee will indemnify and keep indemnified the Lessor from and against all Claims whatsoever to which the Lessor shall or may be or become liable for or in respect of the Lessee's occupation operation and use of the Premises or for or in respect of all Claims of whatsoever nature or kind and howsoever arising (and whether to any property or to any person resulting in the destruction or damage of any property or the death or injury of any person) at or upon the Premises or originating on the Premises, although occurring or sustained outside the Premises, except to the extent that any such Claims:
  - (i) arise from or are contributed to by the negligence or wilful act or omission on the part of the Lessor; or
  - (ii) arise from the occupation, operation or use of the Premises by any other occupier, or the acts of any person who has access to the Premises with the consent of

another occupier, and the Lessor is adequately indemnified by that other occupier in respect of the relevant Claim or demand, and the Lessor will use its reasonable endeavours to ensure that an indemnity in or to the effect of this form is contained in any agreement with any other occupier of the Premises.

**44.2 Indemnity Continues After Expiration of Lease**

The obligations of the Lessee under this clause continue after the expiration or other determination of this Lease in respect of any act, deed, matter or thing happening before such expiration or determination for the period limited by the Statute of Limitations.

**44.3 Exclusion of Consequential Loss**

Despite any other provision of this Lease, both Parties exclude, (and agree that they will have no rights against the other for) liability for consequential or indirect loss arising out of this Lease including (without limitation) in respect of loss of profits or loss of business. This clause does not apply in respect of wilful acts by either Party.

**45. RELEASE OF LESSOR FROM LIABILITY**

- (a) The Lessee shall occupy, use and keep the Premises at the risk of the Lessee and hereby releases to the full extent permitted by law the Lessor from all Claims resulting from any accident, damage or injury occurring therein (but excluding such Claims to the extent that such Claims arise out of the negligent or wilful acts omissions or default of the Lessor) and the Lessor shall have no responsibility or liability for any loss of or damage to fixtures and/or personal property of the Lessee or any agent or servant of the Lessee or of any member of the public whilst in or upon the Premises (but excluding such Claims to the extent that such Claims arise out of the negligent acts or wilful omissions or default of the Lessor).
- (b) The obligations of the Lessee under this clause shall continue after the expiration or other determination of this Lease in respect of any act, deed, matter or thing happening before such expiration or determination for which the Lessee is responsible. Such obligation is to be governed by the Statute of Limitations.

**46. NO LIABILITY FOR FAILURE OF SERVICES**

The Lessor will not be under any liability for any loss, injury or damage sustained by the Lessee or any other person at any time as a result of or arising in any way out of the failure of the electricity, telephones, gas, water supply, sewerage, drainage or any other services or facilities provided by the Lessor or enjoyed by the Lessee in conjunction with the Premises or this Lease provided that such failure is not due to the negligent or wilful act or omission of the Lessor its servants or agents.

**47. LESSEE NOT TO IMPOSE LIABILITY ON LESSOR**

Subject to any other provision of this Lease, the Lessee will not without the written consent of the Lessor or Minister by any act, matter or deed or by failure or omission cause or permit to be imposed on the Lessor or Minister any liability of the Lessee under or by virtue of this Lease even though the Lessee is entitled to do so under any law present or future or otherwise.

**48. INSURANCE - PUBLIC RISK**

The Lessee will effect and maintain with a reputable and solvent insurer with respect to the Premises and the activities carried on in the Premises public risk insurance for an amount not less than the amount set out in Column 2 of Item 12 of Schedule 1 (or such other amount as the Lessor may from time to time reasonably require) as the amount payable in respect of liability arising out of any one single accident or event. The Lessor acknowledges that the Lessee may effect the public risk insurance pursuant to an insurance policy which is not specific as to the location of risk.

**49. PROVISIONS RE POLICIES**

- (a) All insurance policies required to be effected by the Lessee pursuant to this Lease are specified in Schedule 3 - Special Conditions and shall be in place prior to occupying the Premises.
- (b) The Lessee will produce to the Lessor, once per calendar year or once per period of insurance (whichever first occurs), a certificate of insurance and/or a certificate of currency in respect of the insurance policies required to be effected by the Lessee pursuant to this Lease.
- (c) The Lessee will not at any time during the Term do any act or omit to do any act which it ought reasonably believe may render void or voidable any policy of insurance. If the Lessee does any act or fails to do any act whereby the rate of premium on such

insurance shall be liable to be increased, the Lessee will obtain insurance cover for such increased risk and pay all additional premiums required on account of the additional risk caused by the use to which the Premises are put by the Lessee.

- (d) The Lessee will use all reasonable endeavours to ensure that full, true and particular information is given to the office or company with which the said insurances are effected of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or policies of insurance or the payment of all or any moneys there under.

#### **LESSOR'S WARRANTIES AND COVENANTS**

##### **50. HAZARDOUS CHEMICALS**

The Lessor warrants that it has not received any notice pursuant to the Environmentally Hazardous Chemical Act, 1985 (NSW).

##### **51. QUIET ENJOYMENT**

The Lessor warrants that subject to:

- (a) the Lessor's rights under this Lease;
- (b) the Lessee complying with its obligations under this Lease;
- (c) the Lessee may hold and occupy the Premises without undue interference by the Lessor.

#### **LESSOR'S POWERS AND FUNCTIONS**

##### **52. APPROVAL BY THE LESSOR**

- (a) This clause does not apply to a consent or approval under clause 20.
- (b) In any case where pursuant to this Lease the doing or executing of any act, matter or thing by the Lessee is dependent upon the approval or consent of the Lessor such approval or consent will not be effective unless given in writing and may be given or withheld (unless the context otherwise requires) by the Lessor and may be given subject to such conditions as the Lessor may determine unless otherwise provided in this Lease provided such consent or approval is not unreasonably withheld or such terms and conditions are not unreasonable.
- (c) Any failure by the Lessee to comply with a condition imposed by the Lessor pursuant to sub-clause 52(b) constitutes a failure by the Lessee to comply with a condition of this Lease.

##### **53. OPINION OF THE LESSOR**

Any opinion to be formed by the Lessor for the purposes of this Lease may be formed by the Lessor on such grounds and material as the Lessor determines to be sufficient. If the Lessor deems it necessary, such opinion will be formed after consultation with any New South Wales Government Department, the Local Council or other public authority or the Standards Association of Australia or any other body whose objects and functions are relevant. In forming any such opinion the Lessor is deemed to be exercising merely administrative functions.

#### **COMPLIANCE WITH STATUTES AND OTHER INSTRUMENTS**

##### **54. LESSEE TO COMPLY WITH ALL COMMONWEALTH AND NSW STATE LAWS**

- (a) The Lessee will comply with the requirements of all statutes, regulations or by-laws and requirements of all relevant public and local authorities in so far as they apply in relation to the use and occupation of the Premises to the extent to which the Lessee is bound at law to comply with the same and nothing in this Lease affects this obligation.
- (b) The Lessee will forthwith on being served with a notice by the Lessor comply with any notice or direction served on the Lessor by a competent authority relating to the destruction of noxious animals or plants or pests or the carrying out of repairs alterations or works on or to the Premises.

##### **55. LESSEE TO COMPLY WITH ENVIRONMENTAL LAWS**

In relation to its use of the Premises, the Lessee must, during the Term, and in relation to the Premises:

- (a) comply with relevant Environmental Law;
- (b) use its best endeavours to prevent a breach of any Environmental Law;
- (c) report any breach even if accidental; and
- (d) provide to the Lessor as soon as reasonably practicable details of notices received by or proceedings commenced against the Lessee pursuant to an Environmental Law:
  - (i) relating to a breach or alleged breach by the Lessee of an Environmental Law; or

- (ii) requiring the Lessee to carry out works to decrease the affectation of the Premises by any Hazardous Substance.

**56. LESSEE'S FAILURE TO COMPLY WITH STATUTORY REQUIREMENTS**

Where the Lessee breaches any law in relation to its use of the Premises it is taken to breach a condition of this Lease, provided that:

- (a) the Lessee has been found guilty of the breach, and
- (b) the Lessor determines that the breach warrants the Termination of this lease.

**57. INDEMNITY FOR NON-COMPLIANCE WITH LEGISLATION**

The Lessee will indemnify and keep indemnified the Lessor from and against any Claims arising from the non-compliance by the Lessee with any New South Wales or Commonwealth legislation that may apply to the Lessee's use and occupation of the site and access thereto and the Lessee's operation of their business from the site and access thereto.

This clause shall not merge on the expiration or other determination of this Lease in respect of any act, deed, matter or thing happening before such expiration or determination.

**58. INDEMNITY FOR BREACH OF ENVIRONMENTAL LAW**

Without prejudice to any other indemnity granted by this Lease, the Lessee shall indemnify and keep the Lessor indemnified against all Claims arising from a breach by the Lessee of any Environmental Law which breach is in relation to the Premises. This clause shall not merge on expiration or other determination of this Lease in respect of any act, deed, matter or thing happening before such expiration or determination.

**DISPUTE RESOLUTION**

**59. PROCEDURE - DISPUTE RESOLUTION**

- (a) In the event that the Lessor and the Lessee are in dispute regarding any matter relating to or arising under this Lease or in respect of any approvals or consents to be granted by the Lessor (except those approvals or consents where the Lessor has an obligation to act reasonably) to the Lessee hereunder, then either the Lessor or the Lessee may give notice and particulars of such dispute to the other Party.
- (b) Where a notice of dispute is served pursuant to this clause the Parties agree to enter into informal negotiations to try and resolve the dispute in good faith and in an amicable manner.
- (c) If the dispute is not resolved informally within 21 days of service of written notice, the Parties may confer with a mutually agreed third party whose role will be to assist in the resolution of the dispute by mediation or expert appraisal of the dispute. The Parties agree to provide all information and assistance reasonably requested by such third party, including access to any accounting or other business records relating to or arising out of the Lease.
- (d) A third party appointed in accordance with this clause may decide in which proportions any fees will be borne by the respective Parties. In the absence of any such decision by the third party fees shall be borne equally by the Parties.
- (e) Neither Party shall be entitled to commence or maintain any proceedings in any court or tribunal until negotiations or mediations have taken place pursuant to this clause except where either Party seeks urgent interlocutory relief.
- (f) Either Party may at any time bring negotiations or mediation to an end by serving upon the other Party written notice stating that the dispute has failed to be resolved. Upon service of such notice both Parties shall be entitled to pursue any legal remedies available to them in relation to the dispute. This sub-clause does not in any way limit a mediator's power to apportion fees under sub-clause 59(d).
- (g) Notwithstanding the existence of a dispute being dealt with under this clause the Parties must, unless acting in accordance with an express provision of this Lease, continue to perform their obligations under this Lease.

**60. NOTICES**

**60.1 Service of Notice on Lessee**

Any notice served by the Lessor on the Lessee must be in writing and will be sufficiently served if:



- (a) served personally or left addressed to the Lessee at the address stated in Column 2 of Item 10 of Schedule 1 or such other address as the Lessee notifies in writing to the Lessor; or
- (b) sent by email to the Lessee's email address stated in Column 2 of Item 10 of Schedule 1 or such other address as the Lessee notifies in writing to the Lessor;
- (c) sent by facsimile to the Lessee's facsimile number stated in Column 2 of Item 10 of Schedule 1 or such other number as the Lessee notifies in writing to the Lessor; or
- (d) forwarded by prepaid security mail addressed to the Lessee at the address stated in Column 2 of Item 10 of Schedule 1,

and every such notice must also be served on the Lessee's solicitors, as they may be nominated from time to time, or such other address or facsimile number as the Lessee's solicitors notify in writing to the Lessor, by any methods identified in clauses 60.1 (a), (b) and (c).

#### **60.2 Service of Notice on Lessor**

Any notice served by the Lessee on the Lessor must be in writing and will be sufficiently served if:

- (a) served personally or left addressed to the Lessor at the address stated in Column 2 of Item 11 of Schedule 1 or such other address as the Lessor notifies in writing to the Lessee; or
- (b) sent by email to the Lessor's email address stated in Column 2 of Item 11 of Schedule 1 or such other address as the Lessor notifies in writing to the Lessee;
- (c) sent by facsimile to the Lessor's facsimile number stated in Column 2 of Item 11 of Schedule 1 or such other number as the Lessor notifies in writing to the Lessee; or
- (d) forwarded by prepaid security mail addressed to the Lessor at the address stated in Column 2 of Item 11 of Schedule 1,

and every such notice must also be served on the Lessor's solicitors, as they may be nominated from time to time, or such other address or facsimile number as the Lessor's solicitors notify in writing to the Lessee, by any methods identified in clauses 60.1 (a), (b) and (c).

#### **60.3 Notices**

- (a) Any notice served by the Lessor or the Lessee under this Lease will be effective if signed by a director or secretary or the solicitors for the Party giving the notice or any other person or persons nominated in writing from time to time respectively by the Lessor or by the Lessee to the other.
- (b) Any notice sent by prepaid security mail will be deemed to be served at the expiration of 2 Business Days after the date of posting.
- (c) Any notice sent by facsimile machine will be deemed to be served on the first Business Day after the date of transmission (provided that the sending Party receives a facsimile machine verification report indicating that the notice has been transmitted).

### **MISCELLANEOUS**

#### **61. NO MORATORIUM**

Any present or future legislation which operates to vary obligations between the Lessee and the Lessor, except to the extent that such legislation is expressly accepted to apply to this Lease or that its exclusion is prohibited, is excluded from this Lease.

#### **62. NO WAIVER**

No waiver by a Party of any breach of any covenant obligation or provision in this Lease either express or implied shall operate as a waiver of another breach of the same or of any other covenant obligation or provision in this Lease contained or implied. None of the provisions of this Lease shall be taken either at law or in equity to have been varied waived discharged or released by a Party unless by express consent in writing.

#### **63. NO MERGER**

Nothing in this lease merges, postpones, extinguishes, lessens or otherwise prejudicially affects the rights and remedies of the Parties under this Lease or under any other agreement.

#### **64. COUNTERPARTS**

- (a) A Party may execute this lease by signing any counterpart.
- (b) All counterparts constitute one document when taken together.

**65. CONTACT PERSON**

The Lessor and the Lessee each must nominate a person to contact about matters arising under this Lease. The person so nominated is the person referred to in Column 2 of Items 13 and 14 of Schedule 1 or such other person as the Lessor nominates in writing to the Lessee and the Lessee nominates in writing to the Lessor from time to time.

**66. APPLICABLE LAW**

This Lease shall be construed and interpreted in accordance with the law of New South Wales.

**67. NO HOLDING OUT**

The Lessee will not in connection with the Premises or otherwise directly or indirectly hold out or not permit to be held out to any member of the public any statement, act, deed, matter or thing indicating that the Premises or the business conducted or operated thereon or any parts or parts thereof are or is being carried on or managed or supervised by the Lessor nor shall the Lessee act as or represent itself to be the servant or agent of the Lessor.

**68. WHOLE AGREEMENT**

- (a) The provisions contained in this Lease expressly or by statutory implication cover and comprise the whole of the agreement between the Parties.
- (b) No further or other provisions whether in respect of the Premises or otherwise will be deemed to be implied in this Lease or to arise between the Parties hereto by way of collateral or other agreement by reason or any promise representation warranty or undertaking given or made by any Party hereto to another on or prior to the execution of this Lease.
- (c) The existence of any such implication or collateral or other agreement is hereby negatived.

**69. SPECIAL CONDITIONS**

The Special Conditions set out in Column 2 of Item 16 of Schedule 1 apply and form part of this Lease.

**SCHEDULE 1**

Item	Clause	Column 1	Column 2
1	2	<b>Commencing Date</b>	1 July 2014
2	7	<b>Term</b>	10 Years
3	21	<b>Terminating Date</b>	30 June 2024
4	8	<b>Permitted Use</b>	Art Gallery and ancillary uses
5	9	<b>Initial Rent</b>	\$7,800.00 per annum
6	9	<b>Rent Rebate</b>	Not applicable
7	9	<b>Due Date</b>	31 December in each and every year of the term with the first payment to be made on 31 December 2014
8	9	<b>Market Rent Review Date</b>	Not Applicable
9	18	<b>Address for Payment of Rent</b>	
10	60	<b>Lessee's address for Service of Notices</b>	1 Benerembah Street, Griffith NSW 2680 Attention: Daphne Bruce  Phone: 02 6962 8100 Facsimile: 02 6962 7161 Email:
11	60	<b>Lessor's address for Service of Notices</b>	Attention Phone: Facsimile: Email:

12	48	<b>Public Risk Insurance amount</b>	\$10 Million
13	65	<b>Lessor's Contact Person</b>	Pat Cox
14	65	<b>Lessee's Contact Person</b>	Daphne Bruce
15	5	<b>Essential Conditions</b>	7, 8, 9, 11, 20, 21, 27, 28, 48, 49, 54, 56, Special Conditions 2, 4 and 6
16	69	<b>Special Conditions</b>	The special conditions set out in Schedule 3

**End of Schedule 1**

## **SCHEDULE 2**

### **Part 1**

#### **Particulars of the Reserve**

Crown Reserve 559027

### **Part 2**

#### **Description of the Premises**

Part of Folio Identifier 2/586768 being premises known as Griffith Regional Art Gallery, Banna Avenue, Griffith, New South Wales and more fully shown on the plan signed by both parties bearing the same date as this Lease but which plan does not form part of this Lease.

**End Schedule 2**

## **SCHEDULE 3**

### **Special Conditions**

#### **1. Definitions**

In this lease, unless the contrary intention appears:

**Building** means the building located on the Land;

**Land** means all that land in folio identifier 2/586768;

**Shared Areas** means the porch, verandah, courtyard, kitchen, landing, classroom and toilets located within or adjacent to the Building.

**Shared Expense** means a charge fee or expense that is:

- (a) to be shared between the parties equally pursuant to special condition 2.1; or
- (b) to be shared between the parties in unequal shares pursuant to special condition 2.3.

**Special Conditions** mean the clauses set out in this Schedule 3.

**Standard Provisions** means clauses 1 – 69 inclusive of this lease as set out before the beginning of Schedule 1.

#### **2. Rent**

Clause 9 of the Standard Provisions is replaced with the following:

#### **9. PAYMENT OF RENT**

##### **9.1 Definitions**

*For the purposes of this clause:*

**Base Annual Rent** means:

- (a) the Initial Rent where the Rent has not been adjusted or redetermined in accordance with sub-clause 9.3; or
- (b) in any other case - the Rent as last redetermined or adjusted in accordance with the provisions of sub-clause 9.3;

**Due Date** means the date for payment of Rent under this Lease as is specified in Column 2 of Item 7 of Schedule 1 and thereafter each anniversary of that date;

**Initial Rent** means the Rent payable under this Lease in respect of the Premises as is specified in Column 2 of Item 5 of Schedule 1 expressed as an annual amount;

**Rent** means the greater of:

- (a) the Base Annual Rent payable upon each Due Date less any Rent Rebate granted to the Lessee by the Lessor; or
- (b) the statutory minimum Rent payable in respect of a lease granted under the CL Act which is not subject to any rebate;

**Rent Adjustment** means an adjustment of Rent made under sub-clause 9.3.

**Review Date** means each anniversary of the Commencing Date.

## 9.2 Lessee to Pay Rent

The Lessee covenants with the Lessor that the Lessee will on the Commencing Date and thereafter during the whole of the Term on the Due Date pay the Rent to the Lessor in accordance with the provisions of this clause without demand free of exchange and without deduction whatsoever.

## 9.3 Calculation of Rent Adjustment

- (a) On each Review Date the Rent will be adjusted in accordance with the following formula:

$$R = B \times \frac{C}{D}$$

where:

R represents the Base Annual Rent following adjustment under this Clause;

B represents the Base Annual Rent before adjustment under this Clause;

C represents the Consumer Price Index number for the quarter ending immediately before the Review Date; and

D represents the Consumer Price Index number for the quarter ending immediately before the immediately preceding review date (or in the case of the first review date, immediately preceding the Commencing Date).

- (b) In this clause "Consumer Price Index number" in relation to a quarter means the number for that quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician. In the event that such index be discontinued or abolished the Minister may at his absolute discretion nominate another Index.
- (c) If the reference base for the Consumer Price Index is changed regard shall be had only to Index numbers published in terms of the new reference base or to Index numbers converted to the new reference base in accordance with an arithmetical conversion factor specified by the Australian Statistician.
- (d) Any Rent adjusted under this sub-clause must be adjusted to the nearest whole dollar.
- (e) An adjustment of Rent made under this clause shall take effect on the Review Date notwithstanding that any Rent notice to the Lessee is not issued until after that date.

## 3. Expenses

### 3.1 Expenses to be shared equally between the Lessor and the Lessee

The Lessor and the Lessee shall pay in equal shares:

- (a) all water and sewer access charges in respect of the Building and the Land;
- (b) all potable water consumption charges in respect of the Building and the Land;
- (c) all charges in respect of security services including alarm monitoring in respect of the Building and the Land;

- (d) all charges in respect of regular inspection of the Building and the Land by a qualified pest inspector and all preventative and control services provided;
- (e) all charges in respect of fire service inspections and maintenance for the Building.

### **3.2 Expenses to be paid by Lessee**

The Lessee shall pay the following expenses:

- (a) all local government waste services provided to the Building and the Land; and
- (b) all raw water charges in respect of the Buildings and the Land.

### **3.3 Electricity Expenses**

All electricity charges (both fixed service fees and consumption fees) in respect of the Building and the Land shall be paid in the following manner:

- (a) the Lessee shall pay seventy five per centum (75%); and
- (b) the Lessor shall pay twenty five per centum (25%).

### **3.4 Lessee to engage service providers**

The Lessee shall engage on behalf of the Lessee and the Lessor the following services:

- (a) a security firm to provide security services to the Building and the Land including alarm monitoring;
- (b) a qualified pest inspector to provide an annual inspect of the Building and the Land and to conduct preventative pest services and pest control services; and
- (c) a qualified fire control/maintenance provider to provide fire service inspections and maintenance services to the Building and the Land.

The fees and charges payable in respect of these services shall be paid in accordance with special condition 3.1.

### **3.5 Lessor to insure**

The Lessor shall at its own expense insure:

- (a) the Building and all other improvements on the Land for their full replacement value against loss or damage because of fire and other risks including water, storm and rainwater damage;
- (b) all the Lessor's plant, equipment, fixtures, fittings, furnishings and other property in the Building or on the Land for their full insurable replacement value.

### **3.6 Payment of Shared Services**

- (a) A party who pays a shared expense may serve notice on the other party requesting reimbursement for that shared expense in accordance with special condition 3.1 and/or 3.3 ('re-imbursement notice').
- (b) A re-imbursement notice must:
  - (i) contain details of the shared expense the subject of the notice;
  - (ii) state the amount claimed; and
  - (iii) attach a copy of the invoice from the service provider who provided the goods or services the subject matter of the notice.
- (c) A party who receives a valid reimbursement notice may pay the other party the amount claimed in the reimbursement notice within 28 days after receiving the reimbursement notice.

### **3.7 Amendment to Standard Provisions**

Clauses 12, 13 and 14 of Standard Provisions are deleted.

## **4. Entitlement to use Common Area's**

- (a) The Lessee is entitled to use the Shared Areas in conjunction with the Premises.
- (b) The Lessee acknowledges that the Lessor and other occupiers of the Building of which the Premises form part must be entitled to free access to and through the Shared Areas at all times and the Lessee will not inhibit the use of the Shared Areas by the Lessor, other occupiers of anyone else permitted to use the Shared Areas.
- (c) The Lessee must not stand or store any equipment or other goods in the Shared Areas without the Lessor's consent.
- (d) The Lessee must promptly repair any damage to the Shared Areas or any of the Lessor's property which is damaged or requires repair as a result of an act, neglect, or default of the Lessee or resulting from the Lessee's use of the Shared Areas.

- (e) The Lessee must keep the Shared Areas in a clean and tidy condition.
- (f) The Lessee must not do or allow or permit any matter of thing which may grow to be a nuisance or annoyance including but not limited to ensuring that noise does not emanate from the Shared Areas so as to disturb the occupants of the Building or other occupiers of neighbouring properties.
- (g) The Lessee must maintain the same insurances in respect of the Shared Areas as the Lessee is required to maintain in respect of the Premises under this Lease.

## **5. Repair and Maintenance**

### **5.1 Lessee's Obligations**

- (a) The Lessee must keep the Premises in good and substantial repair except for:
  - (i) fair wear and tear; or
  - (ii) damage caused by fire, lightning, storm, tempest, earthquake, explosion, riot civil commotion, act of God or war.
- (b) The Lessee is not obliged to carry out structural work unless that work is required because of:
  - (i) the Lessee's act, neglect or default; or
  - (ii) the Lessee's particular use of the Premises.
- (c) The Lessee must repair or pay the Lessor's cost of repairing the structure of the Premises or Building if the need arises because of the Lessee's act, neglect or default.

### **5.2 Lessor's Obligations**

Except as provided in special condition 5.1, the Lessor must:

- (a) maintain in a good state of condition and serviceable repair the roof, ceiling, walls, doors and associated door jambs and the floors of the Building and must fix structural defects;
- (b) maintain the Building in a structurally sound condition; and
- (c) maintain essential services.

### **5.3 Amendment to terms of Standard Provisions**

Clause 40 of the Standard Provisions is deleted.

## **6. Option to renew**

- (a) The Lessor will, if the Lessee:
  - (i) has punctually complied with all the Lessee's obligations under this lease for the Term; and
  - (ii) give the Lessor personally a notice of exercise of option to renew the Lease not more than six months but not less than three months before the end of the Term, grant a renewal of this Lease to the Lessee for a further term of ten (10) years from the date this lease ends.
- (b) The renewed lease must contain all the terms of this lease (except this special condition 3), subject to the changes in rent to be decided as set out below.
- (c) The initial rent at the beginning of the option lease shall be the Base Annual Rent immediately before the end of this lease adjusted in accordance with special condition 1.4.
- (d) The Lessor and the Lessee expressly acknowledge that no rights or interests will be conferred on either Party by the provisions of the option lease unless the Minister has granted consent under Section 102 of the CL Act to the grant of the option lease.

## **7. Insurance**

The insurance policies required to be taken out by the Lessee pursuant to clause 49(a) of the Standard Provisions are:

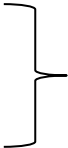
- (a) a policy of workers' compensation insurance to cover all the Lessee's employees;
- (b) a policy of insurance in respect of all the Lessee's plant, equipment, fixtures, fittings, furnishings and other property in the Building or on the Land for their full insurable replacement value.

**END SCHEDULE 3**

EXECUTED AS A DEED

EXECUTED by GRIFFITH WAR  
MEMORIAL MUSEUM RESERVE  
TRUST in accordance section 50  
*Interpretation Act 1987*

THE COMMON SEAL of  
GRIFFITH CITY COUNCIL was  
hereunto affixed in the presence of:



John Dal Broi – Mayor

Brett Stonestreet – General Manager