

Date:

Licence Agreement

**THE COUNCIL OF THE CITY OF RYDE
ABN 81 621 292 610**

and

TBC

Premises: 'Trim Place Kiosk'

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Licence Particulars

Item 1.	Land:	172A Victoria Road, Gladesville being the land contained in folio identifier 1/448998
Item 2.	Premises:	<p>The structure known as 'Trim Place Kiosk' and the land as represented by the area hatched and described in the plan at Annexure "A"</p> <p>The area of the Premises is approximately: TBC square metres</p>
Item 3.	Licence Commencement Date:	TBC
Item 4.	Term:	TBC
Item 5.	Licence Fee:	\$TBC per annum, plus GST
Item 6.	Licence Fee Commencement Date:	Licence Commencement Date
Item 7.	Permitted Use:	TBC
Item 8.	Licensed Hours:	<i>To be confirmed subject to successful tenderer.</i>
Item 9.	Licence Fee Increase and Date:	TBC
Item 10.	Not Used	
Item 11.	Outgoings	TBC
Item 12.	Licence Fee in Over holding Period:	At commencement of the Overholding Period, the previous year's Licence Fee plus the Local Government Cost Index increase for that year. On each anniversary of the Commencement Date of the Overholding Period, the previous year's Licence Fee plus the Local Government Cost Index increase for that year.
Item 13.	Option	TBC
Item 14.	Not Used	
Item 15.	Security Deposit:	TBC

Licence Agreement

Dated / /

Parties

Name	THE COUNCIL OF THE CITY OF RYDE ABN 81 621 292 610
Address	Binary Centre, Building 0, Level 1, 3 Richardson Place, North Ryde NSW 2113
Facsimile	9952 8070
Email	cityofryde@ryde.nsw.gov.au
Contact	Senior Coordinator – Property Management
Short name	Licensor

Name	TBC
Address	TBC
Email	
Contact	The Property Manager
Short name	Licensee

Definitions

In this Licence unless expressed or implied to the contrary:

Action Plan means an action plan negotiated between the Licensee and Licensor in relation to a timeframe for the Licensee to comply with any breaches of the License to a maximum length of 12 months from the date of the breach.

Business Day means any day except a Saturday, Sunday or public holiday in Sydney, New South Wales.

Common Areas means those parts of the Land or Building which the Licensor intends for common use.

Condition Report means the report at Annexure "B".

Environmental Protection Legislation means any statute, regulation, code, proclamation, ministerial directive, ordinance, by law, planning policy or subordinate legislation, past, present or future, relating to pollutants and contaminants, use of land, human health and safety or protection of the environment.

Insolvency Event means:

- (a) in the case of a natural person, if that person:
 - (i) becomes bankrupt;
 - (ii) assigns the person's estate; or
 - (iii) enters into a deed of arrangement or composition for the benefit of creditors.
- (b) in the case of a corporation, if that corporation:
 - (i) goes into liquidation (including provisional liquidation) other than a voluntary liquidation for the purposes of reconstruction or reorganisation;
 - (ii) is wound up or dissolved or has an application made for its winding up or dissolution;
 - (iii) enters into a scheme or arrangement with or makes an assignment for the benefit of its creditors or any class or classes of them;
 - (iv) is placed under official management;
 - (v) has an agent in possession or a receiver and/or manager or an administrator appointed to the whole or any substantial part of its assets; or
 - (vi) has an inspector or investigator appointed under the Corporations Act 2001 (Cth).

Item means an item in the Licence Particulars.

Kiosk means the structure erected on the Premises.

Land means the land specified in **Item 1**.

Licence Commencement Date means the date specified in **Item 3**.

Licence Fee means the amount specified in **Item 5** as reviewed, adjusted or increased under this Licence.

Licence Fee Commencement Date means the date specified in **Item 6**.

Licensed Hours means the hours specified in **Item 8**.

Licence Particulars means the schedule of Items specified on pages 4 and 5 of this Licence.

Licensee includes the Licensee's successors and assigns and where it is consistent with the context includes the Licensee's employees, contractors, agents, invitees and persons the Licensee allows in the Premises.

Licensee's Property means all property in the Premises including all fixtures and fittings owned or licensed by the Licensee

Licensor means the Licensor in its capacity as the owner of the Land and includes the Licensor's successors and assigns and where it is consistent with the context includes the Licensor's employees and agents.

Licensor's Fixtures means all fittings, fixtures, and chattels owned by the Licensor and contained in the Premises at the Licence Commencement Date.

Local Government Cost Index means the cost index figure published by Independent Pricing and Regulatory Tribunal from time to time.

Outgoings mean all amounts payable by the Licensor in respect of the building (plus GST on those amounts if the Licensor does not receive an input tax credit for that GST) including the following:

- (a) Rates and Taxes;
- (b) all premiums and other amounts payable in respect of insurances effected from time to time by the Licensor relating to the Building, the use and occupancy of the Building or the Licensor's Fixtures including plate glass insurance, public risk insurance, insurance for fire, loss of Licence Fee insurance, insurance for machinery breakdowns, explosions or terrorist attack;
- (c) the cost of all maintenance, repair, servicing and redecoration of the Building, excluding the cost of any structural improvements;
- (d) the cost of cleaning and disposal of refuse and the cost of supplying requisites in the Common Areas and the Common Area washrooms in the Building;
- (e) the cost of security and fire protection services;
- (f) all costs incurred in management, control and administration of the Building irrespective of where the management is carried out (including the costs of providing audited statements, bank charges and fees payable to any managing agent) and all salaries, wages, superannuation, leave entitlements and other employment costs;
- (g) the cost of supplying, maintaining and repairing any services which are not charged directly to any Licensee; and
- (h) all costs associated with gardening and pest and vermin control.

For the avoidance of doubt Outgoings do not include the cost of Utilities consumed by the Licensee at the Premises.

Option Term means the term and dates specified in **Item 13** for the new licence agreement set out in clause 19.

Overholding means the period in which the Licensee occupies the Premises after the expiration of the Term.

Permitted Use means the use specified in **Item 7**.

Plan means the Plan at Annexure "A".

Plan of Management means the [TBC] adopted [Date of Plan of Management].

Premises means the premises specified in **Item 2** and includes the Licensor's Fixtures.

Principal Contractor means the position of principal contractor referred to in Chapter 8 of the WHS Regulations.

Rates and Taxes means:

- (a) local government rates and charges;
- (b) water rates and charges, and Common Area water usage charges;
- (c) Common Area sewerage and drainage rates and charges;
- (d) land tax, on the basis assessed to the Licensor; and
- (e) Licensor's waste charges in connection with the Common Areas,

but excluding the Utilities.

RLA means the *Retail Leases Act 1994*.

Security Deposit means the amount specified in **Item 5**.

Services Agreement means the agreement from time to time (if any) between the Licensor and the Licensee for the provision of services at the Premises in accordance with the Permitted Use.

Term means the term specified in **Item 4**.

Utilities means all services engaged and consumables used by the Licensee to service the Premises, including but not limited to lights, electricity, water, data/internet, telephone, gas and rubbish removal.

Background

- A. The Licensor owns the Premises set out in **Item 2** which is built on the Land set out in **Item 1** and intends to offer a licence to use the Premises to the Licensee.
- B. In consideration of the Licensee's agreement to pay the Licence Fee and observe and perform the Licensee's obligations set out in this Licence Agreement, the Licensor agrees that the Licensee should be permitted to use the Premises for the permitted use as set out in **Item 7**.
- C. The Licence is a personal right given to the Licensee and may not be assigned by the Licensee and does not confer upon the Licensee any estate or interest in the Land or any part thereof and the legal possession and control of the Land will at all times remain vested in the Licensor.

1. The Licence

1.1 Grant of Licence

The Licensor agrees that the Licensee can occupy the Premises for the term set out in **Item 4**, starting on the date set out in **Item 3**.

1.2 Overholding

If the Licensee continues to occupy the Premises after the end of the Licence with the consent of the Licensor:

- 1.2.1 the Licence shall become a monthly Licence;
- 1.2.2 the Licensee shall occupy the Premises on the same terms and conditions as this Licence;
- 1.2.3 either party can end the monthly Licence by giving 30 days written notice to the other party; and
- 1.2.4 the Licence Fee shall be as set out in **Item 12**.

2. Licence Fee

2.1 Payment

- 2.1.1 The Licensee must pay to the Licensor, without deduction or set-off, the annual Licence Fee as set out in **Item 5**, by equal monthly instalments ("Instalments"), in advance, in cleared funds.
- 2.1.2 The first of the Instalments of the Licence Fee is due to the Licensor on the Licence Fee Commencement Date and then all subsequent Instalments are due on the same day of each successive month or, if there is no such day, then on the next business day.
- 2.1.3 The Licensee must pay the Instalments by cheque made payable to the Licensor or directly to the Licensor's bank account details of which the Licensor shall give to the Licensee.

2.2 Outgoings

The Licensee shall pay the Outgoings as set out in **Item 11**.

2.3 Not Used

3. Licence Fee Increase

The Licence Fee will be increased on the dates and in the manner shown in **Item 9**.

4. Other expenses

4.1 Utilities

The Licensee must pay:

- 4.1.1 Within 14 days of demand, all Utilities in connect with the Premises; and
- 4.1.2 where the Premises are not separately metered, pay for the cost of installing separate meters to assess the charges for the services (if required by Council).

4.2 Costs

The Licensee must also pay to the Licensor:

- 4.2.1 The Licensor's costs (including but not limited legal costs) in relation to amending this Licence as requested by the Licensor and finalisation of same;
- 4.2.2 the Licensor's costs and disbursements of considering any application by the Licensee for Licensor's consent (whether or not given) and on any surrender of the Licence;
- 4.2.3 the Licensor's reasonable costs and disbursements in connection with a default by the Licensee under this Licence including, but not limited to, enforcement costs; and
- 4.2.4 the costs to the Licensor of obtaining any mortgagee's consent to this Licence and/or to any request for the Licensor's consent requiring the consent of any mortgagee (if required).

5. GST

5.1 GST exclusive

All money payable under this Licence does not include Goods & Services Tax ("**GST**").

5.2 Increase in consideration

If GST is payable under this Licence (**GST Amount**), the Licensee will pay to the Licensor the GST amount upon receiving a Tax Invoice for the GST.

5.3 Payment of GST

Subject to clause 5.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under the Licence.

5.4 Tax Invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 5.4.

5.5 Reimbursements

If the Licence requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- 5.5.1 The amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- 5.5.2 If the payment or reimbursement is subject to GST, an amount equal to that GST.

5.6 Adjustment events

If an adjustment event occurs in relation to a taxable supply under this Licence:

- 5.6.1 The supplier must provided an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and

- 5.6.2 Any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

6. Payment requirements

6.1 No deduction

The Licensee must pay all amounts due under this Licence to the Licensor (including the Licence Fee and Utilities) without holding back any money.

6.2 Interest on late payments

If any money is paid late, the Licensee must pay, from the date when it was due, interest on any money paid late at the rate of 10% compounding.

6.3 Payment after termination

The Licensee must:

- 6.3.1 Make all payments due under this Licence; and
- 6.3.2 provide all information to the Licensor under this Licence to calculate any such payments;

even if this Licence has ended.

7. Repairs, Refurbishment and Alterations

7.1 Repairs and maintenance

The Licensee at its own expense must:

- 7.1.1 keep the premises in good condition and working order, including the:
 - (a) Fixtures and fittings including curtains, blinds, doors, locks, window frames, fittings, floors, plaster on walls and ceilings, paint on the walls and ceiling, pipes, cables, decking, light fittings and electrical installations (as applicable)
 - (b) Air conditioning (if applicable)
 - (c) Anything broken by the Licensee
 - (d) Anything installed by the Licensee
- 7.1.2 immediately remove any graffiti appearing on the exterior of the Premises.
- 7.1.3 paint any parts of the Premises previously painted whenever required by the Licensor.

7.2 Make Good

- 7.2.1 The Licensee must repair any damage it causes.

- 7.2.2 Prior to vacating the Premises, unless otherwise agreed with the Licensor, remove all additions and alterations installed by the Licensee other than as provided as part of the Premises fitout.

7.3 Equipment in Premises

The Licensee must:

- 7.3.1 repair and maintain the Licensor's property and goods (excluding costs to replace them) in accordance with the Licensor's reasonable requirements;
- 7.3.2 comply with the Licensor's reasonable requirements concerning the use of the Licensor's Property, including air-conditioning and heating equipment; and
- 7.3.3 repair, maintain and renew Licensee's Property during the Licence as reasonably required by the Licensor.

7.4 Alterations to Premises

The Licensee can only do work on the premises:

- 7.4.1 with the Licensor's written consent;
- 7.4.2 in accordance with any conditions of the Licensor;
- 7.4.3 strictly in accordance with any plans and specifications approved by the Licensor;
- 7.4.4 using qualified tradespersons approved by the Licensor;
- 7.4.5 to the Licensor's reasonable satisfaction;
- 7.4.6 if required by the Licensor, under the supervision of the Licensor's architect or consultant (the cost of which must be paid by the Licensee to the Licensor within 14 days of demand); and
- 7.4.7 in accordance with all rules and requirements of any authority.

7.5 Work, health and safety (“WHS”)

For the purposes of the WHS Law, the Licensee agrees that:

- 7.5.1 the Licensee has the sole management and control of the Premises and has responsibility for ensuring that the Premises and the means of entering and leaving them are safe and without risks to health;
- 7.5.2 the Licensor appoints the Licensee as Principal Contractor in respect of any works to be carried out by the Licensee on the Premises to which an WHS Law applies;
- 7.5.3 the Licensee must carry out such works in accordance with the requirements of the WHS Law; and
- 7.5.4 the Licensor authorises the Licensee to exercise whatever authority is necessary for the Licensee to discharge the responsibilities of the appointment under clause 7.5.2.

7.6 Not interfere with services

The Licensee must not interfere with, misuse or overload any services to the Premises, including electricity, gas and water.

7.7 Damage to Premises

The Licensee must not alter or cause damage to the Premises (including drilling holes in the Premises) unless approved by the Licensor in writing.

7.8 Failure to repair and maintain

If the Licensee does not carry out the repairs, maintenance or works required under this Licence within 14 days of receiving written notice from the Licensor to do so:

- 7.8.1 the Licensor may carry out such repairs, maintenance and works at any reasonable time after giving the Licensee reasonable notice; and
- 7.8.2 charge the cost of all such repairs, maintenance and works to the Licensee.

8. Insurance

8.1 Public liability and glass insurance

The Licensee must take out and keep insurance with an insurance company approved by the Australian Prudential Regulation Authority for:

- 8.1.1 public liability in the amount of \$20 million concerning one single event, noting the interests of the Licensor in the premises; and
- 8.1.2 any glass in the Premises for the full replacement value; and
- 8.1.3 other insurances required by the Licensor based on the Licensee's use and occupation of the Premises.

8.2 Licensee's Property

The Licensee must insure its Property for loss and damage from risks including fire and water damage for its full replacement value.

8.3 Payment and production of policies

The Licensee must pay for such policies on or before the due date of payment and give to the Licensor copies of the certificate of currency for such policies on or before each anniversary of the Commencement Date.

8.4 Not invalidate policies

The Licensee must:

- 8.4.1 not do anything which may make any insurance invalid, capable by being cancelled or rendered ineffective, or which may increase any insurance premium taken out by the Licensor; and
- 8.4.2 pay any increase in any insurance premium caused by the Licensee's acts, default or use of the Premises.

8.5 Requirements by insurer

The Licensee must comply with all reasonable requirements of the Licensor's insurer in connection with the Premises.

8.6 Cross-liability clause and condition in policies

The Licensee must ensure that the policies effected under clause 8.1:

- 8.6.1 Contain a cross-liability clause extending the policy so that the words 'the insured' are considered as applying to each party comprising the insured, as though a separate policy has been issued to each of the parties, in the same manner as if that party were the only party named as the insured; and
- 8.6.2 Contain a condition that the insurer will notify the Licensor at least 14 days before the policies lapse.

9. Release, indemnity and no compensation

9.1 Existing Condition / Risk

- 9.1.1 The Licensee accepts the Premises in their existing condition.
- 9.1.2 The Licensee occupies the Premises at its own risk and anything which the Licensee is obliged to do under this Licence is to be done by the Licensee at its own risk and cost.

9.2 Release

The Licensee releases the Licensor's from all claims resulting from any damage, loss, death or injury in connection with the Premises.

9.3 Indemnity

The Licensee indemnifies the Licensor against all claims, losses, liabilities, costs or expenses incurred in connection with or resulting from:

- 9.3.1 any damage, loss, death or injury in connection with the Premises;
- 9.3.2 the use or occupation of the Premises by the Licensee;
- 9.3.3 any default by the Licensee under this Licence.

9.4 No compensation

The Licensor does not have to pay the Licensee for any loss or damage suffered by the Licensee due to:

- 9.4.1 any damage to the Premises;
- 9.4.2 the failure of the Licensor's property or any plant and equipment (including air conditioning and escalators) to operate properly;
- 9.4.3 the interruption or damage to any services (including electricity, gas or water) to the Premises; and
- 9.4.4 the overflow or leakage of water in the Premises.

10. Permitted Use and Hours

10.1 Permitted Use

The Licensee must only use the Premises for the Permitted Use shown at **Item 7** and not for any other purpose..

10.2 No warranty

The Licensee:

10.2.1 agrees that the Licensor has not told them or does not represent that the Premises are suitable for the use; and

10.2.2 must satisfy itself and make its own enquiries that the Premises can be used for the use.

10.3 Illegal purpose

The Licensee must not use the Premises for any illegal purpose or carry on a noxious or offensive activity on the Premises.

10.4 Minimum Requirements

10.4.1 The Licensee must use the premises to a standard and quality satisfactory to the Licensor.

10.4.2 If the Licensee does not use the premises to a satisfactory standard and quality, the Licensor may end this Licence by giving 3 months' notice in writing to the Licensee.

10.5 Trading hours

The Licensee may only use the Premises during the Licensed Hours shown at **Item 8**. At all other times, the Licensor may at its risk use the Premises or make them available for others.

11. Other obligations concerning the Premises

11.1 Acknowledgements

11.1.1 The Licensee acknowledges that in entering into this Licence it has not relied in whole or in part upon any statement, representation, promise or undertaking given by or on behalf of the Licensor as to:

- (a) the suitability of the Premises for the purpose for which they are permitted to be used pursuant to the provisions of this Lease;
- (b) the nature or quality of any of the Licensor's Property or the services;
- (c) the potential performance of the Licensee's business;
- (d) the need for the availability and existence of all approvals, consents and licences required for the use of the Premises by the Licensee for its business and for the intended and the Permitted Use; or
- (e) any other matter whatsoever.

11.2 Compliance with laws

11.2.1 The Licensee must obey all laws and requirements that apply to the Land and Premises and the Licensee's use and occupation of the Premises.

11.2.2 The Licensee must ensure that all statutory and regulatory consents have been obtained in respect of its use and occupation of the Premises.

11.3 Licences and permits

Before this Licence can operate, the Licensee must have all licences, approvals and permits required for the Licensee's use of the Premises.

11.4 Nuisance

11.4.1 The Licensee must not cause a nuisance or interfere with any other person or other premises or be dangerous or offensive in the Licensor's reasonable opinion.

11.4.2 Lighting of the Premises shall be directed so as not to cause nuisance to the owners of occupiers of adjacent and adjoining premises or to motorists on adjoining or nearby roads. Notwithstanding security and emergency lighting installed within the Building, the Licensee must ensure that all the other lightings in the Premises are turned off outside of the Licensed Hours (except solar powered lighting).

11.5 Security

The Licensee must keep the Premises locked at all times when the Premises are not being used by the Licensee.

11.6 Signs

11.6.1 The Licensee cannot erect any signs, advertisements or notices to any part of the Premises without the prior written approval of the Licensor.

11.6.2 Subject to clause 11.5.1, any signage erected by the Licensee must be of a professional standard.

11.6.3 The Licensee is responsible for all costs associated with the signage.

11.7 No vending machines

The Licensee must not allow any vending, gaming or amusement machines in the Premises.

11.8 No auctions

The Licensee must not carry out any auctions or fire sales in the Premises.

11.9 No smoking

The Licensee must:

11.9.1 not permit any smoking in the Premises; and

11.9.2 display 'no smoking' signs in the Premises.

11.10 Heavy objects and inflammable substances

The Licensee must not have any inflammable or explosive substances in the Premises nor store any heavy objects in the Premises or anything likely to damage the Premises without obtaining the written approval of the Licensor.

11.11 Television and radio

The Licensee must not install any televisions, radios, music systems or other equipment in the Premises which can be heard outside the Premises without obtaining the written approval of the Licensor.

11.12 Endanger premises

The Licensee must not allow anything to be done which in the opinion of the Licensor may damage the Premises or be a risk to any person or property.

11.13 Cleaning

The Licensee at its own expense must keep the Premises clean and to an acceptable condition at all times.

11.14 Licensee's employees

The Licensee's employees, agents, contractors and invitees are to comply with the Licensee's obligations under this Licence.

11.15 Environmental management

The Licensee must provide at the request of the Licensor:

11.15.1 Information held by the Licensee relating to the environmental management of the premises including electricity, gas and water use, recycling and disposal of paper and waste, and the materials used in the fit out of the premises; and

11.15.2 All necessary assistance to enable the Licensor to obtain an environmental rating for the Premises or the Building (including a National Australian Built Environment Rating System Energy rating).

12. Licensee's environmental obligations

12.1 Not permit contamination

The Licensee must not carry out any activities on the Premises which may cause any Contamination.

12.2 Notify of and clean up contamination

If Contamination is found in or near the Premises, the Licensee must immediately notify the Licensor and promptly comply with any notice, order, direction or requirement of the Licensor and of any authority in relation to any such Contamination.

12.3 Indemnify the Licensor

The Licensee indemnifies the Licensor against all claims for damages, loss, injury or death caused by or arising out of or otherwise in respect of any Contamination being spilled, deposited or otherwise escaping into or on the Premises caused by the Licensee.

12.4 Comply with Environmental Protection Legislation

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

12.5 Obtain reports, surveys or audits

the Licensee must immediately obtain any reports, surveys or audits which the Licensor may reasonably require to enable the Licensor to determine whether a breach of the terms of this clause has occurred, the Licensee will also pay the Licensor on demand the reasonable costs of any such report, survey or audit which the Licensor may obtain.

13. Dealing with Interest in the Premises

The Licensee must not:

- 13.1.1 give possession of the Premises to someone else;
- 13.1.2 transfer its rights under this Licence;
- 13.1.3 assign its rights under this Licence;
- 13.1.4 grant to any person a licence or concession in respect of the Premises; and
- 13.1.5 mortgage this Licence or the Licensee's Premises.

13.2 Change in control

If the Licensee is a corporation (other than a corporation listed on any stock exchange in Australia):

- 13.2.1 A change in the control of the Licensee or of any holding company or ultimate holding company of the Licensee; or
- 13.2.2 A change in the holding of more than one-half of the issued share capital of the Licensee will be deemed to be an assignment of this Licence.

14. Licensee's obligations at the end of this licence

14.1 Condition Report

The Licensee acknowledges and agrees that the Premises have been handed over with a Condition Report and include power and water supply to the Premises, which must be in a proper working condition at the end of the Licence.

14.2 Licensee's obligations

At the end of this Licence, the Licensee must:

- 14.2.1 leave the Premises;
- 14.2.2 and give them back to the Licensor in a clean and tidy condition;

- 14.2.3 if requested by the Licensor, remove any items comprising the Licensee's Property (including all signs and lettering) and return the Premises to the condition the Premises were in prior to the installation of such items including making good any damage caused by their removal;
- 14.2.4 make good any damage or accelerated wear and tear to the Premises caused by the Licensee's use and occupation of the Premises during the Term; and;
- 14.2.5 give to the Licensor all keys and other security devices for the Premises.

14.3 Licensee's property left in premises

Anything left in the Premises after 7 days of the end of this Licence will become the property of the Licensor and, in the case of items the Licensor requires to be removed under clause 14.1, may be removed by the Licensor at the Licensee's cost and at the Licensee's risk.

15. Licensor's rights and obligations

15.1 Quiet enjoyment

As long as the Licensee does not breach this Licence, the Licensor must not interfere with the Licensee's use and occupation of the Premises except as provided by this Licence.

15.2 Dealing with the land

The Licensor may:

- 15.2.1 subdivide the Land, grant easements or other rights over the Land or the Premises except where it will interfere with the Licensee's use and occupation of the Premises;
- 15.2.2 require the Licensee to do everything necessary to enable the Licensor to exercise those rights; and
- 15.2.3 require the Licensee to vary or replace this Licence, provided that the variation or replacement must not adversely affect the Licensee's rights under this Licence.

15.3 Entry by Licensor

The Licensor may enter the Premises at any time after giving the Licensee 24 hours notice, to:

- 15.3.1 inspect the condition of the Premises;
- 15.3.2 rectify any default by the Licensee under this Licence;
- 15.3.3 install, repair or replace pipes, cables and conduits in the Premises;
- 15.3.4 carry out any inspection, repairs, maintenance, works or alterations in the Premises which the Licensor decides to or is required to carry out by any law or authority; or
- 15.3.5 do anything which the Licensor must or may do under this Licence.

15.4 Emergency

If the Licensor decides that there is an emergency, the Licensor may, without giving notice to the Licensee enter the Premises at any time.

15.5 Re-letting and sale

The Licensor may affix a 'For Sale' or 'For Lease' sign on the Premises and show the Premises to intending purchasers or tenants of the Premises.

15.6 Licensor's consent

Where the Licensor is required to give its consent under this Licence, the Licensor may give or refuse its consent.

15.7 Managing agent

The Licensor may appoint an agent to manage the day to day running of the Building or the Premises. Directions the Licensor override those from any agents.

15.8 Keys

If the Licensor gives the Licensee any key or access device the Licensee must:

- 15.8.1 not copy the Key;
- 15.8.2 reimburse the Licensor for any costs incurred by the Licensor if the Licensee loses any Key;
- 15.8.3 give a Key only to its employees, and on request advise the Licensor of the names of all employees who have a Key; and
- 15.8.4 return all Keys to the Licensor on the expiry or termination of this Licence.

15.9 No exclusive use

The Licensor may licence other parts of the building for a use which competes with the Licensee's use of the Premises.

16. Termination of Licence

16.1 Action Plan

- 16.1.1 If the Licensee breaches its obligations under this Licence then an Action Plan must be negotiated between the parties in order to address the non-compliance.
- 16.1.2 The Licensor is entitled to terminate this Licence if an Action Plan cannot be agreed between the parties or the Licensee is still in breach at the end of the Action Plan period.

16.2 Events of default

The Licensor may end this Licence if:

- 16.2.1 an Insolvency Event occurs in relation to the Licensee;

- 16.2.2 the Licensee breaches this Licence and does not fix the breach within the timeframe set out in the Action Plan; or
- 16.2.3 the Licensee breaches a Services Agreement and does not remedy the breach within the time specified in an Action Plan.
- 16.2.4 The parties cannot reach agreement on an Action Plan.

16.3 Licensor's termination

If the Licensor is entitled to terminate this Licence under clauses 16.1 and 16.2, the Licensor may terminate this Licence by re-entering the Premises or serving a notice of termination on the Licensee.

16.4 Damages following termination

If the Licensee defaults under this Licence, or if this Licence is terminated by the Licensor, the Licensee must pay the Licensor for any loss or damage the Licensor suffers including the loss of the benefit of the Licensee performing its obligations under this Licence up to the expiration of the Term.

16.5 Essential terms

The following terms of this Licence are essential terms and must be complied with:

- (a) clause 2 (Payment of Licence Fee);
- (b) clause 5 (GST);
- (c) clause 6.2 (Interest on late payments);
- (d) clause 7.1 (Repairs and maintenance);
- (e) clause 7.3 (Equipment in Premises);
- (f) clause 7.4 (Alterations to Premises);
- (g) clause 8.1 (Public liability and glass insurance);
- (h) clause 10.1 (Permitted Use);
- (i) clause 10.4 (Minimum Requirements); and
- (j) clause 13 (Dealing with interest in the Premises).

The breach of an essential term is a repudiation of this Licence.

16.6 No deemed termination

If the Licensee leaves the Premises, this Licence will continue until the Licensor gives notice to the Licensee terminating this Licence.

17. Destruction or Damage of Premises

17.1 Reduction in Licence Fee

If the Premises, or any part of the Premises, are destroyed or damaged to the extent that the Licensee cannot use or have access to the Premises, then the Licensor will reduce the Licence Fee by a reasonable amount depending upon the nature and extent of destruction or damage until the Licensee can use or have access to the Premises unless the damage or destruction was caused or contributed to by the Licensee.

17.2 Reinstatement of Premises

If the Premises or any part of the Premises are destroyed or damaged, the Licensor may, within 6 months from the date of such damage or destruction, give notice to the Licensee ending this Licence or that the Licensor will repair the Premises to a condition where the Licensee can use or have access to the Premises.

17.3 Licensee's right of termination

17.3.1 Where the Licensee has not caused or contributed to the damage or destruction of the Premises, the Licensee may give written notice to the Licensor ending this Licence where the Licensor does not give notice to the Licensee pursuant to clause 17.2 or commence reinstatement within 12 months of the date of damage or destruction.

17.3.2 Upon such termination of this Licence, each party is released from all further obligations under this Licence except nothing in this clause releases either party from any breach of this Licence arising prior to the date of termination.

17.4 No compensation

The Licensee acknowledges that if the Premises are destroyed or damaged, the Licensee is not entitled to receive any compensation from the Licensor.

18. Dispute Resolution

18.1 Appointment of Expert

18.1.1 If a dispute arises between the parties in relation to any matter arising under this Licence, either party may refer the matter to determination by an independent expert ("**Expert**") of at least 5 years current relevant experience in dealing with disputes in respect of the particular matter in dispute, and as mutually agreed between the parties.

18.1.2 Where, within 10 Business Days of the dispute arising, the parties fail to agree on an Expert in accordance with Clause 18.1.1 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) or its successor organisation and in the event that the Institute ceases to exist, then the President of a similar property industry body.

18.2 Determination of Dispute

In determining a dispute under this Licence, the Expert must:

18.2.1 have regard to the terms and conditions of this Licence;

- 18.2.2 invite and consider and have due regard to any written submissions made and/or any documented evidence provided by the parties supporting their contentions;
- 18.2.3 act as an Expert and not as an arbitrator; and
- 18.2.4 within 45 days of his appointment, provide the parties with its determination of the dispute in writing, including details of the basis for the determination.

18.3 Expert's Determination of Dispute Final

- 18.3.1 Any determination of a dispute made by an Expert in accordance with this clause 18 is final and binding on the parties.

18.4 Dispute Resolution Costs

The costs associated with the determination of a dispute by an Expert under this clause 18, including any costs associated with the appointment of the Expert under clause 18.1.2 must be borne by the parties equally unless determined otherwise by the Expert.

19. Option Term

- 19.1.1 The Licensee is entitled to a new licence agreement for the Option Term at the sole discretion of the Licensor in accordance with this clause 19 unless
 - (a) The Licensee gives the Licensor written notice at least 9 months prior to the end of the Term state that it does not agree to the Option Term; or
 - (b) The Licensee is in breach of the licence on the day the Term ends unless such breach has been waived in writing by the Licensor.
- 19.1.2 If the Licensor does not serve a written notice on the Licensee in accordance with clause 19 and the Licensor's willingness for the Licensee to remain in the Premises for the Option Term, the Licensor and Licensee agree to enter into a new licence agreement for the Premises on the same terms and conditions of this Licence save for:
 - (a) the term, licence commencing date and terminating date, which will be those dates specified in **Item 13**;
 - (b) the Licence Fee, which will be reviewed in accordance with clause 3; and
 - (c) this clause 19, which will be excluded.

20. Notices

20.1 Notices

Any notice required to be served under this Licence must be in writing and must be served by post, or hand delivered to:

- 20.1.1 the Licensee at its address set out in this Licence, the Licensee's registered office address, the Premises, or the last known address of the Licensee; and
- 20.1.2 the Licensor at its address set out in this Licence or any other address notified in writing to the Licensee by the Licensor.

20.2 Time of service

A notice is deemed served:

- 20.2.1 if served personally or left at the person's address, upon service;
- 20.2.2 if posted within Australian to an Australian address,, 2 Business Days after posting and in any other case, seven business days after posting; and
- 20.2.3 if received after 6.00 pm in the place of receipt or on a day which is not a Business Day, at 9.00 am on the next Business Day.

21. General

21.1 Governing law and jurisdiction

This Licence is governed by the laws of New South Wales.

21.2 Exclusion of statutory provisions

The following statutory provisions are excluded from this Licence sections 84, 84A, 85 and 86 of the *Conveyancing Act 1919* (NSW) and to the full extent permitted by law, any legislation that adversely affects an obligation of the Licensee, or the exercise of a right or remedy by the Licensor, under this Licence.

21.3 Civil Liability Act

All rights, obligations and liabilities under or in connection with this Licence are to apply, even where the relevant circumstances involve a failure to take reasonable care and the existence of current wrongdoers (as defined in section 34(2) of the *Civil Liability Act 2002* (NSW)), unlimited and unaffected by anything that, but for this clause, may by virtue of the provisions of the *Civil Liability Act 2002* (NSW) have limited or otherwise affected those rights, obligations and liabilities.

21.4 Entire understanding

This Licence contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Licence and have no effect.

21.5 Legal advice

The Licensee warrants that it has obtained appropriate legal advice on this Licence prior to entering into this Licence.

21.6 Waiver

If the Licensor accepts the Licence Fee or any other monies under this Licence (before or after the end of this Licence) or does not exercise or delays exercising any of the Licensor's rights under this Licence, it will not be a waiver of the breach of this Licence by the Licensee or of the Licensor's rights under this Licence.

21.7 Joint and several

If a party consists of more than one person, this Licence binds them jointly and each of them severally.

21.8 Operation of indemnities

Each indemnity of the Licensee in this Licence is a continuing obligation, independent of the Licensee's other obligations and continues after this Licence expires or is terminated. It is not necessary for the Licensor to incur an expense or make a payment before enforcing a right of indemnity under this Licence.

22. Interpretation

22.1 Persons

In this Licence, a reference to a person includes a firm, partnership, association, corporation or other corporate body.

22.2 Legislation

In this Licence, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

22.3 Clauses and headings

In this Licence:

22.3.1 a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure in or to this Licence; and

22.3.2 headings and sub-headings are inserted for ease of reference only and do not effect the interpretation of this Licence.

22.4 Severance

In this Licence:

22.4.1 if a provision is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable; and

22.4.2 if it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Licence.

22.5 Number and gender

In this Licence, a reference to:

22.5.1 the singular includes the plural and vice versa; and

22.5.2 a gender includes the other genders.

22.6 Construction

No rule of construction applies to the disadvantage of the Licensor because the Licensor was responsible for the preparation of this Licence.

23. Role as a Governmental Agency

Nothing in this Licence restricts or otherwise affects the Licensor in the exercise of its statutory powers as a governmental agency.

In the event of any conflict between the Licensor in the exercise of its statutory powers as a governmental agency and the performance of obligations under this Licence, the former prevails.

For the avoidance of doubt:

- 23.1.1 any consent or approval given by the Licensor under this Licence is given in its capacity as the owner of the Premises; and
- 23.1.2 the Licensee must comply with all relevant procedures, laws and regulations in seeking the consent or approval of City of Ryde in its capacity as a governmental agency.

24. Security Deposit

24.1 Delivery

On or before the Commencement Date the Licensee must deliver the Security Deposit to the Licensor.

24.2 Appropriation

The Licensor may at any time and from time to time have recourse to the Security Deposit on account of the Rent or other amounts payable under this Licence:

- 24.2.1 Whether the liability to pay those amounts arises or will arise by way of damages or otherwise; and
- 24.2.2 Whether or not any judgement or other order of a court has been made in respect of them;

as the Licensor may determine, to compensate the Licensor for the loss suffered directly or indirectly by the Licensor as a result of the default of the Licensee.

24.3 Requirement for a replacement Security Deposit

If the Licensor makes an appropriation from the Security Deposit, the Licensee must immediately provide a replacement Security Deposit to Council so that there is maintained during the Term a Security Deposit for the amount required under this Licence.

25. Land Tax

- 25.1 Pursuant to section 21C *Land Tax Management Act 1956* (NSW), the Licensor is not liable to and for the payment of land tax.
- 25.2 The Licensee acknowledges that as a Licensee of land or part of land owned by a local council, it is for land tax purposes deemed to be the owner of that land or parcel of land consisting of the land licensed and as such the Licensor is not considered to be the owner of that land for land tax purposes.

25.3 Unless any of the exemptions available under subsection 21C(6) apply, the Licensee enters into this Licence in full knowledge of the provisions of section 21C and its liability for payment of such tax as assessed and determined by the Chief Commissioner.

26. Plan of Management

26.1 Plan of Management

The Licensee must comply with the Plan of Management that applies to the Premises and/or the Permitted Use.

27. Redevelopment

27.1 Redevelopment

The parties agree that, if at any time during the Term of the Licence, the Licensor in its absolute discretion requires:

27.1.1 the Premises to be sold, demolished, substantially altered, or rebuilt;

27.1.2 the Premises to be sold, acquired or resumed;

27.1.3 the Premises to be dedicated; or

27.1.4 the Premises to be redeveloped.

then the Licensor shall be entitled to determine this Lease by giving the Licensee twelve (12) months written notice of its intention and at the expiration of such time (**Determination Date**) this Lease shall be at an end and subject to the other provisions hereof and save for any rights which either party may have against other for any breach or damage which has occurred prior to the expiration of the term (and save for any rights the parties may have under the *Retail Leases Act 1994*), neither party shall have any action or claim for damages against the other for the termination of Lease pursuant to this clause.

27.2 Certificate to be provided

A certificate by the Licensor or its agent certifying that it has made a decision under clause 27.1 above shall be conclusive evidence for all purposes including court or other proceedings that such decision has been made pursuant to clause 27.1.

27.3 Quiet enjoyment

That exercise by the Licensor of its rights conferred by this clause shall not constitute a breach by the Licensor of its covenant for quiet enjoyment of the premises or any other covenant or obligation of the Licensor, express or implied, contained in or arising under Licence.

27.4 No liability for Licensor

Under no circumstance shall the Licensor be liable for any loss, injury and/or damage howsoever caused by whomsoever (including but without limiting the generality of the foregoing loss of goodwill, profits and/or economic loss) suffered or sustained by the Licensee or any other person at any time as a result of or arising out of the exercise by the Licensor or any of its rights under this clause.

27.5 No warranty or representations

Without prejudice to the operation of this Lease, the Licensee acknowledges and accepts that in entering into this Lease, the Licensee has not relied and will not rely upon any warranty or representation made by the Licensor or any person on behalf of the Licensor, express or implied, or upon any conduct of the Licensor or any person on behalf of the Licensor as to whether or when the Licensor may make a decision under this clause.

27.6 Licensor to execute all documents

The Licensee must do all things, execute such documents and carry out such acts as will put into effect the intentions of this clause such that the Lease must be surrendered and vacant possession of the premises must be available to the Licensor as and from the Determination Date. The Licensee agrees to refrain from any act or being a party to any act or circumstance which would defeat those intentions.

27.7 Adjustments

The Licensor and the Licensee agrees to make on the Determination Date all adjustments or rents, rates, land tax and any other outgoings or other amounts which are payable by the Licensee pursuant to the covenants of the Lease.

27.8 Licence to continue up to the Determination date

For the removal of any doubt the Licensee acknowledges and agrees that:

- 27.8.1 until the Determination Date, the Licensee must continue to duly and punctually observe and perform the covenants expressed or implied in this Lease to be observed and performed by the Licensee up to and including the Determination Date; and
- 27.8.2 as from the Determination Date the Licensee shall have no right whatsoever to occupy or use the Premises.

Signed by the parties:

Date:

EXECUTED on behalf of **The Council of
the City of Ryde ABN 81 621 292 610**)
by the Acting General Manager under)
delegated authority pursuant to s 377(a) of)
the *Local Government Act* in the presence)
of:

.....
Signature of Witness

.....
Signature of the
Acting General Manager

.....
Name of Witness

EXECUTED on behalf of **TBC**)
in the presence of:)
)
)

.....
Signature of Witness

.....
Signature of Licensee

.....
Name of Witness

Annexure "A" Location / Plan of Premises

Draft

Annexure “B” Condition Report

Draft