

AGREEMENT TO LEASE

Tauranga City Council

University of Waikato



AGREEMENT TO LEASE

AGREEMENT dated this 4th day of July 2024

PARTIES

1. Tauranga City Council (TCC)
2. University of Waikato (UoW)

BACKGROUND

- A. TCC owns and manages the land at Marine Park, Sulphur Point, Tauranga.
- B. TCC has called for tenders for the lease of part of that land for the purposes of constructing and managing a Marine Research and Education Facility.
- C. UoW submitted a tender application.
- D. Pursuant to the process outlined in the tender documentation, the parties now enter into this agreement to record the terms under which TCC will lease the land to UoW and UoW will design and construct on that land the Marine Research and Education Facility.

TERMS OF AGREEMENT

1. DEFINITIONS AND INTERPRETATION

- 1.1 **Defined Terms:** In this Agreement and any schedules to it, the following terms will, unless the context otherwise admits or requires, have (with or without the definite article) the following meanings:

Agreement means this agreement.

Authority means any local body, government or other authority having jurisdiction over or authority in respect of the Premises and its use or occupation and acting in that capacity.

Approvals means any consents, authorities, and permits required from any Authority (except for any approval required of TCC acting in its capacity as lessor (not the territorial authority) under this Agreement) for UoW to complete the Development Works including (without limitation) all consents required pursuant to the Resource Management Act 1991, the Building Act 2004 and the Reserves Act 1977.

Community Outcomes means the outcomes of the Development that benefit the Tauranga community as are more particularly described in the Design Criteria.

Concept Design means the concept design documents and concept plans and specifications (which are to be based on the Preliminary Concept Design and the Design Criteria) for the Development developed and approved in accordance with this Agreement.

Contaminant has the same meaning as set out in the Resource Management Act 1991 and 'Contamination' shall have a corresponding meaning.

Design Criteria means the design criteria for the Development, as set out in Schedule Two which include the Community Outcomes.

Design Group has the meaning given to it in clause 4.2.

Detailed Design means the detailed design documents, plans and specifications for the Development Works (which are to be based on the Concept Design) as developed in accordance with clause 6.2.

Development means the buildings, carparks and improvements to be erected on the Development Land by UoW in accordance with this Agreement.

Development Land means that part of Marine Park being and area of 6,952 square metres and described as Area A on Survey Office Plan 530292, being classified as a local purpose (marine research and education) reserve subject to the Reserves Act 1977.

Development Works means the works to be executed to complete the Development in accordance with the Detailed Design, together with the Subdivision and any other incidental works in relation to the completion of the Development.

Dispute means a dispute arising between the parties on any matter under this Agreement (except a dispute over a right to rescind or terminate this Agreement).

Good Faith means dealing with each other honestly, openly and without misleading each other. Good faith requires parties to be active and constructive in establishing and maintaining a productive relationship in which they are responsive and communicative.

Lease means the lease between TCC (as Lessor) and UoW (as Lessee) to be entered into by the parties pursuant to clause 10.1 of this Agreement on the form set out in Schedule Four.

LINZ means Land Information New Zealand.

Marine Park means the land owned and managed by TCC, described as Part Lot 2 DPS 34961, Lot 4 DPS 34961 and Section 1 SO 332660, comprised in record of title 173890, including all buildings and improvements on that land, being a reserve subject to the Reserves Act 1977.

Objective means to proactively work together in Good Faith for the purposes of constructing a Marine Research and Education Facility on the Development Land.

Practical Completion or **Practically Complete** means that stage of the Development Works when:

- (a) UoW's architect (acting reasonably) confirms that the Development Works have been completed in accordance with the Detailed Design to the extent that the Development is available for occupation and use by UoW for its intended purpose without material inconvenience and subject only to any minor work and any necessary remedial work that does not prevent such occupation and use; and
- (b) a Code Compliance Certificate or certificate of public use (for a reasonable period) has issued for the Development Works.

Preliminary Concept Design means the plans and documents attached as Schedule One of this Agreement.

Project Control Group means the project control group described in clause 7.

Subdivision Approvals means the Approvals contemplated by clause 5.1.

Target Dates mean the key dates and milestones specified in Schedule Three; and

Working Day has the meaning given to that term in the Property Law Act 2007 and otherwise excludes any day on which UoW is closed.

1.2 **Interpretation:** In this Agreement, unless the context otherwise requires:

- (a) words importing one gender include the other genders;
- (b) the singular includes the plural and vice versa;
- (c) a reference to TCC or UoW is a reference also to their respective executors, administrators or successors and permitted assigns;
- (d) headings are for convenience only and shall not affect interpretation;
- (e) references to sections, clauses and schedules are references to sections, clauses and schedules of this Agreement unless specifically stated otherwise; and
- (f) references to any legislation or to any provision of any legislation (including regulations and orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and, unless otherwise specifically stated, refers to New Zealand legislation and provisions.

2. CONDITIONS

2.1 **Conditions and fulfilment dates:** This Agreement is conditional upon the following:

- (a) UoW preparing and TCC approving, the Concept Design for the Development in accordance with clause 4.7. The last date for the fulfilment of this condition will be the date 12 months from the date of this Agreement.
- (b) UoW being entirely satisfied that it has obtained or that it will obtain all necessary funding commitments for the completion of the Development as a single project. The last date for the fulfilment of this condition will be the date two years from the date of this Agreement.
- (c) UoW obtaining, and notifying TCC that it has obtained, all Subdivision Approvals in accordance with clause 5.1. The last date for the fulfilment of this condition will be the date 12 months following the date both conditions in clauses 2.1(a) and 2.1(b) are fulfilled;
- (d) TCC and UoW approving the terms and conditions of the Subdivision Approvals. The last date for the fulfilment of this condition will be the date three months following the fulfilment of the condition in clause 2.1(c); and
- (e) UoW obtaining and notifying TCC that it has obtained all Approvals contemplated by clause 6.1 from the relevant Authority on terms and conditions satisfactory to UoW in all respects. The last date for the fulfilment of this condition will be the date 18 months following the date both conditions in clauses 2.1(a) and 2.1(b) are fulfilled.

- 2.2 **Benefit of conditions:** The condition/s in:
- (a) clause 2.1(b) is inserted for the sole benefit of UoW;
 - (b) clauses 2.1(a) and 2.1(c) to 2.1(e) are inserted for the benefit of both parties.
- 2.3 **Operation of conditions:** In relation to each condition set out in clause 2.1, the following shall apply unless otherwise expressly provided:
- (a) The condition will be a condition subsequent.
 - (b) The party for whose benefit the condition has been included must do all things which may reasonably be necessary to enable the condition to be fulfilled by the date of fulfilment.
 - (c) Time for fulfilment of any condition and any extended time for fulfilment to a fixed date will be of the essence.
 - (d) If one party requests an extension to the date for satisfaction of a condition contained in this clause 2, the other party will act reasonably in considering that request.
 - (e) The condition will be deemed to be not fulfilled until notice of fulfilment has been served by one party on the other.
 - (f) If the condition is not fulfilled by the date for fulfilment, either party may at any time before the condition is fulfilled or waived, avoid this Agreement by giving notice in writing to the other. Upon avoidance of this Agreement neither party shall have any right or claim against the other arising from this Agreement or its termination.
 - (g) At any time before this Agreement is avoided, any party may waive any condition which is for the sole benefit of that party. A waiver shall be by notice in writing.

3. COLLABORATIVE APPROACH

- 3.1 **Uncertainty:** The parties acknowledge that at the date of this Agreement UoW's funding of the design and construction of the Development is uncertain. In particular UoW is not aware of how long it will take to obtain funding nor the amount of funding UoW will be able to raise or otherwise allocate in relation to the design and construction of the Development. Therefore, the size and features of the Development are currently unknown.
- 3.2 **Staging variations:** In addition to the above, it is possible that the construction of the Development may need to be staged so that it is developed and expanded over time and a staged approach is not currently contemplated by this Agreement or the Lease.
- 3.3 **Tauranga Community:** UoW acknowledges that TCC as local authority and administering body of Marine Park has obligations to the Tauranga community that go beyond those obligations of being merely a passive ground lessor. Accordingly, there are obligations as expressed in this Agreement that address the completion of the Development in accordance with the agreed Concept Design and Detailed Design, Approvals and practical public access to the Development.

- 3.4 **Collaboration on variations:** Recognising the uncertainty set out in clauses 3.1 and 3.2, TCC's obligations set out in clause 3.3, and the need for collaborative solutions and problem solving, the parties agree to work together in Good Faith in respect of any variations to this Agreement, the Lease, and/or the construction phasing, which may be reasonably necessary or desirable to reflect or address such factors as UoW funding, the need to stage construction or operation of the Development.
- 3.5 **Objective:** The parties agree to exercise Good Faith in implementing the Objective and in performing their respective obligations under this Agreement.
- 3.6 **Approach:** In keeping with the parties' agreement in clauses 3.4 and 3.5, UoW will in Good Faith as part of its procurement processes for the Development (but without creating any obligations and subject always and absolutely to UoW's procurement obligations/policy):
- (a) consider opportunities for Iwi and youth; and
 - (b) take into account potential benefits to the Tauranga based contractors and suppliers.

4. CONCEPT DESIGN & DESIGN GROUP

- 4.1 **Preliminary Concept Design:** The Preliminary Concept Design that has been provided by UoW is an overview of the key site strategies informing early bulk and location analysis for the proposed Development. TCC acknowledges that this will not be determinative of the Concept Design or Detailed Design. Nothing in the Preliminary Concept Design, whether statements, representations or imagery will be binding on UoW.
- 4.2 **Formation of the Design Group:** As soon as practicable following execution of this agreement, the parties will work in Good Faith to appoint the Design Group (whose membership will be in accordance with clause 4.3). The Design Group's purpose will be to provide guidance on the fulfilment of the Design Criteria in UoW's development of the Concept Design.
- 4.3 **Membership of the Design Group:** The Design Group will consist of:
- (a) Two representatives of UoW;
 - (b) Two representatives of TCC;
 - (c) UoW's architect; and
 - (d) any other person (whether as a continuing or temporary member) as TCC and UoW may from time to time appoint by agreement.
- 4.4 **Preparation of Concept Design:** Following the appointment of the Design Group, UoW shall procure the development of the Concept Design in accordance with the Design Criteria, including features of any access, connections and services that may need to be anticipated in the consents to be obtained by UoW in accordance with clause 5.1 and 6.1.
- 4.5 **Design Group guidance:** UoW will refer iterations of the Concept Design during its development to the Design Group, where UoW considers it appropriate for the purpose of increasing the likelihood of obtaining TCC approval pursuant to clause 4.7.

- 4.6 **Staging:** Where, whether prior to the commencement of the design process or during the development of the Concept Design, there arises a requirement or desire to stage the Development in one or more stages, the parties will, in accordance with clause 3.4, work together to determine any variations that may be required to this Agreement, including whether the Concept Design for the Development itself is progressed in a staged manner.
- 4.7 **TCC approval:** UoW will provide the Concept Design to TCC for approval upon its completion. TCC will advise UoW whether it approves or disapproves the Concept Design (as lessor and not as regulatory authority) as soon as reasonably practicable, but in any event within 20 Working Days of receipt of the Concept Design. TCC shall not withhold or delay the giving of its approval to the Concept Design where the Concept Design is consistent with the Design Criteria or otherwise unreasonably or arbitrarily withhold its consent for any other reason.
- 4.8 **Variations:** Where TCC advises UoW of variations required to enable it to provide its approval for reasons of any inconsistency with the Preliminary Concept Design or Design Criteria, and UoW accepts such variations, UoW will incorporate such variations into the Concept Design at its cost. Following incorporation of such variations, UoW will re-submit the Design Concept to TCC and the process in clauses 4.7 and this 4.8 will re-apply. If UoW (acting reasonably) does not agree to TCC's proposed variations, and the parties cannot resolve TCC's changes within 20 Working Days, then one or both of the parties may refer the matter for determination in accordance with clause 13.2.
- 4.9 **Deemed approval:** TCC will be deemed to have approved the Concept Design or any variation (as lessor and not as regulatory authority) if it does not provide its approval or disapproval in writing within the timeframe set out in clause 4.7 provided that UoW has first served notice on TCC advising TCC of its failure to provide its approval or disapproval in writing and allow no less than a further 10 Working Days for TCC to respond.

5. SUBDIVISION APPROVAL

- 5.1 **UoW to obtain:** UoW will seek to obtain any Approvals required for:
- (a) the issue of a separate leasehold record of title for the Development Land;
 - (b) any required connections of the Development to the Tauranga harbour; and
 - (c) any services necessary for the Development to the Development Land.
- 5.2 **TCC's approval of applications:**
- (a) UoW's applications for its Subdivision Approvals (and any conditions or variations to the Subdivision Approvals) will be subject to TCC's approval (as lessor and not as regulatory authority) prior to submission and/or variation.
 - (b) UoW must provide a copy of any applications for the Subdivision Approvals to TCC not less than 20 Working Days prior to the date on which UoW proposes to lodge them for approval by the relevant Authority.
 - (c) TCC, acting promptly, diligently and in Good Faith, will have 20 Working Days from the date of receipt to provide its feedback on the applications to UoW. The feedback shall include the reasons for TCC's approval or disapproval (as lessor and not as regulatory authority) together with supporting information (where applicable) to enable UoW to ascertain and consider the implications of the feedback and (including (if applicable) any variations required by TCC to enable it

to provide its approval) to the applications for the Subdivision Approvals to UoW in writing (**Subdivision Feedback Notice**).

- (d) On receipt of the Subdivision Feedback Notice, the parties shall discuss the same in Good Faith to agree the changes (if any) to the applications.
- (e) If UoW agrees to the changes sought by TCC in the Subdivision Feedback Notice, UoW shall update the applications to reflect the Subdivision Feedback Notice (or any revised feedback agreed during the discussions between the parties) prior to lodging the application.
- (f) UoW shall lodge the application as soon as practicable following receipt of approval in accordance with clause 5.2(c), or its agreement to update the applications in accordance with clause 5.2(e).
- (g) UoW shall provide a copy of the finalised applications to TCC within 3 Working Days of their lodgement.
- (h) If UoW (acting reasonably) does not agree to the feedback or changes proposed in the Subdivision Feedback Notice, and the parties cannot resolve TCC's changes sought in the Subdivision Feedback Notice within 20 Working Days of receipt of the Subdivision Feedback Notice, then one or both of the parties may refer the matter for determination in accordance with clause 13.2. Nothing in this clause restricts the right of UoW to avoid this agreement under clause 2 if the Subdivision Approvals have not been approved by both parties by the date provided for in clause 2.1(d).

5.3 **Deemed approval:** TCC will be deemed to have approved UoW's applications for the Subdivision Approvals (as lessor and not as regulatory authority) if it does not provide its approval or disapproval in writing within the timeframe set out in clause 5.2.

5.4 **Approval of consent:** UoW shall provide a copy of each Subdivision Approval received to TCC promptly following receipt of the same. Each party shall advise its approval or disapproval of the conditions of any consent within 10 Working Days of the date that the relevant consent is provided to TCC. The parties acknowledge that they shall not be entitled to object to any term or condition which was contemplated in any application approved pursuant to this clause 5, or otherwise could reasonably be expected to be included in a consent of the nature intended and which is otherwise consistent with the terms of this Agreement and the Lease, except where such term or condition materially decreases the benefit, increases the burden or otherwise impacts the economic viability of the Development to either party.

5.5 **Subdivision Approval Costs:** TCC will be responsible, and will reimburse UoW, for all reasonable costs associated with UoW obtaining the Subdivision Approvals and completing the subdivision in accordance with the Subdivision Approvals to create a separate leasehold record of title for the Development Land, including:

- (a) consultancy costs, including planning, surveying and engineering;
- (b) legal costs (as between solicitor and client);
- (c) LINZ fees;
- (d) any consent fees or development contribution required to be paid to any Local Authority; and

- (e) any out of site works agreed pursuant to clause 6.7,

and TCC will make payment of such costs on the 20th of the next month following receipt of a valid tax invoice from UoW, notwithstanding any prior cancellation of this Agreement.

- 5.6 **Deduction:** UoW will be entitled to deduct any unpaid amount of costs under clause 5.5 from any amount of rent or outgoings payable under the Lease.
- 5.7 **Assistance:** TCC acting as lessor, will provide reasonable assistance where requested by UoW to secure the Subdivision Approvals.

6. BUILDING AND LAND USE CONSENTS

- 6.1 **UoW to obtain:** Following approval of the Concept Design and fulfilment of the condition in clause 2.1(b)2.1(a) UoW will obtain, at its cost, any Approvals required for the Development including (but not limited to):

- (a) the carrying out of the Development Works; and
- (b) the use of the Development as a Marine Research and Education Facility.

- 6.2 **Development of Detailed Design:** For the purpose of obtaining building consent Approval, UoW will procure the development of the Detailed Design. The Detailed Design must be consistent with the Concept Design approved by TCC pursuant to clause 4 and any conditions of the Subdivision Approvals. UoW may refer material iterations of the Detailed Design during its development to the Design Group, where UoW considers it appropriate to ensure its consistency with the Concept Design and compliance with this clause 6.2.

- 6.3 **Provision of applications to TCC before submission:** UoW must provide a copy of any applications for the Approvals under clause 6.1 to TCC (as lessor and not as regulatory authority) as soon as reasonably practicable and in any event, not less than 20 Working Days prior to the date on which UoW proposes to lodge them for approval by the relevant Authority. This obligation shall not apply in respect of any variations to the Approvals which may become necessary during the course of the construction of the Development Works provided that such variations do not materially depart from the Concept Design (as approved by TCC in accordance with clause 4.7). TCC will be given no less than 20 Working Days following receipt to provide any comments on the application, before it may be submitted by UoW. It will be at UoW's discretion (acting reasonably) whether any variations are made to the application for Approval following receipt of comments by TCC.

- 6.4 **Assistance:** TCC acting as lessor, will provide reasonable assistance where requested by UoW to secure the Approvals contemplated by this clause 6.

- 6.5 **Contamination assessment:** TCC will have prepared and provided to UoW a report from an independent environmental engineer from a reputable firm of environmental consultants confirming the presence (or otherwise) of any existing Contaminant in or on the Development Land, and where necessary, advice as to the steps required for the appropriate remediation of such Contamination to enable the Development to take place. If TCC considers the cost of such remediation works is unreasonable or uneconomic, TCC will discuss with UoW in Good Faith to endeavour to come to a resolution, failing which TCC may determine this agreement at any time within a period of six months following receipt of the contamination report. Upon such termination, neither party shall have any claim against the other except:

- (a) for any antecedent breach of this Agreement; and
- (b) TCC will reimburse UoW for the costs incurred pursuant to clause 5.5 and any other reasonable costs incurred by UoW in the preparation and approval of the Concept Design and the progression of any Approvals.

6.6 **Contamination:** Subject to TCC's right of termination in clause 6.5, to the extent that any Approvals required for the purpose of clause 6.1 necessitate the remediation of any existing Contaminant within or on the Marine Park, all associated works and costs of such remediation will be the responsibility of TCC. TCC will complete all required remediation works as soon as reasonably practicable following the obtaining of the relevant Approval by UoW.

6.7 **Out of site works:** The parties acknowledge that, in exercising its rights to fulfil or otherwise the conditions in either clauses 2.1(d) or 2.1(e), UoW may take into account whether any Approval under those clauses necessitate any upgrade or improvement to any existing infrastructure and/or the addition of new infrastructure which is outside of the Development Land. Prior to exercising any right of cancellation for non-fulfilment of such conditions, UoW will discuss with TCC in Good Faith endeavour to come to a resolution on the responsibility for such works, failing which, UoW may cancel this agreement pursuant to clauses 2.1(d) or 2.1(e), as the case may be.

7. PROJECT CONTROL GROUP

7.1 **Project Control Group:** As soon as practicable following UoW obtaining the Subdivision Approvals in accordance with clause 5 or other Approvals in accordance with clause 6 (whichever is earlier), UoW will establish a project control group for the construction of the Development. The Project Control Group will consist of:

- (a) two representatives of UoW;
- (b) two representatives of TCC;
- (c) UoW's architect;
- (d) a representative of the head contractor for the Development (following appointment of that contractor); and
- (e) any other person (whether as a continuing or temporary member) UoW may from time to time appoint.

7.2 **Meetings:** The Project Control Group will meet on a monthly basis.

7.3 **Dissolution:** The Project Control Group will dissolve following Practical Completion.

8. CONSTRUCTION OF DEVELOPMENT

8.1 **Construction contract:** Following completion of the Detailed Design and any necessary Approvals being obtained, UoW will procure its construction contract (on the conditions of contract substantially similar to those set out in the relevant Standards New Zealand form) in accordance with its usual procurement policies and processes. In appointing its contractor, UoW will have regard to clause 3.6.

- 8.2 **Commencing construction:** Prior to commencing construction, UoW will provide TCC with an indicative programme for completion of the Development, generally in accordance with the Target Dates.
- 8.3 **UoW's works:** UoW will:
- (a) complete the Development generally in accordance with the Detailed Design and the Target Dates, subject to clause 8.4;
 - (b) ensure that the Development is completed in accordance with the requirements of any statutory or regulatory authority having jurisdiction and with the provisions of any Approvals issued for the Development and the Development Works;
 - (c) ensure the Development is undertaken in a good and workmanlike manner and in accordance with good industry and regulatory standards appropriate for the Development; and
 - (d) notify the relevant Authorities on completion, and obtain a code compliance certificate for the Development and the Development Works.
- 8.4 **Extension to Target Dates:** If an extension of time is properly approved under the construction contract described in clause 8.1 then the Target Dates will be extended by an equivalent length of time. UoW must take all reasonable steps to accelerate the work to reduce to the extent possible the effect of any extensions of time (but shall not be obliged to incur a greater cost in accelerating the work than it otherwise would have had if the work not been accelerated).
- 8.5 **Variations and Alterations to Detailed Design:**
- (a) UoW will be entitled to make minor alterations and variations to the Detailed Design which may become necessary during the course of the construction of the Development Works by reason of any matters beyond the control of UoW. Such matters beyond the control of UoW may include, but not be limited to:
 - (i) the requirements and directions of any Authority; or
 - (ii) the practical requirements of the construction of the Development Works including the dictates of good building practice and/or the availability of materials.
 - (b) UoW will be entitled to make all immaterial and otherwise minor alterations and variations to the Detailed Design which occur during the ordinary course of construction of the Development Works. UoW such alterations and variations shall be raised at the PCG.
 - (c) In relation to all other alterations and variations to the Detailed Design, UoW must obtain TCC's prior written approval (not to be unreasonably withheld) and TCC must provide its approval (as lessor and not as regulatory authority) or otherwise promptly so as to not delay the undertaking of the Development Works. Such approval may be provided (in writing) via TCC's representatives on the PCG as part of any PCG process.
- 8.6 **Substitution of Materials:** If through unavailability or delays in availability of materials, or if through any other cause beyond the reasonable control of UoW it is impractical to

incorporate in the Development Works any material, finish, product or system referred to in the Detailed Design, then UoW may substitute an equivalent alternative material, finish, product or system provided:

- (a) such substitution adheres to, or preserves to the maximum extent practicable the quality and intent as stated in the Detailed Design; and
- (b) does not delay the Development Works programme, except as contemplated by clause 8.4.

UoW must advise TCC prior to substituting any materials.

8.7 Practical Completion: UoW will notify TCC in writing promptly upon the occurrence of Practical Completion. Following Practical Completion, UoW must obtain a Code Compliance Certificate, Compliance Schedule and a Compliance Schedule Statement in respect of the Development.

8.8 Costs: TCC will not be responsible for any costs relating to any Approvals for the Development, completion of the Development Works (including the cost of any physical works required as part of the Subdivision Approval) or maintenance of the Development, unless specifically provided for in the Agreement or the Lease. UoW agrees not to call on TCC to contribute to these costs.

9. NAMING RIGHT

9.1 UoW will, prior to achieving Practical Completion advise TCC of the name of the Marine Research and Education Facility. Such name proposed by UoW must not contravene the requirements set out in the Signage and Naming Requirements attached as Schedule Five.

10. LEASE OF THE DEVELOPMENT LAND

10.1 Agreement to lease: TCC agrees to lease and UoW agrees to take on the lease of the Development Land on the terms and conditions specified in this Agreement and otherwise on the terms and subject to the covenants contained in the Lease.

10.2 Lease commencement: The Lease will commence one day after the later of:

- (a) the date that all of the conditions contained in clause 2.1 are fulfilled or waived; and
- (b) the date of completion by TCC of the remediation of any Contamination pursuant to clause 6.6.

On and from the commencement date of the Lease, UoW will be granted vacant possession of the Development Land. UoW acknowledges and agrees that such possession will be subject to the terms and conditions of any easements or other interests registered against the title to the Marine Park.

10.3 Subdivision and Lease registration: UoW will, as soon as practicable do all things reasonably necessary to complete the subdivision of the Development Land in accordance with the Subdivision Approvals obtained pursuant to clause 5, including the completion of any required works at UoW's cost. As part of the subdivision, UoW will as soon as practicable procure the registration of the Lease with LINZ and obtain a new leasehold record of title in

the name of UoW. TCC will sign the necessary documents as lessor under the Lease to enable its registration.

- 10.4 **Rent** The rent will be payable as set out in clause 3.1 of the Lease.
- 10.5 **Outgoings:** Outgoings will commence, on the commencement of the Lease.
- 10.6 **Consents under the Lease:** TCC agrees that TCC's approval (as lessor and not as regulatory authority) of UoW's Subdivision Approvals and the Concept Design in accordance with this Agreement, will be deemed to be its consent to the subdivision of the Development Land and additions and alterations which form part of the Development pursuant to clauses 6 and 7 of the Lease.

11. INSURANCE

- 11.1 **Construction insurances:** Prior to commencement of any Development Works, UoW will:
 - (a) effect or procure UoW's contractor to effect and maintain contractor's all risks insurance to cover the Development for full replacement value, including additional costs for reinstatement, and noting the interest of TCC as lessor, until the date of Practical Completion. Such insurance may be subject to such reasonable exclusions and excesses as are contained in UoW's contractor's all risks insurance policy;
 - (b) hold and maintain or procure UoW's contractor to hold and maintain insurance against public liability for an amount no less than \$10,000,000 at all times until the date of Practical Completion; and
 - (c) upon request, produce evidence of the currency of the insurances referred to in this clause 11.1.
- 11.2 **Building insurance:** From the date of Practical Completion, UoW will effect and maintain all insurances relating to the Development and UoW's use of the Development and Development Land as required by the Lease.

12. REGULATORY POSITION

- 12.1 **TCC's capacity:** TCC has entered into this Agreement in its non-regulatory capacity.
- 12.2 **Position:** This Agreement does not bind Tauranga City Council in its regulatory authority in any way, and any consent or agreement TCC gives under this Agreement is not an agreement or consent in Tauranga City Council's regulatory capacity and vice versa.
- 12.3 **Consideration of applications for Approvals:** When acting in its regulatory capacity, Tauranga City Council is entitled to consider all applications to it without regard to this Agreement. TCC will not be liable to UoW or any other party if, in its regulatory capacity, Tauranga City Council declines or imposes conditions on any consent or permission UoW or any other party seeks for any purpose associated with this Agreement.
- 12.4 **Definitions:** For the purposes of this clause, "Tauranga City Council" refers to the Tauranga City Council in its regulatory capacity and "TCC" refers to the Tauranga City Council in its non-regulatory capacity.

13. GENERAL PROVISIONS

13.1 **Costs:** Each party shall pay its own costs of and incidental to the preparation of this Agreement, the Lease, any variation to this Agreement, and (except as expressly provided in this Agreement) the performance of all obligations arising under this Agreement.

13.2 **Disputes:**

- (a) Where any differences or disputes arise between the parties in relation to this Agreement, in a spirit of mutual goodwill and co-operation the Chief Executive of TCC and the Senior Deputy Vice-Chancellor of UoW will from time to time meet with each other as necessary to discuss such differences or disputes and will use their best endeavours to resolve the matter before recourse to other processes.
- (b) If any difference or dispute cannot be resolved in accordance with clause 13.2(a) within fifteen Working Days, then the parties shall refer the matter to mediation. The parties will try to agree on a mediator and failing agreement within ten Working Days of the matter being referred to mediation, the then current President of the Waikato Bay of Plenty Branch of the New Zealand Law Society shall be asked to appoint a mediator. The mediation will not be binding unless a settlement agreement is signed by both parties. Failing resolution of the dispute by mediation within thirty Working Days of referral of the dispute to mediation, the parties are free to initiate legal proceedings or, if both parties agree, commence arbitration proceedings.
- (c) Notwithstanding any other provision in this Agreement, either party may at any time initiate proceedings for urgent injunctive relief.

13.3 **Waiver:** Waiver by either party of a default by the other party will not constitute a waiver of any other default.

13.4 **Notices:** Any notice in writing or other document required to be given under this Agreement shall be given to TCC or UoW at its address set out below or such other address as may be notified in writing by that party to the other party from time to time. Any such notice is deemed to have been served:

- (a) if delivered by hand, at the time the notice is left at the party's address as recorded below;
- (b) if sent by overnight courier (or another next Working Day delivery service), on the second Working Day after posting;
- (c) if sent by email, the notice will be deemed to have been duly received on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee notified below);

unless in each case such deemed receipt would occur outside business hours (meaning 9.00am to 5.00pm on any Working Day), in which case receipt will be deemed to occur when business hours resume in the place of receipt.

TCC: Position: GM: Community Services

Physical Address: Tauranga City Council

306 Cameron Road
Tauranga 3110

Postal Address: Private Bag 12002
Tauranga 3143

Email: barbara.dempsey@tauranga.govt.nz

UoW: Position: Deputy Vice-Chancellor

Physical Address: University of Waikato

Te Whare Wananga o Waikato
Gate 1, Knighton Road
Hamilton 3216

Postal Address: Private Bag 3105
Hamilton 3240

Email: ajones@waikato.ac.nz

- 13.5 **Entire agreement:** The terms and conditions set out in this Agreement and any approvals and consents in writing provided for in this Agreement and given prior to execution contain the entire Agreement as concluded between the parties. This Agreement replaces and supersedes any prior agreement, representation or arrangement, including (but not limited to) the tender application.
- 13.6 **Variations:** Any modification to or variation of this Agreement must be in writing and signed by an authorised person for each party.
- 13.7 **No merger:** Notwithstanding the execution of the Lease, the covenants, conditions or agreements appearing in this Agreement remain binding upon the parties until the duration of any such covenant, condition or agreement has expired (where the same is expressed to be for a limited period) or until performance in full of such covenant, condition or agreement whichever shall be the earlier.
- 13.8 **No partnership or agency:** Nothing in this Agreement or in the Lease will constitute a partnership or a relationship of agency between the parties.
- 13.9 **Assignment:** Neither party will assign its interest under this Agreement other than to a statutory successor.
- 13.10 **Applicable law:** This Agreement will in all respects be construed and applied and take effect as a contract made in New Zealand and shall be governed by and performed according to the law of New Zealand.
- 13.11 **Confidentiality:** The parties agree to keep confidential this Agreement, and any information relating to the Agreement and the Lease directly or indirectly obtained, except where:
- (a) required by law or necessary to carry out obligations by TCC or UoW pursuant to this Agreement;

- (b) required to be disclosed to either party's professional advisors for the purposes of entering into this Agreement;
- (c) either party has obtained the express consent of the other party to disclose any confidential information; or
- (d) the information is publicly available without a breach of confidentiality.

The restrictions contained in this clause 13.11 will continue to apply notwithstanding termination of this Agreement or Practical Completion of the Development and will persist for the duration of the Lease.

13.12 Parties' Legislative Obligations: The parties acknowledge that each may be subject to the Privacy Act 1993, the Ombudsmen Act 1975, the Official Information Act 1982, the Local Government, the Official Information and Meetings Act 1987, the Public Audit Act 2001, the Public Finance Act 1989 and other legislation relevant to their activities. To enable the parties to comply with its legislative obligations, the parties agree as follows:

- (a) They will each (**Recipient**) immediately refer to the other (**Other Party**) for response to any request made by a third party for information about the Development or the Agreement, regardless of whether or not the request is stated to be made under any particular legislation.
- (b) The Other Party will provide assistance and information to the Recipient upon request in order to:
 - (i) fulfil the Recipient's responsibilities under the relevant legislation; and
 - (ii) enable the Recipient to comply with any other statutory obligations or internal business obligations insofar as they relate to this Agreement.
- (c) The Other Party will not charge or otherwise make a claim on the Recipient for assistance and/or information provided by it under this clause 13.12.

13.13 Announcements: Neither party will make any statements to the media or publish any material concerning the Agreement or the other party, without the prior written consent of the other party, provided that this clause will not prohibit UoW from publicly issuing updates of construction of the Development following the commencement date of the Lease.

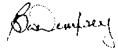
13.14 Counterparts: This Agreement may be executed in two or more counterparts, all of which will be deemed to constitute one and the same agreement. A party may enter into this Agreement by signing a counterpart copy and sending it to the other party, including by facsimile or email. This Agreement is deemed to be signed by a party if that party has signed any of the following formats of this Agreement:

- (a) an original;
- (b) a photocopy; or
- (c) a PDF or email image copy,

13.15 Execution: The parties shall not be bound until they have both executed this Agreement.

EXECUTED AS AN AGREEMENT

Signed by Tauranga City Council by:



Authorised Signatory's signature

Barbara Dempsey

Authorised Signatory's full name

Authorised Signatory's signature

Authorised Signatory's full name

Signed by University of Waikato by:



Authorised Signatory's signature

Rt Hon Sir Anand Satyanand

Authorised Signatory's full name



Authorised Signatory's signature

Professor Neil Quigley

Authorised Signatory's full name

SCHEDULE ONE

Preliminary Design Concept

UoW Marine Education & Research Facility

1.2 Connection & Context

SITE STRATEGIES

- Strengthening Tauranga City Council's strategic vision for the wider Tauranga Moana site and context
- Promoting strong physical and visual connectivity to the park, water's edge, wider recreational amenity and key sight lines
- Prioritizing pedestrian movement and safety across the site

DESIGN PRINCIPLES

- Supporting positive north/south connectivity by attracting and drawing people through the site
- Respecting key sight lines and site features including Te Kāpuhi Whetū - The Māori Celestial Compass, and view shaft to Mt Maunganui/ Mauso
- Providing clear and welcoming points of entry and arrival
- Separating vehicle and pedestrian movement, public and private circulation zones, and supporting positive CPTED Principles
- Encouraging access to and celebration of the waters edge and foreshore through integration of play and landscape features



DIAGRAM KEY | ACCESS & MOVEMENT

- Main Entry - Arrival & Welcome Zone
- Proposed Marine Research & Education Facility
- Shared Public Amenity Coastal Edge Recreation (Refer Diagram 1.4)
- Parking Zone
- Key Pedestrian Linkages - Proposed Coastal Pathway
- Primary Vehicle Access Points
- Primary Pedestrian Access Points
- Key Sight Lines



UoW Marine Education & Research Facility

1.3 Form & Function

SITE STRATEGIES

- Actively engaging and interacting with the surrounding context
- Putting marine education and research on display and making it accessible to the community
- Supporting flexible and adaptive use by the University and wider community partners

DESIGN PRINCIPLES

- Engaging sensitively with surrounding context through building orientation, edge treatments and form
- Maximising transparency and porosity as appropriate to support positive flow and movement through and around the facility
- Careful consideration of public and private functions, including integration and screening of back of house facilities (avoiding 'site shed sprawl')
- Accommodating for likely rezoning strategies within proposed building height and mass



DIAGRAM KEY | FUNCTIONAL ZONES

- Main Entry - Arrival & Welcome space
- Flexible Learning, Meeting, Conference & Collaboration Spaces
- Primary Research & Field Station Facility
- Back of House, Boat & General Storage Areas
- Secure Parking for Facility
- 'Public' Movement Flows
- 'Private' Movement Flows



UoW Marine Education & Research Facility

1.4 Community Engagement & Amenity

SITE STRATEGIES

- Activating and enhancing the wider natural and physical amenity of the Marine Park Recreation area
- Offering a 'draw-card for the community' encouraging engagement and interaction
- Providing environments for community use, learning and collaboration

DESIGN PRINCIPLES

- Prioritising coastal edge for public engagement spaces and shared amenity
- Optimising design through integration of shared use multi purposes spaces
- Design & planning to support positive passive surveillance of all public use spaces



DIAGRAM KEY | SHARED AMENITY

- Social Verandah - Covered External Public Space & Circulation Zone integrating Bike Parking, Water Fountain Amenity etc...
- Marine Themed Public Playground & Educational Resource
- Main Entry - Arrival & Welcome Zone - including access to Public Use WC's
- Flexible Learning, Meeting & Conference Zone - including Community Events & Showcasing Spaces, Live Camera Feeds & Aquarium
- Primary Research & Field Station Facility
- Back of House, Boat & General Storage Areas
- Facility Parking & Loading Zone - including Spill Over Parking for Community Use to South

UoW Marine Education & Research Facility

1.5 Climate Change & Resilience

SITE STRATEGIES

- Provisioning for climate change resilience while making a 'light imprint' on the site
- Building as a living resource for climate change research and learning

DESIGN PRINCIPLES

- Carefully considered site orientation and facade specific elevational treatments
- Greenstar or equivalent design principles to be applied through design development and specification
- Design development to be guided by early Life Cycle Assessments (LCA)
- Zero effective impact, zero discharge design with focus on enhancing water quality
- Rising Sea Level Mitigation Measures: including setbacks and relative floor levels to be informed by UoW Research Team and Geotechnical Engineers



Sensitive selection of materials for coastal context, with LCA focus



Showcasing of environmental awareness and marine preservation



Careful integration of native planting to mitigate coastal erosion and support TCC's 'green necklace' strategy

UoW Marine Education & Research Facility Visualisation



Shared Education
& Showcasing Spaces



Interactive Display
& Aquarium



Marine Themed Playground
& Recreation Amenity

SCHEDULE TWO

Design Criteria

Simple Form Carefully Integrated with its Context

- Engagement with iwi and mana whenua focus in building design and narrative.
- Simple two-story build accommodating a mezzanine and double-height areas.
- Design emphasis and impact focused on Public Education/Community facing facades and entrances to the West/South West of the site.
- Design approach to seek, where practical, to blur the edges between building and landscape.
- Visual impact and welcome

Innovation & Value Focused Design

Design concept for the new facility is to balance simplicity and affordability with the provision of an education and research environment. This will require consideration of the following features:

- Tailored façade responses, given a building with no 'back'.
- Integrated cultural and environmental narrative as part of the built form.
- Simplicity of materials palette and detailing.
- Context-appropriate materials with, where practical, an emphasis on durability and tactility to front of house spaces.
- Integrate sustainability outcomes as much as feasible.

Active Community Hub – A Destination for Education & Engagement

- New facility to provide an active and engaging community learning environment through a combination of design, display, and functionality. Key design features where possible to comprise:
 - Attractive and welcoming entry and arrival.
 - Interactive environment with meeting/breakout/workshop spaces accommodated at ground and possible mezzanine levels.
 - Interactive marine displays, including wall (both as display and practical research environment) providing the physical interface between community education and research facilities.
 - Destination playground and possibly a café environment

Flexible & Agile Research Facility – Nexus Point for Learning and Research

- Where possible, Research Facilities accommodated within clear open construction enabling long-term flexibility with the ability to 'dock' more specialist components as required over time.

SCHEDULE THREE

Target Dates

Commencement of Construction: The date 36 months from the Commencement Date.

Practical Completion Date: Prior to the date 60 calendar months from the Commencement Date.

SCHEDULE FOUR

Form of Lease

Form 11

Lease Instrument

(Section 91 Land Transfer Act 2017)

Record of Title (unique identifier)	All/part	Area/Description of part
173890	Part	Area A SO 530292 Part Lot 2 DPS 34961

Lessor

TAURANGA CITY COUNCIL

Lessee

UNIVERSITY OF WAIKATO

Estate or Interest

Insert "fee simple", "leasehold in lease number" etc

Fee simple

Lease Memorandum Number

(if applicable)

Not applicable

Term

Refer Schedule A

Rental

Refer clause 3.1

Lease and Terms of Lease

If required, set out the terms of lease in Annexure Schedules

For the purposes set out in the Background, the Lessor leases to the Lessee and the Lessee accepts the lease of the above Estate or Interest in the land in the affected computer register(s) for the Term and at the Rental and on the Terms of Lease set out in the Annexure schedules.

*Insert instrument type***Lease****Background**

- A. The land in the record of title referred to on the front page of this Lease instrument forms part of the larger reserve known as Marine Park.
- B. Pursuant to the Agreement to Lease the Lessor agreed to grant to the Lessee the lease in respect of the Land.

SIGNING:

SIGNED for and behalf of **TAURANGA CITY COUNCIL** under delegated authority as
Lessor by:

Full name of authorised signatory

Signature of authorised signatory

SIGNED for and behalf of the **UNIVERSITY OF WAIKATO** under delegated authority as
Lessee by:

Full name of authorised signatory

Signature of authorised signatory

Full name of authorised signatory

Signature of authorised signatory

Insert instrument type

Lease

SCHEDULE A

LAND:	0.6952 ha more or less being Area A SO Plan 530292 Part Lot 2 DPS 34961 being part of the land contained in Record of Title 173890 classified as a Local Purpose (Marine Research and Education Facility) reserve subject to the Reserves Act 1977, together with the drains or other structures existing on the Land at the Commencement Date.
TERM:	99 years from the Commencement Date
COMMENCEMENT DATE:	[Insert Commencement Date under the Agreement]
FINAL EXPIRY DATE:	[Insert the date being 99 years from the Commencement Date]
PERMITTED USE:	Marine Research and Education Facility, including ancillary uses which are: <ul style="list-style-type: none"> (a) facilities for public interpretation and education; or (b) associated with, complementary to, or which generally form part of the activities and functions of a tertiary education provider in relation to the Centre, for example research and teaching; or (c) associated with, complementary to, or which generally form part of such a Centre, for example a café serving users of and visitors to the Centre.
DEFAULT INTEREST RATE:	Double the 90 day bank bill buy rate applicable during the continuance of the default.
LESSEE'S INSURANCE: (clause 11.1)	Type: Indemnity to estimated replacement value. Public liability.

Insert instrument type

Lease

SCHEDULE B

The Lessor and the Lessee covenant:

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this lease, unless the context otherwise requires:

Agreement to Lease means the agreement to lease between the parties in respect of the Land dated *[Insert date 2024]*

Approvals means the building consents and other approvals from the relevant Authority (if applicable);

Authority means any government, regulatory, local, regional, territorial, or other authority having jurisdiction or authority over, or in respect of, the Land or its use;

BA means the Building Act 2004;

Building means the building situated on the Land to be constructed in accordance with clause 6 as part of the "Development" as contemplated in the Agreement to Lease;

Code Compliance Certificate has the meaning given to that term in the Building Act 2004;

Commencement Date means the commencement date of the Term as specified in Schedule A;

Compliance Schedule means the definition of Compliance Schedule as used in the Building Act 2004;

Compliance Schedule Statement means the definition of a Compliance Schedule Statement as used in the Building Code pursuant to the Building Act 2004;

Contaminant has the same meaning as set out in the Resource Management Act 1991 as at the Commencement Date, and 'Contamination' shall have a corresponding meaning.

Council means Tauranga City Council and includes any successor to that body;

Crown Entity has the meaning given to that term in the Crown Entities Act 2004;

Easements means any easements, land covenants, encumbrances, consent notices and other memorialised interests, rights or obligations registered against record of title 173890 as may affect the Land;

Insert instrument type

Lease

Force Majeure Event means an event beyond the reasonable control of the party immediately affected by the event, including without limitation:

- (a) fire, floods, tsunamis, storms, tempest, earthquake and other acts of God or nature;
- (b) nuclear, chemical or biological contamination;
- (c) acts of public enemies, terrorism, war (whether declared or not), invasion, riots, act of civil or military authority, sabotage, rebellion, insurrection, revolution or civil war, embargo or requisition;
- (d) act of government or government agency, or a change to applicable law; or
- (e) epidemic or pandemic; or
- (f) malicious damage, civil disturbance or labour disruption.

GST means goods and services tax charged or chargeable under the Goods and Services Tax Act 1985;

Insured Risks means loss, damage or destruction to the Building resulting from fire, earthquake, storm, flood, lightning, volcanic activity, explosion and any other risks which the insuring party reasonably requires to be insured against being risks for which cover is obtained from a reputable insurer at commercially competitive rates;

Land means the land specified in Schedule A;

Lease means this lease, including any memorandum (as amended, added to, or varied) incorporated into it, and any Schedule attached to and forming part of this lease;

Lessee means the lessee named on the front page of this Lease and includes that party's executors, administrators, successors and assigns and, where not repugnant to the context, includes the servants and agents of the Lessee;

Lessor means the lessor named on the front page of this Lease and that party's executors, administrators, successors and assigns and, where not repugnant to the context, includes the servants and agents of the Lessor;

Outgoings means the total outgoings, costs, expenses in any way relating to the Land or the interest of the Lessor in the Land (to the extent not otherwise paid by the Lessee), including the following to the extent they may be applicable:

- (a) rates, charges, levies, assessments, duties, impositions and fees from time to time payable by the Lessor to any Authority relating to the Land irrespective of the ownership of the Land or paid or payable by the Lessor in respect of the receipt of money or the provision of services pursuant to this Lease (but excluding Lessor's income tax or any other tax duty or levy assessed in respect of the Lessor's profits, income, or capital gains and any other tax

Insert instrument type

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payable by the Lessor as a result of any disposition of or dealing with the reversions of this Lease);

- (b) any costs incurred by the Lessor in complying with the requirements contained in any compliance schedule provided in the Building and in obtaining an annual Warrant of Fitness for the Building;
- (c) any insurance premiums and amounts payable by the Lessor in respect of any insurances which are required by Law to be taken out and maintained by the Lessor in respect of the Land and which under the applicable Law the obligation of the Lessor cannot be discharged by procuring the Lessee to take out and maintain these policies or self-insure for those risks;
- (d) any costs incurred by the Lessor in relation to the Lessor obtaining and maintaining registrations, permits and licences for the Services required by Law or any Authority for the lawful occupation of the Land and the lawful provision and operation of those Services;
- (e) any costs required to be met by the Lessee under this lease but incurred by the Lessor in relation to repair or maintenance, including capital and structural repair and replacements and structural work, in respect of the Land;

but excludes any such costs which are otherwise separately recoverable by the Lessor under this Lease;

Permitted Use means the permitted use specified in Schedule A;

PLA means the Property Law Act 2007;

Rating Act means the Local Government (Rating) Act 2002;

RMA means the Resource Management Act 1991;

Services means all services or systems of any nature from time to time provided to, exclusively service or available for exclusive use of the Land, and includes those of the following which are part of the Land on the Commencement Date:

- (a) any electronic medium, energy source, lighting, gas, fuel, power, water, sewerage, drainage, loading docks, plant rooms, storage areas, fire services, sprinkler systems or devices, lifts, escalators and air-conditioning;
- (b) fittings, fixtures, appliances, plant and equipment utilised for any of these Services; and
- (c) any services or systems from time to time utilised for access to the Land;
- (d) line or system charges associated with the foregoing utilities;
- (e) rubbish collection charges; and
- (f) New Zealand Fire Service charges.

Insert instrument type

Lease

Term means the term of this Lease specified in Schedule A;

Working Day means any day of the week other than:

- (a) Saturday, Sunday, Tauranga's Anniversary day, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Labour Day, Matariki and any other statutory holiday observed in Tauranga; and
- (b) a day in the period commencing on the 24th day of December in any year and ending on the 5th day of January in the following year, both days inclusive;

Interpretation

1.2 In this Lease, unless the context otherwise requires:

- (a) any term which corresponds to a heading in Schedule A means and includes the details inserted against that heading in Schedule A;
- (b) clause headings do not form part of this Lease and do not affect the interpretation or construction of this Lease;
- (c) words referring to one gender include every other gender;
- (d) words referring to the singular include the plural and vice versa;
- (e) words denoting persons include any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government or statutory body, in each case whether or not having separate legal identity;
- (f) any provision of this Lease to be performed by two or more persons binds those persons jointly and severally;
- (g) a reference to a statute includes all regulations under and amendments to that statute and any statute passed in substitution for that statute;
- (h) a reference to a clause is a reference to a clause of this Lease;
- (i) a reference in a clause to a paragraph is a reference to a paragraph of that clause;
- (j) all covenants and powers implied in leases by law apply to this Lease except to the extent that they are inconsistent with the express provisions of this Lease;
- (k) in respect of the Default Interest Rate specified in Schedule A, the applicable 90 day bank bill buy rate is that rate advised by the Lessor's bank and, if more than one such rate, then the highest rate during the relevant period;
- (l) any obligation not to do anything includes an obligation not to allow or cause that thing to be done; and

Insert instrument type

Lease

- (m) the words "include" or "including" are to be construed as meaning include or including without limitation and in interpreting this lease the *ejusdem generis* rule will not apply.

2. TERM

- 2.1 The Term will commence on the Commencement Date and will expire at midnight on the last day of the Term.
- 2.2 The Lessor agrees during the period of 12 months following the 90th anniversary of the Initial Commencement Date to discuss with the Lessee the possibility of an extension of the Term beyond the Final Expiry Date. Notwithstanding these discussions neither party will be bound to agree to any extension of the Term.

3. RENT PREPAYMENT

- 3.1 The Lessee will pay the Rental as follows:
- (a) \$120,000 (plus GST) on the Commencement Date;
 - (b) \$480,000 (plus GST) upon the date Practical Completion (as defined in the Agreement to Lease) of the Building or the date that is 48 months from the date the Lessee commenced construction of the Development (as defined in the Agreement to Lease), whichever is earlier;
 - (c) \$120,000 (plus GST) upon the date that falls one year after the date Practical Completion (as defined in the Agreement to Lease) of the Building or the due date of the payment in clause 3.1(b) above, whichever is earlier; and
 - (d) \$480,000 (plus GST) upon the date that falls two years after the date Practical Completion (as defined in the Agreement to Lease) of the Building or the date of the payment in clause 3.1(b) above, whichever is earlier.
- 3.2 The parties acknowledge that the above Rental payments constitute the full Rental under this Lease for the full duration of the Term and the Lessee will not be required to pay any further rental during the Term.
- 3.3 The Lessee acknowledges that except as set out in clause 6.3, Rental once paid is non-refundable in all circumstances, including the valid termination of this Lease by the Lessor in accordance with clauses 6.5, 12.1 or 19.
- 3.4 The Lessee shall be entitled to deduct from any amount payable under this Lease, any amount which is payable by the Lessor to the Lessee pursuant to the Agreement to Lease.

4. OUTGOINGS

- 4.1 The Lessee must during the Term punctually pay all Outgoings in respect of the Land.
- 4.2 If the Lessor is assessed for current land tax or any tax in the nature of a land tax during the Term, the Lessee must pay to the Lessor on demand such portion of that tax as the

Insert instrument type

Lease

value of the Land bears to the total value of all land included in the Lessor's assessment for the tax.

4.3 For the purposes of clause 4.2:

(a) **value** means the land value of the Land as shown in the district valuation roll maintained under the Rating Valuations Act 1998. However, if the Land is not separately valued, "value" will mean the same proportion of the total land value of the separately valued land of which the Land forms part as the area of the Land bears to the total area of the land included in such valuation; and

(b) the tax will be deemed to be due in the same manner as rates and to be a liability throughout the financial year during which it is first due and will be apportioned between the Lessor and the Lessee in respect of periods current at the Commencement Date and at the end of the Term.

4.4 In accordance with section 11(1)(b) of the Rating Act, the name of the Lessee must be entered, as the ratepayer in respect of the Land, in the rating information database and the district valuation roll of each Authority having power to assess and levy rates in respect of the Land.

4.5 The Lessor agrees that, subject to the Land being used by the Lessee for the Permitted Use, the Land is non-ratable land pursuant to section 8(1), and Part 1 of Schedule One of the Rating Act and the Lessor will provide all such reasonable assistance to the Lessee (as lessor and not as regulatory authority) in engaging with the Council or any other relevant local authority to advocate for the property to be determined non-ratable.

4.6 The outgoings referred to in clause 4.1 will be apportioned between the Lessor and the Lessee in respect of periods current at the Commencement Date and at the end of the Term.

5. GST

5.1 Subject to the Lessor providing the Lessee a valid tax invoice pursuant to the Goods and Services Tax Act 1985 in respect of any GST payable pursuant to this clause, the Lessee must pay to the Lessor all GST (if any) payable by the Lessor in respect of payments payable under this Lease by the Lessee. The GST in respect of the rent will be payable on the due date for payment and in respect of any other payment will be payable upon demand.

5.2 If the Lessee defaults in the payment of money payable under this Lease, and the Lessor becomes liable to pay additional GST, then the Lessee must pay any resulting additional tax to the Lessor upon demand.

6. CONSTRUCTION OF BUILDING

6.1 The parties acknowledge that commencement of this Lease precedes the Lessee's construction of the Building on the Land, and the Lessee and Lessor will continue to be bound by the terms of the Agreement to Lease in respect of such construction of the Building.

6.2 In the event that the Lessee has not entered into a construction contract for construction of the Building and materially commenced construction of the Building pursuant to the

Insert instrument type

Lease

Agreement to Lease on or before the date that falls 36 calendar months from the Commencement Date, the Lessor may terminate this Lease at any time by giving not less than 6 months' notice in writing to the Lessee (**Lessor's Termination Notice**).

6.3 On the expiry of the Lessor's Termination Notice, this Lease will immediately terminate and the Lessee must give up vacant possession of the Land to the Lessor. The Lessee will promptly reinstate and make good the Land by removing all improvements, buildings or structures and restoring the Land to the same condition as at the Commencement Date with all services capped off and returning the Land to a safe and usable condition, including restoring the surface to grass safe and suitable for public use and will sign an appropriate deed of surrender prepared by the Lessor's lawyers (if required by the Lessor). The Lessee will be entitled to a refund of rent paid pursuant to clause 3.1(a) from the Lessor, but will not otherwise be entitled to any refund of outgoings paid or compensation or damages from the Lessor arising in any way directly or indirectly in connection with the termination of this Lease under this clause.

6.4 The Lessor is not a developer under this Lease. The Building and all improvements associated with the Building and undertaken and constructed on the Land by the Lessee will be solely owned by the Lessee.

6.5 If the Building has not reached Practical Completion (as that term is defined in the Agreement to Lease) within 48 calendar months of the date the Lessee commenced construction (provided that UoW will be entitled to an extension of such date of an equivalent timeframe of any extension to the Target Date for Practical Completion under clause 8.4 of the Agreement to Lease), the Lessor may at any time thereafter give the Lessee not less than 12 months' notice in writing of the requirement to achieve such Practical Completion.

6.6 In the event that the Building has not reached such Practical Completion on or before the expiry of the Lessee's notice given pursuant to clause 6.5, the Lessee will, within not less than 12 months thereafter, give up vacant possession of the Land and if required by the Lessor, promptly reinstate and make good the Land by removing all improvements, buildings or structures and restoring the Land to the same condition as at the Commencement Date with all services capped off and returning the Land to a safe and usable condition, including restoring the surface to grass safe and suitable for public use. The Lessee will sign an appropriate deed of surrender prepared by the Lessor's lawyers (if required by the Lessor). The Lessee will not be entitled to any refund of outgoings paid or compensation or damages from the Lessor arising in any way directly or indirectly in connection with the termination of this Lease under clause 6.5. If the Lessor does not require the Lessee to remove its improvements, buildings or structures from the Land then all improvements, buildings or structures on the Land will on termination of the Lease pursuant to this clause 6.6 revert to the Lessor without any compensation or consideration whatsoever being payable to the Lessee.

7. ADDITIONS AND ALTERATIONS

7.1 The Lessee must not:

- (a) subdivide the Land; or
- (b) develop or erect any buildings or structures on the Land other than the Building; or

Insert instrument type

Lease

- (c) carry out any additions or alterations to any external part of the Building, without first producing to the Lessor on every occasion plans and specifications, copies of all currency of insurances and obtaining the prior written consent of the Lessor.

7.2 The Lessee must carry out the works:

- (a) in a skilful and efficient manner;
- (b) in conformity with the building consents and other approvals from the relevant Authorities (if applicable);
- (c) in accordance with usual trade practices; and
- (d) in compliance with the requirements of all Laws as they affect the Land, including but not limited all health and safety legislation, regulations and applicable codes of practice and standards during any such period of construction.

7.3 The Lessee must carry out any works necessary to ensure the stability of the Land and any adjoining land owned by the Lessor during any building works.

7.4 On completion of any building work, the Lessee must obtain and provide to the Lessor the Code Compliance Certificate (if applicable) and a complete set of as-built drawings accurately showing the building work.

7.5 The Lessee warrants to the Lessor that the construction and completion of any works described in clause 7.1 and the Development Works (as that term is defined in the Agreement to Lease) will be carried out under the control and supervision of competent and duly qualified building personnel and entirely at the risk of the Lessee. The Lessee indemnifies the Lessor to the fullest extent permitted at law from and against all actions, claims, demands, losses, damages, fines, penalties, costs and expenses for which the Lessor will or may be or may become liable in respect of and arising from any loss, damage or injury to property or persons caused or contributed to by the neglect, breach or default on the part of the Lessee or persons under the control of the Lessee in carrying out the construction and completion any works described in clause 7.1 and of the Development (as that term is defined in the Agreement to Lease).

7.6 The Lessee must not allow the Land or to be open to members of the public or allow the use of the Building by members of the public if that would be in breach of section 363 of the Building Act.

7.7 The Lessee must pay the Lessor's reasonable external costs for any consent or application for consent under this clause (including the Lessor's reasonable legal costs) except for the Lessor's costs relating to the Development Works (as that term is defined in the Agreement to Lease).

8. SIGNS & NAMING RIGHT

8.1 The Lessee must not erect, affix or paint any sign or notice or advertising device on the Land that does not comply with Schedule C of this Lease.

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- 8.2 The Lessor and the Lessee agrees the Building is to be known as '[insert name]' and the Lessee must not alter the name of the Building without first notifying the Lessor's and, provided that such name complies with Schedule C of this Lease.

9. MAINTENANCE

- 9.1 The Lessee must keep the external appearance of the Building and any other buildings or structures erected on the Land from time to time in a neat, clean and tidy condition, including the prompt removal of any graffiti.

- 9.2 The Lessee must keep any sealed, paved and landscaped areas (including planter boxes and pots) forming part of the Land in a neat, clean and tidy condition with all weeds regularly removed and tree and plant maintenance (pruning, trimming etc.) undertaken on a regular basis.

- 9.3 The Lessor may by the Lessor's employees or agents at all reasonable times during the Term enter upon the Land to view its condition and state of repair, or to inspect and/or maintain, repair or renew services and infrastructure, provided that:

- (a) the Lessor must, except in the case of an emergency, first give reasonable prior written notice to the Lessee and must be accompanied by a representative of the Lessee and must comply with the Lessee's security and safety requirements;
- (b) the Lessor will cause as little interference or inconvenience to the Lessee and its invitees or damage to the Land, Building or any other property of the Lessee or its invitees; and
- (c) the Lessor will, without delay, make good any damage caused to the Land, Building or any other property of the Lessee or its invitees result of exercising this right.

- 9.4 If the Lessor, following an inspection under clause 9.3, serves the Lessee with notice alleging a breach of the Lessee's obligations under clauses 9.1, 9.2 and/ or 9.3 and specifying any works required by the Lessor, and if the Lessee has not within a reasonable time (having regard to the extent and nature of the work required) remedied the breach set out in the Lessor's notice, then without prejudice to the Lessor's other rights and remedies, the Lessor may by the Lessor's employees or agents with all necessary equipment enter the Land to carry out the works specified in the Lessor's notice subject to the same proviso as set out in clause 9.3. All money reasonably incurred by the Lessor in carrying out the works will be payable by the Lessee to the Lessor upon demand together with interest on that money at the Default Interest Rate from the date of expenditure to the date of payment.

10. YIELD UP OBLIGATION

- 10.1 Subject to clause 6.3, 6.5 and 12.1, the Lessee will on the expiration of the Term or sooner determination of this Lease surrender and yield up to the Lessor the Land (including all Buildings, structures, improvements, paved or landscaped areas and fixtures and fittings constructed or installed by the Lessee) in a clean and tidy condition and otherwise consistent with performance of the Lessee's obligations under clause 9 and free from any rubbish and debris. Where such yielding up occurs within a period of

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50 years from the Commencement Date, the Lessee will also yield up the Building in a materially weatherproof and structurally sound condition. The Lessor will not be required to compensate the Lessee for any Buildings, structures, improvements, paved or landscaped areas or fixtures and fittings of the Lessee yielded up under this clause. The Lessee will undertake all works necessary to remediate any Contamination of the Land arising out of the use and occupation of the Land by the Lessee.

11. INSURANCE

- 11.1 The Lessee must, for the duration of the Term effect and keep and maintain current a policy of insurance of the type shown in Schedule A for the Insured Risks, noting the interest of the Lessor.
- 11.2 If insurance cover required under clause 11.1 becomes unavailable or unaffordable (in the Lessee's opinion, acting reasonably) during the term of this lease, other than because of the Lessee's act or omission, the Lessee will not be in breach while cover is unavailable or not obtained by the Lessee due to it being unavailable or unaffordable. The Lessee will advise the Lessor in writing whenever cover becomes unavailable or unaffordable and, where practicable, provide reasons as to the unavailability or unaffordability and the parties will then discuss in good faith the alternative form(s) of cover that may be available with a view to ensuring that adequate and affordable insurance cover is provided at the cost of the Lessee at all times during the Term. The insurance must note the interest of the Lessor.
- 11.3 The Lessee will keep current at all times during the continuance of this Lease a policy of public risk insurance (noting the interest of the Lessor) appropriate to the Land and the use of the Land.
- 11.4 For the purposes of section 271 of the Property Law Act 2007, the Lessee acknowledges and agrees that:
- (a) the Lessor has not insured the Land or the Building against destruction or damage arising from fire, flood, explosion, lightning, storm, earthquake or volcanic activity; and
 - (b) the Lessee, subject to the provisions of section 271(2)(a) – (c) of the Property Law Act 2007 and clause 12 of this Lease, will meet the cost of making good any destruction or damage to the Land and the Building.
- 11.5 The Lessee will provide written evidence of all insurances to the Lessor when reasonably requested by the Lessor.

12. DAMAGE OR DESTRUCTION OF BUILDING

- 12.1 If the Building is destroyed or damaged, the Lessee will pay out the insurance money received by it in respect of the destruction or damage to the Building in reinstating and completing the Building, as soon as is reasonably practicable. However, if:
- (a) the Lessee is unable to obtain all necessary consents from each relevant local, territorial, governmental or other authority having jurisdiction over the Land or the use of the Land;
 - (b) the necessary labour and materials are not, or will not remain, available;

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- (c) the by-laws, relevant district plan or regulations do not permit or allow the Building to be reinstated in a manner and design similar to the plans and specifications of the Building prior to such damage or destruction;
- (d) the Lessee is unable to obtain access to the Land or the areas generally surrounding the Land for the purposes of repairing, reinstating, rebuilding or completing;
- (e) the repairing, reinstating, rebuilding or completion is otherwise prevented by any local or governmental action or any other circumstances beyond the reasonable control of the Lessee; or
- (f) the cost to the Lessee to repair, reinstate, rebuild or complete the Building will exceed the insurance money received by the Lessee and such excess cost is not caused by the negligence or improper or unlawful act of the Lessee; or
- (g) if mutually agreed by the parties,

then the Lessee may by giving 20 Working Days' notice to the Lessor, terminate this lease and will have no further obligations to the Lessor in respect of this lease provided that upon such termination the Lessee must do one of the following:

- (h) if agreed by to by the Lessor, transfer to the Lessor the insurance moneys received by the Lessee which have not otherwise been applied in endeavouring to repair, reinstate, rebuild or complete the Building pursuant to this clause; or
- (i) reinstate the Land by clearing the damaged or destroyed Building and demolition debris and returning the Land to a safe and usable condition, including restoring the surface to grass safe and suitable for public use.

12.2 If the Building is damaged or destroyed and this lease is not terminated pursuant to clause 12.1 then the Lessor and the Lessee will discuss in good faith working together to minimise loss to each of them. Such discussions may include, but not be limited to, a suspension of the term of this Lease.

12.3 Any termination pursuant to clause 12.1 will be without prejudice to the rights of either party against the other in respect of any earlier breach of their respective obligations in this lease.

13. FENCING

13.1 Any fencing erected by the Lessee must comply with the requirements of the Fencing Act 1978. The Lessee must not claim any contribution from the Lessor to such fencing.

13.2 The Lessor will not be liable to contribute to the cost of erecting or maintaining any fence between the Land and any adjoining land owned by the Lessor.

13.3 The covenant in clause 13.2 does not operate for the benefit of any subsequent purchaser or lessee of the adjoining land.

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14. LAND STATUS

14.1 The Lessee acknowledges that:

- (a) the Land is subject to the Reserves Act 1977 and the restrictions in that Act that apply to the Land;
- (b) the Land has been reclaimed from the sea;
- (c) the Lessor has made no representation, express or implied, that:
 - (i) the Land is stable;
 - (ii) the Land is, or will remain, suitable or adequate for use by the Lessee;
 - (iii) any use of the Land by the Lessee complies with the by-laws or rules of the Council's district plan or other requirements of the Council or of any other Authority.

14.2 The Lessee covenants with the Lessor that the Lessee will not make any claim against the Lessor for any loss, resulting directly or indirectly from subsidence or instability of the Land.

14.3 The Lessor will indemnify and hold harmless the Lessee from and against all actions, claims, demands, losses, damages, costs and expenses for which the Lessee will or may be or become liable at any time in respect of and arising from any Contaminant in or on the Land existing prior to the Commencement Date or which occurs as a result of the acts of omissions of the Lessor.

14.4 In yielding up the Land to the Lessor under this Lease, whether pursuant to clause 10.1, 12.1(i) or 30.2, the Lessee will have no obligation in respect of the remediation of any Contamination to the Land existing prior to the Commencement Date or not otherwise arising out of the use and occupation of the Land by the Lessee.

15. USE

15.1 The Lessee must use the Land only for the Permitted Use.

15.2 A breach of clause 15.1 will be a material breach for the purposes of clause 19.1.

15.3 The Lessee must comply with the provisions of all statutes, ordinances, regulations and by-laws relating to the use of the land by the Lessee or other occupant and will also comply with the provisions of all licences, requisitions and compliance notices issued by any Authority in respect of the Land or the Building or their use by the Lessee or other occupants. The Lessee will promptly provide the Lessor with a copy of all requisitions and compliance notices received from any Authority under this clause.

15.4 The Lessee must:

- (a) not carry on any noxious, noisy or offensive business or activity on or about the Land or do anything which is or may become a nuisance or annoyance to

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any person, but the carrying on of the Permitted Use by the Lessee in a reasonable manner will not of itself be a breach of this clause;

- (b) not do anything which is or may become a breach of any duty imposed on any person by the Resource Management Act 1991; and
- (c) not do anything which is or may become a breach of any duty imposed on any person by the Health and Safety at Work Act 2015.

16. ASSIGNMENT OR SUBLETTING

16.1 Subject to the provisions of this clause 16, the Lessee must not assign, sublet, mortgage, charge or part with possession of the Land or any part of the Land, except with the prior written consent of the Lessor.

16.2 Without limiting the grounds on which the Lessor may withhold consent, the Lessor may, as a condition of any consent, require prior compliance with the following conditions in respect of a proposed assignment of the Lessee's interest in this Lease or a proposed sublease of the whole of the Land or Building:

- (a) the Lessee must prove to the Lessor's reasonable satisfaction that the proposed assignee or subtenant is responsible and reputable, and, in the case of an assignment, is of sound financial standing, and has the capability, capacity, and resources to be able to undertake the Permitted Use;
- (b) the Lessee must not be in breach of the Lessee's obligations under this Lease as at the time of the request for consent of the proposed assignment or grant of the sublease; and
- (c) in the case of an assignment, the assignee must sign a deed of covenant with the Lessor agreeing to perform the Lessee's obligations under this Lease but without releasing the assignor or any other person from liability under this Lease.

16.3 The Lessee may without the Lessor's prior written consent sublease part of the Building, for a period of no longer than 10 years (including rights of renewal), and for an area that is not:

- (a) in any single case more than 10%, or
- (b) in aggregate (at any time) more than 25%,

of the gross floor area of the Building.

16.4 For the avoidance of doubt a subletting authorised pursuant to clause 16.3 will not be a breach of clause 16.1.

16.5 For the purposes of clause 16.1 any proposed change in the effective control of a Lessee that is a Crown Entity or a State Owned Enterprise will not be a proposed assignment of this Lease. For the purpose of this clause and for the avoidance of doubt none of the following are an assignment or parting with possession of all or any part of the Land and/or Building or any interest in this Lease:

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- (a) a change in government;
- (b) a transferral of responsibility for administration or control of Crown Entities or State Owned Enterprises from one Ministry or Department to another;
- (c) a change in the membership or composition of any Council (as that term is defined in the Education and Training Act 2020) of the Lessee;
- (d) a change in the membership or composition of any board of directors or other governing body of the Lessee;
- (e) the disestablishment of the Lessee pursuant to the Education and Training Act 2020 and its incorporation into another institution pursuant to that Act; or
- (f) a change in the identity of the Minister who is responsible for administering or controlling Institutions or who holds shares in a Crown Entity or a State Owned Enterprise.

16.6 The Lessee must pay the Lessor's reasonable costs for any consent or application for consent under this clause (including the Lessor's reasonable legal costs).

16.7 Subject to clause 16.6, where the Lessee is a company, any change in the shareholding of the Lessee altering the effective control of the Lessee (or in the shareholding of any entity, other than a company or trust listed on any recognised stock exchange), so that ultimate control is not exercised by any one of those entities exercising control at the Commencement Date, will be deemed to be an assignment and the provisions of sub-clause 16.1 will apply.

16.8 In the event of an assignment of the Lessee's interest in this Lease, the liability of the assignor (being the person who assigned the Lessee's interest under this Lease) under or otherwise in respect of this Lease, whether in contract, tort, equity, under statute or otherwise, shall at all times be limited to \$24,000 (plus GST) and in no circumstances shall the assignor have any such liability after the expiry of 2 years following the date that the assignor, assigned its rights and interest under this Lease.

17. INTEREST ON UNPAID MONEY

17.1 If the Lessee defaults in payment of the rent or any other money payable under this Lease for 10 Working Days, then the Lessee will pay on demand interest at the Default Interest Rate on the moneys unpaid from the due date for payment down to the date of payment.

18. COSTS

18.1 The Lessee will pay the Lessor's proper legal costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Lessor's rights, powers and remedies under this Lease.

19. DEFAULT

19.1 Save for in the event of insolvency (which is dealt with under clause 19.2, the Lessor may cancel this Lease where:

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- (a) the rent shall be in arrears 20 Working Days after any rent payment rent date specified in clause 3.1 and the Lessee has failed to remedy that breach within 20 Working Days after service on the Lessee of a notice in accordance with section 245 of the PLA;
- (b) the Lessee is in material breach of the Lessee's obligations under this Lease and, the Lessee has failed to remedy that breach within 130 Working Days (subject to clause 19.2) of receiving written notice served on the Lessee by Lessor; and
- (c) the Lessor has first:
 - (i) served 40 Working Days' notice on any subtenant, occupier, mortgagee or charge holder in respect of the Land so as to allow them an opportunity to take steps to remedy the breach; and
 - (ii) obtained an order of the court for possession of the Land in accordance with section 244 of the PLA,

and the Term will terminate on such cancellation but without prejudice to the rights of either party against the other.

19.2 The period of 130 Working Days referred to in clause 19.1(a) will be reduced to 40 Working Days where the Lessee:

- (a) being a natural person:
 - (i) is declared bankrupt or insolvent according to law; or
 - (ii) assigns his or her estate or enters into a deed of arrangement for the benefit of creditors; or
- (b) being a company:
 - (i) is or is deemed to be unable to pay the Lessee's debts under section 287 of the Companies Act 1993;
 - (ii) goes into liquidation (other than voluntary liquidation for the purpose of reconstruction or amalgamation approved in writing by the Lessor);
 - (iii) is wound up or dissolved;
 - (iv) enters into any assignment or other compromise or scheme of arrangement with the Lessee's creditors or any class of the Lessee's creditors;
 - (v) has a receiver, manager or receiver and manager appointed relating to any of the Lessee's assets; or

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- (vi) has an application made to a court for, or a resolution proposed for, or any other step is taken in anticipation of, the appointment of an administrator or has an administrator appointed.

19.3 The parties acknowledge that the provisions of this clause 19 will be in addition to any rights granted to the Lessee, mortgagee or charge holder under the PLA.

20. ESSENTIAL TERMS

20.1 The Lessee's breach of the following terms is a breach of an essential term of this lease:

- (a) the covenant to pay rent or other money payable by the Lessee under this Lease;
- (b) the terms dealing with assignment and subleasing; or
- (c) the terms restricting the use of the Land.

20.2 The Lessor's acceptance of any arrears of rent or other money payable under this lease is not a waiver of the essential obligation to pay any other rent or money payable under this Lease.

20.3 The Lessee must compensate the Lessor for any breach of an essential term of this Lease. The Lessor may recover damages from the Lessee for those breaches. The Lessor's entitlement to compensation under this clause is in addition to any other remedy or entitlement of the Lessor (including the right to terminate this lease).

21. NEGLECT OF OTHER TENANTS

21.1 The Lessor will not be responsible to the Lessee for any act or default or neglect of any other tenant of the Lessor, or members of the public.

22. REPUDIATION

22.1 The Lessee will compensate the Lessor and the Lessor will be entitled to recover damages for any loss or damage suffered by reason of any acts or omissions of the Lessee constituting a repudiation of the Lease or the Lessee's obligations under the Lease. The Lessor's entitlement to recover damages will subsist despite any determination of the Lease and will be in addition to any other right or remedy which the Lessor may have.

23. QUIET ENJOYMENT

23.1 Until the expiry or earlier termination of the Lease, the Lessee (if complying with the Lessee's obligations under this Lease) will quietly hold and enjoy the Land without any improper interruption by the Lessor or any person claiming under the Lessor.

24. RIGHT OF SURRENDER

24.1 The Lessee may at any time after the expiry of 10 years after the Commencement Date give notice to the Lessor of no less than 12 months that the Lessee wishes to surrender

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this Lease. This Lease will then be surrendered on the expiry of that notice period. The parties will then take such steps as are necessary to surrender this Lease.

- 24.2 Any surrender pursuant to clause 22.1 will be without prejudice to the rights of either party against the other in respect of any earlier breach of their respective obligations in this Lease.

25. GENERAL INDEMNITY

- 25.1 The Lessee will indemnify and hold harmless the Lessor from and against all actions, claims, demands, losses, damages, costs and expenses for which the Lessor will or may be or become liable in respect of and arising from:

- (a) any failure by the Lessee to comply with any obligation imposed on the Lessee under this Lease or by law;
- (b) any use of the Land by the Lessee; or
- (c) any wrongful act, wrongful omission, neglect, breach, or default on the part of the Lessee under this Lease.

26. HEALTH AND SAFETY

- 26.1 The Lessee must, to the extent that its health and safety duties overlap with the Lessor:
- (a) so far as is reasonably practicable, consult, co-operate with and co-ordinate its activities at the Land with the Lessor; and
 - (b) ensure that any feedback, agreed changes or improvements to health and safety processes and procedures are implemented immediately.

27. ARBITRATION

- 27.1 Unless any dispute or difference is resolved by agreement, the dispute or difference must be submitted to the arbitration of one arbitrator who will conduct the arbitral proceedings in accordance with the Arbitration Act 1996.
- 27.2 If the parties are unable to agree on the arbitrator, an arbitrator will be appointed, upon request of any party, by the president or vice-president for the time being of the New Zealand Law Society. That appointment will be binding on all parties to the arbitration and will be subject to no appeal. The provisions of article 11 of the First Schedule to the Arbitration Act 1996 are to be read subject to this clause and are varied accordingly.
- 27.3 The procedures prescribed in this clause will not prevent the Lessor from taking proceedings for the recovery of any rent or other money payable under this Lease that remain unpaid or from exercising the rights and remedies in the event of a default prescribed in clause 19.1.
- 27.4 The arbitrator may award interest at the default interest rate on any sum which is awarded to any party.

28. EASEMENTS

- 28.1 This Lease is granted subject to and with the benefit of the Easements.

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29. HOLDING OVER

- 29.1 If the Lessor permits the Lessee to remain in occupation of the Land after the expiry or sooner determination of the Term, that occupation will be a periodic tenancy only terminable by 20 Working Days' notice and otherwise on the same covenants and agreements (so far as applicable to a periodic tenancy) as are expressed or implied in this Lease.

30. NO COMPENSATION FOR BUILDING

- 30.1 Subject to clause 30.2, on termination of this Lease by expiry, surrender, breach of conditions, or otherwise, the Land, together with the Building and all other improvements on the Land, will revert to the Lessor **without** any compensation or consideration whatsoever being payable to the Lessee.

- 30.2 Where this Lease is surrendered pursuant to clause 24.1 and the date that surrender takes effect (**Surrender Date**) is later than the date fifty (50) years from the Commencement Date, and the Lessor, acting reasonably, is of the opinion that the Building has reached the end of its useful life and:

- (a) it is not subsequently able to be reasonably occupied and/or used by the Lessor; or
- (b) significant costs would need to be incurred by the Lessor to enable it to be reasonably occupied and/or used by the Lessor;

the Lessor may, by written notice given to the Lessee no later than eighteen months prior to the Surrender Date, require the Lessee to reinstate the Land by removing the Building, clearing the demolition debris and returning the Land to a safe and usable condition, including restoring the surface to grass safe and suitable for public use.

- 30.3 **Failure to remove and reinstate:** If the Lessee, after receiving a notice pursuant to clause 30.2 does not remove the Building and reinstate the Land prior to Surrender Date, the Lessor may, at its discretion, remove the Building and reinstate the Land, and the Lessee undertakes to repay promptly on demand all costs and expenses incurred by the Lessor in doing so.

31. SUITABILITY

- 31.1 No warranty or representation expressed or implied has been or is made by the Lessor that the Land is now suitable or will remain suitable or adequate for use by the Lessee or that any use of the Land by the Lessee will comply with the by-laws or ordinances or other requirements of any authority having jurisdiction.

32. FORCE MAJEURE

- 32.1 Neither party shall be liable for any failure or delay in complying with any obligation imposed on it under this Agreement if:

- (a) the failure or delay arises from a Force Majeure Event;

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- (b) that party, on becoming aware of the Force Majeure Event, promptly notifies the other party advising of the nature and expected duration of, and the obligation affected by, the Force Majeure Event; and
- (c) that party uses its best endeavours:
- (i) to mitigate the effects of the Force Majeure Event on that party's obligations under this Agreement; and
 - (ii) to perform that party's obligations under this Agreement on time despite the Force Majeure Event.
- 32.2 An obligation to pay money, or the consequences of insolvency, or financial difficulty, are never excused by a Force Majeure Event.
- 33. WAIVER**
- 33.1 No waiver or failure to act by either party in respect of any breach by the other operates as a waiver of any other breach.
- 34. NOTICES**
- 34.1 All notices must be in writing and must be served by one of the following means:
- (a) in the case of a notice under sections 245 or 246 of the PLA in the manner prescribed by section 353 of the PLA; and
 - (b) in all other cases, unless otherwise required by sections 354 to 361 of the PLA:
 - (i) in the manner authorised by sections 352 to 361 of the PLA; or
 - (ii) by personal delivery, or by posting by registered or ordinary mail, or by email.
- 34.2 In respect of service under clause 34.1(b)(ii), a notice is deemed to have been served:
- (a) in the case of personal delivery, when received by the addressee;
 - (b) in the case of posting by mail, on the second Working Day following the date of posting to the addressee's last known address in New Zealand; or
 - (c) in the case of email, when acknowledged by return email or otherwise in writing.
- 34.3 In the case of a notice to be served on the Lessee, if the Lessor is unaware of the Lessee's last known address in New Zealand, any notice placed conspicuously on any part of the Land will be deemed to have been served on the Lessee on the day on which it is placed.
- 34.4 A notice will be valid if given by any director, general manager, solicitor, or other authorised representative of the party giving the notice.

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- 35.1 The Lessor's consent under this lease is required for each occasion even if the Lessor has given a consent for the same or a similar purpose on an earlier occasion.

36. TAURANGA CITY COUNCIL

- 36.1 Without derogating from its responsibilities as territorial authority, the parties acknowledge and agree that nothing in this Lease will fetter or otherwise limit or compromise Tauranga City Council in performing its role as territorial authority.

SCHEDULE C**SIGNAGE & NAMING RIGHTS RULES**

No signage (whether signboards, advertisements or name signs) shall be:

- (a) offensive;
- (b) inappropriate taking into account the status of the land and surrounding land as a reserve;
- (c) likely to bring the Lessor into disrepute or ridicule; or
- (d) in conflict with any signage or naming rights the Lessor has previously reserved or granted.

SCHEDULE FIVE

Signage and Naming Requirements

No signage (whether signboards, advertisements or name signs) shall be:

- (a) offensive;
- (b) inappropriate taking into account the status of the land and surrounding land as a reserve;
- (c) likely to bring the Lessor into disrepute or ridicule; or
- (d) in conflict with any signage or naming rights the Lessor has previously reserved or granted.