

Draft Institutional  
lease agreement  
(with attached licence area)



**PARK LANDS  
LEASE AGREEMENT**

IMPORTANT NOTICE

*Retail and Commercial Leases (SA) 1995 ("Act")*

This Lease is exempt from the application of the Act pursuant to an exemption granted under section 77(1) of the Act by the Minister for Business Services and Consumer on 28 December 2011.



**Contamination** means the presence in, on or under land, air or water of a substance (solid, liquid or gel) or matter at a concentration or level above the concentration or level at which the substance or matter is normally present in, on or under land, air or water in the same locality being a presence that presents a risk of harm to human health or the Environment, or results in a non-compliance with or breach of any Environmental Law (and **contaminant**, **contaminated** and **contaminate** have a corresponding meaning).

**Council** means the party described as "Council" in this Lease and where the context permits includes the employees, contractors, agents and other invitees of the Council.

**Default Rate** means ten per centum (10%).

**Dispute** means a dispute between the Council and the Lessee in relation to this Lease.

**Environment** includes:

- land, air and water;
- any organic or inorganic matter and any living organism; and
- human made or modified structures and areas.

**Environmental Law** means any Statutory Requirement that deals with an aspect of the Environment or health whether made before or after the Commencement Date.

**GST** has the same meaning as given to that term in the GST Legislation.

**GST Legislation** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any ancillary or similar legislation.

**GST Rate** means 10% or such other percentage equal to the rate of GST imposed from time to time under the GST Legislation.

**Insolvency Event** means (in the case of a Lessee being a company or association):

- a meeting of the directors or members of the Lessee is convened to pass a resolution that an administrator of the Lessee be appointed or that the Lessee be wound up voluntarily;
- any person appoints an administrator of the Lessee;
- an application is made to any court to wind up the Lessee;
- an application is made pursuant to Section 411 of the Corporations Act 2001;
- a Controller, Managing Controller, Receiver or Receiver and Manager is appointed to the Lessee or in respect of any property of the Lessee; or
- the Lessee is deregistered or dissolved.

**Institute** means the South Australian Division of the Australian Property Institute (or its successor or equivalent).

**Legislation** includes any relevant Statute or Act of Parliament (whether State or Federal) and any regulation or by-law including by-laws issued by any Statutory Authority.

**Lessee** means the party described as “Lessee” in this Lease and where the context permits includes the employees, contractors, agents, customers and other invitees of the Lessee.

**Lessee's Equipment** means any and all fittings and other equipment installed on, brought on to or kept on the Premises by the Lessee (with or without the consent of the Council).

**Loss** means any loss, damage, death or injury.

**Park Lands** means the Adelaide Park Lands as defined in the Park Lands Act.

**Park Lands Act** means the *Adelaide Park Lands Act (SA) 2005*.

**Payment Date** means the Commencement Date and then the first day of each month during the Term.

**Permitted Use** means the use described in Item 5.

**Plan** means the plan comprising Annexure A.

**Premises** means the area marked on the plan in Annexure A including:

- all Buildings, improvements, fixtures, fittings, plant and equipment in or on the Premises; and
- all the amenities, conveniences and Services of, in or to the Premises.

**Rent** means the rent described in Item 3 (as reviewed from time to time).

**Resolving Body** means LEADR or if that body no longer exists an equivalent Australasian organisation formed to promote dispute resolution.

**Review Date** means each date in Item 4.

**Review Method** means the relevant method of rent review in Item 4 for any Review Date.

**Services** means all services (including gas, electricity, water, sewerage, fire control systems, air-conditioning, plumbing and telephone and all plant, equipment, pipes, wires and cables in connection with them as applicable) to or of the Premises supplied by any authority, the Council or any other person the Council authorises.

**Special Conditions** means any special conditions (if any) in Item 11.

**Statutory Authorities** means any government or semi government authorities (including the Council in its separate capacity as local government authority) or authorities created by or under Legislation.

**Statutory Requirements** means all relevant and applicable Legislation and all lawful conditions, requirements, policies, notices, plans and directives issued or applicable under any such Legislation or by any Statutory Authorities (including any requirement of Council in its separate capacity as a Statutory Authority).

**Structural Work** includes:

- repairing or replacing building facades or any external or internal load bearing structure essential for the stability or strength of the Building including foundations, columns, walls, floors and beams;
- repairs and replacements necessary to keep any Building structurally sound, weatherproof and water tight;
- resurfacing any car park, roads, paths and access ways; and
- works to retaining walls, kerbing and guttering.

**Term** means the term described in Item 2 and any period during which the Lessee holds over or remains in occupation of the Premises.

**Valuer** means a qualified valuer appointed to make a determination under this Lease:

- who will be appointed as agreed by the Council and the Lessee or, failing agreement the person holding or acting in the position of President of the Institute;
- who must have practised as a valuer with a minimum of five (5) years relevant experience; and
- who must act as an expert and not as an arbitrator.

**Yearly Amounts** means the aggregate of the Rent and any other moneys payable by the Lessee during the Term.

## 1.2 Interpretation

Unless the contrary intention appears:

- 1.2.1 headings are for convenience only and do not affect interpretation;
- 1.2.2 the singular includes the plural and vice-versa;
- 1.2.3 a reference to an individual or person include a corporation, partnership, joint venture, authority, trust, state or government and vice versa;
- 1.2.4 a reference to any party in this Lease, or any other document or arrangement referred to in this Lease, includes that party's executors, administrators, substitutes, successors and assigns;
- 1.2.5 a reference to any document (including this Lease) is to that document as varied, novated, ratified or replaced from time to time;
- 1.2.6 a reference to any Legislation includes any statutory modification, re-enactment or any Legislation substituted for it, and all by-laws, regulations and rules issued under it;
- 1.2.7 a reference in this Lease to the Council's approval or consent, is to the Council's prior written approval or consent which may be granted or withheld in the absolute discretion of the Council; and

1.2.8 “including” and similar expressions are not and must not be treated as words of limitation.

## 2. GRANT OF LEASE

The Council grants and the Lessee accepts a lease of the Premises for the Term.

## 3. RENT

### 3.1 Payment of rent

The Lessee must unless otherwise agreed pay the Rent by equal monthly instalments in advance on each Payment Date.

### 3.2 Instalment

If a rent instalment period is less than a month, the instalment for that period is calculated at a daily rate based on the number of days in the month in which that period begins and the monthly instalment which would have been payable for a full month.

## 4. RENT REVIEWS

### 4.1 Fixed review

The Rent on and from each Review Date is calculated as follows:

$$R_2 = R_1 \times 1.04$$

Where:

$R_2$  is the Rent after the Review Date; and

$R_1$  is the Rent immediately before the Review Date (disregarding any abatements incentives or reductions).

### 4.2 Rent pending determination

4.2.1 The Rent may be reviewed at any time from a Review Date even if the review is instituted after that Review Date.

4.2.2 If the Rent to apply on and from a Review Date has not been agreed on or determined by that Review Date, the Lessee must continue to pay Rent until the Rent is determined.

### 4.3 Adjustment once rent determined

Once the Rent to apply on and from a Review Date is determined, the Lessee will pay any shortfall and the Council will allow any adjustment for overpayment at the next Payment Date.

## 5. UTILITIES AND RATES

### 5.1 Utilities and Services

The Lessee will pay when due all costs for the use of telephone, light and other facilities and the consumption of electricity, gas, oil, water and any and all other Services and utilities supplied to or used from the Premises.

## 5.2 **No separate meter**

If there is no separate meter for recording or measuring the Services and utilities supplied to or used from the Premises, then the Lessee must, if required by the Council, install the necessary meters at the Lessee's cost.

## 5.3 **Rates and other taxes**

The Lessee must pay or reimburse the Council for all rates, taxes, levies or other charges (including any Council rates assessed by Council as a Statutory Authority) arising from the grant of the Lease or otherwise assessed or charged in relation to:

5.3.1 the Premises; or

5.3.2 the Lessee's use or occupation of the Premises.

## 6. **USE OF PREMISES**

### 6.1 **Permitted Use**

6.1.1 The Lessee must use the Premises only for the Permitted Use and not use or allow the Premises to be used for any other use including functions or events (without the consent of Council).

6.1.2 Despite anything to the contrary in this Lease the Lessee acknowledges and agrees that the use of the Premises for functions and events is limited to functions and events for the benefit of the the Lessee's staff, students and other members and in the event the Council determines that any of the Premises is being used or operated (whether in whole or in part) as an ongoing business or commercial enterprise the Council is entitled on written notice to the Lessee to require the Lessee to cease undertaking the relevant activity.

### 6.2 **Park Lands**

The Lessee must comply with the approved management plans, guidelines and strategies (from time to time) of the Council and APLA with respect to the use and occupation of the Premises (being part of the Park Lands).

### 6.3 **Offensive activities**

The Lessee must:

6.3.1 not carry on any offensive or dangerous activities on or from the Premises or create a nuisance or disturbance either:

6.3.1.1 for the Council; or

6.3.1.2 for the owners or occupiers of any adjoining property; and

6.3.2 ensure at all times that activities conducted on or from the Premises will not bring any discredit upon the Council.

#### **6.4 Use of Services**

The Lessee will:

- 6.4.1 ensure that the Services are used responsibly and in accordance with any reasonable directions that may be given by Council; and
- 6.4.2 be responsible to repair or correct any damage or malfunction which results from any misuse or abuse of the Services.

#### **6.5 Statutory requirements**

The Lessee must comply with all Statutory Requirements relating to the Lessee's use and occupation of the Premises.

#### **6.6 No alcohol**

The Lessee may:

- 6.6.1 serve, sell or provide to persons; or
- 6.6.2 consume or allow persons to consume;

alcohol on the Premises provided the Lessee has been granted all required consents from any Statutory Authorities.

#### **6.7 Signs**

The Lessee must not place any signs or advertisements in or on the Premises (including on the outside or inside (if they can be seen from outside) of any Building), except signs which:

- 6.7.1 are approved by the Council; and
- 6.7.2 comply with any relevant Statutory Requirements.

#### **6.8 Dangerous or heavy equipment**

- 6.8.1 The Lessee may only install or use equipment which is normally used in connection with the Permitted Use.
- 6.8.2 The Lessee must not without the consent of Council install or bring onto the Premises:
  - 6.8.2.1 any electrical, gas powered or other equipment which may pose a danger, risk or hazard;
  - 6.8.2.2 any dangerous chemicals or other dangerous substances; or
  - 6.8.2.3 any heavy equipment or items which may damage the Premises.

#### **6.9 Fire precautions**

The Lessee must comply with:

- 6.9.1 all reasonable requirements of the Council with regard to fire safety systems and procedures; and



6.9.2 all Statutory Requirements relating to fire safety including undertaking at the Lessee's cost any structural modifications or other building works which are required as a consequence of the Lessee's use or occupation of the Premises.

**6.10 Security**

The Lessee must keep the Building securely locked at all times when the Premises is not occupied and must provide a key to the Building to the Council to be used in the case of an emergency.

**6.11 No vehicles**

The Lessee must not or allow any other person to drive, ride or park any vehicle on or over any part of the Park Lands without the consent of Council.

**6.12 No warranty**

The Council makes no warranty or representation regarding the suitability of the Premises (structural or otherwise) of the Services for the Permitted Use or any other purpose.

**7. INSURANCE**

**7.1 Lessee must insure**

The Lessee must keep current during the Term:

7.1.1 public risk insurance for at least the amount in Item 6 (or any other amount the Council reasonably requires) for each claim;

7.1.2 a policy in respect of breakage and damage to plate and other glass in the Premises;

7.1.3 all insurance in respect of the Lessee's Equipment for its full replacement value; and

7.1.4 other insurances required by any Statutory Requirement or which the Council reasonably requires.

**7.2 Council to insure**

7.2.1 The Council will insure the Building during the Term and the Lessee must reimburse the Council on demand the cost of such insurance.

7.2.2 If the Council maintains an insurance policy that covers the Premises and other buildings and improvements, the Lessee must reimburse a share of the Council's cost of such insurance which will be calculated as the proportion the current value of the Premises (as determined by Council) bears from time to time to the value of all other buildings and improvements covered by and included in that insurance.

7.2.3 The Council will provide the Lessee with evidence of the currency of such insurance (if requested by the Lessee) provided that if any insurance of Council is maintained under any discretionary self-insured fund then no certificate of currency or copy of any insurance policy will be available to the Lessee.

### **7.3 Requirements for Lessee's policies**

Each policy the Lessee takes out must:

- 7.3.1 be with an insurer and on terms (including value of policy) approved by the Council;
- 7.3.2 be in the name of the Lessee and note the Council's interest; and
- 7.3.3 cover events occurring during the policy's currency regardless of when claims are made.

### **7.4 Evidence of insurance**

- 7.4.1 The Lessee must give the Council copies of certificates evidencing the currency of the policies the Lessee has taken out under this clause 7
- 7.4.2 During the Term the Lessee must:
  - 7.4.2.1 pay each premium before it is due for payment;
  - 7.4.2.2 give the Council copies of certificates of currency each year when the policies are renewed and at other times the Council requests;
  - 7.4.2.3 not allow any insurance policy to lapse or vary or cancel it without the Council's consent; and
  - 7.4.2.4 notify the Council immediately if a policy is cancelled or if an event occurs which could prejudice or give rise to a claim under a policy.

### **7.5 Additional premium and excess**

- 7.5.1 The Lessee must not do anything which may:
  - 7.5.1.1 prejudice or render void or voidable any insurance of the Premises; or
  - 7.5.1.2 increase the premium for any insurance.
- 7.5.2 If the Lessee does anything (with or without the consent of Council) that increases the premium of any insurance of the Council the Lessee must on demand pay the amount of that increase to the Council.
- 7.5.3 The Lessee must pay all excess amounts paid or payable by the Council relating to any accident or claim caused or contributed to by the Lessee.

## **8. REPAIR, MAINTENANCE AND ALTERATIONS**

### **8.1 Maintenance and repair**

- 8.1.1 The Lessee must keep, repair and maintain the Premises and the Lessee's Equipment in good repair and condition including:
  - 8.1.1.1 repairing, maintaining or replacing any of the Lessee's Equipment;

- 8.1.1.2 undertaking any upgrade to Services or improvement to the Premises required as a result of the Lessee's use or occupation of the Premises;
  - 8.1.1.3 undertaking any repairs, maintenance or other works (including any works of a capital or Structural nature); and
  - 8.1.1.4 undertaking any works required as a consequence of fair wear and tear.
- 8.1.2 Not less frequently than annually the Lessor and the Lessee must review any works for repairs or replacements of which either party is aware that are required for the next year.
- 8.1.3 Each party must inform the other in writing of any critical structural or capital maintenance, replacement and repair required in respect of the Premises as soon as practicable after it becomes aware of it.
- 8.1.4 The Lessee must when complying with the obligations under the Lease use all reasonable endeavours to carry out any repairs and maintenance in a timely manner and cause as little interruption as possible to the Council and other users of the Park Lands.
- 8.1.5 Any disputes in regard to the subject matter of this clause 8 may be referred by either party for determination under clause 21 of this Lease.
- 8.1.6 The Lessee must not (without the Council's consent) permit the Lessee's agents to:
- 8.1.6.1 cut injure damage deface or obstruct any convenience appliance plant or equipment in the Premises; or
  - 8.1.6.2 mark drill or deface the walls ceilings columns floor or other parts of the Premises; or
  - 8.1.6.3 use the lavatories toilets sinks drains and other plumbing facilities in the Premises for any purpose other than that for which they were constructed or provided and not to deposit or permit to be deposited any rubbish or other material in such facilities.
- 8.1.7 If the Council is required to carry out any works which are the responsibility of the Lessee under this clause 8.1 then:
- 8.1.7.1 the Council may (without any obligation to do so and without any liability to the Lessee in respect of such works) execute such works as if it were the Lessee; and
  - 8.1.7.2 the Lessee shall be liable for all of Council's reasonable costs and expenses in executing such works.

## **8.2 Alterations by Lessee**

- 8.2.1 The Lessee must not carry out any alterations or additions to the Premises without the consent of Council.

- 8.2.2 The Lessee must carry out any approved alterations and additions:
- 8.2.2.1 in a proper and workmanlike manner;
  - 8.2.2.2 in accordance with the conditions and approvals imposed by the Council (as lessor under this Lease); and
  - 8.2.2.3 in accordance with all Statutory Requirements.
- 8.2.3 The Lessee will pay all of the Council's costs (including consultant's costs and legal costs) as a result of the Lessee's alterations and additions.
- 8.2.4 Unless otherwise agreed in writing, any alteration or addition made pursuant to this clause will be the property of the Council.

### 8.3 Pests

The Lessee must keep the Premises free of vermin, insects and other pests (including termites).

### 8.4 Cleaning

The Lessee must:

- 8.4.1 keep the Premises and the surrounding areas clean and tidy and free from dirt, rubbish and graffiti; and
- 8.4.2 not cause any part of the Park Lands to be left untidy or in an unclean state or condition.

## 9. ENVIRONMENT

### 9.1 Environmental obligations

- 9.1.1 The Lessee must not do anything that causes Contamination or is likely to cause Contamination to the Premises or the Environment in contravention of any Environmental Law.
- 9.1.2 The Lessee must perform at its cost any environmental remediation works required as a result of a breach by the Lessee of this clause.

### 9.2 Indemnity

Without limiting clause 15, the Lessee indemnifies the Council against any Claims for any Loss as a result of or contributed to by any breach of an Environmental Law by the Lessee.

### 9.3 Termination

This clause 9 survives termination or the expiration of this Lease.

## 10. ASSIGNING, SUBLETTING AND CHARGING

### 10.1 Assignment

The Lessee must not assign, transfer or otherwise deal with the Lessee's interest in the Premises under this Lease without the consent of Council.

## 10.2 Request for Assignment

If the Lessee requests that the Council consent to any assignment, transfer or other dealing the Lessee must comply with Council's procedural requirements for dealing with the request.

## 10.3 No release

Where the Council grants consent to an assignment or transfer, the Lessee (i.e. the party assigning or transferring the Lease or rights under the Lease) will not be released or discharged from the current or future obligations under this Lease.

## 10.4 Subletting and hiring out

10.4.1 The Lessee must not sublet, hire out or otherwise part with possession of the Premises without the consent of Council.

10.4.2 The Lessee must provide Council with details of the proposed sub-lease, hire agreement or other dealing including a copy of the proposed agreement and details of the sub-lease or hire fees.

10.4.3 The Lessee is responsible for ensuring that any sub-lessee or hirer complies with this Lease and all of the terms of the approved sub-lease or hire agreement.

## 10.5 Charging

10.5.1 The Lessee must not charge the Lessee's interest in this Lease or the Lessee's Equipment without the consent of Council.

10.5.2 If the Council consents to a charge then the Lessee must enter into a deed in a form required by the Council which ensures the charge is subject to the Council's rights under this Lease.

## 10.6 Costs

The Lessee must pay all costs reasonably incurred by the Council (including any legal fees) in relation to any dealing under this clause, including in considering whether or not to grant any consent to a request by the Lessee under this clause 10.

# 11. COUNCIL'S OBLIGATIONS AND RIGHTS

## 11.1 Quiet enjoyment

Subject to the Council's rights and to the Lessee complying with the Lessee's obligations under this Lease, the Lessee may occupy the Premises during the Term without interference from the Council.

## 11.2 Right to enter

The Council may (except in the case of emergency when no notice will be required) enter the Premises after giving the Lessee reasonable notice:

11.2.1 to see the state of repair of the Premises;

11.2.2 to do repairs to the Park Lands or other works which cannot reasonably be done unless the Council enters the Premises; and

11.2.3 to do anything the Council must or may do under this Lease or must do under any law.

### 11.3 **Emergencies**

In an emergency the Council may:

11.3.1 close the Premises; and

11.3.2 prevent or restrict access to the Park Lands.

### 11.4 **Works and restrictions**

11.4.1 The Council may:

11.4.1.1 install, use, maintain, repair, alter, and interrupt Services;

11.4.1.2 carry out works on the Park Lands; and

11.4.1.3 close (temporarily or permanently) and restrict access to the Park Lands (including the Premises).

11.4.2 The Council must (except in cases of emergency) take reasonable steps to minimise interference with the Lessee's use and occupation of the Premises.

### 11.5 **Right to rectify**

Council may at the Lessee's cost do anything which the Lessee should have done under this Lease but which the Lessee has not done or which the Council reasonably considers the Lessee has not done properly.

### 11.6 **Park Lands Events**

11.6.1 The Lessee acknowledges and agrees that (subject to its location in the Park Lands) the Premises may not be available for use and occupation as a result of public or special events to be held in the Park Lands.

11.6.2 The Lessee may not make any Claim against the Council arising from or in connection with any public or special events or the Premises not being available for the Lessee's use and occupation.

11.6.3 The Lessee will not be required to make any payments on account of instalments of Rent for the period the Premises is not available for use by the Lessee as a consequence of any public or special event.

## 12. **DAMAGE OR DESTRUCTION**

### 12.1 **Termination for destruction or damage**

12.1.1 If the Premises is destroyed or is damaged so that the Premises is unfit for the Lessee's use then within three (3) months after the damage or destruction occurs, the Council must give the Lessee a notice either:

12.1.1.1 terminating this Lease (on a date at least one (1) month after the Council gives notice); or

12.1.1.2 advising the Lessee that the Council intends to repair any building forming part of the Premises so that the Lessee can occupy and use the Premises.

12.1.2 If the Council gives a notice under clause 12.1.1.2 but does not carry out the intention within a reasonable time, the Lessee may give notice to the Council that the Lessee intends to end the Lease if the Council does not make the Premises accessible and fit for use and occupation by the Lessee within a reasonable time (having regard to the nature of the required work).

12.1.3 If the Council does not comply with the Lessee's notice under clause 12.1.2, the Lessee may terminate this Lease by giving the Council not less than one (1) month's notice without any Claim by the Lessee against the Council.

## 12.2 Reduction or abatement of rent

12.2.1 The Yearly Amounts to be paid by the Lessee will during the period the Premises is unfit or inaccessible be reduced unless:

12.2.1.1 the Premises is unfit or inaccessible; or

12.2.1.2 an insurer refuses to pay a claim;

as a result of the default or negligence of the Lessee.

12.2.2 The level of the reduction (if any) will depend on the nature and extent of the damage.

12.2.3 If the level of the reduction (if any) cannot be agreed it will be determined by a Valuer.

## 13. RETURN OF PREMISES ON EXPIRY OR TERMINATION

### 13.1 Expiry

This Lease will end at midnight on the last day of the Term unless it is terminated earlier by the Council or the Lessee under any other provision of this Lease.

### 13.2 Handover of possession

13.2.1 Before this Lease ends, the Lessee will (if required to do so by the Council) to Council's satisfaction:

13.2.1.1 remove and reinstate any alterations or additions made by the Lessee and remove the Lessee's Equipment;

13.2.1.2 carry out and complete any repairs and maintenance that the Lessee is obliged to carry out under this Lease; and

13.2.1.3 terminate all Services.

13.2.2 If it is not practical for the Lessee to undertake and complete these requirements before the Lease comes to an end, then such works must be undertaken immediately after the Lease comes to any end, but in accordance with the reasonable requirements of the Council.

13.2.3 If at the time that possession of the Premises is given back to the Council, the Lessee has not complied with all or any of its obligations under this clause 13.2, the Lessee shall not be relieved of its obligation to comply with these requirements, or to compensate the Council for failure to do so, by reason of the fact that the Council has accepted or taken possession of the Premises.

### 13.3 Holding over

If with the Council's consent the Lessee continues to occupy the Premises after the end of this Lease, the Lessee does so as a monthly tenant which:

13.3.1 either party may terminate on one (1) month's notice given at any time; and

13.3.2 is on the same terms as this Lease.

## 14. BREACH

### 14.1 Payment obligations

14.1.1 The Lessee must make payments due under this Lease:

14.1.1.1 without demand (unless this Lease provides demand must be made);

14.1.1.2 without set-off, counter-claim, withholding or deduction; and

14.1.1.3 to the Council or as the Council directs; and

14.1.1.4 by direct debit or such other means as the Council directs.

14.1.2 If a payment is stated to be due on a particular Payment Date (such as the next Payment Date or the first Payment Date after an event) and there is no such Payment Date, the Lessee must make that payment on demand.

### 14.2 Set off

The Council may, by notice to the Lessee, set off against any amount due and payable under this Lease by the Council to the Lessee, any amount due and payable by the Lessee to the Council under this Lease or under any other agreement or arrangement.

### 14.3 Council's rights on breach

14.3.1 If the Lessee is at any time in breach of any of its obligations under this Lease, and the Lessee fails to remedy that breach to the satisfaction of the Council after being requested by the Council to do so, the Council may at any time come onto the Premises without notice and do all things necessary to remedy that breach.

14.3.2 The Lessee will be liable to pay or reimburse the Council for all costs and expenses incurred by the Council in that regard which the Council may recover from the Lessee as a debt due and payable on demand.



#### **14.4 Default, breach and re-entry**

In the event:

- 14.4.1 the Rent or any moneys (or part of any moneys) payable under this Lease are unpaid for the space of fourteen days (14) after any day on which the same ought to have been paid (although no legal or formal demand has been made);
- 14.4.2 the Lessee commits, permits or suffers to occur any breach, or default in the due and punctual observances and performance of any of the covenants, obligations and provisions of the Lease;
- 14.4.3 of an Insolvency Event; or
- 14.4.4 the Premises is left unoccupied for one (1) month or more without the consent of Council;

then despite any other clause of this Lease the Council at any time has the right to terminate this Lease, re-enter into and re-possess the Premises but without prejudice to any action or other remedy which the Council has or might or otherwise could have for arrears of Rent or any other amounts or breach of covenant or for damages as a result of any such event and the Council shall be freed and discharged from any action, suit, claim or demand by or obligation to the Lessee under or by virtue of the Lease.

#### **14.5 Rights of Council not limited**

The rights of the Council under this Lease and at law resulting from a breach of this Lease by the Lessee will not be excluded or limited in any way by reason of the Council having or exercising any powers under this clause 14.

#### **14.6 Landlord and Tenant Act**

In the case of a breach or default of this Lease where notice is required to be given pursuant to Section 10 of the *Landlord and Tenant Act 1936*, such notices will provide that the period of fourteen (14) days is the period within which the Lessee is to remedy any such breach or default if it is capable of remedy or to make reasonable compensation in money to the satisfaction of the Council provided that no notice shall be required in respect of the non-payment of Rent.

#### **14.7 Repudiation and damages**

- 14.7.1 The Lessee acknowledges that the following obligations under this Lease are essential terms:
  - 14.7.1.1 the obligation to pay Rent and any other moneys under the Lease;
  - 14.7.1.2 the obligations and prohibitions in relation to use of the Premises;
  - 14.7.1.3 the obligations in relation to repair and maintenance;
  - 14.7.1.4 the obligations and restrictions in relation to additions and alterations to the Premises; and

14.7.1.5 the restriction on assignment, subletting, mortgaging and licensing.

14.7.2 If the Council accepts payment of Rent or any other moneys late or does not act or exercise any rights immediately or at all in respect of any breach of an essential term, that conduct on the part of the Council will not be deemed to amount to a waiver of the essential nature of that essential term.

14.7.3 If the Lessee breaches any essential term, that conduct on the part of the Lessee will be deemed to constitute a repudiation of this Lease and the Council may then at any time rescind this Lease by accepting that repudiation.

14.7.4 The Lessee agrees that if this Lease is terminated by the Council because of a breach by the Lessee of an essential term, or if the Lessee repudiates this Lease and the Council accepts that repudiation rescinding this Lease, the Lessee will be obliged to pay compensation to the Council including Rent and other moneys which the Council would otherwise have received under this Lease had the Lessee not breached an essential term or repudiated this Lease.

14.7.5 The rights of the Council under this clause 14.7 and any action taken by the Council do not exclude or limit any other rights or entitlements which the Council has under this Lease or at law in respect of any breach or repudiatory conduct on the part of the Lessee.

#### 14.8 **Interest on overdue amounts**

If the Lessee does not pay an amount when it is due, it must pay interest on that amount on demand from when the amount becomes due until it is paid in full calculated on outstanding daily balances at the Default Rate.

### 15. **INDEMNITY AND RELEASE**

#### 15.1 **Risk**

The Lessee occupies and uses the Premises at the Lessee's risk.

#### 15.2 **Indemnity**

The Lessee is liable for and indemnifies the Council against all Claims for any Loss suffered directly or indirectly by the Council as a result of or in connection with the Lessee's use or occupation of the Premises including in connection with:

15.2.1 any act or omission of the Lessee;

15.2.2 the overflow or leakage of water or any other harmful agent into or from the Premises;

15.2.3 any fire on or from the Premises;

15.2.4 loss or damage to property or injury or death to any person caused by the Lessee, the use of the Premises by the Lessee or otherwise relating to the Premises;

15.2.5 a breach of this Lease by the Lessee.

### 15.3 **Release**

The Lessee releases the Council from all Claims for any Loss occurring on the Premises except to the extent that they are caused by the Council's negligence.

### 15.4 **Indemnities are independent**

Each indemnity is independent from the Lessee's other obligations and continues during this Lease and after this Lease ends.

## 16. **GOODS AND SERVICES TAX**

### 16.1 **Agreed consideration**

If a GST applies to impose tax on the Agreed Consideration or any part of it or if the Council is liable to pay GST in connection with any supply under this Lease then:

16.1.1 the Agreed Consideration for that supply is exclusive of GST;

16.1.2 the Council may increase the Agreed Consideration or the relevant part of the Agreed Consideration by a percentage amount which is equal to the GST Rate; and

16.1.3 the Lessee shall pay the increased Agreed Consideration on the due date for payment by the Lessee of the Agreed Consideration.

### 16.2 **Tax invoice**

Where the Agreed Consideration is to be increased to account for GST under this clause 16, the Council will on or before the date on which the Agreed Consideration is payable, issue a tax invoice to the Lessee.

### 16.3 **Penalties and interest**

If the Lessee does not comply with its obligations under the Lease or with its obligations under GST Legislation in connection with the Lease and as a result the Council becomes liable for penalties or interest for late payment of GST, then the Lessee must pay the Council on demand an amount equal to the amount of the penalties and interest.

## 17. **REDEVELOPMENT**

If as part of any redevelopment or project conducted by the Council, or for any other reason the Council wishes to redevelop any part of the Park Lands that may include the Premises, then the Council will be entitled to terminate this Lease subject to the following provisions:

17.1 the Council must provide the Lessee with details of the proposed demolition sufficient to indicate a genuine proposal to carry out that demolition within a reasonably practical time after this Lease is to be terminated;

17.2 the Council may at any time after providing the Lessee with the information specified in clause 17.1, give the Lessee a written notice of termination of this Lease (**Termination Notice**) specifying the date on which this Lease is to come to an end being a date not less than six (6) months after the Termination Notice is given;

- 17.3 this Lease will, unless terminated earlier by the Lessee under clause 17.4, come to an end at midnight on the day specified in the Termination Notice;
- 17.4 at any time after receiving a Termination Notice under clause 17.1, the Lessee may terminate this Lease by giving not less than seven (7) days written notice to the Council; and
- 17.5 when this Lease is terminated (whether by the Council under clause 17.1 or by the Lessee under clause 17.4), the rights and obligations of the Council and the Lessee will come to an end but if any breach by either party still exists at that time then the rights of the other party with regard to that existing breach will continue.

## 18. DISPUTES RESOLUTION

### 18.1 Dispute

A party to a Dispute must comply with this clause before starting arbitration or court proceedings (except proceedings for interlocutory relief).

### 18.2 Notice of Dispute

A party to a Dispute must give the other parties to the Dispute notice setting out details of the Dispute.

### 18.3 Effort to resolve

For twenty (20) Business Days after the notice in clause 18.2, each party to the Dispute must use reasonable efforts to resolve the Dispute.

### 18.4 Mediator

18.4.1 If the parties cannot resolve the Dispute under clause 18.3 within that period, they must refer the Dispute to a mediator.

18.4.2 If, within a further twenty (20) Business Days, the parties to the Dispute do not agree on a mediator, a party to the Dispute may ask the chairman of the Resolving Body to appoint a mediator.

18.4.3 The mediator assists in negotiating a resolution of the Dispute. A mediator may not bind a party unless the party agrees in writing.

18.4.4 The mediation ends if the Dispute is not resolved within twenty (20) Business Days after the mediator's appointment.

### 18.5 Confidentiality

Each party:

18.5.1 must keep confidential any information or documents disclosed in the dispute resolution process; and

18.5.2 may use that information or those documents only to try to resolve the Dispute.

## 18.6 **Cost of dispute**

Each party to a Dispute must pay its own costs of complying with this clause. The parties to the Dispute must pay equally the costs of the mediator and any third party reports and enquiries requested by the mediator.

## 18.7 **Breach of dispute clause**

If a party to a Dispute breaches this clause, the other parties to the Dispute do not have to comply with this clause in relation to the Dispute.

## 19. **LICENCE**

*[This clause 19 applies only if Items 7 to 10 of the Schedule are completed.]*

### 19.1 **Grant of licence**

The Council grants to the Lessee a licence during the Term to use the Licence Area for the Licence Area Permitted Use.

### 19.2 **Term of licence**

The licence granted by this clause 19 will (while the Lessee named in this Lease is the lessee in occupation of the Premises) continue (subject to this clause 19) until the end of the Term or the sooner surrender or determination of this Lease.

### 19.3 **Licence fee**

19.3.1 The Lessee must pay the Licence Fee by equal annual instalments in advance on the Commencement Date and then on 1 September during each year of the Term.

19.3.2 If the Commencement Date is not 1 September then the first and last payment will be adjusted based on the number of days from the Commencement Date to 31 August next and the number of days in the relevant year.

19.3.3 The Licence Fee is reviewed annually by the Council as part of the review of Council's schedule of fee and charges for the Park Lands.

### 19.4 **Licence Area Permitted Use**

The Lessee must not use or permit the Licence Area to be used other than for the Licence Area Permitted Use and only in accordance with the Details of the Licence Area Permitted Use.

### 19.5 **Rates and utilities**

19.5.1 The Lessee must pay or reimburse the Council for all rates, taxes, levies or other charges (including Council rates assessed by the Council as a Statutory Authority) arising from the grant of this licence or in respect of the Licence Area.

19.5.2 The Lessee must pay or reimburse the Council as and when due for payment or if required by the Council then within seven (7) days of demand all costs, fees and charges for the provision of:

- (a) electricity, water, gas, oil and other energy or fuels supplied to and consumed in the Licence Area; and
- (b) telephone, facsimile and other communication services, waste disposal in respect of the Licence Area and all other utility services supplied to or consumed in or on in respect of the Licence Area;

whether supplied by the Council or any other person.

#### **19.6 Insurance**

The Lessee must ensure that any insurance policies required to be effected and maintained by the Lessee under clause 7 of this Lease extend (to the extent applicable) to cover the Licence Area, the use of the Licence Area and any buildings, fixtures, fittings or structures erected or placed on the Licence Area.

#### **19.7 No assignment or subletting**

The Lessee must not assign, transfer, sublicense or otherwise deal with the Lessee's rights under this clause 19 without the consent of Council.

#### **19.8 Improvements**

19.8.1 The Lessee must not erect, fix or place any buildings, fixtures, fittings or structures in, on or under any part of the Licence Area without the consent of Council.

19.8.2 Any buildings, fixtures, fittings or structures erected, fixed or placed (by whatever means) upon the Licence Area will unless otherwise agreed remain until the end of the term of this licence the property of the Lessee but may not be removed from the Licence Area without the consent of the Council.

#### **19.9 Maintenance of improvements**

The Lessee must maintain and repair any buildings, fixtures, fittings or structures erected fixed or placed in, on or under the Licence Area in good and safe repair and condition as determined by Council.

#### **19.10 Events on Park Lands within Licence Area**

19.10.1 Council may (in accordance with its events management policies (as amended from time to time)) grant approval to others to hold events within the Licence Area on terms determined by the Council.

19.10.2 The Lessee may not make any Claim for any Loss or interruption arising from any such approval or being required to relocate to an alternate licence area for the duration of the event.

#### **19.11 To obey policies and direction**

The Lessee must comply with and cause to be complied with all Council policies, directions, rules and by-laws from time to time regarding the Licence Area or the Licence Area Permitted Use including Council's "Recreation and Sport Park Lands Facilities" policy (or any update or replacement policy (from time to time)).

## 19.12 Public access and membership

19.12.1 The Lessee must allow unrestricted public access to those playing fields and surfaces that are unfenced at all times when the Lessee is not using them.

19.12.2 Where the Lessee is an association (and not a school body) membership must be open and available to the public.

## 19.13 Relocation

The Council will have the right where in the opinion of the Council there exists a valid commercial reason so to do at any time during the duration of this licence to relocate the Lessee to another location on the Park Lands provided that the Council will have given not less than three (3) months' notice of its intention to the Lessee.

## 19.14 Nature of licence

The rights granted by the licence conditions in this clause 19 do not create in or confer upon the Lessee any tenancy or any estate or interest in the Licence Area. The rights granted do not confer upon the Lessee any right of exclusive use or occupation and the Council may from time to time exercise all rights which may include the use and enjoyment of the whole or any part of the Licence Area.

## 19.15 No warranty

The Council makes no warranty or representation regarding the suitability of the Licence Area including any buildings, fixtures, fittings or structures in, on or under any part of the Licence Area (whether erected fixed or placed by the Council, any previous licence holder or any other person) for the Licence Area Permitted Use or any other purpose.

## 19.16 Defined terms

In this clause 19 unless the context otherwise requires:

**Details of the Licence Area Permitted Use** means the days and hours of operation or use specified in Item 7;

**buildings, fixtures, fittings or structures** includes all drains, pipes, fencing, goal posts, manholes, reticulation equipment, all electrical equipment (including floodlights) and similar services (and in cases where tennis courts form the whole or part of the Licence Area will also include all court surfaces, perimeter fencing, net posts and perimeter access gates);

**Licence Area** means the area of the Park Lands described in Item 8 including all Building(s), the Council's Equipment and other buildings, fixtures, fittings or structures;

**Licence Area Permitted Use** means the use described in Item 9;

**Licence Fee** means the amount described in Item 11 (as reviewed each year);

## 19.17 Interpretation

Unless the contrary intention appears:

- 19.17.1 a breach of the terms of this clause 19 will be an event of default under the Lease; and
- 19.17.2 all of the “Lessee’s covenants” in the Lease are deemed to be incorporated into the licence under this clause 19 as if they were specifically set out in this licence (including any terms or requirements for Council’s consent) so that “Premises” in the Lease terms will mean “Licence Area” (as defined in this clause 19) and the Lessee agrees to observe and perform all of the “Lessee’s” covenants in relation to the Licence Area.

## 20. GENERAL

### 20.1 Costs

The Lessee must pay or reimburse to the Council:

- 20.1.1 if the Lessee has requested that this Lease be registered and this Lease is capable of registration, all government fees for registration of this Lease. If a lease plan is required to be prepared and registered before this Lease can be registered, then the Lessee must arrange and pay for the preparation and registration of that lease plan;
- 20.1.2 all of the legal costs (determined on a solicitor and client basis) incurred by the Council in connection with the preparation, negotiating, revising and engrossing this Lease (including all attendances on the Lessee and its legal and other advisers and all advices provided to the Council) and attending to the execution of this Lease;
- 20.1.3 all legal and other costs and expenses incurred by the Council in consequence of any actual or threatened breach by the Lessee or in exercising or enforcing (or attempting to do so) any rights or remedies of the Council under this Lease or at law or otherwise arising in consequence of any actual or threatened beach by the Lessee.

### 20.2 Waiver

If the Council accepts or waives any breach by the Lessee, that acceptance or waiver cannot be taken as an acceptance or waiver of any future breach of the same obligation or of any other obligation under this Lease.

### 20.3 Notice

- 20.3.1 Without excluding any other form of service, any notice required to be given or served will be sufficiently given or served as follows:
  - 20.3.1.1 in the case of the Lessee, if posted by pre-paid post or delivered to the last known address of the Lessee; and
  - 20.3.1.2 in the case of the Council, if posted by pre-paid post to the Council at its principal place of business in South Australia (which is taken to be the address stated in this Lease unless the Lessee is or ought reasonably be aware that that is not the Council's principal place of business at the relevant time).



20.3.2 Notice served by pre-paid post will be deemed to have been given or served three (3) Business Days after posting.

20.3.3 Any notice may be signed on a party's behalf by its attorney, director, secretary, officer, solicitor or authorised agent.

#### 20.4 **Severance**

If any part of this Lease is found to be invalid, void or unenforceable, then that part will be severed from this Lease and the remainder of this Lease will continue to apply.

#### 20.5 **Special conditions**

Any Special Conditions will apply to this Lease and in the event of any inconsistency with the terms and conditions in the body of this Lease, then those Special Conditions will prevail.

#### 20.6 **Entire agreement**

The Council and the Lessee acknowledge and agree that this Lease contains and represents the entire agreement reached between them with regard to the Premises and that no promises, representations or undertakings, other than those contained in this Lease, were made or given or relied upon.

#### 20.7 **Resumption**

If the Council receives notice of resumption or acquisition of the Premises or any land affecting the Premises from or by any Statutory Authority or any body or authority of such Statutory Authority, then the Council may terminate this Lease by giving not less than three (3) months written notice to the Lessee. When such termination takes effect, the rights and obligations of the Council and the Lessee hereunder will come to an end but if any breach by either party still exists at that time then the rights of the other party with regard to that existing breach will continue.

## FIRST SCHEDULE

<b>ITEM 1</b> <b>Premises</b>	Portion of the Park Lands being the area marked and described in the plan attached as Annexure A – [#]				
<b>ITEM 2</b> <b>Initial Term</b>	Twenty one (21) years commencing # ( <b>Commencement Date</b> ) and expiring at midnight #				
<b>ITEM 3</b> <b>Rent</b>	Four thousand three hundred and twenty dollars (\$4,320.00) per annum (exclusive of GST) (subject to review)				
<b>ITEM 4</b> <b>Review Dates and Review Method</b>	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%;"><b>Review Dates</b></td> <td style="width: 50%;"><b>Review Method</b></td> </tr> <tr> <td>Each anniversary of the Commencement Date</td> <td>Fixed review by 4 per centum</td> </tr> </table>	<b>Review Dates</b>	<b>Review Method</b>	Each anniversary of the Commencement Date	Fixed review by 4 per centum
<b>Review Dates</b>	<b>Review Method</b>				
Each anniversary of the Commencement Date	Fixed review by 4 per centum				
<b>ITEM 5</b> <b>Permitted Use</b>	Rowing club (subject to clause 6.1.2)				
<b>ITEM 6</b> <b>Public Risk Insurance</b>	\$20,000,000.00				
<b>ITEM 7</b> <b>Details of Licence Area Permitted Use</b>	Not applicable				
<b>ITEM 8</b> <b>Licence Area</b>	Not applicable				
<b>ITEM 9</b> <b>Licence Area Permitted Use</b>	Not applicable				
<b>ITEM 10</b> <b>Licence Fee</b>	Not applicable				

<b>ITEM 11</b> <b>Special Conditions</b>	The Lessee acknowledges the Rent under this Lease does not include the annual River Torrens Licence fee (which is a separate fee reviewed annually by Council).
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**ANNEXURE A  
PLANS**

**EXECUTED as an AGREEMENT**

**Signed** by an Authorised Officer for **THE CORPORATION OF THE CITY OF ADELAIDE** in the presence of:

.....  
Signature of witness

.....  
Signature of Authorised Officer

.....  
Name of witness (print)

.....  
Name of Authorised Officer (print)

**[# *insert lessee execution clause*]**