

20 October 2023

Kelley Jones

T. 08 8113 7100

Level 6/19 Gilles Street
Adelaide SA 5000

GPO Box 2024 SA 5001
ABN 66 159 460 723

kelleyjones.com.au

Mr Terry Buss
Chief Executive Officer
City of West Torrens
165 Sir Donald Bradman Drive
HILTON SA 5033

VIA EMAIL:

CC: Mr Angelo Catinari

Dear Terry

THEBARTON OVAL & KINGS RESERVE PRECINCT – ADELAIDE FOOTBALL CLUB

We refer to the proposed redevelopment and subsequent lease by Adelaide Football Club Limited (**AFC**) of Thebarton Oval and a portion of Kings Reserve (the **Precinct**) (the **Proposed Transaction**).

In particular, we refer to your request to provide a summary of the suite of documents negotiated between representatives for AFC and Council Administration. We confirm that the following documents are proposed to be entered into between the Council and AFC in connection with the Proposed Transaction:

- Project Master Deed;
- Development Deed;
- Lease (being an annexure to the Development Deed);
- Usage Agreement; and
- Contribution Deed,

(together the **Suite of Transaction Documents**). A copy of each draft document is annexed to this letter.

For the purposes of this letter, we also note that the term “**Transaction Documents**”, being a term that is defined in the Project Master Deed, is a reference to the Development Deed, the Usage Agreement and the Contribution Deed.

We address each of these documents in turn.

BACKGROUND

1. From September to October 2022, the Council undertook public consultation in relation to a lease proposal being considered by the Council from AFC in relation to the Proposed Transaction.
2. At a Special Council Meeting on 8 November 2022 (**November 22 Meeting**) and following the public consultation period, the Council reviewed the submissions received, as compiled in a report by URPS. At the November 22 Meeting, the Council accepted the CEO report in connection with the public consultation and findings set out in the URPS Report.
3. Also at the November 22 Meeting, the Council resolved to authorise the CEO and Mayor to execute the Memorandum of Agreement (**MOA**) with AFC to progress negotiations, as follows:
 - “1. The Council notes and receives the report of the CEO titled “Thebarton Oval Precinct Lease Proposal” in respect of the proposed draft Memorandum of Agreement (MOA) between the Council and Adelaide Football Club (AFC), for the purposes of structuring and conducting negotiations with AFC in connection with the proposed redevelopment and the proposed lease of, Thebarton Oval Precinct (the **Project**).
 2. The Council:
 - a. approve the draft Memorandum of Agreement (MOA) (including the flowchart attached thereto) for execution, subject to any further non-material refinements being approved by the Mayor and COE after having taken legal advice; and
 - b. authorise the Mayor and CEO to execute the MOA on behalf of the Council, including if required by affixation of the Common Seal of the Council; and
 - c. authorise the CEO to take all steps contemplated by the MOA to advance the Project in accordance with the terms of the MOA.”
4. The MOA provided, amongst other things:
 - 4.1 that the parties negotiate in good faith and take all steps reasonably available to them, to progress the Proposed Transaction;
 - 4.2 the establishment of a Masterplan Advisory Group (**MAG**) to be comprised of representatives from the Council and Administration, AFC and the community, being an advisory group for the purpose of informing the development of the Agreed Masterplan (as that term is defined in the MOA);
 - 4.3 once agreed, to return the Agreed Masterplan to the next ordinary Council meeting, with a recommendation for approval for public consultation;
 - 4.4 importantly, clause 4.3.2 provides that the Agreed Masterplan is to “reflect the input of the MAG to the extent to which the Council and AFC consider it is reasonable and appropriate”;
 - 4.5 subject to Council approval of the Agreed Masterplan, the Council must undertake public consultation:

- 4.5.1 in accordance with sections 50 and 202(2) of the *Local Government Act 1999* (the **LG Act**);
- 4.5.2 the Council's *Public Consultation Policy*; and
- 4.5.3 any public consultation plan approved by the Council; and
- 4.6 following public consultation, the Agreed Masterplan is to be returned to the Council, together with any submissions received from the public, for consideration by the Council at a formal meeting.

We observe that clauses 4.3.1 and 5.1 of the MOA are a tad inconsistent, in that clause 4.3.1 refers to the Agreed Masterplan being tabled at the next available ordinary Council meeting, whereas clause 5.1, which sets out the steps for public consultation for the Agreed Masterplan, simply makes reference to a Council meeting.

This is not, in our view, of any material import for the following reasons:

- 4.6.1 the MOA merely sets out a process for Council approval, with the type of meeting not being material to the intended process; and
- 4.6.2 further, the obligations under clause 4.3 are 'good faith obligations' intended to progress a decision of the Council in connection with the public consultation for the Agreed Masterplan.
- 5. The parties are currently at Stage 2 of the MOA – seeking the approval of the Council to undertake the Masterplan Consultation.
- 6. Following the November 22 Meeting, the Council executed the MOA. A copy of the MOA is **attached** to this letter.

SUITE OF TRANSACTION DOCUMENTS

- 7. As contemplated in the MOA, the Administration and AFC have been negotiating the terms of the Suite of Transaction documents, which are agreed to the extent that they can be presented to the Council and the Board of AFC for consideration.
- 8. As requested, we provide an overview of the Suite of Transaction Documents for the Council's consideration.

Project Master Deed

- 9. The Project Master Deed is akin to an 'umbrella agreement' which:
 - 9.1 sets out the process for the Transaction;
 - 9.2 establishes a number of Conditions Precedent to the Transaction; and
 - 9.3 provides for and regulates the rights and obligations of the parties (clause 3.1).

10. The Project Master Deed is the first of the Transaction Documents to be executed and, whilst the Conditions Precedent to the Transaction are included in this document, they are conditions to the balance of the Transaction Documents (clause 2).
 - 10.1 If the Conditions Precedent are not met, either party may give notice to terminate the Transaction and, if the relevant Condition Precedent/s cannot be met following the expiry of any notice period, either party may terminate the Deed.
 - 10.2 Once the Conditions Precedent are met, the balance of the Transaction Documents (with the exception of the Usage Agreement, see further below) will become effective. It is to be noted that the Project Master Deed is not subject to the Conditions Precedent and the obligations thereunder become effective upon execution.
11. By virtue of the Project Master Deed being an 'umbrella document', it confirms the parties' agreement of the interoperability of it and the Transaction Documents. That is, a breach of the Project Master Deed is deemed to be a breach of the other Transaction Documents and, conversely, a breach of a Transaction Document is a breach of the Project Master Deed and the balance of the Transaction Documents (clause 4).
12. The Project Master Deed contemplates minor changes to the Master Plan (following public consultation), consistent with the permitted use under the Lease (clause 5).
13. AFC will appoint a Site Contamination Auditor and a Site Contamination Consultant to investigate contamination within the Precinct, with AFC solely responsible for:
 - determining the method to remediate the Precinct; and
 - doing all things reasonably necessary to remediate the Precinct;
(in accordance with any requirements of the Site Contamination Auditor and/or Consultant); and
 - paying the fees of any Site Contamination Consultant, Site Contamination Auditor and the remediation of the Precinct (clause 8).
14. Despite the commitments by AFC to accept responsibility for the audit and remediation of the Precinct, the Council remains liable for claims relating to Contamination occurring prior to AFC's remediation works and responsible for pre-existing groundwater contamination.
15. As the Council is aware, AFC has always indicated a desire for a 99-year lease for the Precinct. The Project Master Deed includes provision for the Council, where requested by AFC not less than ten (10) years after Practical Completion of the redevelopment (subject always to the LG Act), to enter into good faith negotiations with AFC to consider entering into steps to revoke the community land status of the Precinct (clause 9).

Notwithstanding, it is relevant to note that the right granted to AFC is subject to the prevailing requirements of the LG Act at that time. Relevantly, clause 9(b) expressly provides that the Council is not predetermining any position in agreeing to enter into 'good faith negotiations' with AFC.

16. Clause 17 of the Project Master Deed sets out the confidentiality obligations of the parties, with exceptions for the Council, to the extent that it is required to divulge information under a law or parliamentary convention, including to Parliament, to the Crown, or under the *Freedom of Information Act 1991*.
17. During negotiations, AFC sought to include that the Project Master Deed is to be within the definition of "Confidential Information". This was rejected on account of the Administration's intention to publish the Transaction Documents in its public agenda (clause 17).
18. The parties agree to issue public announcements and media releases jointly, or otherwise with the consent of the other party (clause 17.3).
19. Schedules to the Project Master Deed are yet to be finalised, however, we note that:
 - 19.1 Schedules 1 and 2 are yet to be finalised and inserted in the Project Master Deed;
 - 19.2 Schedule 3 sets out the Conditions Precedent to be met by the parties, with the dates for satisfaction yet to be agreed; and
 - 19.3 whilst a number of the Conditions Precedent reflect the surrender of the existing lease of Thebarton Oval with the South Australian National Football League (**SANFL**), AFC has been in negotiations with SANFL in connection with SANFL's proposed relocation to the existing AFC site at West Lakes. Accordingly, AFC will procure the release of the caveats registered over the SANFL leased area and the surrender of the SANFL lease.

Development Deed

20. The Development Deed is the primary document relating to the development of the Precinct. It is akin to an Agreement for Lease and annexes the Lease for execution on and from Practical Completion of the development (as detailed below).
21. It is intended that the Development Deed is the second document, executed after the Project Master Deed. Upon execution of the Development Deed and the Project Master Deed, the MOA is terminated (clause 4.4).
22. The operation of the Development Deed is subject to the Conditions Precedent set out in the Project Master Deed, all being met. Accordingly, if the Project Master Deed is terminated on account of the Conditions Precedent not being met, the Development Deed will also terminate (clause 4).
23. The Development Deed sets out the process by which AFC will develop plans for the Precinct, including any necessary approvals (clause 6).
24. AFC is to provide its schematic design, masterplan and principal project requirements to the Council for approval, noting that the Council may withhold its approval where such documents do not meet the requirements of the Masterplan (clause 6.1(b)).
25. We confirm that the obligations to be met by AFC in relation to the Lessee Works (as that term is defined in the Development Deed), are appropriate and give sufficient comfort to the Council

as the owner of the land, for a development of the type and scale of that proposed for the Precinct.

Clause 6.10 includes an acknowledgment that the Council has entered into the Proposed Transaction on assurances from AFC that a Community Benefit (as that term is defined in the Development Deed) will be provided with a value of not less than \$45 million.

This clause also establishes a process for assessing the value of the Community Benefit, with the parties to negotiate a reduction to the rent rebate offered to AFC in circumstances where the value of the Community Benefit is 5% or more below the \$45 million commitment.

26. The final area of the Precinct which will be leased by AFC will be assessed by a surveyor after the development is complete, for the purposes of determining:
 - 26.1 the area (including to confirm boundaries) to be leased by AFC;
 - 26.2 the preparation of a lease plan for registration with Land Services SA; and
 - 26.3 the calculation of rent payable under the Lease, being limited to the "Commercial Area: of the Precinct (as defined in the Development Deed and Lease), which excludes the Public Realm areas . Rent will be calculated at a rate of \$15 per square metre, indexed by CPI on and from Q1 in 2025 (clause 7).
27. Following the calculation of the Rent, the Council's solicitors must then take steps to engross the Lease and arrange for its execution (clause 8).
28. AFC's right to assign the Development Deed is subject to a number of conditions, including a requirement for any proposed assignee being of 'good standing' (as that term is defined in the Development Deed) (clause 9).
29. AFC has indicated that the Council may be requested to enter into a tripartite deed with a financier to secure the development. Accordingly, if a tripartite deed is agreed (to the Council's reasonable satisfaction), the Council has some comfort that, in the event of AFC's insolvency or default, the financier's primary objective will be to retain the value of its AFC asset. In the event that a tripartite agreement is not agreed, the Council has the comfort of being entitled to complete the development or to reinstate the land (as considered appropriate). Should the Council take such action, it may invoice AFC to meet its reasonable costs (noting the potential difficulties with such action in an insolvency situation).
30. Schedules and Annexures to the Development Deed are yet to be finalised, however, we note:
 - 30.1 Schedules 1, 2 and 4 and Annexures A and B are yet to be finalised and inserted in the Development Deed;
 - 30.2 Annexure C will be the Lease (see further below);
 - 30.3 Annexure D sets out the terms of the Construction Licence to be granted to AFC to perform the development works (until Practical Completion when the Lease will commence).

30.3.1 The Licence Fee is \$1 per annum for the first 30 months of the Licence Agreement, with the prevailing rent under the Lease payable thereafter.

30.3.2 The Licence Agreement is otherwise on standard terms for a construction licence granting access for the purposes of development.

Lease

31. Since the period of public consultation in September and October 2022, the area initially proposed to be leased has been reduced to exclude the western end of Kings Reserve. The excluded area will remain a reserve for public use and enjoyment. This change to the proposed leased area occurred as a direct result of the community feedback received during the public consultation and from further consultation with members of the Masterplan Advisory Group.

32. The Lease will be entered into following Practical Completion of the development of the Precinct by AFC and will govern the long-term relationship between the Council and AFC and tenure for the Precinct (the **Premises**, as defined in the Lease).

33. The Lease will be the final of the Transaction Documents to be executed, with terms to be finalised in accordance with clauses 7 and 8 of the Development Deed.

34. Subject to:

34.1 the Lease being updated to include the Key Commercial Lease Terms; and

34.2 a number of other amendments which do not materially displace, the Key Commercial Lease Terms nor the Draft Lease Covenants, or materially deplete the Council's rights (particularly given the nature and term of the tenure),

the terms of the Lease are similar to the terms which were the subject of public consultation prior to the November 22 Meeting. A copy of the Key Commercial Lease Terms, updated to reflect the Transaction Documents is annexed to this letter.

35. Notwithstanding this confirmation, we draw the following clauses to the Council's attention:

35.1 Rent and Rates are payable on the "Commercial Area" of the Precinct, being those areas occupied by AFC or otherwise generating revenue (e.g. signage), as further defined in the Lease;

35.2 any assignment or subletting of the Premises is subject to a number of conditions, including that any assignee must be solvent and of "good standing", as further defined in the Lease (clause 2.4);

35.3 the default clause has been updated to reflect a mutual right for the parties to seek compensation or termination (in the event of an unremedied default) (clause 4.1). A mutual default right is not unreasonable given the scope and term of the Lease;

35.4 AFC shall have not more than 100 hours access to the Public Realm per calendar month over a calendar year (clause 5(b));

- 35.5 AFC must comply with any on-going environmental monitoring obligations and is responsible to remediate any contamination caused by it during the Term (clause 10(b));
- 35.6 Annexures A and B are yet to be finalised and inserted in the Lease;
- 35.7 Annexure C sets out the Special Conditions of the Lease, as set out in the Key Commercial Lease Terms, as follows:
- 35.7.1 Rent is to be subject to a rebate of 55% in the first 5 years of the Lease and 40% for the balance of the term (SC1);
- 35.7.2 Council rates are to be subject to a rebate of 87% in the first 5 years of the Lease and 72% for the balance of the term (SC2);
- 35.7.3 AFC may apply to the Council between 10 and 8 years before the expiry of the term, to seek a new 42-year lease term. If the Council grants a new lease, then SC4 (being the buyback option) does not apply; and
- 35.7.4 SC 4 sets out the valuation and manner by which the buyback option is to proceed, in circumstances where the Council does not grant a new term to AFC (and AFC is not in default of the Lease).

Usage Agreement

36. The Usage Agreement sets out the agreement between the Council and AFC in relation to each party's access to and use of, the Public Realm and to establish a sinking fund for the Heritage Items.
37. It is intended that the Usage Agreement be executed at or about the same time as the Contribution Deed and immediately after the Project Master Deed and the Development Deed and only commences on the Commencement Date of the Lease (and continues for its Term).
38. Clause 3 of the Usage Agreement sets out the use of the Public Realm, as between the Council, AFC and the community, as follows:
- 38.1 the community may use the Public Realm at all times the ovals and facilities are not being used by AFC. However, either party may request a change to this access where it has reasonable grounds to believe security or safety issues exist;
- 38.2 CWT is responsible for any damage caused to the Public Realm which can be reasonably demonstrated by AFC to be directly caused by the community during times of CWT Use;
- 38.3 AFC is entitled to a maximum of 100 hours per month averaged over a calendar year, with AFC responsible for any damage caused during periods of AFC Use. AFC will provide notice of its scheduled use of the Public Realm, which will be published on its website and otherwise available to the public; and
- 38.4 AFC agrees to grant to the Council not less than 6 days' access to the portion of the Precinct currently known as Kings Reserve, which will allow the Council to continue to operate, host or facilitate community events.

39. The parties also agree to establish a sinking fund to ensure the maintenance and upkeep of the Heritage Items. However, given the items will be subject to an upgrade as part of the AFC development works, contributions to the sinking fund will commence between 3 and 4 years after the commencement of the Lease, and subject to a Building Expenditure Report and Capital Expenditure Report commissioned by AFC at the time (clause 4).
40. The sinking fund will be jointly operated and used solely for the Capital Expenditure Works (unless otherwise agreed by the parties in writing).
41. Schedules 1 and 2 are yet to be finalised and inserted in the Usage Agreement.

Contribution Deed

42. The Contribution Deed sets out the manner in which the parties will contribute funds to the development of the Precinct.
43. It is intended that the Contribution Deed is executed at or about the same time as the Usage Agreement and immediately after the Project Master Deed and the Development Deed. As with the Development Deed, the operation of the Contribution Deed is subject to the fulfilment of the Conditions Precedent contained in the Project Master Deed.
44. The Contribution Deed provides that the Council must provide the CWT Contribution (being the amount of up to \$11.26 million (excluding GST)).
45. AFC must not profit financially from the CWT Contribution and must return any unspent funds to the Council (clause 4).
46. AFC agrees to acknowledge the Council's contribution in any relevant public acknowledgements and promotional material (clause 5).
47. Schedule 1 is yet to be finalised and inserted in the Contribution Deed.
48. Schedule 2 sets out the works towards which the Council's contribution will be directed, with Schedule 3 setting out the Milestone Payments, the first of which (being 25% or up to \$2.815 million) is due on the later of 20 Business Days following the satisfaction of the Conditions Precedent, execution of the Contribution Deed, or 1 January 2024.

COUNCIL RESOLUTION

49. In accordance with the MOA, no decision is required by the Council to enter into the Transaction Documents at this stage, just simply to give the Administration further authority to finalise the Transaction Documents with AFC, ahead of approval by the Council at a future meeting, following the outcome of public consultation on the Agreed Masterplan.

ADDITIONAL LAND TO BE ACQUIRED BY DIT

50. As a final matter, we confirm that we have written to the Department of Infrastructure and Trade (DIT) and to Minister Koutsantonis seeking confirmation of the additional portion of the Precinct to be acquired by DIT for the purposes of the Torrens to Darlington project.

51. At the time of writing we have not received a response from DIT nor the Minister, but will promptly inform the Administration of any response.

We trust that this explanatory letter provides the Council with sufficient comfort to consider the Transaction Documents and, if they are approved, to authorise the Administration to progress the Proposed Transaction, subject to public consultation for the Agreed Masterplan.

Please contact either myself or Zinta Docherty if you have any questions.

Yours sincerely

KELLEDY JONES LAWYERS

A handwritten signature in dark ink, appearing to read 'M Kelledy', with a long, sweeping horizontal stroke extending to the right.

MICHAEL KELLEDY

Annexure A – MOA

Thebarton Oval Precinct Memorandum of Agreement

City of West Torrens ABN 16 346 877 634

Adelaide Football Club Limited ABN 48 008 101 568

CONTENTS

1. Definitions and interpretation.....	2
1.1 Definitions.....	2
1.2 Interpretation.....	4
1.3 Legal effect of this MOA.....	5
2. Purpose	5
3. Flowchart and Stages	5
4. Masterplan Advisory Group.....	6
4.1 Establishment of the Masterplan Advisory Group.....	6
4.2 Composition of the Masterplan Advisory Group	7
4.3 Agreed Masterplan.....	8
5. Public consultation	8
6. Council as responsible decision maker	9
7. Progress reports	9
8. Insurance	9
9. Term and termination	9
10. Confidential Information.....	10
11. Public announcements	10
12. Dispute resolution.....	11
13. Notices	11
13.1 Form of notice and service.....	11
13.2 Signing of notices	11
13.3 Deemed service	11
14. Council's discretion	12
15. Oversight legislation	12
16. General	12
16.1 Further documents.....	12
16.2 Waiver	12
16.3 Severance	12
16.4 Governing Law.....	13
16.5 Costs	13
16.6 Counterparts	13

MEMORANDUM OF AGREEMENT

THIS AGREEMENT IS MADE THE

10th

DAY OF NOVEMBER 2022

BETWEEN

CITY OF WEST TORRENS ABN 16 346 877 634 of 165 Sir Donald Bradman Drive, Hilton SA 5033 (the **Council**)

and

ADELAIDE FOOTBALL CLUB LIMITED ABN 48 008 101 568 of 105 West Lakes Boulevard West Lakes SA 5021 (**AFC**)

BACKGROUND

- A. The Council is the owner in fee simple of the land identified in the Plan and comprised in Certificates of Title Volume 6131 Folios 655 and 656. Volume 5092 Folio 344, portion of Volume 5436 Folio 231 and portion of Volume 6221 Folio 506, more commonly known as 'Kings Reserve' and 'Thebarton Oval' (the **Land**).
- B. The Council and AFC are in negotiations in relation to a proposed lease in the Land to be granted by the Council to AFC and to that end, the Council has undertaken a period of public consultation in accordance with the requirements of section 202 of the LG Act and its *Public Consultation Policy* (the **Lease Consultation**).
- C. AFC and the Council acknowledge and agree that the Land will need to be redeveloped to meet the requirements of AFC as a lessee of the Land, however acknowledge the community sentiment in relation to the public's on-going use of, and access to, the Land.
- D. The Council and AFC propose to enter into various agreements, subject to the parties meeting the conditions precedent set out in this MOA.
- E. The parties have entered into this binding MOA to demonstrate their *bona fides* to work together to progress the intentions of the parties, and to address the genuine needs of the community, ahead of the parties entering into the Transaction Documents.

OPERATIVE PART

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this MOA:

Agreed Masterplan means the masterplan for the Project, as approved by the Council and AFC, with input from the MAG in accordance with clause 4.3.

Action means any action to be performed by either or both parties (including, where relevant, any third party), in order to complete a Stage and/or execute a Document, as set out in the Flowchart.

Approval means any approval to be obtained by a party, in order to complete a Stage and/or execute a Document, as set out in the Flowchart.

Business Day means a day that is not a Saturday, Sunday or public holiday in South Australia.

Commencement Date means the dated of execution of this MOA.

Condition or **Conditions**, is defined in clause 3.1.

Confidential Information means any documentation or information of a confidential nature supplied by either of the parties to the other in connection with this MOA or any Transaction Document (and its preparation or negotiation) and includes financial, commercial, contractual or marketing information possessed by each party but specifically excludes any documentation or information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by law.

Contribution Deed means a Contribution Deed to be entered into between the parties in relation to their respective financial contributions towards the Project.

Council Area means the area for which the Council is constituted in accordance with the LG Act.

Council's Policy or **Council's Policies** means, at any relevant time, the prevailing policy or policies adopted by the Council relevant to the activities contemplated by this MOA.

Development Deed means a Development Deed to be entered into between the parties in relation to the development of the Land in accordance with the Agreed Masterplan, including the grant of a construction licence to AFC to perform the Redevelopment and, upon completion, to enter into the Proposed Lease.

Document means the relevant Transaction Document to be executed by the parties, in order to complete a Stage, as set out in the Flowchart.

Flowchart means the flowchart of the Project annexed to this MOA as **Annexure A**.

Key Commercial Lease Terms means the Key Commercial Lease Terms published by the Council as part of the Lease Consultation.

Land has the meaning given in Background paragraph A.

Lease Consultation has the meaning given in Background paragraph B.

Lease Covenants means the Lease Covenants in the form made publicly available as part of the Lease Consultation.

LG Act means the *Local Government Act 1999*.

Masterplan Advisory Group or **MAG** has the meaning given in clause 4.1.1.

Member means, at any relevant time, an elected member of the Council, namely the Mayor and each councillor.

MOA means this Memorandum of Agreement, as executed by the parties (and as amended from time to time).

Project means development, operation and use of the Land in accordance with the Transaction Documents and for the term of the Proposed Lease.

Project Master Deed means a Project Master Deed to be entered into between the parties in relation to the preliminary obligations of the parties to proceed with the Agreed Masterplan and Redevelopment.

Proposed Lease means the ground lease of the Land, in accordance with the Project Master Deed (and having regard to but not limited by the Key Commercial Lease Terms and Lease Covenants), as may be further negotiated between the parties.

Redevelopment means the development of the Land in accordance with the Agreed Masterplan, for the purposes of the Project.

Service Level Agreement means a Service Level Agreement to be entered into between the parties in relation to their respective maintenance and repair obligations for the Land.

Stages means the various Stages set out in the Flowchart.

Transaction Documents means each of the following documents, upon their execution:

- (a) this MOA;
- (b) the Project Master Deed;
- (c) the Development Deed;
- (d) the Contribution Deed;
- (e) the Service Level Agreement to be made between the Council and AFC in respect of the Land; and
- (f) any other agreement or document made between the Council and AFC in relation to the Project, which the parties agree in writing is a "Transaction Document" for the purposes of any Transaction Document (and in the case of the Council, 'agree' for the purposes of this paragraph (f) means approval by resolution of the Members at a formally constituted Council meeting).

URPS Report means the independent report prepared by URPS in response to the Lease Consultation.

1.2 Interpretation

In this MOA, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 a reference to a 'party' or 'parties' is a reference to a party or the parties to this MOA (as the case may be);
- 1.2.3 the term "person" includes a corporate body, partnership, association, government body or other entity;
- 1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.5 singular includes plural and plural includes singular;

- 1.2.6 a reference to any statute or subordinate legislation includes all statutes and subordinate legislation amending, consolidating or replacing the statute or subordinate legislation referred to.

1.3 Legal effect of this MOA

The parties acknowledge and agree that:

- 1.3.1 this MOA is and is intended to be legally enforceable and binding on the parties to the extent of its terms;
- 1.3.2 the matters set out in the Background to this MOA are true and accurate and form part of the terms of this MOA; and
- 1.3.3 this MOA obliges the Council and AFC to act in good faith in order to finalise and agree or execute the Agreed Masterplan and the Transaction Documents.

2. PURPOSE

The Council and AFC have entered into this MOA to record their commitment to:

- 2.1 negotiate in good faith; and
- 2.2 take all steps reasonably available to each of them, and subject to the Transaction Documents and each Stage,

to progress the Project in accordance with the provisions of this MOA and any Transaction Document.

3. FLOWCHART AND STAGES

- 3.1 The Council and AFC acknowledge that the other party's obligations are subject to various conditions and approvals, before certain Transaction Documents can be executed, or become binding on the parties (each a **Condition**, and together, the **Conditions**).
- 3.2 A number of the Conditions are subject to:
 - 3.2.1 third party approval, including approval by:
 - (a) the Members, in the case of the Council; and
 - (b) the board of the AFC, in the case of the AFC;
 - 3.2.2 public consultation, or other statutory requirements, including under the LG Act; and/or
 - 3.2.3 the satisfaction of other Conditions.
- 3.3 The parties agree to progress their negotiations under this MOA in accordance with the Stages, to ensure that each Condition can be met by the relevant party or parties.
- 3.4 The parties agree that:
 - 3.4.1 they may vary the Flowchart from time to time on agreement in writing;
 - 3.4.2 notwithstanding clause 3.4.1:

- (a) subject to paragraph (b), the Council may propose any Action or Approval to be taken by it (including to add or remove any Action or Approval), but such Action or Approval will not vary this MOA unless mutually agreed in writing by the Council and AFC; and
 - (b) the Council may amend any Action or Approval to be taken by it (including to add or remove an Action or Approval) where reasonably necessary to meet any requirement of the LG Act or other statutory obligation and will promptly notify AFC of any intention to do so and the onus of establishing the requirement as reasonably necessary rests and is to be discharged by the Council;
- 3.4.3 the Project will proceed in numerical order of the Stages; and
- 3.4.4 a party may progress any Action in any subsequent Stage, however, neither party is obliged to perform any Action in a subsequent Stage, unless and until the previous Stage or Stages is/are completed.
- 3.5 For the purposes of this MOA, a Stage is not complete until such time that each:
 - 3.5.1 Action is completed to the satisfaction of both parties;
 - 3.5.2 Approval is obtained by the relevant party; and
 - 3.5.3 the relevant Document is executed,(as applicable), for the relevant Stage.
- 3.6 To avoid doubt, the Actions under Stages 4 and 5 will be included as conditions precedent in the Project Master Deed and are included in the Flowchart for information purposes only, to reflect the parties' intentions following the satisfaction of Stage 3 and (without limitation) any Action or Approval under Stages 4 or 5 does not constitute a Condition or Condition Precedent under this clause 3.

4. MASTERPLAN ADVISORY GROUP

4.1 Establishment of the Masterplan Advisory Group

- 4.1.1 As a consequence of the support and concerns of the community identified in the URPS Report, the Council has identified the need for community representation in the development of a masterplan in relation to the Redevelopment and Proposed Lease (the **Masterplan Advisory Group** or **MAG**).
- 4.1.2 The purpose and objective of the MAG is to inform the development of the Agreed Masterplan, including but not limited to the following matters:
 - (a) location and use of new and existing facilities;
 - (b) preservation of heritage and significant items;
 - (c) landscaping and vegetation;
 - (d) noise and light spill;
 - (e) traffic management;

- (f) car parking;
- (g) game day (AFLW only) and day to day operations;
- (h) connections to and through the Precinct; and
- (i) public use, enjoyment, and access to open space and facilities.

4.1.3 Despite clause 4.1.2, the parties acknowledge and agree that the Agreed Masterplan must include confirmation that any lease to be entered into between the Council and AFC in relation to the Land must include a provision that AFC will not use any portion of the Land which is designated as an oval, for more than a mutually agreed percentage of available daylight hours (as published under the *Proof of Sunrise and Sunset Act 1923*), with access for any special event convened for or by either party, to be negotiated between the parties (acting reasonably).

4.2 Composition of the Masterplan Advisory Group

4.2.1 The membership of the MAG shall comprise:

- (a) three (3) Members, with one being the Mayor;
- (b) three (3) representatives of AFC, nominated by the Chief Executive of AFC;
- (c) four (4) members of the community, appointed by the Council and AFC by mutual agreement and meeting all of the following criteria:
 - (i) a ratepayer or a resident of the Council Area, for a minimum of 5 years;
 - (ii) demonstrating, to the reasonable satisfaction of both the Council and AFC (both acting reasonably):
 - (A) through experience, network or skill, to broadly represent their community;
 - (B) an ability to work with others holding differing opinions; and
 - (C) willingness to equitably and fairly represent the interest of their relevant community group; and
- (d) two (2) officers of Council, nominated by the Chief Executive of the Council.

4.2.2 The Mayor of the Council will chair the meetings of the MAG but in the absence of the Mayor (whether or not previously notified in writing by the Mayor), a Member currently appointed to the MAG in accordance with clause 4.2.1(a), will be appointed as the acting chair for the duration of the Mayor's absence from any meeting.

4.2.3 The MAG does not have any delegated authority to make decisions for or on behalf of Council or AFC. In order to remove doubt, the MAG is an advisory group only with the purpose of informing the development of the Agreed

Masterplan and does not have any authority to make decisions on behalf of the Council or AFC or veto decisions on behalf of the Council or AFC.

4.2.4 Secretariat support for the MAG will be provided by Council.

4.2.5 Minutes of the proceedings of meetings of the MAG will be kept and maintained by the Council and will be promptly distributed to members following each meeting.

4.2.6 The parties agree to negotiate in good faith, any further terms of reference for the MAG, promptly on execution of this MOA.

4.2.7 The parties agree to do all things reasonably necessary to:

- (a) promptly appoint the members of the MAG;
- (b) agree to the terms of reference in accordance with clause 4.2.6; and
- (c) convene the first meeting of the MAG within one (1) month of the Commencement Date.

4.3 Agreed Masterplan

Following consultation with the MAG in accordance with this MOA and any terms of reference for the MAG under clause 4.2.6, the Council and AFC must act in good faith to finalise the Agreed Masterplan:

4.3.1 to be tabled at the next available ordinary Council meeting, to be recommended for approval for public consultation; and

4.3.2 to reflect the input of the MAG to the extent to which the Council and AFC consider it is reasonable and appropriate.

5. PUBLIC CONSULTATION

Upon the Council and AFC finalising the Agreed Masterplan under clause 4.3, the Council:

- 5.1 must use reasonable endeavours to obtain the approval at a Council meeting to undertake public consultation of the Agreed Masterplan;
- 5.2 subject to clause 5.1, must undertake public consultation on the Agreed Masterplan in accordance with sections 50 and 202 (2) of the LG Act, its Public Consultation Policy, and any public consultation plan approved by the Members at a formally constituted Council meeting;
- 5.3 together with any submissions received from the public in connection with the public consultation, put the Agreed Masterplan to the Members for approval at a meeting of the Council;
- 5.4 if the Members do not approve the Agreed Masterplan under clause 5.3, must promptly give written notice to AFC setting out reasonable details and particulars of the grounds on which the Members consider that the Agreed Masterplan under clause 5.3 is not appropriate for approval and acknowledges that AFC may make a deputation to the Council at the next ordinary Council meeting in relation to the appropriateness of the Agreed Masterplan or appropriate amendments thereto and ensure that AFC is permitted to make such deputation; and

- 5.5 if the Members do not approve the Agreed Masterplan under clause 5.4, may terminate this MOA immediately on notice to AFC and in this event, neither party will have any claim against the other under this MOA or at law or otherwise.

6. COUNCIL AS RESPONSIBLE DECISION MAKER

- 6.1 AFC acknowledges that, in accordance with sections 6, 7 and 8 of the LG Act, the Council is established to provide for the government and management of its area, and must be an informed and responsible decision-maker.
- 6.2 Accordingly, where the Council can reasonably demonstrate that the Members do not adopt the outcomes of the Masterplan Consultation, the Council may terminate this MOA immediately on notice to AFC and in this event, neither party will have any claim against the other under this MOA or at law or otherwise.

7. PROGRESS REPORTS

Each party agrees to give the other party an update on the progress of their respective Actions under each Stage on the first Business Day of each month following the execution of this MOA, and as otherwise reasonably requested in writing.

8. INSURANCE

- 8.1 At all times prior to the Commencement Date, the Council must maintain its membership of the Local Government Association Mutual Liability Scheme or take out and maintain during the term of this MOA, a public liability insurance policy as required by legislation.
- 8.2 Notwithstanding any insurance held by the Council under clause 8.1, AFC must also keep and maintain a public liability insurance policy in respect of the Land for an amount of not less \$20,000,000 for each claim:
- 8.2.1 where AFC (or any person engaged by the Contractor) is located on the Land for the purpose of AFC progressing any Action; or
- 8.2.2 AFC occupies the Land (or any part of it) under a licence or permit from the Council; or
- 8.2.3 immediately upon execution of the Development Deed.
- 8.3 Each party must provide to the other, a certificate evidencing its compliance with this clause 8.

9. TERM AND TERMINATION

- 9.1 This MOA expires without any further action by either party on the execution of the Development Deed (noting that the terms of the respective documents do not merge on expiry), unless terminated earlier in accordance with its terms.
- 9.2 Either party may terminate this MOA if:
- 9.2.1 it establishes that an Action in Stage 2 is not capable of being met;
- 9.2.2 it establishes that an Action in Stage 3 is not capable of being met;
- 9.2.3 the other party is in breach of any of its obligations under this MOA and does

not remedy such default within twenty (20) Business Days of written notice issued by the non-defaulting party in relation to that breach; or

9.2.4 a party is in breach of its obligations under this MOA and such breach is not capable of remedy.

9.3 Termination of this MOA does not affect the rights and obligations of a party that arose prior to termination but the parties agree that the event of termination is not a compensable event.

10. CONFIDENTIAL INFORMATION

10.1 Subject to clause 10.2, each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes of and in the manner contemplated by this MOA, and agrees that it will:

10.1.1 keep confidential;

10.1.2 take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;

10.1.3 maintain proper and secure custody thereof; and

10.1.4 not use or reproduce in any form,

any Confidential Information belonging to the other party. Any departure from a party's obligations pursuant to this clause may only occur with the written consent of the other party or as required by law or the terms of this MOA.

10.2 A party may disclose Confidential Information of the other party:

10.2.1 which is or becomes part of the public domain unless that has occurred as a result of a breach of this MOA; or

10.2.2 if required by law or by a Government agency with the power to require such disclosure.

10.3 To avoid doubt, the parties agree that this MOA is not Confidential Information.

10.4 The Council must ensure that any members of the community appointed to the MAG pursuant to clause 4.2.1 comply with the provisions of this clause 10.

11. PUBLIC ANNOUNCEMENTS

11.1 Neither party may make any public announcement or media release about any aspect of this MOA without the prior consent of the other party (which consent must not be unreasonably withheld).

11.2 Notwithstanding any consent given under clause 11.1, the parties agree to issue jointly-prepared announcements where reasonably practicable.

11.3 The Council must ensure that any members of the community appointed to the MAG pursuant to clause 4.2.1 comply with the provisions of this clause 11.

12. DISPUTE RESOLUTION

- 12.1 If any dispute or disagreement arises between the parties in connection with this MOA, the parties undertake to use all reasonable endeavours, in good faith, to settle the dispute or disagreement by negotiation between representatives of the parties.
- 12.2 In the event that negotiations do not resolve the dispute within twenty (20) Business Days, a mediator agreeable to both parties may be engaged to seek a resolution.
- 12.3 If the parties cannot agree upon a mediator within a further twenty (20) Business Days, a party may apply to the President or Acting President of the Law Society of South Australia to appoint a mediator to resolve any dispute under this MOA.
- 12.4 The cost of any mediator appointed to resolve a dispute under this clause be borne equally by both parties, unless the mediator makes a finding in favour contrary to one of the parties.
- 12.5 Nothing in this MOA is intended to limit either party's right to seek a legal remedy for any dispute that arises.

13. NOTICES**13.1 Form of notice and service**

Without prejudice to any other means of giving notice, any notice required to be served or given under this MOA will be sufficiently served or given:

- 13.1.1 by personal service on that party (or if it is a body corporate on a director, secretary or other officer of the party);
- 13.1.2 by post or electronic transmission to the address or email address of the party set out in this MOA or such other address or facsimile number as the party may notify the other party from time to time as being the that party's address or facsimile number for service of notices.

13.2 Signing of notices

Any notice may be signed on that party's behalf by its attorney, director, secretary or other officer or solicitor.

13.3 Deemed service

A notice, if validly given, is taken to have been received:

- 13.3.1 if delivered in person, at the time of delivery;
- 13.3.2 if posted, the third (3) Business Day after posting; or
- 13.3.3 if sent by email and the sender does not receive delivery failure message notifying the sender that the email has failed to be delivered:
 - (a) between 9.00am and 5.00pm on any Business Day, at the time the notice is sent; and
 - (b) on any day that is not a Business Day, at 10.00 am on the next Business Day.

14. **COUNCIL'S DISCRETION**

14.1 The Council enters into this MOA as a council acting under sections 7 and 36 of the LG Act and not in any other capacity. This MOA does not preclude or pre-empt the exercise by the Council of any other regulatory function or power.

14.2 In particular, AFC:

14.2.1 acknowledges that

- (a) by entering into this MOA, the Council is not predetermining any position, in particular in relation to the outcomes of any public consultation process that it undertakes; and
- (b) the Council will use reasonable endeavours to obtain the approvals contemplated in this MOA and any Transaction Document; and

14.2.2 agrees that, where the Council terminates this MOA under clauses 5.4 or 6.2, it does not have any recourse against the Council, for exercising such right of termination.

15. **OVERSIGHT LEGISLATION**

15.1 AFC acknowledges that the *Ombudsman Act 1972* empowers the Ombudsman to investigate matters in the public interest. AFC must ensure compliance with all obligations arising under that Act and all applicable legislation.

15.2 AFC acknowledges and agrees that by entering into this MOA, it must ensure its own compliance with the *Independent Commissioner Against Corruption Act 2012 (ICAC Act)* and must comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

15.3 AFC acknowledges and agrees that the Council is an 'agency' for the purposes of the *Freedom of Information Act 1991* and that documents, correspondence or other information relating to this MOA may be subject to disclosure under that Act.

16. **GENERAL**

16.1 **Further documents**

The parties will take all reasonable steps to complete any applications or enter into any documents reasonably necessary to fulfil the intentions of the parties under this MOA.

16.2 **Waiver**

16.2.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this MOA is not a waiver of that power or right.

16.2.2 An exercise of a power or right under this MOA does not preclude a further exercise of it or the exercise of another right or power.

16.3 **Severance**

Where a clause or part of a clause in this MOA would, but for this clause, be unenforceable:

16.3.1 the clause or part of the clause shall be read down to the extent necessary to avoid that result; or

16.3.2 where the clause or part of the clause cannot be read down as contemplated by clause 16.3.1, it may be severed from this MOA and the remainder of the clause or of the MOA shall continue in force, unless this would result in a material change to the intended effect of the MOA.

16.4 Governing Law

This MOA is governed by the laws of South Australia.

16.5 Costs

Each party will bear its own costs incurred by it in connection with the preparation, negotiation and execution of this MOA, including to meet any obligations under it.

16.6 Counterparts

This MOA may be executed in any number of counterparts and all counterparts together will be taken as one document.



Kelley Jones

Executed as an Agreement.

THE COMMON SEAL OF CITY OF WEST TORRENS ABN 16 346 877 634 was affixed in the presence of:

Handwritten signature of Michael Coxon in black ink.

Michael Coxon
Mayor

Handwritten signature of Terry Buss in black ink.

Terry Buss PSM
Chief Executive Officer

10th November 2022

Date

EXECUTED by **ADELAIDE FOOTBALL CLUB LIMITED** ABN 48 008 101 568 in accordance with section 127 of the *Corporations Act 2001* (Cth) by

Handwritten signature of John Oxson in blue ink.

Signature of Director

JOHN OXSON

Name of Director

Handwritten signature of Shane Smallacombe in black ink.

Signature of Company Secretary/ Director

SHANE SMALLACOMBE

Name of Company Secretary/ Director

Date

10/11/22

MEMORANDUM OF AGREEMENT: ANNEXURE A - FLOWCHART

Kelledy Jones

ACTIONS		APPROVALS	DOCUMENTS
STAGE 1 – LEASE CONSULTATION PHASE			
Lease Consultation		<u>Council</u>	Memorandum of Agreement
Lease Consultation report for consideration by the Council		Council accepting the outcomes of the Lease Consultation for the purposes of progressing negotiations with AFC in relation to a lease with AFC on materially same terms as presented for public consultation. Council to authorise the Mayor and CEO to enter into the Memorandum of Agreement. <u>AFC</u> The Board of AFC authorise AFC to enter into the Memorandum of Agreement.	
STAGE 2 – MASTERPLAN DEVELOPMENT			
CWT & AFC to negotiate the terms of reference for the Masterplan Advisory Group (MAG)		<u>Council</u>	Project Master Deed Contribution Deed
Establish MAG		Council to approve the Agreed Masterplan for the purpose of the Masterplan Consultation.	
MAG to inform the development of the Agreed Masterplan with CWT and AFC		Council to approve the form of the community consultation plan for the Agreed Masterplan.	
AFC/CWT to finalise Masterplan for Masterplan Consultation		Council to authorise the Mayor and CEO to enter into the Project Master Deed and Contribution Deed.	
		<u>AFC</u> The Board of AFC authorise AFC to enter into the Project Master Deed and Contribution Deed	
STAGE 3 – MASTERPLAN CONSULTATION			
Masterplan Consultation		<u>Council</u>	
Masterplan Consultation outcomes reported to the Elected Members for consideration		Council accepting the outcomes of the Masterplan Consultation for the purposes of the Redevelopment to progress on materially same terms as presented for public consultation.	
Amendments to the agreed Masterplan, where required, in line with the public consultation process			



ACTIONS		APPROVALS	DOCUMENTS
		<u>AFC</u> The Board of AFC adopting the Agreed Masterplan.	
STAGES 4 & 5 ARE INCLUDED AS INFORMATION ONLY AND ARE NOT CONDITIONS TO THIS MOA PURSUANT TO CLAUSE 3.6			
STAGE 4 – LICENCE TO CONSTRUCT AND LEASE			
The Council and AFC obtaining all necessary approvals to enable the Council to enter into the proposed Agreement for Lease, including: • approvals under the Planning Development & Infrastructure Act 2016; • any approvals required under the Environment Protection Act 1993; • confirmation from DIT in relation to the portion of the Land to be acquired by it for the T2D Project; • DIT acquiring a portion of the Land; • the Land being subdivided to accommodate the DIT acquisition; • the Council securing a surrender of its lease with SANFL; • the Council securing a surrender, or otherwise terminating, its lease with the Torrensville Bowling Club; • the Council terminating its licence agreement with the Messinian Association (or earlier expiry, if applicable). The parties negotiating in good faith, the treatment and/or management of the Land in line with any environmental assessment.		<u>Council</u> Council adopting the prudential report. Having considered the prudential report, authorise the Mayor and CEO to execute the Development (and, subject to the Development Deed, the Lease) and the Service Level Agreement. The Council obtaining any necessary statutory approval. <u>AFC</u> The Board of AFC authorise AFC to enter into the Development Deed (and, subject to the Development Deed, the Lease) and the Service Level Agreement. AFC obtaining any necessary statutory approval.	Development Deed Service Level Agreement

MEMORANDUM OF AGREEMENT: ANNEXURE A - FLOWCHART

Kelley Jones

ACTIONS	APPROVALS	DOCUMENTS
The Council obtaining a prudential report for the purposes of compliance with section 48 of the LG Act and the requirements of its own Policies.		
STAGE 5 – REDEVELOPMENT & CONSTRUCTION		
Council and AFC entering into and performing the necessary works under the:		Lease
- Project Master Deed - Contribution Deed - Agreement for Lease - Service Level Agreement		

Annexure B – Key Commercial Lease Terms - updated

KEY COMMERCIAL LEASE TERMS

Terms used in this document are set out on page 4.

Item	Key Terms	Deviation from Key Terms (October 2023)
Statement on public consultation	The Council (CWT) is in negotiations with the Adelaide Football Club (AFC) which is seeking a lease of portion of Council land, identified as the 'Proposed Lease Area' in the Plan being the land more commonly known as Thebarton Oval and Kings Park Reserve (the Land). The public is being asked to respond to a proposal to lease an area of the Land, for the purposes of the AFC establishing its corporate and training headquarters. For completeness, this consultation also includes a construction licence for AFC (or any contractor of AFC), to undertake the necessary works to redevelop the Land to achieve the above objective. Following the completion of the T2D works, it is understood that the Department of Industry and Trade (DIT) will return a portion of the DIT Land to CWT, following which CWT will grant a lease of such land to AFC, on the same or similar terms to those under contemplation, as set out in this consultation document. Please note that a copy of the full terms and conditions of the proposed lease are available upon request, as supplemented and/or varied by these Key Commercial Lease Terms.	The area to be leased has decreased in size, to exclude a portion of the western end of Kings Reserve, which will remain a publicly accessible reserve.
Community benefits	CWT has formed the view that the AFC Lease and related redevelopment of the Land will bring significant community benefits. CWT and AFC have commenced work on a Masterplan for the Land, which will include enhancements to the existing facilities and community use thereof, including: - significant infrastructure investment by AFC of approximately \$80 million, including around \$45 million specifically towards community benefit and facilities; - co-investment by CWT of approximately \$9 million towards community benefit and facilities; - works to preserve the Heritage Grandstand and the retention of other heritage items (including the David Hookes memorial);	The Community Hub will not longer be on the Land, however given this does not affect the lease, this is not a material change. We understand the Council is looking to relocate the Thebarton Community Hub given it is subject to DIT acquisition as part of the T2D project.

Item	Key Terms	Deviation from Key Terms (October 2023)
	- development of a new Community Hub on the Land (following the proposed acquisition of the Thebarton Community Hub for the T2D project). The Community Hub will be located <u>within</u> the Lease area, but will be excluded from the Lease and remain CWT Land; and - new and improved Public Realm facilities. The proposed Lease is subject to a number of conditions which are to be met by each of CWT, AFC, and third parties, including the redevelopment of the facilities located at the Land and the development of new state-of-the-art administration and training facilities for the AFC (Adelaide Crows) AFLW and AFL teams. Subject to the conditions being met (or waived), one such condition being an acceptable outcome of this public consultation (for the purposes of section 202 of the LG Act), CWT intends to grant a lease to AFC on the material commercial terms as set out in this document. (See further <i>Conditions Precedent to AFC Lease</i>)	
Conditions Precedent to AFC Lease	The AFC Lease is subject to a number of corporate and statutory conditions, including: - Public consultation, as proposed by this document. - Clarification from DIT in relation to the land to be acquired for the T2D project, which includes a portion of the Land (and part of which is understood will be returned to CWT). - Surrender of lease and/or resumption of lease (as applicable, following confirmation by DIT) of any current lease or licence over any part of the Land that will be impacted by this proposal.	No change
AFC Lease Term	42 years (Initial Term) commencing from occupancy by AFC of the completed facilities (projected for Q1 2025). Prior to the commencement of the Lease, CWT will grant a Construction Licence for an interim period to enable construction delivery, including for the development of the new facilities proposed to be built by AFC, together with Public Realm upgrades.	No change

Item	Key Terms	Deviation from Key Terms (October 2023)
AFC Lease Options	Further Term of 42 years (or maximum term under LG Act if this is increased during the Initial Term). CWT agrees to negotiate in good faith with AFC for a further term of 42 years, these negotiations to be commenced no earlier than 10 years and no later than 8 years prior to expiry of the Initial Term, subject always to the then statutory requirements.	No change
Renewal / Asset Buy-back Arrangement	Acceptance or rejection of the further Lease Option (as above) to be issued to AFC within 120 days. In the event that CWT rejects the AFC request to extend tenure (except in the case of any breach by AFC of the Lease), CWT agrees to acquire the AFC Facilities (Buy Back Option). The Buy Back Option is only available to AFC (i.e. not to any assignee). CWT is not obliged to offer a renewal of the Initial Term, nor to exercise the Buy Back Option in circumstances where AFC is in breach of the Lease. Market value mechanism to be agreed by CWT and AFC for Buy Back Option. Valuation principle of highest and best use on assumed freehold basis to determine market value. Any extension of the Initial Term to be on same terms as Initial Term of Lease (excluding the Buy Back Option).	There is no limit on time for the Council's response (SC 3 to the Lease). This does not adversely affect the Council's rights. The buy back option is available to an assignee, as the retention of this right will retain value in any assignment. Whilst this retains the buy back requirement for the Council, it does not put the Council in any worse position than it is currently entertaining with AFC. We also note that any assignee is subject to a number of conditions of assignment, including evidence that it is solvent and of good standing.
Rent	Reduction in rent for duration of Initial Term. This reduction reflects: - the significant investment by AFC of approximately \$45m in publicly accessible community assets and infrastructure (including the restoration of the Heritage Grandstand and gates located at Thebarton Oval); - the nature and use of the facility and the expenditure by AFC on improvements. In particular, the rental rate is to be determined having specific regard to comparable rents for sports and community club organisations and the upfront and any further capital investment made by AFC in the precinct. The relevant rate for the Initial Term will be a market competitive rate but will not be a commercial rent rate.	The rent rebate has been adjusted to 'flatten' out the rebate, as follows: Years 1 – 5 : 55% rebate Years 6 – 42: 40% rebate We note that the amended rebate will return a significantly greater rent to the Council in the earlier years of the Lease.

Item	Key Terms	Deviation from Key Terms (October 2023)
	Rent rebate: Years 1 – 10: 80% rebate Years 11 – 20: 60% rebate Years 21 – 30: 40% rebate Years 31 – 42: 20% rebate	
Council Rates	Rate relief to be provided to AFC during the Initial Term as follows: - publicly accessible space will not attract Council rates; - AFC exclusive-use buildings and areas will attract Council rates, but a discretionary rebate of 100% will apply for the first 20 years of the Initial Term, and thereafter at 60% for the balance of the Initial Term; - any other area of the Lease the subject of any commercial/retail occupancy by a third party will attract Council rates without any rebate.	The rate rebate has been adjusted to 'flatten' out the rebate, as follows: Years 1 – 5 : 87% rebate Years 6 – 42: 72% rebate Again, this represents a immediate obligation to pay a portion of rates from the Commencement Date.
	Approximate Rent & Council Rates for Initial Term calculated on indicative figures only as follows (and based on <u>current values</u>*): - Years 1 to 10 = \$20,250 p.a. (Rent \$20,250 + Rates \$0) - Years 11 to 20 = \$40,500 p.a. (Rent \$40,500 + Rates \$0) - Years 21 to 30 = \$141,443 p.a. (Rent \$60,750 + Rates \$80,693) - Years 31 to 42 = \$161,693 pa (Rent \$81,000 + Rates \$80,693) NB: This amount excludes any additional rates payable where AFC grants a sublease or sublicence to a 3rd party on commercial terms. <i>*See further Indexation for Rent. Council rates to be calculated at prevailing rates in each year.</i>	Calculations included in the Report.
Indexation for Rent	CPI Review: Annual review on the anniversary of the Commencement Date to reflect the change in CPI (All Groups, Adelaide) (CPI) (except in any year in where a Market Review is held). However, any CPI Review on the 1st to 10th anniversary of Initial Term will be capped at the lesser of CPI or a fixed rate increase of 3%. Market Review: On the 11th, 21st and 31st anniversary of the Commencement Date.	No change

Item	Key Terms	Deviation from Key Terms (October 2023)
Permitted Use	Sporting and community purposes in accordance and in compliance with the Community Management Plan and as permitted by the <i>Planning, Development and Infrastructure Act 2016</i> (and any legislative instrument thereunder) and other uses as may be approved in writing by CWT.	No change
Insurances	AFC must hold the following insurances: • Building and contents insurances for AFC Facilities and Heritage Grandstand for replacement value; • Plate glass insurance; • Public liability: Coverage of at least twenty million dollars (\$20,000,000.00) per claim, and • otherwise as advised by the Council 'insurer', the LGA Mutual Liability Scheme	No change
Signage	AFC to facilitate signage outcomes on developable areas (with CWT consent subject to CWT policy and planning approvals (as applicable)). Revenue generating outcomes retained by AFC, areas being used for revenue-generating signage by a 3 rd party which is outward-facing will attract Council rates without rebate. Landlord approval from CWT must be obtained for any new or updated signage.	No change
Maintenance Obligations – AFC Facilities, community accessible facilities and open space	AFC to fund the maintenance of the Ovals that are for community use and access. AFC to manage and maintain all AFC Facilities to AFC predefined standards, with reimbursement for applicable CWT contributions. AFC to provide a maintenance budget to CWT each year.	AFC to maintain the Premises, with the Usage Agreement establishing a sinking fund for heritage items.
Community access	Community access to the Ovals at all times they are not being used for games (including game days, as required), official training sessions or other related purposes (reasonably acceptable to CWT).	Refer Usage Agreement for detail.

Item	Key Terms	Deviation from Key Terms (October 2023)
Heritage Grandstand – Maintenance and Use Rights	AFC to fund fit out and maintenance and for non-exclusive use by AFC (if it is reasonably determined by CWT and AFC that it is useable). AFC to contribute a fixed annual amount to a jointly controlled sinking fund. Heritage Grandstand will remain a CWT asset and not subject to any calculation for the purposes of the Buy Back Option.	No change
Exit by Lessee / Change of Control Mechanism	AFC may assign, sublet or part with possession on terms which are reasonably acceptable to CWT, but any assignee must demonstrate it is of sound reputation and provide appropriate undertakings in connection with the AFC Facilities and Public Realm.	No change
Masterplan	CWT, together with AFC, to prepare an updated Masterplan for future public consultation.	No change.

Terms used in this document:

AFC	Adelaide Football Club Limited
AFC Facilities	Means the AFC facilities to be developed on the Land, including the corporate and training headquarters and associated buildings.
AFC Lease	The area of the Land to be leased by AFC as marked on the Plan.
CWT	City of West Torrens
DIT	Department of Infrastructure and Transport
DIT Land	The area of the Land anticipated for acquisition by DIT (as marked on the Plan).
Heritage Grandstand	The historic grandstand located at Thebarton Oval.
Land	The land identified in the Plan and commonly known as <i>Kings Park</i> and <i>Thebarton Oval</i> (and immediately surrounding areas), including the AFC Lease, Public Realm and T2D land. This includes the following Certificates of Title: • Volume 6131 Folios 655 and 656 • Volume 5092 Folio 344; • Portion of Volume 5436 Folio 231; and

- Portion of Volume 6221 Folio 506.

LG Act

Local Government Act 1999

Plan

The plan provided as part of this public consultation process identifying the proposed lease are and DIT acquisition area.

**Public
Realm**

The areas of the Land over which the AFC will have a lease, which will be available to the public for community use in accordance with these terms.

T2D

Torrens to Darlington Project for South Road roadworks, proposed to be undertaken by DIT on behalf of the State Government.

Annexure C – Draft Project Master Deed

**FINAL DRAFT FOR
REVIEW: 11.10.23**

Author Note:
This edition of the document is
based on the TG draft dated 3
October 2023.

Project Master Deed

between

City of West Torrens
ABN 16 346 877 634
(CWT)

and

Adelaide Football Club Limited
ABN 48 008 101 568
(AFC)

Regarding Thebarton Oval Sports Precinct

Table of contents

1	Definitions and interpretation	1
1.1	Definitions	1
1.2	Interpretation	4
1.3	Recitals	6
1.4	Headings	6
1.5	Paramountcy	6
2	Conditional arrangements	6
2.1	Satisfaction of Conditions Precedent	6
2.2	Responsibility for Conditions Precedent	6
2.3	Notice of Non-Satisfaction	7
2.4	Obligations of the Parties	7
3	Purpose and operative provisions	7
3.1	Purpose	7
3.2	Scope	7
3.3	Transaction Documents	7
3.4	Term	7
4	Interdependence of Transaction Documents	8
4.1	Interdependence	8
4.2	Breach or default	8
5	Master Plan	8
6	Contribution Deed and Usage Agreement	9
7	Development Deed	9
8	Environmental	9
8.1	Environmental assessment	9
8.2	Method	9
8.3	Costs	10
8.4	Releases	10
8.5	Groundwater Contamination	10
8.6	Inconsistency with Lease	11
9	Land conversion and Lease extension	11
10	Acknowledgement by AFC	11
11	Event of Default	11
12	Representations and warranties	12
12.1	Mutual representations and warranties	12
12.2	Reliance	12
12.3	Survival	12
13	Dispute resolution	12
13.1	All disputes to be dealt with under this clause	12
13.2	Notice of Dispute	13
13.3	Referral of Dispute to an expert	13
13.4	Urgency	14
13.5	Expert	14
13.6	Final	14
13.7	Conduct of Determination	14
14	Costs	14
15	GST	14
15.1	Definitions	15
15.2	GST payable in addition to consideration	15

15.3	Tax Invoice	15
15.4	Payment of GST	15
15.5	Reimbursement or indemnity.....	15
15.6	Adjustment Events	15
15.7	Additional amount	15
15.8	Credit or refund	15
16	Auditor General	15
17	Confidentiality	16
17.1	Confidentiality	16
17.2	Permitted disclosure	16
17.3	Public announcements	16
17.4	Confidentiality deed unaffected	17
18	Notices	17
19	CWT as Council	17
20	Miscellaneous	18
20.1	Governing law and jurisdiction.....	18
20.2	Severability	18
20.3	Further steps.....	18
20.4	Consents.....	18
20.5	Rights cumulative	18
20.6	Waiver and exercise of rights	18
20.7	Survival	18
20.8	Amendment	19
20.9	Counterparts	19
20.10	Entire understanding.....	19
20.11	Power of attorney.....	19
20.12	No partnership	19
Schedule 1.....	20	
The Land.....	20	
Schedule 2.....	21	
Master Plan.....	21	
Schedule 3.....	22	
Conditions Precedent	22	
Schedule 4.....	24	
Party Details	24	

This Deed is made on

2023

between **City of West Torrens** ABN 16 346 877 634 of 165 Sir Donald Bradman Drive, Hilton SA 5033 (**CWT**)

and **Adelaide Football Club Limited** ABN 48 008 101 568 of 105 West Lakes Boulevard, West Lakes SA 5021 (**AFC**)

Recitals

- A On 10 November 2022, the parties entered into a Memorandum of Agreement (**MOA**), which contemplates the parties entering into this Deed, subject to the parties meeting certain conditions precedent set out in the MOA.
- B The CWT is registered as the proprietor of an estate in fee simple in the Land.
- C The AFC has agreed to undertake the Lessee's Works on the Land in accordance with the Transaction Documents and to take the Leases of the Land subject to and on the terms and conditions of the Transaction Documents.
- D This Deed sets out terms and conditions agreed between CWT and AFC in respect of the Project.

Now it is covenanted and agreed as follows:

1 Definitions and interpretation

1.1 Definitions

In this Deed:

Act means *Local Government Act 1999* (SA);

Authority means any public, governmental, semi-governmental, statutory or regulatory authority, department or other body having competent jurisdiction in respect of the relevant act, matter or thing;

Business Day means any day that is not Saturday, Sunday or a public holiday in South Australia;

Claim includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability;

Commencement Date has the same meaning as that term is defined in the Development Deed;

Condition Precedent means the conditions precedent (if any) specified in Schedule 3;

Condition Precedent Satisfaction Date in relation to a Condition Precedent means the date for satisfaction of such Condition Precedent as specified in Schedule 3;

Confidential Information means any documentation or information of a confidential nature supplied by either party to the other in connection with this Deed and the project and includes all scientific, technical, manufacturing, performance, sales, financial, commercial, contractual or marketing information possessed by a party but excludes any documentation or information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by law;

Contaminant means any toxic or Hazardous Substance, gas, liquid or material, any waste or discharge of any pollutant on, in or under the Land which cause them to be:

- (a) unsafe or unfit for habitation or occupation by persons or animals;
- (b) degraded in their capacity to support plant life; or
- (c) otherwise environmentally degraded;

Contamination means the existence of Hazardous Substance or Contaminants:

- (a) in, under or affecting the Land;
- (b) originating from the Land;
- (c) in, under or on any land in the Land; and
- (d) in or on the improvements, or any fixtures, fittings or installations in, to or on the improvements in, on or, under the Land,

which may or does result in any local or public authority issuing any notice or direction or order requiring clean up, decontamination, removal, remedial action or making good the Land according to the requirements of any Environmental Laws;

Contribution Deed means a Contribution Deed to be entered into between the parties in relation to CWT's financial contribution towards the Project;

Corporations Act means the *Corporations Act 2001* (Cth);

Deed means this document entitled 'Project Master Deed' between CWT and AFC;

Deed Date means the date that this Deed has been entered into by all Parties;

Development Deed means the Development Deed to be entered into between the parties in relation to the development of the Land in accordance with the Master Plan, including the grant of a construction licence to AFC;

Environmental Laws means all present and future Laws and regulations, environmental protection policies, and directions, standards and guidelines of any authority (and any other like bodies) regulating or otherwise relating to the environment, including without limitation any law relating to land use, planning, heritage, coastal protection, water catchments, pollution of air or waters, noise, soil or ground water contamination, chemicals, waste, use of hazardous or dangerous goods or substances, building regulations, public and occupational health and safety, or noxious trades and all licences, approvals, consents, permissions or permits issued by any authority of an environmental nature;

EPA means the *Environment Protection Act 1993* (SA);

Event of Default means any event of default specified in clause 11;

Financial Year means each 12 month period ending on 30 June;

GST means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

GST Law has the same meaning as in the GST Act;

Hazardous Substance means any material, substance, gas, liquid, chemical, biological, mineral or other physical matter which would if present in under or on the Land, result in any competent authority issuing any notice or direction or order requiring any investigation, monitoring, clean-up, decontamination, removal, remedial action or making good under any Environmental Law or which would constitute a violation or contravention of any Environmental Law;

Insolvency Event means the occurrence of any one or more of the following events regarding any of the Parties:

- (a) a meeting has been convened, resolution proposed, petition presented or order made for the winding up of that party;
- (b) a receiver, receiver and manager, provisional liquidator, liquidator, or other officer of the Court, or other person of similar function has been appointed regarding all or any material asset of the party;
- (c) a security holder, mortgagee or chargee has taken attempted or indicated an intention to exercise its rights under any security of which the party is the security provider, mortgagor or chargor; or
- (d) an event has taken place with respect to the party which would make, or deem it to be, insolvent under any law applicable to it;

Land means the land described in recital B being the whole of the land comprised and described in Schedule 1, together with all improvements on the Land and also being the land commonly known as Thebarton Oval and Kings Reserve and where the context permits, includes all buildings and improvements;

Law means all present and future laws having application in the State of South Australia and includes any requirement of any statute, rule, regulation, code, proclamation, ordinance or by-law whether state, federal or otherwise;

Lease means the lease in the form of the Memorandum of Lease annexed to the Development Deed (and any agreed variations to it);

Lessee's Improvements means:

- (a) the buildings, improvements, fixtures, fittings, plant, equipment, signage and facilities together with all earth works, laying of foundations, site preparation and site surcharging, reticulation, roadway crossovers, paving, surfaces of car parks, driveways, pathways, landscaping, services and augmentation and infrastructure of any nature, which are constructed or installed by or on behalf of AFC on the Premises; and
- (b) all installations, alterations and additions undertaken by or on behalf of AFC on the Premises at any time,

and includes any part of the Lessee's Improvements;

Lessee's Works means the works described in the Development Deed according to AFC's drawings and specifications reasonably approved by CWT and installing AFC's Improvements in or on the Premises;

Master Plan means the master plan agreed between CWT and AFC in relation to the development of the Project in its entirety and the development of the Premises in accordance with the MOA, a copy of which is set out in Schedule 2;

MOA has the meaning given to that term in Recital A;

Parties means each of the parties to this Deed, and 'Party' means any one of them;

Premises means the Land as delineated on the plan in Schedule 1 on and where the context allows includes:

- (a) all present and future improvements, infrastructure or modifications erected on the Premises, excluding the Lessee's Improvements;

- (b) all the Lessor's improvements, infrastructure, fixtures, fittings, plant and equipment installed in or on the Premises; and
- (c) all the roadways, conveniences, Services, amenities and appurtenances of, in or to the Premises,

and includes any part of the Premises;

Project means the development, operation and use of the Land in accordance with the Transaction Documents and for the term of the Lease;

Public Realm means that part of the Land which is accessible by members of the public in accordance with the terms agreed by the parties in the Leases and Usage Agreement, and which is delineated on the plan contained in Schedule 1;

Site Contamination Auditor has the same meaning as that term is defined in the EPA;

Site Contamination Consultant has the same meaning as that term is defined in the EPA;

Term means the period:

- (a) commencing on the Deed Date;
- (b) expiring on the first to occur of:
 - (i) termination of this Deed pursuant to clause 2 on account of non-satisfaction of the Conditions Precedent; or
 - (ii) expiry or such earlier determination of the Lease in respect of Land (as extended in accordance with clause 9(b);
- (c) or any other such period as agreed in writing by the parties (acting reasonably).

Transaction means the arrangements between CWT and AFC pursuant to the Transaction Documents;

Transaction Documents means:

- (a) the Development Deed;
- (b) the Contribution Deed;
- (c) the Usage Agreement; and
- (d) any other agreement or document which CWT and AFC are obliged to enter into and execute pursuant to the other Transaction Documents; and

Usage Agreement means the Usage Agreement to be entered into between the parties in relation to the use, maintenance, repair and usage of the Heritage Items and the Public Realm.

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) a reference to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular;

- (iii) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this Deed and references to this Deed include any recital, schedule or annexure;
- (iv) any contract (including this Deed) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
- (v) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (vi) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
- (vii) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
- (viii) a group of persons is a reference to any two or more of them taken together and to each of them individually;
- (ix) an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;
- (x) time is a reference to legal time in Adelaide, South Australia;
- (xi) a reference to a day or a month means a calendar day or calendar month;
- (xii) money (including '\$', 'AUD' or 'dollars') is to Australian currency;
- (b) unless expressly stated, no Party enters into this Deed as agent for any other person (or otherwise on their behalf or for their benefit);
- (c) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
- (d) the words 'costs' and 'expenses' include reasonable charges, expenses and legal costs on a full indemnity basis;
- (e) headings and the table of contents are for convenience only and do not form part of this Deed or affect its interpretation;
- (f) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (g) the time between two days, acts or events includes the day of occurrence or performance of the second but not the first day act or event;
- (h) if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day;
- (i) where there are two or more persons in a Party each are bound jointly and severally; and
- (j) a provision of this Deed must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of this Deed or the inclusion of the provision in this Deed.

1.3 Recitals

The Recitals are true and correct and form part of this Deed.

1.4 Headings

In this Deed headings are for convenience of reference only and do not affect interpretation.

1.5 Paramountcy

In the event of any inconsistency between the provisions of this Deed and the Transaction Documents then:

- (a) from the date of execution of this Deed until the Commencement Date of the Lease, the provisions of this Deed override and are paramount to the provisions of the Transaction Documents but only to the extent of such inconsistency; and
- (b) subject to clause 8.6 of this Deed, from the Commencement Date of the Lease, the provisions of the Lease override and are paramount to the provisions of the Transaction Documents but only to the extent of such inconsistency.

2 Conditional arrangements

2.1 Satisfaction of Conditions Precedent

- (a) Notwithstanding any additional condition precedent expressed in a Transaction Document, each Transaction Document shall also be deemed to be subject to and conditional upon CWT and AFC (as the case may be) satisfying each Condition Precedent.
- (b) A Condition Precedent shall be deemed to be satisfied on the first to occur of:
 - (i) the date on which CWT or AFC (as the case may be) gives written notification to the other Party that the relevant Condition Precedent has been satisfied; or
 - (ii) the date on which CWT or AFC, being the party responsible for a Condition Precedent (as the case may be), gives written notification to the other Party that it has elected to waive the requirement for the relevant Condition Precedent to be satisfied; or
 - (iii) the date on which any Authority or third party gives a consent or notification which satisfies the terms of the relevant Condition Precedent.

2.2 Responsibility for Conditions Precedent

- (a) CWT shall be obliged to use its best efforts and endeavours to satisfy (or waive, as the case may be) each Condition Precedent which is nominated as its responsibility in Schedule 3.
- (b) AFC shall be obliged to use its best efforts and endeavours to satisfy (or waive, as the case may be) each Condition Precedent which is nominated as its responsibility in Schedule 3.
- (c) To the extent that it is able to do so, each party agrees to provide any reasonable assistance to the other party to assist it in satisfying each Condition Precedent.
- (d) The parties may, in their discretion, agree in writing to extend the due date for compliance with any Condition Precedent specified in Schedule 3.

2.3 Notice of Non-Satisfaction

- (a) If any Condition Precedent is not satisfied by the due date specified in Schedule 3 then either Party may give written notification to the other Party specifying that the Condition Precedent has not been satisfied and specifying that the Party giving the notice reserves its right to terminate the Transaction if the specified Condition Precedent is not satisfied within a reasonable period of time as nominated in the notice (being not less than fourteen (14) Business Days from the date of the notice).
- (b) If either Party gives a notice pursuant to clause 2.3(a) and the Condition Precedent specified in the notice is not satisfied within the period specified in the notice then either Party may terminate this Deed at any time after the expiration of the notice by written notice to the other Party.
- (c) If this Deed is terminated pursuant to this clause 2.3, no Party has any Claim against the other Party (including any claim for compensation) except for any antecedent breach.

2.4 Obligations of the Parties

Each Party must:

- (a) do all things reasonably necessary to satisfy the Condition Precedent (other than take legal action or commence proceedings in connection with the completion of the Transaction unless it elects to do so in its sole discretion);
- (b) keep the other Party informed as to the status and progress of satisfaction of the Condition Precedent, at all times within five (5) Business Days of receiving or becoming aware of the status, progress and any information; and
- (c) notify the other Party in writing within two (2) Business Days after the satisfaction of the Condition Precedent.

3 Purpose and operative provisions

3.1 Purpose

The purpose of this Deed is to:

- (a) co-ordinate entry by the Parties into the Project and Transaction Documents; and
- (b) provide for and regulate certain rights and obligations of the Parties in respect of the Project and Transaction Documents.

3.2 Scope

Except where otherwise especially provided under this Deed, nothing in this Deed limits any of the obligations of any Party under any other Transaction Document.

3.3 Transaction Documents

This Deed shall apply to each of the other Transaction Documents and CWT and AFC (as applicable) shall have the benefit of this Deed and the terms and conditions of this Deed shall apply to each of the other Transaction Documents mutatis mutandis except to the extent of any inconsistency, in which case the provisions of clause 1.5 of this Deed shall apply.

3.4 Term

This Deed shall apply for the duration of the Term and (without limitation) the obligation of CWT and AFC pursuant to this Deed shall apply in addition to any obligations arising pursuant to the Transaction Documents.

4 Interdependence of Transaction Documents

4.1 Interdependence

Notwithstanding anything expressed or implied to the contrary in any Transaction Document, the Parties agree that:

- (a) CWT and AFC have agreed to enter into the Transaction contemplated by the Transaction Documents in order to effect the Transaction;
- (b) it is a condition of CWT and AFC entering into any Transaction Document that such Party must also enter into all of the Transaction Documents to which it has been expressed to be a Party; and
- (c) it is a condition of CWT and AFC entering into the Transaction Documents that each of the Transaction Documents are interdependent and a breach of any Transaction Document by CWT or AFC is deemed to be a breach of all the Transaction Documents by such Party.

4.2 Breach or default

Without limiting clause 4.1:

- (a) a breach or default in the performance of this Deed shall be deemed to be a breach and default by the relevant party in the performance of each Transaction Documents; and
- (b) a breach or default in the performance of any Transaction Documents shall be deemed to be a breach and default by the relevant Party in the performance of all of the Transaction Documents and this Deed.

5 Master Plan

- (a) CWT and AFC have jointly developed the Master Plan for the Project in accordance with the MOA.
- (b) The Parties may agree to make minor changes to the Master Plan. If AFC proposes a change to the Master Plan which is consistent with the use permitted under the Leases, CWT will use its best endeavours to support and agree to such change.
- (c) AFC acknowledges that, where any change does not meet the requirements of paragraph (b), CWT may require further public consultation of the changes proposed to the Master Plan. AFC agrees to provide all reasonable assistance to CWT in undertaking any further public consultation under this clause 4.
- (d) If changes are required to the Master Plan:
 - (i) as a result of clauses (b) or (c) above; or
 - (ii) in order for AFC to obtain the necessary approvals from its board, its executives or financiers, all appropriate authorities and such other stakeholders in respect to the works to be undertaken by AFC under the respective Agreements to Lease; or
 - (iii) as a result of the Torrens to Darlington Project which is to be undertaken by the Government of South Australia,

the Parties agree to revise the Master Plan as agreed by the Parties;

 - (i) acting reasonably and without delay to finalise the Master Plan ;and

- (ii) subject always to any public consultation process required by law undertaken in relation to the Master Plan and any relevant CWT policy as at the date of this Deed (to the extent that such policy is not inconsistent with this Deed)

6 Contribution Deed and Usage Agreement

- 6.1 On or about the Deed Date, the parties will enter into the Contribution Deed in relation to CWT's financial contributions to the Project.
- 6.2 On or about the Deed Date, the parties will enter into the Usage Agreement in relation to the use, maintenance, repair and usage of the Heritage Items and the Public Realm.

7 Development Deed

On or about the Deed date, the parties will enter into the Development Deed.

8 Environmental

8.1 Environmental assessment

- (a) AFC is to appoint a Site Contamination Auditor to prepare and deliver:
 - (i) to AFC (with a copy to CWT), an environmental assessment which determines the nature and extent of any Contamination existing on or in the areas of the Land, which are to be solely used by AFC (that is, excluding the Public Realm) and an opinion on the remediation options available for those areas (if required) (**AFC Assessment**) and the land use of the relevant area; and
 - (ii) to AFC (with a copy to CWT), an environmental assessment which determines the nature and extent of any Contamination existing on or in the Public Realm and an opinion on the remediation options available for those areas (if required) (**Public Realm Assessment**) and the land use of the relevant area.
- (b) AFC is to appoint a Site Contamination Consultant to perform any investigations of the Land:
 - (i) in accordance with any directions of the Site Contamination Auditor;
 - (ii) to the reasonable satisfaction of the Site Contamination Auditor; and
 - (iii) for the purposes of the AFC Assessment and Public Realm Assessment.
- (c) In the AFC Assessment and the Public Realm Assessment, the Site Contamination Auditor is to identify the respective areas of the Land where any material requiring remediation can be stored (that is, capped rather than removed) and treated onsite in order to minimise the need for any offsite disposal of material requiring remediation.

8.2 Method

- (a) CWT and AFC agree that, subject to AFC complying with clauses 8.2 (a) and 8.2 (b), AFC will be solely responsible for:
 - (i) determining the remediation method to be adopted as identified in the AFC Assessment for remediating the areas of the Land which are to be solely used by AFC (that is, excluding the Public Realm);

- (ii) doing all things reasonably necessary to remediate the areas of the Land which are to be solely used by AFC (that is, excluding the Public Realm), at AFC's cost, in accordance with AFC's chosen remediation methodology;
- (iii) determining the most acceptable remediation method, acting reasonably and in good faith, to be adopted as identified in the Public Realm Assessment for remediating the Public Realm; and
- (iv) all things reasonably necessary to remediate the Public Realm, in accordance with remediation methodology that complies with clauses 8.2 (a) and clause 8.2 (b);

provided always that AFC must ensure that the remediation method has been approved by the Site Contamination Auditor and, if a Site Contamination Auditor is not required, if it has been approved by the Site Contamination Consultant.

- (b) In managing its obligations under this clause 8, AFC must:
 - (i) at all times, comply with:
 - (A) the EPA; and
 - (B) any reasonable direction issued by the Site Contamination Consultant and/or the Site Contamination Auditor provided that if a direction given by the Site Contamination Consultant conflicts with a direction given by the Site Contamination Auditor then the direction given by the Site Contamination Auditor shall prevail and be paramount; and
 - (ii) promptly provide to CWT any written reports or certificates received by it from the Site Contamination Consultant and/or the Site Contamination Auditor.

8.3 Costs

AFC agrees to be solely responsible for:

- (a) subject to clause 8.5, paying any fees charged by the Site Contamination Consultant in connection with the AFC Assessment and the Public Realm Assessment;
- (b) paying any fees charged by the Site Contamination Auditor in connection with the AFC Assessment and the Public Realm Assessment; and
- (c) the costs of any remediation to the Premises.

8.4 Releases

- (a) Subject to subclause 8.4(b) and 8.5, on and from the date that any required remediation works as set out in the AFC Assessment and the Public Realm Assessment are complete, CWT releases AFC, its employees, agents and contractors from any Claims which may arise in respect to the Contamination which existed on or in the Land and the Public Realm prior to the date of completion of the remediation works in accordance with the AFC Assessment and the Public Realm Assessment.
- (b) The release under subclause 8.4(a) does not apply in respect of any Contamination that AFC can reasonably demonstrate that has arisen as the result of the CWT's (or and of CWT's employees, agents and contractors') occupation or use of the Land in connection with the activities or transactions contemplated by the Transaction Documents.

8.5 Groundwater Contamination

- (a) The provisions of this clause 8 do not apply in relation to any pre-existing groundwater contamination identified in the AFC Assessment or identified in the Public Realm Assessment.

- (b) If any pre-existing groundwater contamination is identified in the AFC Assessment or the Public Realm Assessment then:
 - (i) AFC is not liable for remediation of the pre-existing groundwater contamination; and
 - (ii) CWT is liable to undertake and pay for the cost of any monitoring of the pre-existing contamination if required by any of the Site Contamination Auditor, the Site Contamination Consultant, or the EPA (Environmental Protection Authority).
- (c) If the Site Contamination Auditor, Site Contamination Consultant or the EPA require testing for any pre-existing groundwater contamination, the fees and costs of any such testing shall be paid by AFC and CWT in equal shares.

8.6 Inconsistency with Lease

In the event of any inconsistency between the provisions of this clause 8 and clause 10 of the Lease, then this clause prevails to the extent of any inconsistency.

9 Land conversion and Lease extension

- (a) If so requested by AFC not less than ten (10) years after Practical Completion and subject always to the Act, CWT agrees to enter into good faith negotiations with AFC to consider taking steps to revoke the status of the Land as 'community land' as dedicated under the Act (**Revocation**).
- (b) AFC acknowledges and agrees that by agreeing to enter into good faith negotiations in relation to any Revocation under this clause, CWT is not predetermining any position, particularly in relation to the outcomes of any statutory requirement or public consultation process relevant at the time.
- (c) Subject to subclause 9(b), if the status of the Land as 'community land' under the Act is successfully revoked in accordance with clause 9(a) and the Act, then CWT agrees to grant a variation to the Lease in respect to the Land so that it is for a term of 99 years from the Commencement Date.
- (d) To avoid any doubt, with the exception of Lessee's Buy Back (SC4) being deleted from the Leases, no amendments are to be made to the Leases other than those required to affect the variations granted in clause 9(c), unless otherwise agreed between the Parties.
- (e) If the status of the Land as 'community land' under the Act is not successfully revoked in accordance with clause 9(a) then, to avoid any doubt, the provisions of the Lease apply, particularly, Special Condition SC4 of the Lease (Lessor's Buy Back obligation).

10 Acknowledgement by AFC

AFC acknowledges and agrees that, as at the Deed Date, if an area with geotechnical risk is within an area of the Land to be developed by AFC, that AFC is liable for the costs of and incidental to the particular engineering and construction methodology which may be need to be employed to contain the area at risk.

11 Event of Default

It is an Event of Default if:

- (a) a Party fails to perform or observe any undertaking, obligation or agreement expressed or implied in or given under or in relation to any Transaction Document and the Party does not remedy such breach or default on the terms and within the time specified in the Transaction Document; or
- (b) an Insolvency Event occurs in relation to any Party.

12 Representations and warranties

12.1 Mutual representations and warranties

- (a) AFC represents and warrants to CWT that, as at the Deed Date it is a body corporate duly incorporated in accordance with the laws of the Commonwealth of Australia, validly exists under those laws and has the capacity to sue or be sued in its own name and to own its property and conduct its business as it is being conducted.
- (b) Subject to clause 2.1(a), each party represents and warrants to the other party that, as at the Deed Date
 - (i) it has capacity unconditionally to execute and deliver and comply with its obligations under this Deed;
 - (ii) it has taken all necessary action to authorise the unconditional execution and delivery of and the compliance with its obligations under this Deed;
 - (iii) neither the execution, delivery or performance by it of this Deed nor the carrying out of the transactions contemplated by this Deed:
 - (A) violate in any respect any law or any determination, order or award of any governmental or statutory body applicable to it; or
 - (B) conflict with or result in any breach of or require any consent or approval under any mortgage, Deed or other undertaking or instrument to which it is a Party or which is binding upon it or any of its assets.

12.2 Reliance

Each Party acknowledges that each of the other Parties has entered into this Deed in reliance upon the representations and warranties by that Party in clause 12.1.

12.3 Survival

Each representation and warranty in this clause 12 survives the:

- (a) completion of any transaction under this Deed; or
- (b) termination or expiration of this Deed.

13 Dispute resolution

13.1 All disputes to be dealt with under this clause

Unless otherwise provided in this Deed, all disputes or differences between the parties in connection with:

- (a) this Deed; or
- (b) the Development Deed; or

- (c) Contribution Deed; or
- (d) any other matter in any way relating to this Deed,

but not the Lease or Usage Agreement,

(Dispute) will be dealt with under this clause 13.

13.2 Notice of Dispute

Either party (**Disputing Party**) must within 5 Business Days after the Dispute arises, give a notice to the other party (**Non-Disputing Party**):

- (a) setting out details of the Dispute, the reason the Dispute should be resolved in favour of the Disputing Party or a compromise proposal that the Disputing Party offers to the Non-Disputing Party and any other matter that may, in the reasonable opinion of the Disputing Party, be relevant to the resolution of the Dispute; and
- (b) requiring the Non-Disputing Party to, in good faith, resolve the Dispute within 10 Business Days of the date of the notice.

13.3 Referral of Dispute to an expert

If the Dispute is not resolved according to clause 13.2 or as otherwise agreed by the parties in writing then subject to clause 13.4, the determination of the Dispute (**Determination**) will be referred to an independent person (**Expert**):

- (a) mutually agreed by AFC and CWT; or
- (b) failing agreement, an Expert, who must have at least 5 years' current and continuous standing in the Expert's profession at the date of appointment and who must be:
 - (i) for a matter of law, a practising barrister or solicitor appointed by the President of the Law Society of South Australia;
 - (ii) for a financial or accountancy matter, a practising chartered accountant appointed by the President of the South Australian Division of the Institute of Chartered Accountants in Australia;
 - (iii) for a matter connected with the undertaking of AFC's Works, either a practising architect appointed by the President of the South Australian Chapter of the Royal Australian Institute of Architects or a practising quantity surveyor appointed by the President of the South Australian Chapter of the Australian Institute of Quantity Surveyors (whichever is the more appropriate, as determined by CWT acting genuinely and reasonably); or
 - (iv) for any other matter, a qualified person appointed by the senior officer of an appropriate association, institute, society or board,

provided that:

- (c) if appropriate and the parties agree, the dispute may be referred to a panel of experts representing more than one of the appropriate skills; and
- (d) if an Expert refuses to act or the President of the appropriate professional body refuses to appoint an Expert, the President of the Law Society of South Australia or other appropriate person will be requested to select an appropriate Expert who is willing to act regarding the Dispute.

13.4 Urgency

Either party may, in a case of genuine urgency, seek immediate interlocutory relief or interim remedy.

13.5 Expert

The Expert is an expert and not an arbitrator.

13.6 Final

Except if there has been a denial of natural justice or manifest error, the Determination by the Expert is final and binding on the parties.

13.7 Conduct of Determination

Unless otherwise agreed by the parties in writing:

- (a) the place of the proceedings for the purposes of the Determination will be Adelaide, South Australia;
- (b) each Party is entitled to legal representation at all stages of the Determination;
- (c) the proceedings for purposes of the Determination will be conducted according to laws of evidence;
- (d) each Party will bear its own costs and expenses in relation to the Determination;
- (e) the Parties will pay in equal shares the Expert's fees and expenses and the cost of the Determination, including room hire (if any), unless otherwise determined by the Expert;
- (f) the Parties must comply with all reasonable requests and produce all necessary documentation to the Expert, to enable the Expert to make the Determination;
- (g) the Parties may make submissions which the Expert must take into account when making the Determination;
- (h) the Expert must provide its Determination to the parties in writing, with reasons for the Determination, within 10 Business Days of the conclusion of the hearing of the Dispute; and
- (i) the provisions of the *Commercial Arbitration Act 2011* (SA) do not apply to the resolution of any Dispute under the provisions of this clause 13.

14 Costs

Except as expressly stated otherwise in this Deed, each Party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Deed.

15 GST

This clause applies if a Party to this Deed is, or becomes, liable to pay GST regarding any Supply of goods, services or anything else under this Deed.

15.1 Definitions

Capitalised expressions which are not defined in this Deed but which have a defined meaning in the GST Act have the same meaning in this clause.

15.2 GST payable in addition to consideration

If a Party (**Supplier**) makes a Taxable Supply under this Deed, then the Recipient of the Taxable Supply, must pay the Supplier the GST payable on the Taxable Supply in addition to the Consideration for the Supply.

15.3 Tax Invoice

Within seven (7) Business Days of a Supply being made under this Deed, the Supplier must provide to the Recipient a Tax Invoice or other documentation that complies with the requirements for a valid Tax Invoice under the GST Act.

15.4 Payment of GST

Subject to the Supplier issuing a Tax Invoice to the Recipient as required under clause 15.3, the Recipient must pay the GST on the Taxable Supply under this Deed to the Supplier at the same time as the Recipient pays the Consideration for the Supply to the Supplier.

15.5 Reimbursement or indemnity

Despite any other provision of this Deed, if the whole or part of any Consideration under this Deed is a reimbursement or an indemnity to one Party of an expense, loss, outgoing or liability incurred or to be incurred by the other Party, the Consideration excludes any GST included in such expense, loss, outgoing or liability incurred or to be incurred for which the other Party can claim an Input Tax Credit. The other Party will be assumed to be entitled to a full Input Tax Credit unless it can establish otherwise.

15.6 Adjustment Events

If an Adjustment Event occurs regarding a Supply under this Deed, the Supplier must issue to the Recipient an Adjustment Note regarding the Adjustment Event within seven days of the Supplier becoming aware of the Adjustment Event.

15.7 Additional amount

If the Adjustment Note gives effect to an Increasing Adjustment, the Recipient must pay to the Supplier the GST component of the Increasing Adjustment not later than the fourteenth business day of the month following the month in which the Adjustment Note is issued to the Recipient.

15.8 Credit or refund

If the Adjustment Note gives effect to a Decreasing Adjustment, the Supplier must pay to the Recipient the GST component of the Decreasing Adjustment not later than the fourteenth business day of the month following the month in which the Adjustment Note is issued to the Recipient.

16 Auditor General

Nothing in this Deed derogates from the powers of the Auditor General under the *Public Finance and Audit Act 1987* (SA).

17 Confidentiality

17.1 Confidentiality

- (a) Each Party agrees that it will not use any Confidential Information of the other party, or allow any Confidential Information of the other party to be used for any purpose, except for the purposes of and in the manner contemplated by this Deed, and agrees that it will:
 - (i) keep confidential;
 - (ii) take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;
 - (iii) maintain proper and secure custody of; and
 - (iv) not use or reproduce in any form,

In relation to any Confidential Information belonging to the other Party.
- (b) Any departure from a Party's obligations pursuant to this clause may only be with the written consent of the other Party or as required by law or the terms of this Deed.

17.2 Permitted disclosure

Clause 17.1 shall not apply in the following circumstances:

- (a) any disclosure required to be given by CWT to Parliament, the Governor, Cabinet or a Parliamentary or Cabinet Committee or Subcommittee;
- (b) any disclosure to the Crown in right of the State of South Australia or any instrumentality or agency of the Crown in right of the State of South Australia, if the disclosure is made on the basis that the information is confidential;
- (c) any disclosure required by law, including as required by the *Freedom of Information Act 1991* (SA);
- (d) any disclosure required by any applicable stock exchange listing rules;
- (e) disclosure to solicitors, barristers or other professional advisers under a duty of confidentiality;
- (f) a disclosure to bankers or other financial institutions of the party, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if those persons undertake to keep information disclosed confidential;
- (g) a disclosure in connection with the ongoing development, management and operation of the Land; or
- (h) a disclosure of any information which is a matter of public record.

17.3 Public announcements

- (a) Neither Party may make any public announcement or media release about any aspect of this Deed or the Transaction Documents without the prior consent of the other Party (which consent must not be unreasonably withheld).
- (b) Notwithstanding any consent given under clause 17.3(a), the Parties agree to issue jointly-prepared announcements where reasonably practicable.

17.4 Confidentiality deed unaffected

If AFC has entered into any separate deed or agreement to keep confidential the confidential information of CWT or in relation to the Land, nothing in this clause limits or otherwise affects the terms of that deed or agreement.

18 Notices

- (a) In this Deed, a **Notice** means:
 - (i) a notice; or
 - (ii) a consent, approval or other communication required to be in writing, under this Deed.
- (b) A notice, consent, approval or other communication under this deed (**Notice**) must be:
 - (i) in writing and signed by the sender or its duly authorised representative, addressed to the recipient and sent to the recipient's address specified in Schedule 4; and
 - (ii) delivered by personal service, sent by pre-paid mail or transmitted by email, or any other lawful means.
- (c) A Notice given to a person in accordance with this clause is treated as having been given and received:
 - (i) if personally delivered, on delivery;
 - (ii) if sent by pre-paid mail, on the fifth clear Business Day after the date of posting (or the seventh Business Day after the date of posting if sent to or from an address outside Australia); and
 - (iii) if sent by email, at the time of transmission by the sender, unless the sender receives an automated notice generated by the sender's or the recipient's email server that the email was not delivered,

except that, if the delivery, receipt or transmission is after 5.00pm in the place of receipt or on a day which is not a Business Day, it is taken to have been received at 9.00am on the next Business Day.
- (d) A Party may change its address for service by giving Notice of that change to each other Party.
- (e) The provisions of this clause 18 are in addition to any other mode of service permitted by law.

19 CWT as Council

- (a) CWT enters into this Deed as a council acting under sections 7 and 36 of the LG Act and not in any other capacity. This Deed does not preclude or pre-empt the exercise by CWT of any other regulatory function or power as a council.
- (b) AFC acknowledges that this transaction may be an administrative act and that the *Ombudsman Act 1972* (SA) may apply. AFC agrees to cooperate and to comply with all its legal obligations under that or any other Act.

- (c) AFC acknowledges that CWT is an 'agency' for the purposes of the *Freedom of Information Act 1991* (SA) and that documents, correspondence or other information relating to this Deed may be subject to disclosure under that Act.

20 Miscellaneous

20.1 Governing law and jurisdiction

- (a) This Deed is governed by and is to be construed in accordance with the laws applicable in South Australia, Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of South Australia, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

20.2 Severability

- (a) Subject to clause 20.2(b), if a provision of this Deed is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Deed.
- (b) Clause 20.2(a) does not apply if severing the provision:
 - (i) materially alters the:
 - (A) scope and nature of this Deed; or
 - (B) the relative commercial or financial positions of the Parties; or
 - (ii) would be contrary to public policy.

20.3 Further steps

Each Party must promptly do whatever any other Party reasonably requires of it to give effect to this Deed and to perform its obligations under it.

20.4 Consents

Except as expressly stated otherwise in this Deed, a Party may give or withhold consent to be given under this Deed but is obliged to give reasons for doing so.

20.5 Rights cumulative

Except as expressly stated otherwise in this Deed, the rights of a Party under this Deed are cumulative and are in addition to any other rights of that Party.

20.6 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a Party of a right relating to this Deed does not prevent any other exercise of that right or the exercise of any other right.
- (b) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

20.7 Survival

The rights and obligations of the Parties survive the:

- (a) completion of any transaction under this Deed; or
- (b) termination or expiration of this Deed.

and to avoid doubt, the provisions of this Deed capable of having effect following termination of this Deed for any reason do not merge on termination and continue to have full effect.

20.8 **Amendment**

This Deed may only be varied or replaced by a deed executed by the Parties.

20.9 **Counterparts**

This Deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one deed.

20.10 **Entire understanding**

- (a) This Deed contains the entire understanding between the Parties as to the subject matter of this Deed when read and construed in conjunction with the Transaction Documents.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Deed are merged in and superseded by this Deed and are of no effect. No Party is liable to any other Party in respect of those matters.
- (c) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of this Deed; or
 - (ii) constitutes any collateral deed, warranty or understanding between any of the Parties.

20.11 **Power of attorney**

An attorney executing this Deed states that the attorney has no notice of the revocation, termination or suspension of the power of attorney appointing that attorney.

20.12 **No partnership**

Nothing in this Deed is taken or construed by the Parties or any other person as creating the relationship of partnership, principal and agent or joint venture between the Parties.

Schedule 1

The Land

(including delineation of the Public Realm)

DRAFT

Schedule 2

Master Plan

[insert]

DRAFT

Schedule 3

Conditions Precedent

Terms of Condition Precedent	Party Responsible to Fulfil Condition Precedent	Condition Precedent Satisfaction Date
CWT completing any necessary public consultation process in accordance with any relevant policies of CWT (as at the Date Deed) and the Act	CWT	[insert]
CWT obtaining all necessary resolutions and determinations as a Council under the Act in respect to entering into this Deed, the Project with AFC and all of the Transaction Documents	CWT	[insert]
AFC and the South Australian National Football League Inc (SANFL) reaching an agreement for the surrender of the lease with SANFL and the withdrawal of the caveat on title in respect to that lease being dealing no. 13745684 (and CWT shall consent to the surrender of that Lease).	AFC	
AFC and the South Australian Amateur Football League Inc (SAAFL) reaching an agreement (or reaching an agreement with SANFL, as the case may be) for the withdrawal of the caveat on title dealing nos. 13942165 and 13942190.	AFC	
CWT obtaining the surrender of the lease in respect to the Torrensville Bowling Club	CWT	[insert]
CWT obtaining the surrender of the licence with the Messinian Association of SA (unless expired sooner).	CWT	[insert]
CWT obtaining confirmation (to the reasonable satisfaction of CWT) from the Government of South Australia as to the portion of the Land which is to be acquired for the Torrens to Darlington Project, or the acquisition of such land,	CWT	[insert]

Terms of Condition Precedent	Party Responsible to Fulfil Condition Precedent	Condition Precedent Satisfaction Date
whichever is the earlier.		
AFC obtaining all necessary board approvals to enter into this Deed, the Project with CWT and all of the Transaction Documents	AFC	[insert]
AFC obtaining all necessary approvals from the relevant authorities under the Development Deed in respect to the Land to undertake the Lessee's Works under the Development Deed in respect to the Land	AFC	[insert]
AFC obtaining the financial approvals as required by AFC to fund the Project	AFC	[insert]

Schedule 4
Party Details

CWT details for service of Notices

Attention: CEO
Address: 165 Sir Donald Bradman Drive Hilton SA 5033
Email: tbuss@wtcc.sa.gov.au

AFC details for service of Notices

Attention: The Chairman/CEO
Address: 105 West Lakes Boulevard, West Lakes SA 5021
Email: tsilvers@afc.com.au

Executed as an deed

**THE COMMON SEAL OF CITY OF WEST
TORRENS** ABN 16 346 877 634 was affixed in the
presence of:

Michael Coxon
Mayor

Terry Buss PSM
Chief Executive Officer

Date / /

Executed by Adelaide Football Club Limited
ABN 48 008 101 568 in accordance with
section 127 of the *Corporations Act 2001* (Cth):

Director

*Director/*Company Secretary

Name of Director
BLOCK LETTERS

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

Date / /

Annexure D – Draft Development Deed

**FINAL DRAFT FOR REVIEW:
11.10.23**

Author note:

This edition is based on the Kellady Jones document dated 29 September 2023 with further changes from AFC.

Development Deed

between

City of West Torrens
ABN 16 346 877 634
(Lessor)

and

Adelaide Football Club Limited
ABN 48 008 101 568
(Lessee)

Regarding Thebarton Oval Sports Precinct

Table of contents

1	Recitals acknowledgement.....	1
2	Definitions and interpretation.....	1
2.1	Definitions	1
	Conditions Precedent means the Conditions Precedent specified in the Project Master Deed; 2	
2.2	General interpretation	4
3	General terms and occupation	5
3.1	To grant and accept a Lease	5
3.2	Entitlement to exclusive occupation	5
3.3	Construction licence to the Lessee	5
4	Conditions Precedent	6
4.1	Conditions Precedent	6
4.2	Satisfaction	6
4.3	Non satisfaction	6
4.4	MOA.....	6
5	Contamination	6
5.1	Acknowledgement	6
5.2	Remediation.....	6
6	Lessee's Works	7
6.1	Plans and approvals	7
6.2	Undertaking Lessee's Works	8
6.3	Lessee's obligations	8
6.4	Insurance	9
6.5	Indemnity	10
6.6	Lessor's inspection	10
6.7	Repair damage	10
6.8	Lessee's Works' Defects.....	10
6.9	Completion of Lessee's Works	11
6.10	Community Benefit	11
6.11	As-built drawings	12
7	Measurement and calculation of rent.....	12
7.1	Area of Premises	12
7.2	Measurement.....	12
7.3	Notice of measurements.....	13
7.4	Final area of leased Premises	13
7.5	Calculation of rent	13
8	Lease	13
8.1	Preparation	13
8.2	Delivery and execution	14
8.3	No waiver	14
8.4	Obligations not conditional	14
9	Assignment and mortgage	14
10	Lessee's default.....	15
10.1	Termination	15
10.2	Other breaches	16
10.3	Tripartite deed.....	17
11	Lessor's default.....	17
11.1	Termination	17
11.2	Other breaches	18

12	Dispute resolution	18
13	No waiver	18
13.1	Delay	18
13.2	Other breach	18
13.3	Notice	18
13.4	Remedies	19
14	Entire agreement	19
14.1	Whole of agreement	19
14.2	No implied terms	19
15	Notices	19
15.1	Form of notice and service	19
15.2	Signing of notices	19
15.3	Time of service by post	19
15.4	Service by email	20
15.5	Multiple Persons	20
16	Costs	20
17	Governing law	20
18	GST	20
18.1	Liability for GST	20
18.2	Time of GST payment	20
18.3	Liabilities reduced by input tax credits	21
18.4	Adjustment event	21
18.5	Definitions	21
19	Confidential information	21
20	Lessor as local government entity	21
21	Miscellaneous	22
21.1	Non merger	22
21.2	Variations	22
21.3	Severance	22
21.4	Ancillary matters	22
Schedule 1		23
	The Land	23
Schedule 2		24
	The Lessee's Works	24
Schedule 3		25
	Master Plan	25
Annexure A		27
	Plan of the Premises	27
Annexure B		29
	Plan of the Public Realm	29
Annexure C		30
	Lease	30
Annexure D		31
	Terms of Construction Licence to Lessee	31

DRAFT

This deed is made on

2023

Between **City of West Torrens** ABN 16 346 877 634 of 165 Sir Donald Bradman Drive, Hilton SA 5033 (**Lessor**)

And **Adelaide Football Club Limited** ABN 48 008 101 568 of 105 West Lakes Boulevard, West Lakes SA 5021 (**Lessee**)

Recitals

- A The Lessor is registered as the proprietor of an estate in fee simple in the Land.
- B The Land is 'community land' and subject to the requirements for community land under Chapter 11 of the *Local Government Act 1999*.
- C Subject to certain conditions precedent being met under the Project Master Deed, the Lessee has agreed to undertake the Lessee's Works on the Land and, upon the Date of Practical Completion of the Lessee's Works, to take the Lease of the Premises, subject to and on the terms and conditions of this Deed.

Now it is agreed as follows:

1 Recitals acknowledgement

The recitals to this Deed are true and accurate in every particular.

2 Definitions and interpretation

2.1 Definitions

In this Deed, unless the contrary intention appears:

Approval means any permit, licence, approval, authorisation or consent required by Law or otherwise;

Authority means any public, governmental, semi-governmental, statutory or regulatory authority, department or other body having competent jurisdiction in respect of the relevant act, matter or thing;

Building means any building currently constructed on the Land by the Lessor;

Business Day means any day that is not Saturday, Sunday or a public holiday in South Australia;

Commercial Area means the portion of the Premises at ground level in square metres:

- (a) which includes ground floor areas:
- (i) of any permanent new built form or structure erected on the Premises by the Lessee, for the Lessee's sole or primary benefit (or for the benefit or use of any of the Lessee's sublessees, licensees, invitees, agents or contractors
 - (ii) of any signage or screens erected by the Lessee for commercial purposes or benefit;
 - (iii) any non-permanent structure which either requires Development Approval (under the *Planning, Development and Infrastructure Act 2016*), or remains in situ for a period of more than 6 months

- (iv) any other areas occupied by the Lessee to the exclusion to the public;
- (b) which exclude:
 - (i) any areas of multi levels buildings or structures above or below the ground level;
 - (ii) the Public Realm;

as adjusted having regard to the measurement of such Commercial Area.

Commencement Date means the date of commencement of the Lease, being the first to occur of:

- (a) the Date of Practical Completion; and
- (b) subject to approval by CWT (which may be given or refused in CWT's absolute discretion), the date on which the Lessee commences to use the whole or a substantial part of the Premises for the purpose of, or in connection with, the conduct of its business from the Premises (provided that the Lessee cannot use the whole or a substantial part of the Premises without the approval of CWT);

Community Benefit means the costs of the improvements and enhancements to the Public Realm, spent by the Lessee for the benefit of the Lessor and the community, undertaken by the Lessee to complete the Lessee's Works, and includes tangible and intangible benefits of consulting, designing and constructing the publicly accessible areas and improvements, including:

- (a) Main oval including sports lighting;
- (b) Seating bowl and amenities;
- (c) Kings Reserve;
- (d) Heritage grandstand upgrade works;
- (e) Public plaza and landscaping;
- (f) New roadways and associated parking;
- (g) infrastructure and demolition works;
- (h) Environmental works; and
- (i) Public ally accessible building areas (ie Café),

but does not include intangible benefits such as, physical and mental health benefits, quality of life benefits, well-being benefits, cultural benefits, economic benefits, tourism benefits and social benefits;

Conditions Precedent means the Conditions Precedent specified in the Project Master Deed;

Confidential Information means any documentation or information of a confidential nature supplied by either party to the other in connection with this Deed and includes all scientific, technical, manufacturing, performance, sales, financial, commercial, contractual or marketing information possessed by a party but excludes any documentation or information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by law;

Contractors means contractors, subcontractors, consultants, agents and workers;

Date for Practical Completion means the estimated date of practical completion of the Lessee's Works as notified by the Lessee to the Lessor when the design of the works and the building program have been finalised and approved by all relevant statutory authorities;

Date of Practical Completion means the date on which the Lessee's Works are brought to the stage of Practical Completion;

Defect means any loss, damage, defect, shrinkage, omission or any fault or failure to conform to the requirements of this Deed;

Environmental Laws means all present and future Laws and regulations, environmental protection policies, and directions, standards and guidelines of any authority (and any other like bodies) regulating or otherwise relating to the environment, including without limitation any law relating to land use, planning, heritage, coastal protection, water catchments, pollution of air or waters, noise, soil or ground water contamination, chemicals, waste, use of hazardous or dangerous goods or substances, building regulations, public and occupational health and safety, or noxious trades and all licences, approvals, consents, permissions or permits issued by any authority of an environmental nature;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Land means the land comprised and described in Schedule 1, together with all improvements on the Land and where the context permits, includes a Building;

Law includes an act, statute, code, by-law, order-in-council, ordinance, proclamation, regulation and rule and any amendment consolidation re-enactment or replacement of them and includes common law;

Lease means the lease in the form of the Memorandum of Lease annexed as Annexure C of this Deed (and any agreed variations to it), which is to be executed pursuant to this Deed;

Lessee means the person named in this Deed as Lessee and includes its successors and permitted assigns;

Lessee's Agents means each of the Lessee's employees, officers, agents, contractors, subcontractors and invitees;

Lessee's Consultant means such architect or other qualified consultant as the Lessee appoints, from time to time, to issue the certificate of Practical Completion;

Lessee's Contractor means the contractor under a building contract entered into by the Lessee and that contractor, in respect of the Lessee's Works;

Lessee's Improvements means:

- (a) the buildings, improvements, fixtures, fittings, plant, equipment, signage and facilities together with all earth works, laying of foundations, site preparation and site surcharging, reticulation, roadway crossovers, paving, surfaces of car parks, driveways, pathways, landscaping, services and augmentation and infrastructure of any nature, which are constructed or installed by or on behalf of the Lessee on the Premises; and
- (b) all installations, alterations and additions undertaken by or on behalf of the Lessee on the Premises at any time,

and includes any part of the Lessee's Improvements;

Lessee's Works means the works described in Schedule 2 according to the Lessee's drawings and specifications reasonably approved by the Lessor and installing the Lessee's Improvements in or on the Premises;

Lessor means the person named in this Deed as Lessor and includes its successors and assigns;

Lessor's Consultant means such architect or other qualified consultant as the Lessor appoints, from time to time to advise the Lessor in relation to the Project.

Master Plan means the master plan agreed between the Lessor and the Lessee in relation to the development of the Project in its entirety and the development of the Premises and set out in the Project Master Deed.

MOA means the Memorandum of Agreement between the parties dated 10 November 2022;

Practical Completion means that stage of the Lessee's Works when the Lessee's Consultant certifies, in writing, to the Lessee that the Premises is reasonably fit for use and occupation by the Lessee, despite any minor omissions or minor defects which do not prevent the Premises from being reasonably capable of being occupied by the Lessee;

Premises means that part of the Land as delineated on the plan in Annexure A on and where the context allows includes:

- (a) all present and future improvements, infrastructure or modifications erected on the Premises, excluding the Lessee's Improvements;
- (b) all the Lessor's improvements, infrastructure, buildings or other structures, fixtures, fittings, plant and equipment installed in or on the Premises;
- (c) the natural environment, including the turf and trees; and
- (d) all the roadways, conveniences, Services, amenities and appurtenances of, in or to the Premises,

and includes any part of the Premises;

Project means the development, operation and use of the Land as the 'Thebarton Oval Sports Precinct';

Project Master Deed means the document entitled 'Project Master Deed' regarding the Project to be made between the Lessor and the Lessee and executed contemporaneously with this agreement;

Proper Building Procedures means practices followed when work is undertaken:

- (a) in a good, proper and workmanlike manner;
- (b) to the standard of professional care, skill, judgment and diligence expected of a professional experienced in performing services or work of a similar nature, type, size, complexity and character to the relevant works;
- (c) according to all applicable Laws and the lawful requirements of all Authorities; and
- (d) using materials suitable for their intended purpose;

Public Realm means those parts of the Premises which are to be accessible by members of the public in accordance with the terms agreed by the parties and delineated on the plan in Annexure B;

Supply has the same meaning it does in section 9-10 of the GST Act and excludes any 'GST-free supplies' and 'input taxed supplies' as those terms are defined in section 195-1 of the GST Act.

2.2 General interpretation

Unless the contrary intention appears:

- (a) the annexures form part of and are incorporated in this Deed;

- (b) any notice or demand must be in writing or transmitted by facsimile;
- (c) any consent of the Lessor required under the provisions of this Deed means prior written consent which unless otherwise expressly provided, the Lessor may withhold in its absolute discretion and if given, may be made conditional or unconditional;
- (d) anything which the Lessee is required to do under this Deed must be done at the sole cost and expense of the Lessee and completed to the reasonable satisfaction of the Lessor, unless otherwise provided in this Deed;
- (e) nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or any part of it;
- (f) headings are for convenience of reference only and do not affect the construction or interpretation of the provisions of this Deed;
- (g) words importing the singular include the plural and vice versa and words importing one gender include the other genders;
- (h) an agreement, representation or warranty by or in favour of two or more persons or companies binds or is for the benefit of them jointly and severally;
- (i) any reference to a person will include a body corporate and vice versa;
- (j) a reference to dollar or A\$ is to Australian currency;
- (k) if a body, institute, association or Authority referred to in this Deed ceases to exist, then this Deed must be read as referring to such body, institute, association or Authority as then serves substantially the same objects as that body, institute, association or Authority; and
- (l) the words include, includes or including will be deemed in all cases to be followed by the words **without limitation**.

3 General terms and occupation

3.1 To grant and accept a Lease

From the Commencement Date the Lessor agrees to grant the Lease to the Lessee, who accepts the Lease of the Premises, subject to and on the terms and conditions of this Deed.

3.2 Entitlement to exclusive occupation

The Lessee acknowledges that it is not entitled to exclusive occupation of the Premises until the Commencement Date.

3.3 Construction licence to the Lessee

- (a) From the date on which the Conditions Precedent are satisfied to the Commencement Date (or earlier termination of this Deed), the Lessor grants to the Lessee a licence to come on to the Land and the Premises for the purposes of:
 - (i) carrying out any relevant geotechnical or other tests to the Land;
 - (ii) designing and constructing the Lessee's Improvements and Lessee's Works (including all fit out); and
 - (iii) any other reasonable access required for the purposes of completing the Lessee's Improvements and Lessee's Works.

- (b) The licence granted by the Lessor to the Lessee pursuant to this clause shall be deemed to be on the terms and conditions set out in Annexure D to this Deed, and subject to the requirements of Annexure D, the Lessee shall be given free and unrestricted access to the Land.
- (c) CWT agrees to grant AFC access to the Land prior to the commencement of the construction licence under this clause 3.3, on prior written notice.

4 Conditions Precedent

4.1 Conditions Precedent

This Deed is subject to and conditional upon all of the Conditions Precedent specified in the Project Master Deed being satisfied on the terms and by the due dates specified in the Project Master Deed.

4.2 Satisfaction

If the Conditions Precedent specified in the Project Master Deed are satisfied on the terms and by the due dates specified in the Project Master Deed then the Condition Precedent in clause 4.1 shall also be deemed to be satisfied.

4.3 Non satisfaction

- (a) If the Project Master Deed is terminated on account of failure to fulfil any of the Conditions Precedent specified in the Project Master Deed on the terms and by the due dates specified in the Project Master Deed then:
 - (i) this Deed will automatically terminate contemporaneously with termination of the Project Master Deed; and
 - (ii) on such termination, neither party will have any claim against the other under this Deed or at Law or otherwise.

4.4 MOA

The MOA shall lapse and be terminated automatically upon execution of the Project Master Deed and this Deed.

5 Contamination

5.1 Acknowledgement

The Lessor and the Lessee acknowledge that certain areas of the Land have pre-existing contamination. AFC agrees to be responsible for the remediation of the contamination (including any cost thereof) on the terms set out in the Project Master Deed.

5.2 Remediation

The Lessor and the Lessee agree that any contamination identified on the Land will be remediated in accordance with the arrangements specified in the Project Master Deed and the rights obligations and liabilities of the Lessor and the Lessee in relation to remediation of any contamination on the Land will be determined pursuant to the Project Master Deed.

6 Lessee's Works

6.1 Plans and approvals

- (a) The Lessee must, after execution of this Deed:
 - (i) prepare a schematic design and masterplan and principals project requirements for the Lessee's Works and submit it for the approval of the Lessor;
 - (ii) to the extent permitted by law, submit a copy of all relevant documents relating to the Lessee's works, including detailed drawings, specifications and technical reports (including traffic management and asbestos reports) of the Lessee's Works, for the approval of the Lessor;
 - (iii) obtain all necessary Approvals from all appropriate Authorities in respect of the Lessee's Works.
- (b) The Lessor will not unreasonably withhold its approval to any schematic design, masterplan or principal's project requirements or to any drawings and specifications submitted by the Lessee in respect of the Lessee's Works, but the Lessor may make its approval subject to reasonable conditions or stipulations and the Lessor may withhold its approval if the drawings and specifications or the works described in them:
 - (i) do not comply with the provisions of any applicable Law in respect of the Premises or the Lessee's Works; or
 - (ii) adversely affect the structural performance of any structure comprised in the Premises; or
 - (iii) have an adverse impact on the services to the Premises or the Land; or
 - (iv) are subject to Approvals which may not be promptly approved or given by any Authority; or
 - (v) do not meet the requirements of the Master Plan.
- (c) The Lessor is not responsible or liable to the Lessee for anything in connection with:
 - (i) the processes of design and construction of the Lessee's Works; or
 - (ii) the drawings and specifications of the Lessee's Works and other documents prepared by the Lessee; or
 - (iii) any error or omission in or from the Lessee's Works.
- (d) The Lessee acknowledges that:
 - (i) any information made available by the Lessor or any of its officers, employees or agents as information furnished for the convenience of the Lessee, forms no part of the Lease; and
 - (ii) the Lessor is not responsible for the accuracy or adequacy of such information and makes no representations and assumes no duties of care concerning any of the matters raised in respect of the Lessee's Works.
- (e) The Lessee is solely responsible for and must at the Lessee's cost and expense:
 - (i) obtain all necessary Approvals to lawfully undertake the Lessee's Works;
 - (ii) comply with all requirements in notices or orders given or made by an Authority in respect of the Lessee's Works; and

- (iii) promptly provide to the Lessor copies of all such Approvals.
- (f) The Lessee must refer to the Lessor, for the Lessor's approval, any alterations to the Lessee's Works which are required by any Authority and such alterations will be the subject of discussion and negotiation between the Lessor and the Lessee and the relevant Authority, provided that:
 - (i) the Lessor will not unreasonably withhold its approval; and
 - (ii) the Lessee must pay to the Lessor promptly after demand, any increased costs and expenses incurred by the Lessor by reason of any such alterations.
- (g) Despite any clause to the contrary in this Deed, the Lessor will use best endeavours to support any application made by the Lessee seeking approval for a change in land use of the Premises provided that the change in land use is consistent with the use permitted under the Lease and any requirement of the *Local Government Act 1999* or relevant Lessor policy as at the date of this Deed (to the extent that such policy does not derogate from any right of AFC under this Deed).

6.2 Undertaking Lessee's Works

- (a) On receipt of all necessary Approvals and at the risk of the Lessee, the Lessee must commence and execute or cause the Lessee's Works to be commenced and executed:
 - (i) according to Proper Building Procedures;
 - (ii) in accordance with all necessary Approvals; and
 - (iii) as soon as reasonably practicable after access to the Premises is granted by or on behalf of the Lessor to the Lessee.
- (b) The Lessee's Works must be erected or installed by the Lessee's Contractors previously approved in writing by the Lessor under contract to the Lessee, provided that the Lessor will not unreasonably withhold such approval to reputable and financially responsible Contractors.
- (c) In the execution of the Lessee's Works, the Lessee will cooperate with any reasonable request from the Lessor to avoid causing interference with any land or premises adjacent to the Land to the extent obliged by law.

6.3 Lessee's obligations

Without limiting any provision of this Deed, the Lessee agrees that it will:

- (a) ensure that all relevant documents relating to the Lessee's Works (including drawings, specifications and technical reports) are prepared:
 - (i) using consultants and contractors who are suitably qualified and experienced for the purposes of such preparation;
 - (ii) having regard to any appropriate directions or stipulations made by the Lessor's Consultant; and
 - (iii) otherwise according to this Deed;
- (b) ensure that the Lessee's Works are constructed:
 - (i) according to the drawings and specifications and documentation approved by the Lessor and the Authorities and according to all Approvals and Laws and any conditions or stipulations made by the Lessor or the Authorities in respect of such Approvals;

- (ii) using Proper Building Procedures;
- (iii) using materials and goods which are new and of a sound and merchantable quality and which are fit for their intended purpose;
- (iv) using consultants and contractors who are suitably qualified and experienced for the purposes of the construction of the Lessee's Works;
- (v) so that the Premises may be used for the permitted use set out in the Lease and will be fit for purpose in all respects;
- (vi) according to any appropriate directions or stipulations made by the Lessor's Consultant;
- (vii) free of all Defects; and
- (viii) otherwise according to this Deed; and
- (c) use its best endeavours to ensure that:
 - (i) the drawings and specifications of the Lessee's Works are prepared; and
 - (ii) the Lessee's Works are executed according to such plans and specifications and all Approvals necessary,
 to achieve a state of practical completion prior to the Date for Practical Completion.

6.4 Insurance

- (a) Prior to commencing the Lessee's Works, the Lessee or the Lessee's Contractors must effect the following insurances:
 - (i) a policy covering all persons engaged by the Lessee or the Contractor, on or about the Premises and the Land to cover personal injury;
 - (ii) a public risk liability policy indemnifying the Lessee, the Lessor and the Contractor in the sum of not less than \$20,000,000 in respect of any one claim and in the form of a standard public risk policy, but covering all such liabilities arising from access to and use of the Premises, including completion of the Lessee's Works; and
 - (iii) a Contract Works policy in respect of the Lessee's Works to the full value of the Lessee's Works for the period specified in clause 6.4(b).
- (b) The Lessee must ensure that:
 - (i) the insurances specified in clause 6.4(a) are effected by the Lessee or the Lessee's Contractors prior to commencement of the Lessee's Works and any preliminary activities at the Premises; and
 - (ii) such insurances are maintained at all times until one year after Practical Completion.
- (c) Where possible, the insurances specified in clause 6.4(a) must:
 - (i) be effected in the name the Lessee, the Lessee's Contractors and the Lessor to cover their respective rights and interests; and
 - (ii) includes a full waiver of subrogation and a cross liability clause.
- (d) The Lessee must supply to the Lessor prior to commencement of any activities or work at the Premises:

- (i) true and accurate copies of the certificates of currency and insurance cover notes for the insurances specified in this clause 6.4; and
 - (ii) full particulars of any exclusions or conditions applicable to the relevant policies of insurance.
- (e) To avoid doubt, the obligations to effect the insurances under this clause do not affect the obligations of the Lessee to effect the insurances required to be effected under the Lease.

6.5 Indemnity

The Lessee is liable for and must indemnify the Lessor from and against all liability, charges, costs, losses and expenses which the Lessor may suffer or incur arising out of:

- (a) the erection, installation or completion of the Lessee's Works;
- (a) loss, damage or injury to any property or person, caused or contributed to by the use of the Land by the Lessee or any of the Lessee's Agents; and
- (b) any injury, death or loss of property or anything done or omitted to be done by the Lessee or any person claiming through the Lessee or the Lessee's Contractors at or on the Land; and
- (c) exercise of any rights, powers or remedies under this Deed and the Lease in connection with the Lessee's Works,

except to the extent such liability, charges, costs, losses and expenses are caused by the negligent actions or default of the Lessor or its officers, employees or contractors or the Lessor's Consultant.

6.6 Lessor's inspection

At any time the Lessor and the Lessor's Consultant may inspect the progress of the Lessee's Works and the Lessee and the Lessee's Contractors must provide all reasonable assistance and reasonable information required by the Lessor (or the Lessor's Consultant, as the case may be) regarding such inspection provided that the Lessor and the Lessor's Contractors must comply with any reasonable direction given by the Lessee's Contractor in relation to workplace health and safety or any other reasonable issue pertaining to access to the Land and Premises.

6.7 Repair damage

The Lessee must, either:

- (a) repair and make good any damage which may be caused to the Land, either directly or indirectly as a result of the erection and installation of the Lessee's Works, to the reasonable satisfaction of the Lessor's Consultant; or
- (b) reimburse the Lessor on demand, for the costs incurred by the Lessor in having such damage made good by the Lessor or its contractors.

6.8 Lessee's Works' Defects

If either the Lessor or the Lessee becomes aware of any Defects in the Lessee's Works:

- (a) the party must promptly give the other notice of any Defects in the Lessee's Works, including reasonable details of such Defects; and
- (b) the Lessee must remedy or cause to be remedied all such Defects in the Lessee's Works within a reasonable period and according to any reasonable directions given by the Lessor.

6.9 Completion of Lessee's Works

On completion of the Lessee's Works, the Lessee will provide to the Lessor:

- (a) the certificate of Practical Completion issued by the Lessee's Consultant (acting as superintendent under the construction contract for the Lessee's Improvements); and
- (b) a certificate from the Lessee that the Lessee's Works have been completed to the satisfaction of the Lessee,

and until the relevant certificates are provided to the Lessor, the Lessee will not occupy or use the Lessee's Works or allow occupation or use of the Lessee's Works unless otherwise mutually agreed.

6.10 Community Benefit

- (a) The Lessor has entered into the Transaction Documents (including the Project Master Deed) on the assurances provided by the Lessee, that the Lessee's Works will contribute Community Benefit valued at an amount of not less than \$45,000,000 (the **Lessee's Contribution**).
- (b) Within twenty (20) Business Days of the satisfaction of the Conditions Precedent, the Lessee will provide a certificate setting out a breakdown of the value of the Community Benefit (the **Lessee's Certificate**). The Lessee shall act in good faith for the purposes of preparing the Lessee's Certificate and the Lessee shall be obliged to supply to the Lessor such reasonable information as may be requested in order to substantiate any items or calculations in the Lessee's Certificate.
- (c) Within twenty (20) Business Days of Practical Completion, the Lessee will provide an updated Lessee's Certificate setting out the value of the Community Benefit (as installed) (the **Lessee's Further Certificate**). The Lessee shall act in good faith for the purposes of preparing the Lessee's Further Certificate and the Lessee shall be obliged to supply to the Lessor such reasonable information as may be requested in order to substantiate any items or calculations in the Lessee's Further Certificate.
- (d) Within a further twenty (20) Business Days of the receipt of the Lessee's Further Certificate, the Lessor will review and assess the relevant certificate (including to engage a quantity surveyor, where considered necessary by the Lessor) and provide a certificate to the Lessee setting detailing such assessment (the **Lessor's Certificates**). The Lessor shall act in good faith for the purposes of preparing the Lessor's Certificates and the Lessor shall be obliged to supply to the Lessee such reasonable information as may be requested in order to substantiate any items or calculations in the Lessor's Certificate.
- (e) In the event that either of the Lessee's Further Certificate or the Lessor's Certificate ascribes a valuation to the Community Benefit which is less than the Lessee's Contribution by five percent (5%) or more) the Lessee and the Lessor shall negotiate in good faith to assess and agree to adjust, if appropriate, the rent rebate offered to the Lessee in accordance with Special Condition 1 of the Lease, having regard to the anticipated shortfall in the Lessee's Contribution and having regard to all of the circumstances and having regard to the benefit (both tangible and intangible) to the Lessor and the community from the Lessee's Work and having regard to the Prudential Report supplied to the Lessor by the Lessee prior to execution of this Deed. Provided that there shall be no adjustment of rent pursuant to this clause if the anticipated shortfall in the Lessee's Contribution is less than 5% of the Lessee's Contribution. If the parties are unable to agree to an adjustment to the rent rebate under this clause within twenty (20) Business Days of the Lessor's Certificate being issued under clause 6.10(d), either party may invoke the process for the resolution of disputes under clause 12.
- (f) For the purposes of this clause and to avoid doubt:

- (i) the value of the Lessee's Contribution includes any amount which the Lessee proposes to spend on the following facilities, namely:
 - (A) Main Oval (including sports lighting);
 - (B) Seating Bowl and Amenities;
 - (C) Kings Reserve Junior Oval (including sports lighting);
 - (D) Heritage Items Grandstand, Hank Brothers Changerooms & Existing Ticket Gates;
 - (E) External Landscaping and Plaza;
 - (F) New Road Way and Car Parking Areas;
 - (G) Costs include contribution to services infrastructure/demolition; and
 - (H) environmental investigation and remediation of the Premises in accordance with clause 8 of the Project Master Deed;

6.11 As-built drawings

Where required by the Lessor, the Lessee will within forty (40) Business Days after the issue of the certificate of practical completion of the Lessee's Works, or such other time as may be agreed by the Lessor, acting reasonably, provide to the Lessor final as-built drawings of the Lessee's Works which:

- (a) accurately represent all facilities, infrastructure, equipment and services installed as part of the Lessee's Works; and
- (b) must be provided in electronic (CAD) and hard copy format according to the Lessor's drawing and surveying standards or as agreed by the Lessor.

7 Measurement and calculation of rent

7.1 Area of Premises

The Lessee and the Lessor will make no claim against the other party if the final measured area of the Premises or any other areas of the Land differ in size or dimensions from those shown on the plan in Annexure A.

7.2 Measurement

As soon as reasonably practical following the Commencement Date, the Lessee will appoint a licensed surveyor to:

- (a) measure the area of:
 - (i) the Premises;
 - (ii) the Premises excluding the area of the Public Realm; and
 - (iii) the Commercial Area,

according to the guidelines recommended by the *Property Council of Australia (1997 Revision)* or such later revision as may be applicable in respect of the demise of premises of the same type as the Premises; and

- (b) prepare and register a lease plan in respect of the Premises over the title for the Land.

7.3 Notice of measurements

The Lessee will within ten (10) Business Days of receipt of the surveyor's report procured under clause 7.2, give notice to the Lessor of the measurement of the Premises.

7.4 Final area of leased Premises

The Lease shall be prepared on the basis that the final area of the leased Premises shall be adjusted to align with the lease plan prepared pursuant to this clause notwithstanding that there may be differences in size or dimension shown on the plan in Annexure A.

7.5 Calculation of rent

- (a) The commencing annual rent under the Lease will be calculated on the Commercial Area of the Premises only.
- (b) For the purposes of this clause, the rate per square metre of rent payable by the Lessee will be calculated at a rate of \$15 per square metre as adjusted by the increase in the consumer price index as specified in the Lease and using the mechanism specified in the Lease in respect of the period from Q1 2025 to the Commencement Date of the Lease; and

8 Lease

8.1 Preparation

The Lease will be prepared by the Lessor's solicitors and will be completed by the insertion of:

- (a) the legal description of the Premises on page 1 and in item 1 of the reference schedule;
- (b) the date of commencement, being the Commencement Date and the date of expiry of the Lease on page 1 and in item 4 of the reference schedule;
- (c) the rent, being a rent calculated as the Current Prevailing Rent pursuant to the Lease and based on the Commercial Area of the Premises determined pursuant to clause 7 of this Deed, on page 1 and in item 5 of the reference schedule;
- (d) in item 8(a) of the reference schedule, the rent review dates (being the dates for review based on CPI or a fixed percentage) and being the day and month corresponding with the day and month of the Commencement Date and the years of each anniversary of the Commencement Date during the term of the Lease and any extension or renewal of the Lease (other than the year or years specified in clause 8.1(e));
- (e) in item 8(b) of the reference schedule, the review dates for a market review, being the day and month corresponding with the day and month of the Commencement Date and the year of the eleventh (11th), twenty first (21st) and thirty first (31st) anniversary of the Commencement Date;
- (f) attach a copy of the registered lease plan; and
- (g) the date of the Lease,

and delivered to the Lessee as soon as reasonably practical after determination of the information to be inserted together with a certificate from the Lessor's solicitor confirming that the document has been prepared in accordance with this Deed.

8.2 Delivery and execution

- (a) Within ten (10) Business Days after receipt of the Lease by the Lessee, the Lessee will:
 - (i) execute all copies of the Lease and, cause the certification panel of the Lease to be correctly completed and signed for and on behalf of the Lessee, for registration purposes; and
 - (ii) deliver to the Lessor's solicitors all signed and certified copies of the Lease.
- (b) Promptly after receipt of the Lease duly executed by the Lessee and certified for and on behalf of the Lessee, the Lessor will execute the Lease and apply for all necessary consents (if any) and cause the certification panel of the Lease to be correctly completed and signed for and on behalf of the Lessor for registration purposes and cause the Lease to be registered.

8.3 No waiver

- (a) The permitting or accepting of occupancy of the Premises does not waive the obligation of the Lessor and the Lessee to execute the Lease, if it is unexecuted when occupancy of the Premises is permitted or accepted.
- (b) The provisions of this Deed will survive until waived, performed or otherwise satisfied and a default by the Lessee under a surviving provision of this Deed which continues after the Commencement Date also constitutes a default under the Lease.

8.4 Obligations not conditional

- (a) The obligations of the Lessor and the Lessee under this Deed and the Lease are not:
 - (i) conditional or in any way dependent on the preparation and execution of the Lease; and
 - (ii) affected by any default or delay in or waiver or extension of time for the preparation and execution of the Lease.
- (b) Despite the non completion of the Lease from and after the Commencement Date and throughout the term of the Lease:
 - (i) the Lessor will be bound to perform all the Lessor's obligations; and
 - (ii) the Lessee will be bound to perform all the Lessee's obligations,
 as set out in this Deed and the Lease.

9 Assignment and mortgage

- (a) The Lessee must not transfer, assign or part with the Lessee's rights or the benefit of those rights under this Deed in respect to the Premises or any part of the Premises, without the consent of the Lessor, which is not to be unreasonably withheld if:
 - (i) the proposed assignee does not propose to change the use to which the Premises is permitted to be used under the Lease at the time of the transfer or assignment; and
 - (ii) the Lessee can demonstrate (to the reasonable satisfaction of the Lessor) that the proposed assignee is solvent and of good standing.
- (b) If the Lessee requests that the Lessor consent to any such transfer, assignment, parting with the Lessee's rights or the benefit of those rights under this Deed or

execution of any agreement or contract to do so, the Lessee must promptly on receipt of a request from the Lessor to do so:

- (i) duly and punctually fulfil and observe all the terms and conditions of this Deed, provided that the Lessor may require the Lessee when applying for any such consent and as a condition of the consideration of any such application, to pay to the Lessor or to its solicitors or agents all amounts due by the Lessee to the Lessor under this Deed;
 - (ii) submit a true copy of all agreements to be entered into in respect of any proposed dealing with this agreement or the Premises or the Lease, which are reasonably required by the Lessor;
 - (iii) if the proposed assignee or transferee is a trustee of a trust submit a copy of the instrument under which such trust was constituted and the full names, addresses and occupations of the beneficiaries of such trust;
 - (iv) pay to the Lessor, its agents and its solicitors the reasonable costs and expenses of and incidental to enquiries concerning the proposed dealing or the persons concerned in such dealing and of the perusal and preparation of the documents deemed necessary by the Lessor; and
 - (v) if such consent is given the Lessee must ensure that prior to the date of any assignment or transfer the person to whom it is proposed to assign or transfer enters into a direct covenant with the Lessor to observe the terms of this Deed and the Lease.
- (c) On transfer or assignment of the Lessee's interest in this Deed, the Lessor must release the Lessee from its obligations under this Deed, except in respect to any antecedent breach.
- (d) For the purposes of this clause 9, the Lessor will consider the following matters in determining if a proposed assignee is of 'good standing':
- (i) the financial position and financial resources of the proposed assignee as regards its ability to perform the Lease;
 - (ii) no material adverse investigations, prosecutions or penalties of the proposed assignee or any of its key personnel in the preceding five (5) year period; and/or
 - (iii) no other factor is known to the Lessor which would material and adversely affect the reputation of the Lessor, if it were to approve any act under clause 9(a).

10 Lessee's default

10.1 Termination

If:

- (a) the Lessee:
 - (i) breaches or defaults in the due observance or performance of a fundamental term of this Deed and the Lessor gives notice to the Lessee specifying the nature of the breach or default and directing the Lessee to remedy that breach or default or pay reasonable compensation to the Lessor (including reasonable particulars of the calculation of the claimed compensation) within a reasonable period of time when having regard to the nature and extent of the breach or default (such period of time being not less than twenty (20) Business Days of the date of the notice); and

- (ii) fails to remedy the specified breach or default or agree to pay reasonable compensation within that reasonable period of time when having regard to the nature and extent of the breach or default (such period of time being not less than twenty (20) Business Days), except where the matter has been referred for determination under clause 12 and then only if the Lessee fails to comply with such Determination (as defined in clause 12) within the time required by the relevant Expert (as defined in clause 12);

then the Lessor may by notice given to the Lessee terminate this Deed, without prejudice to:

- (iii) either party's rights and interests in respect of any antecedent breach or default; and
 - (iv) any right or remedy of the Lessor or the Lessee at Law or otherwise;
- (b) the Lessee (being a body corporate or unincorporated association or company):
- (i) goes into liquidation or provisional liquidation or has a Receiver or Receiver and Manager or Administrator or Controller or any of them appointed to the Lessee or any property of the Lessee or action is taken towards such appointment; or
 - (ii) the Lessee enters into an arrangement or composition with its creditors (other than a voluntary arrangement or composition),

and the Lessee has failed to remedy either facts of the matter in subclauses 10.1(b)(i) or 10.1(b)(ii) within a reasonable period of time when having regard to the nature and extent of the fact (such period of time being not less than 20 Business Days) of date of a notice from the Lessor, then the Lessor may by notice given to the Lessee terminate this Deed, without prejudice to:

- (iii) either party's rights and interests in respect of any antecedent breach or default; and
- (iv) any right or remedy of the Lessor or the Lessee at Law or otherwise.

10.2 Other breaches

Notwithstanding anything expressed or implied to the contrary (but subject always to clause 10.3(b)):

- (a) the Lessor's right of Termination pursuant to clause 10.1 applies in relation to a breach or default in performance or observance of a fundamental term of this Deed and does not apply to a breach or default in performance in respect of any other term of this Deed;
- (b) if the Lessee breaches or defaults in the due observance or performance of a term of this Deed other than a fundamental term then Lessor's sole right of recovery is for loss and damage arising pursuant to the relevant breach or default; and
- (c) if the Lessee breaches or defaults in the due observance and performance of any term of this Deed other than a fundamental term of this Deed then the Lessor may give notice to the Lessee specifying the reasonable details of the breach or default and the reasonable compensation claimed by the Lessor (including reasonable particulars of the calculation of the claimed compensation) and the Lessee must within 20 Business Days of the date of the notice pay the claimed compensation or alternatively agree to pay reasonable compensation subject to the breach or amount being referred for determination under clause 12 (Dispute Resolution).

10.3 Tripartite deed

- (a) The Lessor and the Lessee agree to use reasonable endeavours to enter into a tripartite deed with the Lessee's financier to establish step-in rights by the financier to ensure that the Project reaches Practical Completion. Any such tripartite deed will be to the reasonable satisfaction of the Lessor.
- (b) If the Lessor and the Lessee have not executed a tripartite deed as contemplated under clause 10.3(a) or if any such tripartite deed is terminated then, following termination by the Lessor in accordance with clause 10.1, the Lessor may, at its discretion either:
 - (i) perform or complete that portion of the Lessee's Works that remains incomplete using the Lessor's own contractors and employees, and plant and equipment; or
 - (ii) cause the Lessee's Works to be carried out or completed by an independent contractor chosen by the Lessor in its absolute discretion; or
 - (iii) where the Lessee's Works have not materially progressed to a state that warrants completion (in the reasonable opinion of the Lessor), cause the reinstatement of the Land (as the case may be) to the state it was in prior to the commencement of the Lessee's Works,
 (each and together, the **Termination Works**).
- (c) At any time or times during or after the performance of the Termination Works, the Lessor may serve upon the Lessee a written demand or several progressive written demands for payment of the reasonable costs incurred by the Lessor in completing the Termination Works pursuant to this clause 10.3. The Lessee must pay to the Lessor those costs within five (5) Business Days of receipt of the demand subject to any amount referred for determination pursuant to clause 12 (Dispute Resolution).

11 Lessor's default

11.1 Termination

If:

- (a) the Lessor:
 - (i) breaches or defaults in the due observance or performance of a fundamental term of this Deed and the Lessee gives notice to the Lessor specifying the nature of the breach or default and directing the Lessor to remedy that breach or default or pay reasonable compensation to the Lessee (including reasonable particulars of the calculation of the claimed compensation) within a reasonable period of time when having regard to the nature and extent of the breach or default (such period of time being not less than 20 Business Days of the date of the notice); and
 - (ii) fails to remedy the specified breach or default or agree to pay reasonable compensation within that reasonable period of time when having regard to the nature and extent of the breach or default (such period of time being not less than 20 Business Days), except where the matter has been referred for determination under clause 12 and then only if the Lessor fails to comply with such Determination (as defined in clause 12) within the time required by the relevant Expert (as defined in clause 12);

then the Lessee may by notice given to the Lessor terminate this Deed, without prejudice to:

- (iii) either party's rights and interests in respect of any antecedent breach or default;
- (iv) any right or remedy of the Lessor or the Lessee at Law or otherwise; and
- (v) clause SC4 of the Lease (Lessor's Buy-Back) applying.

11.2 Other breaches

Notwithstanding anything expressed or implied to the contrary:

- (a) the Lessee's right of Termination pursuant to clause 11.1 applies in relation to a breach or default in performance or observance of a fundamental term of this Deed and does not apply to a breach or default in performance in respect of any other term of this Deed;
- (b) if the Lessor breaches or defaults in the due observance or performance of a term of this Deed other than a fundamental term then Lessee's sole right of recovery is for loss and damage arising pursuant to the relevant breach or default; and
- (c) if the Lessor breaches or defaults in the due observance and performance of any term of this Deed other than a fundamental term of this Deed then the Lessee may give notice to the Lessor specifying the reasonable details of the breach or default and the reasonable compensation claimed by the Lessee (including reasonable particulars of the calculation of the claimed compensation) and the Lessor must within twenty (20) Business Days of the date of the notice pay the claimed compensation or alternatively agree to pay reasonable compensation subject to the amount being referred for determination under clause 12 (Dispute Resolution).

12 Dispute resolution

Clause 13 of the Project Master Deed applies to this Deed.

13 No waiver

13.1 Delay

No delay or omission to exercise any right power or remedy accruing to one party on any continuing breach or default by the other party under this Deed will:

- (a) impair any such right, power or remedy of the non-defaulting party; or
- (b) be construed to waive any such continuing breach or default or as an acquiescence to the breach.

13.2 Other breach

No waiver of any single breach will be deemed a waiver of any other breach or default of that or any other terms of this Deed.

13.3 Notice

Any waiver, permit, consent or approval of any breach or default under this Deed or any waiver of any term or condition of this Deed must be given by notice and will be effective only to the extent specified in such notice.

13.4 Remedies

All remedies under this Deed or by law or otherwise afforded to the Lessor will be cumulative and not alternative.

14 Entire agreement

14.1 Whole of agreement

The terms and conditions of this Deed (express or contained in any deed, agreement or document referred to in this Deed) comprise the whole of the agreement between the parties in respect of its subject matter.

14.2 No implied terms

The parties agree and declare that no further or other terms or conditions will be deemed to be implied in this Deed or to arise between the parties:

- (a) by way of collateral or other agreement; or
- (b) by reason of any representation, warranty or undertaking given or made by either party to the other, on or prior to the execution of this Deed,

and the existence of any such implication or collateral or other agreement is by this Deed negated.

15 Notices

15.1 Form of notice and service

Without prejudice to any other means of giving notice, any notice required to be served or given under this Deed will be sufficiently served or given:

- (a) by personal service on that party (or if it is a body corporate at the registered office of the party);
- (b) if to the Lessee, by post or email transmission to the address of the Lessee set out in this Deed or such other address or facsimile number as the Lessee may notify the Lessor from time to time as being the Lessee's address or facsimile number for service of notices; and
- (c) if to the Lessor, by post or email transmission to the address of the Lessor set out in this Deed or such other address or facsimile number as the Lessor may notify the Lessee from time to time as being the Lessor's address or facsimile number for service of notices.

Notices under clauses 10 and 11 of this Deed must not be provided by email.

15.2 Signing of notices

Any notice may be signed on that party's behalf by its attorney, director, secretary or other officer or solicitor.

15.3 Time of service by post

A notice by post will be deemed to be served or given at the time when it ought to be delivered in the due course of post.

15.4 Service by email

A notice by email is deemed served at the time of transmission by the sender, unless the sender receives an automated notice generated by the sender's or the recipient's email server that the email was not delivered.

Except that, if the delivery, receipt or transmission is after 5.00pm in the place of receipt or on a day which is not a Business Day, it is taken to have been received at 9.00am on the next Business Day

15.5 Multiple Persons

Where there is more than one person comprising the Lessee a notice served on or by any one or more of the persons comprising the Lessee is deemed served on or by all of the persons comprising the Lessee.

16 Costs

- (a) The Lessor and the Lessee shall each bear their own costs of and incidental to the negotiation, preparation and engrossment of this Deed and the Lease.
- (b) If registration is required by the Lessee, the reasonable cost of the certification and registration of the Lease, survey and lease plans and all mortgagee fees must be paid by the Lessee.
- (c) The Lessor's reasonable costs of and incidental to the negotiation, preparation and engrossment of any other document to be executed pursuant to this Deed or the Lease (to the extent permitted by law) but excluding the Transaction Documents and all registration fees on the Lease (if registration is required by the Lessee), must be paid by the Lessee within 5 Business Days of demand by the Lessor.

17 Governing law

- (a) This Deed is governed and construed in all respects according to the law of the State of South Australia.
- (b) The parties submit to the jurisdiction of the Courts of the State of South Australia and the Commonwealth of Australia in respect of all matters arising under or relating to this Deed, provided that any proceedings issued in the Courts of the Commonwealth of Australia are issued in the Adelaide Registry of any such Court.

18 GST

18.1 Liability for GST

- (a) Unless otherwise stated, the consideration payable by the Recipient to the Supplier for, or in connection with a Supply under this Deed which is subject to GST does not include any GST.
- (b) The Recipient must pay to the Supplier an additional amount on account of GST (**GST Amount**) equal to the consideration payable by the Recipient to the Supplier for the Supply multiplied by the prevailing GST rate.

18.2 Time of GST payment

The GST Amount is payable no later than the time the consideration to which the GST Amount relates is payable by the Recipient under this Deed, provided the Supplier has issued a tax invoice to the Recipient.

18.3 Liabilities reduced by input tax credits

To the extent that the consideration for a Supply consists of the reimbursement or indemnity for any liability (including costs and expenses) incurred by the Supplier, in this Deed:

- (a) the amount of that liability will be reduced by the amount of any input tax credit to which the Supplier is entitled as a result of incurring the liability; and
- (b) the Recipient must also pay the GST Amount relating to the reimbursement or indemnity for that liability.

18.4 Adjustment event

If an adjustment event results in the GST on a taxable Supply being different from the GST recovered by the Supplier, the Supplier must refund to the Recipient the excess and may recover from the Recipient the shortfall provided the Supplier has issued an adjustment note to the Recipient.

18.5 Definitions

Terms used in this clause 18 have the same meaning as in the GST Act.

19 Confidential information

Each party (the **Disclosing Party**) agrees with the other party (the **Non-Disclosing Party**):

- (a) The Disclosing Party agrees with the Non-Disclosing Party that the Disclosing Party will not, without the prior written consent of the Non-Disclosing Party, which consent will not be unreasonably withheld or delayed, disclose any Confidential Information, to any person, other than:
 - (i) to the officers and consultants of the Disclosing Party where such disclosure is necessary for the purpose of negotiating or executing this Deed;
 - (ii) to the Disclosing Party's Contractors, where such disclosure is necessary for the purpose of carrying out the Lessee's Works;
 - (iii) to the auditors or financial and legal consultants of the Disclosing Party;
 - (iv) to the extent that it can be proven that such information has been previously published or otherwise disclosed to the general public;
 - (v) on registration of the Lease; and
 - (vi) to the extent of any legal obligation or established government convention to make such disclosure.
- (b) If disclosure is made with the prior written consent of the Non-Disclosing Party or to the persons referred to in clause 19(a), then the Disclosing Party must inform such persons that the information must be kept confidential.
- (c) The Lessee acknowledges that any disclosures made as a result of the Lessor complying with its obligations under the *Freedom of Information Act 1991*, subject to any legally required consultation, do not breach the provisions of this clause 19.

20 Lessor as local government entity

- (a) The Lessor enters into this Deed as a council acting under sections 7 and 36 of the LG Act and not in any other capacity. This Deed does not preclude or pre-empt the exercise by the Lessor of any other regulatory function or power as a council.

- (b) The Lessee acknowledges that this transaction may be an administrative act and that the *Ombudsman Act 1972* (SA) may apply. The Lessee agrees to cooperate and to comply with all its legal obligations under that or any other Act.
- (c) The Lessee acknowledges that the Lessor is an 'agency' for the purposes of the *Freedom of Information Act 1991* (SA) and that documents, correspondence or other information relating to this Deed may be subject to disclosure under that Act.
- (d) The Lessee acknowledges and agrees that by entering into this Deed, it will be deemed to be a public officer/authority for the purposes of the *Independent Commissioner Against Corruption Act 2012 (ICAC Act)* and obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

21 Miscellaneous

21.1 Non merger

The provisions of this Deed will not merge on the commencement or the execution of the Lease, but will continue in full force and effect after such commencement or execution.

21.2 Variations

No variation of this Deed is valid unless made in writing and executed in the same manner as this Deed.

21.3 Severance

Each and every provision or part of a provision of this Deed will, unless the context requires, be read and construed as:

- (a) a separate and severable provision; and
- (b) as separate and severable parts,

so that if any provision or part is void or unenforceable for any reason, then such provision or part will be severed and the remainder read and construed as if the severed provision or part is omitted.

21.4 Ancillary matters

The parties agree to execute and perform all acts, deeds, matters and things as may be required to give effect to the provisions of this Deed.

Schedule 1

The Land

DRAFT

Schedule 2

The Lessee's Works

DRAFT

Schedule 3

Master Plan

DRAFT

Executed as a Deed.

THE COMMON SEAL OF CITY OF WEST TORRENS ABN 16 346 877 634 was affixed in the presence of:

Michael Coxon
 Mayor

Terry Buss PSM
 Chief Executive Officer

 Date

Lessor

Executed by Adelaide Football Club Limited
 ABN 48 008 101 568 in accordance with
 section 127 of the *Corporations Act 2001* (Cth):

 Director

 *Director/*Company Secretary

 Name of Director
 BLOCK LETTERS

 Name of *Director/*Company Secretary
 BLOCK LETTERS
 *please strike out as appropriate

Date / /

Lessee

Annexure A
Plan of the Premises

DRAFT

DRAFT

Annexure B
Plan of the Public Realm

DRAFT

Annexure C

Lease

DRAFT

Annexure D

Terms of Construction Licence to Lessee

2 Definitions

In this Annexure D:

Licence Fee means the licence fee of one dollar (\$1.00) per annum, for the initial thirty (30) months of the term of the licence, and thereafter calculated in accordance with the initial Rent under the Lease;

Licensee's Proportion means the proportion that the net lettable area of the Premises bears to the net lettable area of the land to which the particular charge, tax, invoice or assessment relates;

Permitted Use means the Licensor granting to the Licensee a licence to come on to the Land and the Premises for the purposes of:

- (a) carrying out any relevant geotechnical or other tests to the Land;
- (b) designing and constructing the Lessee's Improvements (including all fit out) including the Lessee's Works; and
- (c) any other reasonable access required for the purposes of completing the Lessee's Improvements including the Lessee's Works,

subject to any relevant Licensor Policy (to the extent that such policy does not derogate from any right of the Licensee under this Agreement);

Premises means the whole of the Land defined as the Premises in the Development Deed; and

Term means a term commencing on the date the Conditions Precedent are satisfied and expiring at the date of the commencement of the Lease contemplated by the Development Deed.

3 Interpretation

In the interpretation of this Agreement, unless the contrary intention appears:

- (a) a reference to the Development Deed means the document made between the City of West Torrens as Lessor and Adelaide Football Club Limited as Lessee to which this Annexure D is a part;
- (b) terms defined in the Development Deed have the same meaning in this Licence;
- (c) a reference in this Annexure D to the Licensor is a reference to the Lessor pursuant to the Development Deed; and
- (d) a reference in this Annexure D to the Licensee is a reference to the Lessee pursuant to the Development Deed.

4 Background

- (a) Pursuant to the Development Deed made between the Licensor as Lessor and Licensee as Lessee (**Agreement**) the Lessor agreed to lease the Land to the Lessee subject to the terms of the Agreement.

- (b) The Lessor grants the Licensee a licence to come on to the Land and the Premises from the date of this Agreement until the Commencement Date of the Lease contemplated by the Agreement.

5 Grant of Licence

- (a) The Lessor grants to the Licensee and the Licensee accepts a bare licence (**Licence**) to use and occupy the Premises for the Term, together with the right for the Licensee and any officer, employee, agent, contractor, sublicensee or invitee of the Licensee and any person claiming through or under the Licensee (**Licensee's Agents**) in common with:
- (i) the Lessor; and
 - (ii) all other persons authorised from time to time by the Lessor and Licensee by mutual agreement,
- (subject to the reasonable directions of the Lessor) of reasonable access, ingress and egress to and from the Premises, with or without vehicles, over, across and along those portions of the Common Area designated by the Lessor for use as thoroughfares, public foyers, entrances, exits, staircases, passages and yards during the Term and for the purposes of this Licence.
- (b) **Common Area** means those portions of the Land dedicated by the Lessor from time to time for common use by:
- (i) the Lessor; and
 - (ii) all other persons authorised from time to time by the Lessor and Licensee by mutual agreement,
- and includes any part of the Common Area, provided that the rights and powers granted to the Licensee rest in contract only and do not create any estate or interest in the Premises.

6 Licensee's covenants

The Licensee agrees with the Lessor that throughout the Term:

6.1 Licence fee

the Licensee must pay to the Lessor, free of all deductions, the licence fee in advance by equal monthly instalments, the first instalment to be paid on or before the date of commencement of the Term and then, on or before the same day of each and every calendar month, at the Lessor's address stated above, or such other address as the Lessor notifies the Licensee, in writing, from time to time;

6.2 Utilities, Rates and Taxes and outgoings

- (a) the Licensee must pay, as and when due or following demand being made, all costs and charges for the provision of:
- (i) electricity;
 - (ii) gas;
 - (iii) oil; and/or
 - (iv) other energies or fuels,

and all expenses, fees and charges regarding:

- (v) water;
- (vi) telephone;
- (vii) facsimile and other communication services;
- (viii) waste disposal;
- (ix) garbage collection; and
- (x) other utility services,

consumed on, or in respect of the Premises, whether supplied by the Licensor or any other party or authority (**Utilities**), provided that if the Premises is not separately metered, then the Licensee must pay the Licensee's Proportion of the Utilities;

- (b) all such Rates and Taxes, costs and charges will be adjusted as between the Licensor and the Licensee as at the date of commencement and the date of expiry of the Term and the Licensor's proportion will be deemed to be so much of such Rates and Taxes, costs and charges as are referable to any time not included in the Term, calculated on a daily basis;
- (c) the Licensee will pay to the Licensor, the Licensee's Proportion of the total of all present and future outgoings, costs and expenses properly and reasonably assessed or incurred on, or in respect of the Land, or on the Licensor in relation to the Land, or in the use, management and maintenance of the Land (**Outgoings**) for each Accounting Period in equal monthly instalments, regarding which:
 - (i) those monthly instalments are to be calculated by dividing the Licensor's estimate of the Licensee's Proportion for the relevant Accounting Period (**Licensor's Estimate**) by the number of months to which such estimate relates; and
 - (ii) the first instalment is to be paid on the date of commencement of the Term (being a proportionate instalment if appropriate) and then, on the first day of each and every succeeding month of the Term;
- (d) before this Licence is entered into and then one month prior to the commencement of each Accounting Period, the Licensor will furnish to the Licensee a written statement giving details for the next Accounting Period of:
 - (i) the nature of the Outgoings; and
 - (ii) the Licensor's Estimate in each separate category of the Outgoings;
- (e) the Licensee's Proportion will be computed for every Accounting Period and within 3 months after each Accounting Period, the Licensor will furnish to the Licensee a written statement setting out:
 - (i) the amount actually incurred by the Licensor on account of Outgoings in that Accounting Period;
 - (ii) the amount payable by the Licensee on account of the Licensee's Proportion for that Accounting Period; and
 - (iii) the adjustment between the Licensor and the Licensee taking into account any underpayment or overpayment by the Licensee,

and if there is:

 - (iv) an overpayment by the Licensee then the Licensor will:

- (A) refund such excess to the Licensee; or
 - (B) credit such excess towards discharging the Licensee's liabilities under this Licence; or
- (v) an underpayment by the Licensee, then the Licensee must immediately on receipt of such written statement, pay the amount due to the Licensor;
- (f) for any part of the Term which is not comprised within a full Accounting Period, the Licensee must pay a pro rata share of the Licensee's Proportion calculated on a daily basis; and
- (g) for the purposes of this Licence:
 - (i) Accounting Period means:
 - (A) each period of one year commencing on 1 July and expiring at midnight on the next 30 June, where the whole of that year falls within the Term;
 - (B) the period from the date of commencement of the Term to midnight on the next 30 June; and
 - (C) the period from the previous 1 July to the date of expiry of the Term or surrender of this Licence or any sooner determination of this Licence; and
 - (ii) **Relevant Authority** means any government, any municipal, government or statutory authority or body or any other person, authority or body having authority over the Land or to whose systems the Land is connected at any time (and includes any supplier of electricity, gas, water, drainage or telecommunications services);

6.3 Permitted Use

the Licensee must:

- (a) not use the Premises other than for the Permitted Use nor do or permit anything which may be or become unlawful, immoral or an annoyance, nuisance or damage to the Licensor or any other person in, or in the vicinity of, the Premises; and
- (b) at the Licensee's cost and expense, promptly obtain, keep current and comply with all consents, approvals and licences from all Relevant Authorities or otherwise necessary or incidental to the use of the Premises for the Permitted Use and the provisions of this Licence and provide the Licensor with copies of all approvals, consents and licences immediately after being obtained by the Licensee;

6.4 Maintenance and repairs

the Licensee must maintain, repair and keep the Premises (including all Licensor's fixtures and fittings) in good and substantial repair, order and condition and where appropriate, in good working order (fair wear and tear excepted);

6.5 Cleaning

the Licensee must:

- (a) cause the Premises to be cleaned regularly and kept clean and free from rubbish and not cause any part of the Premises to be, or become, in an insanitary, unsafe or unhygienic condition; and

- (b) if required by the Licensor, pay to the Licensor the Licensee's Proportion of the cost of cleaning the Common Area, including the cost of provision of hygiene equipment and services, toilet requisites and other supplies to Common Area facilities;

6.6 **Insurances**

the Licensee must effect and keep current the insurances specified in the Development Deed;

6.7 **Indemnities**

the Licensee indemnifies the Licensor on the terms set out in clause 6.5 of the Development Deed;

6.8 **Release**

the Licensee will occupy, use and keep the Premises at the risk of the Licensee and the Licensee releases to the full extent permitted by law the Licensor and its officers, employees, agents and contractors from all and any claims, demands and damages of every kind resulting from, or contributed to, by any accident, damage, injury or incident occurring in, or on, the Premises or the Land, except where caused by the wilful or negligent act or omission of the Licensor;

6.9 **Assignment**

the Licensee will not transfer, assign or sublicense this Licence or the Premises, without the prior written consent of the Licensor (which consent may be withheld in the reasonable discretion of the Licensor);

6.10 **Statutory requirements**

at the Licensee's expense, the Licensee must promptly and efficiently satisfy, comply with and observe all present and future laws and with the requirements, directions and orders of any governmental, semi-governmental, civic, health, safety, licensing, environmental or other authority with competent jurisdiction relating to, or affecting the use or condition of, the Premises or the occupancy by the Licensee of the Premises, whether such compliance or obligations are imposed on the owner or occupier of the Premises;

6.11 **Fire precautions**

the Licensee must:

- (a) take such precautions against fire on and regarding the Premises, as are or may, from time to time, be required under any present and future laws or by any Relevant Authority in relation to the Premises;
- (b) do and execute or abstain from doing or executing, all things in relation to fire safety or fire prevention, as are or may be directed or required (whether of the owner or occupier of the Premises) by any Relevant Authority in relation to the Premises;
- (c) comply with sprinkler and fire alarm laws regarding the sprinkler and fire alarm systems installed in, or about, the Premises; and
- (d) perform and observe and ensure that the Licensee's Agents perform and observe all necessary and proper fire drills and emergency evacuation procedures;

6.12 **Work, health and safety**

the Licensee:

- (a) is the responsible obligation holder or entity under applicable work health and safety laws for all aspects of health and safety for, or in connection with, occupation and use of the Premises under this Licence and as the person conducting the business or undertaking on the Premises; and

- (b) must perform its obligations under this Licence in a manner that does not cause the Licensors to breach any of the Licensors' obligations under applicable work health and safety laws; and

7 Licensors' covenants - quiet occupation

The Licensors agree with the Licensee that, in consideration of the Licensee paying the licence fee and duly and punctually observing and performing the Licensee's covenants and obligations in this Licence, the Licensee may peaceably occupy and enjoy the Premises under a bare licence for the Term.

8 Mutual covenants

8.1 Costs and expenses

The Licensors and the Licensee agree that the costs of and incidental to the recovery of any moneys due under this Licence, and the Licensors' costs and expenses incurred in remedying or attempting to remedy any breach of the Licensee's covenants will be:

- (a) deemed to be an addition to the licence fee falling due on the date on which such costs and expenses become due and owing; and
- (b) recoverable by the Licensors from the Licensee, in the same manner as any unpaid licence fee.

8.2 Notices

Without prejudice to any other means of giving notice, any notice required to be served will be sufficiently served on the Licensee, if left at the Premises or if forwarded to the Licensee by mail to the last known place of business or residence of the Licensee and will be sufficiently served on the Licensors, if addressed to the Licensors and sent by mail to the Licensors at the address set out in the Development Deed and any notice sent by mail is deemed to be given at the time when it ought to be delivered in the due course of post;

8.3 Severance

Any covenant or provision of this Licence which is not applicable to the Premises or which is repugnant to the general interpretation of this Licence or which is invalid, unlawful, void or unenforceable, will be capable of severance without affecting any other of the covenants and provisions.

8.4 No warranty

The Licensee acknowledges and declares that:

- (a) no promise, representation, warranty, assurance or undertaking has been given by the Licensors, regarding the suitability of the Premises, for any purpose or business to be carried on in the Premises; and
- (b) the Licensors do not warrant that the Premises will, for the duration of this Licence, be structurally or otherwise suitable for the business to be conducted in the Premises by the Licensee.

9 GST

9.1 Definitions and interpretation

For the purposes of interpretation of this clause 9:

- (a) **GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (b) **Recipient** and **Supplier** have the respective meanings ascribed to those terms in the GST Act;
- (c) **supply** has the same meaning it does in section 9-10 of the GST Act and excludes any **GST-free supplies** and **input taxed supplies** as those terms are defined in section 195-1 of the GST Act; and
- (d) terms used in this clause have the same meaning as in the GST Act, unless the context requires otherwise.

9.2 Liability for GST

- (a) Unless otherwise stated, the consideration payable by the Recipient to the Supplier for, or in connection with, a supply under this Licence which is subject to GST, does not include any GST.
- (b) The Recipient must pay to the Supplier an additional amount on account of GST (**GST Amount**) equal to the consideration payable by the Recipient to the Supplier for the supply multiplied by the prevailing GST rate.

9.3 Time of GST payment

The GST Amount is payable no later than the time the consideration to which the GST Amount relates is payable by the Recipient under this Licence, provided the Supplier has issued a tax invoice to the Recipient.

9.4 Liabilities reduced by input tax credits

To the extent that the consideration for a supply consists of the reimbursement or indemnity for any liability (including costs and expenses) incurred by the Supplier, in this Licence:

- (a) the amount of that liability will be reduced by the amount of any input tax credit to which the Supplier is entitled as a result of incurring the liability; and
- (b) the Recipient must also pay the GST Amount relating to the reimbursement or indemnity for that liability.

9.5 Adjustment event

If an adjustment event results in the GST on a supply being different from the GST recovered by the Supplier, the Supplier must refund to the Recipient the excess and may recover from the Recipient the shortfall, provided the Supplier has issued an adjustment note to the Recipient.

10 Environmental requirements

The Licensee must, in relation to the Premises:

- (a) comply with Environmental Laws;
- (b) do all things necessary to prevent a breach of any Environmental Laws;
- (c) promptly notify the Licensor of any breach of any Environmental Laws; and
- (d) promptly notify the Licensor of any:
 - (i) notice received by the Licensee; or
 - (ii) proceedings commenced,

under any Environmental Laws:

- (iii) relating to a breach or alleged breach of any Environmental Laws; or
- (iv) requiring any works to be carried out in relation to the Premises or any land adjoining the Premises because of any Contaminant affecting the Premises .

DRAFT

Annexure E – Draft Lease

**Draft Base Lease: City of West Torrens (CWT) as Lessor and
Adelaide Football Club Limited (AFC) as Lessee**

Final Draft for Review: 03.10.2023

Author note:

This edition is based on the document dated 29 September 2023 from Kelledy Jones with changes accepted for final review.

DRAFT

LANDS TITLES REGISTRATION OFFICE

SOUTH AUSTRALIA

LEASE

FORM APPROVED BY THE REGISTRAR-GENERAL

PRIORITY NOTICE ID	
--------------------	--

SERIES NO	PREFIX
	L

**BELOW THIS LINE FOR OFFICE
PURPOSES ONLY**

AGENT CODE
THPL - 80

LODGED BY:
Thomson Geer 19 Gouger Street Adelaide 5000

CORRECTION TO:
Thomson Geer

SUPPORTING DOCUMENTATION LODGED WITH INSTRUMENT
(COPIES ONLY)

1

2

3

4

5

CORRECTION	PASSED
REGISTERED	
REGISTRAR-GENERAL	

LEASE

PRIVACY COLLECTION STATEMENT: The information in this form is collected under statutory authority and is used for maintaining publicly searchable registers and indexes. It may also be used for authorised purposes in accordance with Government legislation and policy requirements.

LAND DESCRIPTION

The whole of the land in Certificates of Title Volume **[insert title references]**

ESTATE & INTEREST

Estate in fee simple

LESSOR (Full name and address)

City of West Torrens ABN 16 346 877 634 of 165 Sir Donald Bradman Drive, Hilton SA 5033

LESSEE (Full name, address and mode of holding)

Adelaide Football Club Limited ABN 48 008 101 568 of 105 West Lakes Boulevard, West Lakes SA 5021

TERM

COMMENCING ON **[insert]**

AND

EXPIRING ON **[insert]**

RENT AND MANNER OF PAYMENT (or other consideration)

Rent: \$**[insert in numerals and words]** per annum subject to clause 6 and subject to review under clause 4.8 of this Lease. The annual rent must be paid by equal, consecutive, calendar monthly instalments equivalent to one twelfth of the annual rent, always in advance, the first such instalment to be paid on the Commencement Date (being a proportionate instalment if appropriate) and then on the first day of each and every succeeding month

IT IS COVENANTED BY AND BETWEEN THE LESSOR AND THE LESSEE as listed herein:

(Covenants, where not deposited, to be set forth on insert sheet(s) and securely attached)

Reference Schedule

Item 1 Premises	The portion of the Land identified in the plan annexed to this Lease and marked Annexure A .		
Item 2 Lessor	City of West Torrens ABN 16 346 877 634 of 165 Sir Donald Bradman Drive, Hilton SA 5033 Email: tbuss@wtcc.sa.gov.au		
Item 3 Lessee	Adelaide Football Club Limited ABN 48 008 101 568 of 105 West Lakes Boulevard, West Lakes SA 5021 Email: tsilvers@afc.com.au		
Item 4 Term	Forty two (42) years commencing on [insert] and expiring at midnight on [insert]		
Item 5 Rent and Manner of Payment	Rent: \$[insert in numerals and words] per annum subject to clause 6 and subject to review under clause 4.8 of this Lease. The annual rent must be paid by equal, consecutive, calendar monthly instalments equivalent to one twelfth of the annual rent, always in advance, the first such instalment to be paid on the Commencement Date (being a proportionate instalment if appropriate) and then on the first day of each and every succeeding month and (in order to remove doubt) subject to the rent rebates specified in Special Condition SC1 of this Lease		
Item 6 Land	The whole of the land in Certificate of Title Volume 6131 Folio 655 and part of Certificate of Title Volume 6131 Folio 656, Volume 5092 Folio 344, Volume 5436 Folio 231 and Volume 6221 Folio 506, more commonly known as Kings Reserve and Thebarton Oval.		
Item 7 Permitted Use	Sporting and community purposes in accordance and in compliance with the Community Land Management Plan and as permitted by the <i>Planning, Development and Infrastructure Act 2016</i> (and any legislative instrument thereunder) and other uses as may be approved in writing by CWT.		
Item 8 Rent Review Dates	(a)	CPI or a fixed rate increase of 3% (whichever is the lesser):	Date: The anniversary of the Commencement Date
			Year(s): Annually save and except on the dates specified in Item 8(b) of this Reference Schedule
	(b)	Market review:	Date: The anniversary of the Commencement Date
			Year(s): On the eleventh (11 th), twenty first (21 st) and thirty first (31 st) anniversary of the Commencement Date

Table of contents

1	Definitions and interpretation.....	5
1.1	Definitions	5
1.2	Interpretation	9
2	Lessee's covenants	10
2.1	Rent.....	10
2.2	Statutory Charges, utilities and management fees	10
2.3	Costs	11
2.4	Assignment and subletting	11
2.5	Permitted Use	12
2.6	Maintenance and repair	13
2.7	Cleaning	14
2.8	Painting	14
2.9	Statutory requirements.....	14
2.10	Notice of defects or hazards and work, health and safety	14
2.11	Signs and other devices	15
2.12	Lessee's alterations and additions	15
2.13	Liquor Licence	16
2.14	Reservation of use of conduits.....	16
2.15	Heavy and noisy equipment.....	16
2.16	Dangerous substances	16
2.17	Lessor's access.....	17
2.18	Security	17
2.19	Insurances.....	17
2.20	Additional premium and excess	18
2.21	Not to affect Lessor's insurance.....	19
2.22	Indemnities	19
2.23	Release of Lessor	19
2.24	Reletting	20
2.25	Lessee's consent.....	20
2.26	Superior or concurrent interest	20
2.27	No unauthorised caveat	20
3	Quiet possession	20
4	Mutual covenants.....	20
4.1	Default	20
4.2	Landlord and Tenant Act.....	22
4.3	Real Property Act	22
4.4	Default interest.....	22
4.5	Destruction or damage.....	22
4.6	Electricity laws.....	23
4.7	Holding over	24
4.8	Rent review	24
4.9	Removal of fixtures and fittings and yielding up Premises	25
4.10	Power of attorney	26
4.11	Notice	26
4.12	other matters	27
4.13	No partnership.....	27
5	Community access	27
6	GST	27
6.1	Liability for GST.....	27
6.2	Time of GST payment.....	27
6.3	Liabilities reduced by input tax credits	27
6.4	Adjustment event	28
6.5	Definitions	28
7	Personal Property Securities Act.....	28

7.1	Lessor may register financing statement	28
7.2	Co-operation by Lessee	28
7.3	No financing statement for security deposit/bank guarantee	28
7.4	Exclusion of certain provisions of PPSA	28
7.5	No notice of verification statement	28
7.6	Definitions	28
8	Acknowledgements	28
9	Consent	28
10	Environmental requirements	29
11	Exemption application	30
12	Dispute resolution	30
12.1	All Disputes to be dealt with under this clause	30
12.2	Notice of Dispute	30
12.3	Referral of Dispute to an Expert	30
12.4	Urgency	30
12.5	Expert	30
12.6	Final	31
12.7	Conduct of Determination	31
13	Statutory authority	31
14	Resumption	31
14.1	If the lessor receives notice of resumption or compulsory acquisition of the Premises or the Land from or by any statutory authority and the area to be compulsory acquired, renders it commercially, financially or practically impossible for the Lessee to utilise the remaining portion of the Premises or the Land for the permitted use then:	31
14.2	If the Lessor receives notice of resumption or compulsory acquisition of portion only of the Premises or the Land in circumstances other than specified in clause 14.1 then:	31
15	Lessor's discretion	31
16	Community Land	31
17	Oversight legislation	32
SC1	Rent Rebate	35
SC2	Council Rates	35
SC3	Future tenure	35
SC4	Lessor's Buy-Back obligation	36

1 Definitions and interpretation

In this Lease unless the contrary intention appears:

1.1 Definitions

Act means the *Local Government Act 1999*;

AFC Assessment means the environmental assessment which determined the nature and extent of any Contamination existing on or in the Land which are to be solely used by AFC (that is, excluding the Public Realm) prepared by a Site Contamination Auditor, procured in accordance with clause 8 of the Project Master Deed;

Business Day means any day that is not Saturday, Sunday or a public holiday in South Australia;

Commencement Date means the date of commencement of the Original Term set out in item 4(a) of the schedule;

Commercial Area means the portion of the Premises at ground level in square metres:

- (a) which includes ground floor areas:
 - (i) of any permanent new built form or structure erected on the Premises by the Lessee, for the Lessee's sole or primary benefit (or for the benefit or use of any of the Lessee's sublessees, licensees, invitees, agents or contractors;
 - (ii) of any signage or screens erected by the Lessee for commercial purposes or benefit;
 - (iii) any non-permanent structure which either requires Development Approval (under the *Planning, Development and Infrastructure Act 2016*), or remains in situ for a period of more than 6 months;
 - (iv) any other areas occupied by the Lessee to the exclusion to the public;
- (b) which exclude:
 - (i) any areas of multi levels buildings or structures above or below the ground level;
 - (ii) the Public Realm;

as adjusted having regard to the measurement of such Commercial Area.

Contaminant or **Contamination** means any substance, matter or thing on, in or under the Land which causes it to be:

- (a) unsafe or unfit for habitation or occupation by persons or animals; or
- (b) degraded in its capacity to support plant life; or
- (c) otherwise environmentally degraded;

CPI means the Consumer Price Index (All Groups) for Adelaide published from time to time by the Australian Bureau of Statistics or by the Commonwealth of Australia or by any other body authorised by the Commonwealth of Australia to do so;

Current Prevailing Rent means the annual rent that can reasonably be obtained for the Premises in the open market, by a willing but not anxious lessor, which rent is to be determined:

- (a) having regard to the nature and use of the Premises and the sporting and associated training and entertainment and management and administration facilities comprised in the Premises and the prevailing rental rates payable in respect of comparable sports and community club facilities; and
- (b) having regard to the capital expenditure made by the Lessee in upgrading the Premises and the facilities comprised in the Premises at its own cost and including an appropriate discount having regard to the amount of capital expenditure made by the Lessee,

and which rent is adjusted to reflect the following conditions:

- (c) on the basis of the Commercial Area of the Premises, on the same terms as this Lease;
- (d) on the basis that the Premises is unoccupied; and

- (e) on the basis that infrastructure and facility comprised in the Premises supplied by the Lessor are considered;

and not considering:

- (f) any breach of this Lease by the Lessee or the Lessor (but without prejudice to any right or remedy for any such breach);
- (g) any damage to or destruction of the Premises nor any consequential cessation or suspension of rent;
- (h) any value attaching to Improvements or Lessee's property erected or installed by or on behalf of the Lessee,

and considering:

- (i) all costs and expenses of any nature payable by the Lessor in respect of the Premises which are not payable by or recoverable from the Lessee under this Lease;
- (j) the fact that the annual rent set out in item 5 of the schedule is GST exclusive and that under this Lease an additional amount on account of GST is payable;
- (k) a deduction or allowance for any increase in value of the Premises, including any increase in value arising from any permanent improvements erected or installed at the expense of the Lessee and which the Lessee may not remove from the Premises;
- (l) the benefit of environmental sustainability ratings (if applicable) and environmental performance and implementation of the Environmental Principles relevant to the Premises;
- (m) the fact that the Lessee is obliged to permit public access to the Premises or parts of the Premises on the terms and conditions of clause 5 this Lease and the Usage Agreement; and
- (n) For the purposes of this clause, the area of the Premises in respect of which Rent is payable shall be deemed to be the Commercial Area at any time during the Term of the Lease.

Default Rate means the interest rate for moneys due and owing, but unpaid by the Lessee to the Lessor, as determined by the Lessor from time to time, acting in good faith and by reference to 2% above the interest rate charged by a banker of the Lessor on commercial overdrafts of \$100,000.00;

Development Deed means the development deed entered into between the parties in connection with the works performed prior to the commencement of this Lease.

Environmental Laws means:

- (a) all present and future laws and regulations, environmental protection policies, and directions, standards and guidelines of any relevant authority (and any other like bodies) regulating or otherwise relating to the environment, including any law relating to:
 - (i) land use; or
 - (ii) planning; or
 - (iii) heritage; or
 - (iv) coastal protection; or
 - (v) water catchments; or
 - (vi) pollution of air or waters; or
 - (vii) noise, soil or ground water contamination; or
 - (viii) chemicals; or
 - (ix) waste; or
 - (x) use of hazardous or dangerous goods or substances; or
 - (xi) building regulations; or
 - (xii) public and occupational health and safety; or
 - (xiii) noxious trades; and

- (b) all licences, approvals, consents, permissions or permits issued by any relevant authority of an environmental nature;

Environmental Principles means the aim to:

- (a) improve energy efficiency and promote reduction of greenhouse emissions; and
- (b) ensure environmental sustainability of the Premises, the Lessee's Improvements and their Services,

which principles will be determined by the Lessor from time to time, acting reasonably and after consultation with the Lessee and having regard to the condition of the Premises and the performance of the Services and applicable laws at the relevant time;

Good Standing of a person, means that a person has good standing if:

- (a) that person has the financial position and financial resources as regards its ability to perform the lease;
- (b) if that person has no material adverse investigations, prosecutions of, or penalties payable by, the person (or any of its key personnel) in the preceding five (5) year period; and
- (c) there is no other factor that is known to the Lessor which would materially and adversely affect the Lessor's reputation or the legal compliance of the Lessor under the Local Government Act (LGA), if it were to approve any act under clause 2.4;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Heritage Items means the historic grandstand, ticketing booth situated on the Land and such other historic property situated on the Public Realm, as determined by AFC and CWT (acting reasonably), or if otherwise identified as an object or place of 'heritage significance under the *Heritage Places Act 1993* (SA) (or similar declaration);

Land means the Land described in item 1 and item 6 of the schedule;

Lessee means the person described in item 3 of the schedule;

Lessee Event means any event held by the Lessee at the Premises, including a sporting event which may be held at the Premises;

Lessee's Agents means each of the Lessee's agents, contractors, officers, employees, underlessees, invitees and other persons claiming through or under the Lessee;

Lessee's Improvements means:

- (a) the buildings, improvements, fixtures, fittings, plant, equipment, signage and facilities together with all earth works, laying of foundations, site preparation and site surcharging, reticulation, roadway crossovers, paving, surfaces of car parks, driveways, pathways, landscaping, services and augmentation and infrastructure of any nature, which are constructed or installed by or on behalf of the Lessee on the Premises; and
- (b) all installations, alterations and additions undertaken by or on behalf of the Lessee on the Premises at any time,

and includes any part of the Lessee's Improvements;

Lessor means the person described in item 2 of the schedule;

Network Charges means the costs payable from time to time to the operator of the external electricity distribution network to which the Land is connected on account of the use of that network to deliver electricity to the Land;

Non-Lessee Event means any event, not being a Lessee Event, which may be held at the Premises for the benefit or enjoyment of the Lessor or the Community at large;

notice means notice in writing or transmitted by email;

Original Term means the term of this Lease set out in item 4 of the schedule;

Permitted Use means the use described in item 7 of the schedule;

Premises means the Land and where the context allows includes:

- (a) all present and future improvements, infrastructure or modifications erected on the Premises, excluding the Lessee's Improvements;
 - (b) all the Lessor's improvements, infrastructure, buildings or other structures, fixtures, fittings, plant and equipment installed in or on the Premises;
 - (c) the natural environment, including the turf and trees; and
 - (d) all the roadways, conveniences, Services, amenities and appurtenances of, in or to the Premises,
- and includes any part of the Premises;

Project Master Deed means the means the document entitled 'Thebarton Oval Sports Precinct Project Master Deed' made between the Lessor and the Lessee for the transaction involving the development and lease of the Land;

PPSA means the *Personal Property Securities Act 2009* (Cth);

PPSR means the Personal Property Securities Register established under the PPSA;

Public Realm means those parts of the Premises which are to be accessible by members of the public in accordance with the terms agreed by the parties in this Lease and the Usage Agreement;

Public Realm Assessment means the environmental assessment which determined the nature and extent of any Contamination existing on or in the Public Realm prepared by a Site Contamination Auditor, procured in accordance with clause 8 of the Project Master Deed;

relevant authority means any public, governmental, semi-governmental, statutory or regulatory authority, department or other body having competent jurisdiction in respect of the relevant act, matter or thing;

rent means the rent reserved by this Lease;

Review Date means the relevant date set out in item 8 of the schedule;

Services means:

- (a) all electrical, air-conditioning, gas, power, fire, security, plumbing, telecommunication and transportation systems;
- (b) all emergency warning information systems;
- (c) all building management systems; and
- (d) other like installations,

including all pipes, drains, cables, wires, data points and other conduits situated in, under, on or serving the Premises and the Lessee's Improvements;

Site Contamination Auditor means:

- (a) the person engaged to be the Site Contamination Auditor under the Project Master Deed; or
- (b) if the person in (a) is not available, a replacement Site Contamination Auditor engaged in accordance with the requirements of clause 8 of the Project Master Deed;

Site Contamination Consultant means:

- (c) the person engaged to be the Site Contamination Consultant under the Project Master Deed; or
- (d) if the person in (a) is not available, a replacement Site Contamination Consultant engaged in accordance with the requirements of clause 8 of the Project Master Deed;

Special Conditions means the terms and conditions contained at Annexure C to this Lease;

Supply has the same meaning it does in section 9-10 of the GST Act and excludes any 'GST-free supplies' and 'input taxed supplies' as those terms are defined in section 195-1 of the GST Act;

Term means the Original Term and any extension or renewal of that term and any period during which the Lessee holds over or remains in occupation of the Premises;

terms of this Lease means the terms, covenants, agreements, duties, obligations, rights, powers, privileges, provisions, acknowledgements and conditions set out in this Lease;

Valuer means a qualified valuer (being an individual with the professional designation corresponding to valuer as designated by the Australian Property Institute as at the relevant appointment date) who is appointed to decide under this Lease and:

- (a) who is appointed by the Lessor and the Lessee or (if they fail to agree on the appointee within 7 days of either notifying the other of the requirement for such appointment) at the request of either by the person for the time being holding or acting in the office of President of the Australian Property Institute (South Australian Division);
- (b) who has been an accredited member of that Institute for at least 5 consecutive years immediately prior to the date of such appointment;
- (c) who has practised as a land valuer as defined in the *Land Valuers Act 1994* (SA) in the valuation for rental purposes of property similar to the Premises for a period of not less than 5 consecutive years immediately prior to such appointment;
- (d) who is deemed to act as an expert and not as an arbitrator;
- (e) whose determination will be final and binding as between the Lessor and the Lessee, except in the case of manifest error;
- (f) who may seek the assistance of any appropriately qualified experts; and
- (g) all costs and expenses of and incidental to such determination will be paid by the Lessee and the Lessor in equal shares, unless otherwise provided in this Lease; and

Usage Agreement means a Usage Agreement to be entered into between the parties in relation to the use, maintenance, repair and usage of the Heritage Items and the Public Realm; and

1.2 Interpretation

- (a) a reference to any Act includes all statutes, regulations, codes, by-laws or ordinances and any notice, demand, order, direction, requirement or obligation under that Act (and vice versa) and unless otherwise provided in that Act includes all consolidations, amendments, re-enactments or replacements from time to time of that Act and a reference to 'law' includes a reference to any Act and the common law;
- (b) words importing the singular embrace the plural and words importing one gender embrace the other genders and vice versa respectively;
- (c) any reference to a person will be deemed to include a body corporate and vice versa;
- (d) anything which the Lessee is required to do must be done at the cost of the Lessee and to the reasonable satisfaction of the Lessor;
- (e) an obligation on the Lessee under this Lease (other than an obligation to pay rent or other moneys to the Lessor), requires the Lessee to ensure compliance by the Lessee's Agents with that obligation;
- (f) headings are for convenience of reference only and will not affect the interpretation of this Lease;
- (g) any reference to an 'item of the schedule' means the relevant item of the Reference Schedule contained in this Lease and any reference to a clause means the relevant clause of this Lease;
- (h) where the words 'Not applicable' appear opposite any part of any item of the schedule, then each and every clause in this Lease in which specific reference is made to such part of the relevant item of the schedule will be of no effect;
- (i) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (j) a reference to dollar or A\$ is to Australian currency;
- (k) a reference to time is to time in South Australia, Australia;
- (l) a reference to a party to this Lease and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes and if more than one, then jointly and severally;
- (m) nothing in this Lease is to be interpreted against a party solely on the ground that the party put forward this Lease or any part of it;

- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (o) if a body, institute, association or relevant authority referred to in this Lease ceases to exist, then this Lease must be read as referring to such body, institute, association or relevant authority as then serves substantially the same objects as that body, institute, association or relevant authority;
- (p) all money (including rent) payable by the Lessee to the Lessor and costs recoverable from the Lessee by the Lessor must be paid to the Lessor (or such other person as the Lessor notifies the Lessee) and at the place or in the manner specified under clause 2.1 and will be recoverable as a debt and if no date or time for payment is specified must be paid within 7 days of demand;
- (q) the words 'include', 'includes' or 'including' will be deemed in all cases to be followed by the words 'without limitation'; and
- (r) the Special Conditions form part of this Lease.

2 Lessee's covenants

The Lessee agrees with the Lessor throughout the Term:

2.1 Rent

to pay the rent free from exchange, deduction, set off or counterclaim and abatement to the Lessor as the Lessor requires:

- (a) at the Lessor's address set out in item 2 of the schedule; or
 - (b) by direct bank transfer to the credit of a bank account nominated by the Lessor; or
 - (c) to such other person or at such other place as the Lessor may notify the Lessee,
- and at the times and in the manner set out in item 5 of the schedule and the terms of this Lease.

2.2 Statutory Charges, utilities and management fees

- (a) subject to the terms of this Lease, to pay all present and future rates, taxes, charges, levies, assessments, duties, impositions and fees of any relevant authority including:
 - (i) council rates, permit fees and car parking levies (if any);
 - (ii) water and sewerage rates, charges and levies;
 - (iii) land tax on a single holding basis; and
 - (iv) emergency services levies,

which are referable only to the Premises and the Lessee's Improvements (**Statutory Charges**):

 - (v) as and when such Statutory Charges are due and payable to the relevant authority; or
 - (vi) if required by the Lessor, then to the Lessor within 7 days of demand being made by the Lessor;
- (b) to pay as and when due for payment or if required by the Lessor, within 7 days of demand being made by the Lessor, all costs, fees and charges for the provision of:
 - (i) water, gas, oil and other energy or fuels (other than for electricity which costs, fees and charges are payable under clause 4.6) supplied to or separately metered or consumed in the Premises and the Lessee's Improvements;
 - (ii) telephone, facsimile, data and other communication services, waste disposal and garbage collection in respect of the Premises and the Lessee's Improvements; and
 - (iii) all other utility services supplied to or separately metered or consumed in or in respect of the Premises and the Lessee's Improvements,

irrespective of the identity of the supplier;

- (c) that all such Statutory Charges, costs and charges will be adjusted (if necessary) as between the Lessor and the Lessee and the Lessor's share will be that proportion which relates to the period outside the Term;

2.3 **Costs**

- (a) to pay the Lessor's reasonable costs of and incidental to the preparation (but not the negotiation) and engrossment and, if the Lessee requires registration, certification and registration of this Lease and any extension or renewal of this Lease;
- (b) to pay the Lessor's reasonable costs of any guarantee, assignment, transfer or surrender of this Lease and any other incidental documents; and
- (c) to pay all stamp duty (if any) and registration fees in connection with this Lease and any assignment, transfer, guarantee, surrender, extension or renewal of this Lease and all the mortgagee consent fees in respect of any assignment, transfer or surrender of this Lease;

2.4 **Assignment and subletting**

- (a) not to transfer, assign, underlease, licence, grant a concession, part with possession or mortgage this Lease or the Premises or the Lessee's Improvements without the consent of the Lessor, which consent will not be unreasonably withheld or refused subject to subclause 2.4(a);
- (b) if requested by the Lessor, the Lessor's consent under subclause 2.4(a) is subject to any relevant third party confirming that it does not propose to change the use to which the Premises is permitted to be used under the Lease at the time of the transfer or assignment; and
- (c) if the Lessee requests that the Lessor consent to any transfer or assignment, the Lessee must promptly on receipt of a request to do so from the Lessor:
 - (i) pay all arrears of rent and other money outstanding under this Lease and remedy all outstanding breaches and defaults of which the Lessee has received prior notice;
 - (ii) pay such money as is reasonably estimated by the Lessor's consultants to be required for the Lessee to comply with any breach of the terms of this Lease, including those relating to the state of repair and cleanliness and painting of the Premises and the Lessee's Improvements, including the reasonable costs of such consultants in inspecting the Premises and the Lessee's Improvements;
 - (iii) submit a true copy of all agreements to be entered into in respect of any proposed dealing with this Lease or the Premises and the Lessee's Improvements which are reasonably required by the Lessor and evidence satisfactory to the Lessor, acting reasonably, that the proposed transferee or assignee (**assignee**) is solvent and of good standing;
 - (iv) if the proposed assignee is a trustee of a Trust submit a copy of the instrument under which such Trust was constituted and the full names, addresses and occupations of the beneficiaries of such Trust; and
 - (v) pay to the Lessor, its agents and its solicitors, the reasonable costs of and incidental to enquiries concerning the proposed dealing or the persons concerned in such dealing and of the perusal, preparation and stamping of the documents reasonably deemed necessary by the Lessor,

and if such consent is given the Lessee will ensure that prior to the date of any transfer or assignment the proposed assignee:

- (vi) enters into a direct covenant with the Lessor to observe the terms of this Lease; and
- (vii) furnishes such guarantees of the performance of such person's obligations under this Lease as the Lessor may reasonably require;
- (d) on transfer or assignment of the Lessee's interest in this Lease, the Lessor may release the Lessee from its obligations under this Lease, except in respect to any antecedent breach;
- (e) the Lessee acknowledges and agrees that it will be a condition of any consent granted by the Lessor to the Lessee to mortgage its estate, interest or rights under this Lease that the Lessee and the mortgagee must enter into a deed with the Lessor acknowledging and agreeing that:

- (i) any rights created under such mortgage are subject to the rights of the Lessor under this Lease;
- (ii) the rights of the Lessor will not be limited by section 139 of the *Real Property Act 1886* (SA);
- (iii) from the date the mortgagee:
 - (A) goes into possession of the Premises or the Lessee's Improvements; or
 - (B) commences to receive the income or profits of the Premises or the Lessee's Improvements; or
 - (C) otherwise exercises its powers under the mortgage,

the mortgagee will be bound by all the terms of this Lease and will perform all of the Lessee's covenants in this Lease (including the Lessee's obligations to pay rent, outgoings and utilities) and will first remedy any default of the Lessee under this Lease existing at that time; and
- (iv) contemporaneously with service on the Lessee, the mortgagee will serve on the Lessor copies of all notices which the mortgagee serves on the Lessee under the terms of the mortgage; and
- (f) in this clause 2.4, **mortgage** includes a secured interest or any other encumbrance and **mortgagee** includes a secured party or encumbrancee (as the case may be);

2.5 Permitted Use

- (a) not to use or permit the use of the Premises and the Lessee's Improvements other than for the Permitted Use and not to:
 - (i) do or permit to be done anything which may:
 - (A) be or become dangerous, unlawful or immoral; or
 - (B) cause unreasonable annoyance or constitute nuisance at law; or
 - (C) cause damage to the Lessor or its property or any other person or property in or in the vicinity of the Premises and the Lessee's Improvements; or
 - (D) adversely affect:
 - (I) the performance of the Premises, the Lessee's Improvements and their Services; or
 - (II) any environmental sustainability ratings and environmental performance and implementation of the Environmental Principles, relevant to the Premises and the Lessee's Improvements; or
- (b) to promptly apply for, obtain, keep current and comply with all consents, approvals and licences from all relevant authorities or other persons necessary or incidental to:
 - (i) the use of the Premises and the Lessee's Improvements for the Permitted Use;
 - (ii) the construction of the Lessee's Improvements; and
 - (iii) the provisions of this Lease; and
- (c) to provide the Lessor with copies of all approvals, consents and licences promptly after being obtained by the Lessee;
- (d) other than light spill emitting from the existing light towers on the Premises and noise emanating from the Premises during a Lessee Event or a Non-Lessee Event at the Premises, the Lessee must not do or permit to be done anything which may be or become unlawful or immoral or an annoyance, nuisance or damage to the Lessor or any other adjoining owner or occupier including:
 - (i) allowing excessive noise to emanate from the Premises; or
 - (ii) create light spill affecting owners and occupiers of adjoining or nearby land;
- (e) despite any clause to the contrary in this agreement, the Lessor will use its best endeavours to support any application made by the Lessee seeking approval for a change in land use of the Premises provided that the change in land use is consistent with the Permitted Use;

- (f) the provisions of this clause 2.5 do not apply to any community use;
- (g) for the purposes of determining what is a Permitted Use, the parties agree that:
 - (i) An Australian Football League sized oval, training park, sports complex, retail, media, entertainment area and facility, management and administration complex, and any other use ancillary or incidental to sporting facilities is in accordance with and in compliance with the relevant Community Land Management Plan; and
 - (ii) Tourism and allied health facilities and any other use ancillary or incidental to sporting facilities in accordance and in compliance with the Community Land Management Plan and as permitted by the *Planning Development And Infrastructure Act 2016* (and any legislative instrument thereunder) may be permitted subject to the approval of the Lessor (which approval must not be unreasonably withheld and, if approval is refused, the Lessor giving reasons in writing for any such refusal) and any legal obligations imposed on the Lessor in respect of process or public consultation.

2.6 Maintenance and repair

subject to the terms of the Usage Agreement:

- (a) to maintain, repair, replace and keep the Premises, the Lessee's Improvements and the Lessee's property on the Premises in:
 - (i) good and substantial repair and where appropriate, working order, to the extent necessary to conduct the Permitted Use at a high and efficient standard, at all times during the Term fair wear and tear excepted; and
 - (ii) not less than the state and condition in which the Lessee's Improvements and the Premises would be maintained, by a reasonable and prudent registered proprietor of an estate in fee simple in the Premises fair wear and tear excepted,
 except:
 - (iii) to the extent that any damage is contributed to or caused by any wilful or negligent act or omission of the Lessor or any of the Lessor's Agents; or
 - (iv) where the Lessor has given notice that reinstatement or rebuilding is not required;
- (b) to implement procedures relevant to the Premises and the Lessee's Improvements to achieve the environmental initiatives of the Lessee, including to monitor and manage:
 - (i) energy and water consumption regarding the Premises and the Lessee's Improvements with the aim of reaching energy and water consumption reduction targets reasonably established for the Premises, the Lessee's Improvements and their Services; and
 - (ii) waste reduction and recycling regarding the Premises (other than the Heritage Items) and the Lessee's Improvements to minimise landfill disposal,
 having regard to the Environmental Principles.
- (c) to promptly repair or replace (or pay to the Lessor its cost of doing so) all damaged, scratched, vandalised or broken glass in or about the Lessee's Improvements, including external windows with glass of the same or similar quality and all damaged or broken light globes, florescent tubes (including in any light towers) and similar items;
- (d) not without the Lessor's consent to modify or obstruct the Services in or servicing the Premises (other than the Lessee's Improvements which may be modified without the Lessor's consent) or permit such activity;
- (e) to make good any breakage, defect or damage to the Lessee's Improvements to the extent contributed to or caused by the Lessee or any of the Lessee's Agents; and
- (f) if the Lessee by notice requires the Lessor to carry out any works which are the responsibility of the Lessee under this clause 2.6, then:
 - (i) the Lessor may (without any obligation to do so and without any liability to the Lessee in respect of such works) on reasonable notice and at reasonable times execute such works as if it were the Lessee; and

- (ii) the Lessee must pay to the Lessor all the Lessor's reasonable costs and expenses in executing such works;

2.7 Cleaning

having regard to the Environmental Principles applicable to the Premises, and subject to the Usage Agreement:

- (a) at its cost, to cause the Premises to be cleaned regularly and kept clean and free from dirt and rubbish in a proper and workmanlike manner;
- (b) to keep and maintain clean and in good order, repair and condition all of the fixtures, fittings, plant, equipment and chattels of the Lessee, to the extent necessary to prevent any hazard or deterioration in the condition of the Premises;
- (c) to store and keep all waste materials and garbage in proper receptacles for it and to ensure that all organic waste is placed in appropriate bags and sealed prior to placement in such waste receptacles and to arrange for the regular removal of it from the Premises; and
- (d) to exterminate or eradicate vermin and pests from the Premises and to comply with the Lessor's reasonable requests relating to pest control;

2.8 Painting

- (a) subject to the Usage Agreement, in a proper and workmanlike manner, by professional painters, using low environmental impact materials and in colours and according to specifications approved by the Lessor (which approval will not be unreasonably withheld), to paint or cause to be painted:
 - (i) when reasonably required during the Term, all parts of the exterior of the Premises excluding the Lessee's Improvements as are usually painted and reasonably require repainting to preserve the amenity of the area and external appearance of the Premises excluding the Lessee's Improvements; and
 - (ii) if required by the Lessor, immediately prior to the expiry of the Term or the surrender of this Lease or within 30 days of any sooner determination of this Lease, all parts of the Premises excluding the Public Realm as are painted at the Commencement Date; and
- (b) that if the Lessee fails to comply with such obligation then the Lessor may, on giving 14 days' notice to the Lessee of the Lessor's intention, undertake such painting through the services of its contractors or nominees and any costs incurred by the Lessor in the exercise of such election must be paid to the Lessor by the Lessee;

2.9 Statutory requirements

to:

- (a) promptly and efficiently satisfy, comply with and observe all present and future laws and the requirements, directions and orders of any relevant authority; and
- (b) promptly do all things reasonably requested by the Lessor, which the Lessor considers necessary to assist the Lessor to comply with its obligations under all present and future laws and the requirements, directions and orders of any relevant authority,

relating to or affecting the use or condition of the Premises or the Lessee's use and occupancy of the Land and (where applicable) irrespective of whether such compliance or obligations are imposed on the owner or occupier of the Premises;

2.10 Notice of defects or hazards and work, health and safety

- (a) to give to the Lessor:
 - (i) prompt notice of any circumstance, including any material or significant accident or defect or want of repair in any Services to or improvements, fixtures or fittings in the Premises or the Lessee's Improvements, which the Lessee should reasonably be aware might cause any danger, risk or hazard to the Premises, the Land or the Lessee's Improvements or any person in the Premises or on the Land or the Lessee's Improvements; and
 - (ii) contemporaneously with the notice under clause 2.10(a)(i), reasonable details of the action to be taken by the Lessee to avoid or mitigate such likely danger, risk or hazard or to remedy such defect or damage;

- (b) that the Lessee is a person conducting a business or undertaking, with management and control of the Premises and the Lessee's Improvements (**PCBU**) and without limiting clause 2.9, the Lessee will comply, at its cost, with all safety obligations which the Lessee has under work, health and safety laws as a PCBU, including its obligation to:
 - (i) conduct a risk assessment of its activities within the Premises and the Lessee's Improvements; and
 - (ii) ensure the health and safety of workers and other persons at the Premises and the Lessee's Improvements;

2.11 Signs and other devices

- (a) not erect, paint, place, display, affix or exhibit on the exterior of the Premises or the Lessee's Improvements, any permanent sign, advertisement, name or notice, which is visible from outside the Premises or the Lessee's Improvements which:
 - (i) is of a gratuitous or offensive nature to the general public; or
 - (ii) relates to goods and services which are detrimental to the Lessor (in its reasonable opinion);
- (b) not without the consent of the Lessor (which consent will not be unreasonably withheld or delayed), to erect or place outside the Premises or the Lessee's Improvements any radio or television or any loudspeakers, film screens, media equipment or similar devices or equipment which are likely to cause disturbance or result in reasonable complaints;
- (c) to comply with any notice from the Lessor to the Lessee requiring the Lessee to fit effective suppressors to any electrical or other equipment of the Lessee in the Premises or the Lessee's Improvements which may cause electromagnetic interference;
- (d) to maintain radio and television interference levels and electrical disturbance levels emanating from the Premises or the Lessee's Improvements within the limits set out in any relevant Australian Standards;
- (e) to maintain such signage and equipment in good and substantial repair and on vacating the Premises or otherwise at the request of the Lessor, acting reasonably, to promptly remove any signs, advertisements, names, notices or other equipment erected, displayed, painted, placed, affixed or exhibited on, in, to or outside the Premises or the Lessee's Improvements by or on behalf of the Lessee and to make good any damage or disfigurement caused by reason of such erection, painting, displaying, affixing, placing, exhibiting or removal;
- (f) the Lessee will ensure that any signage on the exterior of the Premises or the Lessee's Improvements will comply with the prevailing Lessor's policy in respect of signage from time to time; and
- (g) the provision of this clause 2.11 do not apply to any inward facing signage on the Premises or the Lessee's Improvements

2.12 Lessee's alterations and additions

not without the consent of the Lessor (which consent will not be unreasonably withheld or delayed) and all relevant authorities to:

- (a) construct the Lessee's Improvements; nor
- (b) make any material or substantial alteration or addition in or to:
 - (i) the Premises; nor
 - (ii) the Lessee's Improvements; nor
 the Services,

provided that where such consent is given:

- (c) the materials and design must:
 - (i) first be reasonably approved by the Lessor or its consultants, which approval will not be unreasonably withheld or delayed; and
 - (ii) have regard to the Environmental Principles and initiatives applicable to the Premises, the Lessee's Improvements and their Services and the Lessee's obligations under this Lease;

- (d) such work, equipment or installation must be installed or altered according to the consent so given (if any);
- (e) all reasonable fees payable to the Lessor's consultants in connection with such consent and inspection' must be paid by the Lessee to the Lessor;
- (f) the Lessee must obtain and keep current and ensure that its contractors obtain and keep current such insurance of the Premises, the Lessee's Improvements and the works and of the Lessee and its contractors and workers as the Lessor reasonably requires; and
- (g) such equipment and installations will remain the property of the Lessee and the Lessee must:
 - (i) maintain and repair such equipment and installations in good order and where appropriate in working condition;
 - (ii) pay all associated running costs; and
 - (iii) have regard to the Environmental Principles and initiatives applicable to the Premises, the Lessee's Improvements and their Services and the Lessee's obligations under this Lease;

2.13 **Liquor Licence**

- (a) to own and maintain such licences, permits, approvals and consents as may be necessary from time to time in connection with the Permitted Use;
- (b) it must:
 - (i) not do, omit or cause to be done any act, matter or thing as a result of which any licence (Liquor Licence) issued under the Liquor Licensing Act 1997 (Liquor Act) in respect of the Premises may be liable to be not renewed, or to be suspended, forfeited or removed from the Premises, or in any way prejudicially affected or whereby any offences will be committed under the Liquor Act; and
 - (ii) at all times comply with, observe, carry out and perform the requirements of the Liquor Act and each and every order, direction, and requirements relating to the Premises of the licensing authority or it any inspector, officer or person appointed by the licensing authority;
- (c) it must not transfer any Liquor Licence in respect of the Premises without the prior consent in writing of the Lessor (which may be withheld in the Lessor's reasonable discretion) and shall retain ownership of any such Liquor Licence at the end of the Term;
- (d) it must not seek to vary the Liquor Licence without the Lessor's prior consent (which consent may not be unreasonably withheld). The Lessor must advise the Lessee of its decision to either consent or to refuse the Lessee's request to vary the Liquor Licence within 20 Business Days of receiving the Lessee's request in writing. In the event the Lessor fails to notify to notify the Lessee of its decisions within period specified in this subclause (d), the Lessor is deemed to have consented to the proposed variation;

2.14 **Reservation of use of conduits**

to allow the Lessor and other persons reasonably authorised by the Lessor the free and uninterrupted passage of gas, water, electricity, telecommunication and similar services through and along the Services situated under, in or on the Premises;

2.15 **Heavy and noisy equipment**

- (a) not without the consent of the Lessor to bring on to or install in the Premises or the Lessee's Improvements, any machinery, plant or equipment of such nature, weight or size as to cause or potentially cause any structural or other damage to the Premises or the Lessee's Improvements or which may in the opinion of the Lessor cause unreasonable noise or vibrations; and
- (b) before bringing any such machinery, plant and equipment on to the Premises or the Lessee's Improvements, to inform the Lessor of the Lessee's intention to do so and the Lessor may reasonably direct the routing, installation and location of all such machinery, plant and equipment and the Lessee must observe and comply with all such directions;

2.16 **Dangerous substances**

not without the consent of the Lessor to bring or allow to be brought onto the Premises or the Lessee's Improvements any dangerous, noxious, odorous, toxic, volatile, explosive or inflammable substance,

compound or pollutant whether in solid, liquid, gaseous or other form other than such substances normally used in the conduct of the Permitted Use, provided that:

- (a) such substances or compounds (including products used in the cleaning of the Premises) are used, handled and stored; and
 - (b) appropriate registers are kept and maintained,
- to comply with all applicable laws;

2.17 **Lessor's access**

- (a) to permit the Lessor and any person authorised by the Lessor at all reasonable times, on giving to the Lessee reasonable prior notice, to enter the Premises and the Lessee's Improvements in the presence of any person appointed for that purpose by the Lessee, which person the Lessee will make available when reasonably required by the Lessor), to:
 - (i) inspect, collect data and other information and, if necessary, audit regarding the Services and the Lessee's fixtures, fittings and equipment, to assess whether they comply with the Environmental Principles and initiatives applicable to the Premises, the Lessee's Improvements and their Services; and
 - (ii) view the state of its repair,and if the Lessor considers that repairs are required or the Services or the Lessee's fixtures, fittings and equipment require alteration:
 - (iii) the Lessor may then serve on the Lessee a notice of any defect, the repair of or alteration to which is within the Lessee's obligations under this Lease, requiring the Lessee within a reasonable time to remedy the defect;
 - (iv) in default of the Lessee remedying such defect, the Lessor may execute the required repairs or alterations as if it were the Lessee and for that purpose, the Lessor and any person authorised by the Lessor may enter onto the Premises and the Lessee's Improvements and remain there for the purpose of doing, erecting or effecting any such required repairs or alterations; and
 - (v) all direct and actual costs of and incidental to carrying out such repairs or alterations must be paid by the Lessee to the Lessor;
- (b) to provide reasonable assistance to the Lessor to enable the Lessor to exercise the Lessor's rights under this clause 2.17;
- (c) in an emergency, the Lessor may, without notice, enter the Premises and the Lessee's Improvements to carry out any works deemed necessary by the Lessor; and

2.18 **Security**

- (a) to use the Lessee's reasonable endeavours to protect and keep safe the Premises and the Lessee's Improvements and any property contained in it from theft or vandalism and to keep all doors, windows and other openings closed and locked when the Premises are not in use; and
- (b) to comply with the Lessor's reasonable systems and requirements in respect of the security of the Premises;

2.19 **Insurances**

- (a) to effect by the Commencement Date and maintain during the Term in the name of the Lessee but noting the interest of the Lessor for:
 - (i) a public liability insurance policy for an amount of not less than \$20,000,000.00 per occurrence (or such other amount as the Lessor may reasonably require and notify the Lessee in writing), which policy notes the interest of the Lessor under section 48 of the *Insurance Contracts Act 1984* (Cth);
 - (ii) plate glass insurance;
 - (iii) a policy under which the Premises, the Lessee's Improvements and the Lessee's chattels, fixtures, fittings, plant, equipment and signs in or about the Premises and the Lessee's

Improvements are insured for their full insurable reinstatement and replacement value and against all insurable risks as the Lessor, acting reasonably, may require from time to time; and

- (iv) any insurance reasonably required by LG Risk Services for the purposes of the LGA Mutual Liability Scheme;

Provided that the Lessee shall not be obliged to effect such insurance to the extent that it has insurance cover under the AFL Collective Cover Insurance Policy.

- (b) the estimated cost of complete replacement and reinstatement of the Premises and the Lessee's Improvements, including the cost of demolition and removal of debris:
 - (i) must be reviewed by the Lessor and the Lessee at each anniversary of the Commencement Date; and
 - (ii) if, before 90 days from each such anniversary, the parties are unable to agree on such estimated cost, then it will be fixed by a member of the Australian Institute of Quantity Surveyors appointed by the President for the time being of the Australian Institute of Quantity Surveyors (SA Chapter):
 - (A) who is deemed to act as an expert and not as an arbitrator;
 - (B) whose fees and costs are to be paid equally by the Lessor and the Lessee;
 - (C) whose determination of the costs of complete replacement and reinstatement will be the value for insurance as set out in clause 2.19(a)(iii); and
 - (D) whose determination will be binding on the parties;
- (c) in respect of the insurances required by clause 2.19(a), the Lessee must:
 - (i) supply the Lessor with copies of the certificates of currency of insurance containing details of the period and cover effected promptly after written request from the Lessor;
 - (ii) pay each premium before the due date and when requested by the Lessor, produce certificates of currency;
 - (iii) immediately rectify anything which might prejudice any insurance and reinstate the insurance if it lapses; and
 - (iv) notify the Lessor immediately when:
 - (A) the Lessee becomes aware of an event which gives rise or might give rise to a claim under or which could prejudice a policy of insurance; or
 - (B) any policy of insurance is cancelled; and
- (d) that the Lessee may not:
 - (i) do or permit anything which the Lessee knows prejudices any insurance in connection with the Premises or the Lessee's Improvements; nor
 - (ii) unless otherwise agreed by the Lessor, disburse any insurance money recovered other than for the purpose of:
 - (A) reinstating or repairing the damage in respect of which a claim under any of the insurance policies was made;
 - (B) construction of improvements first approved by the Lessor; and
 - (C) payment of rent, Statutory Charges and other tenancy costs payable under this Lease;

2.20 Additional premium and excess

- (a) to pay any additional premium levied on account of:
 - (i) the Lessee's particular use or occupation of the Premises and the Lessee's Improvements; or
 - (ii) where the Lessor increases the cover for a particular insured risk, at the Lessee's request,

regarding any policy of insurance effected in respect of the Premises or any policy of public liability insurance effected by the Lessor; and

- (b) to pay all excess amounts paid or payable by the Lessor under or regarding any of such policies of insurance relating to any accident, incident or claim relating to the Premises;

2.21 Not to affect Lessor's insurance

not at any time to cause or permit anything in or on the Premises and the Lessee's Improvements which may result in:

- (a) any insurance or indemnity claim regarding the Premises being vitiated or rendered void or voidable; or
- (b) the rate of premium on any insurance or indemnity arrangement increasing; or
- (c) any insurance or indemnity being at risk of being declined or not renewed or not continued; or
- (d) the Lessor being unable to procure or maintain the insurance or to rely upon its membership of the LGA Mutual Liability Scheme;

2.22 Indemnities

to indemnify the Lessor and its officers, employees, agents, contractors and other occupiers of the Land against and in respect of all and any actions, claims, demands, losses, damages, costs and expenses which the Lessor or any of its officers, employees, agents, contractors and other occupiers of the Land may incur in respect of or arising from:

- (a) the death of or injury to any person; or
- (b) loss of or damage to the property of any person; or
- (c) any occurrence in or on any part of the Premises or the Lessee's Improvements,

to the extent contributed to or caused by:

- (d) the Lessee or the Lessee's Agents; or
- (e) the use of the Premises or the Lessee's Improvements by the Lessee or any of the Lessee's Agents (despite such use being within the scope of the Permitted Use); or
- (f) any alterations and additions made by the Lessee to the Premises or the Lessee's Improvements,

except to the extent that the action, claim, demand, loss, damage, cost and expense arises or results from the wilful or negligent act or omission of the person seeking such indemnity;

2.23 Release of Lessor

to occupy, use and keep the Premises and the Lessee's Improvements at the risk of the Lessee and the Lessee agrees that the Lessor and its officers, employees, agents and contractors will have no responsibility or liability and are fully released from all responsibility or liability and the Lessee must not make any claim or commence or maintain any suit or action against the Lessor or any of its officers, employees, agents or contractors for breach of the quiet enjoyment covenant set out in clause 3 in respect of:

- (a) loss of or damage to the Lessee's Improvements and other property;
- (b) claims, demands and damages resulting from or contributed to by any accident, damage or injury occurring in, on or about the Premises and the Lessee's Improvements, unless deriving from any structural defect in the Premises (not contributed to or caused by the Lessee or any of the Lessee's Agents); and
- (c) loss or damage suffered because of or to the extent contributed to by:
 - (i) flooding of the Premises or the Lessee's Improvements affecting the ability of the Lessee to use the Premises or the Lessee's Improvements; or
 - (ii) blockage of any sewers, drains, traps, gutters or down pipes; or
 - (iii) any malfunction, failure to function or interruption of or to the water, gas, electricity, telephone, facsimile, air-conditioning, fire prevention, fire safety, lifts and other systems and other Services (if any) situated in or serving the Premises or the Lessee's Improvements,

except to the extent caused or contributed to by the wilful or negligent act or omission of the Lessor or any of its officers, employees, agents or contractors;

2.24 **Reletting**

to permit the Lessor:

- (a) to enter the Premises on reasonable notice at all reasonable times for the purpose of showing prospective lessees or purchasers over the Premises; and
- (b) to enter the Premises on reasonable notice at all reasonable times during the last 6 months of the Term (if the Lessee has not exercised any rights to renew the Term) for the purpose of showing prospective tenants or purchasers over the Premises;

2.25 **Lessee's consent**

that where under any statutory requirement, the consent of the Lessee is required to any process, step or dealing by the Lessor with its interest in the Premises, then the Lessee must give its written consent to such proposed process, step or dealing promptly within a reasonable time and, in any event, within 20 Business Days after receipt of a written request from the Lessor to do so, provided that such proposed process, step or dealing does not materially detrimentally affect the Lessee's use of or access to the Premises or the Lessee's Improvements and in the event of any failure by the Lessee to comply with this clause, the Lessee is, by operation of this clause, to be considered to have provided its consent;

2.26 **Superior or concurrent interest**

- (a) to permit any person having any interest in the Premises superior or concurrent with the Lessor to exercise the Lessor's powers under this Lease and their lawful rights in relation to the Premises; and
- (b) if any person, other than the Lessor, becomes entitled to receive money payable under this Lease either by operation of law or otherwise, to enter into an agreement with that person at the Lessor's expense in the form and containing provisions reasonably required by the Lessor;

2.27 **No unauthorised caveat**

- (a) not to lodge or cause or permit to be lodged:
 - (i) any absolute caveat on the Certificate of Title for the Land; nor
 - (ii) any permissive caveat containing terms that require the caveatee to obtain the consent of the Lessee to register any future dealing by the Lessor with its interest in the Land or the Premises; and
- (b) to indemnify the Lessor against and in respect of all and any actions, claims, demands, losses, damages, costs and expenses which the Lessor may incur in respect of the lodgement, removal or withdrawal of any such caveat which breaches the requirements of this clause;

3 Quiet possession

The Lessor agrees with the Lessee throughout the Term that if the Lessee pays the rent and duly and punctually observes and performs the terms of this Lease, the Lessee may peaceably possess and enjoy the Premises for the Term, without any interruption or disturbance from the Lessor.

4 Mutual covenants

The Lessor and the Lessee agree throughout the Term that:

4.1 **Default**

(a) **Essential terms**

clauses 2.1, 2.2, 2.4, 2.5, 2.9, and 2.19 are fundamental and essential terms of this Lease (**Essential Term**) and the Lessor may treat as a repudiation by the Lessee of this Lease, any material breach or default by the Lessee in the observance or performance by the Lessee of its duties and obligations under such clauses which is not rectified within a reasonable time following notice from the Lessor given pursuant to this clause 4.1.

(b) **Termination**

- (i) If a party:

- (A) breaches or defaults in the due observance or performance of an Essential Term of this Lease and the other party gives notice to the defaulting party specifying the nature of the breach or default and directing that party to remedy that breach or default or pay reasonable compensation (including reasonable particulars of the calculation of the claimed compensation) within a reasonable period of time when having regard to the nature and extent of the breach or default (such period of time being not less than twenty (20) Business Days of the date of the notice); and
- (B) fails to remedy the specified breach or default or agree to pay reasonable compensation within that reasonable period of time when having regard to the nature and extent of the breach or default (such period of time being not less than twenty (20) Business Days), except where the matter has been referred for determination under clause 12 and then only if the defaulting party fails to comply with such Determination (as defined in clause 12) within the time required by the relevant Expert (as defined in clause 12);

then the other party may by notice terminate this Lease, without prejudice to:

- (C) either party's rights and interests in respect of any antecedent breach or default;
- (D) any right or remedy of the Lessor or the Lessee at Law or otherwise; and
- (E) (where the party in breach is the Lessor), that applicability of clause SC4 of this Lease.

(ii) If the Lessee (being a body corporate or unincorporated association or company):

- (A) goes into liquidation or provisional liquidation or has a Receiver or Receiver and Manager or Administrator or Controller or any of them appointed to the Lessee or any property of the Lessee or action is taken towards such appointment; or
- (B) the Lessee enters into an arrangement or composition with its creditors (other than a voluntary arrangement or composition),

and the Lessee has failed to remedy either facts of the matter in subclauses 4.1(b)(ii)(A) or 4.1(b)(ii)(B) within a reasonable period of time when having regard to the nature and extent of the fact (such period of time being not less than 20 Business Days) of date of a notice from the Lessor, then the Lessor may by notice given to the Lessee terminate this Deed, without prejudice to:

- (C) either party's rights and interests in respect of any antecedent breach or default; and
- (D) any right or remedy of the Lessor or the Lessee at Law or otherwise.

(c) **Other Breaches**

notwithstanding anything expressed or implied to the contrary:

- (i) a party's right of termination pursuant to clause 4.1(b) applies in relation to a breach or default in performance or observance of an Essential Term of this Lease and does not apply to a breach or default in performance in respect of any other term of this Lease;
- (ii) if a party breaches or defaults in the due observance or performance of a term of this Lease other than an Essential Term then the other party's sole right of recovery is for loss and damage arising pursuant to the relevant breach or default; and
- (iii) if a party breaches or defaults in the due observance and performance of any term of this agreement other than an Essential Term of this agreement then the other party may give notice specifying the reasonable details of the breach or default and the reasonable compensation claimed by the non-defaulting party (including reasonable particulars of the calculation of the claimed compensation) and the party receiving the notice must within 30 Business Days of the date of the notice pay the claimed compensation or alternatively agree to pay reasonable compensation subject to the breach or amount being referred for determination under clause 12 (Dispute Resolution).

(d) **Repudiation**

if the Lessee's conduct (being an act but not omission) constitutes:

- (i) a repudiation of this Lease (or of the Lessee's obligations under this Lease); or
- (ii) a breach of any of the terms of this Lease,

the Lessee must compensate the Lessor for the loss or damage suffered because of such repudiation or breach and the Lessor's entitlement to recover damages will not be prejudiced or limited by:

- (iii) the Lessee abandoning or vacating the premises;
- (iv) the Lessor electing to re-enter the premises or to terminate this Lease;
- (v) the Lessor accepting the Lessee's repudiation;
- (vi) the conduct of the Lessor or Lessee constituting a surrender by operation of law;

(e) Lessor Right of Re-entry

if the Lessor has a right of termination pursuant to clause 4.1(b) and exercises such right of termination in accordance with the requirements of this lease and the Law then (without limiting the Lessors rights pursuant to clause 4.1 (b)) the Lessor shall also (to the extent permitted by law and subject to any requirement to give prior notice under this lease) have the right to re-enter and re-possess the Premises.

4.2 Landlord and Tenant Act

if:

- (a) notice to the Lessee is required to be given under sections 10 and 12 of the *Landlord and Tenant Act 1936* (SA) before exercising any right of re-entry or forfeiture, then such notice must provide that 60 days is the reasonable period within which the Lessee is to:
 - (i) remedy any such breach if it is capable of remedy; and
 - (ii) make reasonable compensation in money to the satisfaction of the Lessor for the breach; and
- (b) the matter has been referred for determination under clause 1210, the Lessor's right of re-entry or forfeiture is subject to such determination;

4.3 Real Property Act

the covenants and powers implied in leases under sections 124 and 125 of the *Real Property Act 1886* (SA) will apply and be implied in this Lease, unless they are expressly or by necessary implication excluded or modified;

4.4 Default interest

without prejudice to any other right or remedy of the Lessor, the Lessee must pay to the Lessor interest at the Default Rate on any money payable but unpaid on the day that money becomes payable by the Lessee to the Lessor under this Lease, such interest to be computed from the date on which the money becomes payable until payment is made in full;

4.5 Destruction or damage

- (a) if the Premises or the Lessee's Improvements are damaged or destroyed, the Lessee must, unless otherwise agreed by the Lessor:
 - (i) promptly claim on the insurance referred to in clause 2.19; and
 - (ii) subject to clause 4.5(c), use the proceeds of such insurance to promptly reinstate the Premises and the Lessee's Improvements, to a standard equivalent to the Premises and the Lessee's Improvements prior to the date of damage or destruction,

and any deficiencies in the insurance moneys received must be paid by the Lessee to reinstate the Premises and the Lessee's Improvements to such condition save and except to the extent that insurance proceeds are unrecoverable or deficient due to any act or omission of the Lessor, subject to the Lessee first obtaining the consent of the Lessor and all relevant authorities to such reinstatement works;

- (b) there will be no abatement of rent, Statutory Charges and other tenancy costs on account of the Premises or the Lessee's Improvements being rendered unfit for occupation or inaccessible as a result of such damage or destruction or during rebuilding or reparation of the Premises or the Lessee's

Improvements, provided that a fair proportion of the rent, Statutory Charges and other tenancy costs will abate if the damage or destruction results from any wilful or negligent act or omission of the Lessor, which renders insurance moneys irrecoverable under the Lessee's insurance effected pursuant to clause 2.19; and

- (c) if the damage or destruction occurs in the last 10 years of the Term, the Lessee may elect not to reinstate the damage and destruction, but the Lessee must remove all debris and if required by the Lessor, remove all remaining parts of the Lessee's Improvements and make good any resulting damage to the Premises and on completion of such removal and make good works, either the Lessor or the Lessee may terminate this Lease and neither party may make a claim against the other except in respect of antecedent breach or default;

4.6 Electricity laws

- (a) if the Lessor sells electricity to the Lessee in respect of a period and the Lessee does not in respect of that period, purchase electricity from a licensed retailer of electricity of its choice (**Licensed Retailer of Electricity**), then the Lessee must:
 - (i) pay, when due, all costs, fees and charges for the provision of electricity by the Lessor to the Lessee, at the rate nominated by the Lessor from time to time;
 - (ii) pay to the Lessor, when due, the Network Charges that the Lessee would be required to pay to the operator of the external electricity distribution network, as if the Premises were directly connected to that external electricity distribution network, unless such Network Charges are already included in the rate nominated by the Lessor under clause 4.6(a)(i); and
 - (iii) comply with the terms and conditions applicable to the network, as advised by the Lessor from time to time;
- (b) the Lessor acknowledges that where the Lessee is to purchase electricity from a Licensed Retailer of Electricity, the Lessor will for that purpose allow the Lessee without charge payable to the Lessor (except under clause 4.6(c)), but otherwise at the cost of the Lessee, to:
 - (i) access and use the Lessor's network; and
 - (ii) install, maintain and use meters and other necessary equipment in the Premises to record, deal with or segregate the supply of electricity to the Premises,

provided that the Lessee must notify the Lessor of any information relating to the supply and consumption of electricity by the Lessee in or in relation to the Premises, as may be reasonably required by the Lessor to administer the Lessor's network;

- (c) if the Lessee purchases electricity directly from a Licensed Retailer of Electricity and has access to the Lessor's network, then the Lessee must pay to the Lessor the Network Charges that the Lessee would be required to pay to the operator of the external electricity distribution network, as if the Premises were directly connected to that external electricity distribution network, unless the Premises are directly connected by a supply point to that external electricity distribution network;
- (d) to the extent permitted by law, the Lessor gives no warranty or undertaking and makes no representations concerning the condition, suitability, quality or quantity of the electricity sold by the Lessor to the Lessee or electricity supplied to the Premises;
- (e) if the Lessee proposes to increase the electricity requirements of the Premises during the Term, which necessitates:
 - (i) the installation of additional electricity equipment in the Premises; or
 - (ii) alteration to the Lessor's network,

then to the extent consistent with applicable electricity laws, the Lessee will be liable for the costs of and incidental to:

- (iii) installing that additional electricity equipment; and
- (iv) making those alterations to the Lessor's network,

but:

- (v) such installation or alteration will be carried out within the Premises or to the Lessor's network, only with the prior approval of the Lessor and in compliance with the terms of this Lease; and

- (vi) in any event the Lessor may, in its absolute discretion, carry out such installation or alteration and the reasonable cost of such works will be promptly paid by the Lessee; and
- (f) the Lessee acknowledges and agrees that, if at the request of the Lessee, the Lessor makes arrangements with the Lessee for the provision of power from the Lessor's emergency power or back up power generation system (if any is installed at the absolute discretion of the Lessor), then to the extent permitted by law, the Lessee must pay the Lessor's separate charges for the connection to and supply of power to the Premises from the Lessor's emergency power or back up power generation system;

4.7 Holding over

- (a) if the Lessee holds over after the expiry or sooner determination of the Original Term or any extension or renewal of this Lease, as the case may be, (**Holding Over Commencement Date**) with the consent (express or implied) of the Lessor, the Lessee then becomes a monthly tenant of the Lessor, which tenancy may be terminated by either party giving to the other 12 month's prior notice, expiring at any time, at a monthly rent equivalent to one twelfth of the annual rent, being the amount **A** calculated according to the following formula:

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

where:

B is the amount of the annual rent payable in respect of the Premises immediately before the Holding Over Commencement Date;

C is the quarterly CPI figure applicable immediately before the Holding Over Commencement Date; and

D is the quarterly CPI figure for the corresponding quarter applicable immediately before the date that is 12 months before the Holding Over Commencement Date,

and the rent so adjusted as at the Holding Over Commencement Date will be further adjusted in the same manner as is set out in this clause 4.7(a) (with the necessary changes) on each anniversary of the Holding Over Commencement Date and otherwise on the same terms and conditions (with the necessary changes) as those contained in this Lease so far as applicable; and

- (b) if the Lessee vacates the Premises on the expiry of the Term or sooner determination of this Lease and has not complied with its obligations under clause 4.9 then, despite the Lessee not being in physical occupation of the Premises, the Lessee will be deemed to be holding over on a daily basis at a rent to be determined in the manner specified in clause 4.7(a) (with the necessary changes) and otherwise on the same terms and conditions (with the necessary changes) as this Lease, until the Lessee has complied with its obligations under clause 4.9;

4.8 Rent review

- (a) the rent will be as at and from each Review Date specified in item 8(a) of the schedule the lesser of:
 - (i) **A** calculated according to the following formula:

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

where:

B is the amount of the annual rent payable in respect of the Premises during the 12 months immediately before the relevant Review Date, except in the case of the first review in respect of the Original Term, where **B** will be the initial annual rent specified in item 5 of the schedule, but disregarding any rent incentives or rebates;

C is the quarterly CPI figure applicable immediately before the relevant Review Date; and

D is the quarterly CPI figure for the corresponding quarter applicable immediately before the date that is 12 months before the relevant Review Date,

provided that if:

- (A) the CPI (**Original Index**) ceases to be published; or
 - (B) the basis on which the Original Index is calculated is substantially changed,

then the Lessor (acting reasonably) will nominate a similar index or indicator of changes in consumer costs in lieu of CPI; and
- (ii) the amount equivalent to the annual rent (disregarding any rent incentives or rebates) payable during the 12 months immediately prior to the relevant Review Date, as increased by 3% per annum;
- (b) the rent will be reviewed as at and from each Review Date specified in item 8(b) of the schedule, to the Current Prevailing Rent as at the relevant Review Date, as agreed between the Lessor and the Lessee in writing and failing agreement 60 days before the relevant Review Date, the Current Prevailing Rent as at the relevant Review Date will be as determined by a Valuer and the Valuer's appointment will include a requirement that the Valuer accept instructions to undertake the determination on the following basis:
 - (i) promptly on appointment, the Valuer will notify the Lessor and the Lessee in writing of the fact of such appointment and the Valuer's acceptance of it;
 - (ii) the Valuer will seek written submissions from the Lessor and the Lessee or their duly authorised representatives as to the matters to which the Valuer should have regard in making the determination and will provide a copy of any submission to the other party to allow a right of reply to the submission;
 - (iii) the Valuer will give consideration to those submissions before making the determination, provided that the submissions are made within the time nominated by the Valuer;
 - (iv) promptly on making the determination, the Valuer will dispatch to the Lessor and the Lessee a copy of the determination being a detailed written report;
 - (v) the determination will be made within 60 days following the Valuer's acceptance of the appointment; and
 - (vi) if the Valuer fails to make the determination within 60 days after accepting the appointment or becomes incapacitated or dies or resigns from the appointment, then another Valuer may be appointed to act under this clause 4.8;
- (c) the failure of the Lessor to require a determination of the new rent as at any Review Date will not impede or prevent the Lessor at any subsequent time from requiring the new rent to be determined under this clause 4.8 as at and from the Review Date;
- (d) if the new rent applicable as at and from any Review Date is not reviewed by that date, then:
 - (i) pending such review, the Lessee must pay the instalments of the rent at the rate applicable immediately prior to the Review Date; and
 - (ii) the new rent will be varied retrospectively as at and from the Review Date and any necessary adjustment in respect of:
 - (A) any underpayment of any instalment paid after the Review Date must be paid by the Lessee to the Lessor within 14 days after the new rent is determined; and
 - (B) any overpayment will be credited to the next rent instalments due by the Lessee after the new rent is determined;
- (e) this clause 4.8 is subject in all respects to clause 6;
- (f) despite any other provision of this clause 4.10, the rent on review will not be less than the annual rent payable in respect of the Premises immediately prior to the Review Date (but disregarding any incentives or rebates);

4.9 **Removal of fixtures and fittings and yielding up Premises**

- (a) at or immediately before the expiry of the Term or surrender of this Lease or within 14 days of any sooner determination of this Lease, the Lessee must:
 - (i) peaceably surrender and yield up the Premises (and if required by the Lessor, the Remaining Improvements defined in clause 4.9(b)):

- (A) clean and free of rubbish; and
 - (B) in good and substantial repair, order and condition and safe and where appropriate, in good working order (fair wear and tear excepted); and
- (ii) surrender all keys and access devices and other security mechanisms for the Premises and the Lessee's Improvements (if relevant) to the Lessor and:
 - (A) inform the Lessor of all combinations on locks, safes and vaults (if any) in the Premises and the Lessee's Improvements (if relevant);
 - (B) provide a detailed list of any security devices which may have been stolen or lost; and
 - (C) pay to the Lessor all replacement costs;
- (b) subject to SC4, if the Lessor requires the Lessee to yield up to the Lessor, the Lessee's Improvements or any part of them, which the Lessor requires to remain on the Premises (**Remaining Improvements**), then at or immediately before the expiry of the Term or surrender of this Lease or within 14 days of any sooner determination of this Lease, the Lessee will, in consideration of payment by the Lessor of the value of the Remaining Improvements:
 - (i) transfer to the Lessor or at the Lessor's direction, all the right, title and interest of the Lessee in the Remaining Improvements; and
 - (ii) at the Lessor's option, assign or novate all maintenance agreements, warranties, licences and permits relating to the Remaining Improvements;

4.10 Power of attorney

- (a) If the Lessor becomes entitled to re-enter and take possession of the Premises after complying with any relevant statutory provision, the Lessee irrevocably appoints the Lessor to be the attorney of the Lessee to execute any documents and perform any acts the Lessor requires to give full effect to the power of re-entry under the *Real Property Act 1886*.
- (b) The Lessor may do, execute and perform all things relating to the Premises as fully and effectually as the Lessee could do. The Lessee must ratify and confirm the appointment of and all actions by the Lessor under this clause 4.10.

4.11 Notice

- (a) without prejudice to any other means of serving notice any notice required to be served under this Lease will be sufficiently served:
 - (i) if to the Lessee, then:
 - (A) by personal service on the Lessee (or if it is a body corporate on a director, secretary or other officer of the Lessee); or
 - (B) by personal service at the Premises; or
 - (C) by post to the Premises or the Lessee's registered office (if a body corporate); or
 - (D) by email to the address specified in Item 3 of the schedule (or as otherwise notified by the Lessee to the Lessor by notice in writing from time to time); or
 - (E) by personal service at or post to the Lessee's last place of business or residence known to the Lessor; and
 - (ii) if to the Lessor, then:
 - (A) by personal service on the Chief Executive Officer (or other member of the Executive Team) of the Lessor; or
 - (B) by post to the Lessor's principal office; or
 - (C) by email to the address specified in Item 2 of the schedule (or as otherwise notified by the Lessee to the Lessor by notice in writing from time to time);
- (b) any notice may be signed on a party's behalf by its attorney, director, secretary or other officer or solicitor;

- (c) a notice by post is deemed served at the time when it ought to be delivered in the due course of post;
- (d) a notice by email is deemed served at the time of transmission by the Sender, unless the sender receives an automated notice generated by the sender's or the recipient's email server that the email was not delivered; and
- (e) where there is more than one person comprising the Lessee a notice served on or by any one or more of the persons comprising the Lessee is deemed served on or by all of the persons comprising the Lessee;

4.12 **other matters**

- (a) no promise, representation or warranty (including as to the suitability of the Premises to conduct the Lessee's business or to the fittings, fixtures and facilities of the Premises) has been given or made by or on behalf of the Lessor to the Lessee;
- (b) no waiver by the Lessor of one breach of any term of this Lease will operate as a waiver of another breach of that or any other term of this Lease; and
- (c) any term of this Lease which is not applicable to the Premises or which is repugnant to the general interpretation of this Lease or which is invalid, unlawful, void or unenforceable will be capable of severance without affecting any of the other terms of this Lease;

4.13 **No partnership**

nothing contained in this Lease will create the relationship of:

- (a) partnership; or
- (b) principal and agent; or
- (c) joint venture,

between the Lessor and the Lessee and no term of this Lease will create any relationship between the Lessor and the Lessee other than the relationship of lessor and lessee; and

5 **Community access**

- (a) The parties have entered into the Usage Agreement in relation to the use, maintenance, repair and usage of the Heritage Items and the Public Realm.
- (b) The parties acknowledge and agree that community access to the Public Realm is subject always to the Lessee's right to have exclusive access to the Public Realm for not more than an average of 100 hours per month over a calendar year.

6 **GST**

6.1 **Liability for GST**

- (a) Unless otherwise stated, the consideration payable by the Recipient to the Supplier for, or in connection with a Supply under this Lease which is subject to GST, does not include any GST.
- (b) The Recipient must pay to the Supplier an additional amount on account of GST (**GST Amount**) equal to the consideration payable by the Recipient to the Supplier for the Supply multiplied by the prevailing GST rate.

6.2 **Time of GST payment**

The GST Amount is payable no later than the time the consideration to which the GST Amount relates is payable by the Recipient under this Lease, provided the Supplier has issued a tax invoice to the Recipient.

6.3 **Liabilities reduced by input tax credits**

To the extent that the consideration for a Supply consists of the reimbursement or indemnity for any liability (including costs and expenses) incurred by the Supplier, in this Lease:

- (a) the amount of that liability will be reduced by the amount of any input tax credit to which the Supplier is entitled because of incurring the liability; and

- (b) the Recipient must also pay the GST Amount relating to the reimbursement or indemnity for that liability.

6.4 Adjustment event

If an adjustment event results in the GST on a taxable Supply being different from the GST recovered by the Supplier, the Supplier must refund to the Recipient the excess and may recover from the Recipient the shortfall, provided the Supplier has issued an adjustment note to the Recipient.

6.5 Definitions

Terms used in this clause 6 have the same meaning as in the GST Act.

7 Personal Property Securities Act

7.1 Lessor may register financing statement

The Lessor may, at any time, register a financing statement or financing change statement on the PPSR in relation to any security interest arising out of this Lease, over any or all of the Lessor's personal property in or about the Premises, at any time, for any time and with any description of collateral, as the Lessor sees fit.

7.2 Co-operation by Lessee

- (a) The Lessee must sign any documents and do anything necessary to enable the Lessor to exercise its rights, and comply with its obligations, under this clause, including to ensure that any security interest is fully effective, enforceable and perfected with the priority required by the Lessor and for this purpose the Lessee agrees that the Lessor may register any security interest as a purchase money security interest on the PPSR, if applicable.
- (b) The costs of and incidental to the registration of a financing statement or financing change statement on the PPSR and any related documents must be paid by the Lessee.

7.3 No financing statement for security deposit/bank guarantee

The Lessee must not register, or permit to be registered, a financing statement on the PPSR in relation to any security deposit or bank guarantee provided by it.

7.4 Exclusion of certain provisions of PPSA

Under section 115 of the PPSA, the parties contract out of the provisions of sections 95, 96, 117, 118, 120, 125, 130, 135, 142 and 143, subsections 121(4) and 132(4), paragraph 132(3)(d) and Division 6 of Part 4.3 of the PPSA.

7.5 No notice of verification statement

Under section 157(3) of the PPSA, the Lessee waives its right to receive notice of a verification statement in respect of a registration event.

7.6 Definitions

Terms used in this clause 7 have the same meaning as in the PPSA.

8 Acknowledgements

The Lessee acknowledges that it has relied on its own judgment and expertise and the Lessee's experts in entering into this Lease and deciding that the Premises is suitable for its purpose.

9 Consent

Unless otherwise provided in this Lease, where the consent or approval of the Lessor is required, such consent or approval:

- (a) means consent or approval given in writing;
- (b) may be given or withheld in the reasonable discretion of the Lessor but the Lessor is obliged to give reasons for withholding consent or approval; and
- (c) if given may be made conditional or unconditional provided any conditions are reasonable and the lessor is obliged to give reasons for any conditions .

10 Environmental requirements

- (a) Subject to clauses 10(a) and 10(b) below, the Lessee must, in relation to the Premises:
 - (i) comply with Environmental Laws;
 - (ii) do all things necessary to prevent a breach of any Environmental Law; and
 - (iii) promptly notify the Lessor of any:
 - (A) breach of any Environmental Law; and
 - (B) notice received by the Lessee; or
 - (C) proceedings commenced, under an Environmental Law:
 - (I) relating to a breach or alleged breach of an Environmental Law; or
 - (II) requiring any works to be carried out in relation to the Premises or any land adjoining the because of any Contaminant affecting the Premises.
- (b) During the Term, the Lessor and Lessee agree as follows:
 - (i) The Lessee is to, at its cost, comply with any ongoing environmental monitoring program and audit program as required under the AFC Assessment and by the Site Contamination Auditor for the areas of the Land which are to be solely used by the Lessee (that is, excluding the Public Realm); and
 - (ii) the Lessee is to comply with any ongoing environmental monitoring program and audit program as required under the Public Realm Assessment and by the Site Contamination Auditor for the Public Realm (save and except pre-existing groundwater contamination monitoring which will be the sole responsibility of the Lessor).
- (c) At least two (2) months before the expiry of the Term or such earlier determination of the Lease, the Lessor and Lessee are to, jointly and at a shared cost, engage the Site Contamination Consultant to assess the presence and extent of any Contamination on or in the Land (**Final Environmental Assessment**).
- (d) If the Final Environmental Assessment indicates that there is additional Contamination affecting the Land as measured by reference to the AFC Assessment and Public Realm Assessment, the Lessee will be liable to remediate the Contamination to the extent that:
 - (i) the Contamination was caused by the Lessee; and
 - (ii) the remediation is required by a Site Contamination Auditor.
- (e) On and from the last to occur of, the date:
 - (i) of the Final Environmental Assessment, if it indicates that there is no further Contamination affecting the Land as measured by reference to the AFC Assessment and Public Realm Assessment not caused by the lessee; or
 - (ii) the Lessee remediates any Contamination in accordance with clause 10(d),

the Lessor releases the lessee, its employees, agents and contractors from any claims which may arise in respect to the Contamination existing on or in the Land.
- (f) The Lessee must permit the Lessor and its employees, agents, contractors and consultants to enter the Premises for the purpose of:
 - (i) conducting such annual tests or audits, as are reasonably required by the Lessor, to determine whether there has been any leakage of Contaminants; and
 - (ii) monitoring the Lessee's compliance with Environmental Laws and this clause 10.
- (g) If any ongoing environmental monitoring, tests or audits disclose that there has been a leakage of Contaminants by the Lessee, the Lessee must, at its cost, within 3 months of receiving the report in respect of the leakage or earlier, if required by Environmental Law, take such action as is necessary to:
 - (i) remediate the Premises; and

- (ii) ensure that no further leakage occurs.
- (h) After the Lessee has carried out the appropriate remediation work under subclause 10(g), the Lessee must forward to the Lessor a report from an appropriately qualified consultant (approved by the Lessor, which approval will not be unreasonably withheld), which confirms that:
 - (i) the Premises has been remediated;
 - (ii) the source of the leakage has been identified; and
 - (iii) appropriate rectification works have been completed to prevent any further leakage.
- (i) In exercising rights under this clause, the Lessor and its employees, agents, contractors and consultants must:
 - (i) give reasonable prior notice to the Lessee of the Lessor's intention to exercise rights under this clause;
 - (ii) cause as little inconvenience as reasonably practicable to the Lessee in its use and occupation of the Premises; and
 - (iii) comply with the Lessee's reasonable hygiene or safety requirements.

11 Exemption application

The Lessee and the Lessor acknowledge and agree that the provisions of the *Retail and Commercial Leases Act 1995* (SA) (**Leases Act**) will not apply to the provisions of this Lease throughout the Term.

12 Dispute resolution

12.1 All Disputes to be dealt with under this clause

Unless otherwise provided in this Lease, all disputes or differences between the parties in connection with:

- (a) this Lease; or
- (b) any other matter in any way relating to this Lease,

(**Dispute**) will be dealt with under this clause 12, whether the Dispute is first raised before, during or after the Term.

12.2 Notice of Dispute

Either party (**Disputing Party**) may within 30 days after the Dispute arises, give a notice to the other party (**Non-Disputing Party**):

- (a) setting out details of the Dispute, the reason the Dispute should be resolved in favour of the Disputing Party and any other matter that may, in the reasonable opinion of the Disputing Party, be relevant to the resolution of the Dispute; and
- (b) requiring the Non-Disputing Party to, in good faith, resolve the Dispute within 14 days of the date of the notice.

12.3 Referral of Dispute to an Expert

If the Dispute is not resolved according to the provisions of clause 12.2 and subject to clause 12.4, the determination of the Dispute (**Determination**) will be referred to a suitably qualified and experienced independent person (**Expert**) nominated by the President (or if there is not a President, then Chief Executive Officer or other person of like status) for the time being of The Law Society of South Australia (or if that body has ceased to exist, then a body fulfilling substantially the same functions as the first mentioned body).

12.4 Urgency

Either party may, in a case of genuine urgency, seek immediate interlocutory relief or interim remedy.

12.5 Expert

The Expert is an expert and not an arbitrator.

12.6 Final

The Determination is final and binding on the parties.

12.7 Conduct of Determination

Unless otherwise agreed by the parties in writing:

- (a) the place of the proceedings for the purposes of the Determination will be Adelaide, South Australia;
- (b) each party is entitled to legal representation at all stages of the Determination;
- (c) the proceedings for purposes of the Determination will be conducted according to laws of evidence;
- (d) each party will bear its own costs and expenses in relation to the Determination;
- (e) the parties will pay in equal shares the Expert's fees and expenses and the cost of the Determination including room hire (if any), unless otherwise determined by the Expert;
- (f) the parties must comply with all reasonable requests and produce all necessary documentation to the Expert to enable the Expert to make the Determination;
- (g) the parties may make submissions which the Expert must take into account when making the Determination;
- (h) the Expert must provide its Determination to the parties in writing, with reasons for the Determination and within 14 days of the conclusion of the hearing of the Dispute; and
- (i) the provisions of the *Commercial Arbitration and Industrial Referral Agreements Act 1986* (SA) do not apply to the resolution of any Dispute under the provisions of this clause 12.

13 Statutory authority

The Lessee acknowledges and agrees that any approval or consent by the Lessor under this Lease does not constitute consent or approval of, or limit, restrict or falter any right, power or privilege of the Lessor in its separate capacity as a statutory authority.

14 Resumption

14.1 If the lessor receives notice of resumption or compulsory acquisition of the Premises or the Land from or by any statutory authority and the area to be compulsory acquired, renders it commercially, financially or practically impossible for the Lessee to utilise the remaining portion of the Premises or the Land for the permitted use then:

- (a) The Lessor shall have the right to terminate this lease; and
- (b) The Lessor and the Lessee will negotiate with the relevant statutory authority to obtain compensation for their respective estate and interest in the Land and the Premises.

14.2 If the Lessor receives notice of resumption or compulsory acquisition of portion only of the Premises or the Land in circumstances other than specified in clause 14.1 then:

- (a) The Lessor shall not have the right to terminate this Lease; and
- (b) The Lessor and the Lessee will negotiate with the relevant statutory authority to obtain compensation for their respective estate and interest in the Land and the Premises.

15 Lessor's discretion

The Lessor enters into this Lease as a council acting under sections 7 and 36 of the Act and not in any other capacity. This Lease does not preclude or pre-empt the exercise by the Lessor of any other regulatory function or power as a council.

16 Community Land

- (a) This Lease is subject to and conditional upon the Lessor obtaining all consents and approvals and undertaking any process required under the Act or any other law in order for the Lessor to validly grant and duly execute this Lease, including (without limitation):

- (i) Confirmation that the Licence Agreement complies with the Community Land Management Plan; and
 - (ii) any public consultation process required under the Act.
- (b) For the purpose of this clause, **Community Land Management Plan** means the management plan prepared and adopted by the Lessor pursuant to section 196 of the Act in relation to the Land.

17 Oversight legislation

- (a) The Lessee acknowledges that this transaction may be an administrative act and that the *Ombudsman Act 1972* (SA) may apply. The Lessee agrees to cooperate and to comply with all its legal obligations under that or any other Act.
- (b) The Lessee acknowledges that Lessor is an 'agency' for the purposes of the *Freedom of Information Act 1991* (SA) and that documents, correspondence or other information relating to this Lease may be subject to disclosure under that Act.

DRAFT

Executed as a deed

Lessor

THE COMMON SEAL OF CITY OF WEST

TORRENS ABN 16 346 877 634 was affixed in the presence of:

Michael Coxon
Mayor

Terry Buss PSM
Chief Executive Officer

Lessee

Executed by Adelaide Football Club Limited

ABN 48 008 101 568 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Director

*Director/*Company Secretary

Name of Director
BLOCK LETTERS

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

**Annexure A
Plan of Premises**

**Annexure B
Plan of Public Realm**

DRAFT

Annexure C Special Conditions

SC0 Commercial Area

- (a) The initial Rent payable under this Lease will be determined in accordance with the Development Deed, payable on the part of the Premises identified as the Commercial Area.
- (b) The Lessee must notify the Lessor of any change to the Commercial Area within 10 Business Days of any such change, upon which the Lessor will review the Rent payable under this Lease and where there is a change in the Commercial Area, the Rent will be adjusted proportionately to reflect the change in the Commercial Area.
- (c) Any adjusted Rent amount under clause SC0(b) will be subject to review in accordance with clause 4.8 of this Lease.

SC1 Rent Rebate

The Current Prevailing Rent as determined from time to time and payable in accordance with clause 2 shall be subject to a rent rebate and discount calculated as follows:

Year	Rebate
Years 1 to 5	55% rebate
Years 6 to 42	40% rebate

SC2 Council Rates

For the purposes of calculating the Council Rates payable by the Lessee for the purposes of clause 2.2(a) the following provisions shall apply, namely:

- (a) any part of the Premises (that is, the Public Realm) which is publicly accessible space and not identified as Commercial Area, will not attract Council Rates;
- (b) any part of the Commercial Areas of the Premises which comprises land, buildings or facilities which are for the exclusive use of the Lessee and its officers, staff, players, members and invitees will attract Council Rates at the prevailing applicable rate but a rebate of 87% of such Council Rates will apply from the Commencement Date to the fifth (5th) anniversary of the Commencement Date and thereafter a rebate of 72% will apply for the balance of the Initial Term of the Lease;
- (c) any other part of the Commercial Areas of the Premises which is the subject of any commercial or retail occupancy by a third party will attract Council Rates calculated at the prevailing rate from time to time;
- (d) any Commercial Area of the Premises which are used for revenue generating signage by a third party and which are outward facing from the Premises or the Lessee's Improvements will attract Council Rates at the prevailing rate from time to time without rebate;

SC3 Future tenure

- (a) The parties acknowledge that the Lessor's right to grant a new term following the Original Term of this Lease is subject to and conditional upon the Lessor:
 - (i) procuring any necessary consent or approval and otherwise complying with any relevant public consultation process pursuant to Chapter 11 of the Act; and
 - (ii) passing any necessary resolution or making any necessary determination required pursuant to the Act in order to grant the Renewed Term,

(the **Future Tenure Conditions**)

- (b) On the written request of the Lessee made not less than 8 years nor more than 10 years before the expiry of the Original Term and provided that there has not at the time of such request or after such request, but prior to the commencement of the renewed term, been any unremedied breach or non-observance by the Lessee of any of the essential or fundamental terms of this Lease (prior written notice of which has been given to the Lessee), the Lessor will
 - (i) use reasonable endeavours to obtain and grant the Future Tenure Conditions; and
 - (ii) enter into good faith negotiations with the Lessee to grant to the Lessee a new term of this Lease for the further term of forty-two (42) years (**New Term**), subject to and on the same terms and conditions as are contained in this Lease, except for the exclusion of:
 - (A) clause SC1 giving the Lessee a rent rebate and discount;
 - (B) clause SC2 giving the Lessee a rebate on Council Rates;
 - (C) this clause SC3 giving the Lessee a right of renewal; and
 - (D) SC4, removing the Lessee's right to a buy-back of the Lessee's Improvements.
- (c) If this Lease is renewed under this clause SC3 and on the date of commencement of the New Term, the rent has not been reviewed under clause 4.8, then the renewal will be effective despite the rent being reviewed at a subsequent date.
- (d) Notwithstanding anything expressed or implied to the contrary in any provision of this Lease or otherwise at law:
 - (i) if the Lessee requests an extension of the Original Term pursuant to this clause and the Lessor for any reason whatsoever (including the reasons specified in SC3(a) of this Lease fails to agree to grant the New Term as contemplated by this Special Condition 3), then clause SC4 of this Lease applies;
 - (ii) if the Lessee requests an extension of the Original Term pursuant to this clause and the Lease is renewed under this clause SC3, SC4 does not apply.

SC4 Lessor's Buy-Back obligation

If:

- (a) the Lessee has exercised its rights under clause SC3 but the Lessor has:
 - (i) notified the Lessee in writing that the New Term will not be granted; or
 - (ii) notified the Lessee within thirty (30) days of receipt of the Lessee's notice under SC3 that the Lessee is required to yield up the Premises to the Lessor at expiry of the Original Term; or
 - (iii) failed to notify the Lessee in writing within ninety (90) days (or any other date agreed in writing by the parties) that the New Term will be granted to the Lessee;
- (b) this SC4 otherwise expressly applies under this Lease, and
- (c) there is not at the time any non-observance by the Lessee of any of the essential or fundamental terms of this Lease;

then the Lessee is to sell and the Lessor must purchase the Lessee's Improvements and any of the Lessee's fixtures, fittings, plant and equipment located on the Premises which the Lessee wishes to sell (**Assets**) having regard to the matters in SC4(g)(iv) on the following terms and conditions:

- (d) the Lessee will, by notice given to the Lessor, specify the Assets which are to be sold to and purchased by the Lessor and the Lessee's assessment of the value of the Assets as at the date of the notice (**Notice of Offer**);
- (e) the Lessor must within fourteen (14) days after service of the Notice of Offer give written notice to the Lessee of the Lessor's acceptance or rejection of the Lessee's assessment of the value of the Assets;
- (f) if the Lessor does not agree to the Lessee's assessment of the value of the Assets then the Lessor must within fourteen (14) days of the date of the service of the Notice of Offer on the Lessor serve on the Lessee a notice specifying the Lessor's assessment of the market value of the Assets;

- (g) if the Lessee fails to agree to the Lessor's assessment of the value of the Assets and the Lessor and the Lessee fail to agree on the value of the Assets within seven (7) days of the date of service by the Lessor of the notice on the Lessee under SC4(f) then either of the Lessor and the Lessee may request that the then State Chair of the South Australian State Committee of the Australian Property Institute Limited (**Institute**) (or should that Institute cease to exist then the Chair, President or other principal officer of such body formed by or for valuers in South Australia for similar purposes as that Institute or if there are none in South Australia then in the Commonwealth of Australia) to nominate a valuer (**Assets Valuer**) who:
- (i) must be independent;
 - (ii) must act as an expert and not an arbitrator;
 - (iii) must be a valuer practising in the City of Adelaide with not less than ten (10) years' experience immediately prior to the date of nomination in the valuation of assets of the type to be sold;
 - (iv) will be directed to:
 - (A) value the Assets on a depreciated replacement cost-based approach taking into account the costs to relocate and establish equivalent Assets and a linear depreciation basis for an adopted asset life of 99 years;
 - (B) have reasonable regard to all written submissions made by the Lessor, the Lessee and their respective representatives before making the determination;
 - (C) have regard to the legislative, political and social impacts affecting any decision by the Lessor in not granting the New Lease;
 - (D) have regard to loss of profits of the Lessee;
 - (E) have regard to the immediate future use of the Assets, having regard to their age and location;
 - (F) have regard to the loss of tenure if the Lessee's tenure is less than 84 years (for the purposes of adopting an equivalent freehold basis that supports funding and financing of such investment in the Assets);
 - (G) have regard to the costs to establish equivalent Assets to another area of similar sizing, similar zoning and in a similar metropolitan location at the end of the Original Term, including any construction costs, calculated using an appropriate index determined by the Valuer;
 - (H) subject to the Lessor confirming that any remediation has been performed to its reasonable satisfaction, have regard to the cost actually expended by the Lessee to remediate the Premises as required under the Project Master Deed and Lease; and
 - (I) have regard to any goodwill attaching to the Premises by reason of the Lessee's business conducted at the Premises; and
 - (J) consider the value of assets of a similar type to the Assets to be sold;
 - (v) who must be instructed to determine the value of the Assets within thirty (30) days of the date of such valuer's appointment; and
 - (vi) is to provide the Lessor and the Lessee with a written report of such valuation,
- and the cost of the valuation will be paid equally between the Lessor and the Lessee, unless the Assets Valuer determines otherwise;
- (h) within seven (7) days of the receipt of the valuation from the Assets Valuer, the Lessee must offer (and is deemed to offer) to sell the Assets to the Lessor at the value determined by the Assets Valuer (**Final Offer**);
- (i) if:
- (i) the Lessor accepts the Lessee's value assessment of the Assets in the Notice of Offer or the Lessee and the Lessor otherwise agree to the market value assessment of the Assets; or
 - (ii) the Lessee gives the Lessor the Final Offer,

the Lessor and the Lessee are to, as soon as practicable and no later than thirty (30) days from the Notice of Offer or Final Offer (as the case may be), enter into a binding contract as prepared by the Lessee's solicitors for the sale by the Lessee and the purchase by the Lessor of the Assets for the consideration as mutually agreed or determined (**Purchase Price**), and subject to the following terms and conditions:

- (iii) a deposit of 10% of the Purchase Price must be paid by the Lessor to the Lessee within three (3) Business Days of service by the Lessee of the binding contract on the Lessor or if the Lessor is entitled to the benefit of section 5 of the *Land and Business (Sale and Conveyancing) Act 1994* (SA) on the expiration of the prescribed time as defined in section 5;
- (iv) the balance of the Purchase Price must be paid at settlement which must take place ninety (90) days after service by the Lessee of the binding contract on the Lessor;
- (v) settlement must take place at the Premises or at such other place as may be mutually agreed in writing between the Lessor and the Lessee; and
- (vi) if the Lessor defaults in payment of the Purchase Price or any part of it (including the deposit) or in due compliance with the terms and conditions of the sale set out in this clause then the Lessor must pay to the Lessee interest on so much of the Purchase Price (including the deposit) as remains unpaid at the Default Rate computed from the date on which such payment or payments fell due until payment is made in full.

OPERATIVE CLAUSE **Delete the inapplicable*

The Lessor LEASES TO THE LESSEE the land *above / ~~*hereinafter~~ described and the LESSEE ACCEPTS THIS LEASE of the land for the term and at the rent stipulated, subject to the covenants and conditions expressed *herein / ~~*in Memorandum No. _____~~ and to the powers and covenants implied by the *Real Property Act 1886* (except to the extent that the same are modified or negated below).

DEFINE THE LAND BEING LEASED INCORPORATING THE REQUIRED EASEMENT(S) ETC.

[Insert title references]

DRAFT

CONSENTS OF MORTGAGEES

Nil

DRAFT

DATED

CERTIFICATION **Delete the inapplicable*

Lessor(s)

- *The Certifier has taken reasonable steps to verify the identity of the lessor or his, her or its administrator or attorney.
- *The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
- *The Certifier has retained the evidence to support this Registry Instrument or Document.
- *The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

Name of certifying party
Capacity of certifying party

for: Company name
On behalf of the Lessor

Lessee(s)

- *The Certifier has taken reasonable steps to verify the identity of the lessee or his, her or its administrator or attorney.
- *The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
- *The Certifier has retained the evidence to support this Registry Instrument or Document.
- *The Certifier has taken reasonable steps to ensure that the Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Signed By:

Name of certifying party
Capacity of certifying party

for: Company name
On behalf of the Lessee

Annexure F – Draft Usage Agreement

Usage Agreement

Final Draft for Review: 18.10.23

Author Note:

This edition of the document is based on the draft dated 11 October 2023 from Kelledy Jones.

between

City of West Torrens
ABN 16 346 877 634
(CWT)

and

Adelaide Football Club Limited
ABN 48 008 101 568
(AFC)

Regarding Thebarton Oval Sports Precinct

Table of contents

1	Definitions and interpretation.....	1
1.1	Definitions	1
1.2	General interpretation	3
1.3	Recitals	3
2	Term	3
3	Use of the Public Realm.....	4
3.1	Community Use.....	4
3.2	AFC Use.....	4
3.3	CWT Use.....	4
3.4	Use by CWT or others	5
3.5	Usage calendar	5
4	Maintenance of Heritage Items	5
4.1	Commissioning reports	5
4.2	Establishment of Sinking Fund	5
4.3	Income	6
4.4	Expenditure	6
4.5	Management of the Sinking Fund	7
4.6	Grant	7
5	Confidential Information	7
6	Notices	8
7	Dispute resolution	8
8	CWT as Council	8
9	General	8
9.1	Survival	8
9.2	Relationship	8
Schedule 1	9	
The Land	9	
Schedule 2.....	10	
Public Realm	10	

This agreement is made on

2023

between **City of West Torrens** ABN 16 346 877 634 of 165 Sir Donald Bradman Drive, Hilton SA 5033 (**CWT**)

And **Adelaide Football Club Limited** ABN 48 008 101 568 of 105 West Lakes Boulevard, West Lakes SA 5021 (**AFC**)

Recitals

- A CWT and AFC have entered into the Transaction Documents and, subject to any conditions set out in those documents being met (or waived) in accordance with their terms, CWT has agreed to grant and AFC has agreed to take, a long-term lease over the Land and AFC has agreed to construct various sporting facilities and improvements on the Land.
- B AFC acknowledges that CWT grants to AFC a lease of the Land on the understanding that:
- (i) the community has access to the Public Realm at all times the Public Realm is not required (whether in whole or in part) for AFC Use; and
 - (ii) CWT may use the Public Realm from time to time to host functions and events for the benefit of the community, in accordance with clause 3.3 of this agreement.
- C CWT and AFC have agreed to enter into this Agreement to reflect their rights and responsibilities in relation to the use, maintenance, repair and usage of the Heritage Items and the Public Realm.
- D The parties acknowledge that this Agreement is a Usage Agreement for the purposes of the Transaction Documents.

Now it is agreed as follows:

1 Definitions and interpretation

1.1 Definitions

AFC means Adelaide Football Club Limited ABN 48 008 101 568 and its successors and permitted assigns;

AFC Use means the exclusive access to the Public Realm published by AFC in accordance with clause 3.2;

AFL means the Australian Football League;

AFLW means the Australian Football League Women;

AFL Season means the period during which the AFL and AFLW play their primary season of football, as announced by AFL Limited from time to time and including any preseason games and training games or sessions required by AFC;

Agreement means this agreement, as varied by the parties from time to time.

Building Condition Report means a report prepared by an appropriately qualified expert, independently and jointly appointed by CWT and AFC, which sets out the condition of the Heritage Items as at the date of the report;

Business Days means any day other than a Saturday, Sunday, or a bank holiday or a public holiday in South Australia;

Commencement Date has the same definition as that term is defined in the Development Deed;

Confidential Information means any documentation or information of a confidential nature supplied by either party to the other in connection with this Agreement and includes all scientific, technical, manufacturing, performance, sales, financial, commercial, contractual or marketing information possessed by a party but excludes any documentation or information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by law;

Capital Expenditure Report means a report prepared by an appropriately qualified expert, independently and jointly appointed by CWT and AFC, which sets out the recommended capital expenditure work to be undertaken to maintain the Heritage Items during the term of the Lease, and includes any such other replacement capital expenditure report jointly obtained by CWT and AFC;

Capital Expenditure Works includes:

- (a) the programmed capital expenditure works as set out in the Capital Expenditure Report; and
- (b) any other works to the Heritage Items which are approved by the Parties (acting reasonably) in writing;

CWT means City of West Torrens ABN 16 346 877 634 and its successors and permitted assigns;

Development Deed means the Development Deed to be entered into between the parties in relation to the development of the Land in accordance with the Master Plan, including the grant of a construction licence to AFC to perform the redevelopment of the Land;

Dispute means a dispute between the parties as to the interpretation or operation of this Agreement or the amount payable by a party under this Agreement;

Excluded Activities means:

- (a) Golf;
- (b) Horse riding;
- (c) Any other activities which are likely to damage or impair the playing surface of the AFL Football Oval as determined by AFC with the consent of CWT (which consent shall not be unreasonably withheld); and
- (d) Such other activities agreed in writing by AFC and CWT;

Funds means the amount held in the Sinking Fund from time to time;

Heritage Items means the historic grandstand, ticketing booth and such other historic property on the Land as determined by AFC and CWT (acting reasonably);

Land means the land identified in Schedule 1;

Lease means the lease in the form of the Memorandum of Lease annexed to the Development Deed (and any agreed variations to it);

LG Act means the *Local Government Act 1999*;

Public Realm means:

- (a) the ovals and open public spaces of the of the Land identified on the plan contained in Schedule 2; and
- (b) excludes internal parts of buildings; or
- (c) such areas as otherwise agreed or amended in writing by the parties;

Sinking Fund means the fund established pursuant to this Agreement, whereby the Funds are to be held in an account with an Australian bank jointly nominated by CWT and AFC, acting reasonably and for which CWT and AFC are joint signatories, for the payment of Capital Expenditure Works in respect to the Heritage Items;

Term means the period set out in clause 2; and

Transaction Documents means:

- (a) the Development Deed;
- (b) the Contribution Deed;
- (c) the Usage Agreement; and
- (d) any other agreement or document which CWT and AFC are obliged to enter into and execute pursuant to the other Transaction Documents.

1.2 General interpretation

Unless the contrary intention appears:

- (a) the Schedules and any Annexures form part of and are incorporated in this Agreement;
- (b) anything which AFC is required to do under this Agreement must be done at the sole cost and expense of AFC and completed to the reasonable satisfaction of CWT, unless otherwise provided in this Agreement;
- (c) nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or any part of it;
- (d) headings are for convenience of reference only and do not affect the construction or interpretation of the provisions of this Agreement;
- (e) words importing the singular include the plural and vice versa and words importing one gender include the other genders;
- (f) an agreement, representation or warranty by or in favour of two or more persons or companies binds or is for the benefit of them jointly and severally;
- (g) any reference to a person will include a body corporate and vice versa;
- (h) a reference to dollar or A\$ is to Australian currency;
- (i) if a body, institute, association or authority referred to in this Agreement ceases to exist, then this Agreement must be read as referring to such body, institute, association or Authority as then serves substantially the same objects as that body, institute, association or Authority; and
- (j) the words include, includes or including will be deemed in all cases to be followed by the words **without limitation**.

1.3 Recitals

The Recitals are true and correct and form part of this Agreement.

2 Term

The obligations under this Agreement:

- (a) commence on the Commencement Date; and
 - (b) cease when the Lease is terminated,
- (the **Term**)

3 Use of the Public Realm

3.1 Community Use

- (a) AFC shall permit members of the public to have community use to the Public Realm at all times that the ovals and facilities are not being used for AFC's Use
- (b) Either the Lessor or the Lessee may request a change to the availability of public access times to the Public Realm under clause 3.1(a), by notice in writing to the other party, if that party have reasonable grounds to believe that:
 - (i) security and safety issues exists in respect of the Premises; or
 - (ii) there is a significant change in circumstances affecting the safety and security of the Public Realm.

Such issues may include, but are not limited to, incidents of vandalism, theft, unauthorised access, anti-social behaviour, or other security related concerns.

- (c) Upon the issue of an notice under clause 3.1(b), the parties agree to convene good faith discussions within ten (10) Business Days of any such notice, to address the security and safety concerns (while considering the access needs of the public to have community use of the Public Realm).
- (d) The public use to the Public Realm for the purposes of this clause shall exclude all activities which are Excluded Activities.
- (e) CWT is responsible for the cost of rectifying any damage to the Land which can be reasonably demonstrated by AFC to have been directly caused by the community, during any periods of CWT Use.

3.2 AFC Use

- (a) AFC shall publish the dates and times it requires AFC Use no later than six (6) months in advance of such use and will provide monthly updates of the AFC Use requirements for the following month:
 - (i) on its website; and
 - (ii) to CWT for publication to the community (as CWT sees fit).
- (b) AFC is entitled to AFC Use for no more than an average of 100 hours per month averaged over a calendar year starting from the commencement of the Lease.
- (c) AFC is responsible for the cost of rectifying any damage to the Land caused during any periods of AFC Use.

3.3 CWT Use

- (a) Subject to paragraph (c), AFC agrees to grant CWT not less than six (6) days' access in each calendar year, to the AFC lease area of Kings Reserve for CWT to operate, host, or facilitate (as the case may be) functions or events which are for the benefit of the community (**CWT Use**).
- (b) The parties will schedule the CWT Use in advance in accordance with clause 3.5.
- (c) CWT acknowledges and agrees that AFC may refuse to grant any CWT Use in any week during the AFL Season, but must otherwise approve any requested date for any CWT Use (acting reasonably).
- (d) CWT by mutual agreement with AFC may also use the Public Realm when it is not reasonably required by AFC.

3.4 Use by CWT or others

AFC may permit use of the Public Realm by CWT or others on reasonable terms, subject to such use being consistent with the Permitted Use, as that term is defined in the Lease.

3.5 Usage calendar

- (a) The use of the Public Realm in this clause 3 is subject at all times to this subclause 3.5.
- (b) Unless otherwise mutually agreed, AFC and CWT agree to meet:
 - (i) at least six (6) months prior to the Commencement Date; and
 - (ii) thereafter at least three (3) months prior to the announcement of each AFL Season during the Term or the end of the calendar year prior to the AFL Season (whichever is the earlier),

to agree the use of the Public Realm for the following twelve (12) months.

- (c) The agenda for each meeting under paragraph (b) will include detailed scheduling of the following:
 - (i) the number of hours, including times and dates, of AFC Use under clause 3.2(b), including a reconciliation of the number of hours used each month, in a calendar year-to-date;
 - (ii) the dates for the CWT use under clause 3.3(a);
 - (iii) any other proposed use of the Public Realm.

Unless otherwise mutually agreed, AFC and CWT agree to meet within a further three (3) months, six (6) months and nine (9) months of each meeting under paragraph (b), to further refine and update the proposed usage, including community access and use, of the Public Realm.

- (d) If the parties cannot agree on the use of the Public Realm within ten (10) Business Days of the meeting scheduled under paragraph (b), either party may invoke the dispute resolution process under clause 7.
- (e) Nothing in this clause prevents the parties from scheduling use earlier than contemplated by this clause 3.5.

4 Maintenance of Heritage Items

4.1 Commissioning reports

- (a) AFC agrees to commission a Building Expenditure Report and a Capital Expenditure Report.
 - (i) not less than three (3) years, but not more than four (4) years after the commencement of the Lease; and
 - (ii) every three (3) years thereafter during the term of the Lease.
- (b) The parties agree to bear the costs of any Building Condition Report or Capital Expenditure Report in equal shares.

4.2 Establishment of Sinking Fund

- (a) Subject to the receipt of the reports contemplated by clause 4.1(a)(i), CWT and AFC are to jointly establish the Sinking Fund which is to be used for the Heritage Items.
- (b) CWT and AFC will jointly hold the Funds and income from the Funds in the Sinking Fund on trust for the Parties.

4.3 Income

- (a) On and from the Commencement Date the parties must deposit into the Sinking Fund an amount which is calculated in accordance with this clause 4.3 (**Sinking Fund Income**).
- (b) On a date which is:
 - (i) within twenty (20) Business Days of the receipt of any Capital Expenditure Report (or any replacement report) under clause 4.1(a); and
 - (ii) every twelve (12) months after the date in clause 4.3(b)(i),
 the parties are to meet to agree on:
 - (iii) the Capital Expenditure Works to be performed for the next twelve (12) months (if any);
 - (iv) the Sinking Fund Income required for the Capital Expenditure Works to be performed for the next 12 months (if any), having regard to the matters in clause 4.3(c);
 - (v) the respective portions of the Sinking Fund Income payable by the parties (if any) having regard to the matters in clause 4.3(d); and
 - (vi) the dates upon which the Sinking Fund Income is to be paid by the parties.
- (c) The total amount of the Sinking Fund Income payable by the parties for a 12 month period is to be determined having regard to:
 - (i) the condition of the Heritage Items as set out in the most recent Building Condition Report; and
 - (ii) the anticipated Capital Expenditure Works for the Term.
- (d) The respective portions of the Sinking Fund Income payable by the parties is to be determined on a proportional basis with:
 - (i) AFC paying a proportion of the Sinking Fund Income relative to the anticipated AFC Use of the Heritage Items; and
 - (ii) CWT paying a proportion of the Sinking Fund Income relative to the anticipated community use of the Heritage Items,
- (e) If the parties are unable to reach agreement at least four (4) months after the date calculated in accordance with clause 4.3(c), then:
 - (i) the determination of the Sinking Fund Income is referred to an Expert for determination in accordance with clause 12 of the Lease; and
 - (ii) until such time that the Expert makes its determination, the parties will contribute the same portions which were contributed by them in the previous twelve (12) month period (with any contribution by a party in excess of the Expert's determination to be promptly returned to that party).

4.4 Expenditure

- (a) During the Term, AFC is to carry out the Capital Expenditure Works, as follows:
 - (i) AFC may use the Funds in the Sinking Fund to pay for the costs of the Capital Expenditure Works;
 - (ii) AFC is to engage and remunerate contractors who are to carry out the Capital Expenditure Works on behalf of AFC in a proper and workmanlike manner, subject to prior approval by CWT, acting reasonably;

- (iii) AFC is to manage the carrying out of the Capital Expenditure Works in accordance with a program, first approved by CWT acting reasonably; and
- (b) Notwithstanding any clause to the contrary in this Agreement, AFC is not obliged to fund Capital Expenditure Works other than in accordance with payments into the Sinking Fund.

4.5 Management of the Sinking Fund

CWT and AFC are jointly responsible for the management of the Sinking Fund including:

- (a) depositing all money received;
- (b) ensuring that the Sinking Fund is at all times prudently managed and maintained in the ordinary and usual course consistent with its usual management and investment practices, so that there is no material adverse change in the financial condition of the Sinking Fund;
- (c) overseeing the financial affairs of the Sinking Fund in a prudent manner;
- (d) providing to each Party any information reasonably requested in respect to the Heritage Grandstand and the Heritage Items; and
- (e) ensuring that the Funds available in the Sinking Fund are not used for any purpose other than the Capital Expenditure Works, unless otherwise agreed between the Parties in writing.

4.6 Grant

Notwithstanding any clause to the contrary in this clause 4, CWT and AFC agree as follows:

- (a) AFC may apply for funding from appropriate grants relating to the Capital Expenditure Works (**Grant Funding**);
- (b) CWT is to use reasonable endeavours to support any application by AFC for Grant Funding;
- (c) if AFC is successfully awarded any Grant Funding, AFC agrees to deposit the Grant Funding into the Sinking Fund, with such Grant Funding to be deemed a joint contribution towards the cost of the Capital Expenditure Works; and
- (d) the Grant Funding is to be exhausted before the Parties are to use the other Funds available in the Sinking Fund for the cost of the Capital Expenditure Works.

5 Confidential Information

- (a) Each party agrees that it will not use any Confidential Information of the other party, or allow any Confidential Information of the other party to be used for any purpose, except for the purposes of and in the manner contemplated by this Agreement, and agrees that it will:
 - (i) keep confidential;
 - (ii) take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;
 - (iii) maintain proper and secure custody of; and
 - (iv) not use or reproduce in any form,
 - (v) any Confidential Information belonging to the other party.
- (b) Any departure from a party's obligations pursuant to this clause may only be with the written consent of the other party or as required by law or the terms of this Agreement.
- (c) AFC acknowledges that any disclosures made as a result of CWT complying with its obligations under the FOI Act, subject to any legally required consultation, do not breach the provisions of this clause 5.

6 Notices

Unless otherwise provided in this Agreement, all notices between the parties in connection with this Agreement; or any other matter in any way relating to this Agreement, will be dealt with under clause 4.11 of the Lease.

7 Dispute resolution

Unless otherwise provided in this Agreement, all disputes or differences between the parties in connection with this Agreement; or any other matter in any way relating to this Agreement, (**Dispute**) will be dealt with under clause 12 of the Lease.

8 CWT as Council

- (a) CWT enters into this Agreement as a council acting under sections 7 and 36 of the LG Act and not in any other capacity. This Agreement does not preclude or pre-empt the exercise by CWT of any other regulatory function or power as a council.
- (b) AFC acknowledges that this transaction may be an administrative act and that the *Ombudsman Act 1972* (SA) may apply. AFC agrees to cooperate and to comply with all its legal obligations under that or any other Act.
- (c) AFC acknowledges that CWT is an 'agency' for the purposes of the *Freedom of Information Act 1991* (SA) and that documents, correspondence or other information relating to this Lease may be subject to disclosure under that Act.
- (d) AFC acknowledges and agrees that by entering into this agreement, it will be deemed to be a public officer/authority for the purposes of the *Independent Commissioner Against Corruption Act 2012* (**ICAC Act**) and obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

9 General

9.1 Survival

Any indemnity or any obligation of confidence under this Agreement is independent and survives termination of this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement.

9.2 Relationship

Except where this Agreement expressly states otherwise, it does not create a relationship of employment, trust, agency, joint venture or partnership between the parties.

Schedule 1

The Land

[plan of the land and CT references to be inserted,]

DRAFT

Schedule 2
Public Realm

DRAFT

Executed as an agreement

**THE COMMON SEAL OF THE CITY OF WEST
TORRENS ABN 16 346 877 634** was affixed
in the presence of:

Michael Coxon
Mayor

Date / /

Terry Buss PSM
Chief Executive Officer

Executed by Adelaide Football Club Limited
ABN 48 008 101 568 in accordance with
section 127 of the *Corporations Act 2001* (Cth):

Director

*Director/*Company Secretary

Name of Director
BLOCK LETTERS

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

Date / /

Annexure G – Draft Contribution Deed

Contribution Deed

**FINAL DRAFT FOR REVIEW:
18.10.23**

Author note: this edition of the document is based on the draft dated 11 October 2023 by KJ.

City of West Torrens ABN 16 346 877 634

Adelaide Football Club Limited ABN 48 008 10 1568

CONTENTS

1. Definitions.....	2
2. Interpretation	4
2.9 Recitals.....	5
2.10 Headings	5
3. Term	5
4. Commitments and responsibilities	5
5. Recognition	6
6. Inspection of CWT.....	6
7. Insurance.....	6
8. Dispute resolution	6
9. Breach and termination	6
9.1 Interdependence	6
9.2 Breach or default.....	6
9.3 Termination	6
10. Confidential Information	7
11. CWT's discretion	7
12. Oversight legislation.....	7
13. GST	7
14. Notices	7
15. Costs	8
16. Miscellaneous.....	8

CONTRIBUTION DEED

THIS DEED is made on

2023

BETWEEN

CITY OF WEST TORRENS ABN 16 346 877 634 of 165 Sir Donald Bradman Drive, Hilton SA 5033 (CWT)

AND

ADELAIDE FOOTBALL CLUB LIMITED ABN 48 008 101 568 of 105 West Lakes Boulevard, West Lakes SA 5021 (AFC)

RECITALS

- A. CWT is registered as the proprietor of an estate in fee simple in the Land.
- B. CWT and AFC have entered into the Transaction Documents and, subject to any conditions set out in those documents being met (or waived) in accordance with their terms, CWT has agreed to grant and AFC has agreed to take, a long-term lease over the Land and AFC has agreed to construct various sporting facilities and improvements on the Land.
- C. CWT and AFC wish to facilitate certain capital works to the Land (**Works**), to ensure ongoing functionality and use for AFC requirements under the Lease, and for the CWT's requirements to meet community needs.
- D. CWT will allocate funding of an amount of up to \$11.26 million (excluding GST), to AFC, to contribute to the Works (the **CWT Contribution**).
- E. AFC will contribute:
 - (a) upgrade works to an amount of not less than \$45 million for the Community Benefit in accordance with clause 6.10 of the Development Deed; and
 - (b) such additional funds as may be necessary to complete the balance of the Works over and above the CWT Contribution,(**AFC Contribution**).
- F. CWT and AFC have agreed to enter into this Deed to reflect their rights and responsibilities in relation to the provision of the contributions by each of them.

AGREED TERMS AND CONDITIONS

1. DEFINITIONS

In this Deed:

Bank Account means the bank account established by AFC for the purpose of receipting and managing the Contributions and the payment of expenses required for completion of the Works.

Business Day means a day that is not a Saturday, Sunday or public holiday in South Australia.

Community Benefit is defined in the Development Deed.

Completion Date means the Date of Practical Completion of the Lessee's Works.

Conditions Precedent means the Conditions Precedent set out in clause 2 of the Project Master Deed.

Confidential Information means any documentation or information of a confidential nature supplied by either party to the other in connection with this Deed and includes all scientific, technical, manufacturing, performance, sales, financial, commercial, contractual or marketing information possessed by a party but excludes any documentation or information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by law.

CWT Contribution has the meaning given to that term in paragraph D of the Recitals, namely the sum of up to \$11.26 million in aggregate, payable in accordance with Schedule 3.

Date for Practical Completion has the meaning given to it in the Development Deed for the Land.

Date of Practical Completion has the meaning given to it in the Development Deed for the Land.

Deed means this Contribution Deed and includes any variations or amendments agreed in writing by the parties.

Development Deed means a Development Deed to be entered into between the parties in relation to the development of the Land in accordance with the Master Plan, including the grant of a construction licence to AFC to perform the redevelopment of the Land.

FOI Act means the *Freedom of Information Act 1991*.

Heritage Items has the meaning given to that term in the Usage Agreement;

Land means the land described in paragraph A of the Recitals, being the Land comprised and described in Schedule 1, together with all improvements on the Land and also being the land commonly known as Thebarton Oval and Kings Reserve and where the context permits, includes all buildings and improvements.

Project Master Deed means the Project Master Deed between CWT and AFC dated on or about the date of this Contribution Deed.

Public Realm has the meaning given to it in the Project Master Deed.

Transaction Documents means:

- (a) this Deed;
- (b) the Project Master Deed;
- (c) the Development Deed;
- (d) the Usage Agreement to be made between CWT and AFC in respect of the Land; and

- (e) any other agreement or document made between CWT and AFC in relation to the Project, which the parties agree in writing is a “**Transaction Document**” for the purposes of this Deed.

Unspent Funds means any funds remaining unspent from the CWT Contribution and following termination of this Deed.

Works has the meaning given to that term in paragraph C of the Recitals, which Works are more specifically detailed in Schedule 2.

2. INTERPRETATION

In this Deed, unless the context otherwise requires:

2.1 a reference to:

- 2.1.1 one gender includes the others;
- 2.1.2 the singular includes the plural and the plural includes the singular;
- 2.1.3 a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this Deed and references to this Deed include any recital, schedule or annexure;
- 2.1.4 any contract (including this Deed) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
- 2.1.5 a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- 2.1.6 a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
- 2.1.7 time is a reference to legal time in Adelaide, South Australia;
- 2.1.8 a reference to a day or a month means a calendar day or calendar month;
- 2.1.9 money (including ‘\$’, ‘AUD’ or ‘dollars’) is to Australian currency;
- 2.2 the meaning of any general language is not restricted by any accompanying example, and the words ‘includes’, ‘including’, ‘such as’, ‘for example’ or similar words are not words of limitation;
- 2.3 headings and the table of contents are for convenience only and do not form part of this Deed or affect its interpretation;
- 2.4 if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- 2.5 the time between two days, acts or events includes the day of occurrence or performance of the second but not the first day act or event;
- 2.6 if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day;
- 2.7 where there are two or more persons in a Party each are bound jointly and severally; and

- 2.8 a provision of this Deed must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of this Deed or the inclusion of the provision in this Deed.

2.9 Recitals

The Recitals are true and correct and form part of this Deed.

2.10 Headings

In this Deed headings are for convenience of reference only and do not affect interpretation.

3. TERM

- 3.1 This Deed is subject to the Conditions Precedent, and its commencement is subject to the Conditions Precedent being satisfied or waived in accordance with the Project Master Deed.

- 3.2 This Deed terminates on the Completion Date.

4. COMMITMENTS AND RESPONSIBILITIES

- 4.1 Subject to clause 3.1, CWT will:

- 4.1.1 provide CWT Contribution to AFC for the purpose of AFC performing the Works; and

- 4.1.2 transfer CWT Contribution to the Bank Account as soon as reasonably practicable following notification of the details of the Bank Account from AFC.

- 4.2 AFC will:

- 4.2.1 perform the Works as a part of the Lessee's Works under the Development Deed in accordance with the terms of the Development Deed, and in particular, clause 6.10;

- 4.2.2 contribute the AFC Contribution in accordance with Recital E;

- 4.2.3 establish and manage the Bank Account, and ensure that all withdrawals made from the Bank Account are for the purpose of undertaking the Works;

- 4.2.4 not profit financially from any part of the CWT Contribution to the Works; and

- 4.2.5 return to CWT, the CWT's portion of the Unspent Funds in accordance with clause 4.3 of this Deed.

- 4.3 Upon termination of this Deed, any Unspent Funds will be paid by AFC to CWT.

- 4.4 The parties, in carrying out their responsibilities under this Deed, agree to fulfil all obligations under all relevant laws, regulations, by-laws and requirements of the Commonwealth, State and local authorities (including but not limited to all requirements under the *Work Health and Safety Act 2012* applicable to any activity undertaken by or at AFC's request on or in the vicinity of the Land for the purposes of or incidental to the Works).

- 4.5 AFC will ensure that it delivers to CWT a certificate of practical completion, including an acquittal of the allocation of the CWT Contribution to the Works, promptly after the Works

reach practical completion.

5. RECOGNITION

- 5.1 AFC will acknowledge CWT as a supporter of the Works in any relevant public acknowledgements whether in written form or otherwise, relating to the Works and also in all relevant promotional material, as agreed between the parties in writing.
- 5.2 AFC will include CWT's logo on all relevant promotional material relating to the Works and in doing so will ensure that any guidelines or conditions applicable to the use of the logo are met, as reasonably required by CWT.

6. INSPECTION OF CWT

CWT may inspect the Works in accordance with the Development Deed.

7. INSURANCE

AFC is responsible for ensuring the Works and the Land are covered by the insurance policies identified in the Development Deed.

8. DISPUTE RESOLUTION

Clause 13 of the Project Master Deed applies to any dispute under this Deed.

9. BREACH AND TERMINATION

9.1 Interdependence

Notwithstanding anything expressed or implied to the contrary in any Transaction Document, the Parties agree that it is a condition of CWT and AFC entering into the Transaction Documents that each of the Transaction Documents are interdependent and a breach of any Transaction Document by CWT or AFC is deemed to be a breach of all the Transaction Documents by such Party.

9.2 Breach or default

Without limiting clause 9.1:

- 9.2.1 a breach or default in the performance of this Deed shall be deemed to be a breach and default in the performance of each Transaction Documents; and
- 9.2.2 a breach or default in the performance of any Transaction Documents shall be deemed to be a breach and default by the relevant Party in the performance of all of the Transaction Documents and this Deed.

9.3 Termination

This Deed will terminate upon the occurrence of any of the following:

- 9.3.1 if a party breaches its obligations under this Deed and does not remedy that failure within ten (10) Business Days of being notified in writing of the failure by the other party;
- 9.3.2 a Transaction Document is terminated; or
- 9.3.3 the parties voluntarily agreeing in writing to that effect or otherwise in accordance with this clause.

10. CONFIDENTIAL INFORMATION

10.1 Each party agrees that it will not use any Confidential Information of the other party, or allow any Confidential Information of the other party to be used for any purpose, except for the purposes of and in the manner contemplated by this Deed, and agrees that it will:

10.1.1 keep confidential;

10.1.2 take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;

10.1.3 maintain proper and secure custody of; and

10.1.4 not use or reproduce in any form,

any Confidential Information belonging to the other party.

10.2 Any departure from a party's obligations pursuant to this clause may only be with the written consent of the other party or as required by law or the terms of this Deed.

10.3 AFC acknowledges that any disclosures made as a result of the CWT complying with its obligations under the FOI Act, subject to any legally required consultation, do not breach the provisions of this clause 10.

11. CWT'S DISCRETION

CWT enters into this Deed as a council acting under sections 7 and 36 of the *Local Government Act 1999* and not in any other capacity. This Deed does not preclude or pre-empt the exercise by the council of any regulatory function or power.

12. OVERSIGHT LEGISLATION

12.1 AFC acknowledges that this transaction may be an administrative act and that the *Ombudsman Act 1972* may apply. AFC agrees to cooperate and to comply with all its legal obligations under that or any other Act.

12.2 AFC acknowledges that CWT is an 'agency' for the purposes of the *Freedom of Information Act 1991* and that documents, correspondence or other information relating to this Lease may be subject to disclosure under that Act.

13. GST

13.1 In this clause an expression defined in the *A New Tax System (Goods and Service Tax) Act 1999* (Cth) has the meaning given to it in that Act.

13.2 If CWT makes a supply under or in connection with this Deed in respect of which GST is payable, the consideration for the supply is taken to include an amount equal to the GST payable by the CWT on the supply.

13.3 CWT need not make a payment for a taxable supply under or in connection with this Deed until it receives a tax invoice for the supply.

14. NOTICES

Without prejudice to any other means of giving notice, any notice required to be served or given under this Deed will be sufficiently served or given if given in accordance with clause 18 of the Project Master Deed.

15. COSTS

Each party will bear its own costs (including legal costs) of and incidental to the preparation and execution of this Deed.

16. MISCELLANEOUS

16.1 A party may only assign its rights or obligations under this Deed with the prior written consent of the other party.

16.2 This Deed may only be altered in writing signed by each party.

16.3 The parties agree not to make public statements about this Deed or any matter contained within this Deed without first consulting with the other party, other than in accordance with the terms of this Deed.

16.4 A waiver of a provision or right under this Deed must be in writing signed by the party giving the waiver and is effective only to the extent set out in the written waiver.

16.5 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this Deed is not a waiver of that power or right. An exercise of a power or right under this Deed does not preclude a further exercise of it or the exercise of another power or right.

16.6 If a provision (including part of a provision) of this Deed would, but for this clause, be unenforceable:

16.6.1 the provision must be read down to the extent necessary to avoid that result; and

16.6.2 if the provision cannot be read down to that extent, it must be severed and the remainder of this Deed continues to bind the parties, unless this would materially change the intended effect of this Deed.

16.7 Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this Deed, remains in force after the expiration or sooner termination of this Deed.

16.8 This Deed is governed by the law in South Australia and the parties irrevocably submit to the non-exclusive jurisdiction of the courts in South Australia.

SCHEDULE 1 – LAND

DRAFT

SCHEDULE 2 – WORKS

Main Oval (including sports lighting but excludes venue requirements)

Seating Bowl and amenities

Kings Reserve Junior Oval

Heritage Items Grandstand, Hank Brothers Changerooms & Existing Ticket Gates

External Landscaping and Plaza

New Road Way and Car Parking Areas;

Environmental investigation and remediation of the Premises in accordance with clause 8 of the Project Master Deed;

DRAFT

SCHEDULE 3 – CONTRIBUTIONS

CWT Contribution - timing

The CWT Contribution is payable to AFC as follows:

Payment Number	Payment Proportion	Timing
1	25%	Within 20 Business Days of the satisfaction or waiver of the Conditions Precedent or execution of this Deed or 1 January 2024, whichever is the later.
2	25%	Within 4 months of the first payment
3	25%	Within 4 months of the second payment
4	25%	Within 4 months of the third payment

CWT Contribution - purpose

For the purpose of contribution to the cost of the Works including remediation pursuant to clause 8 of the Project Master Deed.

EXECUTED AS A DEED.

THE COMMON SEAL of **CITY OF WEST TORRENS** ABN 16 346 877 634 was affixed in the presence of:

.....
Michael Coxon
Mayor

.....
Terry Buss PSM
Chief Executive Officer

Date / /2023

EXECUTED by **ADELAIDE FOOTBALL CLUB LIMITED** ABN 48 008 101 568 in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....
Signature of Director

.....
Signature of Company Secretary / Director

.....
Name of Director

.....
Name of Company Secretary/Director

Date / /2023