

Community Licence

Gosford City Council

licence to

Saratoga and District Sport and Recreation
Association Incorporated

Premises: Saratoga Tennis Courts R64760
Willaroo Road, Saratoga

Date: 1st October 2015



Community Licence

Contents

PART	TITLE	PAGE NO
	Contents	1
	Introduction	1
	Principal Terms Schedule	2
1.	Definitions and interpretations	3
2.	Licence	8
3.	Licence Fee and Licence Fee reviews	10
4.	Outgoings and expenses	11
5.	Goods and Services Tax	12
6.	Use of Premises	12
7.	Maintenance and repair	15
8.	No assignment or sublicensing	16
9.	Insurance, release and indemnity	19
10.	Reporting to Council	20
11.	Default	21
12.	Termination	23
	Maintenance Schedule	25
	Legal Advice Acknowledgement	28
	Signing Page	29

Introduction

The Building is a community asset owned or administered by Council for community use. The Licensee has requested Council licence the Premises for the Permitted Use to the Licensee.

The Licensee acknowledges that the Licence Fee is not at market rent but a concessional charge for community use and it agrees that it will promptly and fully perform its obligations under this Deed including payment of all money due to Council, using the Premises for the Permitted Use only and not licencing the Premises for any reason or purpose without Council's prior consent.

The Licensee acknowledges that any default of the terms of this Deed by the Licensee may result in the Licence being terminated by Council and the Licensee being required to vacate the Premises.

The Licensee acknowledges that Council has a duty to the community as a whole to make facilities available for community use and agrees to cooperate with Council to make available the Building and Premises, when not used by the Licensee, for other community uses.

Council has agreed to grant the Licensee a licence of the Premises on the terms of this Deed.

Community Licence

Principal Terms Schedule

Term	Meaning of Term
Council:	The Council of the City of Gosford ABN 78 303 458 861 of 49 Mann Street, Gosford
Licensee	Saratoga and District Sport and Recreation Association Incorporated (ABN) ¹ of 3 Willaroo Road, Saratoga
Premises:	Saratoga Tennis Courts R64760 Willaroo Road, Saratoga
Building:	2 Tennis courts, floodlights, clubroom, picnic shelters, playground
Occupancy Hours	24 hours per day
Term:	3 years from 1 st October 2015 to 1 st October 2018.
Licence Fee:	\$464 per annum.
CPI Review Date:	1 st July each year
Percentage Review Date:	1 st October 2016, 1 st October 2017
Review Percentage:	3.00%
Licensee's Proportion:	100%
Permitted Use:	In accordance with Gosford City Council's Sportsground Plan of Management, Tennis Playing and coaching on tennis courts.

1. Definitions and interpretations

1.1. Definitions

In this Deed, unless the contrary intention appears:

- (a) **Authority** means any governmental, statutory, public, local government or other authority or body having jurisdiction over any part of the Land or relating to its use including Council.
- (b) **Claims** means all or any claims, proceedings, actions, rights of action, liabilities, damages, losses, remedies, expenses, fines and penalties (including associated expenses and legal costs on a full indemnity basis).
- (c) **Common Areas** means those parts of the Building from time to time intended for common use including entrance, foyer and passageways and those parts of the Building from time to time designated for common use by Council.
- (d) **Consumer Price Index** means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.
- (e) **Deed** means this document including any attachment.
- (f) **Emergency Services** means NSW Police Force, NSW Rural Fire Service, Fire and Rescue NSW, NSW Ambulance, Roads and Maritime Services, Council when providing emergency services, State Emergency Services and similar government bodies.
- (g) **GST** means the goods and services tax payable under the GST Legislation and notional GST payable by a State entity under the *Intergovernmental Agreement Implementation (GST) Act 2000 (NSW)*.
- (h) **GST Legislation** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and related Acts and Regulations.
- (i) **Licence** means the licence to use the Premises granted under this Deed.
- (j) **Licensee's Invitees** means the Licensee's employees, agents, contractors, clients, customers, visitors, hirers and other persons on the Premises with the consent of the Licensee.

- (k) **Outgoings** means the total of all outgoings paid or payable by Council in respect of the Building and Premises as relevant including:
- (i) *Rates, taxes and assessments*: all rates taxes charges assessments duties impositions and fees payable to any government, local government, semi government or other competent authority including land tax at the rate payable by Council;
 - (ii) *Water, sewerage and waste*: all charges for and costs in relation to the supply of water, sewerage and drainage and the removal of all waste and other garbage;
 - (iii) *Insurances*: all amounts payable in respect of insurances effected from time to time by Council relating to the Building, the use and occupancy of the Building and the equipment and appliances in the Building including plate glass insurance, public risk insurance, insurance for fire and loss of rental and insurance for machinery breakdowns, explosions or terrorist attack;
 - (iv) *Security services*: all charges for security services including the installation, maintenance and repair of alarms and call out fees;
 - (v) *Any other services*: all proper and reasonable costs (including wages and other employment overheads) of the operation maintenance and supply of any services provided by Council including caretaking, supervision, airconditioning, lifts, pest control, ventilation, the provision of light and power to Common Areas, hot and cold water and supplies for the washrooms and lavatories, cleansing, maintaining, decorating, lawn mowing, gardening and landscaping and any other amenities and services;
 - (vi) *Repairs*: the cost of the maintenance, repair, cleaning, servicing, redecoration and renovation of the Building and all carpets, window coverings, fixtures, fittings, plant and equipment in the Building or servicing the Building including amounts paid under proper and reasonable service and maintenance contracts but not including repairs and maintenance of a structural nature;
 - (vii) *Essential Services*: the cost of all necessary inspections and testing of essential services and fire safety and the preparation of certificates and reports including an annual Fire Safety Statement under the *Environmental Planning and Assessment Regulation 2000 (NSW)*.

- (l) **Premises** includes all plant and equipment (mechanical and otherwise, including airconditioning and fire services) fittings, fixtures, furniture and furnishings of any kind from time to time on the Premises owned or supplied by Council.
- (m) **Prescribed Rate** means the rate prescribed from time to time under the *Uniform Civil Procedure Rules 2005* as the rate of interest on judgment debts plus 2%, calculated daily and compounded on the last day of each month.

1.2. Interpretation

(a) **Number, gender and corporation**

Words importing the singular number include the plural and vice versa, words importing a person include a corporation and vice versa and each gender includes every other gender.

(b) **Jointly and severally**

Any provision of this Deed to be performed by two or more persons binds those persons jointly and each of them severally.

(c) **Bodies and Associations**

References to authorities, institutes, associations and bodies, whether statutory or otherwise, will in the event of any such organisation ceasing to exist, being reconstituted, renamed or replaced or the powers or functions or any such organisation being transferred to any other organisation, be deemed to refer respectively to the organisation established or constituted in lieu of any such organisation.

(d) **Statutes and Regulations**

Reference to a statute or ordinance includes all regulations under and amendments to that statute or ordinance whether by subsequent statute or otherwise and a statute or ordinance passed in substitution for the statute or ordinance.

(e) **Headings and Parts**

Headings and any marginal notes have been inserted for convenience only and do not in any way limit or govern the construction of the terms of this Deed. Each numbered section is a Part as specified in the Table of Contents

(f) **Monthly and Yearly**

A reference to month and year means respectively calendar month and calendar year.

(g) **Entire Agreement**

This Deed constitutes the entire agreement of the parties on everything connected with the subject matter of this Deed and supersedes all prior agreements, understandings and negotiations in relation to those matters. Each party agrees and represents that it has not relied on any prior representations with respect to the subject matter of this Deed except those set out in this Deed.

(h) **Counterparts**

This document may be executed in any number of counterparts all of which taken together constitute one instrument.

(i) **Business Days**

Where under or pursuant to the Deed the day on or by which any act, matter or thing is to be done is a Saturday, Sunday or public holiday in the State or place in which the Premises are situated, such act, matter or thing may be done on the next succeeding day which is not a Saturday, Sunday or public holiday.

(j) **Include**

The word *include* (in any form) when introducing one or more specific items does not limit the meaning of the general words to those items or to items of a similar kind.

(k) **Rule of Construction**

In the interpretation of this Deed no rule of construction applies to the disadvantage of one party on the basis that that party put forward this Deed.

(l) **Severance**

If a term of this Deed is or becomes wholly or partly void, voidable, or unenforceable Council may at its option either terminate this Deed or sever the offending term without affecting the enforceability or validity of the remainder of the Deed.

(m) **Defined Terms**

Each term specified in the Principal Terms Schedule has the meaning specified for it in the Principal Terms Schedule. Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

(n) **Notices etc**

Any notices, notification, nomination, request, direction, demand, authorisation, approval or consent must be in writing and will be properly executed if signed by an officer, manager or solicitor of the party giving it.

(o) **Service**

A document may be served by leaving it at or sending it by pre-paid post to the relevant officer or manager at the address of the party set out in this Deed or such other address subsequently notified. A document sent by post will be deemed to be delivered at the time when it would be delivered in the ordinary course of post.

(p) **Deed ends**

A reference to the end of this Deed is a reference to the expiration of the Term (or where occupation continues under a holding over, the end of the holding over) or the earlier determination of the Term by default or otherwise.

(q) **Continuing Obligations**

The obligations of the parties arising prior to the end of this Deed continue until they are fulfilled.

(r) **Obligations and Payments of Licensee**

The Licensee must perform the obligations of the Licensee under this Deed at the expense and risk of the Licensee. An amount to be paid under this Deed is due for payment on the earlier of demand or the date specified in the notice or invoice except the Licence Fee which is payable without demand, notice or invoice. Payments must be made as Council may direct including by bank cheque, direct deposit or electronic funds transfer.

(s) **Implied Covenants**

Any present or future legislation or any implied term (including a duty of good faith or anything similar) which operates to vary the obligations of the Licensee in connection with this Deed with the result that Council's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded, except to the extent that its exclusion is prohibited or rendered ineffective by law.

1.3. No Restriction on Council's powers

This Deed or anything done or to be done under this Deed:

- (a) is not to be taken as approval or consent by Council as a regulatory authority; and
- (b) does not in any way inhibit, deter or prejudice Council in the proper exercise of its functions, duties or powers,

pursuant to or under any legislation including the *Local Government Act 1993* or the *Environmental Planning and Assessment Act 1979*.

2. Licence

2.1. Grant

The Council grants the Licensee a non-exclusive licence to occupy and use the Premises during the Occupancy Hours for the Term.

2.2. No Tenancy

This Deed does not create and must not be taken or construed to create a tenancy or lease or any rights or interest in the Premises or a relation of landlord and tenant between the Licensee and Council.

2.3. Emergency Services

Despite the grant of Licence to the Licensee, the Building may be used by Emergency Services who may from time to time occupy the Building including the Premises to the exclusion of the Licensee when required by the Emergency Services.

2.4. Community Use

- (a) The Licensee must cooperate with Council to maximise the community use of the Building, making the Building accessible to other community groups and members and assisting Council in providing for community needs as expressed in Council's policies and guidelines. In particular, the Licensee must at the request of Council:
 - (i) allow access to the Premises at times other than the Occupancy Hours;
 - (ii) remove or secure in the Premises any property of the Licensee; and
 - (iii) occupy and use the Premises as reasonably required by Council to enable other community uses.
- (b) Council will inform the Licensee when a new licence is granted in respect of the Building.
- (c) The Licensee acknowledges that, in accordance with clause 9.3:
 - (i) the Licensee occupies the Premises at its own risk; and
 - (ii) all property of the Licensee in the Premises is at the sole risk of the Licensee.

2.5. Relocation

Where Council requires the Premises or the Building for other community services or Council requirements and can make available to the Licensee premises that in the reasonable opinion of Council are suitable alternative premises, the following procedure will apply:

- (a) Council will notify the Licensee of the proposed relocation and the alternative premises available (**Relocation Notice**);
- (b) the Licensee will promptly consider the alternative premises offered in the Relocation Notice and within 21 days of service of the Relocation Notice notify Council if the alternative premises are acceptable or are not acceptable;
- (c) if requested by the Licensee, Council officers will meet to discuss the proposed relocation and the alternative premises available;

- (d) where the Licensee has notified Council it will accept the alternative premises, Council will promptly issue the Licensee with a licence for the alternative premises which will be substantially the same as this Licence except that:
- (i) the Premises and the Building will be updated to refer to the relocation premises;
 - (ii) the term will be for the balance remaining of the Term to the Terminating Date, unless Council offers a further term; and
 - (iii) the Licensee Fee will be current Licence Fee as at the date of the commencement of the new Licence with the rent review and review dates adjusted accordingly.

This Licence will terminate on the date prior to the commencement of the licence for the alternative premises;

- (e) where the Licensee does not accept a licence of the alternative premises, this Licence will terminate on the day 3 months after service of the Relocation Notice.

2.6. Holding Over

If the Licensee continues to occupy the Premises after the Term with Council's consent then:

- (a) the Licensee occupies the Premises under a monthly tenancy which either party may end by giving 1 months notice expiring on any day; and
- (b) this licence will be on the same terms as this Deed so far as they apply to a periodic licence with the Licence Fee being the Licence Fee payable immediately prior to the Terminating Date reviewed as provided in this Deed except that Council may prior to the Terminating Date or subsequently on not less than one month's notice vary the Licence Fee.

3. Licence Fee and Licence Fee reviews

3.1. Licence Fee

The Licensee must pay to Council without deduction or set off the Licence Fee by equal monthly instalments in advance with the first payment due on the Commencement Date.

3.2. Consumer Price Index Review

On each CPI Review Date the Licence Fee will be increased to the greater of:

- (a) the Licence Fee payable immediately prior to the CPI Review Date; and
- (b) the Licence Fee payable immediately prior to the CPI Review Date increased by the same percentage as the annual percentage change, if any, in the Consumer Price Index most recently published prior to the CPI Review Date.

3.3. Percentage Licence Fee Review

On each Percentage Review Date the Licence Fee payable immediately prior to that Percentage Review Date will be increased by the Review Percentage.

4. Outgoings and expenses

4.1. Payment of Outgoings

The Licensee must pay to Council on demand the Licensee's Proportion of the Outgoings, incurred or for which Council becomes liable during the Term.

4.2. Estimate and monthly instalments

The Council may notify the Licensee of Council's reasonable estimate of the Licensee's Proportion of the Outgoings payable by the Licensee in advance each year. The Licensee must pay Council the estimate by equal monthly instalments at the same time as payment of Licence Fee. At the end of each year Council must provide the Licensee with a copy of a statement giving details of the Licensee's Proportion of the Outgoings and any necessary adjustment between the estimated and actual Licensee's Proportion of the Outgoings will be made between the parties within one month.

4.3. Licensee's expenses

The Licensee must pay on time all charges for electricity, gas, water, sewage use, telephone and other services where they are separately metered or supplied to the Premises and where appropriate install any necessary meters. Where there are no separate meters, the Licensee must pay the proportion determined by Council as directed by Council. The Licensee must pay any for garbage and waste removal services required in respect of the Premises.

5. Goods and Services Tax

5.1. Payments Exclusive of GST

All payments or other consideration paid or payable under this Deed are exclusive of GST.

5.2. Payment of GST

In addition to payment for a supply in connection with this Deed (including Licence Fee and outgoings contributions) on which GST is paid or payable, the Licensee must pay, at the same time and in the same manner, the amount of the GST which is paid or payable in respect of that supply.

5.3. Tax invoice

The Council will at the request of the Licensee provide the Licensee with a tax invoice as prescribed in the GST Legislation.

5.4. Late payment

If Council becomes subject to penalties or interest resulting from late payment of GST because of the Licensee's failure to comply with this Part, then the Licensee must pay on demand an additional amount equal to the amount of those penalties and interest.

5.5. Outgoings net of GST

Notwithstanding anything else to the contrary, in calculating Outgoings, any GST forming part of those Outgoings on which Council is entitled to claim an input tax credit under the relevant GST Legislation, cannot be included in the Outgoings payable by the Licensee.

6. Use of Premises

6.1. Permitted Use

- (a) The Licensee must only use the Premises for the Permitted Use.
- (b) The Council does not warrant that the Premises are suitable for or may be used for the Permitted Use.
- (c) If:
 - (i) the Licensee ceases to use the Premises for the Permitted Use; or

- (ii) any part of the Premises is not used for the Permitted Use,

without the Council's prior consent (which may be granted or withheld at Council's absolute discretion), then Council may by notice to the Licensee terminate this Licence.

6.2. Restrictions on Use

The Licensee must not and must not permit the Licensee's Invitees to:

- (a) use the Premises as a residence or for any activity that is dangerous, offensive, noxious or illegal or that may become a nuisance for any neighbouring property or other occupants of the Building including Council;
- (b) overload the floors or walls of the Premises, the electrical system or any other services to the Premises;
- (c) damage the Premises or the Building;
- (d) make any alterations or additions to the Premises or the Building without Council's prior consent;
- (e) make any alterations or additions other than minor changes to the Licensee's fixtures, fittings, equipment or furnishings without Council's prior consent;
- (f) use or store inflammable or explosive materials, liquids or gas in the Building;
- (g) do anything that may prejudice, invalidate or increase the premium payable for an insurance policy covering the Premises or the Building;
- (h) paint, affix or erect on the interior or exterior of the Premises or the Building any notices, advertisements or signs without the prior written approval of Council;
- (i) drive nails or screws into or in any way damage or deface any floors, walls, partitions or other part of the Building;
- (j) obstruct or otherwise improperly interfere with the use of the Common Areas;
- (k) improperly interfere with the fittings, equipment and services (including plumbing, air-conditioning and fire services) serving the Premises or forming part of the Building or otherwise provided by Council;
- (l) smoke in the Premises or the Building;
- (m) hold any auction, bankruptcy or fire sale;

- (n) throw, place or allow to fall any waste, rubbish or debris on the Building or the Land; or
- (o) cook food or sell any alcoholic beverages on the Premises.

6.3. Requirements of Authorities

- (a) The Licensee must comply and ensure the Licensee's Invitees comply with all laws and all notices, orders and directives from any Authority relating to the use or occupation of the Premises, obtain the consents or licences needed, comply with any conditions of consent and keep current any licences or registrations needed for the use of the Premises by the Licensee PROVIDED THAT the Licensee is not required to effect structural works unless they are directly attributable to the Licensee's business in the Premises.
- (b) The Licensee must provide promptly to Council a copy of any law or requirement in respect of the Premises notified to the Licensee.

6.4. Licensee's obligations

The Licensee must:

- (a) lock all exterior doors and windows when the Premises are not occupied and be responsible for the security of the Premises;
- (b) comply with and ensure the Licensee's Invitees comply with all building rules issued by Council from time to time;
- (c) give notice to Council promptly of any damage, accident to or defect in the Premises or any circumstances within the Building likely to cause any damage or injury of which the Licensee is aware;
- (d) participate and direct the Licensee's Invitees to participate in emergency evacuation procedures; and
- (e) store and remove all waste and garbage as directed by Council.

6.5. Common Areas

- (a) The Licensee and the Licensee's Invitees may use the Common Areas in common with Council, Council's employees, agents and contractors, other lessees or licensees and their employees, agents, contractors, clients, customers and visitors and other occupiers of the Building and persons authorised by them.

- (b) The Licensee acknowledges that the Common Areas may vary from time to time and Council may vary the Common Areas serving the Premises including the entrance and foyer of the Building. The Licensee cannot make a claim or otherwise object to a variation in the Common Areas.

7. Maintenance and repair

7.1. Licensee's obligation to repair

The Licensee must keep the Premises in good repair and condition subject to the condition of the Premises at the Commencing Date except for:

- (a) fair wear and tear;
- (b) structural repairs unless they are required as a result of the default or neglect of the Licensee or the Licensee's Invitees.

7.2. Licensee's further obligations

The Licensee must in addition to the Licensee's obligations under the previous clause:

- (a) keep the Premises tidy, clean and free of all rubbish and debris;
- (b) keep the Premises free from pests including rodents, cockroaches and termites;
- (c) repair or replace any stained, worn or damaged carpet in the Premises;
- (d) replace broken or faulty light bulbs and tubes in the Premises;
- (e) replace broken glass in the Premises;
- (f) clean, maintain in good repair and working order all plant, equipment, fixtures and fittings exclusively servicing the Premises; and
- (g) maintain the grounds, lawns and gardens of the Building in a clean and tidy condition.

7.3. Access by Council

The Licensee must, upon receiving reasonable notice, except in an emergency when no notice is required, give Council or anyone authorised in writing by Council access to the Premises at any reasonable time for the purpose of:

- (a) inspecting the condition of the Premises;
- (b) doing anything that Council can or must do under this Deed or must do by law;
- (c) undertaking maintenance, repairs, renovations and redecorating of the Building;
- (d) assisting in any emergency or for security or safety;
- (e) viewing the Premises by a valuer, prospective buyer, tenant or licensee; and
- (f) fixing a notice in a reasonable position on the outside of the Premises saying it is for sale or for lease.

7.4. Damage to Building

If the Building is damaged and as a result the Licensee cannot use or gain access to the whole or a significant part of the Premises then either party may by notice to the other party terminate the Licence.

7.5. Maintenance Schedule

The Licensee must in addition to the Licensee's obligations under the other clauses in this Part undertake the items listed as 'Occupant's Responsibility' in the Maintenance Schedule attached.

8. No assignment or sublicensing

8.1. Prohibited dealings

The Licensee must not:

- (a) assign, sublet, licence, hire, part with possession or otherwise deal with any part of the Premises or this Deed; nor
- (b) create or allow to come into existence any charge, mortgage or a security interest affecting the Licensee's estate or interest in the Premises.

8.2. Hire of Premises

Notwithstanding the previous clause, the Licensee may hire the Premises but only if before the hiring commences:

- (a) the Licensee submits to Council details of the proposed hiring, including details of all income to be received from the proposed hiring, in such form as Council may require;
- (b) provides such further information as Council may require; and
- (c) obtains the consent of Council to the proposed hiring.

8.3. Hire at Direction of Council

- (a) This clause applies notwithstanding any other provisions in this Deed.
- (b) The Licensee must licence the Premises at the direction of Council where:
 - (i) Council receives a request for a community use of the Building (**Requested Use**);
 - (ii) the Requested Use is compatible with the Permitted Use;
 - (iii) the Licensee does not actively use the Premises at the time proposed for or during the period proposed for the Requested Use; and
 - (iv) Council notifies the Licensee of the Requested Use and the proposed terms for the licence of the Premises not less than 21 days prior to the commencement of the proposed New Use.

The licence for the Requested Use granted by the Licensee must be on substantially the same terms as this Deed modified as appropriate. The Licensee must promptly after execution provide Council with a copy of the signed licence deed for the Requested Use.

- (c) Where the Licensee fails to grant a licence for the Premises in accordance with the directions of Council not less than 7 days prior to the proposed commencement of the Requested Use, then Council may grant this licence. The grant of the licence by Council for the Requested Use will not be a breach of this Deed and the Licensee cannot make a Claim in respect of the grant of the licence for the Requested Use or the use and occupation of the Premises during the period of this licence for the Requested Use.

8.4. Change of control of Licensee

Where the Licensee is a corporation a change in shareholding (including any variation in the beneficial ownership of the shares) of the Licensee or its holding company that gives

Community Licence

control of the Licensee to a different person or group of persons will be deemed to be an assignment of this Deed.

8.5. Income from Hire of Premises

- (a) All income from the hire of the Premises by the Licensee must be shared equally between Council and the Licensee.
- (b) The Licensee's share of any income from the hire of the Premises by the Licensee must be allocated in the following priority:
 - (i) to payment of the Licence Fee and all charges under the Deed;
 - (ii) to maintain and improve the Building; and
 - (iii) for the community service objectives of the Licensee.
- (c) Prior to 15 April and 15 October each year the Licensee must provide Council with:
 - (i) a statement of all income from the hire of the Premises by the Licensee in the 6 months prior to 31 March or 30 September, as relevant, (certified as true and correct by a director, responsible officer or independent auditor of the Licensee); and
 - (ii) payment of Council's share of the income from the hire of the Premises by the Licensee in the 6 months prior to 31 March or 30 September, as relevant.

8.6. Sale of Building

If Council transfers its interest in the Land or grants a lease over the Premises the Licensee must within 21 days after the request of Council enter into those documents Council may reasonably require to enable the transferee or lessor in its name to enforce the benefits of the Licensee's obligations under this Deed.

8.7. Default

The Licensee acknowledges that, in accordance with Part 11 *Default*, if the Licensee fails to comply with any obligation of the Licensee under this Part within 7 days after Council gives the Licensee notice requiring compliance then Council may enter and take possession of the Premises or by notice to the Licensee terminate the Licence.

9. Insurance, release and indemnity

9.1. Licensee's insurance

The Licensee must keep current an insurance policy covering:

- (a) public risk for at least \$20,000,000 for each accident or event or for such higher amount as Council may reasonably notify noting Council's interest under the policy; and
- (b) the Licensee's property in the Premises for its full insurable value,

and must produce evidence of this insurance on each anniversary of the Commencing Date and at the request of Council.

9.2. Insurance terms

All insurance policies must:

- (a) be with a reputable insurer acceptable to Council;
- (b) be for such amounts and cover such risks as are reasonably required by Council and contain such conditions as are reasonably acceptable to Council; and
- (c) have endorsed upon them the rights and interests of Council.

If any loss or damage arises from any cause covered by the Licensee's insurance, the Licensee must immediately apply for the insurance money and expend it together with the Licensee's money to promptly rectify the loss or damage.

9.3. Assumption of risk by Licensee

The Licensee occupies the Premises and carries out any building work in the Premises at its own risk. All property of the Licensee in the Premises is at the sole risk of the Licensee.

9.4. Licensee's release and indemnity

The Licensee cannot make a Claim against Council and releases Council from and indemnifies it against all Claims for damages, loss, injury or death which:

- (a) occur in or around the Premises;

- (b) arise from the use of the Premises by the Licensee or the Licensee's Invitees;
- (c) occur in connection with any building work undertaken by the Licensee for the Premises;
- (d) arise from any activity undertaken on the Building by the Licensee or the Licensee's Invitees; or
- (e) arise from the misuse of the services in the Building,

except to the extent that it is caused by the wilful act or omission or negligence of Council, its employees, agents or contractors.

9.5. To pay all extra premiums

The Licensee will from time to time, as and when required by notice in writing from Council, pay all extra premiums and stamp duties payable by Council on account of extra risk caused by the use to which the Premises are put by the Licensee.

9.6. Work Health and Safety

The Licensee must comply with all professional, licensing and legislative requirements in relation to work health and safety and all rules, regulations, policies or guidelines issued by WorkCover, the Licensee's insurer or any relevant authority in respect of any activity undertaken on the Premises by the Licensee.

10. Reporting to Council

10.1. Performance Statements

On each anniversary of the Licensee (or any such other time as requested by Council) the Licensee must provide Council with statements certified as true and correct by the Licensee outlining the use of the Premises, the repair, maintenance and cleaning of the Premises, the hiring of the Premises (including hiring fees and dates) and other performance indicators requested by Council in such format as Council may reasonably require.

10.2. Financial Records

In July each year of the Term, the Licensee must provide Council with audited annual financial reports of the Licensee (certified as true and correct by a director, responsible officer or independent auditor of the Licensee) including:

- (a) expenditure of Council grants received by the Licensee; and
- (b) allocation of revenue raised from:
 - (i) the Permitted Use;
 - (ii) the hire of the Premises; and
 - (iii) any other activity undertaken at the Premises (with the consent of Council) by the Licensee or the Licensee's Invitees.

When providing Council with its audited annual financial reports the Licensee must also pay to Council without deduction or set off Council's share of any hiring fees earned by the Licensee for that financial year pursuant to clause 8.2.

10.3. Licensee Information

The Licensee must provide at the request of Council details of the Licensee including the names and address of office holders, registered office, a copy of the constitution of the Licensee, copies of bank statements and such other information as Council may reasonably request.

11. Default

11.1. Default and termination

The Licensee will be in default under this Deed if:

- (a) the Licensee has repudiated this Deed;
- (b) Licence Fee or any other money payable by the Licensee under this Deed is more than 7 days overdue for payment;
- (c) the Licensee fails to comply with any obligation of the Licensee under this Deed within 7 days after Council gives the Licensee notice requiring compliance; or
- (d) the Licensee:
 - (i) being a corporation – resolves to or enters into any arrangement for the benefit of creditors, resolves to or is wound up or internally reconstructed, takes any step to obtain protection or is granted protection from its creditors, becomes an externally administered body corporate, becomes

insolvent or anything analogous or having a substantially similar effect occurs; or

- (ii) being an individual – enters into an assignment or arrangement for the benefit of creditors, becomes bankrupt or dies,

and then Council may enter and take possession of the Premises or by notice to the Licensee terminate the Licence.

11.2. Waiver

A provision or a right created under this Deed may not be waived or varied except in writing signed by the party to be bound. No failure to exercise and no delay in exercising any right, power or remedy under this Deed or any custom or practice existing between the parties in relation to this Deed operates as a waiver. No single or partial exercise of any right, power or remedy precludes any other or further exercise of that or any other right, power or remedy. No waiver by a party of one breach of a provision under this Deed by the other party is a waiver of another breach of that provision or any other.

The demand of or subsequent acceptance of any money under this Deed by a party is not to be deemed a waiver of any preceding breach of this Deed by the other party, except only in relation to the failure to make that particular payment when due.

Money tendered by the Licensee and accepted by Council may be applied in the manner Council decides.

11.3. Power of Attorney

The Licensee irrevocably appoints Council to be the attorney of the Licensee to do on behalf of the Licensee only if the Licensee is in default under the Deed and Council has legally entered into possession of the Premises anything the Licensee may lawfully authorise an attorney to do including anything which confers a benefit on Council.

11.4. Council may rectify

The Council may remedy at any time, without notice, any breach of this Deed by the Licensee as the agent of the Licensee and at the risk of the Licensee. The Licensee must pay all reasonable costs incurred by Council in remedying a default.

11.5. Costs on default

The Licensee must pay Council's expenses including internal management costs and legal fees and disbursements on an indemnity basis in connection with any breach of a provision of this Deed or default by the Licensee.

11.6. Interest on overdue payments

The Licensee must pay interest on any money due to Council but not paid on the due date from the date payment was due at the Prescribed Rate.

11.7. Council's certificate

A certificate executed by Council is, in the absence of manifest error notified to Council within 7 days of receipt, conclusive evidence of the matters stated in the certificate including the overdue Licence Fee and interest payable.

12. Termination

12.1. Licensee to yield up and remove its property

When this Deed ends the Licensee must:

- (a) return the Premises to Council in the condition that this Deed requires the Licensee to keep it in; and
- (b) have removed all property of the Licensee and the Licensee's Invitees and anything the Licensee fixed to the Premises during the Term or the prior occupation of the Premises and have made good any damage caused by the removal.

12.2. Abandoned property

Anything not removed within 14 days after the end of this Deed becomes the property of Council who can keep it or remove and dispose of it and recover from the Licensee the cost of removal, making good and disposal.

12.3. Failure of Licensee

If the Licensee fails to comply with its obligations under this Part (in which respect time is of the essence) Council may at the Licensee's expense payable on demand perform these obligations. Notwithstanding the termination of this Deed and vacation of the Premises the Licensee's obligations to pay Licence Fee and contributions to outgoings

Community Licence

will continue until the Licensee has properly complied with its obligations under this Part or the failure has been rectified by Council.

Maintenance Schedule

MAINTENANCE ITEM	OCCUPANT'S RESPONSIBILITY	COUNCIL'S RESPONSIBILITY
Heating and cooling fixtures (not installed by Council)	Pay all gas and electricity bills, service, replacement and repair as required	No responsibility
Building alterations	Determine and document specific needs of the building relating to any requests to Council for building alterations	Assess all requests submitted and, if approved by Council, ensure satisfactory completion of work by responsible parties
Curtains, blinds and window fittings, solar film	Installation, if required Regular cleaning and repair	No responsibility
Ceilings	Regular cleaning and repairs due to misuse	Major repair and/or replacement due to structural faults, age, etc.
Doors (incl. cupboard doors, door fittings, closers and screens)	Regular cleaning and repair of internal doors due to misuse, (with the same hardware)	Replacement due to age or structural fault on internal doors. Repair on all external doors
Electrical wiring and fittings in building	Repair and replacement due to misuse - must be undertaken by licensed electrical contractor	All building wiring from main supply to and including switchboard, power points, switches and light fittings
Fire extinguishers	Fill when discharged	Testing, maintenance and replacement due to age
Fire Panel	No responsibility	Testing, maintenance and rectification of any problems
Floor surfaces, coverings, including tennis court surfaces, coverings and nets	All regular cleaning and maintenance. Replacement due to age or compliance	No responsibility
Window glass and flyscreens	Clean and replace internal breakages, with compliant glass	Replace externally if breakage occurs due to vandalism

Community Licence

MAINTENANCE ITEM	OCCUPANT'S RESPONSIBILITY	COUNCIL'S RESPONSIBILITY
Vandalism	No external responsibility unless the vandalism is caused by the Licensee or the Licensee's Invitees	Removal of graffiti from external areas unless caused by the Licensee or the Licensee's Invitees
Keys and locks	Purchase, install and maintain all locks	No responsibility
Pest inspection	Internal inspection and treatment of any infestation as required	Internal and external inspection and treatment of any infestation
Fences, including tennis court fencing	Maintain and replace when necessary	No responsibility
Security system including call out	Purchase, installation, service and maintenance, in line with Council's masterkey and security patrol systems	Masterkey register and co-ordination of security patrol contract
Light globes and fittings (external)	Replacement of general lighting globes	Replacement and maintenance of security lighting where installed by Council
Accessible Light globes (internal)	Replacement	No responsibility
Plumbing & Fixtures	Internal repairs and any add-on fixtures not standard in the building, leaking taps and cisterns, replacement of washers	Repair and renewal of all external plumbing, leaking pipes
Plumbing waste pipes, drains and storm water pits	Keep clear of foreign objects, mud etc. and clear if blocked by these materials	General maintenance, stormwater and sewer blockages/house drains
Other permanent fixtures	Regular cleaning of all fixtures and repair/or replace if due to misuse	Handrails/disability access fixtures
Hygiene	To keep all areas in a clean and hygienic state	No responsibility

MAINTENANCE ITEM	OCCUPANT'S RESPONSIBILITY	COUNCIL'S RESPONSIBILITY
Painting	Internal painting if damaged through misuse, to match existing	Internal and external painting and Cyclic Maintenance Program
Roofs, guttering and skylights	Regular gutter cleaning	All maintenance and repair as required
Walls	Regular cleaning and repair of any damage through misuse or wear and tear	Structural maintenance
Building External	No responsibility	General maintenance
Food handling areas and equipment	To comply with relevant Health legislations and maintain equipment required by legislation	No responsibility
Lawns, yards and gardens	Prune trees to ensure they do not overhang roof or pathways, mow lawns, maintain gardens and keep site tidy Removal of any rubbish	No responsibility
Fences	Maintenance, replace when/where necessary	No responsibility
Water tanks	Regular maintenance and cleaning of filters and leaf traps	Repair, maintenance and/or replacement due to age.

Community Licence

Legal Advice Acknowledgement

The Licensee warrants that it has received legal advice on this Deed on the grant of the Licence from²

prior to entering into this Deed.

EXECUTED by the LICENSEE
in the presence of:

Signature of Witness

Signature

Name of Witness

² Insert name of lawyer or law firm.

Community Licence

Signing Page

Executed as a Deed on

day of

2015

EXECUTED by **GOSFORD CITY COUNCIL** by
its attorney pursuant to Power of Attorney Book
No. in the presence of:

Signature of Attorney

Signature of Witness

Name of Witness

EXECUTED by the LICENSEE
in the presence of:

Signature of Witness

Signature

Name of Witness

Name

Office Held

