**SA HEALTH**

**SWIMMING POOL FACILITY HIRE AGREEMENT**

**BETWEEN:**

**THE PARTY NAMED IN ITEM 2 OF SCHEDULE 1** (“**the Licensor**”)

**AND**

**THE PARTY NAMED IN ITEM 3 OF SCHEDULE 1** (“**the Licensee**”)

**IT IS AGREED** that this Execution Page, the Agreement Details (Schedule 1), the Plan (Schedule 2), the Special Conditions (Schedule 3), the Requirements (Schedule 4) and the Terms and Conditions (Schedule 5) will together comprise the Agreement between the Parties for the hire of the Facility specified in Schedule 1.

**EXECUTED AS AN AGREEMENT**

**Licensor**

|  |  |  |
| --- | --- | --- |
| **SIGNED** by a duly authorised officer for and on behalf of the **LICENSOR NAMED IN ITEM 2 OF SCHEDULE 1** in the presence of: | )))) |  |
|  Witness signature Witness name |  Authorised officer signature Authorised officer name |
| **Licensee****SIGNED** by a duly authorised officer for and on behalf of the **LICENSEE NAMED IN ITEM 3 OF SCHEDULE 1** in the presence of: | ))) |  |
|  Witness signature Witness name |  Authorised officer signature Authorised officer name |

SCHEDULE 1

Agreement Details

|  |  |
| --- | --- |
| **ITEM 1****Facility** | Name: insert name of facilityAddress: insert address of facilityCertificate of Title: Volume insert details Folio insert details |
| **ITEM 2****Licensor (We, Us)** | **Licensor’s Name:** insert the Licensor's legal name**A.B.N.** insert the Licensor's A.B.N **Licensor’s Address:** insert the Licensor's address  |
| **ITEM 3****Licensee (You)** | **Licensee’s Name:** insert the Licensee's legal name**A.B.N.** insert the Licensee's A.B.N **A.C.N.** insert the Licensee's A.C.N. (if applicable) **Licensee’s Address:** insert the Licensee's address  |
| **ITEM 4****Licensed Area** | insert details of the Licensed Area (e.g. hydrotherapy pool) |
| **ITEM 5****Access Times** | **Day** **Occurrence** **Dates**□ Monday □ Weekly \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_□ Tuesday □ Wednesday □ Monthly \_\_\_/\_\_\_/\_\_\_ to \_\_\_/\_\_\_/\_\_\_□ Thursday □ Friday □ One Off \_\_\_/\_\_\_/\_\_\_\_□ Saturday □ Sunday **Times**………………. am/pm to ……………… am/pm |
| **ITEM 6****Commencement Date** | insert the commencement date of the Licence |
| **ITEM 7****End Date** | insert the end date of the Licence |
| **ITEM 8****Licence Fee** | $ insert amount per hour plus GST$ insert amount per half day plus GST$ insert amount per day plus GST\* Delete as appropriate \*  |
| **ITEM 9****Representatives and Address for Notices** | **Licensor:**Name: insert name of Licensor's RepresentativePosition: insert Position of Licensor's RepresentativeAddress: insert addressEmail: insert email address**Licensee:**Name: insert name of Licensor's RepresentativePosition: insert Position of Licensor's RepresentativeAddress: insert addressEmail: insert email address |

SCHEDULE 2

Plan

[Insert Description of Licensed Area (e.g. XYZ Hospital Hydrotherapy Pool)]

[Insert Address of Licensed Area]

[Insert a copy of the Plan of the Licensed Area that highlights Licensed Area]

SCHEDULE 3

Special Conditions

**POOL SAFETY**

1. The Licensee agrees that there must be two responsible supervising adults **AT ALL TIMES** in the pool area during each session; one adult to be nominated by the Licensee as the Person in Charge who has life saving skills and holds a current CPR certificate.
2. The Licensee acknowledges that the Licensor is not required to provide any qualified supervisors while the Licensee uses the Facility.
3. The Licensee agrees to ensure the Person in Charge understands and complies with the requirements detailed in the Information Check List for Pool Use identified at the premises.
4. The Licensee shall at all times remain solely responsible for the behaviour and safety of all persons, whether such persons are participants, staff or spectators using the Facility and equipment during the Agreement Period.
5. The Licensee shall ensure that all persons using the Facility conduct themselves in an orderly manner at all times during the Agreement Period (which includes arrival and departure). Any person behaving in a disorderly manner shall be requested to leave the premises by the Licensor.
6. The Licensee shall remove all persons from the pool immediately if a faecal contamination should occur and must report the faecal contamination to the Licensor. The Licensor shall perform the necessary maintenance to rectify the contamination and the Licensee shall be liable for all costs involved in such rectification.

**CLEANING**

1. The Licensee shall leave the Facility, in particular the change rooms, in a clean and safe condition.
2. The Licensee shall complete a Safety Check List to that effect after each session to ensure excess water is removed from the floors of the Facility; in particular the change rooms.
3. The Licensee shall ensure that all equipment is removed and stored in the appropriate places, or as directed by the Licensor or its staff.
4. Failure by the Licensee to ensure the Facility is left in a clean and tidy condition including removal and storage of necessary equipment will result in the Licensee being charged an incidental cleaning fee equivalent to one hour hiring fee.

**SCHEDULE 4**

Policies and Procedures

1. **SECURITY AND SAFETY**

You and/or your Personnel are:

## required to comply with our requirement to wear Photo Identification while on the Facility.

## not to allow clients to be seen in areas other than those approved through this Agreement.

## to attend an annual fire and emergency training session held at the Facility.

## to be introduced to our reception staff upon commencement. All Personnel are to attend an orientation and induction session as required by us prior to commencing services at the Facility.

## to request Keys to offices and/or security door swipe cards from us, and return all keys and cards to us on demand and no later than the End Date.

## required to comply with our requirements for working in the Facility after normal business hours.

## required to ensure that all of your electrical items brought onto the Licensed Area show current tags for electrical testing. Such inspection and testing must be undertaken at your own cost

1. **WORKPLACE HEALTH AND SAFETY (WHS)**

## You must ensure all work performed on the Licensed Area is in accordance with Workplace Health and Safety (WHS) Act, 1986, its Regulations, Approved Codes of Practice, Australian Standards and Licensor WHS and Injury Management Policy, Management Standards and other supporting documents, including Licensor and local health Licensed Area WHS procedures (including required notification of all hazards, incidents and accidents) Any hazards or incidents are to be reported on the appropriate PPRHS forms and forwarded to our nominated contact officer.

## WHS Inspections are conducted at 6 monthly intervals and all areas of the Facility are audited. We will communicate any areas of concern to you.

1. **Facility Rules and Regulations**

During the Agreement Period you must not do, or allow, any of the following:

## the smoking of tobacco or related products on the Licensed Area and other areas of the Facility. All Department of Health and Wellbeing premises in South Australia are non‑smoking premises. This includes all areas of the buildings and grounds;

## the bringing of any noxious, explosive, inflammable or dangerous substance or appliance on to the Licensed Area, without our prior written approval or unless the substance or appliance is of a kind and quantity reasonably necessary for the conduct of the activities intended to be performed on the Licensed Area. You shall advise us of the type and quantity of such substances or appliances normally brought onto or held on the Licensed Area;

## the bringing upon the Licensed Area of any live animals reptiles birds or poultry;

## the sleeping of any person upon the Licensed Area or using the Licensed Area for residential purposes;

## the leaving or depositing outside the Licensed Area of any goods or articles of any kind and whether in the nature of display or otherwise;

## the holding of any auction or any bankruptcy or fire sale upon the Licensed Area;

## the doing of any thing or bringing on to the Licensed Area of any equipment or machinery that will place excessive weight or stress upon any part of the floor walls or ceiling of the Licensed Area and which is reasonably likely to cause damage to the structure of the Licensed Area or the Facility or which is greater than the maximum weight (if any) prescribed for that purpose by us from time to time.

## the installing of any electrical or electronic equipment in the Licensed Area which may overload the electrical services to the Licensed Area or the Facility;

## the obstructing of the pavements entrances arcades vestibules corridors passages halls lifts stairways fire doors or escape doors in or about the Facility or using any of them for any purpose other than that for which they were constructed or provided;

## the using of the Common Area for any business or commercial purpose, or the displaying or advertising of any goods or services, or generally for any purpose other than a purpose for which they were intended or provided; and

## the entering or going up on the roof or in any plant room or in any other part of the Facility other than the Common Area except as authorised by us or in the case of an emergency.

**SCHEDULE 5**

**STANDARD TERMS AND CONDITIONS FOR THE HIRE OF SWIMMING POOL FACILITY**

PARTIES:

**THE party DESCRIBED IN ITEM 2 OF SCHEDULE 1 as the LICENSOR** (“**we, us, our**”)

**AND**

**THE party DESCRIBED IN ITEM 3 OF SCHEDULE 1 as the LICENSEE (**“**you, your**”**)**

background:

1. We are the owner, an occupier or an operator of the Facility and we are entitled to occupy or deal with the Licensed Area.
2. We agree to grant and you have agreed to accept a non-exclusive licence to enter upon the Licensed Area and use the Licensed Area for the Permitted Use upon the terms and conditions contained in this Agreement.

**AGREED TERMS:**

# about this agreement

## The Background above is true and correct and forms part of this Agreement.

## The definitions and rules for interpreting this Agreement are set out at the end in clause 47.

## This Agreement between the parties comprises these standard terms and conditions, and all the documents comprised in, and incorporated by reference to, the Schedules. If any of the documents comprising this Agreement are inconsistent, they shall take priority in the following order:

### the special conditions (if any) referred to in clause 46;

### these standard terms and conditions (excluding the special conditions); and

### the Schedules (excluding the special conditions).

# Licence

## Subject to clause 2.2, we grant to you a licence to access, occupy and use the Licensed Area during the Access Times for the Permitted Use.

## The rights granted by us in this Agreement are contractual only and shall not create or confer upon you any tenancy, estate or interest in the Licensed Area and the Facility.

# Agreement Period

## This Agreement is for the period commencing on the Commencement Date and expiring on the End Date.

## This clause 3 is subject to any earlier termination under this Agreement.

# Permitted Use

## You must not without our prior written consent (which we may give or withhold in our absolute discretion) use the Licensed Area for any purpose other than the Permitted Use.

## Without limiting your obligations under this Agreement, you must at your own expense obtain and maintain during the Agreement Period all approvals necessary for the Permitted Use.

## Notwithstanding any other provisions of this Agreement, we may restrict the use of the Licensed Area where such use will in our opinion cause damage to the Licensed Area or will prejudice, cause nuisance to or obstruction other users of the Facility.

# use Not exclusive

## The licence to access, occupy and use the Licensed Area is non exclusive and the Licensed Area may be used by other parties/persons, including:

### us and our successors and assigns;

### all other persons or corporations having a superior of concurrent estate or interest in the Licensed Area; and

### other tenants using or introduced to the Facility to meet the needs of the Facility from time to time in our discretion.

## ’You may be allocated an area of the pool as appropriate, however, you acknowledge that the Permitted Use is not an exclusive use and we may permit or engage other parties or employ employees to provide the same or similar services at the Facility as those contemplated by the Permitted Use and (if applicable) the Specified Services.

# licence fee

## In consideration of the grant of the licence under clause 1, you agree to pay the Licence Fee set out in item 8 of Schedule 1 without demand or set-off calendar monthly in advance commencing on the Commencement Date and then on the first day of each calendar month.

## The Licence Fee is to be calculated pro rata for periods of less than one month.

## The Licence Fee is to be paid to the Licensor by bank cheque or electronic transfer or as otherwise agreed between the parties

# care and maintenance

## You must at your own expense:

### keep the Licensed Area in a clean, neat and tidy condition and in a good and tenantable state of presentation (fair wear and tear excepted);

### keep and maintain Our Assets in clean and in good order condition.

## Subject to your obligations set out in clause 7.1, we will at our expense maintain:

### the Licensed Area and the Facility in a good and substantial state of repair and condition; and

### all building services on or in the Facility (including those on or in the Licensed Area) in good working order,

including, if and when circumstances require it, effecting capital and structural repairs not caused by an act or omission of you provided that our obligations under this clause do not extend to providing a general handyman service for your benefit at the Licensed Area.

# repair damage

## You must promptly make good any damage caused to the Licensed Area, Our Assets or the Common Area by you or your Personnel or your invitees, including where necessary replacing any of Our Assets with new items of a similar standard.

## The costs of any repairs and replacements undertaken by us to remedy the damage or destruction caused by you or your Personnel or your invitees will be payable by you to us upon demand.

## You must keep the Licensed Area in a clean and tidy state and such other condition as shall be consistent with the obligations contained in this Agreement.

## You must remove all of your property and rubbish from the Licensed Area after using the Facility.

# Facility Rules and Regulations

## You will at all times comply with the Facility rules and regulations contained in Schedule 4 and any variations made pursuant to clause 9.2, which rules and regulations are to be construed as being incorporated in and forming part of this Agreement.

## We will be entitled at all times to delete, vary or amend any of the rules and regulations and to make further and other rules and regulations as in our judgment may from time to time be necessary or desirable, provided that the rules or any variations are not inconsistent with the terms of this Agreement.

# carParking

While engaged in business at the Licensed Area you are, together with your Personnel and invitees, permitted to park motor vehicles on the portions of the Common Area as may be set aside from time to time as car parking area together with a right of reasonable access to and exits from the car parking area from any adjoining roads provided always that any persons using the car parking area or any access to or exit from them will at all times observe the rules and regulations, and the signs, markings and directions as may be made or exhibited by us (or the owner, if applicable) for the orderly movement or parking of vehicles and will pay any fees applicable therefore.

# Alterations or additions

You must not:

## undertake any fit-out or building works, alterations or additions (including but not limited to the erection of signs) or equipment installations to the Licensed Area; or

## mark, paint, drill or in any way deface or damage any wall, floor, ceiling or other part of the Licensed Area.

# Statutory compliance

You shall at all times during the Agreement Period comply with:

## the requirements of all statutes, regulations, by-laws, ordinances, rules or other forms of statutory instruments or delegated legislation applicable to the Licensed Area or to the use of the such Licensed Area by you;

## the requirements of all notices, orders or requirements lawfully given or made by any authority or authorities in respect of the Licensed Area or the use of the such Licensed Area by you; and

## applicable occupational health, safety and welfare standards, including but not limited to those relating to hazardous materials.

# COMPLIANCE WITH LAWS AND POLICIES

## You must comply with the requirements of all Laws.

## You must comply with the Policies and Procedures set out in Schedule 4.

## You undertake to comply with all South Australian Government policies of which we inform you which relate to the performance of your obligations under this Agreement.

# Common Area

## The Common Area shall at all times be subject to our control (or the control of the owner, if applicable), with the right to establish modify and enforce reasonable rules and regulations with regard to the Common Areas having regard to the interests of the management of the Common Areas as a whole and the rights and interests of other tenants occupiers or persons in the Common Areas from time to time.

## Your right to use the Common Area is subject to:

### any restrictions made under this Agreement; and

### rules and regulations referred to in Schedule 4.

# your assets

## You must at your own expense:

## provide your own fixtures, fittings, furniture and equipment to meet your professional and business requirements in the Licensed Area, except as otherwise provided in this Agreement;

## label and keep all Your Assets labelled; and

## provide to us a register specifying details of Your Assets as at the Commencement Date (to the extent not already provided) and annually thereafter;

## keep and maintain Your Assets in clean and in good order condition.

# financial VIABILITY

## You warrant that you are financially viable and have the necessary relevant expertise to conduct your business and provide your services at the Licensed Area.

# service quality

Giving due consideration to principal objective under the *Health Care Act 2008* to facilitate the provision of safe, high-quality health services, you agree in relation to any services you provide at the Licensed Area to:

## conduct yourself (and ensure your Personnel do likewise):

### in a proper, competent and professional manner, that enhances the goodwill and reputation of the Facility;

### in accordance with the best practices current in your profession;

### with due care, skill and diligence;

### in a way that will prevent injury to persons and/or damage to property;

### strictly in accordance with:

#### all applicable laws;

#### all applicable codes of conduct and professional practice; and

#### any policies and direction given to you by us from time to time;

### where relevant, using consumables that are:

#### of the highest quality;

#### free from any latent defects or deficiencies;

#### fit for their purpose; and

### so as to avoid any disruption of or interference to the business or other activities conducted or carried on by us or any other person at the Facility;

## ensure that your Personnel are competent and professional with qualifications and experience appropriate to the tasks they will perform and you must provide evidence of such qualifications and experience to us on demand;

## if applicable, and without limiting clause 17.2, ensure that you and any Personnel comprising medical practitioners and/or registered allied health professionals are entitled to practice the relevant profession in accordance with all Laws and are registered with the relevant state or national board, and you must provide us with evidence of such registration on demand.

## for self-regulated professions, provide evidence of the ability of you and your Personnel to meet the relevant applicable standards prior to commencement of service;

## comply with and maintain all relevant accreditation standards;

## ensure that all training activities you and your Personnel undertake take account of the applicable accepted and recommended standards current from time to time;

## ensure confidentiality of operational and client matters, and comply with the Commonwealth Information Privacy Principles as defined in the Privacy Act 1988 (Cth) as if you were an agency under that Act, and otherwise comply with the *Privacy Act 1988* (Cth);

## notify us immediately upon becoming aware of any possibility that you may not be able to provide services from the Licensed Area at any time;

## provide National Police Clearance Certificates for yourself and all your Personnel on or before you or they commence to provide services from the Licensed Area and then from time to time when reasonably requested by us;

## if in our reasonable opinion you or a member of your Personnel are guilty of misconduct, incompetence or negligence, or are charged with a serious offence, that affects your ability to fulfil your obligations under this Agreement or impugns the reputation of the Facility, or could do any of these things, we may give you a notice requiring you or the relevant Personnel to suspend or cease providing services at the Licensed Area;

## notify us within a reasonable time of any matter of which you are aware or ought to be aware and about which a prudent practitioner in your profession should reasonably believe we should be notified including:

### you or your Personnel being subject to

#### any change in accreditation status;

#### referrals to the relevant registration board or professional association;

#### fines imposed or reprimands given by the relevant registration board or professional association, undertakings given to the relevant registration board or professional association as to good behaviour, or registration being made conditional, being removed, suspended or lapsed;

#### charges with or convictions of any criminal offence involving dishonesty or punishable by imprisonment; or

#### actual or anticipated inability or non-availability to provide the your services; and

### in connection with receiving services from you or your Personnel, a patient:

#### is involved in an adverse incident;

#### makes a verbal or written complaint;

#### is the subject of requests by the Coroner for medical reports;

#### threatens or issues legal action or any writ, subpoena or summons; or

#### is the subject of a referral to the Health and Community Services Complaints Commissioner; or

### matters of which you or your Personnel are obliged to inform their applicable defence organisation, indemnity fund or insurer;

## if requested by us:

### provide to us as soon as soon reasonably practicable all relevant details of any matters of which we are notified pursuant to clause 17.11; and

### take all reasonable steps to assist us to inquire into and resolve any complaint, dispute or other issue arising under or in connection with this Agreement (including but not limited to any matter of which we are notified pursuant to clause 17.11).

# no EMPLOYMENT RELATIONSHIP

## Nothing in this Agreement constitutes any relationship of employer and employee or partnership between the parties.

## No party has any authority to bind the other party in any manner without the prior consent of the other party.

## You acknowledge that you operate as your own business at the Licensed Area, and you shall ensure all your clients are informed that you and your Personnel are not employed by us but operate as a separate business.

## You acknowledge that you retain professional liability for your actions and practice and of your Personnel, as well as any liability arising from workers compensation claims.

# CONFIDENTIAL INFORMATION

## Subject to this clause 19, neither party may disclose any Confidential Information of the other party except as genuinely and necessarily required for the purpose of this Agreement.

## Neither party may disclose any Confidential Information of the other party except:

### to an employee or agent of that party, on a “need to know” and confidential basis;

### to the Australian Competition and Consumer Commission (ACCC) if we reasonably suspect, or are notified by the ACCC that it reasonably suspects, that there is Cartel Conduct or unlawful collusion in connection with the supply of any Specified Services required to be supplied under this Agreement;

### as required by law or a court order; or

### in accordance with any parliamentary or constitutional convention.

## In clause 19.2.2:

### “**Cartel Conduct**” means conduct by two or more parties who are competitors (or would be but for the conduct) who enter into a contract, arrangement or understanding that involves price fixing, output restrictions, allocating customers, suppliers or territories, or bid-rigging, as defined in s44ZZRD of the *Competition and Consumer Act* 2010; and

### “**Confidential Information**” means information which is identified either as confidential information (if disclosed by us) or proprietary information (if disclosed by you), but does not include this Agreement.

## Any obligations imposed by this Agreement in relation to confidentiality continue unless and until a party is released from those obligations by the other party by notice in writing.

# CONFLICTS OF INTEREST

## You warrant to us that neither you, nor any of your Personnel, have a Conflict of Interest under this Agreement.

## If you become aware that you or any of your Personnel do have or will have a Conflict of Interest, then you must immediately inform us, in writing, with full details of that Conflict of Interest.

## You must comply with all our reasonable directions requiring you to resolve or otherwise deal with any Conflict of Interest.

## The provision of this clause will operate without prejudice to any other rights which we may have arising out, or in respect of, the existence of any Conflict of Interest or potential Conflict of Interest.

## In this clause, “**Conflict of Interest**” means any interest or duty which conflicts or potentially conflicts with the obligations, liabilities or rights of either party as written in this Agreement.

# no ASSIGNMENT

You must not assign, transfer, sub-let, sub-contract, encumber, mortgage or charge your rights or obligations under this Agreement .

# INSURANCE

## You must effect and maintain the following insurances, for the following amounts with a reputable insurer approved by us and provide us with proof of insurance on or prior to the Commencement Date and thereafter on demand:

(a) Public Liability: AUD$20 million

(b) Professional Liability: AUD$20 million

## The policies referred to in this clause must: note our interests under this Agreement unless we otherwise agree.

## We may require you to provide proof that the policies of insurance required by this clause have been effected and maintained.

## We may terminate this Agreement immediately if you do not comply with this clause.

## You acknowledge that:

### it is the your responsibility to assess and consider the type, scope and quantum of insurance required in respect of your use of the Licensed Area; and

### we accept no responsibility for the adequacy of the sum insured or the scope of the insurance acquired.

# release

Your occupation and use of the Licensed Area is at your own risk and you release us and the Crown and our respective officers, employees, contractors and agents to the full extent permitted by law from all claims resulting from:

## any loss of life, accident, injury to persons or loss of or damage to property occurring in, on or in the vicinity of the Licensed Area, or as a result of the use of the Licensed Area by you (including any loss of or damage to any of your personal property); or

## any defect in the construction of the Licensed Area.

# indemnity

## You indemnify us and the Crown and our respective officers, employees, contractors and agents from and against all claims, damages costs expenses liabilities and other outgoings whatsoever which we or the Crown may suffer or incur, including in connection with loss of life, personal injury and/or damage to property, arising from or out of any occurrence in, on or about the Licensed Area, arising from:

### your negligent use or misuse of the Licensed Area;

### any negligence, wrongful act or omission or breach of duty by you or any of your Personnel; or

### any breach by you of any of the provisions of this Agreement.

## This clause will survive termination of this Agreement.

# Holding over

If you remain in occupation of the Licensed Area after the End Date no licence from year to year (or longer) is to be implied by payment or acceptance of the Licence Fee but you continue to occupy the Licensed Area on a monthly licence determinable at any time by either party on one (1) calendar month’s notice in writing and at a monthly Licence Fee equivalent to the monthly proportion of the total annual Licence Fee payable by you at the expiration of the Agreement Period and otherwise on the same terms and conditions as those contained in this Licence so far as is applicable.

# TERMINATION for convenience

Without prejudice to any other right to terminate this Agreement, we may terminate this Agreement, without the need to specify the reason, by giving you not less than 24 hours notice of our intention to do so, and upon the expiry of the notice period, this Agreement will terminate and be at an end and you shall have no claim against us in respect of such early termination except in respect of any antecedent breaches (if any) of this Agreement by us.

# termination for breach

## In addition to any other rights of termination granted by this Agreement, we may terminate this Agreement immediately by notice in writing to you if:

### you fail to rectify a breach of an obligation under this Agreement within the time set out in a notice from us requiring such breach to be rectified;

### you commit or permit any further breach of an obligation imposed on you by this Agreement for which we has previously given notice in writing, notwithstanding rectification of the previous breach; or

### you enter into an Insolvency Administration.

## Termination of this Agreement by us is without prejudice to any rights, remedies or actions that we may have or had against you in respect of any previous breach by you of the terms and conditions contained in this Agreement.

## If any of the Licence Fee reserved or any part of it or any other moneys payable by you to us shall at any time remain unpaid for seven (7) days after they have become due (whether any formal or legal demand has been made or not) then you shall pay to us interest calculated on a daily basis at the Rate on those moneys from the date on which they fall due for payment to the date on which they are paid to or recovered by us (as the case may be).

# Damage or destruction

## We and our superiors in title have no obligation to reinstate or restore:

### the Licensed Area if the Licensed Area is rendered unfit for your occupation or use; or

### any part of the Licensed Area if it is compromised by damage to, or destruction of, any part of the building in which it exists.

## If part of the Licensed Area is damaged or destroyed, we may determine in our absolute discretion whether the Licensed Area has been rendered unfit for occupation or use by you.

## If we determine that the Licensed Area is unfit for your occupation or use, this Agreement will terminate immediately as of the date of damage to, or destruction of, the Licensed Area without prejudice to any rights, remedies or actions which we may have against you in respect of any previous breach by you of this Agreement.

# Dispute Resolution

## The parties agree to use reasonable efforts to resolve by negotiation any problem that arises between them under this Agreement. Neither party will resort to legal proceedings, or terminate this Agreement for breach or default (other than in connection with solvency), until the following process has been exhausted, except if it is necessary to seek an urgent interim determination.

## If a problem arises (including a breach or an alleged breach) under this Agreement a party concerned about the problem may notify the other. The parties will then endeavour in good faith to agree upon a resolution.

## Should the parties fail to reach a solution in accordance with clause 31.2 within five (5) working days (or such other time frame agreed between the parties), the parties may agree to mediation. The parties will appoint the mediator. If the parties cannot agree on such appointment within fourteen (14) days the President of the Law Society of South Australia shall appoint the mediator.

## If mediation fails, or if either party states that it does not wish to proceed with mediation, then either party may commence legal proceedings against the other.

## Unless prevented by the nature of the dispute, the parties will continue to perform their obligations under this Agreement while attempts are made to resolve the dispute.

# OBLIGATIONS AT THE END OF THE agreement

## At the expiry or determination of this Agreement:

### you must remove at your own cost all Your Assets from the Licensed Area and the Facility unless otherwise directed in writing by us. Any items not removed will be treated as abandoned in favour of us and may be retained, sold or disposed of at our absolute discretion without compensation to the you;

### you must, to our satisfaction, reinstate the Licensed Area and make good any damage or disturbance whatsoever done throughout the Agreement to the extent that the damage or disturbance was, in our reasonable opinion, caused by or made through any act or omission by you; and

### deliver up possession of the Licensed Area (including our Assets) in a clean and tidy state and such other condition as shall be consistent with the obligations contained in this Agreement.

## If you fail to comply with this clause we retain the right to remedy your breach at your cost.

# SEVERANCE

## Each word, phrase, sentence, paragraph and clause of this Agreement is severable.

## If a court determines that a part of this Agreement is unenforceable, invalid, illegal or void that court may sever that part.

## Severance of a part of this Agreement will not affect any other part of this Agreement.

# ENTIRE AGREEMENT

## This Agreement contains the entire Agreement between the parties with respect to its subject matter.

## This Agreement supersedes any prior agreement, understanding or representation of the parties on the subject matter.

# waiver

## A waiver of any provision of this Agreement must both be in writing and be signed by the parties or by a person duly authorised to sign such a document on a party’s behalf.

## No waiver by a party of a breach of a term or condition contained in this Agreement shall operate as a waiver of any breach of the same or any other term or condition contained in this Agreement.

## No forbearance, delay or indulgence by any party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party.

# NOTICES

## A **“notice”** means:

### a notice in writing; or

### a consent, approval or other communication required to be in writing under this Agreement.

## A notice must be signed by or on behalf of the sender addressed to the recipient and:

### delivered to the recipient’s address;

### sent by pre-paid mail to the recipient’s address; or

### transmitted by facsimile to the recipient’s address.

## A notice given to a person in accordance with this clause is treated as having been given and received:

### on the day of delivery if delivered before 5.00 pm on a Business Day, otherwise on the next Business Day;

### if sent by pre-paid mail, on the third Business Day after posting; or

### if transmitted by email before 5.00pm on a Business Day and the sender does not receive a transmission error message.

## The address and email address of a person are those set out below that person’s name in item 9 of Schedule 1.

## A person may from time to time notify its change of address or email address by written notice to the other party.

# MODIFICATION

Any modification of this Agreement must be in writing and signed by each party and state that it is a modification of this Agreement.

# Goods and Services Tax

## The parties acknowledge and agree that the amounts expressed as payable under this Agreement for or in connection with a Taxable Supply do not include GST unless expressed otherwise.

## If any supply under this Agreement is a Taxable Supply:

### the recipient must pay to the supplier, in addition to any consideration payable or to be provided by the recipient for the supply under this Agreement apart from this clause, (“base consideration”) an additional amount of consideration (“GST consideration”) for the supply calculated by multiplying the GST Rate by the base consideration;

### any invoice for payment under this Agreement must be a Tax Invoice (and any prescribed form of invoice under this Agreement is amended accordingly); and

### the recipient is not obliged to make any payment under this Agreement unless the supplier has provided a Tax Invoice in respect of that payment.

## When claiming payment of GST consideration under this clause the supplier must disclose the supply and the base consideration to which the GST consideration is attributable.

# costs and stamp duty

## Each party must pay its own costs incurred in respect of the preparation, perusal, negotiation and execution of this Agreement and any amendment or extension of it.

## You shall pay the stamp duty (if any) assessed or charged in respect of this Agreement.

# PUBLIC DISCLOSURE

We may disclose this Agreement and/or information relating to this Agreement in either printed or electronic form and either generally to the public or to a particular person as a result of a specific request. Nothing in this clause derogates from your obligations under any provision of this Agreement, or the provisions of the *Freedom of Information Act 1991*.

# Publicity

You must not make or permit a public announcement or media release to be made about any aspect of this Agreement without first obtaining our prior written consent.

# AUDITOR-GENERAL

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

# Representatives

## The parties appoint the persons named in item 9 of Schedule 1 as their respective authorised Representatives. Each authorised Representative has authority to:

### exercise all of the powers and functions of his or her party under this Agreement; and

### bind his or her party in relation to any matter arising out of or in connection with this Agreement.

## A notice served on an authorised Representative is taken to be notice to that authorised Representative’s party.

## A party may from time to time notify change of its authorised Representative by written notice to the other party.

# superior estate

## You must permit the owner (if applicable) and any other person or persons having any estate or interest in the Licensed Area superior to or concurrent with us to exercise our power under this Agreement.

# Preservation of Remedies

Termination of this Agreement does not affect:

## any accrued right or liability of a party; or

## the coming into force of any provision of this Agreement that is expressly or by implication intended to come into force on or to survive or continue its effect after termination (for example, the provisions regarding insurance, indemnities, confidentiality and publicity).

# NO WARRANTies

## You acknowledge that we make no express or implied warranty that the Licensed Area is fit or suitable for the activities associated with the Permitted Use under this Agreement.

## To the maximum extent permitted by law, you acknowledge and agree that no representation, warranty, guarantee or other statement express or implied, was made or given to you by us prior to entering into this Agreement as to the benefits which you might enjoy as a result of entering into this Agreement (including but not limited, if applicable, to the volume of the services you may be able to provide or the level of profit you may be able to make).

# Retail and Commercial Leases Act 1995

You agree that if at any time any use of the Licensed Area under this Agreement gives rise to a retail shop lease under or is subject to the *Retail and Commercial Leases Act 1995*, you must immediately apply for an exemption under section 77 of that Act from all provisions of the Act.

# special condItions

This Licence is subject to the special conditions (if any) set out in Schedule 3 and the special conditions prevail to the extent of any inconsistency with any other terms of this Agreement.

# Definitions and interpretation

In this Agreement, unless otherwise provided:

## “**Access Times**” means the days and times your are licensed to access the Licensed Area as set out in item 5 of Schedule 1;

## “**Agreement**” means this Agreement and includes all schedules;

## “**Agreement Period**” means the Commencement Date until the End Date, subject to any earlier termination of this Agreement;

## “**Business Day**” means Monday to Friday (excluding South Australian public holidays);

## “**Commencement Date**” means the date set out in item 6 of Schedule 1;

## “**Common Area**” means those portions of the Facility provided from time to time for common use by the tenants and occupiers, including but not limited to, driveways, access and egress roads, car parks, walkways, pavements, entrances, courts, vestibules, passages, corridors, stairways, lifts, washrooms, toilets, loading bays, garden and service areasand those portions (if any) of the Facility identified on the Plan;

## “**Crown**” means the Crown in the right of the State of South Australia;

## “**End Date**” means the date set out in item 7 of Schedule 1;

## **“Facility”** means the health facility set out in item 1 of Schedule 1;

## “**GST**” means the tax imposed by the *GST Act*;

## “**GST Act**“ has the meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

## “**GST Rate**” has the meaning attributed in the GST Law;

## “**Insolvency Administration**” means

### if you are a corporate body:

#### an administrator is appointed to you;

#### you resolve to be wound up;

#### a court order is made that you be wound up (for insolvency or otherwise);

#### you cease business;

#### a receiver or manager is appointed to you;

#### a liquidator or provisional liquidator of you is appointed;

#### you enter into an arrangement with your creditors; or

#### you are unable to pay your debts when they are due;

### if you are a natural person:

#### you have committed an act of bankruptcy as contemplated by the *Bankruptcy Act 1966* (Cth);

#### you are unable to pay your debts as and when they become due and payable;

#### the court has made a sequestration order against your estate;

#### a creditors’ petition has been presented against you;

#### you have presented to the official receiver a declaration of intention to present a debtor’s petition;

#### you become a bankrupt;

#### a meeting of your creditors is convened; or

#### you lodge with your trustee a proposal to your creditors for a composition in satisfaction of your debts or a scheme of arrangement of your affairs;

### if you are trading as a partnership, the occurrence of any of the events described in clause 47.13.2 in relation to any of the partners of the partnership.

## “**Intellectual Property Rights**” means all intellectual property rights, including:

### patents, plant breeders’ rights, copyright, rights in circuit layouts, registered designs, trade marks, know-how and any right to have Confidential Information kept confidential; and

### any application or right to apply for registration of any of the rights referred to in subclause 47.14.1;

## “**Laws**” shall mean and include all present and future legislation (both State and Federal) and all amendments to them and re-enactments of them and all regulations, by-laws and orders made pursuant to them;

## “**Licence** **Fee**” means the licence fee set out in item 8 of Schedule 1;

## “**Licensed Area**” means the part of the Facility identified in item 4 of Schedule 1, including Our Assets,

## “**Our Assets**” means all our fixtures, fittings, equipment or property on or in the Licensed Area;

## “**Permitted Use**” means using the pool facilities for the purpose of swimming;

## “**Personnel**” means any subcontractors, employees, agents and any other person employed or engaged by you to perform this Agreement, and includes your Representative and you if you are not a corporate body;

## “**Plan**” means the plan of the Licensed Area set out in Schedule 2;

## “**Rate**” means a rate of interest equal to the maximum Indicator Lending Variable Rate (for Bank’s business loans for small business) published in the *“Reserve Bank of Australia Bulletin”* published monthly by the Reserve Bank of Australia, for the month in which interest commences to be payable pursuant to the relevant provision of this Licence;

## “**Representative**” means either of the persons nominated as your Representative and our Representative;

## “**Tax Invoice**” has the meaning attributed in the *ANTS GST Act*;

## “**Taxable Supply**” has the meaning attributed in the *ANTS GST Act*;

## “**Your** **Assets**” means all your fixtures, fittings, furniture equipment or property on or in the Licensed Area including your personal effects;

## a reference to any legislation or to any provision of any legislation includes:

### all legislation, regulations, proclamations, ordinances, by-laws and instruments issued under that legislation or provision; and

### any modification, consolidation, amendment, re-enactment or substitution of that legislation or provision;

## a word importing:

### the singular includes the plural;

### the plural includes the singular; and

### a gender includes every other gender;

## words denoting individuals include corporations, unincorporated associations, partnerships, trusts and joint ventures;

## a reference to a party includes that party’s administrators, successors and permitted assigns;

## if any act pursuant to this Agreement would otherwise be required to be done on a day which is not a Business Day then that act may be done on the next Business Day;

## where a word or phrase is given a defined meaning, any other part of speech or grammatical form in respect of that word or phrase has a corresponding meaning;

## a reference to two or more persons is a reference to those persons jointly and severally;

## a reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or annexure to, this Agreement;

## a reference to a clause number is a reference to all of its sub-clauses;

## a reference to dollars is to Australian dollars;

## where general words are associated with specific words which define a class, the general words are not limited by reference to that class;

## the clause headings are for convenient reference only and they do not form part of this Agreement;

## the word “or” is not exclusive; and

## unless stated otherwise, where this Agreement requires action of you, such action is to be undertaken at your cost.