

**Agreement to Manage, Operate and Promote the
Council Tennis Facilities**

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Agreement to Manage, Operate and Promote Council Tennis Facilities

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Parties

Willoughby City Council ABN 47 974 826 099 of 31 Victor Street, CHATSWOOD NSW 2067 (**Council**)

and

Sydney Sports Management Group and Voyager Tennis Pty Ltd (ACN 652 024 032) of PKF, Level 8, 1 O'Connell St, Sydney, NSW, 2000 (**Operator**)

Background

- A Tennis Courts and associated Facilities are located on the Sites.
- B Council has issued a Tender for the Services to be provided from the Sites.
- C The Operator was the successful Tenderer and is to manage the Sites specified in this Agreement.
- D The terms and conditions under which the Operator is to provide the Services from the Sites are set out in this Agreement.

Conditions of Contract

1 Definitions

1.1 In this Agreement the following definitions apply:

Agreement means this Agreement and includes any schedules, annexures and appendices to this Agreement.

Annual Business Plan means the annual business plan as required under the Specification and otherwise amended and updated in accordance with this Agreement.

Annual Report means the report to be prepared by the Operator and submitted annually to Council in accordance with the Specification.

Business Methodology Statement means the document set out in Schedule 3 detailing how the Services are to be provided and including the details about the Programs to be run at a Site, updated as part of the Annual Business Plan and otherwise amended in accordance with this Agreement.

Claims includes actions, proceedings, suits, causes of action, arbitration, verdicts, and judgments either at law or in equity or arising under statute, debts, dues, demands, claims of any nature, costs and expenses.

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Commencement Date means the date specified in Item 1 of Schedule 1.

Community Program Hire means programmes developed for the use of a Site by users including schools, not for profit or sports professionals for the types of activities set out in the Specification.

Consumables means those items which are regularly used up in the course of providing the Services and must be regularly replaced and includes but is not limited to:

- (a) all cleaning supplies and equipment;
- (b) toilet and change room consumables (sanitary paper, hand towels, hand wash soap, and the like);
- (c) stationery supplies;
- (d) light bulbs and fittings;
- (e) paints; and
- (f) stocking of first aid rooms & kits.

Contaminant means any substance or material (whether liquid, solid or gas) which may make a Site or surrounding environment:

- (a) unsafe, unfit or harmful for occupation by persons or animals;
- (b) degraded in its capacity to support plant life;
- (c) such that it does not satisfy the contamination criteria or standards in the environment objectives;
- (d) require site investigation and/or remediation of any land under any Law.

Contamination Event means an event which would or could result in any Contaminant affecting a Site (or any part of a Site) or land within the vicinity of a Site or any water found or stored on a Site or any water in the vicinity of a Site which would or could result in an offence or the breach of any provision of any Law.

Contract Term means the Term set out in the Licence Deed.

Council means the person identified in Item 6 of Schedule 1 and its employees, agents, sub-contractors, permitted assigns and successors.

Council Equipment means the plant and equipment listed in Schedule 2 of the Licence Deed.

Council's Representative means the person specified in Item 7 of Schedule 1.

Direction means any notice in writing issued by the Council's Representative.

Emergency Management Plan means the emergency management plan provided with the Tender approved by Council and otherwise amended in accordance with this Agreement.

Environmental Law all laws and regulations, consents, permits, environmental protection policies, and directions, standards and guidelines including determinations, of any authority, including federal, state or local government authorities, (and any other like bodies) regulating or otherwise relating to the environment, including but not limited to land use, planning, heritage, coastal protection, water catchments, pollution of air or waters, noise, soil or ground water contamination, chemicals, waste, waste

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management, use of hazardous or dangerous goods or substances, building regulations, public and occupational health and safety, or noxious trades, use of biodegradable/non-biodegradable products.

Environmental Management System means the environmental management audit report addressing matters including waste management and environmental sustainability in accordance with the Specification, signed by an independent OHS Auditor certified as a Principal, Lead or Business Improvement Auditor by a JAS-ANZ personnel certifier, such as RABQSA, attesting that the Operator's Environmental Management System complies with relevant and current standards and procedures.

Equipment means the Operator's Equipment and the Council Equipment.

Equipment Maintenance Plan means the equipment maintenance plan to be prepared as part of the Maintenance Plan, approved by Council and otherwise amended in accordance with this Agreement.

Facilities has the same meaning as set out in clause 124 of the Licence Deed.

Force Majeure has the same meaning as set out in clause 124 of the Licence Deed.

Graffiti means the marking of any part of a Site or any Equipment in such a manner that the mark is not readily removable by wiping or by the use of water or detergent.

Gross Revenue means the gross amount received or receivable whether in cash or otherwise from User Fees, income from the sale of any merchandise or the operation of any café or kiosk.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Hazardous Substance means a substance that is listed in the document entitled '*List of Designated Hazardous Substances*' published by Safe Work Australia in its Hazardous Substances Information System or a substance that fits the criteria for a hazardous substance set out in the document entitled '*Approved Criteria for Classifying Hazardous Substances*' published by Safe Work Australia.

Incident means any incident at a Site involving:

- (a) minor or serious accident causing personal injury to a User or an employee, contractor or agent of the Operator or a visitor, whether or not requiring first aid;
- (b) attendance at a Site by the police, the fire brigade, an ambulance or State Emergency Services;
- (c) damage to a Site or the Facilities including Vandalism or Graffiti or damage to private property whether or not such damage may cause any interruption to normal operation of that Site;
- (d) work, health and safety issues;
- (e) breaches of Laws;
- (f) criminal activity;

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- (g) any conduct reportable under the Specification;
- (h) any breach of a relevant Council policy;
- (i) any actual or potential disruption to the Services including actual or threatened industrial action;
- (j) any breach of an Environmental Law or a Contamination Event, even if accidental;
- (k) the occurrence of any matter that may result in media attention;
- (l) the occurrence of any matter that may lead to litigation, give rise to an insurance claim or adversely affect the interests, or reputation of Council;
- (m) any default by the Operator in the performance or observance of any obligation it has under this Agreement.

Information means any information including data bases, financial information such as cash register takings, membership records, booking records and point of sale records, in all forms and includes all visual images, videos, recordings, computer generated data, information stored or recorded by any electronic medium or method of reproduction and includes personal information as defined under a Privacy Law.

Key Performance Indicators means the requirements for the performance of the Services (including, without limitation, any time, quality and/or cost outcomes) which the Operator must satisfy as stated in the Specification and updated or revised throughout the Contract Term.

Key Personnel means those persons identified in Schedule 2 as key personnel.

Law means any Federal, State or Local Government Statute, regulation, rule, statutory instrument, guideline, order or direction or the like given by a competent authority arising from such laws, rules or regulations.

Licence Deed means the Licence Deed granting the Operator the right to use and occupy a Site for the Contract Term so as to provide the Services and executed by the Parties on or about the date of this Agreement.

Licence Fee means the licence fee as provided for in the Licence Deed.

Maintenance means keep clean and tidy and in a good and substantial state of repair and working order having regard to the requirements of the Maintenance Plan to a standard acceptable by Council, and includes without limitation, the Grounds Maintenance and such routine maintenance as described in the Specification including the removal of Graffiti and the repair of any damage to a Site and the Facilities identified in this Agreement caused by Vandalism.

Maintenance Plan means the Maintenance Plan and Capital Works Schedule for a Site and the Facilities on the Site to ensure that the Site and the Facilities remains suitable for the delivery of the Services addressing the matters required by the Specification, approved by Council and otherwise amended in accordance with this Agreement.

Operator means the person identified in Item 5 of Schedule 1 and its employees, sub-contractors, agents and permitted assigns and successors.

Operator's Representative means the person specified in Item 8 of Schedule 1.

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Notify means to serve a written notice.

Objectives means the Objectives of the Council in outsourcing the operation and management of a Site as stated in clause 2.3 of the Specification.

Operating expenses means the following costs incurred in connection with the provision of the Services:

- (a) Outgoings;
- (b) repairs to, and maintenance of a Site or any building on a Site;
- (c) Grounds maintenance;
- (d) maintenance and repair of fire safety and extinguishing equipment to a Site and any building on a Site so as to ensure that an annual fire safety certificate pursuant to the Environmental Planning and Assessment Act 1979 can be issued, including the costs of repairs and maintenance;
- (e) cleaning a Site and any building on a Site (including the supply of all materials and equipment), and garbage removal and waste management;
- (f) repairs and maintenance of any Equipment including repairs and maintenance required as a result of Vandalism or Graffiti;
- (g) costs of building works and modifications to fitting and fixtures to and at a Site other than those fixtures and fitting identified in Specification as being owned by a licensee under a Pre-existing Licence;
- (h) the removal of any Graffiti and restoration of the part of a Site and/or Equipment affected by the Graffiti to its original condition;
- (i) providing security to a Site additional to the security system which has been installed at a Site by Council at the Commencement Date;
- (j) marketing and advertising expenses for a Site and the Services;
- (k) pest control;
- (l) telephone, facsimile and internet costs including call costs and line rental;
- (m) GST on these expenses, to the extent that the Council does not receive an input tax credit for them under the GST Law;
- (n) expenses properly chargeable to a capital account, interest on loans raised for the purpose of capital expenses and rent paid by the Licensor for any land comprising any part of the building are not operating expenses;
- (o) costs incurred in the management, administration and customer services;
- (p) audit, accounting reporting and other professional costs;
- (q) wages associated costs (including payroll tax) payable in respect of employees employed by the Operator to deliver the Services;
- (r) providing, replacing, repairing and maintaining Signage;
- (s) costs incurred in obtaining and keeping current all licences, approvals, consents, permits and certificates;
- (t) any other costs incurred in the day to day management of a Site.

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Operating Hours means the hours identified in the Specification for the operation of a Site or the Facilities within a Site or such other hours as are agreed in writing between the Parties.

Operational Management Documents means the documents referred to in clause 11 as amended from time to time during the Contract Term in accordance with this Agreement and which at the date of this Agreement are set out at Appendix 1.

Operator's Equipment means all necessary equipment provided by the Operator for the operation of its activities on a Site (including Consumables, all computer hardware, software (such as an on-line booking system) and point of sale equipment; furniture and equipment required to deliver Services such as nets and court fittings shelving, counters, safes, electrical equipment, water coolers, display furniture, cash registers, or other articles and any plant and machinery or other articles in the nature of trade fixtures).

Outgoings means the costs means:

- (a) rates and taxes;
- (b) sewer charges and liquid waste charges;
- (c) water charges (Access and Usage);
- (d) insurance premiums and other insurance directly or indirectly related to the Sites; and
- (e) GST on these outgoings, to the extent that the Licensor does not receive an input tax credit for them under the GST Law.

Party means a party to this Agreement.

Performance Period means each 6 month period throughout the Agreement over which the Key Performance Indicators will be assessed.

Programs means structured and regular activity run by the Operator for activities such as private tennis lessons, introductory tennis clinics, group tennis coaching, tennis tournaments and competitions and school holiday tennis clinics and national programs and including the Community Hire Programs, Programs and Social Use Programs.

Plan of Management means a plan of management that applies to a Site 'adopted by the Council under Division 2 of Part 6 of the *Local Government Act 1993* (NSW) as amended and replaced from time to time.

Pre-existing Licence has the same meaning as set out in clause 124 of the Licence Deed.

Privacy Law means any Law which may be applicable to the disclosure of Information, including the:

- (a) *Privacy Act 1988* (Cth);
- (b) *Privacy and Personal Information Protection Act 1998* (NSW); and
- (c) *Workplace Surveillance Act 2005* (NSW).

Request for Tender means the tender no T-[127716] issued by the Council requesting tenders for the provision of the Services at the Sites.

Security means the Security provided to the Council under the Licence Deed.

Services mean the services set out in Item 4 of Schedule 1 to this Agreement.

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Signage includes but is not limited to all directional and emergency signage, identification signage, safety and promotional signage.

Sites means that part of land identified in Item 8 of Schedule 1 and Appendices A and B of the Licence Deed.

Specification means the specification relating to the Services which forms part of the Request for Tender and includes any amendment to it agreed by the Parties from time to time.

Social Use Programs means programs to encourage the hire of tennis courts by groups or individual's (other than clubs, associations or organisations) for recreational and non-coaching purposes.

Tender means the Operator's response to the Request for Tender.

Tennis Site Inspection Sheet means the completed monthly Tennis Site Inspection Sheet in the form set out in the Specification.

Terminating Date means the date specified in Item 2 of Schedule 1.

Transition Plan means transition in and transition out plan addressing the requirements of the Specification and maintained as part of the Annual Business Plan.

User means any or all users of a Site.

User Fees means the fees paid by the users of the Facilities (other than fees paid under the Pre-existing Licences). The User Fee may, without limitation include revenue received or receivable for the use of any Facility as part of a Program or otherwise.

Vandalism means any damage to a Site resulting from the deliberate destruction or damage of a Site other than Graffiti.

WHS Management System means the work, health and safety management system submitted as part of the Tender and otherwise prepared and amended in accordance with this Agreement.

2 Interpretation

- 2.1 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- 2.1.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
 - 2.1.2 A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 2.1.3 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
 - 2.1.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
 - 2.1.5 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-

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- enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 2.1.6 A reference in this Agreement to any agreement, Agreement or document is to that agreement, Agreement or document as amended, novated, supplemented or replaced.
- 2.1.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement unless expressly stated otherwise.
- 2.1.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 2.1.9 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.
- 2.1.10 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 2.1.11 References to the word 'include' or 'including' are to be construed without limitation.
- 2.1.12 A reference to this Agreement includes the agreement recorded in this Agreement.
- 2.1.13 A reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 2.1.14 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 2.1.15 Any schedules, appendices and attachments to the Agreement form part of this Agreement.
- 2.1.16 Notes appearing in this Agreement are operative provisions of this Agreement.
- 2.1.17 If more than one site is identified in Schedule 1 of the Licence Deed, a reference to a Site includes a reference to all the Sites unless the context requires otherwise.

3 Notification and service

- 3.1 Where this Agreement provides that one Party is to Notify the other, a notice may be served by :
- 3.1.1 leaving it at the Party's address as specified in Item 6 or Item 7 (as relevant) of Schedule 1 or
- 3.1.2 sending it to the email address specified in Item 6 or Item 7 (as relevant) of Schedule 1; or
- 3.1.3 by any of the methods described by Section 710 of the *Local Government Act 1993* (NSW).
- 3.2 Anything sent by post will be taken to have been received in the ordinary course of post, whether or not the person to be served receives it.

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- 3.3 Where more than one person has the same interest in this Agreement, notification to or by one of them is sufficient notification to or by all of them.
- 3.4 Where notification relates to an Incident service of the notice may occur by email sent to the email address of the Council's Representative or the Operator's Representative as set out in Schedule 1.

4 Warranties and Undertakings

- 4.1 The Operator warrants that at the date of this Agreement and at all times during the Contract Term:
- 4.1.1 it has the right and authority to enter into this Agreement and to do all things which it is required to do by this Agreement;
- 4.1.2 all action has been taken by the Operator to render this Agreement binding upon it and legally enforceable against it in accordance with its terms;
- 4.1.3 it has had the opportunity to inspect each Site the subject of this Agreement prior to entering into this Agreement;
- 4.1.4 it has reviewed the Pre-existing Licences and is satisfied that it can provide the Services despite the Pre-existing Licences and that the provision of these Services can occur in a manner which does not interfere with the use and occupation of a Site by a licensee under a Pre-existing Licence;
- 4.1.5 it has all licences, authorisations, and insurances necessary to carry out the Services in accordance with the terms and conditions of this Agreement and the execution of this Agreement and its performance in accordance with its terms by the Operator:
- (a) complies with and will continue to comply with all necessary consents, registrations, approvals, licences, certificates or permits required by any Law and any relevant governmental agency;
- (b) does not violate any Laws or the requirements of any relevant governmental agency;
- 4.1.6 it has complied and will continue to comply throughout the Contract Term with the *Workplace Health & Safety Act 2011* (NSW) and any regulations made under that statute;
- 4.1.7 it has the skills, training and accreditations necessary to perform the Services to the level required by the Council and will ensure that all staff and sub-contractors engaged by it in the performance of the Services will have the necessary skills, training and accreditation;
- 4.1.8 it will take all reasonable and proper safety precautions to prevent death or injury to any person or damage to any property in or near a Site and will use, maintain and store all equipment used by the Operator or its sub-contractors to prevent unauthorised use and to minimise the danger of accident, injury, or loss arising from the use of a Site or part of a Site by any person;
- 4.1.9 all goods and materials that the Operator provides in the performances of this Agreement will meet all the requirements of the

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Specification or other documents supplied by Council in the Request for Tender;

4.1.10 all goods and materials delivered under this Agreement will be fit for the purpose stated in this Agreement, or if no purpose is stated, the purpose for which the goods and materials would ordinarily be used.

4.2 The Council may rely on each of the Operator's representations and warranties being true until this Agreement expires or is terminated (whichever is the earlier).

5 Relationship between Council and the Operator

5.1 The Operator will at all times during the Contract Term perform the Services in the capacity of an independent contractor to the Council.

5.2 The Operator does not have the authority to, and must not, bind the Council to any agreement or otherwise hold itself out as being authorised to deal as an agent of the Council except as authorised by this Agreement.

6 Interdependency

6.1 This Agreement is interdependent with and conditional upon the commencement of the Licence Deed.

6.2 To the extent there is any inconsistency between the terms of this Agreement and the Licence Deed, the terms of the Licence Deed prevail.

6.3 A breach by either the Operator or the Council of any provision of the Licence Deed will constitute a breach of this Agreement.

6.4 If either party rescinds the Licence Deed, then either party will be entitled to rescind this Agreement by notice in writing and this Agreement will be deemed to have been rescinded.

7 Commencement

7.1 Subject to clause 6.1, this Agreement commences and has force and effect on and from the date when the Parties have:

7.1.1 both executed the same copy of this Agreement and the Licence Deed, or

7.1.2 each executed separate counterparts of this Agreement and the Licence Deed and exchanged the counterparts.

7.2 The Parties are to insert the date when this Agreement commences on the front page and on the execution page.

8 Option to extend

8.1 Provided the Council is satisfied that the Operator has complied with the terms of this Agreement and if the Council extends the Term under the Licence Deed, the Contract Term under this Agreement will be extended for the period specified as Option 1 and set out in Item 3 of Schedule 1.

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- 8.2 This further term will commence on the day after the Terminating Date and subject to the following will be on the same terms and conditions as this Agreement (excluding clause 8.1) following the exercise of the extension.
- 8.2.1 the Commencement Date in Item 1 of Schedule 1 shall be replaced with the Commencement Date provided for in Item 3 of Schedule 1 as Commencement Date for Option 1, and
- 8.2.2 the Terminating Date in Item 2 of Schedule 1 shall be replaced with a Terminating Date provided for in Item 3 of Schedule 1 as the Terminating Date for Option 1.
- 8.3 Provided the Council is satisfied that the Operator has complied with the terms of this Agreement and if the Council extends the term under the Licence Deed in accordance with clause 10 of the Licence Deed, the Contract Term under this Agreement will be extended for the period specified as Option 2 and set out in Item 3 of Schedule 1.
- 8.4 This further term will commence on the day after the Terminating Date specified in Item 2 in accordance with clause 8.2.2 and terminate at the end of the period specified for Option 2 and subject to the following will be on the same terms and conditions as this Agreement:
- 8.4.1 Clause 8.3 and 8.4 will be excluded; and
- 8.4.2 the Commencement Date in Item 1 of Schedule 1 shall be replaced with the Commencement Date provided for in Item 3 of Schedule 1 as the Commencement Date for Option 2,
- 8.4.3 the Terminating Date in Item 2 of Schedule 1 shall be replaced with the Terminating Date provided for in Item 3 of Schedule 1 as Terminating Date for Option 2.

9 Provision of the Services

- 9.1 The Operator must perform the Services during the Contract Term:
- 9.1.1 at the times and in the manner specified in this Agreement and the Specification;
- 9.1.2 in accordance with the terms and conditions of this Agreement, the Licence Deed and the standards and requirements of the Specification;
- 9.1.3 in accordance with the Operational Management Documents as finalised, amended or varied from time to time in accordance with Agreement and the Specification;
- 9.1.4 with such skill and care which as is equal to the degree of skill, care and diligence normally exercised by recognised professional persons who supply services of a similar nature;
- 9.1.5 in accordance with, and in order to achieve, the Objectives and the Key Performance Indicators.
- 9.2 The Operator must in the performance of the Services conform to, observe and comply with:
- 9.2.1 the Directions from time to time made or given by the Council's Representative notwithstanding that any such Direction is inconsistent

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with or not in accordance with the Operational Management Documents;

9.2.2 all applicable policies, procedures and codes of conduct of the Council.

10 Operator's obligation to meet costs

- 10.1 The Operator manages and operates a Site and the Facilities at that Site entirely at its risk. The Operator shall be responsible for the payment of all Operating Expenses, costs for which it is responsible for under the Licence Deed (including Outgoings) and other costs and expenses related to and incidental to the provision by the Operator of the Services.
- 10.2 Where any of the costs and expenses referred to in clause 10.1 are incurred by the Council, the Council will issue a tax invoice to the Operator every quarter commencing on the Commencement Date of this Agreement and the Operator will reimburse the Council for the full amount incurred by the Council within seven (7) days of receipt of such invoice.
- 10.3 The Operator is to provide and maintain at its expense all the Operator's Equipment.
- 10.4 The Operator will be responsible for all costs associated with obtaining, renewing or transferring all licences, certificates and permits.
- 10.5 Despite any other provision of this Agreement, increases in the costs of water usage charges, gas, or electricity energy costs due to an increase in the amount of water, gas, electricity or other energy used at a Site or a Facility at the Commencement Date are costs payable by the Operator and Council shall not be liable to reimburse the Operator for such costs.

11 Plans

- 11.1 The Operator must provide a draft Annual Business Plan to the Council's representative on the Commencement Date. Thereafter the Annual Business Plan for the forthcoming financial year must be provided to Council's Representative by 1 July each year throughout the Contract Term.
- 11.2 The Parties acknowledge that the Annual Business Plan is an Operational Management Document and is to address the requirements set out in the Business Methodology Statement including :
- 11.2.1 a strategy for the coming year setting out such matters as:
- (a) organisational priorities;
 - (b) the services and outcomes to be provided;
 - (c) a review of external influences (STEEPLE analysis) that impact on a Site;
 - (d) customer, stakeholder and service standards to be achieved by the Operator; and.
- 11.2.2 operational matters dealing with:
- (a) proposed budgets including proposed Capital Works, Maintenance and any Refurbishment Works;

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- (b) a marketing plan;
 - (c) Key Performance Indicators and operational risks.
- 11.3 In addition to the Annual Business Plan, the Operator must ensure that it maintains and keeps up to date the following Operational Management Documents:
 - 11.3.1 Emergency Management Plan;
 - 11.3.2 Transition Plan;
 - 11.3.3 Work Health and Safety Plan;
 - 11.3.4 Environmental Management System.
 - 11.3.5 Hazardous Chemicals Register; and
 - 11.3.6 any other plan, policy or procedure related to the management and operation of one or all of a Site as identified in the Specification or as required by Council.
- 11.4 The Operational Management Documents shall be developed and finalised in accordance with the Specification.
- 11.5 The Operator must keep the Operational Management Documents up to date and current and to this end the Parties will discuss any variations that may be required to those documents at meetings held regularly and at least twice annually.
- 11.6 Without limiting clause 11.5, the Council may, following consultation with the Operator, issue a written Direction to the Operator requiring a change to the Operational Management Documents. Upon receipt of the Direction the Operational Management Documents are taken to be varied and the Operator must comply with the varied Operational Management Documents.
- 11.7 The Operator must comply with all Directions of the Council in relation to the Operational Management Documents.
- 11.8 The Council's Representative may at any time undertake an audit of the performance of any part of the Services including an audit to assess compliance of the Services with the Operational Management Documents and to this end may inspect any part of a Site. The Operator will provide access to all documents and make available all personnel reasonably required for such audit.
- 11.9 Despite anything to the contrary in this Agreement, the Operator must:
 - 11.9.1 by the 10th day of each calendar month provide to Council in respect of a Site the attendance figures, participation numbers, court usage statistics and any other figures reasonably required by Council in the form set out in the Specification;
 - 11.9.2 on each six (6) month anniversary of the commencement of this Agreement provide to Council the Operator's up to date financial reports in respect of its use of a Site.
 - 11.9.3 provide the Tennis Site Inspection Sheet to the Council in accordance with the Licence Deed.

12 User Fees and Other Charges

- 12.1 Subject to the Operator providing the Services, the Operator is entitled to receive the Gross Revenue throughout the Contract Term and is required to include the proposed user fees for each year in the Annual Business Plan.

13 Council's Representative and Operator's Representative

- 13.1 The Operator warrants that the Operator's Representative:
- 13.1.1 acts as an agent of Operator;
 - 13.1.2 will be available to consult with the Council in relation to matters arising out of this Agreement;
- and decisions of the Operator's Representative bind the Operator in all respects.
- 13.2 The duties of the Council's Representative include (without limitation):
- 13.2.1 review and monitor the performance of the Council of its obligations under this Agreement and report thereon to the Council;
 - 13.2.2 ensure that the Operator's obligations under the Agreement are carried out in accordance with the Operation Management Documents and policies, procedures and codes of conduct adopted by the Council from time to time;
 - 13.2.3 carry out such other functions as are set out in this Agreement or agreed between the Parties from time to time;
 - 13.2.4 issue any Direction under this Agreement, including without limitation any variation to the Operational Management Documents or any modification to any safety policy or plan.
- 13.3 The duties of the Operator's Representative include (without limitation):
- 13.3.1 administering the terms of this Agreement including reporting regularly or as requested to the Council's Representative in relation to the performance of the Services;
 - 13.3.2 accepting on behalf of the Operator any notices or other documents issued by or on behalf of the Council from time to time pursuant to this Agreement;
 - 13.3.3 liaising with the Council's Representative in good faith in relation to any, comments or other communications received from time to time in relation to the Services;
 - 13.3.4 binding the Operator by his decisions and acts or omissions.
- 13.4 The Operator must comply with any Direction given by the Council or the Council's Representative in accordance with this Agreement.
- 13.5 The Council's Representative may appoint a person to act on his or her behalf either generally or in relation to specific matters.
- 13.6 A reference in this Agreement to the Council's Representative does not operate so as to prevent the Council exercising the functions given to the Council's Representative.

14 Variation of the Services

- 14.1 Without limiting any other rights of the Council under this Agreement, if at any time the Operator or the Council wishes to add to, enhance or vary any part of the Services or the Operational Management Documents, the Operator's Representative and the Council's Representative are to meet in good faith to negotiate such variation and the terms of this clause shall apply.
- 14.2 If either Party wishes to add to, enhance or vary any part of the Services or the Operational Management Documents, it must Notify the Operator of the proposed variation.
- 14.3 Upon receipt of the notice, the Parties shall meet within seven days to discuss and attempt to agree if the proposed Variation will have any impact of the Gross Revenue and/or if the Variation will necessitate an adjustment to the Licence Fee payable under the Licence Deed.
- 14.4 If the Parties agree in writing the effects of the variation, the Council may instruct the Operator in writing to carry out the variation and the Licence Fee will be adjusted accordingly.
- 14.5 If the Parties do not agree on the effect of the variation proposed under this clause, there will be no change to the Services.

15 Suspension of Services

- 15.1 The Operator may suspend the Services at a Site but only in the circumstances set out in clause 27(a) – (c) of the Licence Deed for that Site or in accordance with clause 19 of this Agreement.

16 Obligations and restrictions relating to the Delivery of the Services

- 16.1 Without limiting any other obligation of the Operator under this Agreement, the Operator must in the course of providing the Services:
 - 16.1.1 comply with any Law affecting the carrying out of the Services from all or any part of a Site including any Development Consent relating to a Site);
 - 16.1.2 take out and keep current all licences and permits required to perform the Services to be conducted on a Site;
 - 16.1.3 comply with all requirements and Directions of the Council;
 - 16.1.4 maintain an up to date Emergency Plan for a Site and ensure that all staff and sub-contractors are trained and familiar with its operation;
 - 16.1.5 identify sponsorship opportunities for the Services and a Site;
 - 16.1.6 liaise in good faith with all third party users of a Site; and
 - 16.1.7 ensure the safety and wellbeing of persons within a Site including without limitation ensuring the protection of children present at a Site.

17 Maintenance of the Equipment

- 17.1 The Operator shall be responsible for the maintenance and replacement of all Equipment and must at all times comply with the Equipment Maintenance Plan.
- 17.2 The maintenance of equipment is to be undertaken by suitably qualified and experienced personnel or specialist contractors.

18 Food and Beverages

- 18.1 If part of a Facility includes a café or kiosk or the like, the Operator acknowledges that as part of the Services it will be responsible for ensuring that catering and food services are available from that café during the Operating Hours and that all hospitality facilities are presented in a clean and attractive manner.
- 18.2 The Operator acknowledges that it is responsible for the provision of all equipment necessary to operate the café including any freezers and electrical appliances.
- 18.3 The Operator must, at all times, ensure the food preparation areas are registered, that a trained Food Safety Supervisor pursuant to the Food Act 2003 is employed at a Site operating the café or kiosk, that approved food safety plans are in place and full compliance with all relevant Laws and standards and codes of practice is maintained.
- 18.4 The Operator is to make reasonable endeavours to ensure that a range of healthy food and beverage options are available from the kitchen/kiosk, local government area.
- 18.5 Prior to the sale or consumption of any alcohol, a copy of the relevant licence must be provided to the Council. Any sale and consumption of alcohol must be in accordance with that liquor licence.

19 Operating Hours

- 19.1 Except as provided under this Agreement the Parties agree that any Site which is subject to this Agreement must be open to the public during the Operating Hours.
- 19.2 The Operator may close a Site during operating hours only in the following circumstances:
 - 19.2.1 with the prior written consent of the Council which may be withheld in its absolute discretion;
 - 19.2.2 a Force Majeure event which satisfies the requirements of clause 15;
 - 19.2.3 as a result of inclement weather which would make it unsafe for the Facilities to be used; or
 - 19.2.4 as otherwise provided for in the Specification.
- 19.3 If a Force Majeure event requires shutdown of a Site the Council's Representative should be contacted as soon as practical and a report detailing the reasons for the shutdown should be provided to the Council's Representative.

- 19.4 If a Site is closed under clause 19.2.2 both the Council and the Operator must use their best endeavours to re-open the Site as soon as practicable.

20 Marketing and Sponsorship

- 20.1 The Operator must promote each Site the subject of this Agreement in accordance with the Annual Business Plan.
- 20.2 The Operator may with the prior written approval of the Council's Representative seek sponsorship of events or Programs to be held at a Site the aim of which is to enhance the use of a Site for tennis and recreational purposes.
- 20.3 The Operator shall ensure that the sponsor(s) and its business activities are compatible with the obligations of the Operator as detailed in this Agreement and the aims of the Council in general.
- 20.4 The Operator will advise the Council's Representative and invite Council's comment in advance of completion of any negotiations with any potential sponsors for any sponsorship.
- 20.5 The Operator shall not enter into any agreement or commitment with sponsors which extends beyond the period of this Agreement.
- 20.6 Any sponsorship agreement must provide for the Operator to terminate the sponsorship agreement at the Operator's convenience.
- 20.7 The Operator must notify the Council immediately upon becoming aware of any matter arising from the sponsorship which has the potential to effect the Services or bring the Council into disrepute.
- 20.8 The Operator must comply with any Council policy adopted by Council from time to time in relation to sponsorship and must not seek sponsorship from:
- 20.8.1 companies which sell tobacco or alcohol;
 - 20.8.2 companies which engage in or promote gambling, or prostitution;
 - 20.8.3 companies selling sex products;
 - 20.8.4 religious organisations;
 - 20.8.5 organisations which portray negative views on gender, race, sexual preference, religious belief, marital status or physical or mental disability.
- 20.9 Despite anything in this Agreement, Council retains all rights in respect of the naming of a Site and the Operator cannot enter into any sponsorship agreement in respect of such rights.

21 Merchandising

- 21.1 If retail space is available at a Site the Operator must manage and promote the retail merchandising activities associated with the Permitted Use from the Site and ensure that any shop selling merchandise is open during Operating Hours.
- 21.2 The Operator acknowledges that as part of the Services it will be responsible:

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21.2.1 for ensuring that all retail facilities are presented in a clean and attractive manner and adequately stocked.

21.2.2 the provision of all equipment necessary to operate this service including point of sale equipment and electrical appliances.

22 Performance Indicators

- 22.1 The Operator must comply with the Key Performance Indicators during the Contract Term.
- 22.2 The performance of the Operator will be assessed against the Key Performance Criteria during the Performance Period every 6 months.
- 22.3 The Operator acknowledges and agrees that:
- 22.3.1 the Key Performance Indicators represent a reasonable standard for the performance of the Services;
- 22.3.2 the Key Performance Indicators may be reviewed by the Council at such time as it thinks fit to ensure that they reflect best practice from time to time.
- 22.4 Any variation to the Key Performance Indicators will be notified to the Operator in writing and will take effect from the date such notice is delivered to the Operator. The Council, may not, without the consent of the Operator, vary the Key Performance Indicators in a manner which is reasonably likely to increase the costs incurred by the Operator in the performance of the Services.
- 22.5 The Operator acknowledges that the Council has entered into this Agreement in reliance upon the Operator's representations and warranties regarding its capabilities of performing the Services in accordance with the Specification and the Key Performance Indicators.
- 22.6 Except in the case of Graffiti or an Incident resulting in the death or serious injury of a person at a Site, in which case notification must be as soon as practical, the Operator must notify the Council within 14 days of becoming aware of any Incident. The Operator agrees that it shall take prompt action to address the Incident.
- 22.7 If, during any Performance Period, the Operator fails to achieve the Key Performance Indicators, the Council may, in its absolute discretion, by notice in writing:
- 22.7.1 manage the non-performance in accordance with the Specification; or
- 22.7.2 grant the Operator additional time to achieve the Key Performance Indicators;
- 22.7.3 terminate this Agreement in accordance with clause 29 and recover any loss or damages the Council determines it has incurred which will then be a debt due and payable to the Council.

23 Intellectual Property

- 23.1 The Operator warrants that it is entitled to use any Intellectual Property, which may be used by it in connection with the provision of the Services under this Agreement. The Operator indemnifies and at all times must keep the Council

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indemnified against all Claims including a Claim, to pay compensation for damages and costs or expenses arising out of or in respect of any breach of any third party's Intellectual Property rights relating to the scope of activities under this Agreement.

- 23.2 If applicable and required, the Operator will grant to the Council a non-exclusive licence to use the Operator's Intellectual Property rights in relation to the goods & materials or service being provided and must execute an agreement giving effect to this clause if requested by the Council.

24 Employees, Key Personnel and Sub Contractors

- 24.1 The Operator must engage, employ and maintain at all times suitably qualified, skilled and efficient contractors staff together with Key Personnel to perform the Services and its other obligations under this Agreement.
- 24.2 The Operator must ensure that:
- 24.2.1 a sufficient number of suitably qualified staff are present at a Site at all times during the Operating Hours and at any other times that the Site is open to the public.
 - 24.2.2 no person other than Key Personnel perform the functions or roles designated for those persons in connection with the performance of the Services by the Operator.
 - 24.2.3 all its employees and/or contractors or any other person representing the Operator and associated with the provision of activities for children on a Site have undertaken a "Working with Children Check" in a manner required and certified by the New South Wales Government's Office of the Children's Guardian or have otherwise complied with any other statutory requirements in respect of working with children required from time to time.
- 24.3 The Operator must Notify the Council in writing immediately upon any Key Personnel being unable to carry out their designated functions or roles or ceasing to be employed or engaged by the Operator.
- 24.4 The Operator must without delay engage or employ replacement staff to carry out the functions or roles of the Key Personnel. The replacement staff must have skill and expertise comparable to those of the Key Personnel whom they are replacing.
- 24.5 The Operator may engage sub-contractors in connection with the performance of the Services but only with the prior written approval of the Council. Notwithstanding the engagement of sub-contractors the Operator remains responsible for the performance of the Services.
- 24.6 Without limiting clause 49.1, when seeking approval pursuant to clause 24.5 to engage a sub-contractor the Operator must provide information to the Council to demonstrate to the Council that the proposed sub-contractor is respectable, qualified and capable of performing that part of the Services which the Operator proposes to subcontract.
- 24.7 The Operator is to pay the Council's reasonable legal and other costs which Council may incur in making inquiries as to the respectability, solvency, responsibility, stature, experience and capability of any proposed sub-contractor.
- 24.8 The Operator must ensure that all employees, sub-contractors and agents:

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- 24.8.1 comply with all Laws relating to the performance by the subcontractor of its obligations under the subcontract; and
- 24.8.2 comply with relevant codes of practice and Australian Standards and seek to apply best practice in the performance of the Services or any work under a contract;
- 24.8.3 comply with the quality standards and specifications required by the Council pursuant to this Agreement.
- 24.8.4 are fully qualified or trained for the work and satisfactorily complete any training required by the Council or the Council's Representative from time to time;
- 24.8.5 comply with any Direction of the Council's Representative;
- 24.9 The Operator must evaluate the performance of all personnel engaged in connection with the provision of the Services from time to time as requested by the Council and provide copies of such evaluations to the Council.
- 24.10 The Council's Representative may give a Direction to the Operator requiring the immediate removal of any employee, agent or sub-contractor of the Operator from a Site.
- 24.11 Any costs associated with the carrying out of such a Direction will be borne by the Operator.

25 Records, reports and Incident reporting

- 25.1 The Operator must keep and maintain complete and accurate records of all matters specified in this Agreement and the Specification.
- 25.2 The Operator must deliver to the Council all reports required to be prepared and submitted under this Agreement at the times, in the format approved by Council and in the manner stated in the Specification or otherwise as the Council may direct from time to time.
- 25.3 The Operator's Representative will, in consultation with the Council's Representative develop a standard template for recording and reporting Incidents and comply with such a template.
- 25.4 If the Council forms the reasonable opinion that:
 - 25.4.1 there is a defect or irregularity in the reports referred to in this clause;
 - 25.4.2 any matter which should be disclosed in such accounts is not in fact so disclosed;
 - 25.4.3 there is any material defect or irregularity in such accounts;
 - 25.4.4 such accounts do not contain a true and fair report of the matters they purport to deal,it may issue a Direction under clause 13 and or request access to all financial records for the purposes of inspecting and auditing the financial operation of any Site including but not limited to, random cash audits or spot checks of income collected against income recorded. The Operator will cooperate with the Council in respect of any such inspection or audit.

26 Indemnity

- 26.1 Without limiting any indemnity otherwise given under this Agreement and in addition to any indemnity provided under the Licence Deed, the Operator shall indemnify Council to the fullest extent permitted by Law against all Claims to which the Council shall or may be or become liable including but not limited to all Claims:
- 26.1.1 in connection with a breach of this Agreement;
 - 26.1.2 in connection with a failure of the Operator to pay a cost for which it is responsible pursuant to clause 10.
 - 26.1.3 in connection with a failure of the Operator to take reasonable precautions to prevent child abuse (as defined in Part 1B of the *Civil Liability Act 2005*) by an employee, a person akin to an employee, a sub-contractor or agent of the Operator);
 - 26.1.4 in connection with damage to any Equipment whatsoever including Council Equipment whether caused by the Operator or its employees, or any other person whether employed by the Operator or not and whether or not arising from any accident, damage or injury occurring from the use of a Site; or
 - 26.1.5 in connection with a failure of the Operator to comply with any Law including but not limited to any Law which may apply to the Operator's use of a Site and access thereto.
- except to the extent that any such Claims arise from or are contributed to by the negligence or wilful act or omission on the part of the Council.
- 26.2 Without limiting clause 26.1, Council shall have no responsibility or liability for any loss of or damage to fixtures and/or personal property of the Operator, any agent or servant of the Operator or of any member of the public whilst in or upon a Site (except to the extent that such Claims arise out of the negligent acts or wilful omissions or default of the Council).
- 26.3 The Council will not be under any liability for any loss, injury or damage sustained by the Operator or any other person at any time in connection with a failure of the electricity, telephones, gas, water supply, sewerage, drainage or any other services or facilities provided by the Council or enjoyed by the Operator in conjunction with the delivery of the Services under this Agreement provided that such failure is not due to the negligent or wilful act or omission of the Council its servants or agents.
- 26.4 Any breach of any Law in relation to the delivery of the Services from the a Site is taken to breach a condition of this Agreement, provided that:
- 26.4.1 the Operator has been found guilty of the breach, and
 - 26.4.2 the Council determines that the breach warrants the Termination of this Agreement.
- 26.5 Without limiting any other indemnity granted by this Agreement, the Operator shall indemnify and keep the Council indemnified against all Claims arising from a breach by the Operator of any Environmental Law which breach is in relation to a Site. This clause shall not merge on expiration or other determination of this Agreement in respect of any act, deed, matter or thing happening before such expiration or determination.
- 26.6 To the fullest extent permitted by law, Part 4 of the *Civil Liability Act 2002* (NSW) does not apply to this Agreement.

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27 Insurance

- 27.1 The Operator must, at its own expense, take out and keep up to date:
- 27.1.1 a public liability insurance policy in the amount of \$20 million for each incident;
 - 27.1.2 a professional indemnity insurance policy in the amount of \$10 million for each incident;
 - 27.1.3 worker's compensation insurance in accordance with any applicable Law;
 - 27.1.4 a policy of insurance for the contents of a Site for all Equipment,
 - 27.1.5 a policy of insurance for covering product liability in relation to any merchandise sold by the Operator,
 - 27.1.6 volunteer's insurance;
 - 27.1.7 such other insurance policies as a prudent person would maintain in the circumstances of the Operator.
- 27.2 The insurance policies must be taken out with an insurance company licensed to conduct insurance business in Australia and approved by the Council. The interest of Council must be noted on the insurance policy.
- 27.3 The Operator must give copies of the insurance policies of the types described in clause 27.1 to the Council on the Commencement Date.
- 27.4 Within seven (7) days of receiving any certificate of renewal or further policy, the Operator must give a copy of it to the Council.
- 27.5 The Operator must, if requested by the Council, show evidence of renewal of an expired policy to the Council.
- 27.6 The Operator must not do anything directly or indirectly that might make any insurance on or relating to a Site void or voidable, prejudice any claim under such policy or which might increase the policy premium.
- 27.7 The Operator must pay any increase in insurance premiums or charges incurred because of the Operator's use of a Site or the Services to be provided under this Agreement.
- 27.8 The Operator must comply with the requirements of any insurer.
- 27.9 No Claim can be made by the Operator to Council as a result of its failure to insure any item required to be insured under this Agreement and any loss incurred as a result of that failure cannot be categorised as an operational expense under this Agreement.

28 Transfer and assignment

- 28.1 The Operator must not transfer or assign its rights or obligations under this Agreement to any person.

29 Termination of this Agreement

- 29.1 The Council may terminate this Agreement:

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- 29.1.1 if the Licence Deed is terminated for any reason;
- 29.1.2 if the Operator breaches a condition of this Agreement and the Operator fails to rectify such breach in accordance with the provisions of this Agreement;
- 29.1.3 if the Operator fails to comply with a Direction in accordance with this Agreement;
- 29.1.4 if the Operator fails, on three occasions to submit reports required under clause 25 in accordance with this Agreement;
- 29.1.5 if defects notified under the provisions of this Agreement are not remedied within the time specified in the notice;
- 29.1.6 if the Operator is a corporation that:
 - (a) stops or threatens to stop carrying on the business; or
 - (b) goes into liquidation, whether voluntary or not; or
 - (c) an order is made or a resolution is passed for its winding up or is wound up unless it is for reconstruction or amalgamation; or
 - (d) is placed under the control of a liquidator or receiver (in both cases whether provisional or otherwise); or
 - (e) is placed under official management under the *Corporations Act 2001*; or
 - (f) enters into a composition or scheme of arrangement.
- 29.2 In the circumstances specified in clause 29.1, the Council may terminate the Agreement by notifying the Operator in writing of the termination of the Agreement.
- 29.3 If the Council terminates this Agreement under this clause, the Operator will not be released from liability for any prior breach of this Agreement and other remedies available to the Council to recover any amounts due and owing to Council or for breach of this Agreement will not be prejudiced.

30 Completion of the Contract Term

- 30.1 Upon the expiry of the Contract Term or the termination of this Agreement the Operator must:
 - 30.1.1 provide or return to Council all Information, data bases, records, source coding for web-sites, intellectual property and materials developed for the delivery of the Services from a Site during the Contract Term or those requested by Council in the format and order required by Council;
 - 30.1.2 remove any Operator's Equipment from a Site and make good to the satisfaction of the Council's Representative any damage caused by such removal,
 - 30.1.3 ensure that all Council Equipment owned by Council is securely retained at the Site at which it is usually used and stored and accessible to Council.
- 30.2 Any Operator's Equipment which is not removed by the Operator at the end of the Contract Term, is deemed to have been abandoned by the Operator.

- 30.3 To ensure the continuation of Services without any degradation in the quality of service delivery prior to expiration or termination of this Agreement the Operator must comply with the Transition Plan. The obligation to comply with the Transition Plan continues after the termination or expiration of this Agreement.
- 30.4 The Operator must co-operate with Council and provide necessary assistance to any operator appointed by Council to take over the operation of a Site after the Contract Term. Any action by the Operator which has the effect of delaying, obstructing, damaging, misleading or harassing any successor appointed by Council shall constitute a breach of this Agreement. This clause shall not merge on expiration or other determination of this Agreement.

31 Security for performance of obligations

- 31.1 The Parties acknowledge that the Security to be provided by the Operator under the Licence Deed is security for the purposes of this Agreement.
- 31.2 In addition to the purposes set out in clause 22 of the Licence Deed the Council may call on the Security to remedy any breach of this Agreement notwithstanding any other remedy it may have under this Agreement, under any Act or otherwise at law or in equity. Such application will not waive any breach of any of the Operator's obligations under this Agreement.
- 31.3 If Council uses the Security in whole or part to remedy breach of this Agreement then the Licensee must within 14 days of written demand from Council top-up the Security to the amount required under the Licence Deed.

32 Interest

- 32.1 The Operator must pay interest to the Council:
 - 32.1.1 on any money due under this Agreement; or
 - 32.1.2 on any judgment for the Council in an action arising from this Agreement,until all outstanding money and interest is paid in full.
- 32.2 Interest will accrue and be calculated daily at the rate set by the Council's bank as its benchmark rate for overdrafts of \$100,000 or more or, if there is no set rate, a rate equivalent to 3% more than the 90 day bank bill swap rate (as quoted in the Australian Financial Review) as at the date the money is due and will be calculated on the daily balances.

33 Costs

- 33.1 The Operator and the Council shall each meet their own costs in relation to the preparation and negotiation of this Agreement.
- 33.2 The Operator shall pay for any stamp duty and registration fees in relation to this Agreement.

34 Confidentiality

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- 34.1 The Operator must not at any time during the currency of this Agreement or at any time thereafter unless required in the proper course of carrying out the Services or as authorised by the Council and by Law, disclose to any person any personal information, confidential strategies, operations, processes, dealing or other information relating to the Council or its organisation structure, finances, transactions or affairs which may come to the knowledge of the Council during the term of this Agreement and shall keep with complete secrecy all or any such information which may come to the knowledge of the Operator, except where disclosure is required by Law by the order of a Court of competent jurisdiction.
- 34.2 The Operator agrees and undertakes not to use or attempt to use any or all of such information in any manner whatsoever which may cause or be calculated or likely to cause injury or loss either directly or indirectly to the Council.
- 34.3 The Operator must take all reasonable steps to ensure that its staff, subcontractors, directors and agents do not make public or disclose any of the information referred to in this clause.
- 34.4 This clause survives termination of this Agreement.

35 Information Collection and Access

- 35.1 The Operator must comply with all Privacy Laws in collecting, storing and disclosing any personal information.

36 Access to Public Information

- 36.1 The Operator acknowledges that this clause is included in this Agreement to facilitate Council's obligations under s121 of the *Government Information (Public Access) Act 2009*.
- 36.2 The Operator must within seven days of receiving a written request by Council, provide Council with access to the following information contained in records held by the Operator:
- 36.2.1 information relating directly to the performance of the Services,
- 36.2.2 information collected by the Operator from members of the public to whom it provides, or offers to provide, the Services,
- 36.2.3 information received by the Operator from Council to enable it to provide the Services.
- 36.3 For the purposes of clause 36.2, information to be provided to Council does not include:
- 36.3.1 information that discloses or would tend to disclose the Operator's financing arrangements, financial modelling, cost structure or profit margins,
- 36.3.2 information that the Operator is prohibited from disclosing to Council by provision made by or under any Law,
- 36.3.3 information that, if disclosed to Council could reasonably be expected to place the Operator at a substantial commercial disadvantage in relation to Council, whether at present or in the future.

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- 36.4 The Operator will provide copies of any information in clause 36.2 as requested by Council at the Operator's own expense.
- 36.5 Any failure of the Operator to comply with any request in this clause will be a breach of this Agreement and will allow Council to terminate the Agreement by giving notice in writing of its intention to do so with the termination to take effect seven (7) days after receipt of the notice.

37 GST

- 37.1 In this clause:
Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.
Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 37.2 Subject to clause 37.3, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 37.3 If a Party is seeking payment for a Taxable Supply under this Agreement from another Party it must deliver tax invoices to the other Party in a form that complies with the GST Law, so that the Party receiving the Supply may claim Input Tax Credits for the Taxable Supply.
- 37.4 No additional amount shall be payable by the Council under clause 37.3 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 37.5 No payment of any amount pursuant to this clause 37, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 37.6 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 37.7 This clause continues to apply after expiration or termination of this Agreement.

38 Dispute Resolution

- 38.1 Without limiting any rights that the Council may have under this clause 38, should the Council be dissatisfied with the Operator's performance under this

**Agreement to Manage, Operate and Promote Council Tennis Facilities
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024 032)**

- Agreement, the Council may make a Complaint by Notifying the Operator in writing of the matter with which it is dissatisfied.
- 38.2 If the Operator fails to address the Complaint to the satisfaction of Council within the time frame specified by the Council in the notice, then the Council may treat the matter as a dispute.
- 38.3 In addition to clause 38.1, if the Parties are in dispute regarding any matter relating to or arising under this Agreement, then either Party may Notify the other giving particulars of such dispute.
- 38.4 Where a notice of dispute is served pursuant to this clause the Parties agree to enter into informal negotiations to try and resolve the dispute in good faith and in an amicable manner.
- 38.5 If the dispute is not resolved informally within 21 days of service of written notification, the Parties may confer with a mutually agreed third party whose role will be to assist in the resolution of the dispute by mediation or expert appraisal of the dispute. The Parties agree to provide all information and assistance reasonably requested by such third party, including access to any accounting or other business records relating to or arising out of this Agreement.
- 38.6 A third party appointed in accordance with this clause may decide in which proportions any fees will be borne by the respective Parties. In the absence of any such decision by the third party fees shall be borne equally by the Parties.
- 38.7 Neither Party shall be entitled to commence or maintain any proceedings in any court or tribunal until negotiations or mediations have taken place pursuant to this clause except where either Party seeks urgent interlocutory relief.
- 38.8 Either Party may at any time bring negotiations or mediation to an end by serving upon the other Party written notice stating that the dispute has failed to be resolved. Upon service of such notice both Parties shall be entitled to pursue any legal remedies available to them in relation to the dispute. This clause does not in any way limit a mediator's power to apportion fees under clause 38.6.
- 38.9 Despite any dispute under this or any other clause of this Agreement the Parties must, unless acting in accordance with an express provision of this Agreement, continue to perform their obligations under this Agreement.

39 Governing Law

- 39.1 This Agreement will be governed by and construed in accordance with the laws of the State of New South Wales and the Parties submit generally and unconditionally to the non-exclusive jurisdiction of the Courts of that State.

40 Variations

- 40.1 No amendment, variation or modification or consent to departure by any Party of the terms of this Agreement will have any force or effect, unless effected by a document executed by the Parties.

41 Waivers and Remedies

- 41.1 The failure to exercise or delay in exercising by any party of any right conferred by this Agreement does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that Party.
- 41.2 The rights of a party conferred by this Agreement are cumulative and are not exclusive of any rights provided by Law.

42 Continuing Performance

- 42.1 The provisions of this Agreement do not merge with any action performed or document executed or delivered by any party for the purposes of performance of this Agreement.
- 42.2 All representations and warranties in this Agreement will survive the execution and delivery of any document for the purposes of, and continue subsequent to, performance of this Agreement.

43 Entire Agreement

- 43.1 Except as provided for in clause 6, this Agreement expresses and incorporates the entire agreement between the Parties in relation to its subject matter and all the terms of that agreement, and supersedes and excludes any prior document or collateral negotiations, understanding, communication, agreement, representation or warranty by or between the Parties in relation to that subject matter or any term of that agreement.

44 Further Assurance

- 44.1 Each Party must whether prior or subsequent to performance of this Agreement, execute all documents and perform all acts necessary to give full effect to this Agreement.

45 Precedence

- 45.1 Without limiting clause 6.2, in the event of any inconsistency between any of the documents which constitute this Agreement the following is the order of precedence with the first mentioned prevailing over the second and so forth:
- 45.1.1 the terms of this Agreement;
 - 45.1.2 the Operational Management Documents;
 - 45.1.3 the Specification;
 - 45.1.4 the Tender;
 - 45.1.5 the Request for Tender.

46 Indemnities

- 46.1 Each indemnity undertaken by any Party pursuant to this Agreement shall:
- 46.2 constitute an obligation of that Party separate and independent from its other obligations under this Agreement or any other agreement;
 - 46.3 survive and continue subsequent to performance of this Agreement.

47 Severability

- 47.1 Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

48 No fetter of Discretion

- 48.1 The Operator acknowledges that nothing in this Agreement restricts, limits or modifies in any way Council's functions, actions or discretions (of any kind) where it is acting in its capacity as a statutory authority in accordance with legislation for any reason. Where the Council is exercising such functions, actions and directions, the Council will be deemed to be a third party to this Agreement.

49 Granting Approval

- 49.1 The Council may, where it is required to give approval or consent, give it conditionally or unconditionally or withhold approval in its absolute discretion unless this Agreement provides otherwise.

50 Media


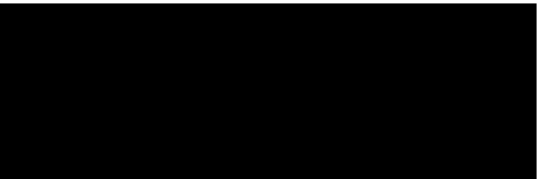
- 50.1 All media contact and the use of social media in connection with any Incident is to be managed by Council.
- 50.2 The Operator must not issue any information, publication, document or article for publication in any media concerning the Services without the prior written consent of the Council.
- 50.3 The Operator must notify Council immediately and follow up in writing within 24 hours if a journalist or representative of the media attends a Site or contacts the Operator.

Schedule 1

1. Commencement Date	5 October 2021
2. Terminating Date	4 October 2031
3. Options to renew	<p>Option 1: 5 years</p> <p>Commencement Date for Option 1: date on which the Option 1 period under the Licence Deed commences.</p> <p>Terminating Date for Option 1: date on which the Option 1 period under the Licence Deed terminates.</p> <p>Option 2: 5 years.</p> <p>Commencement Date for Option 2: date on which the Option 2 period under the Licence Deed commences.</p> <p>Terminating Date for Option 2: date on which the Option 2 period under the Licence Deed terminates.</p>
4. Services	The management, operation, marketing and Maintenance of the Sites, in accordance with this Agreement, the Licence Deed and the Operation Management Documents as finalised, amended or varied from time to time in and includes without limitation the delivery of programs, events and activities at a Site which at the Commencement Date are described in Schedule 3.
5. Operator	<p>Name: Sydney Sports Management Group and Voyager Tennis Pty Ltd (ACN 652 024 032)</p> <p>Address: PKF, Level 8, 1 O'Connell St, Sydney, NSW, 2000</p> <p>Telephone: [REDACTED]</p> <p>Email: info@ssmgroup.com.au</p>
6. Council	<p>Name: Willoughby City Council</p> <p>Address: 31 Victor Street, CHATSWOOD NSW 2067</p> <p>Telephone: 02 9777 1000</p> <p>Email: email@willoughby.nsw.gov.au</p>
7. Council's Representative	[REDACTED]

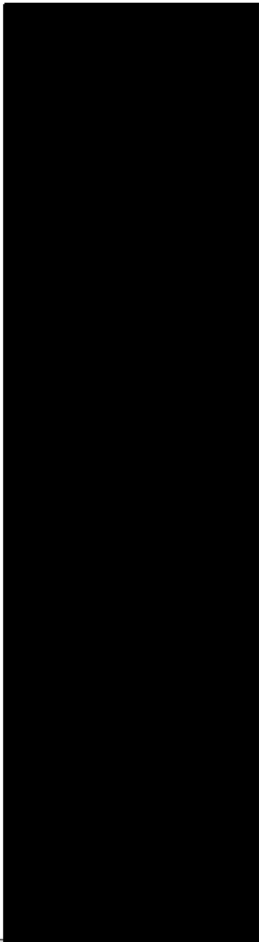
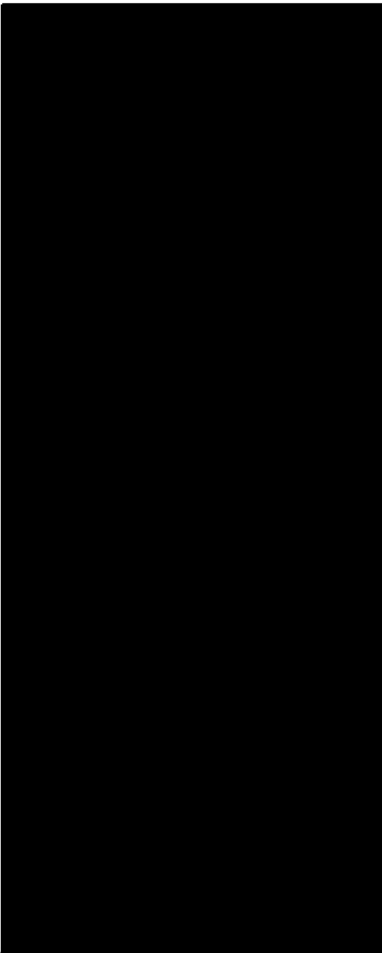
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024 032)**

	
8. Operator's Representative	

Schedule 2

Key Personnel

Name	Position
	

Agreement to Manage, Operate and Promote Council Tennis Facilities

Willoughby City Council

Sydney Sports Management Group and Voyager Tennis Pty Ltd (ACN 652 024 032)

Schedule 3
Methodology Statement

Appendix 1

Operational Management Documents

Completed business plan, developed in collaboration with Council as per the tender return to be included once finalised,

Agreement to Manage, Operate and Promote Council Tennis Facilities
Willoughby City Council
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Execution

Executed by the Parties as an Agreement

Dated: 07/09/2021

EXECUTED on behalf of the **Council of the City of Willoughby** (ABN 47 974 826 099) by its authorised delegate pursuant to section 377 of the *Local Government Act 1993* in the presence of:



Chief Executive Officer – Debra Just


Witness CAROLINE MCKENZIE

Witness

EXECUTED on behalf of the **Operator** in accordance with s127(1) of the Corporations Act (Cth) 2001


Signature of Director


Signature of Director

Ryan Henry _____
Name of Director

Scott Riley _____
Name of Director

