



Commonwealth Place West Kiosk Licence (CXX/XXX)

Parties	<p>The Commonwealth of Australia as represented by the National Capital Authority ABN 75 149 374 427</p> <p>of Ground Floor, Treasury Building, King Edward Terrace, Parkes ACT 2600</p> <p style="text-align: right;">(Licensor)</p>
	<hr/> <p>XXXX ABN XX XXX XXX XXX</p> <p>of XXXX</p> <p style="text-align: right;">(Licensee)</p>

Recitals	<p>The Licensor is responsible for promoting the National Triangle as "the place of the people", accessible to all Australians so that they can more fully understand and appreciate the collective experience and rich diversity of this country.</p> <p>The Commonwealth Place Forecourt East and West kiosks are located within the National Triangle on the southern foreshore of Lake Burley Griffin. The purpose of the kiosks is to provide a location for public amenities and commercial ventures which will assist in enlivening the area.</p> <p>Through this Licence for use of the West Kiosk and Jetty, the Licensee will play an important role in increasing activity on and around Lake Burley Griffin and within the National Triangle.</p>
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Reference Schedule – Licence Details

Item 1 Commencement Date **XXXX** 2022

Item 2 Expiry Date **XXXX** 2025 (or **XXXX** 2027 if the Further Term is granted)

Item 3 Further Term One (1) period of two (2) years

Item 4 Licensed Area The area and Structures marked in **Schedule 1**, including all Services, which comprises of:

- (a) **Area A** (15.2sqm indoor, 39.2sqm outdoor): West Kiosk Commonwealth Place PARKES ACT 2600 situated on part of the road reserve on Queen Elizabeth Terrace and Part Block 6 Section 27 PARKES;
- (b) **Area B** (200sqm): West Kiosk Additional Outdoor Space situated on part of the road reserve on Queen Elizabeth Terrace; and
- (c) **Area C** (570sqm): West Jetty situated on Part Block 1 Section 54 PARKES.

Item 5 Licence Fee As specified in **Schedule 2**.

Item 6 Permitted Use Retail business and related activities, including but not limited to the operation of **XXXXXXXXXXXXXXXXXXXXXX**.

Item 7 Hours of Operation The Licensee must use and operate Area A with the following minimum trading hours:

Time of year	Mon-Thur	Fri	Sat-Sun
June, July, August	XXXX	XXXX	XXXX
All other months	XXXX	XXXX	XXXX

The Licensee may also use and operate the Licensed Area beyond these minimum trading hours at any time at the Licensee's discretion provided that the Licensee complies (and ensures that Licensee Personnel comply) with all applicable laws and the applicable conditions of any licence or permits held that in anyway relates to the Licensed Area.

The Licensee may close the Licensed Area for up to 7 calendar days during each Christmas/New Year holiday period.

Item 8	Insurance	Insurance type	Amount	Period
		Public and products liability insurance to cover the risk of injury, death, loss or damage to persons or property in relation to the Licensed Area, including property of the Licensor	\$20 million per occurrence	For occurrence-based policy: until the end of the Term For claims-made policy: until 7 years after the end of the Term
		Contents insurance for loss of and damage to Licensee-owned Improvements and any other relevant property of the Licensee	Full insurable value	Until the end of the Term
		Workers' compensation insurance	As required by law	Until the end of the Term
Item 9	Nominated Contact Details	<p>(a) Licensor (9am-5pm on Business Days) Email address: license@nca.gov.au Physical address: Ground Floor, Treasury Building, King Edward Terrace, Parkes ACT 2600</p> <p>(b) Licensor (afterhours) Mobile: XXXX</p> <p>(c) Licensee Contact Name: XXXX Mobile: XXXX Email: XXXX Physical address: XXXX</p>		

1. Definitions and interpretation

1.1 Definitions

In this Licence, capitalised terms have the meaning specified in the reference schedule or as follows, except where the contrary intention is expressed:

Audited Statement	means a statement of Gross Revenue for a financial year which has been prepared by the Licensee and certified by the Licensee's auditor or a certified practising accountant.
Business Day	any day other than a Saturday, a Sunday or a public holiday in the Australian Capital Territory.
Certifier	refers to a 'certifier' under the <i>Building Act 2004</i> (ACT).
Fair Market Licence Fee	means a fair estimated amount for which the Licensed Area should be licensed, as at the relevant date, between a willing licensor and a willing licensee in an arm's length transaction, wherein the parties had each acted knowledgeably, prudently, and without compulsion and having regard to the usual market terms and conditions for license of similar properties including, but not limited to, a comparison of the location, use, condition, size, design, and physical character of the property and proximity to other services and facilities.
Food Standards Code	means the Australia New Zealand Food Standards Code, available from https://www.foodstandards.gov.au/code
Gross Revenue	includes all amounts invoiced by, paid to and payable to or on account of or at the direction of the Licensee for goods and services sold or provided by the Licensee to anyone that is in any way connected with the Licensee's use of the Licensed Area, but excludes: <ul style="list-style-type: none">(a) any Goods and Services Tax on supplies made by the Licensee;(b) refunds and returns made by the Licensee; and(c) amounts not connected with the Licensee's use of the Licensed Area.
Hazardous Materials Report	means the document at Schedule 5 of this Licence entitled <i>Hazardous Materials Risk Assessment Survey Report – Commonwealth Place Kiosk East Queen Elizabeth Terrace, Parkes ACT 2600</i> dated 14 January 2020.
Heritage Management Plan	means the <i>Parliament House Vista Heritage Management Plan</i> , available at https://www.nca.gov.au/planning-and-heritage/heritage/heritage-management-plans/parliament-house-vista-heritage-management .
Licence	means this licence agreement.
Licensee-owned Improvements	means all of the Licensee's furniture, fixtures, fittings, plant, and equipment of any kind that the Licensee installs in or brings onto the Licensed Area at any time.

Licensee Personnel	includes the Licensee's employees, officers, agents and advisers, as well as the employees, officers, agents and advisers of its subcontractors and suppliers.
Liquor Licence	means a liquor licence under the <i>Liquor Act 2010</i> (ACT).
Losses	includes any loss, damage, liability, cost or expense (including legal costs and expenses on a solicitor and own client basis) arising from any claim, suit, demand, action or proceeding.
Notice	means an official notice or communication under this Licence in writing from one party to another at the relevant address stated in the Nominated Contact Details or as notified from time to time.
Outgoings	means all costs levied, assessed, charged, paid or payable in relation to the Licensed Area, including but not limited to: electricity and gas, clearance of trade waste, cleaning, telecommunications, fire protection, security, maintenance, rates, taxes, charges, and assessments and impositions of any kind.
Resolution Institute	the dispute resolution organisation by that name, ACN 008 651 232.
Services	means all utilities and services installed in the Licensed Area or serving the Licensed Area, including but not limited to (a) the following systems: water, gas, electricity, lighting, sanitary, hot water, air-conditioning, humidifier, ventilation, security, communication and telecommunication, fire safety; and (b) the following ancillary or associated parts and accessories: aerials, wires, cables, pipes, ducts, conduits, tanks, cisterns; and (c) lifts and other electrical and mechanical plant and equipment.
Structures	includes, but is not limited to, all walls (whether load bearing or not), floors, doors, windows, gutters, downpipes, facades, foundations, ceilings and roofs.
Term	means the period of time commencing on the Commencement Date and ending on the Expiry Date or the date on which a termination in accordance with this Licence takes effect.
WHS Law	means the <i>Work Health and Safety Act 2011</i> (Cth), and any 'corresponding WHS Law' as defined in that Act.
Works Approvals	means approvals required by section 12 of the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i> (Cth).

1.2 Interpretation

In this Licence, unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect interpretation;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined have a corresponding meaning;
- (e) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal personality);
- (f) a reference to anything (including any right) includes a part of that thing, but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Licence and a reference to this Licence includes any clause, annexure, exhibit and schedule;
- (h) a reference to a document (including this Licence) includes all amendments or supplements to, or replacements or novation's of, that document;
- (i) a reference to a party to any document includes that party's successors and permitted assigns;
- (j) a reference to time is to Canberra, Australian Capital Territory, Australia time;
- (k) a reference to any law includes legislation and legislation all delegated or subordinate legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;
- (l) a reference to an agreement other than this Licence includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (m) a provision of this Licence may not be construed adversely to a party solely on the ground that the party (or that party's representative) was responsible for the preparation of this Licence or the preparation or proposal of that provision;
- (n) a reference to a body, other than a party to this Licence (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;

- (o) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this Licence do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (p) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (q) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
- (r) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day; and
- (s) a reference to '\$', 'A\$', 'AUD', 'dollars' or 'Dollars' is a reference to the lawful currency of Australia.

1.3 Business Day

If anything under this Licence is required to be done by or on a day that is not a Business Day that thing must be done by or on the next Business Day.

2. Licence

2.1 Grant of Licence

- (a) The Licensor grants to the Licensee a licence to use and occupy the Licensed Area during the Hours of Operation for the Permitted Use on the terms and conditions of this Licence.
- (b) The Licensor gives no warranty and makes no representation that the Licensed Area is suitable for the Permitted Use. The Licensee has, by its own enquiries and investigations, satisfied itself as to the suitability of the Licensed Area for the conduct of the Permitted Use.
- (c) The Licensor reserves the right to renew existing licence arrangements or issue new licence agreements from time to time for any purpose in any part of Commonwealth Place except the Licensed Area during the Term.

2.2 Nature of rights

- (a) The rights created by this Licence:
 - (i) exist in contract only;
 - (ii) do not create in or confer upon the Licensee any estate, interest or tenancy in or over the Licensed Area;
 - (iii) are those of a licensee only; and
 - (iv) do not include any further or other rights.

- (b) The Licensee must not lodge or allow to be lodged on the Licensee's behalf a caveat in relation to the Licensed Area.

2.3 Relationship of the parties

- (a) Neither party is the employee, officer, agent, adviser, or partner of the other party nor, by virtue of this License, authorised to bind or represent the other party.
- (b) The Licensee must ensure that Licensee Personnel do not represent themselves as being an employee, officer, agent, adviser, or partner of the Licensor.
- (c) In all dealings related to the Licence, the parties agree to:
 - (i) communicate openly with each other and cooperate in achieving the contractual objectives; and
 - (ii) act honestly and ethically; and
 - (iii) comply with reasonable commercial standards of fair conduct; and
 - (iv) consult, cooperate and coordinate activities to identify and address any overlapping work health and safety responsibilities aimed at ensuring the health and safety of workers and workplaces; and
 - (v) comply with all reasonable directions and procedures relating to work health and safety, record keeping and security in operation at the Licensed Area whether specifically informed or as might reasonably be inferred from the circumstances.

2.4 Licensor works

- (a) The Licensee acknowledges that the Licensor may undertake repair, maintenance, improvements and other work to the Licensed Area and its environs during the Term.
- (b) In undertaking such works, the Licensor will provide prior Notice to the Licensee and use its reasonable endeavours to minimise the adverse impact of such works, if any, on the Licensee's use of the Licensed Area.
- (c) Subject to clause 3.3 (Abatement of Licence Fee), the Licensee agrees that it will not be entitled to make any claim or seek compensation or refund for any cost, loss, damage, expense, financial loss, or consequential or indirect loss arising from any such works.

2.5 Events in the vicinity

- (a) The Licensee acknowledges that the Licensor may allow events near the Licensed Area and that some of these events may impact upon the Licensee's use of the Licensed Area during the Term, including but not limited to the closure of roads and paths providing access to the Licensed Area.

- (b) In allowing such events, the Licensor will provide prior Notice to the Licensee and use its reasonable endeavours to minimise the adverse impact of such events, if any, on the Licensee's use of the Licensed Area.
- (c) Subject to clause 3.3 (Abatement of Licence Fee), the Licensee agrees that it will not be entitled to make any claim or seek compensation or refund for any cost, loss, damage, expense, financial loss, or consequential or indirect loss arising from any such events.
- (d) The Licensee warrants that it has not entered this Licence in reliance on business being received from events, or from surrounding business or attractions.

2.6 Further Term

- (a) The Licensor may, at its full discretion, grant the Licensee the Further Term, if the Licensee gives the Licensor a Notice requesting a Further Term no earlier than 7 months and no later than 6 months prior to the expiration of the Term.
- (b) If the Licensor grants a Further Term in accordance with clause 4.1, this Licence continues on the same terms unless varied in accordance with clause 9.2 (Variation).

2.7 Holding over

If the Licensee continues to use the Licensed Area after the end of the Term with the written approval of the Licensor, then it does so on a monthly basis on the terms set out in this Licence.

3. Licence Fee and Outgoings

3.1 Licence Fee

The Licensee must pay the Licence Fee to the Licensor and all other money payable under this Licence without any set-off or deduction and in the manner specified in this Licence.

3.2 Variation of Licence Fee

Before the start of the Further Term, if any, the parties may agree to adjust the Licence Fee having regard to the Fair Market Licence Fee for the Licensed Area. Any agreed variation to the Licence Fee will only be given effect in accordance with clause 9.2 (Variation).

3.3 Abatement of Licence Fee

If, during the Term, the Licensed Area or any part of it is destroyed or damaged by storm, tempest, lightning, earthquake or other disabling cause so that the Licensed Area or any part of it becomes unfit for use by the Licensee, the Licensee may request that the Licensor waives a proportionate part of the Licence Fee until the affected area has been rebuilt to the extent that the Licensed Area becomes fit for use by the Licensee.

3.4 Outgoings

- (a) The Licensee is responsible for all Outgoings in respect of the Licensed Area.
- (b) Where Outgoings in relation to the Licensed Area can be separately charged to the Licensee by third parties, the Licensee must ensure that such Outgoings are separately charged, and the Licensee must pay such Outgoings as and when they fall due.
- (c) In relation to all Outgoings for the Licensed Area that cannot be separately charged to the Licensee by third parties, the Licensee must, within 30 Business Days of receiving Notice from the Licensor of the amount owing, pay the Licensor the notified amount of such Outgoings.

4. Audited Statement, records, and inspections

4.1 Audited Statement

- (a) The Licensee must give the Licensor, in a form reasonably required by the Licensor:
 - (i) within 10 Business Days from the end of each month during the Term, a statement of the Gross Revenue for that previous month which has been prepared and certified as correct by the Licensee; and
 - (ii) within 10 Business Days from the end of each financial year, an Audited Statement for that financial year.
- (b) If the Licensee fails to give the Licensor the Audited Statement in accordance with clause 4.1(a)(ii) the Licensor may calculate the Gross Revenue for the relevant financial year acting reasonably and having regard to any information that the Licensor has. The Licensor's calculation of the Gross Revenue under this clause will be final and binding on the Licensee.
- (c) If an audit of the Licensee's accounting records reveals any error in an Audited Statement, the parties must make any necessary adjustment within 1 month of the error being discovered and if the error results in the Gross Revenue being understated by more than 2% then the Licensee must pay the Licensor's audit costs as well as any outstanding Licence Fee as a result.

4.2 Records

- (a) The Licensee must keep complete and accurate accounting records of the Licensee's business for the calculation of the Gross Sales Fee during the Term and for at least 3 years after the end of the Term.
- (b) The Licensor may, upon giving the Licensee reasonable Notice at any time during the Term and within 3 years after the end of the Term, inspect or audit the Licensee's accounting records of the Licensee's business and the Licensee must make available to the Licensor all the Licensee's accounting records as the Licensor reasonably requires.

4.3 Inspections

- (a) Promptly on Notice from the Licensor, the Licensee must assist the Licensor to carry out inspections of the Licensed Area during the Term.
- (b) The Licensee accepts that, where necessary in an emergency, the Licensor will enter the Licensed Area at any time and without prior Notice to the Licensee.

5. Licensee's obligations

5.1 General obligations

The Licensee:

- (a) must comply with all laws, policies, and management plans applicable to the Licensed Area and any adjacent or adjoining lands, areas or facilities, including all applicable requirements of the Heritage Management Plan at all times;
- (b) must obtain and maintain (and ensure that Licensee Personnel obtain and maintain) all appropriate permits, licenses, certifications, and approvals required to carry on its business and the Permitted Use at the Licensed Area at its own expense, including but not limited to current background checks and registration pursuant to the *Working with Vulnerable People (Background Checking) Act 2011* (ACT)
- (c) bears all risks and costs associated with its business, the Licensee-owned Improvements, and the Permitted Use at the Licensed Area;
- (d) must rectify all relevant faults and safety risks identified by the Licensor as part of any risk assessment undertaken by the Licensor to a standard approved by the Licensor in a timeframe nominated by the Licensor (acting reasonably);
- (e) is responsible for securely storing items under its control, including the Licensee-owned Improvements and any property of Licensee Personnel;
- (f) must provide adequate and appropriate training for all relevant Licensee Personnel to the satisfaction of the Licensor and must keep continuous records of such training and make these records available for inspection by the Licensor on request;
- (g) must take all reasonable precautions to prevent any rubbish or waste material being deposited in or around the Licensed Area or Lake Burley Griffin near the Licensed Area; and
- (h) subject to clauses 5.1(a)-(g), ensure that all outdoor areas within the Licensed Area are reasonably open and accessible to the public.

5.2 Use of the Licensed Area

The Licensee must:

- (a) only use the Licensed Area for the Permitted Use during the Hours of Operation within the Term;
- (b) comply with Schedule 3 (Activation Calendar);
- (c) conduct the Licensee's business in the Licensed Area in a proper manner and in compliance with clause 5.3 (Service standards);
- (d) ensure that Licensee Personnel behave professionally and responsibly and are courteous and responsive to patrons of the Licensed Area, members of the public and the Licensor;
- (e) not do anything in the Licensed Area which in the reasonable opinion of the Licensor may cause offence, nuisance, obstruction, danger, damage or disturbance to the Licensor or to other persons;
- (f) comply with all reasonable directions of the Licensor in relation to matters of health, safety, cleanliness, management of the Licensed Area, maintaining security, car parking, proper use of facilities and appurtenances and affixing items to the Licensed Area;
- (g) at all times operate the Licensed Area in a manner that ensures the health and safety of patrons and Licensee Personnel in compliance with all applicable laws;
- (h) promptly inform the Licensor of any damage to the Licensed Area; and
- (i) ensure that the Licensed Area is appropriately secure at the end of each day.

5.3 Service standards

The Licensee must operate a safe, reliable and efficient business that is in keeping with the significance of the Licensed Area to the satisfaction of the Licensor, including but not limited to the following service standards:

- (a) the Licensee must provide a level of service to customers that encourage them to return regularly, measured by:
 - (i) time taken to acknowledge customers' arrival;
 - (ii) time taken to serve customers;
 - (iii) compliance with health directions from the ACT Government, including but not limited to directions from WorkSafe ACT; and
 - (iv) compliance with the Food Standards Code.
- (b) all relevant Licensee Personnel must:
 - (i) wear personal protective equipment as appropriate;
 - (ii) wear attire which is neat and tidy and appropriate to the nature of the commercial enterprise at the Licensed Area;

- (iii) be clean and tidy in their personal appearance; and
 - (iv) provide efficient and courteous service to customers;
- (c) the Licensee must prohibit all smoking in the Licenced Area by Licensee Personnel;
- (d) the Licensee must keep the Licensed Area clean, free of grit, marks and stains and hygienically finished at all times, with particular attention to:
 - (i) on-site storage of garbage and refuse;
 - (ii) areas for food preparation and display; and
 - (iii) trays, tables, chairs, crockery and cutlery;
- (e) the Licensee must provide, supply and replenish adequate consumables;
- (f) the quality of all goods and services provided to customers are to be of a standard which is at least equivalent to the standard provided in comparable premises in the Australian Capital Territory; and
- (g) prices charged by the Licensee are to be competitive with prices charged for equivalent items by operators of comparable premises in the Australian Capital Territory.

5.4 Liquor Licence

If the Licensee becomes the holder of a Liquor Licence in relation to the Licensed Area, the Licensee must, in addition to complying with all laws, provide copies of the following to the Licensor electronically for information within 1 Business Day of receipt:

- (a) the Liquor Licence, including any renewals, extensions, variations, and conditions; and
- (b) any notice, warning or fine received by the Licensee in relation to the Liquor Licence.

5.5 Health directions

Without limiting the Licensee's obligations under this Licence, the Licensee must ensure that the number of people within the Licensed Area complies with any applicable directions made pursuant to the *Public Health Act 1997* (ACT) in relation to COVID-19 or any similar health emergency.

5.6 Licensee-owned Improvements

The Licensee must:

- (a) not install, or permit to be installed, any Licensee-owned Improvements in or on the Licensed Area without the Licensor's prior written consent;

- (b) obtain Works Approvals in relation to Licensee-owned Improvements where appropriate (see <https://www.nca.gov.au/planning-heritage/works-approval> for guidance on Works Approvals);
- (c) fit out and install Licensee-owned Improvements in or on the Licensed Area in accordance with all applicable laws and such works must be certified by a Certifier where relevant;
- (d) submit to the Licensor “plans as executed” drawings, copies of maintenance programs or manuals and a full asset list within 20 Business Days of completion of the installation of Licensee-owned Improvements;
- (e) ensure all Licensee-owned Improvements:
 - (i) are funded and installed at its own cost and risk;
 - (ii) are installed in a proper and workmanlike manner and be consistent with the general standards and design integrity of the Licensed Area;
 - (iii) do not interfere with the Services or air circulation unless expressly and specifically approved by the Licensor in writing; and
 - (iv) comply with all applicable legislation, codes of practice and standards relating to work health and safety; and
- (f) comply with any Notice from the Licensor to remove any or all items of Licensee-owned Improvements, make good any damage caused to the Licensed Area, and return the Licensed Area to a clean and tidy condition.

5.7 Signage

- (a) The Licensee must not display any external advertising or signage in, on, or around the Licenced Area without specific prior written approval of the Licensor.
- (b) In providing approval, the Licensor will act promptly and reasonably but will not permit the display of any external advertising or signage that is, in the opinion of the Licensor:
 - (i) not of a professional standard;
 - (ii) potentially offensive or inappropriate; or
 - (iii) not directly related to the Permitted Purpose.
- (c) All external advertising and signage must be installed safely with full consideration of weather conditions and in accordance with the Licensor’s reasonable requirements

5.8 Cleaning, maintenance and repairs

- (a) The Licensor is responsible for all base building maintenance and repairs to the Licensed Area including:

- (i) maintenance or repair to the Licensed Area that is of a structural nature or which requires the replacement of major items of plant or equipment;
- (ii) maintenance or repair of any fire equipment, HVAC, humidifier and all pipe plumbing; or
- (iii) graffiti removal.

The Licensee will submit such maintenance and repair issues via the online portal for review and actioning at <https://apps.bgis.com/SSR/ServiceRequest/Log?id=159020F8-2C8D-41F1-9F66-3771C8E4EE92>.

- (b) The Licensor is responsible for maintenance and repair of the public toilet facilities adjacent to Area A of the Licenced Area and for cleaning them once per day. The Licensee is responsible for any further or more frequent cleaning of those toilet facilities where necessary due to the Licensee's use of the Licensed Area.
- (c) Subject to clauses 5.8(a) and 5.8(b), the Licensee is solely responsible for the cleaning, maintenance and repair of the Licensee-owned Improvements, the Licensed Area, and one metre outside the Licensed Area in compliance with all laws and health requirements to a condition that is good, safe, clean, tidy, and to the satisfaction of the Licensor. This includes but is not limited to:
 - (i) promptly replacing damaged or broken glass;
 - (ii) promptly replacing damaged or inoperative light bulbs, tubes and the like in or on the Licensed Area;
 - (iii) ensuring that all internal and external walls are in a clean and tidy state at all times;
 - (iv) using such means as the Licensor shall reasonably deem necessary to protect the flooring from damage and excessive wear and tear;
 - (v) ensuring that all garbage is properly stored and regularly collected including any commercial waste;
 - (vi) maintaining plumbing such as by fixing leaking taps, replacing washers, and removing simple blockages;
 - (vii) promptly repairing, replacing or reporting (as appropriate) any breakage, defect or damage to the Licensed Area and the Licensee-owned Improvements; and
 - (viii) promptly complying with any Notice from the Licensor requiring the Licensee to repair, maintain and/or cleanse the Licensed Area in accordance with the Licensee's obligations under this Licence;
- (d) If the Licensee fails to comply with clause 5.8(c) promptly and to the satisfaction of the Licensor, the Licensor may carry out the cleaning, maintenance and/or repair at the reasonable cost of the Licensee, and any reasonable costs

incurred by the Licensor as a result must be reimbursed by the Licensee upon demand by the Licensor.

- (e) If the Licensee becomes aware of any unsafe situation in or on the Licensed Area or in the vicinity of the Licensed Area generally, it must immediately notify the Licensor via a Notice that provides details of that unsafe situation.
- (f) For avoidance of doubt, the parties agree that the Licensee is not responsible for the replacement of items that were broken or damaged as a result of any malicious or negligent act or omission of the Licensor, its employees, officers, agents, advisers, or contractors (other than the Licensee).

5.9 Safety

- (a) The Licensee:
 - (i) acknowledges the information provided in the Hazardous Materials Report and has satisfied itself as to the nature of the hazardous materials in the Licenced Area and the risks that they may pose to any person working on or visiting the Licensed Area;
 - (ii) must ensure that all appropriate precautions are taken in relation to the treatment, maintenance, storage and use of materials of a hazardous, explosive or flammable nature, and that such materials are stored safely and in accordance with all applicable laws, including in relation to any hazardous materials identified in the Hazardous Materials Report; and
 - (iii) must ensure copies of material safety data sheets for any chemicals are provided to the Licensor and the storage area is signed off as compliant by the Licensor.
- (b) The Licensee must:
 - (i) immediately notify the Licensor via a Notice if the Licensee becomes aware of any threat to the Licensed Area and comply with the Licensor's directions for the purpose of protecting property or persons in the Licensed Area;
 - (ii) report any notifiable incident to the relevant regulator in accordance with the applicable WHS Law; and
 - (iii) report all incidents to the Licensor in compliance with procedures set out at <https://www.nca.gov.au/about-nca/contact-us/incidentaccident-reporting>.
- (c) Within 20 Business Days of the Commencement Date, the Licensee must submit a draft incident action plan to the Licensor for approval. The incident action plan must clearly identify:
 - (i) the different classes of incidents (including notifiable incidents, near misses, minor incidents (such as first aid injuries) etc.) that may arise; and

- (ii) the action that will be taken by the Licensee in respect of each class of incidents and the timing of each action,

in such a manner as to ensure compliance with this clause 5.9 as well as clauses 2.3(c)(iv) and 2.3(c)(v) of this Licence. Once approved, the parties must comply with the incident action plan.

- (d) The Licensee must co-operate with the Licensor in relation to any subsequent investigation or inquiry, including making available all relevant Licensee Personnel involved in the incident or incident response for the purposes of incident investigations or inquiries.
- (e) The Licensee must retain all necessary records of any incidents that occur, for audits and inspections including any training and emergency drills conducted by the Licensee.

5.10 **Announcements and public relations**

- (a) In all its marketing and media appearances associated with the Licensed Area, which includes but is not limited to print and online advertisements, social media, food and lifestyle magazines, newspapers, and media launches, the Licensee must:
 - (i) include the appropriate version of the National Triangle Logo (see Schedule 4);
 - (ii) acknowledge the location of the Licensed Area in Commonwealth Place within the National Triangle, Canberra; and
 - (iii) acknowledge the full name of the Licensor as the 'National Capital Authority'.
- (b) Any proposed use of the Australian Government logo in any form by the Licensee must only occur after the Licensor has provided specific prior written approval of that instance of use. The Licensor will use best endeavours to provide clear approval or rejection within 5 Business Days of receipt of the request from the Licensee.

6. Risk and insurance

6.1 **Insurance**

- (a) The Licensee must maintain adequate insurances for the Licence and the Licensed Area with reputable insurers on usual commercial terms. At a minimum, this includes the insurances stated at Item 8 of the reference schedule.
- (b) The Licensee must provide a certificate of currency for each of the above insurances to the Licensor at the Commencement Date and upon the anniversary of that date each year during the Term.

- (c) The Licensee must immediately inform the Licensor if it becomes aware of any situation which may invalidate any of the above insurances or cause them to cease to have effect.

6.2 Licensee indemnifies Licensor

- (a) The Licensee indemnifies the Licensor (including the Licensor's employees, officers, agents, and advisers) against Losses arising in connection with:
 - (i) the Licenced Area;
 - (ii) Licensee Personnel;
 - (iii) Licensee-owned Improvements;
 - (iv) any other properties of the Licensee;
 - (v) any death or injury connected to the Licensed Area;
 - (vi) any permit, licence, certification, or approval connected to the Licensed Area, including but not limited to any Liquor Licence;
 - (vii) any negligent or wilful breach of the Licensee's obligations or representations under this Licence;
 - (viii) overflow of water or rainwater which may leak into the Licensed Area or flow from any part of the Licensed Area or from any pipes in the Licensed Area;
 - (ix) any injury, sickness, medical complaint, or death in connection with exposure to any hazardous materials identified in the Hazardous Materials Report; or
 - (x) use of the Services or use of any fittings or appliances connected to the Services.
- (b) The Licensee's obligation to indemnify the Licensor reduces proportionally to the extent that any wrongful or negligent act or omission by the Licensor contributed to the Losses.
- (c) Each indemnity contained in this Licence is a continuing obligation, independent from the other obligations of the parties and survives the termination of this Licence.
- (d) It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Licence.

6.3 Security

Neither party is liable for any loss or damage suffered by the other party arising from theft, vandalism, or other criminal behaviour unless caused or contributed to by the wrongful or negligent act or omission of the first party.

7. End of this Licence

7.1 Termination and suspension

- (a) If the Term continues under clause 2.7 (Holding over), either party may terminate the Licence by 28 calendar days' Notice to the other party, ending the Term on any day of the week.
- (b) Either party may terminate this Licence by giving the other party 6 months' Notice at any point during the Term. During this 6-month period, both parties must continue to comply with this Licence. The Term ends at the end of that 6-month period.
- (c) The Licensee may terminate this Licence by giving the Licensor 20 Business Days' Notice if the Licensor waives an amount of Licence Fee under clause 3.3 (Abatement of Licence Fee) that is equivalent to 90 days' base fee for the Licensed Area in accordance with Schedule 2 over any 6-month period.
- (d) The Licensor may suspend or terminate this Licence immediately by Notice to the Licensee if, in the Licensor's opinion:
 - (i) the Licence Fee, any part of the Licence Fee, Outgoings, or any other money payable by the Licensee to the Licensor under this Licence remains unpaid for 14 calendar days after the day on which they should have been paid (whether legally demanded or not);
 - (ii) the Licensee may be using (or may have used) the Licensed Area to facilitate illegal activities or for purposes that are not the Permitted Purpose;
 - (iii) the Licensee has failed to remedy a breach of any clause of this Licence within 10 Business Days after having received a Notice from the Licensor requesting remedy of the breach; or
 - (iv) the Licensee:
 - (A) is unable to pay all its debts when they become due;
 - (B) if incorporated – has a liquidator, receiver, administrator or other controller appointed under the *Corporations Act 2001* (Cth) or an equivalent appointment is made under legislation other than that Act; or
 - (C) if an individual – becomes bankrupt or enters into an arrangement under Part IX or Part X of the *Bankruptcy Act 1966* (Cth).

7.2 Consequences of termination

- (a) Regardless of how the Licence was terminated, the Licensee must comply with clause 7.3 (Transition-out) and pay all Licence Fees payable subject to clause 3.3 (Abatement of Licence Fee).

- (b) The parties agree that neither party will be entitled to make any claim or seek compensation or refund for any cost, loss, damage, expense, financial loss, or consequential or indirect loss arising from the other party's exercise of a right under clause 7.1 (Termination and suspension).

7.3 Transition-out

- (a) Within 5 Business Days of the end of the Term, the Licensee must, unless the Licensor agrees or instructs otherwise by Notice:
 - (i) immediately and carefully remove all Licensee-owned Improvements;
 - (ii) make good at its own expense and to the satisfaction of the Licensor any damage caused to the Licensed Area in effecting any removal of Licensee-owned Improvements; and
 - (iii) return the Licensed Area to the condition it was in at the Commencement Date, fair wear and tear excepted.
- (b) If the Licensee does not comply with clause 7.3(a) to the Licensor's satisfaction, the Licensor will take all reasonable measures necessary to ensure that the Licensed Area is in a condition that is satisfactory to the Licensor and any costs for measures taken will be a debt owed and payable by the Licensee to the Licensor.

8. Disputes

8.1 Negotiation

The parties agree to negotiate in good faith and use all reasonable efforts to resolve disagreements and escalate issues internally as quickly as practicable.

8.2 Notice of dispute

If the parties are unable to resolve a disagreement, the party raising that as a dispute is to notify the other party with a Notice that details the nature of the dispute and gives adequate particulars to identify the dispute.

8.3 Attempt to resolve

Within 7 calendar days of the giving of that Notice of dispute, the parties must each nominate representatives who will use all reasonable efforts to attempt to resolve the dispute, including meetings in person or via other agreed methods.

8.4 Licence to continue

Unless otherwise directed by the Licensor, the Licensee must at all times continue to carry out its obligations under the Licence, regardless of any dispute.

8.5 Mediation

All disputes not resolved within 14 calendar days of the Notice of dispute can be referred to the Resolution Institute for mediation in accordance with the *Resolution Institute Mediation Rules 2016*.

8.6 Costs

The parties are to bear their own costs of the mediation, and where costs are jointly incurred, the parties are to bear those costs equally. If a party does not pay its share of the jointly incurred costs of the mediation upon request, then the other party may pay those costs and the amount of those costs will be a debt due to the paying party under the Licence.

9. General

9.1 Notices

A Notice is deemed to be effected:

- (a) if delivered by hand - upon delivery to the relevant address;
- (b) if sent by registered post - upon delivery to the relevant address; or
- (c) if transmitted electronically - upon actual delivery as evidenced by an acknowledgement of receipt from the recipient's system by any means (including by means of delivery receipt); and
- (d) on the next Business Day if the Notice was received after 5.00 pm, or on a day that is not a Business Day, in the place of receipt.

9.2 Variation

A variation of any term of this Licence will be of no force or effect unless it is in writing and signed by both parties.

9.3 Assignment

- (a) The Licensee must not assign or otherwise deal with any of its rights under this Licence without the prior written consent of the Licensor. The Licensor may withhold its consent in its absolute discretion. An assignment in breach of this clause is intended by the parties to be void and is of no force and effect.
- (b) The Licensor may assign or otherwise deal with any or all of its rights and obligations under this Licence without the consent of the Licensee.

9.4 Taxation

The Licensee agrees to comply, and to require its subcontractors to comply, with all applicable laws relating to taxation.

9.5 **Costs and expenses**

- (a) Each party must pay its own costs (including legal costs) and expenses in connection with the negotiation, preparation, execution and delivery of this Licence.
- (b) The Licensee must pay any stamp duty payable in relation to this Licence.

9.6 **Waiver**

- (a) A party does not waive a right, remedy or power if it delays in exercising, fails to exercise, or only partially exercises that right, remedy or power.
- (b) A waiver of a right, remedy or power must specific, explicit, and in writing, signed by the party giving the waiver. It is only effective in relation to the particular obligation or breach in respect of which it is given, and cannot be construed as a waiver of that obligation or breach on any other occasion.
- (c) A waiver issued by a party does not preclude that party from enforcing or exercising any other right, remedy or power under this Licence, nor can it be construed as a waiver of any other obligation or breach.

9.7 **Severance**

If a provision in this Licence is wholly or partly void, illegal or unenforceable in any relevant jurisdiction, that provision or part must, to that extent, be treated as deleted from this Licence for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this Licence.

9.8 **Governing law**

The laws of the Australian Capital Territory apply to this Licence.

9.9 **Further assurances**

Each party must, at its own expense, do all things and execute all further documents necessary to give full effect to this Licence and the transactions contemplated by it.

9.10 **No reliance**

Neither party has relied on any statement by the other party which has not been expressly included in this Licence.

9.11 **Entire agreement**

The Licence represents the parties' entire agreement in relation to the subject matter at the Commencement Date. Anything that occurred before the Commencement Date is disregarded unless incorporated into this Licence in writing. However, the Licensee represents that the claims made in its responses to the request for proposal issued by the Licensor in relation to the Licensed Area (AXX/XXX) were correct when made and remain correct.

9.12 Counterparts and electronic execution

The parties may sign this Licence (or any part thereof) electronically and in counterparts. Each signed counterpart is deemed an original, and all signed counterparts together constitute one document. Each party to this Licence agrees to the use of electronic signatures and agrees to be subject to the provisions of applicable laws governing electronic signatures.

9.13 Remedies cumulative

Except as provided in this Licence and permitted by law, the rights, powers and remedies provided in this Licence are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Licence.

9.14 Survival

This clause, and all clauses of this Licence which, as a matter of construction, are intended to survive the end of the Term, do so survive. This includes but is not limited to clauses 4 (Audited Statement, records, and inspections), 6 (Risk and insurance), 7.3 (Transition-out), 8 (Disputes).

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Signature Page

Signed by an authorised representative of the **Commonwealth of Australia as represented by the National Capital Authority ABN 75 149 374 427** in the presence of:

Signature of witness

Signature of authorised representative

Full name of witness (print)

Full name of authorised representative (print)

Date

Date

Executed by XXXX
ABN XXXX in accordance with section 127
of the *Corporations Act 2001* (Cth) by:

Signature of Director

Signature of Director/Company Secretary

Full name (print)

Full name (print)

Date

Date

Schedule 1 – Licensed Area

TO BE INSERTED

DRAFT

Schedule 2 – Licence Fee

1. Overview

1.1 TO BE INSERTED

2. Calculation

2.1 TO BE INSERTED

3. Payment schedule

3.1 Subject to clause 3.3 (Abatement of Licence Fee), the parties agree to the following payment schedule:

3.2 TO BE INSERTED

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Schedule 3 – Activation Calendar

1. Overview

- 1.1 The Licensed Area is located in the heart of Canberra within the National Triangle on the southern foreshore of Lake Burley Griffin, near major national attractions and public spaces for concerts, gatherings, ceremonies, markets, displays and exhibitions. It also offers unique and spectacular views across the lake to the National Capital Exhibition at Regatta Point, the Captain Cook Memorial Jet, Commonwealth and Kings Parks with Anzac Parade leading up to the Australian War Memorial in the distance.
- 1.2 Jetty facilities provide access to commercial tourist ferries, hire boats and other vessels permitted to use the lake for commercial and recreational purposes.
- 1.3 As a result, in addition to operating Area A, the Licensee is encouraged to make full use of the Licenced Area.

2. Activation Calendar

- 2.1 The Licensee will make full use of the Licenced Area in conjunction with the following events every year during the Term, weather permitting and where reasonable to do so:
- 2.2 **TO BE INSERTED**

Schedule 4 – National Triangle Logo

1. **Inline version:**



2. **Stacked version:**



Schedule 5 – Hazardous Materials Report

separately attached

