

# LEASE FOR PREMISES AT NGAHUE RESERVE, ST JOHNS, AUCKLAND

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between

AUCKLAND COUNCIL

and

OCEANIA FOOTBALL CONFEDERATION INCORPORATED



## TABLE OF CONTENTS

TABLE OF CONTENTS	2
BACKGROUND	3
REFERENCE SCHEDULE	5
1. INTERPRETATION.....	7
2. TERM.....	10
3. RENT.....	10
4. RENT REVIEW.....	10
5. OUTGOINGS.....	12
6. GST.....	12
7. REQUIRED USE.....	12
8. CONDUCT ON THE PREMISES.....	13
9. COMMUNITY OBJECTIVES AND OUTCOMES.....	13
10. SIGNS.....	14
11. LIQUOR LICENCES.....	15
12. TENANT'S ANNUAL REPORT.....	15
13. OPEN MEMBERSHIP.....	16
14. PUBLIC ACCESS.....	16
15. INSURANCE.....	17
16. DAMAGE TO OR DESTRUCTION OF THE PREMISES.....	18
17. QUIET ENJOYMENT.....	<del>18</del> 19
18. BUILDING WORK.....	19
19. MAINTENANCE OF GROUNDS AND SURROUNDS.....	<del>20</del> 21
20. MAINTENANCE PLAN, MAINTENANCE AND RENEWAL OF BUILDINGS AND/OR IMPROVEMENTS.....	21
21. REMOVAL OF BUILDINGS/IMPROVEMENTS.....	<del>22</del> 23
22. ACTS, REGULATIONS, BY-LAWS, RULES AND MANAGEMENT PLAN.....	<del>23</del> 24
23. INSPECTIONS.....	25
24. ASSIGNMENT AND SUBLETTING.....	<del>25</del> 26
25. HIRING.....	<del>25</del> 26
26. DEFAULT.....	<del>26</del> 27
27. INDEMNITY.....	27
28. DISPUTE RESOLUTION.....	<del>27</del> 28
29. NATURE OF THE COUNCIL.....	<del>27</del> 28
30. IMPLIED PROVISIONS.....	<del>28</del> 29
31. COSTS.....	<del>28</del> 29
32. GENERAL PROVISIONS.....	<del>28</del> 29
33. GOVERNING LAW AND JURISDICTION.....	<del>29</del> 30
34. CONSENT UNDER THE RESERVES ACT 1977.....	<del>29</del> 30
35. TREATY OF WAITANGI.....	<del>29</del> 30

36	NOTICES .....	<del>2930</del>
37	WAIVER .....	<del>2930</del>

**DEED OF LEASE** dated the \_\_\_\_\_ day of \_\_\_\_\_ 2016

**BETWEEN**        **AUCKLAND COUNCIL (Council)**

**A N D**            **OCEANIA FOOTBALL CONFEDERATION INCORPORATED** (Incorporated  
Society number 883483) (**Tenant**)

**GRANT:**

The Council leases and the Tenant takes on lease the Premises for the Term, at the Rent and subject to the covenants, conditions, agreements, and restrictions in this Lease.

**In witness of which the parties execute this Lease:**

**SIGNED** for and on behalf of the  
**AUCKLAND COUNCIL** under delegated  
authority in the presence of:

Manager

\_\_\_\_\_  
Property Manager / Regional Operations

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full Name

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
Address

**SIGNED** by **OCEANIA FOOTBALL  
CONFEDERATION INCORPORATED**

(by affixing its common seal) in the presence of:

\_\_\_\_\_  
President/Chairman

\_\_\_\_\_  
General Secretary

## REFERENCE SCHEDULE

<b>PREMISES:</b>	The land that is the part of the Reserve containing [ ] m <sup>2</sup> more or less as shown [ ] on the Premises Plan, but excluding the Buildings and Improvements situated or to be situated on that land.
<b>RESERVE:</b>	The reserve known as Ngahue Reserve situated at 62-80 College Road, St Johns Auckland 1072, comprised in: Section 1 SO 453581, Section 2 SO 453581 (NA 587511), Lot 6 DP 357142 (NA 232453) Lot 11 DP 357142 (8732m2) (NA 232458), Lot 12 DP 357142 (95106m2) (NA 232459), Part Allotment 365 District of Tamaki (NA 89C/961).
<b>TERM:</b>	Thirty (30) years
<b>COMMENCEMENT DATE:</b>	[Date of Practical Completion of Stage One of the Project (as defined in the Agreement to Lease) as certified by the Engineer.]
<b>EXPIRY DATE:</b>	[Thirty (30) years after the Commencement Date].
<b>RENT:</b>	\$1.00 plus GST SUBJECT to clause 4.
<b>RENT REVIEW DATES (IF ANY):</b>	As provided for at clauses 4 and 12.3
<b>REQUIRED USE:</b>	All activities and operations related to a football facility, including administration, coaching, refereeing, competitions, football academies and development, gym, futsal and café SUBJECT to limitations provided for herein.
<b>MINIMUM PUBLIC RISK INSURANCE COVER:</b>	\$5,000,000.00
<b>NOTICES:</b>	<b>Council:</b> Auckland Council 135 Albert Street Private Bag 92300

Victoria Street West  
Auckland 1142

Attention: Team Leader, Community Leases, Regional  
Operations, Property Department

**Tenant:**

Oceania Football Confederation Incorporated  
Mt Smart Stadium  
12 Maurice Road  
Penrose  
Auckland 1061

Attention: General Secretary

## GENERAL PROVISIONS

### 1. INTERPRETATION

In this deed unless the context indicates otherwise:

#### 1.1 Definitions:

**Act** means the Reserves Act 1977;

**Agreement to Lease** means the agreement to lease entered into between the Council and the Tenant dated 13 September 2013 [as varied by the first agreement to vary entered into between the parties dated 30 August 2016](#);

**Asset Owner Approval** means the approval of Auckland Council's Land and Coastal Remediation Group;

**Assign** includes sell, assign, transfer, alienate, or otherwise dispose;

**Building** means any building on the Premises;

**Building Work** means work for or in connection with the construction, alteration, demolition or removal of a building or any fixtures or improvements and includes earthworks preparatory to or associated with that construction, alteration, demolition or removal and any work of a structural or retaining nature, and services associated with that work;

**Carparks** means the carparks at the Premises created by the Tenant as part of the Project under the Agreement to Lease;

**Community** means people in the local Stonefields, St Johns, Glen Innes and wider Auckland community excluding the Tenant;

**Community Objectives** means the community focused objectives for the Premises and the Tenant's use of the same outlined in the Schedule 2;

**Council** includes any successor of Auckland Council and, as required, includes the Orakei Local Board;

**Fields** means the fields to be constructed under the Agreement to Lease, indicatively:

- (a) two (2) full size FIFA two-star artificial football fields; and
- (b) two (2) 900m<sup>2</sup> artificial practice/warm-up football turfs;

**Financial Year** means the period commencing on 1 January and ending on 31 December (inclusive);

**GST** means tax levied under the Goods and Services Tax Act 1985 and includes any tax levied in substitution for that tax;

**Improvement** means any improvement at the Premises, and includes the Fields and the Buildings;

**Land and Coastal Remediation Group** means the Land and Coastal Remediation Group of Council, or any other department of Council established in the future to undertake the role and tasks of the Land and Coastal Remediation Group such as monitoring the Landfill;

**Landfill** means the closed landfill located within the Reserve managed by the Land and Coastal Remediation Group and includes its infrastructure (containment systems including cover and cap, leachate and/or gas management and monitoring systems), consent conditions and management plans;

**Lease Year** means each year of the Term of this Lease commencing on the Commencement Date and each anniversary of that date and expiring on the day immediately prior to the subsequent anniversary of the Commencement Date;

**Maintain** and **Maintenance** means all works required to retain all physical and technological components of the Buildings and Improvements in their condition including restoration, rehabilitation, upgrading, refurbishment, and replacement works for those components that have worn out or become obsolete through technology or market changes and includes Routine Maintenance;

**Maintenance Plan** means the plan prepared by the Tenant regarding continuing Maintenance of all of the physical and technological components of the Buildings and Improvements over the life cycle of those components during the Term, and includes landscaping plans for the Premises, attached to this Lease as Schedule 6;

**Management Plan** means the Ngahue Reserve Management Plan prepared under section 41 of the Act;

**Outgoings** means all rates, taxes, costs, expenses, and Utility charges payable in respect of the Premises and/or the Buildings, including any land tax, local authority rates, water rates, wastewater rates, insurance premiums and valuation fees in respect of all insurance policies, and statutory compliance costs, including (but not limited to) the Building Act 2004 and Resource Management Act 1991, and as further detailed in Schedule 3;

**Premises** means the premises defined in the Reference Schedule;

**Premises Plan** means the plan attached to this Lease as Schedule 1 indicatively showing the Premises;

**Rent** means the rent referred to in the Reference Schedule;



**Reserve** means the Ngahue Reserve designated as a recreation reserve under the Act named in the Reference Schedule;

**Routine Maintenance** means regular ongoing day-to-day work necessary to keep the Buildings and Improvements operating without interruption as intended by the Required Use and as set out in Schedule 3 (where applicable); and

**Tenant** includes its executors, administrators and (as applicable) any person for whose acts or omissions the Tenant is responsible;

**Utility** means electricity, gas and any other service or utility charges in respect of the Premises and/or the Buildings; and

**Working day** has the same meaning ascribed to it as within the Property Law Act 2007.

- 1.2 **Defined Expressions:** expressions defined in the main body of this deed have the defined meaning in the whole of this deed including the background;
- 1.3 **Gender:** words importing one gender will include the other genders;
- 1.4 **Headings:** section, clause and other headings are for ease of reference only and will not affect this deed's interpretation;
- 1.5 **Negative Obligations:** any obligation not to do anything will include an obligation not to suffer, permit or cause that thing to be done;
- 1.6 **Parties:** references to parties are references to parties to this deed;
- 1.7 **Persons:** references to persons will include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental or other regulatory bodies or authorities or other entities in each case whether or not having separate legal personality;
- 1.8 **Plural and Singular:** words importing the singular number will include the plural and vice versa;
- 1.9 **Schedules:** the schedules to this deed and the provisions and conditions contained in these schedules will have the same effect as if set out in the body of this deed;
- 1.10 **Sections, Clauses and Schedules:** references to sections, clauses and schedules are references to this deed's sections, clauses and schedules; and
- 1.11 **Statutes and Regulations:** references to any statutory provision will include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

## 2. TERM

2.1 The Term of this Lease will commence on the Commencement Date and will end at 5pm on the Expiry Date.

2.1.

2.2 As at the entering into of this Lease, the Council and/or Auckland Transport are planning to construct, widen and/or reconfigure (at Council's cost) an access way or road through the South and South Eastern corner of the Premises as indicatively shown on the Premises Plan (Access Way). The result of this may result in the access way or road abutting and/or crossing the Premises. Notwithstanding the grant herein such works and the resulting access way or road will not be a breach of the Tenant's quiet enjoyment and following completion of such the parties will record any required variation to the area of the Premises between them.

~~2.2.3~~ The Tenant may cancel this Lease on giving three (3) months' written notice to the Council, but this will not release the Tenant from any of its outstanding obligations under this Lease up to the time of the cancellation.

## 3. RENT

3.1 The Tenant must pay the Rent to the Council by equal annual instalments in advance. The first of these instalments is due on the Commencement Date. However, the Tenant may elect to pay the Rent by equal monthly instalments in advance on the first day of each month, if the Council has reviewed the Rent as provided for in clause 4.

3.2 The Tenant must not reduce any payment of Rent, Outgoings or any other amount payable by the Tenant to the Council by making any deduction from it or set off against it.

## 4. RENT REVIEW

4.1 The Council is entitled at its sole discretion to decide the policy from time to time as to the rent levels that will apply to space of the type that comprises the Premises. For example, those levels may vary according to the type of space, and the purpose for which the space is used.

4.2 If the Council decides that the Rent for all or any part of the Premises is to be set or reviewed to the current market rent for that space, whether pursuant to clause 12.4 or otherwise, the current market rent for the Premises will be decided in the following way:

- (a) not earlier than three (3) months from a Rent Review Date, the Council can give written notice to the Tenant specifying the annual rent the Council considers to be the current market rent for the Premises.
- (b) the current market rent will be decided in accordance with clause 4.3, if the Tenant disputes that the proposed new annual rent is the current market rent by written notice to the Council within 28 days after receiving the Council's notice. However,

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the new rent will not be less than the annual rent payable during the period of 12 months immediately before the relevant Rent Review Date.

- (c) the Tenant will be deemed to have accepted the annual rent specified in the Council's notice, if the Tenant fails to give the notice under clause (b) within the time stated in that sub-clause (time being of the essence).
- (d) the current market rent so decided or accepted will be the annual rent:
  - (ii) if the rent is reviewed due to a change in Council policy, from a date no earlier than twelve (12) months following that policy change; or
  - (iii) if the rent review is pursuant to clause 12.3, from the first day of the following Lease Year.
- (e) Until the current market rent has been decided or accepted, the Tenant will pay the rent specified in the Council's notice, as long as a certificate from a registered valuer substantiates the rent. The Council will give the Tenant a copy of that certificate when it gives its notice under clause (a). Once the current market rent has been decided an appropriate adjustment will be made.
- (f) Either party may request the rent review to be recorded in writing. The Tenant will pay the cost of such recording.

4.3 The parties will try to agree on the current market rent immediately after the Council receives the Tenant's notice. The parties may determine the current market rent in either of the following ways, if the parties do not agree within 14 days:

- (a) By one party giving written notice to the other requiring the current market rent to be decided by arbitration; or
- (b) If the parties so agree, by registered valuers acting as experts and not as arbitrators as follows:
  - (i) each party will appoint a valuer. They will give written notice of the appointment to the other party within 14 days of the parties agreeing to decide the current market rent in this way;
  - (ii) if the party receiving a notice does not appoint a valuer within the 14-day period, then the valuer appointed by the other party will decide the current market rent. The valuer's decision will be binding on both parties;
  - (iii) as soon as the valuers are appointed, they must appoint an umpire. The umpire need not be a registered valuer;
  - (iv) the valuers will then decide the current market rent of the premises. The rent will be decided by the umpire, if the valuers do not agree on it within one month of the date of appointment of the last of them to be appointed;

(v) each party will be given the opportunity to make written or verbal representations to the valuers or the umpire, subject to any reasonable time and other limits the valuers or the umpire prescribe. The valuers or the umpire will have regard to those representations, but will not be bound by them.

(c) the umpire or the valuers will give written notice to the parties of their decision as soon as practicable after they make it. The notice will state how the costs of the determination will be borne. The notice will be binding on the parties. However, either party will be entitled to appeal to the High Court any error of law arising out of the decision.

4.4 In any determination of current market rent, the valuers will disregard the Building Work and Improvements effected at the cost of the Tenant.

## 5. **OUTGOINGS**

5.1 The Tenant must punctually pay all Outgoings whether addressed to the Council or the Tenant.

5.2 Where any Outgoing is not levied wholly in respect of the Premises then the Tenant is only obliged to pay a fair proportion, depending on the period during which and the area over which it has been charged.

5.3 Schedule 3 itemises the obligations of the Tenant and Council in relation to Outgoings for the Premises and/or the Building (where appropriate). In the event of any conflict between clauses 5.1 and 5.2 and Schedule 3 the allocation in Schedule 3 will prevail.

## 6. **GST**

The Tenant must pay all GST on the Rent and other payments made by the Tenant under this Lease either to the Council or as the Council directs. The Tenant will also pay any additional GST the Council must pay, because the Tenant fails to pay when required.

## 7. **REQUIRED USE**

7.1 The Tenant must not use the Premises for any purposes except the Required Use.

7.2 The Council is entitled to make such enquiries as the Council thinks fit, including giving the Tenant an opportunity of explaining the usage of the Premises if at any time the Council is concerned that the Premises are not being used or sufficiently used for the Required Use. The Tenant will be in default of its obligations under this Lease if following such enquiries and having considered the Tenant's explanation the Council reasonably forms the opinion that the Premises are not being so used or sufficiently used.

## **8. CONDUCT ON THE PREMISES**

- 8.1 The Tenant must not use or permit the Premises or any part of the Premises to be used for any activity which is or may become dangerous, offensive, noxious, noisy, illegal or immoral, or which is or may become a nuisance or annoyance to the Council or to the owners and occupiers of neighbouring properties.
- 8.2 The Tenant must not allow any riotous or disorderly conduct to take place on the Premises and must limit noise levels to a moderate level, and in particular must keep the noise level at the boundaries of the Premises to within the requirements of the District Plan.
- 8.3 The Tenant must not allow the Premises to be used for overnight or residential accommodation.
- 8.4 The Tenant may make rules for the management and control of the Premises and for the conduct of persons using the Premises. Those rules must not be inconsistent with the terms of this Lease or the provisions of the Management Plan or the Act. The Council must approve those rules before they can come into effect.
- 8.5 The Tenant must at all times comply with the Council's policy from time to time in effect relating to the hiring, charges and other conditions of sports grounds and/or reserve land.
- 8.6 The Tenant must immediately notify the Land and Coastal Remediation Group of any issues that arise that may be attributable to the Landfill including gas odours, fires, sinkholes or slope failure, leachate breakouts or ponding being odorous or discoloured liquids that may be accompanied by surface sheens or staining, disturbance of wastes or wastes appearing at the surface. The Tenant must also notify the Land and Coastal Remediation Group of any activities including fires, ground breaking up and vandalism to the monitoring well that may occur as a result of the Tenant's activities on the Premises or from the activities of other parties who may or may not legitimately be on the Premises which the Tenant becomes aware of.
- 8.7 The Tenant will ensure that the Carparks are freely available for use by the general public at those times they are not required for use by the Tenant and its visitors.

## **9. COMMUNITY OBJECTIVES AND OUTCOMES**

- 9.1 The Tenant shall use the Premises in a manner consistent with the attainment of the Community Objectives.
- 9.2 On each anniversary of the Commencement Date and at any other time considered reasonable by the Council, the Council and the Tenant may (and will at the request of either party) meet to review the Community Objectives and to consider options for maximising use of the Premises. This review may include but is not limited to consideration of facility sharing, partnerships and amalgamations as well as any submissions made by members of the public or representatives of organisations using or

wishing to use the Premises and any other factors relevant to the ability of the Tenant to better attain the Community Objectives.

9.3 The Tenant will, in good faith and acting reasonably, allow the Council to use the Premises from time to time, as follows:

- (a) complimentary room hire for twelve (12) functions per annum of no more than one (1) day in a room of significant scale that can be used by Council, community and stakeholder functions;
- (b) venue hire at net cost for one (1) major regional event per annum of not more than five (5) days; and
- (c) use of the Premises for civil defence purposes at nil cost to Council.

## 10. SIGNS

10.1 Save as provided for in clause 10.2, the Tenant shall not affix paint or exhibit or permit to be affixed painted or exhibited any name, sign, nameplate, signboard or advertisement of any description on or to the exterior of the Buildings or Improvements without the Council's prior written approval as landowner in each case (including as to type, quality, materials, colour and size). Such approval shall not be unreasonably or arbitrarily withheld in respect of signage describing the Tenant's activities at the Premises.

10.2 The Tenant may affix or exhibit or permit to be affixed or exhibited signage or advertising of a temporary nature that is erected upon or fixed to the Buildings or Improvements for the purpose of promoting specific events, shows or performances.

10.3 The Tenant will ensure that any signage or advertising under clause 10.1 or 10.2 is not any of the following:

- (a) offensive;
- (b) not of appropriate size;
- (c) not erected in a suitable location;
- (d) likely to damage the Building or Improvements;
- (e) not in accord with the general standard of finish and decoration to the Building or Improvements;
- (f) likely to pose a health and safety hazard;
- (g) not in accord with the general image of the Reserve; or
- (h) likely to bring the Council into disrepute or ridicule.

Council will be entitled by written notice to the Tenant to require the Tenant to remove any such sign, nameplate, signboard or advertisement where the Council considers it does not meet the above; and the Tenant will immediately remove any sign, nameplate, signboard or advertisement that is the subject of a notice under this clause.

## 11. LIQUOR LICENCES

11.1 The Tenant must not apply for a liquor licence or renew or vary any liquor licence for the Premises or any part of them without first obtaining the written consent of the Council as owner of the Premises and administering body of the Reserve. The Council has a complete discretion, in this capacity:

- (a) to refuse consent to any application for liquor licence on the Premises; or
- (b) to require the Tenant to modify any part of the application, for example as to the days or times of the day or hours for which the licence is sought, or the type of licence being sought.

11.2 Any application made by the Tenant to the Council in its role as Regulatory Authority under the Sale or Supply of Alcohol Act 2012, must be a "club licence" in terms of the Sale or Supply of Alcohol Act 2012.

11.3 If the Tenant obtains a liquor licence, it is the Tenant's obligation to maintain a safe and responsible approach to the use of the Leased Area for that purpose. If there is a significant breach of that obligation, the Council may, without limiting its powers, warn the Tenant in writing that a second such breach will lead to the Council determining this Lease.

## 12. TENANT'S ANNUAL REPORT

12.1 The Tenant, within six (6) months after the end of each Financial Year, will provide the following information to the Council:

- (a) a set of its financial accounts for that Financial Year, if the Tenant's constitution/rules of incorporation require that the accounts be audited, then audited accounts are required;
- (b) a copy of the Tenant's chairperson or president's report of the Tenant's activities during that Financial Year;
- (c) a copy of any changes to its constitution that have not been previously approved under clause 24.2;
- (d) an up to date list of the Tenant's chairperson or president and secretary, together with their contact details;
- (e) confirmation of the hire charges imposed by the Tenant during the Financial Year;

- (f) confirmation of the total revenue collected by the Tenant during the Financial Year in respect of the Premises; and
- (g) any other information relating to use of the Premises as may be reasonably requested by Council.

12.2 Where the information required by the Council at clause 12.1 differs from the financial accounts the Tenant is legislatively required to submit, the Council will accept the information in the form of a letter, provided the letter is provided by a certified auditor.

12.3 The Council will be entitled at any time on reasonable notice for its auditors, being a Chartered Accountant who meets legislative requirements and the New Zealand Institute of Chartered Accountants requirements, to inspect and audit all of the books of the account statements, documents, records, returns, papers and files of the Tenant relating to the Required Use and the Tenant at the request of the Council shall make the same available for inspection or audit at the Premises or at such other place as the Council may reasonably require.

12.4 The Council will be entitled to review the Rent at any time to the current market rent for the Premises, if it is of the reasonable opinion that the Tenant is either operating for a profit, or is generating a profit from the Premises.

12.5 When considering whether the Tenant is operating for a profit, or is generating a profit from the Premises, the Council will take into account the capital expenditure of the Tenant in the Building Work, Improvements, and in fulfilling its obligations under this Lease.

### 13. **OPEN MEMBERSHIP**

The Tenant must comply with the Human Rights Act 1993 so far as it applies to the Tenant.

### 14. **PUBLIC ACCESS**

14.1 The Tenant must allow any member of the public who behaves in a reasonable manner to enter the Premises without charge as long as that person is suitably dressed, behaves in a reasonable manner and complies with the rules of the Tenant. However, the Tenant is entitled to restrict access to areas of the Premises that it reasonably considers the public should not have access to for security or operational reasons.

14.2 Tenant must allow any member of the public who behaves in a reasonable manner to enter the Premises as a spectator without charge.

14.3 The Tenant must, when the Premises are open for use by the public, make the toilet facilities in the Premises available to the public without charge.

14.4 The Tenant must allow any member of the public, on payment of a reasonable fee (if required), to take part in the sporting activities permitted by this Lease in the playing area in the Premises at the times when the Premises are open for play, as long as that person



is suitably dressed, behaves in a reasonable manner and complies with the rules of the Tenant.

14.5 Despite clauses 14.1, 14.3 and 14.4, the Tenant may, with the prior approval of the Council (as provided for in Schedule 4) exclude the public from the Premises for not more than forty (40) days in any one Lease Year, but not more than six (6) days consecutively (**Exclusive Days**). At those times, the Tenant may make a charge for admission to the Premises and/or use the Premises as approved in accordance with Schedule 4. However, any charges must receive the prior written approval of the Council.

14.6 Subject to any prior bookings, the Tenant must, at the request of the Council make the whole or any part of the building on the Premises available from time to time at reasonable charges to other voluntary organisations wishing to use the Reserve or part of it for outdoor sports, games or recreational activities.

14.7 The Tenant must obtain the Council's approval for any fees charged to the public for the use of the Premises pursuant to the community use arrangements at Schedule 4.

## 15. **INSURANCE**

15.1 The Tenant will insure all Buildings and Improvements against damage or loss for any cause.

15.2 The insurance will be for the full cost of reinstatement, including all professional and consent fees, and costs of demolition, site clearance and for any works required by statute.

15.3 The Tenant will maintain the following insurance during the term:

- (a) public risk (which includes a tenants liability clause) for at least the Minimum Public Risk Insurance, or any higher amount the Council reasonably requires;
- (b) replacement of all glass in the Premises;
- (c) contents insurance; and
- (d) cover for the Premises, Buildings and all Improvements against damage or loss for any cause. The insurance will be for the full cost of reinstatement including all professional and consent fees, and costs of demolition, site clearance and for any works required by statute.

15.4 The Tenant's insurance will be on terms and conditions and with a reputable insurer of which the Council reasonably approves. The Tenant will provide the Council with proof of the insurance and the terms of it on the Commencement Date and every twelve (12) months from the Commencement Date.

15.5 The insurance will be in the joint names of the Council and the Tenant for their respective interests.

15.6 Whenever the Council requests it to, the Tenant will provide the Council with a copy of the insurance policy for the insurance it must maintain, plus evidence that the Tenant has paid the premium.

**16. DAMAGE TO OR DESTRUCTION OF THE PREMISES**

16.1 If any Building or Improvement is destroyed or so damaged so as to render the Premises untenable, the Tenant will advise the Council within three (3) months of the date of the destruction or damage whether the Tenant wishes to restore its Buildings and Improvements. The Tenant will provide the Council with reasonable evidence that it has the funds and is able to obtain all the necessary permits and consents to carry out the work. This Lease will continue and the Tenant will promptly restore its Buildings and Improvements within a reasonable period, if the Council advises the Tenant (in writing) that the Council is reasonably satisfied that the Tenant is able to do so. The Tenant will comply with clause 18.1 in relation to the restoration work.

16.2 This Lease will end at the end of the three (3) month period under the previous clause 16.1, if any of the following occur:

- (a) the Tenant does not give a notice under that clause;
- (b) the Tenant gives a notice that it does not wish to restore its Buildings and Improvements; or
- (c) the Council is not reasonably satisfied the Tenant is able to promptly restore its Buildings and Improvements within a reasonable period, and advises the Tenant in writing accordingly.

Any termination under this clause will be without prejudice to the rights of either party against the other.

16.3 The Tenant will with all reasonable speed repair damage, or reinstate the area affected, if any Building or Improvement is damaged, but the Premises are still tenantable. However, either party will be entitled to end this Lease by notice in writing to the other, if the Tenant, cannot obtain all the necessary permits and consents for the work within a reasonable period, or does not complete the required works within a reasonable period.

16.4 In the event of any destruction or damage to the Buildings or any other chattels or fixtures whatsoever in or on the Site the Tenant or any one claiming under the Tenant shall not be entitled to any compensation or payment whatsoever from the Council.

**17. QUIET ENJOYMENT**

If the Tenant pays the Rent and performs the Tenant's obligations in this Lease, the Tenant will be entitled to quiet enjoyment of the Premises without interruption by the Council or any person

claiming under the Council save that where access and use are provided for in this Lease, including:

- (a) the use by the Community groups under the Council's booking system;
- (b) access and use by the Council including the Access Way; and
- (c) the access and use of the Carparks by the general public,

such access and/or use will not be a breach of the Tenant's quiet enjoyment.

## 18. BUILDING WORK

18.1 The Tenant may not:

- (a) erect any Building or Improvement, or
- (b) alter, reinstate, extend, paint or redecorate any Building or Improvement without:
  - (i) first supplying the Council with detailed plans and specifications and a project programme; and
  - (ii) obtaining the prior written approval of the Council as landowner and Asset Owner Approval. All costs of the Council in respect of such approvals (including architects and consulting fees) shall be paid by the Tenant.
- (c) Undertake any ground breaking/soil disturbance without Asset Owner Approval.

18.2 The Council will not withhold its consent arbitrarily or unreasonably, under clause 18.1(b)(ii) if the proposed Building Work:

- (a) is in accordance with the Management Plan at the time;
- (b) complies with any reasonable standards applicable to the Reserve (whether or not included in the Management Plan) which the Council may from time to time set as to the design, quality, materials and colour of any Buildings and Improvements;
- (c) will not in the opinion of the Council overload or endanger the proper working of any services, utilities or amenities;
- (d) will be carried out under the supervision of an architect, project manager, engineer or other suitably qualified person; and
- (e) demonstrates management of risks to and from the Landfill to the approval of the Land and Coastal Remediation Group.

18.3 If the Council as landowner gives its approval under clause 18.1(b)(ii) then the Tenant must promptly complete the Building Work in a proper and workmanlike manner in accordance with the approved plans and specifications and all approvals, permits and consents.

- 18.4 The Tenant must obtain all consents required under the Building Act 2004 and the Resource Management Act 1991 and provide the Council (as landowner) with a copy of those consents. Approval of the Council under clause 18.1(b)(ii) will not be deemed to affect the Council's duties as a regulator as to those statutory consents.
- 18.5 In granting consent or approval under clause 18.1(b)(ii) the Council will not be deemed to have warranted that the plans or specifications are suitable for the Tenant's purposes or that any person involved in the work is suitable or adequately qualified.
- 18.6 During the construction of the Building Work the Tenant must maintain, in the joint names of the Council and the Tenant for their respective interests, builders' risk and public liability insurance for amounts approved by the Council and will provide the Council with a copy. All Building Work is at the sole risk of the Tenant.
- 18.7 If during the course of the Building Work the Council reasonably considers the Tenant is failing to adhere to the approved plans or specifications, the project programme, the standards referred to in clause 18.2, or reasonably considers that the project is not being properly managed, the Council may by notice in writing to the Tenant require that all work stop immediately, or require it to take other action as necessary to mitigate the Council's concerns.
- 18.8 On or about practical completion of the Building Work, the Tenant must provide Council with a copy of the engineer's certificate of practical completion, the Code Compliance Certificate under the Building Act 2004, the "as built" and "as laid out" plans for the Building Work, and a complete set of drawings accurately showing buildings, improvements, and services on the Premises as constructed or altered.

**19. MAINTENANCE OF GROUNDS AND SURROUNDS**

- 19.1 The Tenant must maintain the grounds and surrounds of the Premises in a clean, tidy and attractive condition at all times to the satisfaction of the Council.
- 19.2 The Tenant must mow any lawns within the Premises regularly and keep those areas fertilised and watered, keep and maintain any gardens, planted and landscaped areas watered and in a tidy and attractive condition and replace plants and shrubs, which die or are destroyed through the actions of the Tenant.
- 19.3 The Tenant must take effective measures to prevent any noxious weeds and recognised environmental plant pests growing on the Premises and comply with the provisions of the Biosecurity Act 1993. The Tenant must also ensure that the Premises are kept free from stones, broken glass, litter, and other detritus.
- 19.4 The Tenant may with the prior written consent of the Council plant new trees on the Premises in places approved by the Council. The Tenant must maintain any trees on the Premises in a neat and tidy condition. The Tenant must not remove or prune any tree without the Council's prior written consent.

- 19.5 The Tenant must repair any damage however caused to any sealed or surfaced areas, gates and existing fences within or bounding the Premises.
- 19.6 The Tenant must not damage, cover or allow site users to interfere with the Landfill and specifically the monitoring bore(s) as shown on Schedule 5.

**20. MAINTENANCE PLAN, MAINTENANCE AND RENEWAL OF BUILDINGS AND/OR IMPROVEMENTS**

20.1 The Maintenance Plan demonstrates how the Tenant will maintain the Buildings and Improvements during the Term including:

- (a) a programme of Routine Maintenance during each Lease Year;
- (b) a programme of renewal and rehabilitation Maintenance including end of life projections, details of how replacements and renewals are identified and lifecycle costs;
- (c) details of how Maintenance will be achieved, monitored, and implemented;
- (d) a timetable for review of the programmes under clauses 20.1(a) and 20.1(b); and
- (e) cash flow forecasts of costs and a funding strategy for Maintenance.

20.2 The Council may review the Maintenance Plan on each fifth (5<sup>th</sup>) anniversary of the Commencement Date.

20.3 The Tenant shall at its own cost at all times clean, maintain, repair, redecorate, replace, renew and keep in good and substantial order, repair and condition in all respects the whole of the interior and exterior of the Buildings and Improvements in a as new condition (considering that all the Buildings and Improvements are or were new on their completion under the Agreement to Lease) and shall also be responsible for all repairs and replacement of the structure and roof of Buildings and Improvements when necessary and/or when required by Council. The Tenant will do this to the satisfaction of the Council. At the expiration or termination of the Term, the Tenant shall yield the Buildings and Improvements up to the Council in the like good order, repair, and condition.

20.4 Without limiting the foregoing, the Tenant shall (at its own cost):

- (a) repair, maintain, replace and renew all technology, machinery, plant, equipment, including mechanical and ventilating air-conditioning equipment, and fire-fighting equipment, electric, light or power installations in or upon the Buildings and Improvements, and shall keep the same in a sound and safe working condition. The Tenant shall comply with all statutory requirements relating to the inspection, maintenance, safety, and operation thereof;

- (b) repair or replace as reasonably necessary any windows, doors, glazing, light fittings and light bulbs, carpets and floor coverings with the same or similar quality; and
- (c) implement the Maintenance Plan and annually review the Maintenance Plan in order to ensure that the Tenant's obligations under this clause are fulfilled. The Tenant shall make such changes to the Maintenance Plan, as the Council shall reasonably require.

20.5 The Tenant acknowledges that its obligations hereunder include an obligation to carry out any works of a structural nature, and require compliance with the provisions of clause 18.

20.6 Schedule 3 itemises the obligations of the Tenant and Council in relation to the Routine Maintenance of the Premises (where applicable). In the event of any conflict between this clause, the Maintenance Plan and Schedule 3, the obligations in the Maintenance Plan shall prevail over Schedule 3 which shall prevail over this clause.

20.7 The Tenant must remove any externally visible graffiti from any Buildings or Improvements within five (5) days of any defacement occurring.

20.8 The Tenant shall permit the Council or any person authorised by the Council to enter the Premises at any time to carry out repairs to the Premises, if such repairs have not been carried out by the Tenant when required.

## 21. REMOVAL OF BUILDINGS/IMPROVEMENTS

21.1 The Tenant may not pull down or remove any Buildings or Improvements without first obtaining the written consent of the Council, and specifically including Asset Owner Approval.

21.2 At the end of this Lease whether by expiry of the term, breach of condition or otherwise, the Premises together with all the Buildings and Improvements will vest in the Council without any compensation whatsoever being payable to the Tenant by the Council.

21.3 Despite clause [Error! Reference source not found.21.2](#), at the end of this Lease, having regard to the condition and safety of the Premises and the Buildings and Improvements, and the requirements of the Management Plan for the Reserve, the Council will have the following rights with respect to the Buildings and Improvements the Tenant has constructed or made:

- (a) the Council may make the Premises available to another community group approved by the Council, in which case the Council may require any incoming tenant of the Premises to pay to the Tenant the value of the Tenant's Buildings and Improvements. This value, or amount to be paid, is to be agreed by the parties or if they cannot agree, it is to be determined in accordance with clause [Error! Reference source not found.21.3](#)(d);

- (b) the Council may require the Tenant on written notice from the Council to remove all or some of the Tenant's Buildings and Improvements, in which case the Tenant will, within a reasonable time as stipulated in the notice, and in the manner stipulated in that notice, remove the Buildings and Improvements, and if this is not done within the stipulated time or in the stipulated manner then the Council may remove the same at the cost in all respects of the Tenant;
- (c) where the Buildings and Improvements erected by the Tenant are of value to the Council, the Council may pay the Tenant the value of the Buildings and Improvements, as agreed by the Council and the Tenant. This value is to be agreed by the parties or if they cannot agree it is to be determined in accordance with clause [Error! Reference source not found.21.3\(d\)](#). Whether the Buildings and Improvements are considered to be of value to the Council for the purpose of this sub-clause is entirely a matter for the Council's discretion and not a matter for dispute between the parties; and
- (d) where under clause [Error! Reference source not found.21.3\(a\)](#) or [Error! Reference source not found.21.3\(c\)](#) the parties cannot agree on the value of the Buildings and Improvements within fourteen (14) days, each party will within a further fourteen (14) days appoint a registered valuer to act as an expert for the purpose of determining the value of the Buildings and Improvements. The valuers will appoint an umpire who need not be a registered valuer before determining the value of the Buildings and Improvements. Where the valuers cannot agree on the value, the umpire will make the final determination.

18.2 At the end of this Lease, the Council may remove from the Premises any chattels in the apparent possession of the Tenant and place them outside the Premises and the Council shall not be answerable for any loss resulting from the exercise of the power of re-entry.

## **22 ACTS, REGULATIONS, BY-LAWS, RULES AND MANAGEMENT PLAN**

22.1 The Tenant must comply with all Acts, Regulations, By-laws, District and Regional Plan Rules and the Management Plan as they affect the Premises.

22.2 Where any Building requires a compliance schedule under the Building Act 2004 (within this clause 22 "the Act") the Tenant shall at its own cost fully comply with all obligations imposed under the Act including but not limited to:

- a) complying with any requirements specified in any compliance schedule issued by the Council in its regulatory capacity;
- b) ensuring the Building has at all times a current building warrant of fitness and obtaining any written reports relating to compliance with the compliance schedule; and

- c) complying with any notices issued by the Council in its regulatory capacity under the Act.
- 22.3 The owner of the Building shall at all times display at a place in the Building to which users of the Building have ready access, a copy of the current building warrant of fitness showing the location of the compliance schedule.
- 22.4 The Tenant shall make available to the Council in its capacity as landowner:
- a) prior to the annual anniversary of the issue of the compliance schedule a copy of the compliance schedule together with any written reports relating to compliance with the compliance schedule; and
  - b) on every subsequent annual anniversary a copy of the current building warrant of fitness for the Building together with any written reports relating to compliance with the compliance schedule.
- 22.5 The Tenant shall:
- a) be incorporated under the Incorporated Societies Act 1908 and remain incorporated or registered for the Term;
  - b) if, registered with the Department of Internal Affairs – Charities, remain registered for the balance of the Term;
  - c) comply with all of its obligations under the Incorporated Societies Act 1908 and/or the Charities Act 2005 (as applicable) including but not limited to the keeping of an up-to-date register of members containing the names addresses and occupations of members; and
  - d) deliver annually to the Registrar of Companies in the prescribed form an annual financial statement containing the particulars required by the Incorporated Societies Act 1908.
- 22.6 The Tenant acknowledges that the Council is subject to the provisions of the Copyright Act 1994 in relation to the payment of fees for the broadcast and performance of music on the Premises. The Council has entered into a licence(s) with the Australasian Performing Rights Association (APRA) and with Phonographic Performances New Zealand (PPNZ), the two statutory bodies empowered to administer the Copyright Act, to authorise the public broadcast and performance of music in respect of some groups which occupy and use Council's land(s) and some activities which may occur on the land. Where the Tenant is contemplating the use of recorded music or the live performance of music on the Premises in the course of the Required Use, the Tenant must make all reasonable enquiries to ascertain whether the said use is covered under the Council's licence(s) with APRA and PPNZ. Where the Premises or proposed activity is not so covered, the Tenant must obtain directly from either or both APRA and PPNZ the relevant licence(s) prior to undertaking the activity.



22.7 In the event the broadcast or performance of music is contemplated in the course of an activity and where the Tenant proposes to levy a charge on the public for attending the said activity, the Tenant must obtain a licence from APRA and/or PPNZ prior to undertaking the said activity in every instance.

22.8 The Tenant agrees to indemnify Council to the fullest extent against any claims made or liability however incurred in respect of the Tenant's responsibilities under clauses 22.6 and 22.7.

### **23 INSPECTIONS**

23.1 The Tenant must allow the Council or any person authorised by the Council at all reasonable times on to the Premises and inside Buildings to inspect them.

23.2 If the Council gives the Tenant notice of failure to do repairs required by this Lease, the Tenant must carry out work with all speed and complete the work in a diligent and workmanlike manner.

23.3 If the Tenant fails to comply with clause 23.2 then the Council is entitled to enter the Premises and carry out the work and the Tenant must pay the cost of that work on demand.

23.4 The Tenant must provide the Council or any person authorised by the Council, including the Land and Coastal Remediation Group with reasonable access to the Premises and to its monitoring bore on the Premises at all reasonable times, but in particular, with unrestricted access in the event of an emergency.

### **24 ASSIGNMENT AND SUBLETTING**

24.1 Except as permitted under clauses 14.6 and 25 of this Lease, the Tenant must not Assign, mortgage, charge, sublet, licence or part with possession of the Premises or any part of the Premises.

24.2 If the Tenant is an incorporated society or an association or trust (whether incorporated or not), any amalgamation, or any change in the Tenant's constitution or rules which affects the objects or purposes of the Tenant (excluding those changes that the Tenant is required to make as a result of its submission to decisions made by the Fédération Internationale de Football Association), will be deemed to be an assignment of this Lease unless the Tenant has obtained the Council's prior written approval to the change, which shall not be unreasonably withheld.

### **25 HIRING**

25.1 The Tenant may from time to time with the prior written consent of the Council let out or hire the Premises or any part of the Premises on intermittent and temporary terms to any responsible and respectable person(s) or organisations with a sporting, community, cultural or recreational interest as long as:

- (a) there is always some staff member and/or agent of the Tenant in charge and no nuisance is caused to neighbours whether by excessive noise or otherwise; and
- (b) such persons have been approved by the Tenant in accordance with such rules and regulations for hirers as shall be approved annually by the Council.

25.2 The Council will not unreasonably withhold its consent for the Tenant to let out or hire the Premises or any part of the Premises as provided for in clause 25.1. This approval to hire or let the Premises shall be subject to annual review in October of each Lease Year, and may be rescinded by the Council in the event of persistent breaches of the rules and regulations.

25.3 If so requested by the Council, on not less than four (4) weeks' notice, the Tenant must make the whole or part of the Premises available from time to time at reasonable charges to other voluntary organisations for recreational or community activities, as long as the Premises is not otherwise required by the Tenant. The Tenant will provide the Council with details of why the Premises are required by it.

25.4 Notwithstanding clauses 25.1 to ~~25.3~~, the Tenant acknowledges that Council will have full use of some of the Fields on the Premises from time to time. The parties agree that the Fields will be hired out for the Council's use via the Council booking system for field hire. The details of the Council booking system and the remuneration for third party use of the Fields are recorded in Schedule 4 of this Lease.

25.5 The Tenant will manage its own booking system in respect of its bookings for use outside of the hours required by the Council for its bookings.

## 26 DEFAULT

26.1 In accordance with the procedures stated in sections 244 to 252 of the Property Law Act 2007, the Council may cancel this Lease and either re-enter the Premises or apply to court for an order for possession of the Premises, if the Tenant:

- 26.1.1 fails for ten (10) Working Days after the due date to pay any instalment of the Rent payable under this Lease; or
- 26.1.2 fails to observe or perform any other obligation under this Lease for a reasonable time after receiving notice of such failure; or
- 26.1.3 being a company or incorporated body:
  - a) is or is deemed to be unable to pay its debts under section 287 of the Companies Act 1993; or
  - b) goes into liquidation (other than voluntary liquidation for the purpose of reconstruction or amalgamation approved in writing by the Council); or
  - c) is wound up or dissolved; or

- d) enters into any assignment or other compromise or scheme of arrangement with its creditors or any class of its creditors; or
  - e) has a receiver, manager or receiver and manager appointed in respect of any of its assets.
- (d) being an unincorporated association or trust, is wound up, dissolved or becomes defunct.

26.2 The Council may without being under any obligation to do so remedy at the Tenant's cost any default by the Tenant under this Lease.

## **27 INDEMNITY**

The Tenant hereby indemnifies the Council against all costs, claims and demands in respect of injury or damage resulting from anything done on the Premises or on any Building.

## **28 DISPUTE RESOLUTION**

28.1 Except for those provisions where the Council has a discretion contained in clause 4, if any dispute arises between the Council and the Tenant concerning this Lease, the parties will try in good faith to settle the matter by negotiation, and if that is unsuccessful by mediation.

28.2 If the dispute cannot be settled by negotiation or mediation, it will be referred to arbitration under clause 28.3.

28.3 The dispute will be referred to a sole arbitrator if the parties agree upon one, and if not then the dispute will be referred to an arbitrator appointed by the then President or Vice President of the New Zealand Law Society.

28.4 The Arbitration Act 1996 will govern the arbitration and the arbitral award will be final and binding on the parties. However, either party is entitled to appeal to the High Court on any error of law arising out of the award.

## **29 NATURE OF THE COUNCIL**

29.1 The Council has signed this Lease as the owner of the Premises. The Council is also the territorial authority for the area in which the Premises are situated. Nothing in this Lease limits or affects the duties and obligations of the Council as a regulatory authority under the Resource Management Act 1991, the Building Act 2004 or any other relevant statute. The Council will not be liable for any expense, costs, loss, or damages the Tenant or any person claiming through the Tenant suffers or incurs because of the Council lawfully carrying out its statutory duties.

29.2 Where this Lease requires the Tenant to obtain any consent or approval of the Council, the Council will grant that consent or approval in its capacity as the owner of the Premises only. The Tenant must separately obtain through the relevant department of

the Council any consent or approval it requires from the Council acting as regulatory authority and Land and Coastal Remediation Group as the Asset Owner of the Landfill. Similarly, any consent or approval the Tenant obtains from the Council acting as territorial (or regulatory) authority, does not constitute the consent of the Council in its capacity as the owner of the Premises.

29.3 Where the Tenant wants to give a notice to or otherwise communicate with the Council, the Tenant must address the notice to, or otherwise deal with the department of the Council from time to time charged with administering this Lease. A notice the Tenant sends that has not been addressed to that department will have no effect and will not have been given, until it has been actually received by that department. Any consent, approval or other permission obtained from any other department will not be binding on the Council.

29.4 The Council will advise the Tenant in writing at the Commencement Date as to the department of the Council charged with administering this Lease. The Council will advise the Tenant of any change as soon as practicable after the change comes into effect.

### **30 IMPLIED PROVISIONS**

30.1 The covenants and provisions implied in Leases by the Property Law Act 2007 and the Land Transfer Act 1952 will apply to this Lease except to the extent they are inconsistent with the terms of this Lease.

30.2 The Tenant must not attempt to register this Lease, or require the Council to register it. The Tenant must not register a caveat against the computer freehold registers to the Premises.

### **31 COSTS**

Each party must pay all of its own legal costs and expenses for the preparation and completion of this Lease, and the Tenant will pay all the Council's costs and expenses of any renewal or variation of this Lease and all costs incurred by the Council in exercising any rights and remedies because of any default by the Tenant under this Lease.

### **32 GENERAL PROVISIONS**

32.1 The obligations of the Council are exclusively set out in this Lease.

32.2 Nothing expressed or implied in this Lease will be deemed to constitute either party as the agent of or as a partner of or in joint venture with the other party, and neither party may hold itself out as such or pledge the credit of the other party.

32.3 This Lease may not be modified or amended except in writing signed by the parties or the respective permitted successors or assigns.

32.4 The Tenant acknowledges that the Council is the territorial authority for the area in which the Premises is located, and nothing in this Lease or Agreement restrict or affect in any

way the manner in which the Council may act in the exercise of its statutory powers as the territorial authority. The Tenant will not be entitled to any compensation for loss or damage suffered as a result of the Council properly exercising its statutory powers as the territorial authority.

### **33 GOVERNING LAW AND JURISDICTION**

The law of New Zealand governs this Lease. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand. The parties will not object to the exercise of jurisdiction by those courts on any basis.

### **34 CONSENT UNDER THE RESERVES ACT 1977**

Landowner consent to this Lease pursuant to the requirements of the Act is granted by the Council pursuant to its delegated authority from the Minister of Conservation.

### **35 TREATY OF WAITANGI**

Council has granted this Lease in its capacity as the statutory Administering Body of the land, acting on behalf of the Crown as land owner, under the Reserves Act 1977. The Crown reserves the right to resume control and administration of the land in the event of a successful claim being made for the land to be used as redress pursuant to the Treaty of Waitangi Act 1975. The contractual rights contained in this Lease will not be affected by any change in land ownership.

### **36 NOTICES**

A notice or other correspondence required to be given by any party under this Lease shall be in writing and may only be served by personal delivery or by facsimile. A notice shall be deemed to have been given and received:

- (a) in the case of personal delivery, when delivered; and
- (b) if made by facsimile, upon production of a transmission report by the machine from which the facsimile was sent which indicates the facsimile was sent in its entirety to the facsimile number of the party designated for the purposes of this Lease,

provided that any communication received or deemed received after 5pm or on a day which is not a Working Day shall be deemed not to have been received until the next Working Day.

### **37 WAIVER**

Failure by any party to enforce at any time or for any period one or more of the terms or conditions of this Lease shall not be a waiver of such terms or conditions nor of that parties' right, at any time subsequently, to enforce all of the terms and conditions of this Lease. The remedies provided in this Lease are cumulative and not exclusive of any remedies provided by law.

**38 ACCESSWAY**

~~As at the entering into of this Lease, the Council and/or Auckland Transport are planning to construct, widen and/or reconfigure (at Council's cost) an access way or road through the South and South Eastern corner of the Premises as indicatively shown on the Premises Plan. The result of this may result in the access way or road abutting and/or crossing the Premises. Notwithstanding the grant herein such works and the resulting access way or road will not be a breach of the Tenant's quiet enjoyment and following completion of such the parties will record any required variation to the area of the Premises between them.~~

**SCHEDULE 1**

PREMISES PLAN

## **SCHEDULE 2**

### **COMMUNITY OBJECTIVES**

The Tenant must use reasonable endeavours to achieve the following in respect of its occupation and operation of the Premises:

1. to be accessible to the Community and support and encourage the use of the Reserve for the purpose of football, futsal and other sports related operations and activities, including education and community facilities for the use and benefit to, football, sporting, education, recreation and community groups in the region;
2. to ensure the Premises are available for use by voluntary organisations on payment of a reasonable charge that is consistent with the fees policy of the Council;
3. to create a sense of ownership of the Premises by the Community;
4. to provide a service that is responsive to the demands of the Community;
5. manage the Premises in a financially sustainable manner; and
6. provide a high level of customer satisfaction to users and members of the public using the Premises.



### SCHEDULE 3

#### OUTGOINGS AND MAINTENANCE ITEMS

(Clauses 5 and 18)

ITEMS	UTILITIES	COUNCIL	TENANT
UTILITIES	Water connection to Building		✓
UTILITIES	Ongoing water charges		✓
UTILITIES	Ongoing waste water charges		✓
UTILITIES	Power connection to Building		✓
UTILITIES	Ongoing power charges		✓
UTILITIES	Gas connection to Building		✓
UTILITIES	Ongoing gas charges		✓
UTILITIES	Telephone connection and ongoing charges, (i.e. telephone listings, internet access)		✓
UTILITIES	Rubbish collection		✓
UTILITIES	Hygiene service contract		✓

ITEMS	SERVICES	COUNCIL	TENANT
SERVICES	Fire service charges and maintenance charges in respect of all fire detection equipment		✓
SERVICES	Maintenance of all fire extinguishers and fire hose reels		✓
SERVICES	Air conditioning service contract		✓
SERVICES	Air conditioning replacement		✓
SERVICES	Lift service contract		✓
SERVICES	Security system service		✓
SERVICES	Monitoring of security system and associated alarm call-outs		✓
SERVICES	Automatic door servicing contract		✓

ITEMS	OUTGOINGS	COUNCIL	TENANT
RATES	Levies payable to any local or territorial authority		✓
INSURANCE	Building – premiums against all insured risks		✓

ITEMS	OUTGOINGS	COUNCIL	TENANT
INSURANCE	Related valuation fees		✓
INSURANCE	Contents (Tenant's possessions)		✓
INSURANCE	Public liability insurance (as per First Schedule)		✓
INSURANCE	Any insurance excess in respect of a claim (as Tenant managing their own risk)		✓
CLEANING	External		✓
CLEANING	Internal		✓
CLEANING	Windows – external		✓
CLEANING	Windows – internal		✓
CLEANING	Carpet cleaning		✓
CLEANING	Cleaning materials		✓
CLEANING	Graffiti removal		✓
CLEANING	Pest control		✓
MAINTENANCE	Repairs – structural		✓
MAINTENANCE	Repairs – external		✓
MAINTENANCE	Repairs – internal		✓
MAINTENANCE	Repainting – external		✓
MAINTENANCE	Repainting – internal (i.e. decorative)		✓
MAINTENANCE	Roof and guttering (including down pipes)		✓
MAINTENANCE	Plumbing (i.e. blocked toilets, drains)		✓
MAINTENANCE	Plumbing (i.e. replacement sink plugs, tap washers)		✓
MAINTENANCE	Electrical (i.e. faulty switches, plugs, light fittings)		✓
MAINTENANCE	Electrical (i.e. replacement light bulbs, fuses)		✓
MAINTENANCE	Floor coverings – replacement after fair wear and tear		✓
MAINTENANCE	Floor coverings – carpet / vinyl repairs		✓
MAINTENANCE	Window coverings (i.e. curtains and/or blinds)		✓
MAINTENANCE	Glass – replacement		✓
MAINTENANCE	External doors		✓
MAINTENANCE	External locks		✓

ITEMS	OUTGOINGS	COUNCIL	TENANT
MAINTENANCE	Internal doors and locks		✓
MAINTENANCE	Keys – replacement and additional keys		✓
GROUNDS	Mowing of lawns / grass of leased area		✓
GROUNDS	Gardens, including trees and bushes of leased area		✓
GROUNDS	Replacement plants		✓
GROUNDS	Car park maintenance (i.e. re-marking, potholes)		✓
GROUNDS	Repairs to paths and driveways		✓
GROUNDS	Repairs to existing fences		✓
GROUNDS	Replacement of fences		✓
GROUNDS	Playground / play equipment maintenance (if applicable)		✓
LEGISLATIVE	Building warrant of fitness charges		✓
LEGISLATIVE	Compliance with Health and Safety in Employment Act		✓
LEGISLATIVE	Compliance with fire and egress codes (including signage)		✓
OTHER	External Signage relating to the site		✓
OTHER	Maintenance of any improvements made to the Building by the Tenant		✓
OTHER	Maintenance of Council's Fixtures and Fittings (if any)		✓
OTHER	Replacement of Council's Fixtures and Fittings (if any) after fair wear and tear		✓
OTHER	Maintenance of Tenant's Fixtures and Fittings		✓
OTHER	Replacement of Tenant's Fixtures and Fittings after fair wear and tear		✓

## SCHEDULE 4

### COMMUNITY USE ARRANGEMENTS

#### BOOKING SYSTEM AND REMUNERATION DETAILS

1. Within this Schedule unless the context indicates otherwise:
  - a. **Booking Schedule** means the schedule prepared by Council detailing Council's Seasonal Times for the forthcoming Season;
  - b. **Council's Allocation** means twenty-four (24) hours per Field per week.
  - c. **Council's Times** means:
    - i. Monday to Friday (inclusive): 3:00PM to 9:00PM; and
    - ii. Saturday and Sunday (inclusive): 8:00AM to 9:00PM.
  - d. **Council's Seasonal Times** means those days and times within the Council Times determined through the Booking Schedule process in this Schedule 4 for Council Allocation in each respective Season;
  - e. **Fee** means the total amount charged by either the Council or the Tenant for the use of parts of the Fields;
  - f. **Season** means respectively:
    - i. the months of April to August (inclusive) in respect of the "winter" sport season; and
    - ii. the months of September to March (inclusive) in respect of the "summer" sport season.
2. Representatives of the Council (being the Parks team responsible for Council's sport fields booking system) and the Tenant will meet at Council's offices at an agreed time no later than two (2) months before the commencement of each Season to discuss:
  - a. the scheduling of Council's Allocation within Council's Times; and
  - b. the Fees to be charged by both Council and the Tenant,for the immediately forthcoming Season (**Scheduling Meeting**).
3. Not less than ten (10) days prior to the Scheduling Meeting the Tenant will notify the Council of any Exclusive Days that will be required for the immediately forthcoming Season (if any). Such notification to include reasonable information on the reason for the exclusive use of the Fields including the times of proposed use, the areas of proposed use and the parties intending to use the same.

4. Not less than five (5) days prior to the Scheduling Meeting the Council will provide the Tenant with a draft Booking Schedule for the immediately forthcoming Season incorporating the Exclusive Days (if any) and the draft Council's Seasonal Times **PROVIDED THAT** where, acting reasonably, the Council does not allocate all or part of any requested Exclusive Day to the Tenant the Council will support such decision with its rationale.
5. As soon as reasonably practicable following the Scheduling Meeting and after considering any comments and/or requirements of the Tenant, the Council will provide the Tenant with the finalised Booking Schedule.
6. Following the finalised Booking Schedule, the Tenant will then be entitled to allocate any other times/days not allocated within the Booking Schedule as it wishes.
7. The Council will allocate Council's Allocation to Community Groups in accordance with its sports field booking policies and procedures from time to time **PROVIDED THAT** Council will use its reasonable endeavours to not allocate Community Groups times intended for further sub-licencing.
8. The Council will collect the Fees charged to the Community Groups in respect of the Council's Allocation and pay the same to the Tenant on a quarterly basis in arrears. The Tenant will collect the Fees charged through its own bookings
9. If, throughout a Season, the Council becomes aware that a Community Group is:
  - a. regularly not using any time(s) allocated under the Council's Allocation; or
  - b. sub-licencing its allocation,
 then the Council will use its reasonable endeavours to:
  - c. reallocate the unused time(s) to other Community Groups; or
  - d. reallocate the sub-licenced time(s) to other Community Groups.
10. Should the Council adopt a 'free-use' policy for fields owned and operated by the Council, this policy shall not extend to the Fields.
11. For the sake of clarity and ~~notwithstanding although the Council will engage with the Tenant in good faith in~~ the Booking Schedule process provided for in this Schedule 4, Council ~~shall be free at all times to may~~ allocate Council's Allocation for any Season on those days and at those times within the Council Times, it deems the most appropriate. No agreement between the parties as to any previous Council's Season Times waives the Council's rights to allocate during the Council Times.
12. The Fees in respect of the Season immediately following the Commencement Date are:
  - a. for the Council's bookings within Council's Allocation:

**Training**

**Matches**

\$35 per hour without floodlights  
\$50 per hour with floodlights

\$50 per 2 hour match without floodlights  
\$75 per 2 hour match with floodlights

b. for the Tenant's bookings outside Council's Allocation:

**Training**

\$50 per hour without floodlights  
\$75 per hour with floodlights

**Matches**

\$75 per 2 hour without floodlights  
\$100 per 2 hour with floodlights

13. The Council will make, whether by agreement, published 'terms and conditions' of use or otherwise, all Community groups allocated use of the Fields through Council's booking system aware that those Community groups may be responsible for damage caused to the Premises during their use.

**SCHEDULE 5**  
LOCATION OF BOREHOLES AND LEACHATE COLLECTION SUMP





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**SCHEDULE 6**  
MAINTENACE PLAN