

OPEN SPACE LICENCE AGREEMENT

PARTIES

PLACE MANAGEMENT NSW (PM NSW)

A.B.N. 51 437 725 177

AND

Company - Account

Address - Account

City - Account*, *State - Account*, *Postal Code - Account

A.B.N.

ABN

(‘THE LICENSEE’)

DATED

Decision

Please initial here

THIS DEED is made on ***Decision***

PARTIES: **PLACE MANAGEMENT NSW** of Level 6, 66 Harrington Street, The Rocks, New South Wales;

THE LICENSEE described in Item 1 of the Schedule.

INTRODUCTION

- A.** PM NSW is the owner of the Licensed Area referred to in Item 2.
- B.** The Licensee wishes to use and occupy the Licensed Area for the purpose stated in Item 4.
- C.** PM NSW has agreed to allow the Licensee to use and occupy the Licensed Area on the following terms and conditions.

IT IS AGREED

1. DEFINITIONS AND INTERPRETATIONS

'Authorised Representative' means a person or persons authorised to represent PM NSW in relation to this Deed and/or the Licensed Area and includes Precinct Rangers.

'Bond' is the amount of the Bond stated in Item 3.

'Deed' means this Open Space Licence Agreement between PM NSW and the Licensee and includes all schedules and attachments to this Open Space Licence Agreement.

'Dangerous Substances or Articles' means without limiting the generality of the term any plant, furnishings, equipment, substances or appliances which by virtue of their weight, nature, size or inherent vice or inadequacy of design may cause a fire hazard, or excessive vibration or noise, land, air or water pollution, or an explosion, or structural or other damage to floors, walls or furnishings at the Licensed Area.

'Licensed Area' means the Licensed Area in Item 2 or as shown on the site plan which is annexed and any improvements, structures planting and landscaped areas.

'PM NSW' means Place Management NSW

'Staff' means the Applicant's servants, actors, agents, suppliers, contractors and sub-contractors or any person on the Licensed Area by the invitation or at the behest (whether tacit or otherwise) of the Applicant or of such servant, agent, contractor or sub-contractor as aforesaid.

1.2 In this agreement, unless the contrary intention appears:

- (a) a reference to a person includes the person's executors, administrative successors and permitted transferees and assigns;
- (b) the singular includes the plural and vice versa;
- (c) the word 'person' includes a firm, a body corporate, an unincorporated association or authority;
- (d) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) a reference to this Deed or another instrument includes any variation or replacement of them; and

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Place Management NSW – Licence Agreement

- (f) headings are inserted for convenience and do not affect the interpretation of this agreement.
- (g) A reference to an Item refers to an Item in the Schedule to this Deed.

- 1.3** This Deed is the entire agreement between the parties in respect of its subject matter.
- 1.4** Where two or more persons are the Licensees or guarantors, these conditions will bind them jointly and severally.
- 1.5** A variation of a term of this Deed must be in writing and signed by the parties.
- 1.6** The laws of the State of New South Wales govern this Deed and the parties irrevocably submit to the exclusive jurisdictions of the Courts of New South Wales.

2. GRANT OF LICENCE

- 2.1** The Foreshore Authority grants to the Licensee a non-exclusive licence to use and occupy the Licensed Area from the date of commencement stated in Item 5 until the date of conclusion stated in Item 5.
- 2.2** The Licensee shall comply with all conditions, restrictions and limitations on the use and occupation of the Licensed Area including, but not limited to, the Conditions of Use and any conditions on permitted use stated in Item 4.

3. LICENCE FEE

The Licensee must pay PM NSW the licence fee stated in Item 3 in consideration for use and occupation of the Licensed Area.

4. PERMITTED USE

The Licensee is only to use and occupy the Licensed Area for the purposes stated in Item 4.

5. RECOVERABLE EXPENSES

- 5.1** All fees, bonds and services charges as stated in Item 3 are payable by the Licensee to PM NSW in accordance with the periods stated in Item 3 of the Schedule.
- 5.2** All other expenses or outgoings to which PM NSW may be subject to or which it may reasonably incur as a result of the permitted use and occupation or its need to supervise the permitted use and occupation or otherwise are recoverable expenses and payable by the Licensee to PM NSW within 14 days of written notice from PM NSW.
- 5.3** PM NSW may deduct the amount of any cost, expense or outgoing incurred by it in accordance with this Deed from any bond furnished by the Licensee.
- 5.4** PM NSW undertakes to refund any bond furnished by the Licensee less any deductions made in accordance with this Deed.

6. LICENSEE'S OBLIGATIONS

The Licensee:

- (a) Acknowledges that it uses and occupies the Licensed Area entirely at its own risk;
- (b) Relies on its own enquiries and inspection of the Licensed Area and accepts the Licensed Area in its present condition and state of repair with all faults latent and patent. PM NSW makes no representation and gives no warranty as to the condition or state of repair of the Licensed Area, structures on or under the Licensed Area and makes no warranty as to the use and occupation to which the Licensed Area may be put;

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- (c) Must not carry out any structural alterations to the Licensed Area except with the prior approval of PM NSW and at the Licensee's sole cost and expense;
- (d) Acknowledges that PM NSW has not given and is not required to give any warranty or representation in relation to any other licences, approvals or authorisations of any kind required in connection with the use and occupation of the Licensed Area and that the Licensee is solely responsible for obtaining and keeping in force any such other licences, approvals or authorisations.
- (e) In addition to the clause titled "Permits and Licences" in the Open Space Conditions of Use, warrants that it has, or will, obtain all licences, approvals or authorisations of any kind required in connection with the use and occupation of the Licensed Area. The Licensee shall provide copies of such licences, approvals or authorisations to PM NSW at least 2 - 5 days prior to the date of commencement stated in Item 5.
- (f) Must not bring into the Licensed Area any dangerous substances or articles without the prior approval of PM NSW.
- (g) Will not use or approve of any fittings, plumbing facilities or equipment in the Licensed Area to be used for any purpose other than those for which they were constructed.
- (h) Will not cause or allow to be caused, any wilful, serious or irreparable damage or alterations to, in or about the Licensed Area without the prior approval of PM NSW.
- (i) Will not do or allow to be done any act or omission in, upon or about the Licensed Area, which may be of annoyance, nuisance, grievance or disturbance to PM NSW, any person lawfully present, and occupiers or owners of any adjacent premises.
- (j) Hereby indemnifies PM NSW, its successors, employees and agents against all claims, damage, costs, expenses, loss and any other liability whatsoever, (including but not limited to any personal injury, loss and/or damage to property or liability for breach of copyright or defamation) suffered or incurred by PM NSW arising out of, or in any way in connection with, the use and occupation of the Licensed Area BUT THE INDEMNITY WILL BE REDUCED PROPORTIONALLY TO THE EXTENT that an act or omission of PM NSW, its employees or agents may have contributed to the claim, damage, cost, expense, loss or other liability.
- (k) Its executors, administrators and assigns hereby releases PM NSW from all claims, costs, liabilities, expenses and sums of money whatsoever arising out of, or in connection with, the use and occupation of the Licensed Area, other than as expressly stated otherwise in this Deed.
- (l) Is responsible for paying all other fees, charges and expenses associated with use and occupation of the Licensed area in addition to the fees, bonds, service charges and recoverable expenses stated in clause 5.
- (m) Must effect and maintain for the Licensed Area a public liability insurance policy with a reputable insurer approved by PM NSW, be in the Licensee's name, which covers the use and occupation of the Licensed Area, and endorses PM NSW as an interested party in the sum of \$20 million (or other amount as PM NSW may reasonably require) for any single event. The Licensee will provide evidence to PM NSW of the currency of such insurance policy before use and occupation of the Licensed Area.
- (n) Must effect and maintain Workers' Compensation insurance in respect of any employee of the Licensee who is employed in connection with the use and occupation of the Licensed Area. The Licensee will provide evidence of the currency of such insurance policy at the request of PM NSW.
- (o) Is responsible for damage or pollution of the environment occurring on or arising out of the use and occupation of the Licensed Area by the Licensee and must, at no expense to PM NSW, rectify any damage or pollution and undertake clean-up to ensure that the damaged or polluted area complies with environmental laws and is restored to the condition prior to use and occupation by the Licensee. Any fines or penalties due to damage imposed under any laws will be paid by the Licensee, or deducted from the bond.

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- (p) Must comply with any notice, order or law of a statutory, public or other authority or body in relation to the use and occupation of, or any activity on, the Licensed Area. The Licensee will provide evidence of its compliance with the *Work Health and Safety Health Act, Work Health and Safety Health Regulation*, Work Cover Authority of NSW requirements and relevant Codes of Practice at the request of PM NSW.
- (q) Agrees that PM NSW will be entitled to have an Authority's representative present in the Licensed Area at all times during the term of the licence (including the photography or the filming) and the Licensee will obey and cause its Staff to obey all reasonable directions given by an Authority's Representative.
- (r) Remove all of its personal property and any rubbish or waste material resulting from the Licensee's use and occupation of the Licensed Area.

7. ASSIGNMENT

The Licensee's rights under this agreement are personal to the Licensee, and the Licensee must not assign, charge or subLicence its rights under this agreement without PM NSW's consent in writing, which may be given or withheld at PM NSW's absolute discretion.

8. REINSTATEMENT OF THE LICENSED AREA

- 8.1 The Licensee will at its own expense, on the date of conclusion referred to in Item 5 or upon termination of this Deed for default, deliver vacant possession of the Licensed Area to PM NSW in good repair and condition having regard to the condition of the Licensed Area and PM NSW's structures on the Licensed Area at the date of commencement referred to in Item 5.
- 8.2 The Licensee will make good any defect in or damage caused by its servants agents or contractors or damage caused by the lack of care or misuse by the Licensee of the Licensed Area.
- 8.3 If the Licensed Area is not reinstated by the Licensee at the end of the term of this Deed or upon termination of this Deed for default, PM NSW may carry out the reinstatement at the expense of the Licensee.

9. PM NSW NOT AN AGENT OF THE LICENSEE

The only relationship between the parties is as set out in this Deed. Nothing contained in this Deed may be deemed or construed as creating any relationship of partnership or of principal and agent between the parties.

10. DEFAULT

PM NSW will be entitled to terminate this Deed by notice in writing to the Licensee if the Licensee fails to comply with its obligations under this Deed.

11. CANCELLATION

- 11.1 The Licensee may terminate this Deed by notice in writing to PM NSW at any stage prior to the date of commencement stated in Item 5. If the Licensee terminates this Deed by notice in writing to PM NSW at least 1 day prior to the date of commencement stated in Item 5, the Licensee will be entitled to a refund in the following amounts:
 - (a) Notice received by PM NSW at least 30 days prior to the date of commencement stated in Item 5 – Full refund of the fees (excluding the Application fee which will be withheld in full), bonds and service charges paid to PM NSW in accordance with clause 5.
 - (b) Notice received by PM NSW at least 14 days prior to the date of commencement stated in Item 5 – 50% of the fees (excluding the Application fee which will be withheld in full) and 100% of the bonds and service charges paid to PM NSW in accordance with clause 5.

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- (c) Notice received by PM NSW at least 7 days prior to the date of commencement stated in Item 5 – 25% of the fees (excluding the Application fee which will be withheld in full) and 100% of the bonds and service charges paid to PM NSW in accordance with clause 5.
 - (d) Notice received by PM NSW at least 1 day (more than 24 hrs) prior to the date of commencement stated in Item 5 – 10% of the fees (excluding the Application fee which will be withheld in full) and 100% of the bonds and service charges paid to PM NSW in accordance with clause 5.
 - (e) Notice received by PM NSW less than 1 day (less than 24 hrs) prior to the date of commencement stated in Item 5 – 10% of the fees (excluding the Application fee which will be withheld in full) and 100% of the bonds, paid to PM NSW in accordance with clause 5. Service charges will be withheld in full.
- 11.2** The Licensee acknowledges that the Licensed Area is in the public domain and that PM NSW may be unable to provide the Licensee with use and occupation of the Licensed Area due to circumstances beyond its reasonable control, including but not limited to, an emergency, unforeseen urgent requirement and exceptional weather conditions.
- 11.3** Where PM NSW is unable to provide use and occupation of the Licensed Area due to circumstances stated in clause 11.2, the Licensee's sole remedy will be a refund of the fees, bonds and service charges paid to PM NSW in accordance with clause 5 (excluding the Application fee which will be withheld in full)

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12. DISPUTE RESOLUTION

If a dispute arises out of or relates to this Deed, or its breach, termination, validity or subject matter, the parties agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre ('ACDC') before having recourse to litigation. The mediator shall be a person agreed by the parties. ACDC will assist the parties by providing a list of professional mediators, and ACDC will select the mediator if the parties cannot agree on one within 7 days of written notice of the dispute is served.

SCHEDULE

Item 1 (Licensee)

Company - Account

ABN: *ABN*

Address - Account

City - Account, *State - Account*, *Postal Code - Account*

Item 2 (Licensed Area)

1. *Anchor Venue*

2. *Booked Spaces*

Item 3 (Fees, Bonds and Services Charges)

1. The Application Fee is \$ 0

The application fee is due and payable _____ days prior to the date of commencement as stated in Item 5.

2. The Licence Fee is \$ 0

The licence fee is due and payable _____ days prior to the date of commencement as stated in Item 5.

3. The Service Charge is \$

The service charge is due and payable _____ days prior to the date of commencement as stated in Item 5.

4. GST \$

5. The Bond is \$

The bond is due and payable _____ days prior to the date of commencement stated in Item 5.

6. Total Fee \$

Item 4 (Permitted Use)

1. *Description*

(Conditions)

1. Pedestrian and emergency vehicle access links must not be obstructed at any time.
2. All equipment and/or cabling associated with the activity must be installed in such a manner as to not affect access or create a trip hazard in the public domain.
3. Public safety must be maintained at all times.
4. Portable A-frame signs are not permitted.
5. The display of signage and banners is only permitted with authorised approval from PM NSW.
6. All amplified noise must comply with the Protection of the Environment (Operations) Act 1997.
7. The distribution of balloons or stickers is prohibited.
8. Should the event, including bump-in and bump-out exceed the scheduled booking (item 5), additional fees will be charged.

Item 5 (Term of Licence)

In Day of Week *In Date* *In Time* to *Out Day of Week* *Out Date* *Out Time*

For Event: *Start Day of Week*, *Start Date* *Start Time* to *End Day of Week*, *End Date* *End Time*

EXECUTED as a Deed.

SIGNED by

)

)

Brendan Burke

)

.....

Signature

PLACE MANAGEMENT NSW under delegated authority and without assuming any personal liability and I hereby certify that I have not notice of the revocation of such delegation, in the presence of:

.....
Signature of Witness

First Name - Primary Coordinator

Last Name - Primary Coordinator

For and on behalf of

Company - Account

)

)

A.B.N. *ABN*

)

Was hereunto affixed by authority of the Board of Directors in the presence of

)

)

.....

Signature of authorised person

.....

Print Name of authorised person

.....
Signature of Witness

.....

Office held

.....
Print Name of Witness

.....
Office held

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