

Shared Facility Service Agreement

DATE

PARTY1 (“the Primary Tenant”)

and

PARTY2 (“the Secondary Tenant”)

Notes to users of this agreement:

- 1. This agreement is subject to the PTA and STA between the respective tenants and the City of Monash. All STA bookings will be made directly with City of Monash. This agreement does not provide an authority for any tenant to sublet the premises to each other or any third party.*
- 2. This agreement details the rights and responsibilities of the Primary Tenant and any Secondary Tenant. The City of Monash is not a party to this agreement.*
- 3. The pricing detail in Attachments A & B are examples only and the parties will need to negotiate any final price prior to executing this agreement.*
- 4. Any keys or access cards required by the Secondary Tenant would usually be provided by, and returned to City of Monash*

Version

INITIAL DRAFT:

UPDATED:

Shared Facility Service Agreement

Insert names of tenants

EXECUTED as a DEED

Dated: / / 2020

EXECUTED by **PARTY1 ABN ABN1** in)
accordance with its constitution:)
)
)

..... Director /
Signature Name Secretary

..... Director
Signature Name

EXECUTED by **Party2 ABN ABN2** in)
accordance with its constitution:)
)
)

..... Director /
Signature Name Secretary

..... Director
Signature Name

Shared Facility Service Agreement

Insert names of tenants

PARTIES

“Primary Tenant” or ABR1”	PARTY1 ABN ABN1 of ADDRESS1
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“Secondary Tenant” or “ABR2”	PARTY2 ABN ABN2 of ADDRESS2
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CONTACTS

Primary Tenant	Name / Phone / Email
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Secondary Tenant	Name / Phone / Email
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PARTICULARS

Commencement Date	
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Term	The earlier of: a) twelve months from the Commencement Date; or b) the end of the PTA; or c) the end of the STA
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Facility Address	<i>Insert address</i>
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Shared Facility Service Agreement

Insert names of tenants

RECITALS

- A. The Primary Tenant is Subject to a Primary Tenancy Agreement ("PTA") with the City of Monash and is among other things responsible for the presentation, cleanliness, maintenance and general serviceability of the Facility during the term of the PTA
- B. The Secondary Tenant is subject to a Secondary Tenancy Agreement ("STA") with the City of Monash that among other things and notwithstanding the PTA, allows the Secondary Tenant access to and use of the Facility during agreed specific times or circumstances ("the Secondary Tenancy Occupation")
- C. It is acknowledged that the Primary Tenant incurs certain increased costs as a result of the Secondary Tenant's use of the Facility
- D. Both the PTA and STA include terms requiring the Primary and Secondary Tenants to enter into a standard form facility shared service agreement ("the Shared Facility Service Agreement") to govern the services provided by the Primary Tenant to the Secondary Tenant and the agreed costs for the services.
- E. These Recitals, the Particulars and any Schedule or Attachment form part of the Shared Facility Service Agreement

AGREEMENT

1. RESPONSIBILITIES OF THE PARTIES

1.1 Primary Tenant's Responsibilities

The Primary Tenant will be responsible for:

- (a) The general furnishing, fit-out and appliances of the Function Room, Change Rooms, Storerooms, Bar and Canteen in line with commonly accepted standards for community sporting facilities and in accordance with the Facility Standards;
- (b) The Presentation, Cleanliness, Maintenance and general Serviceability of the Facilities;
- (c) The provision of suitable quantity and quality of Function Room Consumables to give effect to this agreement;
- (d) The marking of lines on the playing surface in accordance with the Facility Standards or as otherwise agreed in writing with the Secondary Tenant;
- (e) Providing unfettered access to enough quality and quantity of Pitch Fixtures and Fittings to give effect to the Secondary Tenant's approved usage of the Facility;
- (f) Providing unfettered access to the Facility during the Secondary Tenancy Occupation including access to keys and access cards;
- (g) Providing up to two quotations for the repair or rectification of any damage or loss occasioned during the Secondary Tenant's Occupation;

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- (h) Providing the Secondary Tenant with a Facility Inspection Report at the commencement of the agreement;

1.2 Secondary Tenant's Responsibilities

The Secondary Tenant will be responsible for:

- (a) Inspecting the Facility prior to each use referencing the Facility Inspection Report and bringing to the Primary Tenant's attention any irregularity, discrepancy, error or significant difference or variance in condition;
- (b) The necessary care in setting up, using, packing up and securely storing the Pitch Fixtures and Fittings
- (c) The necessary care for the Facility generally including but not limited to:
 - (i) Ensuring that there is no malicious loss or damage caused to the Facilities or the Primary Tenant's property by the Secondary Tenant, any visiting Participants or any other person during the period of Occupation by the Secondary Tenant;
 - (ii) Ensuring that necessary care is taken in setting up, using, packing up and securely storing the Pitch Fixtures and Fittings;
 - (iii) Ensuring that all surfaces in Wet Areas are either wiped, swept and/or mopped in accordance with commonly accepted hygiene procedures;
 - (iv) Ensuring all Bar and Canteen equipment is cleaned and stored as directed by the Primary Tenant;
 - (v) Ensuring that any damage or shortage of Consumables is brought to the attention of the Primary Tenant
 - (vi) Ensuring that any Reportable Incident is reported in writing to the relevant party within one (1) business day.
- (d) Ensuring that all Participants act within the law; in accordance with the Fair Play Code and with respect toward the neighbouring residents of the Facility;
- (e) Return of any Keys or Access Cards (where provided by the Primary Tenant) to the Primary Tenant within one (1) business day of the completion of any Secondary Tenancy Occupation;
- (f) Ensuring that the Facility is returned to the Primary Tenant in a state of General Tidiness at the end of any Second Tenancy Occupation
- (g) Paying the Primary Tenant's Invoices within agreed trading terms
- (h) Reimbursing the Primary Tenant on demand for the cost of replacing or repairing any damage caused during the Secondary Tenant's Occupation for whatever reason;

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- (i) Paying the Primary Tenant for the cost of any Remedial Cleaning required as a result of the Secondary Tenant's failure to return the Facility in a state of General Cleanliness.

2. RECONCILIATION WITH PTA AND STA

2.1 Agreement Subject to PTA and STA

- (a) This Shared Facility Service Agreement is subject to the underlying PTA and STA;
- (b) For the avoidance of doubt, to the extent that any clause or clauses within this Shared Facility Service Agreement are inconsistent with any clauses within the PTA and STA, those Shared Facility Service Agreement clauses will be read down to the extent of the inconsistency.

2.2 No Facility Allocations under this Shared Facility Service Agreement

- (a) All Facility Allocations will be made in accordance with and pursuant to the relevant FTA and STA;
- (b) For the avoidance of doubt, this Shared Facility Service Agreement does not provide or diminish any Facility Allocations made to either party under the PTA or STA

2.3 Secondary Tenancy Occupation may not be Exclusive

- (a) The parties acknowledge that the Secondary Tenancy Occupation may coincide with the Primary Tenant's Agreed Active Hours or use during Designated Competition Periods; and
- (b) To the extent that there is such a coincidence described in cl. 2.3(a), the parties agree to work collaboratively and in good faith to resolve any conflicts that arise.

3. PARTIES TO ACT IN GOOD FAITH

The parties agree to act with respect to each other in the utmost good faith in order to ensure their mutual success.

4. DISPUTE RESOLUTION

4.1 No Escalation

Subject to cl. 4.7, prior to escalating any matter to City of Monash or commencing court or arbitration proceedings, the following steps must be taken to attempt to resolve any dispute that arises out of or in connection with any contract or interaction between the parties (including any dispute as to the validity, breach or termination of any contract, or as to any claim in tort, in equity or pursuant to any statute).

4.2 Notice of Dispute

Shared Facility Service Agreement

Insert names of tenants

Notice (the notice of dispute) must be given in writing by the party claiming that a dispute has arisen to the other party (or parties) specifying the nature of the dispute.

4.3 Parties to Negotiate in Good Faith

Upon receipt of the notice of dispute, the parties must meet within three (3) business days to:

- (a) discuss the dispute and attempt to negotiate a resolution; or
- (b) agree on a framework to resolve the dispute

4.4 Obligation to Mediate

If within ten (10) business days of receipt of the notice of dispute the dispute is not resolved or an appropriate alternative dispute resolution process is not agreed, then the parties shall refer the dispute to the Manager of Active Monash (or equivalent) who will appoint an independent mediator ("the Mediator") for facilitation of a mediation in accordance with commonly accepted rules for mediation in Victoria.

4.5 Obligation to Co-operate and Share Costs

The parties must:

- (a) co-operate with Mediator as facilitator.
- (b) share equally the reasonable costs of the Mediator.

4.6 This clause will remain operative after the contract has been performed and notwithstanding its termination.

4.7 Other than for urgent interlocutory relief

Nothing in this agreement limits any party's rights to any urgent interlocutory relief.

5. TERM

5.1 Initial Term

- (a) This agreement commences on the Commencement Date.
- (b) The agreement will end at the conclusion of the Term detailed in the Particulars but always subject to cl. 2.1 unless the Parties agree to a Further Term in accordance with this Agreement.

5.2 Further Term

Subject to cl. 2.1 the Parties may agree to extend this Agreement for a Further Term by each party providing written notice to the other that:

- (a) they wish to extend the agreement for a Further Term; and
- (b) the period of the extension

Shared Facility Service Agreement

Insert names of tenants

6. NOTICE

Any notice, demand, consent or other communication given or made under this Agreement:

- (a) must be addressed and delivered to the intended recipient at the address detailed in the Particulars or the address last notified by the intended recipient to the sender after the date of this Agreement
- (b) must be in writing and signed by the sender or a person duly authorised by the sender; and
- (c) will be taken to be duly given or made when delivered, received or left at the above address. If delivery or receipt occurs on a day that is not a Business Day in the place to which the notice is sent or is later than 4pm (local time) at that place it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.

7. DEFINITIONS

Word or Phrase	Meaning
<i>Agreed Active Hours</i>	Means the periods that the Primary Tenant and the City have agreed will be exclusively for the use of the Primary Tenant
<i>Appliances</i>	Means all the removable electrical and other appliances that are provided by the Primary Tenant for the use of all users of the Pavilion
<i>Bar</i>	Means the area(s) commonly understood to contain the bar facilities and the areas immediately adjacent that are required to provide access to the bar area. The Bar is marked on the Facility Plan at Attachment D – Facility Plan
<i>Change Rooms</i>	Means the rooms usually used for participants to change, shower, prepare and congregate before, during and after on-field activities and specifically includes the Umpire Room. The Change Rooms are marked on the Facility Plan at Attachment D – Facility Plan
<i>Commencement Date</i>	Means the date specified under that heading in the Particulars. If there is no Commencement Date specified, then the Commencement Date is the Date of Agreement.
<i>Date of Agreement</i>	The date that the last Party to execute this Agreement executes the Agreement.
<i>Designated Competition Periods</i>	Means the periods designated by the Governing Body for fixtured match day activity including the reasonable pre-match and post-match periods required to give effect to the use of the Facility
<i>Facility Inspection Report</i>	Means the facility inspection report including Photo Record and list of Fixtures and Appliances and is attached at Attachment F – Facility Inspection Report

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Insert names of tenants

Facility or Sports Field Facility	Means the Sports Fields, Function Room, Change Rooms, Canteen, Bar, Car Park and surrounds of the property located at the Facility Address identified in the Particulars and shown in the Location Map attached at Attachment C – Location Map
Facility Standards	Means the Facility Standards applicable to the Primary Tenant as determined by the Primary Tenant's Governing Body
Fair Play Code	Means the Victorian State Government's Fair Play Code of Conduct which can be found at:
Fixtures	Means all the items fixed to the Pavilion as is commonly understood by the term
Function Room	Means the Social Areas of the sports field pavilion but specifically excludes the Bar and Canteen, the Change Rooms and any Storage Rooms. The Function Room is marked on the Facility Plan at Attachment D – Facility Plan
Further Term	Means the period that is mutually agreed between the parties to extend this Shared Facility Service Agreement
General Tidiness	Means a state of tidiness and cleanliness to a condition that is acceptable for general use by any user of the Facility
Governing Body	Means the state sporting association or other governing body that the Primary Tenant is affiliated with for competitions
Kiosk	Means the area(s) commonly understood to contain the kiosk and associated servery facilities and the areas immediately adjacent that are required to provide access to the kiosk area. The Kiosk is marked on the Facility Plan at Attachment D – Facility Plan
Monash	Means the City of Monash
Pavilion	Means the building comprising the pavilion complex including but not limited to the Function Room, Bar, Kiosk, Change Rooms and any other area commonly understood to be under the roofline of the pavilion. The Pavilion is marked on the Facility Plan at Attachment D – Facility Plan
Photo Record	Means a record of the condition or presence of a Fixture, Appliance or other fitting or item in the Pavilion or other area at the Facility
Pitch Fixtures and Fittings	Means the goals, nets, corner flags and markers, stretchers and other equipment commonly understood to be required in order to give effect to the Secondary Tenant's approved use of the Facility
Primary Tenancy Agreement or PTA	Means the agreement that governs the relationship between the Primary Tenant and Monash with respect to the Facility
Primary Tenant	Means the tenant(s) that has been given the primary access to, use of and management responsibility for the Facility.

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Insert names of tenants

Remedial Cleaning	Means the cleaning required to return any area of the Facility to a state of General Tidiness
Reportable Incident	Means any incident that must be reported to Monash and the Primary Tenant and includes but is not limited to: <ul style="list-style-type: none"> • Attendance by Police or other law enforcement for any reason; • Attendance by paramedics for any reason; • Unruly behaviour by Participants; • Loss or damage to property; • Complaint by neighbours; • Antisocial behaviour; • Any other incident that is reportable under the PTA or STA
Secondary Tenancy Agreement or STA	Means the agreement that governs the relationship between the Secondary Tenant and Monash with respect to the Facility
Secondary Tenancy Occupation	Means the period that the Secondary Tenant has access to or use of the Facility whether present or not.
Secondary Tenant	Means the tenant(s) that has been given specific periods of access to and use of the Facility
Shared Facility Service Agreement	Means this Shared Facility Service Agreement and includes, the Recitals, Schedule and Particulars
Storage Rooms	Means any room, shed or cabinet specifically reserved for the storage of equipment and consumables and marked on the Facility Plan at Attachment D – Facility Plan
Umpire Room	Means the Change Rooms specifically allocated to match officials and marked on the Facility Plan at Attachment D – Facility Plan
Wet Areas	Means the areas commonly understood as wet areas in the Canteen, Bar, Change Rooms, Function Room including but not limited to sinks, benchtops, tables, chairs and floors.

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Insert names of tenants

ATTACHMENT A – SCHEDULE OF STANDARD COSTS

Item	Including but not limited to:	Unit	Charge Rate (Incl. GST)
Bar Services	Lights, Heating / AC, Cleaning, associated Consumables, kitchen equipment, fridge	Per Hour	\$10
Kiosk Services	Lights, Heating / AC, Cleaning, associated Consumables, kitchen equipment, fridge	Per Hour	\$10
Function Room Services	Lights, Heating / AC, Cleaning to Social Areas and Toilets, associated Consumables but not including the Change Rooms, Bar and Canteen	Per hour	\$10
Change Room Services	Lights, Heating / AC, Cleaning, associated Consumables, Treatment Table	Per hour	\$10
Pitch Services	Line Marking, Goals, Goal Nets, Corner Flags	Per Occasion	\$50
Lights to Pitch 1		Per hour	\$10
Lights to Pitch 2		Per hour	\$10
Remedial Cleaning (Bar)	Cleaning required to rectify the Bar area to a general state of tidiness	One Off	\$50
Remedial Cleaning (Kiosk)	Cleaning required to rectify the Kiosk area to a general state of tidiness	One Off	\$50
Remedial Cleaning (Function Room)	Cleaning required to rectify the Function Room to a general state of tidiness	One Off	\$150
Remedial Cleaning (Change Rooms)	Cleaning required to rectify the Change Rooms to a general state of tidiness	One Off	\$100

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ATTACHMENT B – SCHEDULE OF USE

Upon Execution by the Primary and Secondary Tenant, this Schedule of Use is subject to and forms part of the Shared Facility Service Agreement detailed below:

Primary Tenant		Signed for the Primary Tenant:
Secondary Tenant		Signed for the Secondary Tenant:
Date of Shared Facility Service Agreement	 / /

First Date	1/2/20	Occurrence Start Time	17:00	Repetition	Weekly on Mon/Tue
Final Date	30/9/20	Occurrence End Time	21:00		
No. Occasions	60	Hours per Occasion	4.0	Total Hours	240
Inclusions					

Agreed Charges

Item	Unit	Charge Rate (Incl. GST)	Total Hours	No. Occasions	Cost
Bar / Canteen Services	Per Hour	\$10	240		\$2,400
Function Room Services	Per hour	\$10	240		\$2,400
Change Room Services	Per hour	\$10			
Pitch Services	Per Occasion	\$50			
Lights to Pitch 1	Per hour	\$10	240		\$2,400
Lights to Pitch 2	Per hour	\$10	240		\$2,400
Total					\$9,600

Need to consider separate schedules for Season Training, Season Matches, Ad-hoc, Pre-season

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Insert names of tenants

ATTACHMENT C – LOCATION MAP

ATTACHMENT D – CARLSON RESERVE | SITE PLAN

ATTACHMENT E – CARLSON RESERVE | PAVILION

ATTACHMENT F – FACILITY INSPECTION REPORT

Insert Report