

**TERMS AND CONDITIONS
PURSUANT TO SECTION 18 (3)(b) OF THE
*HEALTH CARE ACT 2008***

Pursuant to section 18(3)(b) of the *Health Care Act 2008 (HC Act)*, an incorporated Health Advisory Council (**HAC**), other than Country Health SA Hospital Incorporated (**CHSAH**), must hold its assets for the benefit, purposes and use of the Minister and CHSAH on the following terms and conditions:

1. ACCESS TO AND USE OF ASSETS

Subject to any rights of any tenant or licensee of the Assets, subject to reasonable access to its Assets in order to discharge its functions under the HC Act (so as not to unreasonably interfere with CHSAH's primary objectives) and subject to these terms and conditions, HAC must permit CHSAH to have access to, and use of, all of its Assets at all times and for all purposes contemplated by the HC Act.

2. APPOINTMENT OF MANAGING AGENT

CHSAH is appointed as HAC's managing agent for a class of its Assets comprising land and buildings (**Premises**). For the avoidance of doubt, Premises includes land and buildings leased to HAC.

3. DUTIES OF CHSAH (AS MANAGING AGENT AND USER OF THE PREMISES)

3.1 Management of Premises

CHSAH will be responsible for the management, operation and conduct of the Premises and in particular will carry out the duties of the managing agent contained in these terms and conditions.

3.2 Rent and Licence Fees

3.2.1 CHSAH will calculate the amount of the outgoings and rent/licence fees which any lessee/licensee of HAC is required to pay in respect of any period that may be provided in any lease/licence in respect of a part of the Premises.

3.2.2 CHSAH will collect all rent/licence fees payable under clause 3.2.1.

3.2.3 CHSAH will retain the benefit of all rent/licence fees collected under clause 3.2.1 for use by CHSAH.

3.2.4 CHSAH will pay, on behalf of HAC, any rent due from HAC in respect of any Premises leased to HAC.

3.3 Accounting and Reports

CHSAH must keep full and proper accounting records relating to the income and expenditure of the Premises.

3.4 Maintenance and Repair of Premises owned by HAC

3.4.1 This clause applies to Premises owned by HAC.

3.4.2 CHSAH must at all times ensure that the Premises including the equipment and any other air conditioning, elevators, carpets, car parking facilities, doors, windows, glass, locks, drains, pipes and gutters in the building are substantially repaired and maintained in

good and substantial repair and condition having regard to their age and condition.

- 3.4.3 CHSAH must ensure that at all times there are taken out and maintained, and where necessary renewed, service or maintenance contracts held by HAC for the Premises and includes but is not limited to:
- (a) the servicing, maintaining and repair of all elevators and escalators;
 - (b) inspection, servicing and testing of all fire equipment and alarm systems; and
 - (c) inspection, maintenance, adjustment, servicing and testing of the air conditioning equipment.
- 3.4.4 The contracts referred to in clause 3.4.3 will be effected, maintained and renewed (as the case may be) by CHSAH.
- 3.4.5 The cost of any repair and maintenance referred to in clause 3.4.2 and the consideration or fee for any contract referred in clause 3.4.3 or any other contract for the maintenance and repair of the Premises not referred to in clause 3.4.3 will form part of the outgoings.
- 3.4.6 All outgoings will be met by CHSAH.

For the purposes of this clause "**outgoings**" means all costs, charges, expenses, fees, rates and outgoings of any kind whatsoever (and whether of a capital or recurrent nature) now or in the future properly assessed, charged or chargeable, paid or payable or otherwise incurred upon or in respect of the Premises or any part of them in relation to the land or building in the conduct, management, security, maintenance, repair and operation of the hospital, including but not limited to:

- 3.4.7 all rates and taxes rated, taxed, assessed or imposed upon the Premises including council rates, water and sewer rates and charges (including charges for water consumption) and State land tax (where applicable);
- 3.4.8 all costs and charges incurred in respect of repairs and maintenance of the Premises including, but without limiting the generality of that statement, painting and repairs to and maintenance of the electrical, building services and plumbing services and work of a structural or capital nature;
- 3.4.9 all costs and charges incurred of operating, repairing and, on a regular basis, testing and maintaining all fire fighting and fire protection systems and equipment serving the building (including sprinklers and fire alarm systems);
- 3.4.10 all costs and charges incurred in removing and disposing of or for providing a service for the removal and disposal of garbage and trade waste from the Premises;
- 3.4.11 all costs and charges incurred in the maintenance and upkeep of gardens and landscaped areas within the Premises;
- 3.4.12 all licence and inspection fees and charges incurred in respect of the Premises and plant, equipment and facilities in the Premises;
- 3.4.13 all costs and charges incurred in providing security at the Premises;

3.4.14 all costs and charges incurred in keeping the Premises clean and tidy; and

3.4.15 any other costs or charges related to the Premises.

3.5 Maintenance and Repair of Premises leased to HAC

Subject to the terms of the relevant lease to HAC, clause 3.4 will apply *mutatis mutandis* to any Premises leased to HAC.

3.6 Management of Leases and Licences of Premises owned by HAC

3.6.1 This clause applies to Premises owned by HAC.

3.6.2 CHSAH must use all reasonable endeavours to ensure that at all times those areas of the Premises owned by HAC which are not then needed by CHSAH and which are otherwise suitable and available for lease/licence, are fully leased/licensed to lessees/licensees upon the terms determined in the following manner:

All leases/licences:

(a) must be for the best rent/licence fee reasonably obtainable having regard to the market condition at the time of negotiation of the lease/licence, unless otherwise agreed between CHSAH and HAC;

(b) must be to a lessee/licensee who is solvent and financially responsible.

3.6.3 CHSAH must ensure that every lessee/licensee of HAC enters into a lease/licence with HAC in a form approved by HAC and CHSAH.

3.6.4 CHSAH must maintain a register of leases/licences from time to time in existence and when requested by HAC will provide full particulars to HAC of all leases/licences.

3.6.5 CHSAH will use its best endeavours to ensure that every lessee/licensee duly observes and performs all of the covenants and conditions and stipulations contained or implied in the relevant lease/licence.

3.6.6 CHSAH may take any action in the name of HAC that is required against any lessee/licensee who is in default of the terms of its lease/licence

3.6.7 CHSAH may take any action in the name of HAC that is required to defend any claim made by a lessee/licensee in relation to its lease/licence.

3.6.8 CHSAH must not, without prior consultation with HAC, except in circumstances of necessity:

(a) agree to vary any of the provisions in any lease/licence relating to the liability of HAC or relating to the payment of any rent/licence fee and any other moneys under any lease/licence;

(b) accept any surrender of any lease/licence on behalf of HAC; or

(c) consent to any assignment of any lease/licence on behalf of HAC.

3.6.9 In the event that a lease/licence in relation to part of the Premises expires or is terminated, HAC grants a first right of refusal to CHSAH

to occupy that part of the Premises on such conditions and for such period as CHSAH determines.

3.7 Management of Leases to HAC

- 3.7.1 This clause applies to Premises leased to HAC.
- 3.7.2 CHSAH may take any action in the name of HAC that is required against any landlord or head lessee who is in default of the terms of its lease.
- 3.7.3 CHSAH may take any action in the name of HAC that is required to defend any claim made by a landlord or head lessee in relation to its lease.
- 3.7.4 CHSAH must not, without prior consultation with HAC, except in circumstances of necessity:
 - (a) agree to vary any of the provisions in any lease relating to the liability of HAC or relating to the payment of any rent and any other moneys under any lease;
 - (b) surrender any lease on behalf of HAC; or
 - (c) consent to any assignment of any lease on behalf of HAC.

For the purposes of these terms and conditions **Assets** means all corporeal property of HAC including any leasehold interest in land and any possessory rights in personal property, but does not include moneys held by a HAC either in cash or in any bank or other financial institution account or property held in a gift fund or held in trust. Any property of which HAC is the beneficial owner pursuant to section 78(1)(d)(ii) of the HC Act, subject to the terms of any trust applying to that property, is included in this definition of Assets.

4. **MEDICAL EQUIPMENT**

- 4.1 In relation to any medical equipment located at the Premises owned or leased by HAC, CHSAH must properly maintain such medical equipment in good working order and condition and substantial repair for the normal life of the equipment. CHSAH is not required to maintain equipment which has become obsolete.
- 4.2 CHSAH will bear all charges and expenses of every kind and nature whatsoever incidental to the use and operation of the medical equipment.
- 4.3 HAC may inspect the medical equipment to satisfy itself that the medical equipment is being repaired and maintained in accordance with these terms and conditions.

5. **INSURANCE**

- 5.1 CHSAH and HAC acknowledge that they are insured under the Department of Health's self-insurance program for claims of up to \$1,000,000.00 and that thereafter they are covered by the South Australian Government Insurance and Risk Management Arrangements administered by the South Australian Government Captive Insurance Corporation (**SAICorp**).
- 5.2 CHSAH will pay the financial contribution attributed to HAC under the agreement between HAC and the Department of Health for its insurance and

risk management arrangements under the Department's self-insurance program.

6. REPORTING

CHSAH will provide such reports as required by HAC to enable HAC to complete an audit of its accounts and financial statements.

7. MEETING

CHSAH and HAC will meet as required at least once a year, or at the direction of the Minister, regarding these terms and conditions.

8. COMPLIANCE

8.1 The Minister reserves the right, in its absolute discretion, to grant approval in writing for a HAC to depart from compliance with these terms and conditions.

8.2 The Minister's approval under this clause may be granted subject to such further or other conditions (in addition to or in substitution for these terms and conditions) as the Minister deems fit, which further or other conditions must be complied with by HAC.