



LAND DEVELOPMENT

C O R P O R A T I O N

Common User Facility (CUF) Licence to Use

East Arm Logistics Precinct, 825-845 Berrimah Road, Darwin NT

VERSION	DATE
4	05/04/2019

This version supersedes all previous versions.

See Appendix 1 (Change Log) for change details.

Note: The CUF consists of the sealed common user area and the multi user barge ramp and its access road.

Schedule 1 DETAILS

ITEM	DESCRIPTION	DETAIL
Item 1	Licensor	Land Development Corporation (ABN 11 768 147 358)
Item 2	Licensor's addresses for service of notices	Att: General Manager Physical address: Level 2, 37 Woods Street, Darwin NT 0801 Postal address: GPO Box 353, Darwin NT 0801 Phone: (08) 8944 0900 Email: landdevcorp@nt.gov.au E-mail:.....
Item 3	Licensee ABN/ACN <i>[insert if applicable]</i>
Item 4	Licensee's addresses for service of notices	Attention: <i>[name and position]</i> Physical address: Postal address: Phone:..... Mobile:..... E-mail: Phone numbers for registration for gate activation 1. Name:..... 2. Name:..... Facility Gate Phone Number: 0417 157 530
Item 5	Start Date/...../.....
Item 6	Expiry Date/...../.....
Item 7	Licence Area m ² indicatively identified on the plan in Annexure A – Plan,
Item 8	Licence Fee	\$.....per square metre per annum. (GST exc) x _____ calculated to \$.....per annum. \$.....Monthly. (GST exc)

Item 9	Payment of Licence Fee	The Licence Fee is payable monthly in advance, paid in accordance with a tax invoice containing specific 'how to pay details' to be issued by the Licensor. Invoices are issued on the 1 day of each month for the month in advance.
Item 10	Permitted Purpose	<i>[insert detailed description of proposed activities and or the nature of goods to be stored in the Licence Area or use of the barge ramp facility and access roadway]</i>
Item 11	Security Deposit	\$..1000..... (GST exclusive) Minimum amount \$1000
Item 12	Notice period calendar months <i>[insert the number of calendar months' notice the Licensee would be required to give to terminate this licence]</i>
Item 13	Area Condition on entry	<i>[describe condition of Licence Area, including any issues identified on inspection by the Licensee accompanied by the Licensor]</i>
Item 14	Special Conditions	Not applicable / See Annexure D – Special Conditions <i>[Circle one] [Insert special conditions into Annexure E if applicable]</i>

TERMS AND CONDITIONS

Note – definitions and interpretation for this document are addressed in clause 18.

1. GRANT OF LICENCE

1.1 Grant of Licence for Licence Area

- (a) The Licensor grants to the Licensee and the Licensee accepts an exclusive licence to occupy and use the Licence Area during the Term for the Permitted Purpose in accordance with the terms of this document.
- (b) The Licence in clause 1.1(a) is granted subject to the Licensee's compliance with the terms of this document, the CUF Rules and all approvals and Laws relevant to the CUF and the Licensee's use of the CUF.

1.2 Grant of Licence for non-exclusive use of Clearways

- (a) Subject to clause 1.2(b), during the time the Licensee is exercising its licence under clause 1.1, the Licensor grants a non-exclusive license to the Licensee to enter and use the Clearways for the purpose of ingress to and egress from the Licence Area.
- (b) The Licensor may limit the use of the CUF generally, and the Clearways specifically, as it sees fit including by changing the location of Clearways and granting further licences or interests in respect of the CUF, provided only that reasonable ingress to and egress from the Licence Area is maintained.

1.3 No interest in the CUF

This document and the granting of the Licence:

- (a) do not confer on the Licensee any right of exclusive possession of any part of the CUF (other than the Licence Area in the limited manner set out in this document); and
- (b) do not in any way create a tenancy or any right in the nature of a tenancy or interest in the Licence Area or the CUF in favour of the Licensee.

1.4 Variation of Permitted Purpose

The Licensee may request a variation of the Permitted Purpose, and the Licensor may exercise its absolute discretion whether to agree the variation. Any agreed variation of the Permitted Purpose must be evidenced by the exchange of written notices between the parties.

2. LICENCE FEE

- (a) The Licensee must pay the Licence Fee for the whole of the Term to the Licensor without offset or deduction in the manner described in Item 9.
- (b) The Licensee acknowledges that if it ceases to use the Licence Area prior to the expiry of the Term it will not be entitled to a refund of any part of the Licence Fee that has been paid.

3. DEPOSIT

3.1 Payment of Deposit

The Licensee must pay the Deposit by way of Bond or Bank Guarantee on or before the Commencement Date.

3.2 Use of Deposit

The Licensor may, without notice to the Licensee, recover from the Deposit any cost incurred or loss suffered by the Licensor if the Licensee breaches this document, and any costs of making good the Licence Area or other damage to the CUF caused by the Licensee.

3.3 Replacement

The Licensee must either replace the Deposit or a part of the Deposit recovered by the Licensor in accordance with clause 3.2 within seven (7) days of receiving notice from the Licensor to do so.

3.4 Increase of Deposit

If the amount of the Deposit (Bond or Bank Guarantee) required under this document increases as a result of an increase in the Licence Fee or other monies payable by the Licensee under this document then the Licensee must deliver to the Licensor additional Deposit or replacement Bank Guarantee for that increased amount within ten (10) Business Days of the date of the Licensor's demand.

3.5 Return of Deposit

Unless the Licensor is entitled to exercise the Licensor's rights under clause 3.2, the Licensor must return the Deposit, or so much of it as remains, to the Licensee within one (1) month after expiry or termination of this document.

4. COMPLIANCE WITH CUF RULES

4.1 CUF Rules

- (a) The Licensee agrees to comply in all respects with the CUF Rules.
- (b) The Licensee acknowledges and agrees that the CUF Rules may be updated or changed by the Licensor from time to time, and the Licensee will comply with the CUF Rules in effect from time to time.

4.2 Consents and approvals

The Licensee must at its own cost obtain any and all consents, approvals, permits and licences of any kind applying to the Licensee's operations and activities on the Licence Area and the CUF.

4.3 Access by Authorities

- (a) The Licensee must allow any government authority access to the Licence Area in accordance with that authority's powers to request, require, order or direct such access be given for the purpose of carrying out and discharging any responsibilities of that authority.
- (b) If the Licensee is given notice by a government authority in respect of access, the Licensee must inform the Licensor of the notice and access requirements of the government authority and make all suitable arrangements with the Licensor for the authorised entry and access to the CUF by the government authority.
- (c) The Licensee must allow the Licensor access to the Licence Area to inspect compliance with this Licence and any Laws.

4.4 Corporate Licensee

If the Licensee is a company, the Licensee agrees and acknowledges that at the time of entry into this Licence and for the term of this Licence the Licensee must:

- (a) remain a corporation registered with in accordance with the *Corporations Act 2001* (Cth);
- (b) be registered for GST collection purposes, and fulfil all obligations under Laws relating to GST in respect of its use of the Licence Area; and
- (c) comply with each of the requirements of the *Corporations Act 2001* (Cth) in relation to shareholdings, appointment of directors and fulfilment of their duties, conduct of meetings, passing of resolutions, maintenance of all appropriate records, provision of all relevant notifications and the submission of reports.

5. USE AND DAMAGE

5.1 Installations and improvements

- (a) The Licensee must use any improvements on the CUF (including the hardstand surface) only for the Permitted Purpose in a manner which is consistent with the CUF Rules and the design, construction and purpose of the improvements.
- (b) The Licensee must not attach or install any fixture, fitting or item (including star pickets) on or in the CUF or improve the CUF with any structure in a manner which damages the CUF in any way.
- (c) The Licensee may request consent by notice in writing from the Licensor to attach or install a fixture, fitting or item on or in the Licence Area. If consent is given, which is in the Licensor's absolute discretion, it must be given in writing.
- (d) The Licensee acknowledges that any fixtures, fittings or items attached or installed for the purpose of cyclone preparation will also require consent from the Licensor, and advance consent should be requested at the beginning of each cyclone season.
- (e) Any damage caused by the Licensee attaching or installing any fixture, fitting or item on or in the Licence Area or improving the Licence Area (with or without Licensor consent) must be notified and made good in accordance with clause 9.

5.2 Signage

The Licensee must not without prior written consent of the Licensor (and any relevant approval authority for approvals that may be required), erect any signs or notices (including, without limitation, advertising signs or notices) on or around the CUF.

5.3 Provision of all equipment

The Licensee must obtain, install and provide all material and facilities as required by any Laws or to enable the Licensee's activities on the CUF, including the following:

- (a) relevant occupational, health and safety equipment;
- (b) fire and emergency equipment;
- (c) lighting;
- (d) security;
- (e) ablutions (such as portable toilets and showers).

6. HEALTH, SAFETY AND ENVIRONMENT

6.1 Work health and safety obligations

The Licensee must:

- (a) prior to entering onto the CUF:
 - (i) consider the Licensor's WHS Documents and User Register;
 - (ii) provide the Licensor with the following in relation to the Licensee's business or undertaking on the CUF:
 - A. the WHS Management Plan;
 - B. a hazard analysis and risk assessment; and
 - C. the names, positions and responsibilities of all persons, including the Manager, who will or are likely to access the CUF whose responsibilities involve specific health and safety responsibilities in connection with the Licensee's use of the CUF.
- (b) promptly:
 - (i) inform the Licensor of any changes to the WHS Management Plan and the Licensee's hazard analysis and risk assessment;
 - (ii) inform the Licensor of any changes to the information provided under clause 6.1(a)(ii)C;
 - (iii) notify the Licensor and other users on the User Register or on the CUF of any proposed action by the Licensee which may affect the other users' use of the CUF or property on the CUF;
 - (iv) upon request:
 - A. demonstrate to the satisfaction of the Licensor (in its absolute discretion) that it has the proper management structure and systems in place to meet work health and safety standards commensurate with the standards generally accepted given the nature of the Licensee's business or undertaking on the CUF;
 - B. provide copies of the current WHS Management Plan and hazard analysis and risk assessment to the Licensor within 5 Business Days of such request;
- (c) at all times:
 - (i) comply with Environment and Safety Laws, CUF Rules and the Licensor's WHS documents;
 - (ii) keep and maintain current the WHS Management Plan, hazard analysis and risk assessment;
 - (iii) in respect of the Licensee's business or undertaking on the CUF, comply with the Environment and Safety Laws and the WHS Management Plan;
 - (iv) ensure that all the Licensee's employees, agents, contractors and invitees when entering on to the CUF:
 - A. are appropriately inducted and trained as to all relevant matters for the CUF;
 - B. wear appropriate safety and personal protective clothing and equipment; and

- C. hold all licences, qualifications and competencies necessary to perform their tasks.
- (v) ensure a Manager is appointed in accordance with clause 6.2.

6.2 Appointment of Manager

The Licensee must:

- (a) nominate a representative of the Licensee (**Manager**) responsible for, and with authority to take action on behalf of, the Licensee in respect of work health and safety and environmental matters concerning or connected with this Licence and the Licensee's use of the CUF;
- (b) ensure that the Manager:
 - (i) liaises with the Licensor (and other users if appropriate) on an ongoing basis in respect to health, safety and environmental matters in connection with this document and the CUF;
 - (ii) identifies and manages the health, safety and environmental aspects and impacts of the Licensee's activities;
 - (iii) provides appropriate induction and awareness training to all of the Licensee's employees, contractors, subcontractors and invitees and manages the Licensee's visitors to the CUF;
 - (iv) keeps current, implements and monitors the Licensee's compliance with the WHS Management Plan and hazard analysis and risk assessment;
 - (v) monitors and ensures the Licensee's compliance with Environment and Safety Laws;
 - (vi) reports to the Licensor, as soon as is reasonably practicable:
 - A. all 'notifiable incidents' as that term is defined in section 35 of the *Work Health And Safety (National Uniform Legislation) Act* (NT);
 - B. all accidents, incidents and circumstances which are likely to cause a danger, risk or hazard to the CUF or any person or property on or in the vicinity of the CUF, which comes to the attention of the Licensee whether it arises because of the Licensee or not;
 - C. the incidence of any property or real property related crime or civil wrong (including theft, damage and trespass);
 - D. all incidents which are the subject of notification requirements under section 14 of the *Waste Management and Pollution Control Act* (NT); and
 - E. all incidents and circumstances which are likely to cause a discharge of any thing other than stormwater into the stormwater system, pollution or Environmental Harm of any degree or duration.

6.3 Environmental protection

- (a) The Licensee is put on notice of the following:
- (i) Environment and Safety Laws such as the *Waste Management and Pollution Control Act* and *Water Act* contain obligations relevant to all CUF users to avoid polluting the receiving environment, and penalties may apply.
 - (ii) The Licensee is expected to understand its obligations under Environment and Safety Laws and implement measures to ensure legislative obligations are met and Environmental Harm is avoided.
 - (iii) Examples of activities, impacts and issues which require measures to be implemented by the Licensee include the following:
 - A. vehicle washdown, refuelling and maintenance;
 - B. tributyltin management (used as a biocide in anti-fouling paint);
 - C. spray painting;
 - D. storage and use of hazardous or dangerous goods;
 - E. fuel storage;
 - F. oil and chemical storage;
 - G. spill management and response for oil and chemical spills, hose or tank rupture, overflows and cargo handling;
 - H. air quality impacts including odour;
 - I. noise and vibration;
 - J. domestic and industrial waste management;
 - K. fire management;
 - L. cyclone preparedness.
- (b) The Licensee must:
- (i) use the CUF and carry on its business in compliance with all Environment and Safety Laws, including where required having regard to the nature of the Licensee's activities, develop and implement an operational environmental management plan to ensure such compliance;
 - (ii) not cause or contribute to any Environmental Harm on, in or above the CUF or its surrounds;
 - (iii) undertake all activities in a manner that minimises impacts on the receiving environment and any known or identified sites of cultural historical significance;
 - (iv) regularly evaluate environmental risks to eliminate, control or reduce the potential environmental impact resulting from the Licensee's activities;
 - (v) at its own cost and expense, immediately clean up, store and dispose of any pollutions, spills or contamination caused or contributed to by the Licensee; and

(vi) pay to the Licensor on demand all costs incurred by the Licensor rectifying non-compliance with this clause 6.3 including costs and expenses to clean-up, store and dispose of pollutions, spills or contamination.

(c) The Licensee accepts responsibility for the protection of the natural environment and social surroundings, the prevention of pollution and minimisation of waste occurring from the Licensee's activities. In order to demonstrate compliance with this clause, the Licensee must prepare (and provide a copy to the Licensee on request) an operational environmental management plan to deal with any activities proposed to be conducted by the Licensee which involve a risk of Environmental Harm. In this regard, at a minimum, for the following activities, the Licensee must provide for the following measures in its operational environmental management plan:

Activity	Measures to be included
Any activity	Hazard and risk assessment. Identification of roles and responsibilities. Monitoring, auditing and reporting. Complaints management procedures. Emergency response and reporting.
Storage or use of hazardous or dangerous goods or substances.	Method of storage or use must be within appropriate bunded areas. Material data safety sheets must be displayed. Fully equipped spill kit must be provided and staff appropriately trained in storage and use of hazardous or dangerous goods or substances and spill kit use.
Vehicle wash-down, maintenance or refuelling.	Appropriate capture systems must be installed to ensure pollutants do not enter drains.
Domestic or industrial waste creation, transport or storage.	Waste materials must be contained and managed to ensure pollutants and litter do not enter the environment.

7. RISK, RELEASE AND INDEMNITY

7.1 Acknowledgement of risk

The Licensee acknowledges that the CUF is a common user area and the Licensee bears the risk of any loss or damage to the Licence Area and the Licensee's goods, materials, plant and equipment and other things that are brought on to the CUF which arises as a result of any cause or reason whatsoever, whether it arises naturally, negligently or otherwise, except to the extent that such loss or damage is caused by a wilful or negligent act or omission of the Licensor.

7.2 Licensee's warranties and acknowledgements

- (a) The Licensee warrants to the Licensor that it has satisfied itself of the condition and state of repair of the CUF in particular the Licence Area, improvements and environment in or in the vicinity of the CUF, roads and Clearways giving access to the CUF or the Licence Area and the ability of the Licensee to conduct its operations in compliance with this document and all Laws.
- (b) The Licensee acknowledges the Licensor has not made any representation or statement about the fitness of the CUF in particular the Licence Area, improvements and environment in or in the vicinity of the CUF, roads and Clearways giving access to the CUF or the Licence Area, in relation to or for the Licensee's intended use, or any matter in respect of Laws affecting or applying to the Licensee's use of the Licence Area or any consents, approvals, permits, licences or other authority required to allow lawful use of the Licence Area.

7.3 Release

- (a) The Licensee releases the Licensor from any claim, action or proceedings brought by any person for loss of or damage to any property, or injury or death of any person, arising out of or associated with the Licensee's access to and use of the CUF.
- (b) The release in clause 7.3(a) does not apply to the extent that the loss of or damage to the property, or injury or death of the person is caused by a wilful or negligent act or omission of the Licensor.

7.4 Indemnity

The Licensee indemnifies (and will keep indemnified) the Licensor against the following, to the extent not caused by a wilful negligent act or omission of the Licensor:

- (a) loss of or damage to any property, or injury or death of any person or other liability incurred; and
- (b) loss or expense incurred by the Licensor in dealing with any claim, action, fine or penalty of any kind against the Licensor, (including legal costs on a solicitor and own client basis),

that is caused by or arises from:

- (c) any act or omission by the Licensee or any of the Licensee's officers, employees, agents, contractors or invitees in connection with the Licensee's access to and use of the CUF, whether negligent or otherwise;
- (d) a failure by the Licensee to comply with any Law; or
- (e) a failure by the Licensee to comply with any or all of the Licensee's obligations under this document.

7.5 No Merger

This clause survives the expiry or any earlier determination of this document.

8. INSURANCE

- (a) The Licensee must effect and maintain in force throughout the Term policies of insurance covering the following risks ("Insurances"):
 - (i) public liability, including personal injury and death, and property damage to the Licensor and third parties arising out of, in connection

with or in relation to any access, occupation, possession and use of the CUF and all related activities by the Licensee for a minimum cover of \$20,000,000.00 in relation to any single event with the interest of the Licensor noted; and

- (ii) the full extent of the Licensee's potential liability under the *Return to Work Act (NT)*;
- (b) At the commencement of the Term, at the commencement of any holding over period, and at any other time during the Term as requested by the Licensor, the Licensee must give the Licensor certificates of currency for the Insurances.
- (c) The Licensee must punctually pay all premiums in respect of the Insurances and not allow any policy required by this clause to lapse or be cancelled.
- (d) The Licensee must not without the prior written consent of the Licensor do or fail to do or permit anything to be done which may make the Licensor liable to pay more than its usual premium rate for insurance or which invalidates or may make void or voidable any policy of insurance held by the Licensor in respect of the CUF.
- (e) If the Licensee does anything which causes an increase in the Licensor's liability for its insurance premium the Licensee will immediately upon demand by the Licensor pay the Licensor the amount by which the premium is increased, such amount being deemed to be a liquidated debt due and payable to the Licensor.

9. VACATION AND MAKE GOOD

- (a) The Licensee must vacate the Licence Area on or by the Expiry Date, unless this document is terminated sooner, in which event the Licensee must vacate the Licence Area upon termination.
- (b) As soon as practicable during the Term, and upon termination, the Licensee must notify the Licensor if any damage is caused to the Licence Area, in which event the Licensee must comply with clause 9(c).
- (c) Unless otherwise notified by the Licensor, the Licensee must as soon as practicable make good any damage according to the following:
 - (i) the Licensee will allow, and do all things necessary to facilitate, the Licensor or the Licensor's contractor to:
 - A. remove any improvements, fixtures and fittings made or installed to the Licence Area by the Licensee; and
 - B. repair the damage so that the CUF continues to perform at the same standard as before the damage occurred;
 - (ii) the Licensee must pay to the Corporation the amount required to make good the damage.

10. HOLDING OVER

- (a) If the Licensee wishes to use the Licence Area after the expiry of the Term the terms and conditions of this document will apply, including in respect of the Licence Fee, to the period the Licensee uses the Licence Area after the expiry of the Term, except that either party may terminate the Licence on one month's written notice to the other party.

- (b) No later than one (1) calendar month before the expiry of the Term, the Licensee must give a notice to the Licensor stating the additional period the Licensee expects to continue using the Licence Area and seeking the Licensor's written consent to holding over under this document, which may be refused in the Licensor's absolute discretion.

11. TERMINATION

- (a) The Licensor may terminate this document:
 - (i) on the expiration of a written notice served by the Licensor on the Licensee which notice identifies a breach by the Licensee of this Licence and which breach has not been remedied within seven (7) days of the date of service of the notice;
 - (ii) immediately by notice if an order is made or a resolution is effectively passed for the winding up of the Licensee (except for the purpose of reconstruction or amalgamation) or if the Licensee goes into liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth), or a receiver or receiver and manager is appointed, or execution is levied against the Licensee, and not discharged within thirty (30) days; or
 - (iii) immediately (and without the Licensor being required to give any notice) if any approval, consent, licence, permit or other authority of the Licensee as required by this document is revoked, cancelled, withdrawn, not received/obtained or lapses.
- (b) The Licensee may terminate this document by notice in writing to the Licensor, effective after the notice period specified in Item 13.
- (c) Termination of this document pursuant to this clause is without prejudice to any rights accrued by either party prior to the termination.
- (d) A delay in giving notice of a breach will not be construed as a waiver of the Licensor's right to require the Licensee to remedy a breach, or for the Licensor to enforce any provision of this document against the Licensee.

12. GST

- (a) An amount payable by a party that is a supplier to a party that is a recipient for or in connection with a taxable supply provided by the supplier to the recipient under or in connection with this document (including without limitation the Licence Fee) is expressed exclusive of GST.
- (b) The recipient must pay to the supplier an additional amount on account of GST equal to the amount payable by the recipient for the relevant taxable supply multiplied by the prevailing GST rate, in accordance with a tax invoice from the supplier to the recipient.
- (c) For the purposes of this clause each of 'taxable supply' and 'tax invoice' have the same meaning as those terms have in the GST Law.

13. DISCLOSURE OF LICENSEE INFORMATION

- (a) The Licensee acknowledges that it is necessary for the proper management of the CUF, in particular for compliance with Environment and Safety Laws, for the Licensor to:
 - (i) collect and maintain relevant information about users of the CUF and their activities in the User Register; and
 - (ii) disclose the User Register to other users of the CUF and other persons involved in the Licensor's activities, such as the Licensor's contractors and government entities.
- (b) The Licensee consents to the Licensor collecting, recording in the User Register and disclosing to other users and persons involved in the Licensor's activities, information about the Licensee and the Licensee's activities on the CUF.
- (c) The Licensee agrees to secure the consent of any of its agents, officers, contractors and employees whose information is provided by the Licensee to the Licensor, such as contact information.
- (d) The Licensee agrees to notify the Licensor of any changes to any relevant information about the Licensee and its activities on the CUF in order to ensure its currency.

14. NOTICES

14.1 Form and service of notices

All notices, approvals, consents, demands or other communications required or permitted to be given under this Licence must be in writing and served:

- (a) personally;
- (b) by pre-paid post;
- (c) by facsimile transmission; or
- (d) by e-mail,

at the address for service of notices in Item 2 (for the Licensor) or Item 4 (for the Licensee), or at such other address as a party may have substituted for its address for service of notices by written notice to the other party in accordance with this clause and within seven (7) calendar days of any change.

14.2 Receipt of notices

A notice, approval consent, demand or other communication is deemed to be given by the sender and received by the addressee, if:

- (a) given by delivery in person, when delivered to the addressee;
- (b) sent by mail, on the second business day from and including the date of posting;
- (c) sent by facsimile, on receipt of a complete and correct transmission report by the sender and if received by the addressee before 4.00 pm (receiver's time) on a Business Day on that day otherwise it is deemed to be received at 9.00 am on the next following Business Day in the place of receipt; or
- (d) sent by e-mail, at the time when the electronic communication becomes capable of being retrieved by the receiver at the e-mail address designated by the receiver.

15. DISPUTE RESOLUTION

15.1 Disputes between users

- (a) The Licensee must take reasonable steps to resolve any dispute arising between it and another user concerning the CUF and its use with that other user.
- (b) If the Licensee cannot resolve the dispute with the other user then:
 - (i) if the other user is a licensee of the CUF, the dispute must be referred to the Licensor, and the Licensor will act as an arbitrator and whose decision is final and binding on the Licensee and any other users; or
 - (ii) if the other user is not a licensee of the CUF, the Licensee must use its best endeavours to secure the other user's consent to referral of the dispute to the Licensor, and the Licensor will act in the capacity and on the terms agreed by the Licensee, the other user and the Licensor.
- (c) In the event a dispute is not referred to the Licensor for any reason, the Licensee and the other user are responsible for resolving the dispute.

15.2 Disputes between Licensor and Licensee

- (a) In the event of a dispute between the parties in relation to this document the parties shall use reasonable endeavours to resolve the dispute between themselves, but if having used reasonable endeavours either party considers that the dispute cannot be resolved without reference to an independent expert, the matter shall be determined by an independent expert in accordance with this clause.
- (b) If a dispute arises between the parties as to any matter concerning this document which cannot be resolved in accordance with clause 15.2(a), the party claiming the dispute will give immediate notice in writing to the other party providing details of the dispute, and:
 - (i) within 5 Business Days of the notice under clause 15.2(b) being received by the receiving party, both parties will nominate an independent expert and confer to attempt to agree in good faith the independent expert;
 - (ii) failing agreement, the parties will refer the nomination of an independent expert to the President for the time being of the Law Society of the Northern Territory.
- (c) The decision of the independent expert is absolute and final and will bind the parties accordingly and this document will be deemed to be amended to incorporate the terms of the independent expert's decision.
- (d) The independent expert will be deemed to be acting in making any decision as an expert and not an arbitrator.
- (e) The parties will bear the costs of the independent expert's determination equally.
- (f) The parties will make available to the independent expert all materials requested by it and will furnish it with all other materials which are relevant to the determination.

16. GENERAL

16.1 Costs and stamp duty

Each party must pay its own costs of and incidental to the negotiations for and the preparation and execution of this document, except stamp duty which is to be paid by the Licensee.

16.2 Entire agreement

This document terminates and supersedes all previous written and oral agreements between the Licensee and the Licensor and constitutes the entire agreement between the parties in relation to its subject matter.

16.3 Amendments

No alteration, addition or amendment may be made to this document other than in writing signed by each of the parties.

16.4 No assignment

The grant of the Licence under this document is personal in nature between the parties. The Licence and this document generally are not able to be assigned, novated or otherwise transferred to a third party.

16.5 Nature of relationship

The parties agree that nothing contained in this document constitutes them as an agent, partner or trustee of the other, or creates any agency, partnership or trust for any purpose whatsoever.

16.6 Governing Law and jurisdiction

This document is governed by the Law for the time being in force in the Northern Territory of Australia and the parties submit to the jurisdiction of the courts of the Northern Territory of Australia, in Darwin, in respect of all matters arising under or in connection with this document.

17. SPECIAL CONDITIONS

The special conditions, if any, specified in Item 15 apply and prevail over any other provision of this document to the extent of any inconsistency.

18. DEFINITIONS AND INTERPRETATION

18.1 Defined terms

In this document, except where the context otherwise requires, the following definitions apply:

- (a) **Bond** means a cash deposit in the amount of the Deposit.
- (b) **Bank Guarantee** means a guarantee by an authorised deposit taking institution within the meaning of the *Banking Act 1959* acceptable to the Licensor to pay the amount of the Deposit to the Licensor without reference to the Licensee that is:
 - (i) in respect of all the Licensee's obligations under this document and any agreements ancillary to this document;
 - (ii) unconditional and irrevocable;
 - (iii) assignable;
 - (iv) without an expiry date; and
 - (v) otherwise in a form and substance reasonably acceptable to the Licensor.

- (c) **Business Day** means a day of the week on which and during the hours in which business is usually conducted, which is not a Saturday, Sunday or public holiday in Darwin in the Northern Territory.
- (d) **Clearways** means those parts of the CUF intended for common use by licensees, including roads and access ways, designated as clearways by the Licensor from time to time by notice in writing to the Licensee.
- (e) **Commencement Date** means the date indicated in Item 1.
- (f) **Common User Facility** or **CUF** is that area designated by the Licensor for common use under licence identified on the plan in Annexure A –Plan, and includes the hardstand surface and subsurface of the area.
- (g) Corporation includes, where the context permits, the Land Development Corporation, its officers, agents, contractors and invitees.
- (h) **Details** means the information about each party set out at the beginning of this licence.
- (i) **CUF Rules** means the Licensor’s rules (a copy of which is in Annexure B – Common User Facility Rules) made and notified to the Licensee from time to time by the Licensor in respect of access to and use of the CUF provided that to the extent of any inconsistency between the CUF Rules and this document, this document prevails.
- (j) **Deposit** means a Bank Guarantee or Bond in the amount described in Item 11 held in accordance with clause 3.
- (k) **Directions** means any reasonable written or verbal request from the Licensor and includes any policies or procedures that may be raised by the Licensor from time to time and notified to the Licensee concerning the orderly and efficient operations of all users of the CUF.
- (l) **Environmental Harm** has the meaning given to it at section 4 of the *Waste Management and Pollution Control Act* (NT).
- (m) **Environment and Safety Laws** means all Laws, government policies and agreements regulating or otherwise relating to the environment including laws relating to land use, planning, heritage, coastal protection, water catchments, pollution of land, air or water, noise, soil or ground water contamination, chemicals, waste, use and storage of hazardous or dangerous goods or substances, building regulations, public and occupational health and safety, noxious trades or other aspects of the environment or person or property.
- (n) **Expiry Date** means the date indicated in Item 6.
- (o) **Goods and Services Tax** or **GST** means a goods or services tax, value added tax or similar tax and includes any tax payable under the GST Law.
- (p) **GST Law** has the same meaning as under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (q) **Item** means an item of Schedule 1 (Details) to this document.
- (r) **Laws** means any relevant law, statute, ordinance, rule, regulation, by law, scheme or permit provisions in force in the Northern Territory from time to time and includes (but is not limited to) laws relating to construction, health and safety, dangerous goods, the environment, land use, planning and building regulations, and development permits and their conditions.
- (s) **Liability** means any obligation or responsibility for performance of acts, the omission of acts, and any resulting damage, loss, costs (including legal costs on a full indemnity basis), penalties or expenses which may give rise to certain rights, enforcement actions, a claim for specific performance, payment of damages, fines, charges, or be the subject of demands of any kind.
- (t) **Licence** means the licence granted under clause 1.

- (u) **Licence Area** means the area within the CUF as described in Item 7, and includes the barge ramp and its access roadway, the hardstand surface and subsurface of the area.
- (v) **Licence Fee** means the amount described in Item 8.
- (w) **Licence Fee Manner of Payment** means the manner of payment of the Licence Fee described in Item 9.
- (x) **Licensee** means the Licensee in Item 3 and includes, where the context permits, its officers, employees, agents, contractors and invitees.
- (y) **Licensee's Property** means all of the Licensee's property, including all property in the possession or control of the Licensee (including property under bailment) stored, kept or on the Licence Area or CUF from time to time.
- (z) **Licensor** means the Licensor in Item 1 and includes, where the context permits, its officers, employees, agents, contractors and invitees.
- (aa) **Licensor's WHS Documents** means the documents in Annexure C – Licensor's WHS Documents, including a hazard analysis and risk assessment and management plan, a User Register and includes any amendments to or replacements of those documents notified by the Licensor to the Licensee from time to time.
- (bb) **Permitted Purpose** means the use specified in Item 10, as varied from time to time in accordance with clause 1.4.
- (cc) **Rules** includes the CUF rules.
- (dd) **Schedule** means the schedule to this Licence.
- (ee) **Term** means the period from the Commencement Date to midnight on the Expiry Date or earlier termination in accordance with this document.
- (ff) **this document** means this document and any schedules and annexures to this document.
- (gg) **User Register** means the document to be maintained by the Licensor which identifies each user with a licence to use the CUF and information regarding each user's licence area, permitted purpose and contact details.
- (hh) **WHS Law** means 'Workplace Health and Safety (National Uniform Legislation) Act 2011 (NT) as amended from time to time and any subordinate legislation made under that Act, including regulations, codes of practice and amendments and re-enactments thereof.
- (ii) **WHS Management Plan** is the Licensee's formal health and safety plan in respect of the Licensee's use of the Licence Area, CUF and Clearways and the conduct of its business or undertaking and operations thereon.

18.2 Interpretation

In the interpretation of this document, except where the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include all other genders;
- (c) words importing persons include a natural person, partnership, body corporate, association, government or local authority or agency or other entity;
- (d) a reference to a Law, 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) all covenants, warranties, undertakings and agreements in this document, if entered into by more than one (1) person, are deemed to be joint and several;
- (f) clause headings and sub-headings are inserted for convenience only, and have no effect in limiting or extending the language of this document;

- (g) any uncertainty or ambiguity in the meaning of a provision of this document will not be interpreted against a party just because that party prepared the provision;
- (h) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (i) a reference to a clause, schedule or annexure is a reference to a recital, clause, schedule or annexure of or to this document;
- (j) schedules and annexures to this document are to be read and construed as part of this document;
- (k) a reference to an agreement or document (including, without limitation a reference to this document) is to the agreement or document as amended, varied, supplemented, notated or replaced, except to the extent prohibited by this document or that other agreement or document;
- (l) a reference to a party to this document or in another agreement or document includes the party's successors and permitted substitutions or assigns (and, where applicable, the party's legal personal representative); and
- (m) a reference to dollars and \$ is to Australian currency.

SIGNING PAGE

Licensor:

The common seal of Land Development Corporation is affixed to this document pursuant to the provisions of the *Land Development Corporation Act* in the presence of:

_____ ←
Date

_____ ←
Authorised Delegate Signature

Name (Print)

Licensee (if a corporation):

Executed by the Licensee pursuant to section 127 of the *Corporations Act 2001* (Cth)

_____ ←
Signature of director

_____ ←
Signature of director/ secretary
(Please delete as applicable)

Name of director (print)

Name of director/ secretary (print)

Licensee (if an individual):

Executed by the Licensee in the presence of:

Signature of witness



Signature of Licensee



Name of witness (print)

Name of Licensee (print)

ANNEXURES

Annexure A – Plan

Annexure B – Common User Area Rules

Annexure C – Licensor’s WHS Documents

Annexure D – Special Conditions

Appendix 1 – Licence Details change log

Appendix 1

CHANGE LOG - Licence Details

Version 2 - Issued 23 September 2016:

CHANGE ITEM No 1:

Schedule 1, Item 2 Modified to include further address detail

Schedule 1, Items 7, 8 and 9, have been modified to provide clear details of monthly rental and payment details.

Schedule 1, The font used for the schedule has been increased in size. And

Schedule 1, Item 11 has been modified to add detail around the deposit amount and payment.

Version 3 - Issued 7 October 2016:

CHANGE ITEM No 2:

Schedule 1, Item 12, deleted PL Insurance is \$20,000,000.00.' added into substantive clause as a specified amount.

Terms and Conditions Item 8. Modified to deal with the insurances required.

Definitions Item 'q' Insurances. Deleted

Version 4 – Issued 5 April 2019

Change Item No 3

Schedule 1, Item 8, amended fee wording to per annum and monthly.

Schedule 1, Item 2 & 4 removed reference to facsimile.