



User Agreement

Common User Facility (Facility)

[insert name of User]

User

Land Development Corporation
LDC

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VERSION	DATE
9	31 July 2024

The latest version supersedes all previous versions.

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User Agreement

Common User Facility

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Reference Schedule

Item 1 LDC	Land Development Corporation (ABN 11 768 147 358)
Item 2 User	[insert User's name and ACN]
Item 3 Usage Area	That part of the Land specified (and/or updated) by LDC from time to time.
Item 4 Land	Section 7147 Hundred of Bagot
Item 5 Usage Fee	The Usage Fees for facilities and/or services shall be in accordance with the published Schedule of Rates applicable at the date the facilities and/or services are used (specifically, being the Usage Periods), <u>in advance</u> , or otherwise agreed between LDC and the User.
Item 6 Commencement Date	[insert date]
Item 7 Expiry Date	[insert date], or otherwise as agreed in writing with LDC.
Item 8 Address for Notices	<p>LDC: Land Development Corporation Address: Level 10, 24 Mitchell Street, Darwin NT 0801 Contact: Property Officer Email: sales@landdevcorp.com.au Telephone: 08 8944 0900</p> <p>User: [insert] Address: [insert] Contact: [insert] Email: [insert] Telephone: [insert] Mobile: [insert]</p>
Item 9 Permitted Purpose	[insert]
Item 10 Hours of Permitted Use	24 hours per day / 7 days per week access is permitted
Item 11 Security Bond	[insert]
Item 12 Industrial or Special Liability Insurance	Applicable/Not Applicable Where applicable, minimum cover is twenty million dollars (\$20,000,000.00)

Item 13 Notice Period	Short Term Use: 2 business days Long Term Use: 14 calendar days
Item 14 Condition of Site Upon Entry	Refer Site Inspection Report to be completed by LDC on or prior to the Commencement Date.
Item 15 Special Conditions	Nil
Item 16 Origin of Goods	Not Applicable

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Background

- A. LDC is the owner of the Land.
- B. The User has requested access to utilise a part of the Land, being the Usage Area, for the Permitted Purpose during the Term.
- C. LDC has agreed to grant a non-exclusive user agreement to the User to use the Usage Area for the Permitted Purpose, on the terms and conditions set out in this Agreement.

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Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

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

Agreement means this document, its Schedules and Annexures and any documentation referenced within.

Approvals means:

- (a) all authorisations, consents, approvals, licences, leases, rulings, permits, permissions, exemptions, filings, registrations, lodgements, variances, orders, certificates, judgments, determinations, decrees, decisions, publications, notices, notarisations, declarations or regulations by, from or with an Authority; and
- (b) all requirements imposed under Law or by an Authority, relating to or necessary for or required in connection with any storage or transportation of items on to and within the Usage Area.

Authorised Persons means the persons authorised by the User to access the Usage Area as advised to LDC in accordance with clause 7.3.

Authority means any public, governmental, semi-governmental, statutory or regulatory authority, department, commission, tribunal, agency or fiscal or judicial body.

Bank Guarantee means a guarantee by an authorised bond taking institution within the meaning of the *Banking Act 1959* (Cth) acceptable to LDC to pay the amount of the Bond to LDC without reference to the User that is:

- (a) in respect of all the User's obligations under this document and any agreements ancillary to this document;
- (b) unconditional and irrevocable;
- (c) assignable;
- (d) without an expiry date; and
- (e) otherwise in a form and substance reasonably acceptable to LDC.

Biosecurity Act means *Biosecurity Act 2015* (Cth).

Biosecurity Awareness Module means the online e-learning course Biosecurity Awareness eLearning package at https://www.agriculture.gov.au/themes/custom/agriculture_base/elearning/seaports-biosecurity-elearning/index.html, or any such course specified by LDC upon direction from the Australian Government's Department of Agriculture, Fisheries and Forestry.

Biosecurity Regulations means *Biosecurity Regulation 2016* (Cth).

Biosecurity Incident Response Procedure means that specific procedure as provided on the LDC Website, and as updated by LDC from time to time.

Biosecurity Incident Report means that specific document as provided on the LDC Website, and as updated by LDC from time to time.

Bond means a Bank Guarantee or Bond in the amount described in Item 11 held in accordance with clause 5.

Business Day means a day which is not Saturday, Sunday or a public holiday in Darwin in the Northern Territory.

Clearways means those parts of the Facility intended for common use by users, including roads and access ways, designated as clearways by LDC from time to time by notice in writing to the User.

Commencement Date means the date set out in Item 6.

Common User Facility or **Facility** is that area designated by LDC for common use under this Agreement identified on the plan provided by LDC in writing to the User, and includes the hardstand surface and subsurface of the area.

Default Rate means the rate of interest two percentage points above the Overdraft Index Rate for commercial or business loans charged by the National Australia Bank Limited ABN 12 004 044 937 on the date default occurs (or if there is more than one rate, or this index rate becomes obsolete then a reasonably comparable rate which LDC considers appropriate in its discretion).

Details means the information about each party included in the Reference Schedule.

Directions means any reasonable written or verbal request from LDC and includes any policies or procedures that may be raised by LDC from time to time and notified to the User concerning the orderly and efficient operations of all users of the Facility.

Environmental Harm has the meaning given to it at section 4 of the *Waste Management and Pollution Control Act* (NT).

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.

Expiry Date means the date set out in Item 7.

Facility Rules means LDC rules (a copy of which is provided on the LDC Website) made and notified to the User from time to time by LDC in respect of access to and use of the Facility provided that to the extent of any inconsistency between the Facility Rules and this document, this document prevails.

Hours of Permitted Use means 24 hours per day / 7 days per week access is permitted.

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.

GST Law has the same meaning as under the *A New Tax System (Goods and Services Tax) Act* 1999 (Cth).

Improvements means any fixtures, fittings or structures erected on the Usage Area.

Insurances means insurance policies for the following risks:

- (a) public liability, including personal injury and death, and property damage arising out of, in connection with or in relation to any access, occupation, possession and use of the Facility and all related activities by the User for a minimum cover of twenty million dollars (\$20,000,000.00) in relation to any single event with the interest of LDC noted;
- (b) if indicated as being by LDC (in writing to the User), industrial or special liability for risks associated with explosion, fire, damage to property, personal injury or death arising out of the User's handling, transportation, storage and associated activities relating to the User's Property and any hazardous or dangerous goods, waste, pollution, chemicals, or other substances used or kept by the User within or passing over the Facility, for the minimum cover identified and advised by LDC in relation to any single event;
- (c) property damage, loss or theft for its full replacement value in relation to the User's Property and all other property (whether belonging to the User or its officers, employees, agents, contractors or invitees) stored or kept within the Facility; and
- (d) personal injury and death of officers or employees of the User as required by the applicable Laws relating to workers compensation and rehabilitation.

Item means an item of the Reference Schedule to this document.

Land means Section 7147 Hundred of Bagot.

Laws means:

- (a) any statute, regulation, ordinance, by-law or subordinate legislation in force from time to time, whether made by state, territory, federal or local government and includes Environmental Laws;
- (b) any other regulatory instruments applying to the Usage Area and Land; and
- (c) the common law applicable from time to time in the Northern Territory.

LDC means the Land Development Corporation defined in Item 1 and includes, where the context permits, its officers, employees, agents, contractors and invitees.

LDC Website means <https://landdevcorp.com.au/> and any sub-pages of this domain site.

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.

Main Gate means the gate located on the Land and providing access to the Facility.

Origin of Goods means where the goods have travelled from prior to arriving in the Facility.

Permitted Purpose means the use specified in Item 9, as varied from time to time in accordance with clause 2.4.

Schedule means the schedule to accompany Agreement.

Site Employee Register means the document as provided on the LDC Website, and as updated by LDC from time to time.

Site Inspection Report means the document as provided on the LDC Website, and as updated by LDC from time to time.

Term means period from the Commencement Date to the Expiry Date.

Usage Area means that part of the Land outlined and specified by LDC (and as described in Item 3), and as updated from time to time.

Usage Fee means the fee payable by the User for facilities and/or services shall be in accordance with the published Schedule of Rates applicable at the date the facilities and/or services are used, or as otherwise agreed between LDC and the User (in writing).

User means the party named as the User in Item 2 and includes the User's officers, employees, agents, contractors and invitees and Authorised Persons.

User's Property means the property of the User stored or located within the Usage Area or at the Facility from time to time.

User Register means the document to be maintained by LDC which identifies each user with a user agreement to use the Facility and information regarding each user's usage area, permitted purpose and contact details and any other information LDC considers appropriate.

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.

WHS Management Plan is the User's formal health and safety plan in respect of the User's use of the Usage Area, Facility and Clearways and the conduct of its business or undertaking and operations thereon.

1.2 Interpretation

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

- (a) words importing the singular include the plural and vice versa;

- (b) words importing persons include a natural person, partnership, body corporate, association, government or local authority or agency or other entity;
- (c) a reference to statute, ordinance, code or other law included regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) all covenants warranties, obligations, undertakings and agreements in this, if entered into by more than one person, are deemed to be joint and several;
- (e) clause headings and sub-headings are inserted for convenience only;
- (f) recitals, schedules and annexures to this Agreement are to be read and construed as part of this Agreement;
- (g) "including" and similar words are not words of limitation;
- (h) a reference to a party to this Agreement includes the party's successors and permitted assigns; and
- (i) a reference to dollars and \$ is to Australian currency.

2. Grant of User Agreement

2.1 For Usage Area

- (a) Subject to the User complying with the terms of this Agreement, Facility Rules and all approvals and Laws, LDC grants to the User a non-exclusive agreement to use the Usage Area during the Term for the Permitted Purpose.
- (b) On commencement of the Agreement and/or on or around the Commencement Date, LDC will complete the Site Inspection Report.
- (c) This Agreement:
 - (i) does not confer on the User any right of exclusive possession of any part of the Usage Area or the Land; and
 - (ii) does not in any way create any tenancy or any right in the nature of a tenancy or interest in the Usage Area or the Land in favour of the User.

2.2 Use of Clearways

- (a) Subject to clause 2.2(b), LDC grants a non-exclusive license to the User to enter and use the Clearways for the purpose of ingress to and egress from the Usage Area.
- (b) LDC may limit the use of the Facility generally, and the Clearways specifically, as it sees fit including by changing the location of Clearways and granting further user agreements or interests in respect of the Facility, provided only that reasonable ingress to and egress from the Usage Area is maintained.

2.3 No interest in the Facility

This document and the granting of the Agreement:

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

2.4 Variation of Permitted Purpose

The User may request a variation of the Permitted Purpose, and LDC may exercise its absolute discretion whether to agree the variation. Any agreed variation of the Permitted Purpose must be evidenced in writing between the parties.

3. User Agreement Fee

- (a) The User must pay LDC the Usage Fee, in advance, without offset or deduction, on or before the later of:
 - (i) the last business day of the month prior to that which the Usage Fees apply;
 - (ii) the 5th business day after the invoice date; or,
 - (iii) any other date as specified by LDC.
- (b) The User acknowledges that if it ceases to use the Usage Area prior to the expiry of the Term it will not be entitled to a refund of any part of the Usage Fee that has been paid.
- (c) Where payment for the Usage Fee or any invoice (including for any interest charges) is overdue following the due date, LDC may restrict or remove access to the Land or the Usage Area, at its discretion, until such time as any overdue amounts are remedied to LDC's satisfaction.
- (d) Where LDC's published Schedule of Rates for the Facility changes from time to time during the Term, the Usage Fee will be the amounts charged under the revised Schedule of Rates payable and from the date of change of that Schedule of Rates.
- (e) This clause 3 shall not prejudice any other right or remedy that LDC may have in accordance with this Agreement or any applicable laws.

4. Allocation of payments

On receipt of any monies from the User, LDC may allocate payments towards satisfaction of any amount payable by the User to LDC notwithstanding any stipulation to the contrary by the User in respect of such payment.

5. Bond

5.1 Payment of Bond

The User must pay the Bond (or any revised Bond amount that LDC may advise to the User) on or before the Commencement Date, or any other date specified by LDC, for immediate payment.

5.2 Use of Bond

LDC may, recover from the Bond any cost incurred or loss suffered by LDC if the User breaches this document, and any costs of making good the Usage Area or other damage to the Facility caused by the User.

5.3 Replacement

The User must either replace the Bond or a part of the Bond recovered by LDC in accordance with clause 5.2 within seven (7) days of receiving a request in writing from LDC to do so.

5.4 Increase of Bond

If the amount of the Bond required under this Agreement increases as a result of an increase in the Usage Fee, or LDC advises the User that it requires an increase to the Bond amount, then the User must deliver to LDC a replacement or additional Bond for that increased amount on or before the date which LDC specifies.

5.5 Return of Bond

Unless LDC is entitled to exercise LDC's rights under clause 5.2, LDC must return the Bond, or so much of it as remains, to the User within one (1) month after expiry or termination of this document.

6. Interest on Overdue Payments

- (a) The User agrees that where payment of any monies owing to LDC under this Agreement are outstanding following the due date, interest shall immediately accrue on the whole of the amount at the Default Rate, until such time that payment is made in full and received by LDC.
- (b) Where interest is applicable in accordance with clause 6(a), LDC may issue an invoice for whole or part of the interest amount at any time. Such an invoice is required to be paid before the date which LDC specifies.
- (c) This clause 6 shall not prejudice any other right or remedy that LDC may have in accordance with this Agreement or any applicable laws.

7. Access to Usage Area

7.1 Compliance with Laws

The User must ensure the Usage Area is only used for the Permitted Purpose and access to and from the Usage Area is undertaken in a safe and proper manner, in accordance with all Laws and Approvals.

7.2 Approvals

The User must:

- (a) obtain, hold, maintain and comply with all Approvals and Laws (as applicable) in relation to the Permitted Purpose, transportation, handling and storage of the User's Property on the Usage Area and on the Land;
- (b) if requested by LDC, provide either the originals or certified copies of evidence, or must arrange for such evidence to be provided to LDC by any relevant Authority of all Approvals within 5 Business Days (or prior to the Commencement Date, whichever is applicable); and
- (c) comply with all of the Facility's Rules, regulations and LDC's reasonable directions from time to time, in respect of the Usage Area and Land.

7.3 Authorised Persons

- (a) On or before the Commencement Date, the User must provide LDC with:
 - (i) current and accurate identification information (and at all times keep that information up to date) in respect of the Authorised Persons, including the provision of photographic identification; and
 - (ii) if requested by LDC, information relating to the duties or activities of any Authorised Persons.
- (b) The User agrees and acknowledges that LDC may specify any individual or entity to which the User must not provide access to the Facility, and any such granting of access will constitute a breach for which LDC may immediately terminate this agreement.
- (c) The User must ensure at all times:
 - (i) the Authorised Persons comply with the User's obligations under this Agreement; and
 - (ii) the Authorised Persons wear identification of a kind reasonably required by LDC to enable LDC and its employees to identify them at all times when accessing the Usage Area and Land.

7.4 Records of access

- (a) The User must maintain and keep accurate records of:
 - (i) its Authorised Persons;

- (ii) entry and exit times of Authorised Persons from the Usage Area and the Land; and,
 - (iii) the User's Property.
- (b) The LDC may request the User to provide LDC with any information set out in clause 7.4(a) and the User must promptly provide LDC with the information requested within the time frame and format specified by LDC.

7.5 Notice of incidents

- (a) If at any time the User becomes aware of:
 - (i) any potential or actual incident, accident or circumstance likely to be or to cause a danger, risk or hazard to the Usage Area or any person or property on or in the vicinity of the Usage Area, or more broadly to the Land, which comes to the attention of the User, whether caused by the User or otherwise; or
 - (ii) any improper access to the Land or usage of the Main Gate,the User must as soon as practicable, notify LDC in writing (and in an emergency also by telephone) and provide sufficient details to LDC of the situation.
- (b) Any notification by the User under clause 7.5(a) does not relieve the User from any obligation it has under this Agreement or under any Laws to take all necessary action in relation to or in response to an incident, to prevent any improper access or use of the Land or the Usage Area, to protect the User's Property and to act in the best interests of other users and the general public at all times.
- (c) The User must at all times ensure any of the User's Property brought on to the Land, stored on or in the Usage Area or taken out is:
 - (i) in containers or suitable restrained, where appropriate, and which comply with all Laws and meet all relevant Australian Standards;
 - (ii) handled and stored in accordance with all Laws and Approvals; and
 - (iii) transported in and out in a safe and proper manner in accordance with all Laws and does not create any risk or hazard to any other user of the Land.

7.6 Access by an Authority

- (a) The User must allow any Authority access to the Usage Area for the purpose of carrying out and discharging any responsibilities of that Authority.
- (b) Where the User is given notice by an Authority seeking access, the User must inform LDC of the requirements of the Authority and make all suitable arrangements with LDC for the authorised entry and access to the Land and the Usage Area by the Authority.

7.7 No Offensive Use

The User must not do or carry on or permit to be done or carried on the Usage Area and Land any illegal trade, business or act.

8. Compliance with Facility Rules

8.1 Facility Rules

- (a) The User agrees to comply in all respects with the Facility Rules.
- (b) In the event that the User actions are not in compliance with the Facility Rules:
 - (i) the User will receive a verbal instruction to comply;
 - (ii) the User will then be issued with a formal instruction to comply in writing;
 - (iii) If the User has not complied with the rules inside the designated timeframes the LDC will seek to remedy the situation at the cost of the User.

- (c) The User acknowledges and agrees that the Facility Rules may be updated or changed by LDC from time to time, and the User will comply with the Facility Rules in effect advised by LDC.
- (d) Notwithstanding this clause 8.1, if the User does not comply with the Facility Rules or any direction provided by LDC, then LDC may immediately terminate this Agreement without the requirement for a notice of breach.

8.2 Consents and approvals

The User must at its own cost obtain any and all consents, approvals, permits and licences of any kind applying to the User's operations and activities on the Usage Area and in the Facility.

8.3 Corporate User

If the User is a company, the User agrees and acknowledges that at the time of entry into this Agreement and for the term of this Agreement the User 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 Usage 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.

9. User's covenants

The User must:

- (a) keep the Usage Area clean and tidy and clear of rubbish and leave the Usage Area in a clean and tidy condition at the end of the Term;
- (b) keep the Usage Area reasonably clear and free from obstructions;
- (c) not use the Usage Area in any way that will or may cause any nuisance, damage, disturbance, annoyance, inconvenience, danger, risk, hazard or interference to LDC or other users of the Land;
- (d) at its own expense, comply with all notices issued by any Authority requiring any practice to be observed or work to be done on the Usage Area arising from the User's use of the Usage Area;
- (e) not provide any access to any individuals or entities to which LDC specifies must not be provided access to the Facility;
- (f) not do anything that will or may constitute a breach of any Laws; and
- (g) at the end of the Term or early determination of this Agreement, promptly remove the User's Property from the Usage Area and the Land and restore the Usage Area to the condition it was in at the Commencement Date.

10. Use and Damage

10.1 Installations and Improvements

- (a) The User must use any improvements on the Facility (including the hardstand surface) only for the Permitted Purpose in a manner which is consistent with the Facility Rules and the design, construction and purpose of the improvements.
- (b) The User must not attach or install any fixture, fitting or item (including star pickets) on or in the Facility or improve the Facility with any structure in a manner which damages the Facility in any way.

- (c) The User may request consent by notice in writing from LDC to attach or install a fixture, fitting or item on or in the Usage Area. If consent is given, which is in LDC's absolute discretion, it must be given in writing.
- (d) The User acknowledges that any fixtures, fittings or items attached or installed for the purpose of cyclone preparation will also require consent from LDC, and advance consent should be requested at the beginning of each cyclone season.
- (e) Any damage caused by the User attaching or installing any fixture, fitting or item on or in the Usage Area or improving the Usage Area (with or without LDC's consent) must be notified and made good in accordance with clause 14(d).

10.2 Signage

The User must not without prior written consent of LDC (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 Facility.

10.3 Provision of all Equipment

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

- (a) relevant occupational, health and safety equipment;
- (b) fire and emergency equipment;
- (c) lighting; and,
- (d) security.

11. Health, Safety and the Environment

11.1 Environmental compliance

The User must:

- (a) comply with this Agreement;
- (b) comply with all Environmental Laws in force from time to time; and
- (c) not cause, nor allow, the Usage Area or Land to be subjected to any Contaminant.

11.2 Work, Health and Safety Obligations

The User must:

- (a) prior to entering onto the Facility:
 - (i) consider LDC's WHS Documents and User Register;
 - (ii) provide LDC with the following in relation to the User's business, activities or undertaking on the Facility if requested by the LDC:
 - (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 Facility whose responsibilities involve specific health and safety responsibilities in connection with the User's use of the Facility.
- (b) promptly:
 - (i) inform LDC of any changes to the WHS Management Plan and the User's hazard analysis and risk assessment;
 - (ii) inform LDC of any changes to the information provided under clause 11.2(a)(ii)(C);

- (iii) notify LDC and other users on the User Register or on the Facility of any proposed action by the User which may affect other users' use of the Facility or property on the Facility;
- (iv) upon request:
 - (A) demonstrate to the satisfaction of LDC (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 User's business or undertaking on the Facility;
 - (B) provide copies of the current WHS Management Plan and hazard analysis and risk assessment to LDC within 5 Business Days of such request;
- (c) at all times:
 - (i) comply with Environment and Safety Laws, Facility Rules and the LDC's WHS documents;
 - (ii) keep and maintain current the WHS Management Plan, hazard analysis and risk assessment;
 - (iii) in respect of the User's business or undertaking on the Facility, comply with the Environment and Safety Laws and the WHS Management Plan;
 - (iv) ensure that all the User's employees, agents, contractors and invitees when entering on to the Facility:
 - (A) are appropriately inducted and trained as to all relevant matters for the Facility;
 - (B) wear appropriate safety and personal protective clothing and equipment; and
 - (C) hold all licences, qualifications and competencies necessary to perform their tasks.
 - (D) ensure a Manager is appointed in accordance with clause 11.3.

11.3 Appointment of Manager

The User must:

- (a) nominate a representative of the User (**Manager**) responsible for, and with authority to take action on behalf of, the User in respect of work health and safety and environmental matters concerning or connected with this Agreement and the User's use of the Facility if requested by LDC;
- (b) ensure that the Manager:
 - (i) liaises with LDC (and other users if appropriate) on an ongoing basis in respect to health, safety and environmental matters in connection with this document and the Facility;
 - (ii) identifies and manages the health, safety and environmental aspects and impacts of the User's activities;
 - (iii) provides appropriate induction and awareness training to all of the User's employees, contractors, subcontractors and invitees and manages the User's visitors to the Facility;
 - (iv) keeps current, implements and monitors the User's compliance with the WHS Management Plan and hazard analysis and risk assessment;
 - (v) monitors and ensures the User's compliance with Environment and Safety Laws;
 - (vi) reports to LDC, 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 Facility or any person or property on or in the vicinity of the Facility, which comes to the attention of the User whether it arises because of the User 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 anything other than stormwater into the stormwater system, pollution or Environmental Harm of any degree or duration.

11.4 Environmental and Biosecurity Protection

- (a) The User is put on notice of the following:
 - (i) Environment and Safety Laws such as the *Waste Management and Pollution Control Act*, *Biosecurity Act*, *Biosecurity Regulations* and *Water Act* contain obligations relevant to all Facility users to avoid polluting the receiving environment, and penalties may apply.
 - (ii) The User 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) The User is required to ensure that all staff are trained in identification and standard operating procedures of the Facility in the event of a Biosecurity Incident. All staff on site are required to have undertaken the Biosecurity Awareness Module.
 - (iv) The User is required to complete the Site Employee Register and provide an updated version to LDC upon each training completion for the User's Staff, including noting the dates of completion. Examples of activities, impacts and issues which require training completion by the License and the User's Staff include the following:
 - (A) vehicle wash down, 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) Biosecurity waste management;
 - (L) Inspection of all freight for infestation of exotic pests or plant material;
 - (M) fire management; and,
 - (N) cyclone preparedness.
- (b) The User must:
 - (i) use the Facility and carry on its business in compliance with all Environment and Safety Laws, including where required having regard to the nature of

- the User'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 Facility 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 User'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 User, provided they do not contravene clause 14(d); and,
 - (vi) pay to LDC on demand all costs incurred by LDC rectifying non-compliance with this clause 11.4(b) including costs and expenses to clean-up, store and dispose of pollutions, spills or contamination.
- (c) The User accepts responsibility for the protection of the natural environment and social surroundings, the prevention of pollution and minimisation of waste occurring from the User's activities. In order to demonstrate compliance with this clause, the User must prepare (and provide a copy to LDC on request) an operational environmental management plan to deal with any activities proposed to be conducted by the User which involve a risk of Environmental Harm. In this regard, at a minimum, for the following activities, the User 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.

11.5 Biosecurity Response

The User will in the event of a Biosecurity incident undertake the measures outlined in the Biosecurity Incident Response Procedure and submit a Biosecurity Incident Report to LDC within 24 hours of the incident.

12. Risk, Release and Indemnity

12.1 Acknowledgement of Risk

The User acknowledges that the Facility is a common user area and the User bears the risk of any loss or damage to the Usage Area and the User's goods, materials, plant and equipment and other things that are brought on to the Facility 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 LDC.

12.2 User's warranties and acknowledgements

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

12.3 Release

- (a) The User releases LDC 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 User's access to and use of the Facility.
- (b) The release in clause 12.3(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 LDC.

13. Insurance and indemnities

13.1 User to insure

- (a) The User must take out, maintain and keep in force during the Term the following insurances in respect of the Usage Area and the Permitted Purpose:
 - (i) third party liability insurance policy covering claims in respect of:
 - (A) damage to loss or destruction of, or loss of use of real or personal property;
 - (B) injury to or disease or death of, persons; and
 - (C) such other risks as are reasonably required by LDC,arising out of or in connection with the Permitted Purpose, the total amount covered in each case being not less than \$20,000,000.00 per claim or such other increased amount as may be reasonably required by LDC from time to time;
 - (ii) other insurances required by Laws or that LDC reasonably requires.
- (b) Each policy the User takes out under this clause 13.113.1 must:

- (i) be with an insurer and on terms approved by LDC;
 - (ii) be in the name of the User with the interest of LDC and of any other person LDC requires noted;
 - (iii) have no limit on the number of claims that can be made under it;
 - (iv) cover events occurring during the policy's currency regardless of when claims are made; and
 - (v) note that despite any similar insurances of LDC, the User's policies will be the primary policies.
- (c) The User must provide a copy of any insurance policy held to satisfy its obligations under this clause to LDC prior to the Commencement Date and when reasonably required by LDC on demand at any time during the Term.
 - (d) The User must effect and maintain the Insurances with reputable insurers reasonably approved by LDC.
 - (e) The User must punctually pay all premiums in respect of the Insurances.
 - (f) The User must not without the prior written consent of LDC do or fail to do or permit anything to be done which may make LDC liable to pay more than its usual premium rate for insurance or which invalidates or may make void or voidable any policy of insurance in respect of the Facility.
 - (g) If the User does anything which causes an increase in the LDC's liability for its insurance premium the User will immediately upon demand by LDC pay LDC the amount by which the premium is increased.

13.2 Protection of Insurance Policies

- (a) The User must:
 - (i) pay all premiums in respect of all required insurance policies before they fall due and not allow any Insurance to lapse;
 - (ii) produce satisfactory evidence to LDC that each annual policy is current on each anniversary of the Commencement Date;
 - (iii) not do or omit to do anything whereby any insurance policy may be prejudiced or vitiated and if necessary, the User must take all reasonably practicable steps to rectify any situation which might prejudice or vitiate any insurance policy;
 - (iv) renew any required insurance policy if it expires during the Term, unless appropriate replacement insurance is obtained;
 - (v) not cancel or allow an insurance policy to lapse during the Term without the prior written consent of LDC;
 - (vi) immediately notify LDC (in writing) of any event which may result in a required insurance policy lapsing, being cancelled or rescinded;
 - (vii) comply fully with its duty of disclosure and obligations of utmost good faith toward the insurer and in connection with all of the required insurance policies; and
- (b) If the User fails to take out, maintain and keep in force any of the policies of insurance required under this Agreement, LDC may (but is under no obligation to) effect such insurances and the User must reimburse LDC for all insurance premiums paid by LDC on demand.

13.3 User to indemnify LDC

- (a) Subject to clause 13.3(c), the User bears the risk of and indemnifies and will keep indemnified LDC against all costs arising from or incurred in connection with:
 - (i) any loss of or damage to the Usage Area and Land or any part thereof;

- (ii) loss of or damage to any property, or injury or death of any person or other liability incurred; and
 - (iii)
 - (iv) all plant, equipment and temporary work; and
 - (v) all unfixed goods and materials (whether on or off the Usage Area), including anything provided by LDC to the User or brought onto the Land by the User.
- (b) Subject to clause 13.3(c), the clause 13.3(c) indemnifies LDC and will keep LDC indemnified against all costs arising from or incurred in connection with:
- (i) the act, omission, negligence, neglect or default on the part of the User and any breach or failure of the User to observe and perform any of the covenants or agreements contained or implied in the Agreement; and
 - (ii) all loss and damage whatsoever sustained by LDC (including persons claiming through LDC, including LDC's officers, employees, agents and contractors) occasioned by:
 - (A) the overflow escape or leakage of water (including rain water) or any other gas or material (including Hazardous Substances) in, into or from the Usage Area and Land but having origin within the Usage Area or caused or contributed to by an act or omission, negligence or default on the part of the User;
 - (B) the use of the Usage Area by the User; or
 - (C) any act (whether wilful, negligent or otherwise) omission, neglect, breach or default of the User.
 - (iii) any act or omission by the User or any of the User's officers, employees, agents, contractors or invitees in connection with the User's access to and use of the Facility, whether negligent or otherwise;
 - (iv) a failure by the User to comply with any Law; or
 - (v) a failure by the User to comply with any or all of the User's obligations under this document.
- (c) The indemnities under this clause 13.3 will not apply to the extent that such loss, damage, cost or expense is caused or contributed to by LDC's malicious act or omission.

13.4 Indemnities Continued

- (a) Each indemnity by the User in this Agreement is a continuing obligation, separate and independent from the User's other obligations and survives termination or expiry of this Agreement.
- (b) It is not necessary for LDC to incur any costs or to make any payment before enforcing a right of indemnity conferred by this Agreement.
- (c) The User must pay on demand any amount it must pay under an indemnity in this Agreement.

13.5 Risk

The User occupies and uses the Land and the Usage Area at its own risk.

13.6 Release

The User releases LDC from and agrees that LDC is not liable for any costs arising from or incurred in connection with:

- (a) anything (including damage, loss, injury and death) unless and only to the extent it is caused by LDC's wrongful act or omission (and in the case of damage or loss caused by LDC's wrongful omission, LDC is only liable if the User has given LDC notice of the omission and LDC has not, within a reasonable time after receiving that notice, taken steps to rectify that omission); and

- (b) LDC doing anything LDC is permitted or obliged to do under this Agreement.

13.7 Notice of damage

The User must advise LDC promptly in writing of any substantial damage sustained to the Usage Area or the Land.

13.8 Interruption of services

Notwithstanding any implication or rule of law to the contrary LDC will not be liable to the User or any person claiming under or through the User for any loss or damage whatsoever directly or indirectly caused by or arising from any malfunction, failure or interruption to or of any services to or related to the Usage Area and Land unless and only to the extent such loss or damage is caused by LDC's malicious act or omission.

13.9 No Merger

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

14. Vacation, Make Good and Remediation Works

- (a) The User must vacate the Usage Area on or by the Expiry Date, unless this document is terminated sooner, in which event the User must vacate the Usage Area upon termination.
- (b) The User will meet with LDC staff members (as required by LDC) to inspect the vacated site and take photos of the site to complete the Site Inspection Report.
- (c) The Site Inspection Report will identify any make good requirements for the site on expiry of the agreement, or during any such other times in which the User utilises the Facility from time to time during the Term.
- (d) As soon as practicable during the Term, and upon termination, the User must notify LDC if any damage is caused to the Usage Area or the Land.
- (e) Unless otherwise notified by LDC, the User must:
 - (i) allow, and do all things necessary to facilitate, LDC or LDC's contractor to:
 - (A) remove any improvements, fixtures and fittings made or installed to the Usage Area by the User; and
 - (B) repair the damage so that the Facility continues to perform at the same standard as before the damage occurred;
 - (ii) must pay to LDC the amount required to make good and remediate the damage pursuant to the Usage Fee relative to the works required.

15. Mutual covenants

15.1 Default

The parties agree:

- (a) The Reference Schedule Items and clauses 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 18 are essential Terms of this Agreement and LDC may at its option treat any breach or default by the User in the observance or performance of its obligations under any of such clauses as a repudiation or a breach by the User of this Agreement;
- (b) LDC's acceptance of Usage Fee arrears will not constitute a waiver of the essential and fundamental nature of the User's obligation to pay Usage Fees as and when due;
- (c) if:
 - (i) any request or demand for payment for any monies payable under this Agreement, either partly or wholly, is unpaid after the due date (although no formal or legal demand, including any notices of breach, has been made for payment);

- (ii) the User commits or permits to occur any breach or default in the due and punctual observance and performance of any of the Terms of this Agreement;
- (iii) where the User is a company:
 - (A) an order is made or resolution is effectively passed for the winding up of the User (except for the purpose of reconstruction or amalgamation with LDC's consent); or
 - (B) a Receiver or Receiver and Manager or Administrator or Controller or any of them is appointed to the User or any property of the User is affected by or action is taken towards such appointment; or
 - (C) the User goes into liquidation or provisional 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; or
 - (D) where the User is a natural person the User is convicted of an indictable offence (other than a traffic offence);
 - (E) execution is levied against the User and not discharged within 14 days;
 - (F) the License Area is left unoccupied and/or vacant for one month or more without LDC's notification and consent;
 - (G) any property in or on the License Area is seized or taken in execution under any judgment or other proceedings;
 - (H) any event described in paragraphs 15.1(c)(iii)(A) to 15.1(c)(iii)(G) of this clause (inclusive) occurs in respect of any guarantor of the User's obligations under this Agreement,

then LDC will have the right to immediately terminate this Agreement (without the need for a notice of breach), without prejudice to any other right or remedy of LDC for arrears of any monies payable under this Agreement or a breach of any term of this Agreement, and if such right is exercised:

- (i) LDC will be released and discharged from any action claim or demand by or obligation to the User under or in respect of this Agreement; and,
- (ii) the User will not be entitled to claim or receive from LDC any compensation or damages in respect of such termination, re-entry and repossession;
- (iii) if the User's conduct (whether by act or omission) constitutes a repudiation of this Agreement (or of the User's obligations under this Agreement) or constitutes a breach of any of the Terms of this Agreement the User will compensate LDC for the loss or damage suffered as a result of such repudiation or breach and LDC's entitlement to recover damages will not be affected or limited by:
 - (A) the User abandoning or vacating the Usage Area; or
 - (B) LDC electing to re-enter the Usage Area or to terminate this Agreement; or
 - (C) LDC accepting the User's repudiation; or
 - (D) the conduct of LDC and the User constituting a surrender by operation of law;

15.2 Abandoned Goods

The parties agree that any goods or other property left on the Usage Area or the Land by the User at the expiration of the Term or any sooner termination of this Agreement may be dealt with by LDC at the User's cost in such a manner as LDC chooses in its absolute discretion and LDC will not be liable to the User or any parties holding encumbrances or with interest secured against the goods or other property on the for any loss or damage in respect of such dealing.

15.3 Costs and Remedies on Default

- (a) If the User breaches or fails to perform any term of this Agreement and such breach or failure to perform continues after LDC advising the User in writing that it requires remedy of the breach or performance then:
 - (i) LDC may remedy the breach or perform the term without prejudice to any other right or remedy; and
 - (ii) the User will pay to LDC all resulting costs incurred and/or the value of any resources expended by the Landlord, including but not limited to:
 - (A) all costs incidental to procuring another User for the Usage Area;
 - (B) all legal costs and disbursements; and
 - (C) any and all loss of License Fees.

15.4 Disclosure of User Information

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

16. Security

16.1 Limitation on LDC's liability for security

The User acknowledges and agrees:

- (a) LDC is responsible only for putting in place and maintaining such security measures as LDC considers necessary in order to monitor the perimeter fence on the Land for the purpose of protecting LDC's own interests in the Land;
- (b) LDC is not responsible for limiting or restricting access across the Land to any usage area located on the Land, or to take any action against or to prevent any person accessing any usage area;
- (c) any property stored on the Usage Area is stored at the User's own risk; and
- (d) despite any security measures put in place or patrols of the Land by LDC, LDC has no responsibility or liability for:
 - (i) the User's Property within the Usage Area or on the Land;
 - (ii) controlling or preventing entry by any person to the Usage Area or the Land;
 - (iii) any activity undertaken by any person within the Usage Area;
 - (iv) any event on the Land that may cause damage or that poses a hazard or risk of harm to the User, its Authorised Persons or the User's Property;

- (v) any breach of any Environmental Laws or other Laws by any person within the Usage Area or on the Land;
- (vi) any loss, damage or theft of any of the User's Property stored on the Usage Area; or
- (vii) reporting on, recording, monitoring or otherwise detailing the activities of any person on the Land or within any licensed area.

16.2 User's responsibility for security

The User is responsible for:

- (a) the security of the Usage Area and the User's Property within the Usage Area;
- (b) ensuring the User's employees, contractors, agents and invitees and Authorised Persons comply at all times with the User's own security directions and LDC's directions given from time to time;
- (c) maintaining the security of the Main Gate when the User or the User's Staff accesses the Land and the Usage Area, and
- (d) rectifying any breach of security affecting the Usage Area or the User's Property.

17. Improvements

17.1 User's warranties and acknowledgements

The User warrants to LDC:

- (a) it has inspected the Usage Area, obtained all relevant Approvals and has satisfied itself to the fitness of the Usage Area for the Permitted Purpose;
- (b) it accepts the condition and state of repair of the Usage Area; and
- (c) it acknowledges LDC has not made any representation or statement about the fitness of the Usage Area for the Permitted Purpose.

18. Termination

18.1 Termination by LDC

LDC may terminate this Agreement by giving the other party 2 Business Days' notice in writing.

18.2 Termination for breach

- (a) In addition to its other legal rights, LDC may terminate this Agreement:
 - (i) upon the expiration of a notice served by LDC identifying a material breach by the User of this Agreement which has not been remedied within 7 days (or any other date specified by LDC, within its discretion) of the date of service of a written notice by LDC; or
 - (ii) if an order is made or a resolution is effectively passed for the winding up of the User (except for the purpose of reconstruction or amalgamation) or if the User 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*, or a receiver or receiver and manager is appointed, or execution is levied against the User, and not discharged within 30 days;
 - (iii) immediately (and without LDC being required to give any notice) if any Approval of the User as required by this Agreement is revoked, cancelled, withdrawn or lapses or any payment owed under this Agreement becomes overdue.

- (b) Termination of this Agreement pursuant to this clause is without prejudice to any rights accrued by either party prior to the termination.

18.3 Early termination

Either party may terminate this Agreement by giving the other party one month's notice in writing in the following circumstances:

- (a) if LDC requires the whole of the Land for another purpose, at which point all access and use agreements will be terminated;
- (b) if the Northern Territory Government resolves to alter, restrict or limit the use to which the Land may be put, and such new use is inconsistent with the Permitted Purpose;
- (c) if the Northern Territory Government or LDC resolve to designate another parcel of land for similar or the same type of use; or
- (d) if the User elects to relocate the User's Property and no longer requires the use of the Usage Area.

18.4 Effect of Termination

If LDC exercises the right to terminate this Agreement under clause 18.1 or if this Agreement is terminated earlier under clause 18.3, LDC will be entitled to recover from the User as a liquidated debt due and payable:

- (a) LDC's costs of remediating, removing or otherwise containing all Contaminants whether on or below the surface of the Usage Area or Land;
- (b) LDC's costs of any works to make the Usage Area and Land safe or stable;
- (c) LDC's costs of removing, transporting and disposing of any of the User's Property; and
- (d) LDC's costs of clearing the Usage Area of any effects, items or goods not agreed to be left on the Usage Area and any rubbish or debris which the User has not removed.

19. Notices

19.1 Form and Service of Notices

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

- (a) personally;
- (b) by pre-paid registered post; or
- (c) by email,

at the address of the party set out in the Reference Schedule or at such other address as a party may have substituted for it by written notice to the other.

19.2 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) by delivery in person, when sent to the recipient's address for service delivered to the addressee;
- (b) sent by mail, on the second Business Day from and including the date of posting; or
- (c) sent by email, when the email is capable of being retrieved by the addressee at the specified email address. It is assumed that the electronic communication is capable of being retrieved by the addressee when it reaches the addressee's electronic address.

20. Dispute Resolution

20.1 Disputes between Users

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

20.2 Disputes between LDC and the User

- (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 20.2(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 20.2(a), 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.

21. Goods and services tax

21.1 Interpretation

For the purposes of this clause unless the context otherwise requires:

- (a) "GST" means any tax imposed on Supply by or through the *A New Tax System (Goods and Services Tax) Act 1999* ("the Act") and any related Tax Imposition Act. Any other term is used in this clause which is defined in the Act has the meaning it bears in the Act;
- (b) "GST Rate" means the percentage amount of GST payable determined under section 9-70 of the Act as amended from time to time; and
- (c) "Input Tax Credit", "Recipient", "Supplier" and "Supply" have the meaning they bear in the Act.

21.2 Consideration inclusive of GST

The parties acknowledge the consideration under this Agreement is inclusive of GST, where GST is calculated using the GST Rate at the time of forming this Agreement.

21.3 Tax invoices

The Supplier will, prior to an amount becoming due for payment by the Recipient, provide the Recipient with a tax invoice in relation to the Supply under this Agreement and the Supplier will do all things reasonably necessary to assist the Recipient to claim and obtain any Input Tax Credit available to it in relation to that Supply.

22. General

22.1 Electronic Signing and Delivery of Documents

The parties agree that:

- (a) The signatories for a party may execute this Agreement electronically.
- (b) If a party delivers an executed counterpart of this Agreement (whether executed electronically or by hand) by e-mail or any other means of electronic transmission the delivery will be deemed to be an effective delivery of an executed counterpart.

22.2 Costs and Stamp Duty

- (a) Each party will pay its own costs of and incidental to the preparation and execution of this Agreement.
- (b) All stamp duty must be paid by the User.

22.3 Entire agreement

This Agreement terminates and supersedes all previous written and oral agreements between the User and LDC and constitutes the entire agreement between the parties in relation to its subject matter.

22.4 Amendments

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

22.5 Assignment

A party must not assign or otherwise deal with this Agreement or any right under this Agreement without the prior written consent of the other party.

22.6 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.

22.7 Governing Law and Jurisdiction

This Agreement 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 respect of all matters arising under or in connection with this Agreement.

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Signing page

EXECUTED as an agreement.

DATED by the parties on

20

The Common Seal of Land Development Corporation was affixed pursuant to the provisions of the *Land Development Act* in the presence of:

Signature of authorised delegate ←

Full name and position of authorised delegate

Executed by [insert name of User]
pursuant to section 127 of the *Corporations Act 2001*

Signature of director ←

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

Name of director (print)

Name of director/company secretary (print)

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Schedule 1 – Plan of Common User Facility

