

TERMS AND CONDITIONS

1 Agreement

- 1.1 During the Term and subject to the terms of this Agreement, we agree to provide the Facility in consideration of your payment of the Fee, subject to and on the terms set out in this Agreement.

2 Commencement

- 2.1 This Agreement will commence on the Commencement Date and will continue for the Term.

3 Non Exclusivity

- 3.1 You agree that the Facility is not provided exclusively to you and that you do not have exclusive rights over, or use of, the Facility or any part of the Premises

4 Fee

- 4.1 You agree to make payment of the Fee in accordance with the Payment Terms.
- 4.2 If any payment has not been made in accordance with the Payment Terms, we may (at our absolute discretion):
- (a) immediately cease providing the Services, and recover, as a debt due and immediately payable from you, our additional costs of doing so; and/or
 - (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 8% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the due date for payment in accordance with the Payment Terms.
- 4.3 Unless permitted elsewhere in this Agreement, you will not be entitled to any use of the Facility until the Fee has been paid in full.

5 Bond

- 5.1 On or prior to the Commencement Date, you must deliver the Bond to us.
- 5.2 If you have breached your obligations under this Agreement, we may draw on the Bond without notice to you. This will not affect or prejudice

any other rights or remedies we have in relation to any breach by you.

- 5.3 If we have drawn on the Bond, you must immediately top up the amount so that the Bond is maintained at the amount stated in the Schedule.
- 5.4 We will return the Bond (or so much of it as remains) to you within 14 days after the later of:
- (a) the End Date; or
 - (b) when you have vacated the Premises; or
 - (c) in accordance with the circumstances at Clause 9.2, if applicable.

6 Your Obligations

- 6.1 You agree:
- (a) to follow any applicable rules for the Facility at all times, such as car park rules;
 - (b) to comply with this Agreement, our reasonable requests or requirements, and all applicable Laws;
 - (c) that you will only have access to the Facility and will not have access to other areas at the Premises;
 - (d) that you will maintain the Facility in good repair and condition, having regard to its condition at the Commencement Date;
 - (e) that you are responsible for the repairs of any damage caused to the Facility which is due to your act, negligence or omission, and at your cost; and
 - (f) if a Control Mechanism applies to the Facility, you will keep any access keys or devices provided to you in safekeeping and return such to us at the End Date.
- 6.2 You acknowledge and warrant the following:
- (g) that there are no legal restrictions preventing you from entering into this Agreement; and
 - (h) that all information and documentation that you provide to us in connection with this Agreement is true, correct and complete.

7 Our Obligations

- 7.1 Subject to your compliance with this Agreement, we will provide the Facility at the Premises for your use during the Term.
- 7.2 If there is a Control Mechanism which applies to the Facility and any access keys or devices have failed to work, we will offer an alternative car parking space for you nearby at our cost.
- 7.3 We have the right to provide you with the use of the Facility pursuant to a [licence / sub-licence] agreement entered between us and the [owner / tenant] of the Premises.
- 7.4 If at any time during the continuance of this Agreement the local council or any competent authority reduces the number of cars permitted to be parked on the Premises or you are deprived of the availability to park at the Facility as a result of any destruction or damage by fire, flood, lightning, storm, tempest or other disabling cause, then we shall be entitled to either terminate this Agreement without compensation to you or reduce the number of car spaces which you are permitted to use under this Licence.

8 Confidential Information

- 8.1 Each Receiving Party agrees:
- (a) not to disclose the Confidential Information of the Disclosing Party to any third party;
 - (b) to use all reasonable endeavours to protect the Confidential Information of the Disclosing Party from any unauthorised disclosure; and
 - (c) to only use the Confidential Information of the Disclosing Party for the purposes for which it was disclosed or provided by the Disclosing Party, and not for any other purpose.
- 8.2 The obligations in clause 15.1 do not apply to Confidential Information that:
- (a) is required to be disclosed in order for the Parties to comply with their obligations under this Agreement;
 - (b) is authorised to be disclosed by the Disclosing Party;

- (c) is in the public domain and/or is no longer confidential, except as a result of a breach of this Agreement; or
- (d) must be disclosed by Law or by a regulatory authority, including under subpoena.

- 8.3 Each Party agrees that monetary damages may not be an adequate remedy for a breach of this clause 15. A Party is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 8 .

- 8.4 This clause 8 will survive the termination or expiry of this Agreement.

9 Termination

- 9.1 We may terminate this Agreement at any time by giving 14 days' notice in writing to you.
- 9.2 You may terminate this Agreement at any time by giving 30 days' notice in writing to us. If you wish to terminate with less than 30 days' notice, we reserve the right to draw on your Bond on a daily basis until the earlier of the following:
- (a) a new customer is found; and
 - (b) the date that is 30 days' since you have given notice.
- 9.3 This Agreement will terminate immediately upon written notice by us, if:
- (a) you breach any provision of this Agreement and that breach has not been remedied within 7 Business Days of being notified by us;
 - (b) if the [licence / sub-licence] agreement between us and the [owner / tenant] of the Premises is terminated for any reason;
 - (c) for any other reason outside our control which has the effect of compromising our ability to perform the Services; or
 - (d) you are unable to pay your debts as they fall due.
- 9.4 Upon expiry or termination of this Agreement:
- (a) you must immediately cease using the Facility;

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- (b) you agree to pay us our reasonable costs arising from, or in connection with, such termination; and
 - (c) you must return any access keys or devices we have provided you. If any access keys or devices have been lost or damaged, you must pay us reasonable compensation for such loss or damage.
- 9.5 We will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to this Agreement constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on expiry or termination of this Agreement.
- 9.6 Termination of this Agreement will not affect any rights or liabilities that a Party has accrued under it.
- 9.7 This clause 9 will survive the termination or expiry of this Agreement.

10 Limitation of Liability

- 10.1 Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with:
- (a) your or your Personnel's acts or omissions;
 - (b) any use or application of the Facility by a person or entity other than you, or other than as reasonably contemplated by this Agreement;
 - (c) any Third Party Inputs;
 - (d) the Facility being unavailable, or any delay in us providing the Facility to you, for whatever reason; and/or
 - (e) any event outside of our reasonable control.
- 10.2 Despite anything to the contrary, to the maximum extent permitted by law, you indemnify us against any liability or loss arising from, any costs incurred in connection with:
- (f) any damage to, or near the Premises and any injury to or death of any person caused or contributed by an act, omission, damage, negligence or default of your or your Personnel; and

- (g) any breach or non-compliance by you or anything you are required to do under this Agreement but which have not been done properly.

- 10.3 This clause 10 will survive the termination or expiry of this Agreement.

11 GST

- 11.1 If GST is payable on any supply made under this Agreement, the recipient of the supply must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided under this Agreement and must be paid in addition to the consideration expressed elsewhere in this Agreement, unless it is expressed to be inclusive of GST. The recipient is not required to pay any GST until the supplier issues a tax invoice for the supply.
- 11.2 If an adjustment event arises in respect of any supply made under this Agreement, a corresponding adjustment must be made between the supplier and the recipient in respect of any amount paid by the recipient under this clause, an adjustment note issued if required, and any payments to give effect to the adjustment must be made.
- 11.3 If the recipient is required under this Agreement to pay for or reimburse an expense or outgoing of the supplier, or is required to make a payment under an indemnity in respect of an expense or outgoing of the supplier, the amount to be paid by the recipient is to be reduced by the amount of any input tax credit in respect of that expense or outgoing that the supplier is entitled to.
- 11.4 The terms "adjustment event", "consideration", "GST", "input tax credit", "recipient", "supplier", "supply", "taxable supply" and "tax invoice" each has the meaning which it is given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

12 General

- 12.1 **Amendment:** This Agreement may only be amended by written instrument executed by the Parties.
- 12.2 **Counterparts:** This Agreement may be executed in any number of counterparts that together will form one instrument.

- 12.3 **Online execution:** This Agreement may be executed by means of such third party online document execution service as we nominate, including by email or any electronic executions platform acceptable to us, subject to such execution being in accordance with the applicable terms and conditions of that document execution service.
- 12.4 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity or termination) **(Dispute)** without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Institute of Victoria to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 12.5 **Entire agreement:** This Agreement contains the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
- 12.6 **Further assurance:** You agree to promptly do all things and execute all further instruments necessary to give full force and effect to this Agreement and your obligations under it.
- 12.7 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under this Agreement if such delay is due to any circumstance beyond our reasonable control.
- 12.8 **Governing law:** This Agreement is governed by the laws of Victoria. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 12.9 **Notices:** Any notice given under this Agreement must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 12.10 **Relationship of Parties:** This Agreement is not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 12.11 **Severance:** If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement

DEFINITIONS AND INTERPRETATION

13 Definitions

In this Agreement, unless the context otherwise requires, capitalised terms have the meanings given to them within this Agreement, in the Schedule, and:

Agreement means these terms and conditions and any documents attached to, or referred to in, each of them.

Bond means the security bond to be provided as set out in the Schedule.

Business Day means a day on which banks are open for general banking business in Victoria, excluding Saturdays, Sundays and public holidays.

Confidential Information includes information which:

- (a) is disclosed to the Receiving Party in connection with this Agreement at any time;

- (b) is prepared or produced under or in connection with this Agreement at any time;
- (c) relates to the Disclosing Party's business, assets or affairs; or
- (d) relates to the subject matter of, the terms of and/or any transactions contemplated by this Agreement,

whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever the Receiving Party receives that information.

Control Mechanism means a boom gate or other mechanism for controlling access to the Facility.

Disclosing Party means the party disclosing Confidential Information to the Receiving Party.

Fee means the amount set out in the Schedule.

Laws means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any person with the authority to bind the relevant Party in connection with this Agreement or the performance of the Services.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a Party to this Agreement or otherwise.

Party means a party to this Agreement from time to time, and Parties means all of them.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents.

Receiving Party means the party receiving Confidential Information from the Disclosing Party.

Schedule means the commercial terms agreed by the Parties and included as a schedule to this Agreement.

Term means the term of this Agreement, commencing on the Commencement Date and ending on the earlier of the End Date or the date on which this Agreement is terminated in accordance with its terms.

Third Party Inputs means third parties or any goods and services provided by third parties, including customers, end users, suppliers, transportation or logistics providers or other subcontractors which the performance of the Services may be contingent on, or impacted by.

14 Interpretation

- a. In this Agreement, unless the context otherwise requires:
 - (a) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
 - (b) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
 - (c) a reference to a person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
 - (d) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
 - (e) a reference to a party (including a Party) to a document includes that party's executors, administrators, successors, permitted assigns and persons substituted by novation from time to time;
 - (f) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
 - (g) a reference to time is to local time in Victoria; and
 - (h) a reference to \$ or dollars refers to the currency of Australia from time to time.

