



Deed Poll - Indemnity and Release

Temporary Use of Airside Areas

Given by:

Name and ABN (if applicable)

In favour of:

Darwin International Airport Pty Limited (ABN 87 081 258 157)

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Deed of Indemnity and Release Temporary Use of Airside Areas

Dated: _____

This DEED is given by:

[Full name, ABN (if applicable) and address] **(User)**

In favour of:

Darwin International Airport Pty Limited (ABN 87 081 258 157) of 1 Henry Wrigley Drive, Eaton Northern Territory 0820

(DIA)

RECITALS:

- A. DIA operates the Airport.
- B. The User wishes to use parts of the Airside Area to use and operate Vehicles, and move around, park, house and otherwise gain access to aircraft, belonging to the User or carriers engaged by the User. DIA grants the User the right to do so on the terms and conditions set out in this Deed.

OPERATIVE PART:

1. Definitions

In this Deed:

- | | |
|---|---|
| Airport | means Darwin International Airport; |
| Airside Area | means the movement area of the Airport, adjacent terrain and buildings or portions thereof being the areas as set out in the Airside Vehicle Control Handbook; |
| Airside Vehicle Control Handbook | means the handbook issued by DIA for the use of Airside at the Airport, as amended or updated from time to time; |
| ASIC | means an aviation security identification card issued under Part 6 of the <i>Aviation Transport Security Regulations 2005 (Cth)</i> ; |
| Authorisations | means: <ul style="list-style-type: none">(a) any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Governmental Agency; or(b) any consent or authorisation regarded as given by a Governmental Agency due to the expiration of the |

period specified by Law within which the Governmental Agency should have acted if it wished to proscribe or limit anything already lodged, registered or notified under that statute.

- Authority to Use Airside** means a permit to be affixed to a Vehicle approved to access the Airside, issued by DIA or by an approved issuing authority;
- Claim** means any action, suit, proceeding or demand of any kind.
- DIA Requirements** means separately and together:
- (a) the latest versions of the following documents as issued by DIA or others (as appropriate) at the relevant time:
 - (i) the Conditions of Use
 - (ii) the Aerodrome Manual;
 - (iii) the Air Navigation Regulations;
 - (iv) the Airport Emergency Plan;
 - (v) the Transport Security Program;
 - (vi) the Airside Vehicle Control Handbook;
 - (vii) the Civil Aviation Regulations;
 - (viii) the Environmental Strategy;
 - (ix) the Security Guide;
 - (x) the Drug and Alcohol Management Plan;
 - (xi) the Terminal Operations Manual; and
 - (b) the reasonable requirements of DIA from time to time relevant to Airport safety, including (without limitation) the Security Rules and decisions made by the Airport Safety and Operations Committee.
- Deed** means this Deed and any amendment or annexure to it;
- Governmental Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, court, department, commission, authority, tribunal, agency or entity.
- GST** has the meaning it has under the *GST Act*.
- GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Law** means:
- (a) the present or future requirements of any statute, regulation, order, rule, subordinate legislation, common law, equity or other document enforceable under any statute, regulation, rule or subordinate legislation, common law or equity;
 - (b) the lawful requirements, directions or instructions of any Governmental Agency; and

	(c) the listing rules of any recognized stock exchange.
Permitted Use	means the permitted use set out in Item 1;
Security Rules	means those requirements established from time to time by DIA as being essential to the security and safety of the Airport including, without limitation, in relation to: <ul style="list-style-type: none"> (a) emergency procedures; and (b) staff security clearances; and (c) security screening (personnel and goods - including checked bag screening); and (d) the issue and use of ASICs; and (e) the payment of fees as set by DIA from time to time to cover such security.
Term	means the period commencing on the date of this Deed and expiring on the date that is specified in the Authority to Use Airside issued to the User;
Terminal	means those areas within the Airport used for the embarkation and disembarkation of aircraft passengers;
User Personnel	means any of the User's employees, agents and representatives;
Vehicle	means any motor vehicle as defined by the <i>Motor Vehicles Act 1949</i> (NT), special purpose vehicle or mobile equipment, which is used on the Airside, or taken onto the Airside, by the User.

2. Interpretation

In this Deed, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (d) a reference to 'A\$', '\$A', 'dollar' or '\$' is to Australian currency;
- (e) a reference to a 'party' is to a party to this Deed, and a reference to a party to a document includes the party's officers, employees, agents, invitees, members, contractors, executors, administrators, successors and permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- (i) any agreement, representation, warranty or indemnity given by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (j) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Deed or any part of it; and
- (l) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.
- (m) a reference to an Item is a reference to the Item in the Reference Schedule to this Deed.

3. Authority to use Airport – Aircraft

- (a) Subject to the User's compliance with this Deed, DIA authorises the User to use the Airport (including the Airside Area) for the Permitted Use for the Term.
- (b) This Deed and the User's access to the Airside Area will continue until the earlier of:
 - (i) The date that is twelve (12) months from the date of this Deed; or
 - (ii) The date that DIA terminates the User's access to the Airside Area in accordance with clause 13 of this Deed.

4. Covenants by Licensee

During the Term, the User must:

- (a) make every payment under this Licence without set-off, counterclaim, withholding or deduction;
- (b) not do or allow anything to be done that might damage the Airside Area;
- (c) promptly reimburse any costs borne by DIA when repairing any damage caused or contributed to the Airside Area by the User;
- (d) keep the Airside Area in a clean and tidy condition, free from rubbish, litter and fire hazards;

- (e) not cause any nuisance, damage, obstruction, annoyance or inconvenience to the occupiers or other users of the Airport (including the Airside Area);
- (f) comply with any reasonable security and fire safety requirements of DIA in relation to the Airport (including the Airside Area);
- (g) comply with any reasonable DIA and/or DIA representative requests;
- (h) comply, on time, with all requirements, orders and notices of Governmental Agency and any insurers and all Laws concerning the User's use of the Airport (including the Airside Area), and the User's property;
- (i) not use the appurtenances, fixtures, fittings, furniture, plant, machinery and equipment in the Airport (including the Airside Area) for anything other than their intended use;
- (j) comply with relevant environmental and occupational health and safety Laws, Governmental Agency requirements, Authorisations and DIA's Requirements, which are in any way applicable to the performance of the User's obligations under this Deed;
- (k) immediately notify DIA of any damage to, defect or disrepair of the Airport (including the Airside Area) or of any circumstances likely to endanger or cause any risk or hazard occurring within the Airport (including the Airside Area) or any person or property in the Airport (including the Airside Area);
- (l) immediately notify DIA of any safety or environmental incident within the Airport (including the Airside Area) and immediately take appropriate measures to remove any associated risks or hazards as a result of the incident; and
- (m) ensure that it complies all Laws relating to occupational health and safety, the Airport (including the Airside Area) and the User's use of the Airport (including the Airside Area).

5. Compliance

5.1 Compliance with Governmental Agency

- (a) The User acknowledges that the terms of this Deed are subject to any contrary provision of any Laws.
- (b) At the User's expense, the User must promptly and efficiently comply with and observe all Laws from time to time relating to the conduct of the Permitted Use and the use by the Licensee of the Airside Area.
- (c) The User must obtain at its own expense any licence consents or the like which may be necessary to enable (respectively) the Permitted Use to be carried out lawfully.

5.2 Using the Airport

- (a) In particular and without limitation, and to the extent of any relevance, the Permitted Use must be conducted in compliance with:

- (i) DIA's Requirements;
 - (ii) the Security Rules; and
 - (iii) best practice industry standards (from time to time) for the conduct of the Permitted Use.
- (b) On a practical level, and without limitation, the User must:
- (i) arrange for all staff to receive a security briefing on induction;
 - (ii) ensure its principal representative is familiar with the Transport Security Program for the Airport;
 - (iii) pay a reasonable fee and provide a reasonable security deposit for all such security cards and/or entry devices issued by DIA for access to all controlled and/or secure areas within the Airside Area;
 - (iv) train its staff to comply with DIA's Requirements, including without limitation, the Drug and Alcohol Management Plan;
 - (v) ensure that all of the User Personnel display a valid ASIC as required by the *Aviation Transport Security Act 2004 (Cth)*;
 - (vi) be familiar with the contents of the Airport Emergency Plan and must ensure that all staff and subcontractors are trained in accordance with the Airport Emergency Plan and all other emergency and Terminal evacuation procedures;
 - (vii) ensure that all employees and contractors are appropriately trained in the use of DIA's property used in the carrying out of their duties;
 - (viii) ensure User Personnel are (where relevant) trained in the provisions of DIA's Requirements and best practice industry standards (from time to time) for the conduct of the Permitted Use;
 - (ix) ensure User Personnel are appropriately trained and competent for all tasks undertaken by the User including sufficient number/s of staff are provided to execute tasks without causing risk to the Airport and / or impacting Airport operations;
 - (x) operate in a professional manner and use best endeavours to ensure that no reputational damage is suffered by DIA as a result or in connection with the User's operations and use of the Airside Area; and
 - (xi) ensure that a representative of the User attends any meeting set by DIA in relation to DIA's Requirements upon the giving of reasonable notice by DIA.

5.3 Security Rules

- (a) The User accepts that a breach or failure by the User to comply with the Security Rules gives DIA, in addition to its other rights and powers, the right to require the User to rectify such non-compliance within a reasonable time and further that

failure by the User to comply entitles DIA to do such things at the User's cost as enables the Security Rules to be satisfied.

- (b) The User acknowledges and agrees that in the event that the User or the User Personnel fail to comply (in whole or in part) with the Security Rules, DIA may without notice immediately suspend or terminate, at DIA's election, the right for the User, or any of User Personnel, from accessing the Airside Area.

6. Licence Fee

The User must pay to DIA, without demand, the Licence Fee by equal monthly instalments, in advance, on and from the Commencement Date.

7. User Personnel

7.1 Notice to cease

- (a) DIA may require that the User cease to permit any User Personnel from accessing the Airside Area for the purposes of the Permitted Use:
 - (i) due to a suspected or actual breach of Law or DIA's Requirements, by written notice with immediate effect; or
 - (ii) if in DIA's reasonable opinion that is necessary, at any time by notice in writing to the User.
 - (iii) If this occurs, the User must promptly remove such User Personnel.

7.2 Nature of relationship

- (a) The parties expressly acknowledge and agree that:
 - (i) the relationship between DIA and the User is that of a licensor and licensee, respectively;
 - (ii) nothing expressed or implied in this Deed may be deemed or treated by the parties or by any third party as creating the relationship of a partnership, an employer and employee, or joint venturers between the parties; and
 - (iii) nothing in this Deed constitutes either party as the agent or legal representative of the other party or creates any fiduciary relationship between the parties.
- (b) Neither party may:
 - (i) bind or commit or purport to bind or commit the other party in any way; or
 - (ii) pledge the credit of the other party for any purpose.

8. Work Health and Safety

The User must at all times:

- (a) ensure that uses the Airside Area in a safe manner;
- (b) comply with all Laws and the requirements of all Governmental Agency (including all applicable work health and safety Laws);
- (c) comply with any reasonable instruction from DIA relating to work health and safety (or safety and security generally) in respect of the User's access or use of the Airside Area;
- (d) communication any issue or concern that it has regarding work health and safety matters in relation to the Airside Area or the means of entering and exiting the Airside Area, as soon as practicable, with DIA; and
- (e) if the User becomes aware of:
 - (i) any death of a person;
 - (ii) any serious injury or illness of a person; or
 - (iii) any dangerous incident,

that occurs within the Airside, whether in relation to the User's access, use or otherwise, immediately notify DIA.

9. Risk

The Licensee accepts all risks associated with accessing the Licence Area and carrying out of the Services under this Agreement (whether ascertainable or not), other than risks specifically reserved to the Airport Operator by this Agreement.

10. Indemnity

- (a) The User must indemnify and keep indemnified DIA from and against all and any loss, damage, cost, charge, expense or other liability incurred by DIA in relation to or arising out of or in consequence of the use of the Airport by the User, including:
 - (i) any action, proceeding, claim or demand which is or may be brought, made or prosecuted or threatened against DIA in respect of any loss of or damage to property, loss of life or personal injury or other loss that may arise in any way from the use of the Airside by the User or by any servant, officer, member, agent or contractor of the User or any third party (including, but not limited to any loss of or damage to property or loss of life or personal injury or other loss suffered or incurred by the User; and
 - (ii) any other thing in any way relating to the use of or operation of any Aircraft on the Airside of the Airport by the User or any servant, officer, member, agent or contractor of the User.

- (b) The indemnity in clause 10(a) is a continuing indemnity and remains in full force and effect notwithstanding the expiry of the User's use of the Airport.
- (c) The indemnity contained in clause 10(a) shall be proportionally reduced to the extent that any such loss, damage, or cost, is caused by the negligence of DIA or its servants, officers, members agents or contractors, or any third party that is not the User's agent employee contractors customer or invitee.

11. Release

- (a) The User access and uses the Airport (including the Airside Area) at its own risk and releases DIA from:
 - (i) all Claims which the User now has or, might at any time in the future have, against DIA; and
 - (ii) all present or future liability of DIA to the User however caused in relation to or arising out of or in consequence of:
 - (A) the use or operation of any Aircraft or Vehicle on the Airside of the Airport by the User or any servant, officer, agent or contractor of the User; or
 - (B) the presence on the Airside of the Airport of any Aircraft or Vehicle (whether or not being used or operated at the time) under the control of the User or any servant, officer, member, agent or contractor of the User; or
 - (C) the presence of the User on the Airside for any reason whatsoever; or
 - (D) the leakage of any substance from the User's Vehicle; or
 - (E) non-compliance with this Deed; or
 - (F) any other thing in any way relating to the access, use or operation of any Vehicle on the Airside Area by the User.
- (b) The release contained in this clause 11 operates even if the User is not now aware of, or has no present knowledge of, or at any future time is not aware or has no knowledge of, any fact or circumstance which may now or in the future be relevant to or apply in relation to any such claim, action, cause of action, proceeding or demand or liability.
- (c) The User must not make or commence or threaten to make or commence any Claim referred to in clause 11.
- (d) The release set out in this clause 11 shall not operate to the extent such claims, actions, causes of action, proceedings, demands, loss, damage or cost are caused by negligence on the part of DIA or any of its servants, officers members, agents or contractors, or any other party other than the User.
- (e) The indemnity set out in this clause 11 is a continuing release and survives termination of this Deed.

12. Insurance

12.1 Public risk insurance

The User must affect and keep current during the Term:

- (a) a public risk policy for a sum of not less than \$30 million in respect of any single claim, and
- (b) other insurances (including without limitation for the full replacement value of any Aircraft) that a prudent User would carry in the circumstances of the use of the Airport to which this Deed relates, with a reputable insurance company.

12.2 Not to vitiate insurance

The User must not do anything whereby:

- (a) the insurance required under clause 12.1 may be vitiated or rendered void or voidable; or
- (b) the rate of premium on any such insurance will be liable to be increased.

12.3 User to produce certificate of currency

- (a) If requested by DIA, the User must produce to DIA a certificate of currency in respect of the insurance policy required under clause 12.1.
- (b) The User must ensure that the insurance policy effected by it under clause 12.1 notes DIA's interest.

13. Termination of Access

13.1 Termination

DIA may immediately terminate this Deed for the use of Vehicles only, and with it the Users access and use of the Airside, by written notice to the User for any reason whatsoever.

13.2 Consequences of Termination

Termination of this Deed in accordance with clause 13.1 is without prejudice to any accrued rights or claim available to DIA under this Deed.

14. General

14.1 Further acts

The User will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to DIA) required by Law or reasonably requested by DIA to give effect to this Deed.

14.2 Notices

Any notice, demand, consent or approval (collectively, **Notice**) under this Deed:

- (a) must be in writing;
- (b) must be addressed as shown in Item 4 (or as otherwise notified by that party to the other party from time to time);
- (c) must be signed by the party making the communication or on behalf of that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by email to the email address, of the addressee, in accordance with clauses 14.2(a) to 14.2(c) (inclusive); and
- (e) will be deemed to be received by the addressee:
 - (i) in the case of prepaid post, on the seventh Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;
 - (ii) in the case of email, on the day the email was sent, but if the time the communication is taken to be received is not on a Business Day or is after 5.00 pm, the communication is taken to be received at 9.00 am on the next Business Day; and
 - (iii) in the case of delivery by hand, on delivery at the address of the addressee, unless that delivery is made on a non-Business Day, or after 5.00 pm on a Business Day, when that communication will be deemed to be received at 9.00 am on the next Business Day.

This clause survives the termination or expiry of this Deed.

14.3 Jurisdiction

- (a) This Deed is governed by the Laws of the Northern Territory of Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Northern Territory of Australia and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this Deed.
- (c) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within clause 14.3.
- (d) This clause survives the termination or expiry of this Deed.

14.4 Amendments

This Deed may only be varied by a document signed by or on behalf of each of the parties.

14.5 **Waiver**

No waiver by a party of one breach of any obligation contained or implied in this Deed operates as a waiver of another breach of the same or of any other obligation contained or implied in this Deed.

14.6 **Non merger**

None of the terms or conditions of this Deed nor anything done under or in connection with this Deed or any other agreement between the parties will operate as a merger of any of the rights and remedies of the parties under this Deed or under that other agreement, all of which will continue in full force and effect.

14.7 **Severability**

If the whole or any part of a provision of this Deed is void, unenforceable or illegal it is severed. The remainder of this Deed continues to have full force and effect.

14.8 **Entire agreement**

To the extent permitted by Law, in relation to the subject matter of this Deed, this Deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed on between the parties; and
- (b) supersedes any prior written or other agreement between the parties.

14.9 **Electronic Signature**

- (a) A party may validly execute this Deed by attaching electronic signature(s) to this Deed using a well-recognised electronic signature platform.
- (b) Each of the parties acknowledge and agree that:
 - (i) use of a signatory's email address within the electronic signature platform is a sufficient method for identifying the signatory and their intention in relation to this Deed; and
 - (i) where this Deed has been signed by a signatory using an appropriate electronic signature platform, such signatures will have the same legal effect as 'wet ink' signatures.

14.10 **Rights cumulative**

- (a) The rights and remedies of DIA provided in this Deed are cumulative and do not exclude any rights and remedies provided at Law.
- (b) This clause survives the termination or expiry of this Deed.

15. **GST**

Words used in this clause which are defined in the *GST Act* have the same meaning as given in the *GST Act*.

- (a) Unless expressly stated otherwise, all amounts and payments stated in this Deed do not include GST.
- (b) If a supply made by DIA under this Deed is a taxable supply under the *GST Act*, the User must in addition to the amount payable to DIA for that supply, concurrently pay to DIA the amount of any GST payable in respect of that supply.
- (c) Without limiting clause 15(b) supply includes the occupation or use of the Airside Area by the User, including after the expiry of the Term.

16. Special Conditions

The Special Conditions specified in Item 5, if any, apply to and form part of this Deed and prevail to the extent of any inconsistency in any other part of this Deed.

EXECUTION PAGE

Executed as a Deed this day of 202

BODY CORPORATE

Signed, sealed and Delivered by the User in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of Director

Signature of Director/Company secretary

Name of Director (print)

Name of Director/Company Secretary (print)

INDIVIDUAL

Signed, sealed and delivered by the User (an individual) in the presence of:

Signature of User

Signature of Witness

Name of User (print)

Name of Witness (print)

ASSOCIATION

The Common Seal of the User is hereunto affixed in the presence of:

Signature of Authorised Representative

Signature of Authorised Representative

Name of Authorised Representative (print)

Name of Authorised Representative (print)