



**City of Busselton**

and

**Margaret River Busselton Tourism  
Association**

**LICENCE AGREEMENT**

Busselton Regional Airport

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## Licence Agreement

This agreement is made on the \_\_\_\_ day of \_\_\_\_\_ 2015 between the following parties:

1. **The City of Busselton** of 1 Southern Drive, Busselton, Western Australia (the **City**); and
2. **Margaret River Busselton Tourism Association (MRBTA)** of 100 Bussell Highway WA 6285 (the **Licensee**).

## Recitals

- A. The City is the registered proprietor of the Land.
- B. The Airport is located on the Land.
- C. The Licensee has requested the City to grant the Licensee a licence to operate the Licensed Activities within the Terminal Building and within prescribed areas at the Airport.
- D. The Airport Terminal has been upgraded and extended and the Licensee has requested the City grant it a licence of the Office Space within the Terminal Building for the purpose of administrative functions relative to operating the Licenced Activities
- E. The Current Licence Agreement made between the City and the Licensee dated 17<sup>th</sup> September 2014 will end and be surrendered by the Licensee simultaneously with the commencement of this Licence.
- F. The City has agreed to grant a licence to the Licensee subject to the terms and conditions of this Licence Agreement.

The Parties agree:

### 1. DEFINITIONS AND INTERPRETATIONS

#### 1.1 DEFINITIONS

In this Licence Agreement, unless otherwise required by the context or subject matter:

**Airport** means the Busselton Regional Airport located on the Land;

**Amounts Payable** means the Licence fee and any other money payable by the Licensee under this Licence Agreement;

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**Authorised Person** means any person conducting/undertaking the Licensed Activities for and on behalf of the Licensee and/or performing any other works and/or duties for and on behalf of the Licensee in terms of this Licence Agreement (including but not limited to the Licensee's officers, agents, employees, licensees, sub contractors or invitees);

**Car Park** means the any area designated or marked as a public parking area, including the public car park and FIFO secured car parks, located on the Land, as indicated on the plan attached as Annexure A;

**CEO** means the Chief Executive Officer for the time being of the City or any person appointed by the Chief Executive Officer to perform any of her or his functions under this Licence Agreement;

**Charter Operations** has the same meaning as in the Aviation Transport Security Regulations 2005;

**City's Covenants** means the covenants, agreements and obligations set out or implied in this Licence Agreement, or imposed by law to be observed and performed by the City;

**Commencement Date** means the date of commencement of the Term specified in **Item 2** of the Schedule;

**Consideration** means the Amounts Payable or any other money payable to the City under this Licence Agreement;

**Current Licence Agreement** means the Licence Agreement dated 17 September 2014 made between the Licensee and the City.

**Encumbrance** means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat;

**FIFO Service** means a fly-in fly-out charter service to be operated from the Airport;

**Ground Services** includes, but is not limited to, passenger check-in, baggage check-in, baggage handling, ticketing and providing the ancillary services required to operate the RPT Service and open and closed chartered flights, , from the Airport;

**GST** means a tax under the Commonwealth's A New Tax System (Goods and Services Tax) Act 1999 (Act) levied on a Supply including but not limited to the Amounts Payable or other money payable to the City for goods or services or property or any other thing under this Licence Agreement;

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**Interest Rate** means the rate at the time the payment falls due being 2% greater than the City's general overdraft rate on borrowings from its bankers on amounts not exceeding \$100,000.00;

**Land** means the land described at **Item 1** of the Schedule;

**Licence** means the licence granted to the Licensee under this Licence Agreement;

**Licensed Activities** means the activities as set out in **Item 6** of the Schedule to be provided by the Licensee within the Licensed Areas, subject to the terms and conditions of this agreement;

**Licence Agreement** means this agreement as supplemented, amended or varied from time to time;

**Licensed Areas** means that part of the Land and Terminal Building which the Licensee is entitled to use to undertake the Licensed Activities described in **Item 1** of the Schedule and which shall include the Office Space;

**Licensee's Covenants** means the covenants, agreements and obligations set out or implied in this Licence Agreement or imposed by law to be performed and observed by any person other than the City;

**Licence fee** means the licence fee specified in **Item 3** of the Schedule;

**Notice** means each notice, demand, consent or authority given or made to any person under this Licence Agreement;

**Office Space** means the area comprising approximately 9 square metres within the Terminal Building currently located in the position indicated on the Plan annexed or such other space of a similar size and utility allocated by the City from time to time

**Party** means the City or the Licensee according to the context;

**Patron** any person at/on or within the Licensed Areas making use of the Licensed Activities and/or being served by any Authorised Person in terms of this Licence Agreement, but does not include a Authorised Person ;

**Plan** means the plan attached to this Licence showing the Licenced Areas for the purpose of identification only

**RPT Service** means public passenger air transport services conducted from the Airport which include without limitation regular passenger services on established routes with established pick-up

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and drop-off points in accordance with a regular timetable and for which passengers pay an individual predetermined fare;

**Rules** means such rules and regulations from time to time made by the City in respect of the use of the Licenced Areas, equipment and the Land

**Schedule** means the Schedule to this Licence Agreement;

**Security Zones** means areas within the Airport as determined by the City from time to time, whether under the City's Transport Security Program (TSP) or otherwise, which areas are restricted to all persons unless specified in the TSP or prior written authority by or on behalf of the City has been granted;

**Services** means electricity, water, gas, telephone, sewerage disposal or communication link or other like service

**Supply** means a good or service or any other thing supplied by the City under this Licence Agreement and includes but is not limited to a grant of a right to use the Licensed Areas;

**Term** means the term specified in **Item 2** of the Schedule; and

**Terminal Building** means the building on the Land used for Ground Services and all operations and functions associated with the Airport .

**Termination** means expiry by effluxion of time or sooner determination of the Term or any period of holding over.

## 1.2 Interpretation

In this Licence Agreement, unless the contrary intention appears:

- (a) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (b) a covenant or agreement by more than one person binds, and is enforceable against, those persons jointly and each of them severally;
- (c) no rules of construction apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this Agreement or any part of it;

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- (d) a reference to any thing is a reference to the whole and each part of it; and
  - (e) a reference to a Schedule or Appendix is a reference to the Schedule of Appendix to this Licence Agreement.

## **2 Licence**

### **2.1 Grant of Licence**

- (a) Subject to the provisions of this Licence Agreement, the City grants to MRBTA a license and an authority to use the Licensed Areas during the Term for the Licensed Activities and the Licensee agrees to undertake the Licensed Activities accordingly.
- (b) Notwithstanding references to the use of the Licensed Areas for particular purposes throughout this Licence Agreement, any authority granted in this Licence Agreement is strictly limited to the Licensed Areas, but the Licensee's responsibility will extend to all areas in any way used by the Licensee, Authorised Persons and Patrons in undertaking the Licensed Activities.

### **2.2 Licence not exclusive**

- (a) The rights conferred by this Licence Agreement shall not create in or confer or grant to the Licensee any tenancy or any estate or interest in the Licensed Areas or the Land or otherwise create any estate or interest in land; and
- (b) The rights of the Licensee shall be those of a licensee only and it is acknowledged that the use of the Licensed Areas will not be exclusive and the right to exclusive possession of the Licensed Areas, the Terminal Building, the Airport and the Land shall at all times remain with the City.

### **2.3 Licence granted subject to other interests**

The Licensee acknowledges and agrees that the Licence granted by this Licence Agreement is granted subject to all and any other interests which exist or which may be created by the City or any other entity in respect of the Licensed Areas, the Terminal Building, the Airport and the Land.

### **2.4 Surrender of Existing Licence Agreement**

The Licensee surrenders and the City shall accept the surrender of the Existing Licence Agreement which surrender shall take effect on the date of this Licence Agreement.

## **3. Licence Fee and other payments**

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### 3.1 Licence fee

The Licensee covenants to pay to the City the Licence fee in the manner set out at **Item 3** of the Schedule from the Commencement Date clear of any deductions whatsoever.

### 3.2 Costs

- (a) The Licensee covenants to pay to the City on demand all levies, taxes, duties, fines and penalties payable in connection with or as a consequence of the Licensee undertaking the Licenced Activities.
- (b) The Licensee covenants to pay to the City all reasonable costs, legal fees, disbursements and payments incurred by or for which the City is or may become liable in connection with or incidental to:
  - (i) obtaining or attempting to obtain payment of the Amounts Payable under this Licence Agreement, following breach of the Licensee's Covenants;
  - (ii) any other breach of covenant by the Licensee or any Authorised Person;
  - (iii) any work done at the Licensee's request unless the work is an obligation of the City, whether under this Licence Agreement or not; and
  - (v) any action or proceedings arising out of or incidental to any matters referred to in this clause 3.2(b) or any matter arising out of this Licence Agreement.
- (c) Each Party is to pay for its own legal costs in relation to the preparation, reviewing and negotiations in respect of this Licence Agreement

### 3.3 Services to the Licenced Areas

- (a) The Licensee must pay:
  - (1) to the City; or
  - (2) to another person, if the demand is made to the Licensee by that other personon demand all charges for Services to the Licenced Areas including costs for the usage and supply of a Service
- (b) The Licensee acknowledges and agrees that the Licensee must pay the proportion of electricity charges in respect of the Office Space specified in **Item 4** of the Schedule

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#### **4. Insurance**

##### **4.1 Public Liability Insurance**

The parties agree that the Licensee must effect and maintain with insurers approved by the City, adequate public liability insurance for a sum not less than the sum set out at **Item 5** of the Schedule in respect of any one claim or such greater amount as the City may from time to time reasonably require. The City must be noted as a third party or a party of interest on this public liability insurance policy

##### **4.2 Building Insurance**

The City shall be responsible to insure and keep insured such buildings and structures that form part of the Land and all additions to such buildings and structures carried out by the Licensee provided such additions are the subject of prior written approval of the City (but excluding all of the Licensee's fixtures).

##### **4.3 Not to Invalidate**

The Licensee must not do or omit to do any act or thing or bring or keep anything on the Land which the Licensee knows (or could reasonably have been expected to know) might;

- (a) render any insurance effected under clause 4.1 and 4.2, void or voidable;
- (b) cause the rate of an insurance premium effected under clause 4.1 or 4.2 to be increased.

##### **4.4 Reports**

Each party must report to the other promptly in writing and in an emergency verbally:

- (a) any damage to the Licensed Area, the Terminal Building or the Airport of which they are or might be aware; and
- (b) any circumstances of which they are aware and which are likely to be a danger or cause any damage or danger to the Terminal Building, the Airport and/or the Licensed Areas or to any person on the Land.

##### **4.5 Licensee May be required to Pay Excess on Insurances**

- (a) Save for the provisions of clause 4.5(b) the Licensee covenants and agrees with the City that it shall be responsible to pay any excess payable in connection with the insurances referred to in clauses 4.1 and 4.2 in the event that it is determined by a court having proper



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jurisdiction, or otherwise that a claim arises out of or in connection with the negligence of the Licensee.

- (a) The Licensee's liability in terms of clause 4.5(a) shall be limited to a maximum amount of \$10 000 or such other amount to which the parties may from time to time agree in writing.

#### **4.6 Occupational Health, Security and Safety**

The Licensee is responsible to meet, at its cost, all industrial site, safety, security, Occupational Health, Union requirements and/or other insurance requirements incidental to the Licence.

### **5. Indemnity**

#### **5.1 Indemnity**

The Licensee indemnifies the City against all present and future legal liability, claims, or proceedings for:

- (a) either or both loss of, or damage to the Licensed Areas and or Security Zones, or any loss of or damage to anything on it;
- (b) either or both loss of, or damage to, property of the Licensee, Authorised Persons, Patrons a third party
- (c) personal injury to, or death of any person in the Licensed Areas and/or the Security Zones;
- (d) any breach of contract by the Licensee or any Authorised Person;
- (e) any wilful, tortious or unlawful act or omission of the Licensee or any Authorised Person or any third party;
- (f) financial loss to the Licensee or any Authorised Person or Patron; and
- (g) failure of the Licenced Activities,

arising from, or attributable to, the Licensee and/or any Authorised Person conducting the Licenced Activities, to the extent that the injury, death, damage, loss or failure is not caused by a wrongful (including negligent) act or omission of the City.

#### **5.2 Indemnity Unaffected by Insurance**

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- (a) The Licensee's obligation to indemnify the City under this Licence Agreement or at law is not affected by any insurance maintained by the City in respect of the Land and/or the Licensed Area and/or the Terminal Building and/or the Airport and the indemnity under clause 5.1 is paramount; and
  - (b) if insurance money is received by the City for any of the obligations set out in this clause then the Licensee's obligations under clause 5.1 will be reduced by the extent of such payment.

### **5.3 Waiver of Rights of Recovery from the City**

The Licensee waives all present and future rights to claim against the City for:

- (a) personal injury to, or death of, any Authorised Person or Patron;
- (b) either or both loss of, or damage to, any of the Licensee or Authorised Person's property;
- (c) failure of the Licenced Activities; and
- (d) financial loss to the Licensee or any Authorised Person,

arising from, or attributable to, the Licensee or any Authorised Person conducting the Licenced Activities. This waiver does not operate to release the City from liability arising from, or attributable to, a wrongful (including negligent) act or omission of the City.

### **6. No representations and Limit of City's Liability**

- (a) It is acknowledged and agreed by the Licensee that, except where explicitly stated in this Licence Agreement, the City has not made any representations or provided any warranties in relation to this Licence Agreement and/or:
  - (i) The suitability of the Licenced Areas, the Terminal Building or the Airport for conducting the Licenced Activities;
  - (ii) The number or schedule of RPT Services or Chartered Operations;
  - (iii) The number of passengers utilizing the RPT Services, Chartered Operations and/or the Airport; or
  - (iv) The volume/quantity of baggage available for handling at the Airport.

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- (b) The City shall not be liable towards the Licensee or any Authorised person for:
    - (i) any interruption to or discontinuation of the RPT Services, any Chartered Operations or any part thereof; or
    - (ii) failure to perform and observe any of the City's Covenants due to any cause beyond the City's control.
  - (c) Where reasonably possible the City shall give the Licensee prior notice of any interruption to or discontinuation of the RPT Services or Chartered Operations.

## **7. Maintenance, repair and cleaning**

### **7.1 Maintenance**

The City will maintain at its own expense the Licensed Areas in good working order.

### **7.2 Repair**

The Licensee must promptly repair at its own expense to the satisfaction of the City any damage to the Office Space, Licensed Areas and Security Zones including damage of a structural nature, caused by the Licensee or any Authorised Person.

### **7.3 Cleaning**

- (a) The City shall ensure that the Licensed Areas are cleaned on a regular basis.
- (b) The Licensee must at all times keep the Licensed Areas clean, tidy, unobstructed and free from dirt and rubbish.

## **8. Alteration**

The Licensee must not without prior written consent from the City:

- (a) make or allow to be made any alteration, addition or improvements to or demolish any part of the Licensed Areas or Security Zones; or
- (b) remove any flora or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Licensed Areas or Security Zones.

## **9. Use of Equipment**

- (a) If the Licensee wishes to use any equipment located at the Airport in undertaking the Licenced Activities the Licensee must

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make the necessary arrangements with the owner of that equipment

(b) The Licensee may use equipment located at the Airport provided by the City from time to time and must make good any damage caused in the use of such equipment and inform the City at the earliest possible opportunity in the event of any malfunction or damage, to the same however caused,

#### **10.1 Licensee to comply with all Laws and Manuals**

(a) The Licensee must comply with each law relating to the Airport or use of the Airport except for any imposing an obligation to carry out structural work unless that work is required as a result of the Licensed Activities.

(b) The Licensee must obtain all consents, licenses and authorities required by the Licensee to conduct the Licensed Activities at the Airport.

#### **10.2 Licensed Areas, and Security Zones**

The Licensee must not and must not suffer or permit a person to:

- (i) use the Licensed Areas, Security Zones or any part of them for any purpose other than for the Licensed Activities; or
- (ii) use the Licensed Areas, Security Zones or any part of them for any purpose which is not permitted under any town planning scheme, local laws, acts, statutes or any laws, regulations, orders and/or directions relating to the Airport and/or aviation;
- (iii) do or carry out on the Licensed Areas, or Security Zones any harmful, offensive or illegal act, matter or thing;
- (iv) do or carry out on the Licensed Areas or Security Zones anything which causes a nuisance, damage or disturbance to the City, to other people at/on the Licensed Areas or Security Zones or to owners or occupiers of adjoining properties;
- (v) store any dangerous compound or substance on the Licensed Areas or Security Zones;
- (vi) do any act or thing which might result in excessive stress or harm to any part of the Licensed Areas, or Security Zones; or

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- (vii) display from or affix any signs, notices or advertisements on the Licensed Areas or Security Zones without the prior written consent of the City; or
  - (viii) display from or affix any signs, notices or advertisements of a permanent or semi permanent nature on the Licensed Areas or Security Zones unless such sign, notice or advertisement contains the wording supported by the City and incorporates the City logo or such wording as approved by the City.

### **10.3 Rules**

- (i) The Licensee must comply with the Rules in respect of the operation, safety and use of the Licensed Areas and equipment and agrees that failure of the Licensee to comply with any of the Rules will constitute a breach of this Licence in the same manner as if the Rules were the Licensee's obligations.
- (ii) If an inconsistency arises between the provision of this Licence and the Rules the provisions of the Licence shall prevail.

## **11. Default**

### **11.1 Events of Default**

A default occurs if:

- (a) the Licensee is in breach of any of the Licensee's Covenants for **14** days after a Notice has been given to the Licensee to rectify the breach or to pay compensation in money;
- (b) the Licensee is wound up whether voluntarily or otherwise;
- (c) the Licensee passes a special resolution under the *Associations Incorporation Act 1997* altering its rules of association in a way that makes its objects or purposes inconsistent with the use permitted by this Licence Agreement;

### **11.2 Forfeiture**

On the occurrence of any of the events of default specified in clause 11.1 the City may by notice to the Licensee determine this Licence Agreement and from the date of giving such notice this Licence Agreement will be absolutely determined but without affecting the right of action or other remedy which the City has in respect of any other breach by the Licensee of the Licensee's

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Covenants or releasing the Licensee from liability in respect of the Licensee's Covenants.

**12 Damage or Destruction to Airport/Ceasing or Interruption of Operations**

- (a) Subject to sub-clause (c) if the Airport or any part of it is destroyed or damaged to such an extent that it impacts substantially on the RPT Service or Chartered Operations, the City may, in its sole discretion, on 60 days' prior written notice to the Licensee suspend the Licenced Activities until the RPT Service or Charter Operations are continued.
- (b) If the City ceases to operate the Airport, or RPT, Open or Closed Charter Operations cease to operate for any other reason than mentioned in sub-clause(a), the City may terminate this Licence Agreement on 6 months' prior written notice to the Licensee.
- (c) If under sub-clause (a) the Licenced Activities are suspended by the City for more than a period of 6 months at a time, the Licensee shall be entitled to terminate the Licence Agreement on 60 days prior written notice to the City.

**13. Holding over**

If the Licensee continues to undertake the Licensed Activities from the Licensed Areas after the expiry of the Term with the consent of the City, the Licensee will be a monthly licensee of the City at a licence fee equivalent to one twelfth of the Licence fee for the period immediately preceding expiry of the Term and otherwise on the same terms and conditions of this Licence Agreement.

**14. Yield up Licensed Area**

On Termination the Licensee must:

- (a) peacefully surrender and yield up to the City the Licensed Area in a condition consistent with the observance and performance of the Licensee's Covenants under this Licence Agreement;
- (b) surrender to the City all keys and security access devices and combination for locks providing an access to or within the Airport held by the Licensee whether or not provided by the City;
- (c) must at the cost of the Licensee remove from the Airport all property of the Licensee including the Licensee's fixtures and promptly make good, to the satisfaction of the City, any damage caused by the removal and/or caused by the Licensee or any Authorised Person.

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**15. Governing Law**

This Licence Agreement is governed by and is to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.

**16. Statutory Powers**

The powers conferred on the City by or under any statutes for the time being in force are, except to the extent that they are inconsistent with the terms and provisions expressed in this Licence Agreement, in addition to the powers conferred on the City in this Licence Agreement.

**17. Notice**

**17.1 Form of Delivery**

Any notice or other communication including, but not limited to any request, demand, consent or approval which may be required to or may be given by either party to the other

(a) must be in writing and addressed:

(i) to the Licensee at the following address

100 Bussell Highway  
MARGARET RIVER WA 6285; or  
Facsimile: (08) 9757 3287  
Email: \_\_\_\_\_

(ii) to the City at the following address:

City of Busselton  
2 Southern Drive  
Locked Bag  
BUSSELTON WA 6280

Attention: Chief Executive Officer; or  
Facsimile: (08) 9752 4858  
Email: \_\_\_\_\_

or to any other address, facsimile number or person most recently specified in writing by a party to the other;

(b) Must be signed by an officer of the sender or its solicitors or agents.

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## 17.2 Service of Notice

A Notice

- (a) Is deemed to be given by the sender and received by the addressee:
  - (i) If given by delivery in person, on the first business day following date of delivery to the addressee;
  - (ii) If sent by security post and if posted from an address within Australia to an address within Australia, on the third Business Day from and including the date of posting, but if posted by security post from outside Australia, or posted to an address outside Australia, then on the sixth business day from and including the date of posting; or
  - (iii) If sent by facsimile transmission or email, on the first business day following transmission thereof and on production of a transmission report by the facsimile machine by which the facsimile message was transmitted which indicates that the facsimile message was transmitted in its entirety to the facsimile number of the recipient; and
- (b) Can be relied upon by the addressee, and the addressee is not liable to any other person for any consequence of that reliance, if the addressee reasonably believes it to be genuine, correct and authorised by the sender.

## 18. Severance

If any part of this Licence Agreement is or becomes void or unenforceable, that part is or will be severed from this Licence Agreement to the intent that all parts that are not or do not become void or unenforceable remain in full force and effect and are unaffected by that severance.

## 19. Variation

This Licence Agreement may be varied only by deed executed by the parties subject to such consents as are required by this Licence Agreement or at law.

## 20. Waiver

Failure to exercise or delay in exercising any right, power or privilege in this Licence Agreement by a Party does not operate as a waiver of that right, power or privilege.



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## **21. Goods and Services Tax**

### **21.1 Licensee to Pay GST**

- (a) The Consideration will be increased by the amount of GST, if any, which the City is required by legislation to pay on any Supply made under the terms of this Licence Agreement;
- (b) The Licensee must pay any increase referred to in sub-clause (a) whether it is the Licensee or any other person who takes the benefit of any Supply; and
- (c) The Licensee must pay the amount of GST to the City at the same time and in the same manner as the Licensee is required to pay the Consideration.

### **21.2 No Contribution from City**

If the Licensee is required under this Licence Agreement to make any payment of money or give other consideration to a third party for outgoings, goods, services and benefits of any kind the Licensee is not entitled to any contribution from the City for any GST payable by it to any person.

### **21.3 Tax Invoices**

For each payment by the Licensee under this clause 21 the City agrees to promptly deliver to the Licensee a tax invoice so as to enable the Licensee to claim input tax credits or decreasing adjustments for Supplies.

## **22. Health and Safety Legislation**

The Licensee will in conducting the Licensed Activities and/or using the Licensed Areas for any purpose whatsoever in terms of this Licence Agreement (included but not limited to the use of any plant or equipment and/or in the employment or engagement of staff and in all other respects whatsoever), comply at all times with the provisions of the Occupational Safety and Health Act 1984 (OSH Act) which are applicable to the Licensee and/or the Licensed Activities, and the Licensee will do so regardless of whether or not the OSH Act places the direct responsibility on the Licensee.

## **23. Security**

The Licensee must:

- (a) keep those parts of the Licensed Areas that are capable of being secured, safe and secure at all times;
- (b) ensure that at all times all Authorised Persons and Patrons

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comply with all requirements imposed by the City from time to time with respect to the security of the Licensed Areas;

- (b) ensure that all keys to doors and equipment at the Licensed Areas which are made available to the Licensee will be kept in the charge of persons authorized by the City and the Licensee will not make duplicate keys without the prior consent of the City;
- (c) deliver up all keys to the City on demand;
- (d) pay the cost of replacement of any key, or lock lost or damaged by the Licensee, employees, servants, agents or invitees, licensees during the Term and the cost of replacement of lock barrels for any lock where any key in the possession of the Licensee is lost and not returned at the end of the Term.

## **24. Authorisation**

The Licensee shall at its cost and risk obtain in addition to the Licence any other authorisation, consent, permit, licence, approval certificate, agreement and/or exemption required by the Licensee under this Licence Agreement, from, by or with any Governmental Agency or such other authority as may be applicable.

## **25 Confidentiality**

### **25.1 Licensee must not disclose Confidential Material**

The Licensee must not publicly disclose, or use for a purpose other than this Licence Agreement, any information or material acquired or produced in connection with the Licence ("Confidential Material"), without the City's prior written consent, except to the extent that:

- (a) the Confidential Material is available to the public generally, other than by breach of this Licence Agreement;
- (b) the Licensee is required under a written law to disclose, file, record or register something that includes Confidential Material;
- (c) disclosure is necessary or advisable to get a consent, authorisation, approval or licence from a governmental or public body or authority;
- (d) it is necessary or advisable to disclose the Confidential Material to a taxation or fiscal authority;
- (e) the Confidential Material is disclosed confidentially to professional advisers:

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- (i) to get professional advice about this Licence Agreement;  
or
  - (ii) to enforce this Licence Agreement, or
  - (f) the parties agree otherwise in writing.

#### **25.2 Authorised Persons to comply**

The Licensee must ensure that Authorised Persons who have access to Confidential Material, are aware of, and comply with, all confidentiality obligations affecting it.

#### **25.3 Survival**

The obligations in clause 25 are continuing obligations and survive expiration or termination of this Agreement.

#### **25.4 Privacy obligations preserved**

Nothing in this clause derogates from a party's obligations under any written law, including the *Privacy Act 1988* (Cth).

#### **26. Negation of employment and agency**

- (a) The Licensee:
  - (i) must not represent itself; and
  - (ii) must ensure that the Authorised Persons do not represent themselves,  
  
as being the City and/or sub-contractors, employees or agents of the City and/or representing the City.
- (b) The Parties agree that nothing in this Licence Agreement may be construed to make either of them a partner, agent, employee or joint venturer of the other. Despite the degree of direction, control or supervision that the City directly or indirectly exercises over or in respect of the Licensee or Authorised Persons, the Licensee is taken to be and remain an independent contractor.
- (c) Without derogating from the generality of sub-clauses (a) and (b), it is specifically agreed that nothing in this Licence Agreement authorises or must be construed as to authorise the Licensee and /or any Authorised Person to approve on behalf of the City any RPT Service, Chartered Operations or any other use of the Airport by a third party for whatever purpose.

#### **27. Conflict of Interests**

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The Licensee warrants that at the date of this Licence Agreement, no conflict of interest exists, or is likely to arise, in providing the Licenced Activities or complying with its obligations under this Licence Agreement. If such a conflict of interest arises the Licensee must:

- (a) promptly notify the City that the conflict has arisen and provide full details; and
- (b) take reasonable steps in consultation with the City to remove or manage the conflict.

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## **SCHEDULE**

**ITEM 1: LAND AND PREMISES**

(a) **Land**

The whole of the land in Certificate of Title Volume 2536 Folio 973 located at Lot 9001 Vasse Highway, Yalyalup.

(b) **Licensed Areas**

Those areas of the Airport and Terminal Building required to carry out the Licenced Activities including the Office Space within the Terminal Building:

- (i) As shown on the plans attached as Annexures 1 and 2;
- (ii) Not being shown as "Licenced Areas" on the plans attached as Annexure 1, but:
  - A. Access to and/or the use of which may be reasonably required by the Licensee for conducting the Licenced Activities; and
  - B. The City's prior written permission for accessing and or using such areas has been obtained.

Should there be any dispute as to the extent of the Licensed Areas the City's determination shall be final and binding.

**ITEM 2: TERM**

The term of this Licence Agreement commences on date of execution thereof by the City and shall be for an initial fixed term until 30 June 2016 where after the agreement will continue indefinitely with either Party entitled to terminate this agreement on 3 months prior written notice.

**ITEM 3: LICENCE FEES**

- 3.1 For Licensed Activities: \$156.36 per annum excluding GST payable on the City's demand.
- 3.2 For use of the Office Space and Licensed Areas: \$4500 per annum excluding

**ITEM 4: ELECTRICITY CHARGES**

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1.0% of the electricity charges in respect of the Terminal Building (being an amount calculated based on the percentage of the Office Space relative to the whole area of the Terminal Building)

**ITEM 5: USE**

The Licensed Activities.

**ITEM 6: PUBLIC LIABILITY INSURANCE**

\$10 000 000.00 (ten million dollars)

**ITEM 7: LICENSED ACTIVITIES**

The Licensee shall be entitled to conduct the following activities on/within the Licensed Areas:

- (a) Aircraft marshalling and parking for RPT and Charter Operations where ground handling services are required;
- (b) Passenger and baggage check-in services for RPT and Charter Operations as agreed between MRBTA and airline operators;
- (c) Baggage handling services, including transporting passenger baggage RPT and Charter Operations from secured landside zones to airside locations and loading of baggage into aircraft hold areas;
- (d) Baggage handling services, including unloading and transporting passenger baggage from aircraft hold to baggage collection areas for RPT and Charter Operations; and
- (e) Assist with refuelling of aircraft used for RPT and Charter Operations where required.

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EXECUTED by the parties as an agreement:

THE COMMON SEAL of the CITY OF ]  
BUSSELTON was hereunto affixed in the ]  
presence of: ]

.....  
IAN WILLIAM STUBBS : MAYOR

.....  
MATTHEW JOHN SMITH obo CHIEF EXECUTIVE OFFICER  
Under Delegation LGCEO 03

THE COMMON SEAL of the MARGARET RIVER BUSSELTON  
TOURISM ASSOCIATION was  
hereunto affixed in the presence of:  
*[insert names and capacity of the officials authorised under the association's constitution  
to witness the affixing of the Common Seal]*

.....  
Signature

.....  
Name and position

.....  
Signature

.....  
Name and position

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## ANNEXURE 1



— MRBTA Licence Area



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## ANNEXURE 2

