

Licence Agreement for Pop-up Kiosk – Food and Beverage - Marapikurrinya Park, Port Hedland

Town of Port Hedland

[Insert Licensee Name]



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Ref: DFN:RA:PORT-47660

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Details

Parties

Town of Port Hedland

of PO Box 41, Port Hedland, Western Australia 6721
(Licensor)

[Insert Licensee Name]

of [Insert Licensee Address]
(Licensee)

Background

- A The Licensor has a leasehold estate in the land described in **Item 1** of the Schedule (**Land**) under the Head Lease.
- B The Licensor has agreed to grant to the Licensee a licence to use that portion of the Land described in **Item 2** of the Schedule (**Licensed Area**).
- C The Licensor and the Licensee enter into this Agreement to set out the terms and conditions upon which the licence is granted.

Agreed terms

1. Condition precedent

The parties acknowledge and agree that the grant of licence made in **clause 2** is subject to and conditional upon the approval in writing of the Head Lessor.

2. Grant of licence

In consideration of the covenants of the Licensee given herein the Licensor HEREBY GRANTS to the Licensee a licence (**Licence**) to use the Licensed Area on the terms and conditions set out in this Deed.

3. Term

The Licence shall continue in force and effect for the duration of the term set out in **Item 3** of the Schedule (**Term**).

4. Permitted Hours of Use

For the duration of the Term of the Licence the Licensee shall be permitted to use the Licensed Area, but only during the permitted hours of use set out in **Item 4** of the Schedule (**Permitted Hours of Use**).

5. Licence fee & GST

The Licensee COVENANTS with the Licensor to pay the Licensor:

- (a) the licence fee referred to in **Item 5** of the Schedule (**Licence Fee**) from the commencement of the Term without any abatement or deduction whatsoever; and
- (b) any GST payable on the Licence Fee and on any other supply made by the Licensor to the Licensee under this Licence.

6. Licence Fee Review

6.1 Licence Fee to be Reviewed

The Licence Fee will be reviewed on and from each Licence Fee Review Date to determine the Licence Fee to be paid by the Licensee until the next Licence Fee Review Date.

6.2 Methods of Review

The review will be either based on CPI or a Market Review. The basis for each licence fee review is as identified for each Licence Fee Review Date in **Item 6** of the Schedule.

6.3 CPI Review

Not used.

6.4 Market Licence Fee Review

- (1) A licence fee review based on the market will establish the current market licence fee for the Licensed Area (which will not be less than the Licence Fee payable in the period immediately

preceding the Licence Fee Review Date) by agreement between the parties and failing agreement, will be determined in accordance with the following provisions.

- (2) If agreement as to the substitution of the CPI with an equivalent index for the Licensed Fee is not reached at least one (1) month prior to the relevant Licence Fee Review Date then the current market licence fee for the Licensed Area will be determined at the expense of the Licensee by a valuer (**Valuer**) licensed under the *Land Valuers Licensing Act 1978*, to be appointed, at the request of either party, by the President for the time being of the Australian Property Institute (Western Australian Division) (or if such body no longer exists, such other body which is then substantially performing the functions performed at the Commencement Date by that Institute).
- (3) The Valuer will act as an expert and not as an arbitrator and his or her decision will be final and binding on the parties. The parties will be entitled to make submissions to the Valuer.
- (4) In this **clause 6**, “current market licence fee” means the licence fee obtainable for the Licensed Area in a free and open market if the Licensed Area was unoccupied and offered for rental for the use for which the Licensed Fee is permitted pursuant to this Licence and on the same terms and conditions contained in this Licence, BUT will not include:
 - (a) any improvements made or effected to the Licensed Area by the Licensee; and
 - (b) any licence fee free periods, discounts or other concessions.

6.5 Licence Fee will not decrease

Notwithstanding the provisions in this clause, the Licence Fee payable from any Licence Fee Review based on CPI Review will not be less than the Licence Fee payable in the period immediately preceding such Licence Fee Review Date.

6.6 Licensor’s right to review

The Licensor may institute a licence fee review notwithstanding the Licence Fee Review Date has passed and the Licensor did not institute a licence fee review on or prior to that Licence Fee Review Date, and in which case the Licence Fee agreed or determined shall date back to and be payable from the Licence Fee Review Date for which such review is made.

7. Use of Licensed Area

7.1 Permitted Use

The Licensee shall ensure that the Licensed Area is used only for the Permitted Use.

7.2 No harm or stress

The Licensee must not and must not suffer or permit a person to do any act or thing which might result in excessive stress or harm to any part of any building in the Licensed Area.

7.3 Sale of Alcohol

The Licensee covenants and agrees:

- (a) not to use or allow the Licensed Area to be used for the sale of alcohol without first obtaining the written consent of the Licensor, and the Licensor shall determine any such application in its absolute discretion; and
- (b) that it shall not make an application for a licence or permit under the *Liquor Control Act 1988* for the Licensed Area or apply for an amendment to a licence or permit it has been granted, without first obtaining the written consent of the Licensor.

7.4 Liquor Licence

The Licensee covenants and agrees that if a licence or permit is granted under the *Liquor Control Act 1988* for the Licensed Area it must:

- (a) comply with any requirements attaching to the licence or permit at its cost and where any alteration is required to the Licensed Area **clause 9** shall apply;
- (b) provide a copy of the licence or permit (as well as a copy of any document referred to in the licence or permit) to the Licensor as soon as practicable after the date of grant; and
- (c) indemnify and keep indemnified the Licensor from and against any breach of the *Liquor Control Act 1988* and *Liquor Control Regulations 1989* or the licence or permit or any conditions imposed thereupon for which it may be liable as the owner of the Licensed Area.

7.5 Sale of Food

The Licensee shall only sell food within the Licensed Area in accordance with the *Food Act 2008* and any other relevant written laws that may be in force from time to time.

7.6 No pollution

The Licensee must do all things necessary to prevent pollution or contamination of the Licensed Area by garbage, refuse, waste matter, oil and other pollutants.

7.7 No breach of copyright

The Licensee shall not do any act, nor authorise or permit any person to do any act, that constitutes a breach or infringement of copyright under the *Copyright Act 1968* (Cth).

8. Outgoings

- (1) To pay to the Licensor or to such person as the Licensor may from time to time direct upon demand and punctually all the following outgoings, utilities or services (if applicable), assessed or incurred in respect of the Licensed Area:

- (a) any fee or charge for the connection of gas and electricity to the Licensed Area and usage charges for any service connected;
- (b) local government rates; and
- (c) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Licensee's use and occupation of the Licensed Area,

save that outgoings payable to the Licensor shall NOT include water charges, which shall be payable by the Licensor.

- (2) If the Licensed Area is not separately charged or assessed the Licensee will pay to the Licensor a proportionate part of any charges or assessments referred to in **clause 8(1)** being the proportion that the relevant portion of the Licensed Area bears to the total area of the land included in the charge or assessment and otherwise arises from or may reasonably be attributed to the Licensee's use of the Licensed Area.

9. Alterations

The Licensee shall not:

- (a) make or cause, suffer or permit to be placed upon the Licensed Area any improvements, alterations, buildings, structures or other fixtures, fittings or equipment of any kind whatsoever; or
- (b) carry out any modifications or alterations whatsoever to the Licensed Area,

unless the Licensee has first obtained the prior written approval of the Licensor (which is granted at the absolute discretion of the Licensor and may be subject to such conditions as the Licensor deems fit) and all necessary approvals, licences and permits required by law have been obtained.

10. Entry and inspection of Licensed Area

The Licensee must permit the Licensor to enter the Licensed Area at any reasonable time during the Permitted Hours of Use to inspect and view the area, to carry out any maintenance work or to rectify any breach of the conditions of this Licence.

11. Signs & advertising

The Licensee shall not affix or exhibit or permit to be affixed or exhibited in or upon any part of the Licensed Area any placard, signboard, neon sign or other advertisement unless the Licensee has first obtained the prior written approval of the Licensor (which is granted at the absolute discretion of the Licensor and may be subject to such conditions as the Licensor deems fit).

12. Compliance with statutes

The Licensee shall:

- (a) comply promptly with all written laws from time to time in force relating to the Licensed Area;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any written law for the Permitted Use to be undertaken on the Licensed Area;
- (c) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Licensee's use of the Licensed Area and any reasonable and lawful direction of the Head Lessor to the extent that direction is required under the Head Lease; and
- (d) ensure that all obligations in regard to payment for copyright or licensing fees are paid to the appropriate person for all performances, exhibitions or displays held within the Licensed Area.

13. Maintenance and cleaning of Licensed Area

13.1 General Maintenance

The Licensee AGREES during the Term and for so long as the Licensee continues to use the Licensed Area to maintain, replace, repair, clean and keep the Licensed Area (which for the avoidance of doubt includes the Licensor's and Licensee's fixtures and fittings) clean and in Good Repair having regard to the age of the Licensed Area at the Commencement Date.

13.2 Cleaning

- (1) The Licensee must keep the Licensed Area clean, tidy and free from rubbish at all times.
- (2) The Licensee shall pay any costs, fees or charges incurred for cleaning of the Licensed Area.

14. Damage to Licensed Area

The Licensor and the Licensee AGREE that:

- (a) it is the responsibility of the Licensee to repair, rehabilitate and make good any damage to the Licensed Area, including but not limited to damage to any fixtures or fittings of the Licensor, caused by or arising out of or in relation to or incidental to the use of the Licensed Area by the Licensee or any Authorised Person or resulting from an act or omission of the Licensee or any Authorised Person;
- (b) the Licensee shall be responsible for the cost of any of the repairs, rehabilitation or making good of damage referred to in sub-clause (a); and
- (c) the Licensee must pay to the Licensor the costs of any repair, rehabilitation or making good of damage to the Licensed Area within 7 days of receipt of a written demand for such payment being made by the Licensor.

15. Not to cause nuisance

The Licensee must not and must not suffer or permit a person to do or carry out on the Licensed Area anything which causes a nuisance, damage or disturbance to the Licensor, other users of the Licensed Area or the Land, or to owners or occupiers of adjoining properties.

16. Indemnity

The Licensee agrees to indemnify and keep indemnified the Licensor and the Head Lessor, and all officers, servants and agents of the Licensor and the Head Lessor:

- (a) from and against the destruction of or damage to any property of the Licensor, Head Lessor or any person; and
- (b) from and against all actions claims, costs and demands in respect of loss or damage to property or death or injury of any nature and however and wherever sustained,

caused by or arising out of or in relation to or incidental to the use of the Licensed Area by the Licensee or any Authorised Person or resulting from an act or omission of the Licensee or any Authorised Person BUT the Licensee shall not be responsible for any loss or damage which is caused by the negligence of the Licensor or its servants, agents, contractors or invitees.

17. Insurance

17.1 Insurance required

The Licensee must effect and maintain with insurers approved by the Licensor (noting the Licensor's and the Licensee's respective rights and interest in the Licensed Area) for the time being:

- (a) adequate public liability insurance for a sum not less than twenty million dollars (\$20,000,000) in respect of any one claim or such greater amount as the Licensor may from time to time reasonably require; and

- (b) where the Licensor so requires, insurance to cover the Licensee's fixtures, fittings, equipment and stock against loss or damage by fire, fusion, smoke, lightning, flood, storm, tempest, earthquake, sprinkler leakage, water damage and other usual risks against which a Licensee can and does ordinarily insure in their full replacement value, and loss from theft or burglary.

17.2 Maintain insurance

The Licensee shall not cancel any policy of insurance referred to in sub-clause (1) and in the event of such cancellation this Licence shall terminate immediately and the Licensee shall have no claim against the Licensor for any loss suffered as a result of such termination.

17.3 Details and receipts

The Licensee shall produce copies of the certificates of currency or receipts confirming the currency of any policy or policies of insurance within seven (7) days of being provided with a written request by the Licensor to do so.

18. Not to void insurance

The Licensee agrees with the Licensor not to at any time during the Term, commit, or suffer to be done any act, matter or thing upon the Licensed Area whereby any insurance which may at any time have been effected in respect of the Licensed Area or any part thereof may be vitiated or rendered void or voidable.

19. No assignment without consent of Licensor and Head Lessor

The Licensee agrees that it shall not encumber, assign, sub-licence or part with the possession or benefit of this Licence or the Licensed Area or any part of the Licensed Area without first obtaining the prior written consent of the Licensor and the Head Lessor, which consent the Licensor or the Head Lessor may withhold in their absolute discretion.

20. Report to Licensor

The Licensee must immediately report to the Licensor:

- (a) any act of vandalism which occurs on the Licensed Area;
- (b) any occurrence or circumstances in or near the Licensed Area, of which it becomes aware, which might reasonably be expected to cause, in or on the Licensed Area, pollution of or damage to the environment; and
- (c) all notices, orders and summonses received by the Licensee and which affect the Licensed Area and immediately give them to the Licensor.

21. No right of exclusive possession

The Licensee acknowledges that this Licence is non-exclusive and does not convey any right of exclusive possession over the Licensed Area to the Licensee and the Licensee AGREES that it shall not interfere with the use of the Licensed Area by any other person authorised by the Licensor or otherwise entitled at law to access or use the Licensed Area.

22. Further Term

If at the date of expiration of the Term:

- (a) there is no outstanding breach of this Licence by the Licensee; and
- (b) the Licensee's conduct of its business activities is otherwise to the satisfaction of the Chief Executive Officer of the Licensor,

the Licensor may grant to the Licensee a further licence of the Licensed Area for any Further Term specified in **Item 3** of the Schedule upon and subject to the same terms, covenants and conditions as are contained or implied in this Licence except this **clause 22** in respect of any Further Term previously taken or the subject of the present exercise.

23. Default

The Licensor and the Licensee AGREE that:

- (a) if any Amounts Payable are in arrears after the date specified for payment for a period of fourteen (14) days after a notice of default has been served on the Licensee;
- (b) the Licensee is in breach of the Licensee's Obligations for a period of fourteen (14) days after a notice to rectify such breach has been served on the Licensee;
- (c) the Licensed Area is vacated;
- (d) a person other than the Licensee or a permitted sublessee or assignee is in occupation or possession of the Licensed Area;
- (e) the Licensee is a body corporate and an administrator of the Licensee is appointed;
- (f) the Licensee is a body corporate and an application is made, an order is made, or, a resolution is passed, or a meeting is convened for the purpose of considering a resolution, for the Licensee to be wound up unless the winding up is for the purpose of reconstruction; or
- (g) the Licensee:
 - (i) becomes insolvent or bankrupt;
 - (ii) admits in writing the inability of the Licensee to pay its debts; or
 - (iii) is deemed to be insolvent or bankrupt;

then the Licensor may terminate this Licence by notice in writing to the Licensee. Upon receipt of such notice by the Licensee the Licence shall terminate, but without prejudice to the right of action of the Licensor for arrears of the Licence Fee or damages for breach of the Licensee's Obligations. Upon termination of the Licence the parties acknowledge that the Licensee shall not be entitled to any refund of the Licence Fee, in respect of any unexpired portion of the Term.

24. Termination of Head lease

The parties ACKNOWLEDGE that:

- (a) the Licence will automatically terminate if the Head Lease is terminated or expires; and

- (b) if the Licence is terminated in accordance with sub-clause (a) of this clause the Licensee will not be entitled to any form of compensation or damages as a result of the termination.

25. Restoration of Licensed Area

The Licensee AGREES with the Licensor that:

- (a) at the expiration or sooner determination of this Licence, it shall at its cost remove from the Licensed Area any alterations, additions, improvements to the Licensed Area installed by the Licensee and any personal property of the Licensee (**Licensee's Property**) unless otherwise approved in writing by the Licensor; and
- (b) it shall restore the Licensed Area to a condition consistent with the obligations of the Licensee under this Licence; and
- (c) in the event the Licensee does not remove the Licensee's Property from the Licensed Area within one month of the expiration or sooner determination of this Licence the Licensor may remove and dispose of the Licensee's Property and the costs of carrying out such removal and disposal shall be a liquidated debt recoverable from the Licensee by the Licensor in a court of competent jurisdiction.

26. Rights rest in contract only

The Licensee ACKNOWLEDGES that the rights hereby conferred rest in contract only and nothing herein contained or implied shall be construed as granting or shall be deemed to grant to the Licensee any estate or proprietary interest in the Licensed Area.

27. Yielding up at expiration of term

The Licensee AGREES with the Licensor that at the end or sooner termination of the Term of the Licence it shall leave the Licensed Area in a condition consistent with the provisions of this Licence.

28. No warranty

The Licensor gives no warranty:

- (a) as to the suitability or otherwise of the Licensed Area for the Permitted Use; or
- (b) that the Licensor will issue any consents, approvals, authorities, permits or licences required by the Licensee under any statute for its use of the Licensed Area.

29. No fetter

Notwithstanding any other provision of this Licence, the Licensee ACKNOWLEDGES that the Licensor is a local government established by the *Local Government Act 1995* (WA), and in that capacity, the Licensor may be obliged to determine applications for approvals having regard to statutes governing such applications including matters required to be taken into consideration and formal processes to be undertaken, and the Licensor shall not be taken to be in default under this Licence by performing its statutory obligations or exercising its statutory discretions, nor shall any provision of this Licence fetter the Licensor in performing its statutory obligations or exercising any discretion.

30. Notice

30.1 Form of Delivery

- (1) Any notice or other communication to or by a Party under this Licence must be in writing, legible and in English and may be given or made:
 - (a) by a delivery to the party personally;
 - (b) by a delivery to the address of the party stipulated in subclause (2);
 - (c) by posting it to the address of the party stipulated in subclause (2); or
 - (d) by email to the email address of the party stipulated in subclause (2).
- (2) For the purposes of subclause (1), the address and email of the Parties are as follows:

Licensee

Address:

Attention:

Email:

Licensor

Address: Civic Centre 13 McGregor Street, Port Hedland WA 6721

Attention: Carl Askew – Chief Executive Officer

Email: council@porthedland.wa.gov.au

30.2 Service of Notice

A Notice to a Party is deemed to be given or made:

- (a) if by personal delivery, when delivered;
- (b) if by leaving the Notice at an address specified in **clause 30.1(2)**, at the time of leaving the Notice, provided the Notice is left during normal business hours;
- (c) if by post to an address specified in **clause 30.1(2)**, on the fourth business day following the date of posting of the Notice; and
- (d) if by email to an email address specified in **clause 30.1(2)**, on the date and time that the email is delivered.

31. Severance

If any part of this Licence is or becomes void or unenforceable, that part is or will be severed from this Licence 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.

32. Further assurance

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the terms of this Licence.

33. Dispute resolution

The parties agree that any dispute between the Licensee and the Licensor in regard to anything arising from this Licence shall:

- (a) be addressed in the first instance by a meeting between representatives of the Licensee, appointed for that purpose, and the officer of the Licensor responsible for administering the Licensed Area; and
- (b) if the dispute cannot be resolved in a manner that is satisfactory to both parties through such a meeting, the Licensee agrees that the CEO of the Licensor will have the power to make a final determination in resolution of the dispute, but only after giving due consideration to all of the matters discussed at the meeting referred to in sub-clause (a) of this clause and setting out in writing the reasons for his or her decision.

34. Variation

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

35. Payment of interest

Without affecting the rights, power and remedies of the Licensor under this Licence, the Licensee shall pay to the Licensor interest on demand on any Amounts Payable which are unpaid for 7 days computed from the due date for payment until payment is made and any interest payable under this paragraph will be charged at the Interest Rate.

36. Costs

The Licensee must pay to the Licensor on demand:

- (a) any statutory duty or taxes payable on or in connection with this Licence;
- (b) all legal costs of and incidental to the preparation, drafting and execution of this Licence;
- (c) all costs, reasonable legal fees, disbursements and payments incurred by or for which the Licensor is liable in connection with or incidental to:
 - (i) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Licence;
 - (ii) any breach of covenant by the Licensee or an Authorised Person; and
 - (iii) any work done at the Licensee's request which the Licensor is not responsible for under the terms of this Licence.

37. Governing law

This Licence 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.

38. Additional terms covenants and conditions

Each of the terms, covenants and conditions (if any) specified in **Item 8** of the Schedule shall be deemed part of this Licence and shall be binding upon the Licensor and Licensee as if incorporated in the body of this Licence.

39. Interpretation

In this Licence, unless expressed to the contrary:

- (a) Words importing:
 - (i) the singular include the plural;
 - (ii) the plural include the singular; and
 - (iii) any gender includes each gender;
- (b) A reference to:
 - (i) a natural person includes a body corporate or local government;
 - (ii) a body corporate or local government includes a natural person;
 - (iii) a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
 - (iv) a statute, includes an ordinance, code, regulation, award, local planning scheme, regulation, local law, by-law, requisition, order or other statutory instruments made under any of them and a reference to any of them, whether or not by name, includes any amendments to, re-enactments of or replacements of any of them from time to time in force;
 - (v) a right includes a benefit, remedy, discretion, authority or power;
 - (vi) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vii) this Licence or provisions of this Licence or any other deed, agreement, instrument or contract includes a reference to:
 - (A) both express and implied provisions; and
 - (B) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
 - (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
 - (ix) anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
- (c) a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure is a reference to, respectively, a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure of this Licence;

- (d) The covenants and obligations on the part of the Licensee not to do or omit to do any act or thing include:
 - (i) covenants not to permit that act or thing to be done or omitted to be done by any officer, workmen, servants, agents, contractors, licensees, invitees, assignees or persons authorised by the Licensee; and
 - (ii) a covenant to take all reasonable steps to ensure that that act or thing is not done or omitted to be done;
- (e) Except in the Schedule, headings do not affect the interpretation of this Licence;
- (f) If a Party comprises two or more persons, the covenants and agreements on their part bind them and must be observed and performed by them jointly and each of them severally, and may be enforced against any one or more of them.
- (g) The Schedule and Annexures (if any) form part of the Licence.

40. Definitions

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

Amounts Payable means the Licence Fee and any other money payable by the Licensee under this Licence;

Authorised Person means an agent, employee, invitee or sub-licensee of the Licensee;

Chief Executive Officer means the Chief Executive Officer of the Licensor or any person authorized to act on his or her behalf;

Commencement Date means the date upon which the Term commences as stipulated in **Item 3** of the Schedule;

CPI means the Consumer Price Index (All Groups) Perth number published from time to time by the Australian Bureau of Statistics;

Good Repair means good and substantial tenantable repair and in clean, good working order and condition;

GST means a tax under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any legislation substituted for, replacing or amending that Act, levied on a supply including but not limited to the Licence Fee or other money payable to the Licensor for goods or services or property or any other thing under this Licence;

Head Lease means the lease of 4, 5 & 6 Richardson Street, Port Hedland between BHP Minerals Pty Ltd, Itochu Minerals & Energy of Australia Pty Ltd and Mitsui-Itochu Iron Pty Ltd as lessor and the Town of Port Hedland as lessee for a term of 5 years with an option for renewal of 5 years;

Head Lessor means the lessor under the Head Lease;

Interest Rate means the rate at the time the payment falls due being 2% greater than the Licensor'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 this deed as supplemented, amended or varied from time to time;

Licence Fee means the fee specified in **Item 5** of the Schedule;

Licensed Area means the Licensed Area described in **Item 2** of the Schedule;

Licensee's Obligations means the covenants, agreements and obligations set out or implied in this Licence or imposed by law to be performed by the Licensee;

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

Party means the Licensor or the Licensee according to the context;

Permitted Use means the use set out in **Item 7** of the Schedule;

Schedule means the Schedule to this Licence, unless otherwise stipulated;

Supply means a good or service or any other thing supplied by the Licensor under this Licence and includes but is not limited to a grant of a right to possession of the Licensed Area; and

Term means the term stipulated in **Item 3** of the Schedule and, where the context permits, includes any further term.

Schedule

Item 1 Land

Lot 65 on Deposited Plan 223062 and being the whole of the land comprised in Certificate of Title Volume 1635 Folio 439 and known municipally as 6 Richardson Street, Port Hedland.

Item 2 Licensed Area

That portion of the Land identified as 'Licensed area' outlined and shaded in blue on the plan annexed hereto as **Annexure A** including any structure or fixture located thereon.

Item 3 Term

Term: Six (6) months commencing on the date of execution of the Licence by both parties.

Further Term: Six (6) months

Item 4 Permitted Hours of Use

All hours during the Term

Item 5 Licence Fee

Licence Fee: \$545.00 excluding GST per month, to be paid on a monthly basis commencing on the date of commencement of the Term.

Manner of Payment: Direct Deposit to the Town of Port Hedland Bank Account, details of which will be provided in writing to the Licensee from the Licensor in writing.

Item 6 Licence Fee Review

Not applicable

Item 7 Permitted Use

Pop-up Incubator

Item 8 Additional terms, covenants and conditions

8.1 Hours of operation

The Incubator Kiosk must be open to the public during the following hours:

1 November to 31 March

Open on weekends and public holidays at a minimum.

1 April to 31 October

Open as often as reasonably possible, including public holidays

During events, cruise ship days

Throughout the year, during events within the locality of the Licensed Area and cruise ship port disembark days.

8.2 Comply with the *Food Act 2008* (WA)

- (1) The Licensee covenants and agrees to comply with all applicable provisions of the *Food Act 2008* (WA) and all Australian and New Zealand Food Safety Standards (**Food Acts**) when carrying out its business and the Permitted Use on the Licensed Area.
- (2) The Licensee acknowledges that the Land and the Licensed Area are subject to regular and unscheduled inspections from authorised officers pursuant to the Food Acts.

8.3 Hygiene and sanitation

The Licensee agrees to ensure that the Licensed Area is at all times kept clean, sanitised and hygienic to the satisfaction of the Licensor or as otherwise required by the Food Acts.

Signing page

EXECUTED by the parties as a Deed on the _____ day of _____ 2024

Executed for and on behalf of the **TOWN**)
OF PORT HEDLAND pursuant to section)
9.49A(4) of the *Local Government Act*)
1995:

(Signed)

(Position)

(Print Full Name)

[*Insert Licensee Execution Clause*]

Annexure A – Plan of Licensed Area

