



**PILBARA PORTS AUTHORITY
and
TOLL TRANSPORT PTY. LIMITED
and
TOLL HOLDINGS PTY. LIMITED**

LEASE – SUPPLY BASE (LA18, LA19 and LA26)

**Pilbara Ports Authority
Level 5, 999 Hay Street
Perth 6000 WA**

**Locked Bag 4
Cloisters Square
PO Perth WA 6850**

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REFERENCE SCHEDULE

Premises: (clauses 1.1 and 2)	That part of Lot 471 on Deposited Plan 220595 identified as LA18, LA19 and LA26 on the plan at Annexure A.																					
Term: (clauses 1.1 and 2)	Five years																					
Commencement Date:	The date on which the last party signs this document																					
Expiry Date:	5 years from the Commencement Date																					
Rent: (clauses 1.1 and 4.1)	[REDACTED]																					
Manner of Payment of Rent: (clause 4.1)	[REDACTED]																					
Payment Day: (clauses 1.1 and 4.1)	[REDACTED]																					
Rent review dates and rent review methods: (clauses 1.1 and 5) During Term:	<table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: center;">Rent Review Date</th> <th style="text-align: center;">Rent Review Method</th> </tr> </thead> <tbody> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> </tbody> </table>	Rent Review Date	Rent Review Method	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
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[REDACTED]	[REDACTED]																					
Permitted Use: (clause 7.1)	Operating a supply base and laydown service, for the oil and gas industry operating in the region, and for handling of cargo moving through the Port of Dampier.																					
Bank Guarantee Amount: (clause 28)	[REDACTED]																					

<p>Delivery of notices: (clause 29)</p>	<p>Landlord</p> <p>Address: Level 5, 999 Hay Street, Perth, WA 6000 Email: businessandtrade@pilbaraports.com.au Attention: Director Business and Trade</p> <p>Tenant</p> <p>Address: Level 4, 30 The Esplanade Perth, WA 6000 Email: TollEnergyContractAdmin@tollgroup.com Attention: Contracts Manager</p> <p>With a copy sent simultaneously to:</p> <p>Address: Level 6, 380 St Kilda Road, Melbourne, Vic 3004 Email: property.enquiry@tollgroup.com.au Attention: [REDACTED] – National Property Manager</p>
<p>Senior Representatives: (clause 27)</p>	<p>Landlord's Senior Representative:</p> <p>General Manager Development and Trade or such other person as may be appointed by the Landlord and notified in writing to the Tenant and authorised to act as the Landlord's Senior Representative</p> <p>Tenant's Senior Representative:</p> <p>General Manager Property Management ANZ or such other person as may be appointed by the Tenant and notified in writing to the Landlord and authorised to act as the Tenant's Senior Representative</p>

Date 02 NOVEMBER 2023.

Parties

Pilbara Ports Authority ABN 94 987 448 870 of Level 5, 999 Hay Street, Perth, Western Australia 6000 (**Landlord**);

Toll Transport Pty. Limited ACN 006 604 191 of Level 6, 380 St Kilda Road, Melbourne VIC 3004 (**Tenant**); and

Toll Holdings Pty. Limited ACN 006 592 089 of Level 6, 380 St Kilda Road, Melbourne VIC 3004 (**Guarantor**)

Background

- A The Premises comprises Port Land.
 - B The Tenant (or its Related Entities (as defined in the Corporations Act)) has been in prior occupation of the areas known as LA16, LA17, LA19, LA24 and LA26 since approximately 1996.
 - C The Tenant is responsible for the prior occupation by unrelated parties of that part of the Premises comprising LA18 since approximately May 2008.
 - D The Landlord agrees to grant and the Tenant agrees to take a lease of the Premises on the terms in this document.
-

Agreed terms

1 INTERPRETATION

1.1 Definitions

In this document the following terms have the meaning ascribed below:

- | | |
|-----------------------|--|
| API | Means the State Division of the Australian Property Institute Limited ABN 49 007 505 866. |
| Authority | Means any government, statutory or other body or authority whether public or private which has authority, jurisdiction or rights over or relating to the Port, the Port Land, the Premises, the Improvements or this document. The term Authority does not include the Landlord in its capacity as Landlord under this document. |
| Bank Guarantee | Means an unconditional and irrevocable undertaking for the Bank Guarantee Amount that otherwise complies with clause 28.2 . |
-

Bank Guarantee Amount	Means initially the amount specified in the reference schedule and then that amount as varied from time to time under clause 28.5 .
Business Day	Means a day which is not a Saturday, Sunday or bank or public holiday in Western Australia.
Change of Control	Means a change in the identity of a person who is able to Control an entity (including a corporation defined in the Corporations Act).
Common Areas	Means those parts of the Port or the Port Land provided by the Landlord from time to time for common use by users and occupiers of the Port.
Construction Works	Has the meaning given to that term in clause 12.1 .
Contamination or Contaminated	Has the same meaning given to that term under the <i>Contaminated Sites Act 2003 (WA)</i> .
Control	Of an entity includes the definition of "Control" in section 50AA of the Corporations Act and in the case of a corporation includes the power (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of the board of directors of that corporation, the voting rights of the majority of the voting shares of the corporation or the management of the affairs of the corporation.
Corporations Act	Means the <i>Corporations Act 2001 (Cth)</i> and any regulations made under it, as amended from time to time.
CPI	Means the All Groups Consumer Price Index number for Perth determined by the Australian Bureau of Statistics ABN 26 331 428 522 or the index officially substituted for it.
Current CPI	Means the CPI last published before the relevant Rent Review Date.
Current Market Rent	Means the current annual market rent for the Premises (exclusive of GST) on a Rent Review Date.
Dealing	Means any: <ul style="list-style-type: none"> (a) Transfer; (b) Sublease, licence, assignment, or otherwise parting with possession; or (c) creation of a Security.

Emergency	Means any event, threat or contingency that the Landlord considers imminent and considers will, or may adversely affect or endanger any one or more of: <ul style="list-style-type: none"> (a) the health or safety of any person; (b) private or public property of any kind; or (c) the Environment, in or around the Port.
Environment	Includes all aspects of the surroundings of human beings including: <ul style="list-style-type: none"> (a) the physical characteristics of those surroundings such as the land, the waters and the atmosphere; (b) the biological characteristics of those surrounds such as the animals, plants and other forms of life; and (c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.
Environmental Consultant	Means a qualified and reputable environmental consultant who is experienced in performing environmental site assessments, nominated by the Tenant, approved by the Landlord and appointed by the Tenant.
Environmental Encumbrance	Means a restraint under Environmental Laws on dealing with any property or a charge in force under Environmental Laws affecting any property as or in effect as security for the payment of a monetary obligation or the observance of any obligation.
Environmental Harm	Has the same meaning given to that term in the <i>Environmental Protection Act 1986 (WA)</i> .
Environmental Law	Means a law relating to the Environment, including a law relating to land use, planning, environmental assessment, the environmental heritage, coastal protection, water catchments, pollution of air or water, noise, soil or ground water contamination, chemicals, pesticides, hazardous substances, the ozone layer, waste, dangerous goods, building regulation, occupation of buildings, fire safety, public health, occupational health and safety, noxious trades, any environmental hazard, any aspect of protection of the Environment, or the enforcement or administration of any of those Laws.
Environmental Liability	Means any of the following liabilities which arise, directly or indirectly, from any Tenant's Act: <ul style="list-style-type: none"> (a) all costs and expenses associated with undertaking any works or action to remove any Contamination and restore the Premises, Port and the Port Land to the state it was in before the Contamination occurred and includes: <ul style="list-style-type: none"> (i) the removal, destruction, reduction, containment or dispersal of the substance causing the

- Contamination, or the reduction or mitigation of the effect of the substance;
- (ii) the protection of human health, the environment or any environmental value from the Contamination; and
- (iii) as directed by the Landlord (acting reasonably having regard to the nature of the Contamination and general practices then prevailing in respect of the removal of that Contamination);
- (b) any compensation or other monies that an Authority requires to be paid to any person under any Environmental Law for any reason;
- (c) any fines or penalties incurred under any Environmental Law;
- (d) all costs (including legal costs and expenses on a full indemnity basis or solicitor and own client basis and expenses incurred in complying with any Environmental Law or incurred as a result of or in connection with a breach of any one or more of the Tenant's obligations under this clause); and
- (e) all other claims, demands, suits, proceedings, causes of action, losses damages, costs and expenses, legal or consulting fees and interest payable under any Environmental Law.

Environmental Report

Has the meaning given to it in clause 11.5(a).

Force Majeure Event

Means any of the following events:

- (a) a cyclone or other severe tropical storm;
- (b) earthquake, flood, bushfire or landslide;
- (c) acts of war; or
- (d) civil commotion, strikes, industry wide disputes, riots, malicious damage, sabotage or civil disturbance,

which:

- (e) was not caused or contributed to by the party claiming relief;
- (f) was not reasonably foreseeable; and
- (g) could not have been prevented by the party seeking relief by the exercise of reasonable diligence,

but expressly does not include:

- (h) the inability of a party, for whatever reason, to pay money it is obliged to pay;
- (i) the inability of either party to perform one or more of its obligations due to its negligent act or omission; or

- (j) any economic conditions (either macroeconomic or microeconomic) or commercial conditions which may detrimentally impact a party.

Guaranteed Money

Means all money payable by the Tenant to the Landlord under this document.

Good Industry Practice

Means, in relation to the performance of any obligation under this document, adherence to a high standard of practice which includes:

- (a) the exercise of the degree of skill, diligence, prudence and foresight which would reasonably be expected from a competent, experienced and qualified operator in the international mining industry under similar circumstances applicable to the Tenant under this document; and
- (b) the exercise of reasonable judgment and decision making in a manner that promotes operational reliability and efficiency, safety, security, environmental protection and expedition.

GST

Has the meaning given to that term in the A New Tax System (Goods & Services Tax) Act 1999 (Cth).

Harbour Master

Means the harbour master appointed pursuant to the Port Act and any deputy harbour master or other person carrying out any of the harbour master's functions from time to time.

Hazardous Materials

Includes any substance, gas, liquid, chemical, mineral or other physical or biological matter (including radiation, radioactivity and magnetic activity) which:

- (a) taking into account the existing and proposed use and development of the Premises may be dangerous or harmful to the Environment or which may cause Pollution, Contamination, Environmental Harm or any hazard or increase in toxicity in the Environment or may lead to, discharge or otherwise cause damage to any person or the Environment;
- (b) is listed on the Safe Work Australia's "Hazardous Substances Information System" as amended or replaced from time to time; or
- (c) has been classified as a hazardous substance by the manufacturer or importer in accordance with the National Occupational Health and Safety Commission's Approved Criteria for Classifying Hazardous Substances NOHSC:1008 (2004) as amended or replaced from time to time.

Invitees	Means customers, clients, visitors and invitees (with or without invitation) of the Tenant over whom the Tenant is able to exercise control.
Improvements	Means the improvements on the Premises, both existing and future, together with any development, extension or alteration made from time to time to those improvements.
Indirect or Consequential Loss	Any kind of indirect, consequential or remote loss or damage, loss of production, loss of profit or anticipated profit, loss of opportunity, loss of markets, loss of use of money, goods or other property, loss of goodwill or business reputation including loss arising from business interruption or loss of contracts.
Land Tax	Means the land tax imposed on or in respect of the Premises pursuant to the <i>Land Tax Assessment Act 2002 (WA)</i> or any tax of a similar nature levied on the Premises as a result of the Landlord's ownership or deemed ownership of the Premises under the <i>Land Tax Assessment Act 2002 (WA)</i> .
Landlord	Includes the Personnel.
Landlord's Assessment	Means the Landlord's assessment of the Current Market Rent as at a Rent Review Date together with any reasonable supporting information as determined by the Landlord.
Landlord's Notice	Means a notice given by the Landlord to the Tenant stating the Landlord's Assessment.
Landlord's Personnel	The officer, employee, agent, contractor (of any tier), consultant, invitee or any other person acting with the authority or permission of the Landlord.
Law	Includes any law, legislation, statute, regulation, rule, proclamation, ordinance, local law, by-law or code, subordinate legislation, judgment, rule of common law or equity, ruling or guideline by a competent entity exercising jurisdiction in the relevant matter, including a rule, ruling or guideline of any Authority.
Lease End Date	Means the earlier of the Expiry Date and the date this document is terminated.
Loss	Means any loss (including loss of profit and loss of expected profit and any damage), claim, action, liability, proceeding, summons, demand, notice, damage, death, personal injury, illness or disease, suit, judgment, injunction, order, decree, cost, charge, expense, outgoing, payment, damages, diminution in value or deficiency of any kind or character which a party pays, suffers or incurs or is liable for including: <ul style="list-style-type: none"> (a) reasonable liabilities on account of Tax; (b) interest and other reasonable amounts payable to third parties;

- (c) reasonable legal costs and other expenses reasonably incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability; and
- (d) amounts paid in settlement of any claim or action.

Management Plans

Means:

- (a) a risk management system designed and implemented under the Australian Standard for Risk Management AS4360-2004 (or the standard officially substituted for it);
- (b) a management plan for the avoidance or mitigation of any hazards identified in a hazard identification study;
- (c) an occupational health and safety plan;
- (d) an emergency response plan; and
- (e) a cyclone management plan
- (f) a traffic management plan
- (g) such other plans as the Landlord from time to time requires (acting reasonably having regard to then current best practice in relation to the Tenant's activities under this document).

Operations WHS Plan

Means the plan referred to in **clause 9.5(c)(1)** that has been approved by the Landlord.

Outgoings

Means the total of all amounts paid or payable by the Landlord relating to the Port Land or the Premises or are payable by the owner or occupier of the Premises for:

- (a) rates, charges, assessments, duties and levies imposed by any Authority; and
- (b) Taxes (other than income or capital gains taxes) imposed by any Authority (including Land Tax).

This expression excludes any amounts paid or payable separately by any other occupier of the Port.

Payment Day

Means:

- (a) in the case of Rent, the Commencement Date and then in each subsequent period the day specified in the **reference schedule**; and
- (b) in the case of Outgoings, the date on which the relevant payment falls due under this document.

Personnel

Means a party's officer, employee, agent, contractor (of any tier), consultant or any other person acting with the authority or permission of that party

Pollution

Has the meaning given in the *Environmental Protection Act 1986* (WA).

Port	Means the Port of Dampier and includes all areas from time to time described in relation to that port pursuant to the Port Act.
Port Act	Means the <i>Port Authorities Act 1999</i> (WA).
Port Development Guidelines	Means the development guidelines published by the Landlord as amended from time to time, which are available on the Landlord's website or on request from the Landlord.
Port Facilities	Has the same meaning as "port facilities" in the Port Act.
Port Facilities Handbook	Means the port facility user's handbook published by the Landlord as amended from time to time, which is available on the Landlord's website or on request from the Landlord.
Port Land	Has the same meaning as "port land" in the Port Act.
Port Security Laws	Means all Laws relating to the security of the Port, including the <i>Maritime Transport and Offshore Facilities Security Act 2003</i> (Cth).
Port Standards and Procedures	Means all obligations, standards, rules, powers, practices and procedures relating to operations, environmental protection, traffic, security, emergencies, health, safety, personal protective equipment requirements, welfare or other matters concerning the Port, or services that are put in place by the Landlord and communicated to the Tenant and/or published on the Landlord's website, as they may be varied by the Landlord from time to time.
Port Works	Has the same meaning as "port works" in the Port Act and also includes the design, construction, extension, maintenance, removal and demolition of conveyors, pipelines, railways, railway crossings, bridges, roads and services to and within the Port (including water, electricity, gas and telecommunications).
PPS Act	Means the <i>Personal Property Securities Act 2009</i> (Cth).
Premises	Means that part of the Port Land specified in the reference schedule , the Improvements and all buildings, fixtures and other improvements situated thereon including all additions, modifications and replacements. This expression includes the Services located within the Premises.
Previous CPI	Means the CPI last published before the later of: <ul style="list-style-type: none"> (a) the Commencement Date; and (b) the last Rent Review Date before the relevant Rent Review Date.
Prior Occupation	Has the meaning given to it in clause 11.4(a).

Related Tenant	Means: <ul style="list-style-type: none"> (a) a company in which Toll Holdings Pty. Limited ACN 006 592 089 has a controlling interest; (b) a company in which Toll Holdings Pty. Limited ACN 006 592 089 holds, beneficially or otherwise, 50% or more of the issued shares; (c) a company in which Toll Holdings Pty. Limited ACN 006 592 089 has contributed 50% or more of its paid up capital; or (d) any related body corporate (as defined in the Corporations Act) of Toll Transport Pty. Limited ACN 006 604 191.
Remediation Standard	Means a standard of remediation such that the Premises would be capable of classification under the <i>Contaminated Sites Act 2003</i> (WA) as "remediated for restricted use" (such that port and industrial land uses would be permitted) or "decontaminated".
Rent	Means, initially the annual amount specified in the reference schedule and then that amount as adjusted from time to time under this document.
Rent Review Date	Means each of the dates specified in the reference schedule .
Rent Review Method	Means the method of reviewing the Rent on each Rent Review Date as specified in the reference schedule .
Rules	Means all obligations, standard, notices, rules, powers, practices and procedures relating to operations, environmental protection, traffic, security, emergencies, health, safety, welfare and other matters concerning the Port or any surrounding areas, including the Port Facilities Handbook that are made, varied and repealed from time to time pursuant to clause 20.5 .
Security	Means a mortgage, charge (circulating or non-circulating), pledge, lien (including unpaid vendor's lien or similar), lease, hire or hire purchase agreement and any other Security Interest or encumbrance.
Security Interest	Means: <ul style="list-style-type: none"> (a) A mortgage, charge (fixed or floating), pledge, lien any security for payment of money, performance of obligations or protection against default (including unpaid vendor's lien, a mortgage, bill of sale, charge, lien, pledge, trust, power or similar), lease, hire, title retention arrangement, right of set-off, assignment of income, garnishee order or hire purchase agreement monetary claim and flawed deposit arrangements); (b) any other security interest which constitutes a security interest as that term is defined in the PPS Act; or encumbrance

	(c) any thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset, and includes any agreement to create any of them or allow them to exist.
Services	Means water, electricity, gas and telephone services to, from or of the Premises provided by an Authority or by or on behalf of the Landlord and any plant, equipment or other item relating to them.
Sublease	Means a sublease or other parting with possession of the Premises and the granting of any licence, franchise or concession relating to the Premises.
Tenant's Act	Means: <ul style="list-style-type: none"> (a) any default, negligence or wrongful act or omission of the Tenant or the Tenant's Associates; (b) the particular use or occupation of the Premises by the Tenant or the Tenant's Associates; or (c) the installation or removal of the Tenant's Items and the Improvements.
Tenant's Assessment	Means the Tenant's assessment of the Current Market Rent as at a Rent Review Date.
Tenant's Associates	Means the Tenant's employees, agents, contractors, subtenants, licensees and Invitees who may at any time be on the Premises or the Port Land under the terms of this document.
Tenant's Items	Means all plant, equipment, fixtures, fittings, furnishings, furniture and other items located in the Premises and provided by the Tenant, and includes other items left with the Tenant by third parties.
Tenant's Notice	Means a notice given by the Tenant to the Landlord disputing the Landlord's Assessment and stating the Tenant's Assessment.
Term	Means the period specified in the reference schedule commencing on the Commencement Date and expiring by effluxion of time on the Expiry Date or such earlier termination. The expression includes, in the context of any of the Tenant's obligations or the Landlord's rights, any holding over period.
Transfer	Means the transfer of the Tenant's rights, interests, benefits or obligations under this document or in the Premises.
Umpire Valuer	has the meaning given in clause 5.4(d).
Valuer	Means a person who: <ul style="list-style-type: none"> (a) at the time of appointment: <ul style="list-style-type: none"> (i) is a current full member of the API;

- (ii) is licensed under the *Land Valuers Licensing Act 1978* (WA); and
 - (iii) has at least five years' personal experience as a valuer valuing commercial and industrial properties and rentals within those commercial and industrial properties;
- (b) has been actively engaged for the year before the relevant Rent Review Date;
 - (c) at all times during the currency of the appointment is not prohibited or restricted from making the determination; and
 - (d) agrees to accept the terms of its appointment under this document.

WHS Law Means any Law relating to the health and safety of persons in the workplace and includes the *Work Health and Safety Act 2020* (WA) and its relevant regulations and subordinate legislation.

Other capitalised expressions appearing in this document which are not defined in this **clause 1.1** have the meaning set out next to them in the **reference schedule**.

1.2 Interpretation

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) if any form of the word "include" is used, it is to be read as if followed by the words "without limitation";
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) any party includes a reference to that party, its legal representatives, successors, permitted assigns and party substituted by novation;
 - (iii) anything (including any amount) includes either the whole or any part of that thing;
 - (iv) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (v) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (vi) a right includes a benefit, remedy, discretion or power;
 - (vii) time is to local time in the capital city of Western Australia;

- (viii) "\$" or "dollars" is a reference to Australian currency;
- (ix) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
- (x) writing includes:
 - (A) any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and
 - (B) words created or stored in any electronic medium and retrievable in perceivable form;
- (xi) the president of an Authority includes any person acting in that capacity, including a nominee of the president;
- (xii) an Authority which ceases to exist includes the Authority that replaces it or substantially performs the same functions or powers;
- (xiii) a group of persons includes all of them together, any two or more of them together and each of them separately;
- (xiv) this document includes all schedules and annexures to it;
- (xv) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document; and
- (xvi) this document means the lease granted under **clause 2** and includes any renewal of it, holding over under it or any equitable lease or lease at law evidenced by the terms of this document, and irrespective of the document not being effective as a lease or not being registered;
- (g) if the date on or by which any amount is payable under this document is not a Business Day, the payment must be made on or by the next Business Day;
- (h) an agreement, obligation, undertaking, covenant, representation or warranty given by, or in favour of, two or more persons binds, or is for the benefit of, them jointly and severally; and
- (i) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

1.3 Headings

Headings do not affect the interpretation of this document.

2 GRANT

The Landlord leases the Premises to the Tenant for the Term on the terms in this document.

3 PORT ACT

3.1 Approval

If, pursuant to the provisions of the Port Act, this document requires the consent of the Minister, the Landlord has obtained such consent. A letter from the Minister confirming such consent is annexed to this document at **annexure B**. However, if the consent of the Minister is not required, then this clause is of no effect.

3.2 Landlord's Port Act powers and discretions prevail

- (a) Nothing in or arising out of this document in any way:
 - (i) diminishes the Landlord's rights, powers, defences, immunities, indemnities and limitations of liability under the Port Act;
 - (ii) fetters any discretion that the Landlord has under the Port Act; or
 - (iii) diminishes or otherwise precludes the Landlord from accessing, relying upon or using any of its rights, powers, defences, immunities, indemnities and limitations of liability under the Port Act in relation to any matter.
- (b) Nothing contained in or implied by this document has the effect of constraining the Landlord or placing any fetter on its statutory rights, duties, powers and functions, including those contained or referred to in the Port Act.

3.3 Inconsistency

If there is any inconsistency between this document and the Port Act, the Port Act prevails to the extent of that inconsistency.

3.4 No claims

The Tenant must not make any claim against the Landlord (except to the extent the claim is caused by the negligence, wrongful act or default of the Landlord) in respect of anything which the Landlord does, fails to do, or purports to do, pursuant to its statutory functions or powers.

4 TENANT PAYMENTS

This **clause 4** must be read subject to **clause 6**.

4.1 Rent

The Tenant must pay the Rent in the manner specified in the **reference schedule** on each Payment Day.

4.2 Outgoings

- (a) The Tenant must pay to the relevant Authority when due (or if paid by the Landlord, reimburse to the Landlord on demand) all Outgoings that are charged upon or for the Premises.
- (b) If any item comprised in the Outgoings is not imposed or charged separately for the Premises, then the Tenant must pay the proportion of that item which the area of the Premises (in the Landlord's reasonable determination) bears to the area in respect of which the Outgoing is imposed or charged.

4.3 Payment for Services

The Tenant must pay all costs, charges and expenses for all Services separately metered or provided to the Premises:

- (a) by or on behalf of the Landlord, on demand by the Landlord; and
- (b) by third party providers, on time.

4.4 Tenant to install meters

If a meter is not already available to exclusively monitor the Tenant's consumption of any of the Services on the Premises, then the Tenant must arrange for such meters to be installed (at the Tenant's cost) as soon as practicable after the Commencement Date.

4.5 Telephone and electricity

Subject to the Tenant complying with the terms of this document, the Tenant may use any supplier for electricity or telephone or data supply as may be selected by the Tenant in its own discretion.

5 RENT REVIEWS

5.1 Rent review procedure

[Redacted]

5.2 Fixed review

[Redacted]

5.3 CPI review

[Redacted]

5.4 Market review

If the Rent Review Method for a Rent Review Date refers or includes a reference to market rent, the Rent may be reviewed as at that Rent Review Date in accordance with the procedural steps and the time period for each step provided in the following table. The parties may agree (in writing) to extend any of the time periods in this **clause 5.4**.

Procedural step	Time period
(a) [Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]

Procedural step	Time period
[REDACTED]	
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

5.5 Time of the essence

- (a) Time is of the essence as regards the time periods under **clause 5.4**, and if any time period is altered by agreement between the parties, time is of the essence as regards the altered time period.
- (b) Notwithstanding anything in this clause 5, including clause 5.5(a), the Landlord will not by reason of its failure to give notice under clauses 5.3 or 5.4 forfeit its right to have the Rent from that Review Date reviewed and the notice whenever given will be of the same force and effect as if it were given in accordance with clauses 5.3 or 5.4.

5.6 Current Market Rent agreement

Despite this **clause 5**, the parties may at any time agree on the Current Market Rent and the Rent as at that Rent Review Date is the Current Market Rent as agreed.

5.7 Terms of Umpire Valuer's appointment

Any Umpire Valuer appointed under this document:

- (a) must give a written valuation providing complete details of the reasons for the determination and specifying that the amount determined is exclusive of GST;
- (b) acts as an expert and not as an arbitrator;
- (c) may conduct the valuation process in such manner as they see fit; and
- (d) must consider submissions from the parties.

5.8 Criteria for determining Current Market Rent

The Current Market Rent must be determined as at the relevant Rent Review Date:

- (a) assuming a willing but not anxious Landlord and a willing but not anxious Tenant;
- (b) by having regard to:
 - (i) current annual rents for comparable premises in Western Australia located within a port precinct with access to a developed and operational port, and

whether those rents are the result of the grant of a new lease to a new tenant or an existing tenant or from rent reviews in existing leases;

- (ii) the terms of this document and the Permitted Use;
 - (iii) the length of the Term and the period of time until the earlier of the next Rent Review Date when **clause 5.4** applies and the Expiry Date; and
 - (iv) any other matter which may be relevant but is not inconsistent with this **clause 5.8**;
- (c) assuming that the Premises can be put to the Permitted Use;
- (d) by disregarding:
- (i) any rent abatement, reduction, incentive or other concession, inducement or arrangement agreed to secure in whole or in part either a tenant of any premises in the Port, or the Tenant;
 - (ii) the value of any personal goodwill of the Tenant and the value of the Tenant's Items or the Improvements;
 - (iii) any alterations made to the Premises or a breach of this document by the Tenant which may adversely affect the condition or rental value of the Premises; and
 - (iv) any rent, fee or money received by any person under any Sublease.

5.9 Umpire Valuer's determination to be binding

Subject to **clause 5.7**, an Umpire Valuer's determination is final and binding on the parties.

5.10 Costs of determination

(a)

5.11 Service of Landlord's Notice

If a Landlord's Notice is given, the Rent as agreed or determined under **clause 5.4** is payable on and from the relevant Rent Review Date.

5.12 Rent pending determination of review

- (a) Until the Landlord gives a notice to the Tenant under **clause 5.3**, the Tenant must pay Rent on and from each Rent Review Date when **clause 5.3** applies at the rate equal to the Rent immediately before the relevant Rent Review Date.
- (b) Until a Landlord's Notice is given under **clause 5.4**, the Tenant must pay Rent on and from each Rent Review Date when **clause 5.4** applies at the rate equal to the Rent immediately before the relevant Rent Review Date.
- (c) On and from the date a Landlord's Notice is given under **clause 5.4** and until the Rent as at that Rent Review Date is agreed or determined under this **clause 5**, the Tenant must pay Rent on account at the rate specified in the Landlord's Notice.

5.13 Rent adjustment

Once the rate at which the Rent payable from and including the Rent Review Date is agreed or determined then the Rent at that rate will be deemed to have been payable from and including the Rent Review Date and appropriate adjustment shall be made. Any balance of the Rent payable by the Tenant to the Landlord up to the due date of the next monthly instalment of Rent shall be paid with the next monthly instalment of Rent or any overpayment by the Tenant may be deducted by the Tenant from subsequent instalment of Rent.

5.14 Rent may rise or fall

Notwithstanding anything to the contrary in this document the Rent payable following a market review under this clause 5 may rise or fall.

6 PAYMENT REQUIREMENTS

6.1 Payments to Landlord

Subject to **clause 6.2** and except as expressly stated otherwise in this document, the Tenant must pay all amounts payable by the Tenant under this document to the Landlord or as the Landlord may direct from time to time without demand or any deduction, set-off or counterclaim. The Tenant does not agree to pay any amount under this document by way of direct debit.

6.2 Broken periods

If an instalment of Rent or Outgoings payable by the Tenant under this document is for a broken period (less than the full period in respect of which that payment relates), that instalment must be apportioned by multiplying the relevant payment by the number of days in the broken period and dividing by the number of days in the full period.

6.3 On demand

If an amount is payable under this document on demand (other than Rent and Outgoings which are payable without demand) by the Landlord, the Tenant must pay that amount within thirty days after the demand for payment is made, whether the demand is made by or on behalf of the Landlord.

6.4 Lease end

After the Lease End Date, the Tenant:

- (a) without limiting any other liability of the Tenant to the Landlord, remains liable to the Landlord for any obligations accrued or arising before then, including the obligations to pay Rent and Outgoings; and
- (b) must pay any further amounts payable by it under this document on demand by the Landlord.

6.5 Payment of interest

If the Tenant fails to pay an amount payable by the Tenant under this document on the due date for payment, the Tenant must pay interest on that amount from the due date of payment until the date that the amount is paid in full, both dates inclusive.

6.6 Calculation of interest

Interest is payable under **clause 6.5** in accordance with section 136 of the Port Act. Interest payable under **clause 6.5** accrues and is payable from day to day and is

calculated on the basis of days elapsed and a 365-day year. Interest will be capitalised on each Payment Day.

7 USE OF PREMISES

7.1 Permitted Use

- (a) The Tenant must actively and continuously use the Premises for the Permitted Use and must not allow them to be used for any other purpose without the prior written consent of the Landlord.
- (b) To the extent that any activity by the Tenant at the Premises involves the handling and/or storage of Hazardous Materials, the Tenant must:
 - (i) comply with applicable Law and approvals and other legal requirements with respect to the handling and storage of Hazardous Materials;
 - (ii) comply with Australian standards in handling and/or storage of such Hazardous Materials.

7.2 No Landlord warranty as to suitability

The Landlord does not expressly or impliedly agree or warrant:

- (a) the nature, coordinates, quality or condition of the Premises;
- (b) as to the use to which the Premises may be put;
- (c) that the design, shape, size or finishes of the Premises or the Improvements are or will be suitable or adequate for the Tenant's purposes;
- (d) the nature, quality or condition of Port Facilities;
- (e) the nature, quality or condition of the Common Areas;
- (f) the nature, quality or condition of the Services;
- (g) as to whether or not water Services are adequate or suitable for:
 - (i) the use to which the Premises may be put; or
 - (ii) the prevention, control or extinguishment of fires;
- (h) as to whether or not electricity Services are adequate or suitable for the use to which the Premises may be put; or
- (i) the uses to which the Port is or may hereafter be put.

7.3 Assumption of risk by Tenant

The Tenant assumes all risks in relation to:

- (a) the matters in **clause 7.2**;
- (b) whether or not the Premises are suitable for the construction of any building;
- (c) whether or not the use to which the Premises may be put is compatible with the uses to which the Port is or may hereafter be put; and
- (d) the use of the Common Areas and the Port Facilities.

7.4 Tenant's access

Subject to the Landlord's rights in **clause 20** and the Tenant complying with its obligations under this document, the Tenant may have access to the Premises 24 hours a day, seven days a week.

8 MAINTENANCE, REPAIR AND CLEANING

8.1 Maintenance and repair

The Tenant must carry out all necessary maintenance, repair and replacement to keep the Premises in good and substantial repair and order and condition, having regard to the condition of the Premises at the Commencement Date.

8.2 Tenant's specific obligations

Without limiting the Tenant's obligations in **clause 8.1** and subject to **clause 12**, the Tenant is required to carry out (at the Tenant's cost) work, improvements or other things required to either the Premises or the Common Areas as a consequence of the Tenant's particular occupation of the Premises or particular use of the Port and all substantial repairs and replacements necessary to keep the Improvements structurally sound.

8.3 Cleaning

The Tenant must:

- (a) keep the Premises clean and tidy at all times;
- (b) place all rubbish in proper containers within the Premises or in other places within the Port (if any) specified by the Landlord from time to time and arrange for its collection and removal from the Port;
- (c) keep the Premises clear of pests and vermin; and
- (d) otherwise comply with the Landlord's reasonable directions relating to the Tenant's cleaning obligations.

8.4 Drainage

The Tenant must ensure that the Premises remains well drained at all times and must ensure that water run-off from the Premises:

- (a) flows directly into a proper drainage system (for example, a trunk main) as required by the Landlord;
- (b) does not cause any erosion to the Premises or surrounding areas;
- (c) does not cause any damage or interference to the Landlord or anyone else using the Port from time to time; and
- (d) does not run-off into the Port waters or surrounding areas.

8.5 Common Areas

The Tenant must pay or reimburse the Landlord on demand for the cost of:

- (a) repairing any damage to the Common Areas to the extent caused by a Tenant's Act; and
- (b) any clean-up of Common Areas to the extent caused by a Tenant's Act.

9 TENANT'S OBLIGATIONS

9.1 Compliance with Laws and directions

The Tenant must ensure that it and the Tenant's Associates:

- (a) comply on time with:
 - (i) all Rules, Laws and with the requirements of all Authorities relating to the Premises and their use or occupation (including Laws and requirements relating to the prevention, control and extinguishment of fires);
 - (ii) any notices or orders issued by any Authority relating to the Premises and their use or occupation (including notices and orders relating to the prevention, control and extinguishment of fires);
 - (iii) all Port Security Laws and with the requirements of the Landlord and all Authorities relating to the security of the Port and of the Premises;
 - (iv) all reasonable directions given by the Landlord from time to time in relation to the:
 - (A) day to day control of vehicle and pedestrian traffic in the Port;
 - (B) safety and security of the Port and the Premises;
 - (v) all directions given by the Harbour Master; and
 - (vi) the Port Development Guidelines;
- (b) at all times hold current licences or permits from all relevant Authorities relating to the Premises and their use or occupation;,
- (c) subject to the terms of this document, actively and continuously use and occupy the Premises for the Permitted Use for the Term; and
- (d) allow the Landlord to exercise its rights or comply with its obligations under and in accordance with the terms of this document.

9.2 Good Industry Practice

- (a) The Tenant must ensure that the Tenant's activities under this document are undertaken at all times in accordance with Good Industry Practice and in accordance with this document.
- (b) The Tenant must procure that all works, services and other activities carried out by or on behalf of the Tenant are carried out by personnel who are fit for work and suitably qualified and experienced to undertake and carry out the work they are allocated.

9.3 Licences and permits

The Tenant must, within 7 days of a request being made by the Landlord, provide the Landlord with a copy of any licences, consents, approvals or permits that the Tenant holds or is required to hold in relation to the Tenant's use of the Premises or the Port.

9.4 Tenant's prohibitions

The Tenant must not, and must not permit the Tenant's Associates to:

- (a) alter or remove any of the Services without the Landlord's prior written consent;
- (b) allow the Premises to be used for an illegal purpose;
- (c) allow any dangerous or offensive activity to occur on the Premises;

- (d) allow any circumstance to arise in the Premises which might be a nuisance to other occupiers or visitors to the Port or to the occupiers of other properties in the vicinity of the Port;
- (e) do anything which might interfere with the effective operation of the Services, the Port Works or the Port Facilities; or
- (f) do anything that interferes with the proper performance by the Landlord of its statutory functions and duties under the Port Act or any other law or the proper exercise by the Landlord or any of its rights.

9.5 Work Health and Safety

- (a) The Tenant will be responsible for the safety of the Premises and in the conduct of the Tenant's activities under this document and must take all steps necessary to prevent injury to the public in the Premises by the Tenant or a Tenant's Associate.
- (b) The Tenant must:
 - (1) comply with WHS Law; and
 - (2) do all things reasonably necessary to implement and enforce the approved Operations WHS Plan,
 in the course of carrying out the Tenant's activities under this document.
- (c) The Tenant must:
 - (1) prior to the commencement of the Term, prepare and submit to the Landlord for its approval a draft WHS management plan which must:
 - (A) outline the Tenant's use, occupation, operation or activities in relation to the Premises and identify hazards, risks and control measures associated with them;
 - (B) appropriately align with a recognised safety management standard (including Australian Standard AS/NZ 4801-2001);
 - (C) identify the obligations of the Tenant under, and comply with, WHS Law;
 - (D) include the Tenant's approved work health and safety policy and commitment to complying with WHS Law;
 - (E) provide for a system for employees and contractors to consult upon and notify of work health and safety matters and risks as they arise to assist in securing a healthy and safe working environment;
 - (F) provide for a system to notify the Landlord of any incident or serious incident which is notifiable to WorkSafe pursuant to the provisions of any WHS Law;
 - (G) include a site safety plan and an Emergency evacuation plan; and
 - (H) conform with all applicable Law, the Landlord's work health and safety policy from time to time and all best practices generally accepted in the industry; and

- (2) if at any time the Landlord determines that the Operations WHS Plan does not comply with this clause 9.5(c), the Tenant must submit a revised version of the Operations WHS Plan to the Landlord for approval.
- (d) The Tenant must procure that each of its, and its Tenant's Associates, Personnel entering the Port is issued with, and wears at all times when on the Premises or when elsewhere within the Port, appropriate personal protective clothing and equipment as is equivalent to or better than the Landlord's "Personal Protective Clothing and Equipment (PPE) Standard" as published on the Landlord's website from time to time.
- (e) The Tenant must ensure that all its, and its Tenant's Associates, Personnel attend any Port induction courses if required by the Landlord.
- (f) The Tenant must immediately give notice to the Landlord (by way of the Landlord's online or other work health and safety reporting system which is in place at the Port at the time) and must comply with all requirements in Law to give notice of any of the following events as soon as it or any of its Personnel become aware of their occurrence:
 - (1) any event where damage of any kind occurs to any vessel or any person or property which is observed;
 - (2) any event observed that gives rise to a hazardous or potentially hazardous situation in the Port;
 - (3) any actual or suspected security breach or security threat in the Port; or
 - (4) any circumstance likely to result in the occurrence of any of the above.
- (g) The Tenant acknowledges and agrees that in respect of the Tenant's activities under this document it:
 - (1) is the "main contractor" or "principal contractor" within the meaning of the WHS Law;
 - (2) has management and control of the Premises;
 - (3) is responsible for discharging any duties imposed by WHS Law in respect of the activities, functions and tasks undertaken and things done at the Premises; and
 - (4) must not delegate its responsibility under this clause 9.5 without the prior written approval of the Landlord.
- (h) Without affecting the application of any other provision of this document, the Tenant must:
 - (1) do all things necessary to enable the Tenant to manage and control the Premises and comply with WHS Law;
 - (2) comply with any direction on safety issued by a relevant work health and safety Authority;
 - (3) ensure that each person accessing the Premises:
 - (A) has been properly inducted;

- (B) is at all times properly instructed and supervised; and
 - (C) has been either:
 - (i) provided with a copy of the Operations WHS Plan; or
 - (ii) directed to peruse the Operations WHS Plan and been provided with access to a copy of it;
 - (D) ensure that a complete copy of the Operations WHS Plan is available for inspection by each person to whom it may be relevant;
 - (E) immediately notify the Landlord (by way of the Landlord's online or other work health and safety reporting system which is in place at the Port at the time) and comply with all requirements in Law to give notice of any of the following events as soon as it or any Tenant's Associate becomes aware of their occurrence:
 - (i) any event where damage of any kind occurs to any vessel or any person or property which is observed;
 - (ii) any event observed that gives rise to a hazardous or potentially hazardous situation;
 - (iii) any incident or serious incident which is notifiable to WorkSafe pursuant to the provisions of any WHS Law;
 - (iv) any actual or suspected security breach or security threat; or
 - (v) any circumstance likely to result in the occurrence of any of the above.
 - (F) notify the Landlord of the outcome of any investigation into an incident or serious incident and if requested by the Landlord provide written confirmation of the outcomes of that investigation within a reasonable time frame; and
 - (G) if requested by the Landlord, provide any documents related to or created in respect of any investigation into an incident or serious incident which is notifiable to WorkSafe pursuant to the provisions of any WHS Law.
- (i) If any safety issue arises on the Premises which may impact upon the operations of the Port, the security of the Port or the Premises or the perimeter of the Premises, the Tenant must notify the Landlord immediately.
 - (j) By notice to the Tenant, the Landlord may require that the Tenant cease immediately undertaking any activity, function or task, if the Landlord consider that the Operations WHS Plan does not comply with clause 9.5(h) or that there has been a breach of any WHS Law. If any such notice is given the Tenant must not undertake the applicable activity, function or task until such non-compliance has been remedied or the circumstance giving rise to the breach is addressed to the Landlord's satisfaction.

9.6 Induction

The Tenant must ensure that the Tenant's Associates attend any Port induction courses if required by the Landlord.

9.7 Maritime security identification card

If required by the Landlord, the Tenant must ensure that each Tenant's Associate working within the Port holds a maritime security identification card.

9.8 Fencing

If required by the Landlord acting reasonably, the Tenant must (at the Tenant's cost) fence the Premises to such standard as the Landlord from time to time directs and **clause 12** applies to fencing works.

9.9 Cyclone Precautions

- (a) The Tenant will at all times observe and comply with the Port cyclone procedure. The Tenant will, at all times, permit the Landlord and its Personnel to enter upon the Premises for the purpose of inspecting them to ensure that the Tenant is complying with all such cyclone precaution measures.
- (b) The Tenant must develop a cyclone management plan in accordance with the Port cyclone procedure and submit the plan to the Landlord for comment.

9.10 Management Plans

- (a) The Tenant must from time to time when requested to do so by the Landlord (including, if requested by the Landlord, before commencing any activity on the Premises) develop the Management Plans and provide copies of the Management Plans (with copies of any supporting studies) to the Landlord for approval, and make such changes to any Management Plan as the Landlord reasonably requires.
- (b) The Tenant must, in respect of its use of the Premises and its activities under this document, comply with the Management Plans developed and approved under clause 9.10(a).
- (c) The Tenant must vary each Management Plan in such manner as is from time to time reasonably required by the Landlord in order to reflect then prevailing best practice.

10 NOTICES OF ACCIDENTS AND EMERGENCIES

10.1 Notice of accidents, incidents and damage

The Tenant must promptly notify the Landlord and must comply with all statutory and regulatory requirements to give prompt notice of any of the following events as soon as it or any of the Tenant's Associates become aware of their occurrence:

- (a) any Contamination, Pollution, or Environmental Harm;
- (b) any suspected security breach or security threat; or
- (c) any material accident or any circumstances likely to cause any material danger, risk or hazard to the Premises or any person on the Premises.

10.2 Threats and emergencies

The Tenant must give the Landlord immediate notice of any actual or potential threat, Emergency or hazard that the Tenant becomes aware of in relation to the Premises.

11 ENVIRONMENT AND RISK

11.1 General compliance with Environmental Law

- (a) The Tenant must employ all measures and do all things reasonably necessary to ensure that:
- (i) no Contamination, Pollution or Environmental Harm occurs at or migrates from the Premises during the Term; and
 - (ii) any Contamination, Pollution or Environmental Harm that does occur at or migrate from the Premises during the Term is minimised and promptly remediated at the Tenant's cost.
- (b) The Tenant must:
- (i) comply with the reasonable requirements of the Landlord concerning the prevention or minimisation of any Contamination, Pollution or Environmental Harm or the application of an Environmental Law to or in connection with the Premises or the use of the Premises;
 - (ii) immediately notify the Landlord if it becomes aware of any contravention of an Environmental Law having occurred at the Premises, or of any Contamination, Pollution or Environmental Harm having occurred at or migrated from the Premises;
 - (iii) immediately notify the Landlord in writing if a complaint is made or proceedings are instituted or a notice, order or directive or similar process is issued against the Tenant in connection with any issues relating to the Environment or any non-compliance with an Environmental Law in respect of the Premises or in connection with the Tenant's use or occupation of the Premises;
 - (iv) carry out any necessary acts, operations, works or installations set out in the notice, prosecution or similar process referred to in **clause 11.1(b)(iii)** in order to comply with it; and
 - (v) provide a comprehensive report to the Landlord on the acts, operations, works or installations undertaken in order to comply with such notice, prosecution or similar process referred to in **clause 11.1(b)(iii)** or in the case of Contamination, provide the Landlord with written confirmation from an Environmental Consultant that the Contamination has been remediated.

11.2 Comply with Environmental Laws

Without limiting the Tenant's obligations under this document, the Tenant must comply, on time and at its own expense, with all requirements, notices or orders of Authorities and all Environmental Laws applicable to the Premises and the occupation and use of the Premises.

11.3 Failure by Tenant to comply

- (a) If the Tenant does not comply with its obligations under **clause 11** then the Landlord may, after giving the Tenant reasonable notice (except in an Emergency when no notice is required), comply with the Tenant's obligations under **clause 11**.
- (b) The Tenant must pay to the Landlord on demand the costs, charges and expenses incurred in connection with any action the Landlord takes under **clause 11.3(a)**.

11.4 Prior Occupation

- (a) The Tenant and Landlord acknowledge and agree that:
 - (i) the Tenant (or its Related Entities (as defined in the Corporations Act)) has been in prior occupation of that part of the Premises comprising LA19 and LA26 since approximately 1996; and
 - (ii) the Tenant is responsible for the prior occupation, by unrelated parties, of that part of the Premises comprising LA18 since approximately May 2008, together, **Prior Occupation**.
- (b) The Tenant warrants in respect of Prior Occupation, that:
 - (i) it used the Premises only for the permitted uses under the previous lease agreements;
 - (ii) any facilities constructed on the Premises prior to the Commencement Date have been constructed with the written consent of the Landlord and in accordance with all relevant Laws; and
 - (iii) it observed, performed and complied with all covenants, agreements, conditions, provisions and obligations with respect to Prior Occupation of the Premises.

11.5 Environmental Report

- (a) Upon the expiry or earlier determination of this document, the Tenant must arrange for an Environmental Consultant to undertake an assessment to:
 - (i) determine the presence of any Contamination, Pollution or Environmental Harm at and immediately surrounding the Premises; and
 - (ii) express a view as to what remediation works are to be undertaken to return the Premises to the Remediation Standard,

(Environmental Report), such Environmental Report to be binding on the parties.
- (b) The Tenant must bear all costs, charges and expenses associated with the assessment identified in clause 11.5(a) and must ensure a copy of all drafts of, and the final Environmental Report are sent to the Landlord at the same time as the Tenant.
- (c) To the extent that:
 - (i) the Environmental Report identifies the presence of any Contamination, Pollution or Environmental Harm;
 - (ii) there is any breach of any Environmental Law caused or contributed to by the Tenant or any Tenant's Associates (including having regard to the Prior Occupation) in relation to a matter arising out of or in connection with this document,then the Tenant must:
 - (iii) carry out all remediation work necessary to ensure that any Contamination, Pollution or Environmental Harm affecting the Premises and the surrounding areas is brought back to the Remediation Standard; and
 - (iv) remedy any breach of an Environmental Law.

- (d) The Tenant must complete the remediation works under this clause 11.5 as soon as possible and, in any event, within 3 months of the date of the Environmental Report, or such other time provided in a closure plan agreed by both parties.
- (e) To the extent that the Tenant's obligation under this clause 11.5 is to carry out remediation that the Landlord would otherwise be responsible for under any Environmental Law, the Tenant must do everything necessary to transfer that responsibility from the Landlord to the Tenant in accordance with section 30 of the *Contaminated Sites Act 2003* (WA) and any other relevant provision of any Environmental Law.
- (f) The Landlord will allow the Tenant access to the Premises after termination of this document for the purpose of complying with this clause 11.5.
- (g) The Tenant must continue to pay Rent, Outgoings and any other money payable under the terms of this document and the provisions of this clause 11 and clause 17 continue to apply, from the expiry or earlier determination of this document until the Tenant has complied with this clause 11.5.
- (h) If the Tenant does not comply with this clause 11.5, the Landlord may arrange for the necessary work to be done and the Tenant must pay to the Landlord the costs of the work on demand.
- (i) If at any time after the expiration or earlier determination of the Term, the Landlord is required by or pursuant to Law or any approvals to carry out remediation or rehabilitation work due to any Contamination, Pollution or Environmental Harm of the Premises arising out of or in connection with the use and occupation of the Premises by the Tenant or any Tenant's Associate (including having regard to the Prior Occupation), then the Tenant must at the request of the Landlord carry out such remediation work at its own cost and expense to the extent it would have otherwise been liable to indemnify the Landlord under clause 17.3.

11.6 Environmental Liabilities

The Tenant indemnifies and keeps indemnified the Landlord against all Environmental Liabilities incurred by the Landlord (whether arising before (including Prior Occupation), during or after expiry or earlier determination of this document). It is not necessary for the Landlord to incur expense or make any payment before enforcing this right of indemnity.

11.7 Environmental Encumbrance

The Tenant must ensure no Environmental Encumbrance takes effect in respect of the Premises.

12 TENANT'S WORKS

12.1 Construction, alterations and installations

The Tenant must not, at any time during the Term:

- (a) construct or install any new facilities on the Premises; or
- (b) alter or modify the Improvements on the Premises;

each being **Construction Works**, without first obtaining the Landlord's prior written consent (which consent must not be unreasonably withheld or delayed or subject to unreasonable conditions) and in all cases only in accordance with the Port Development Guidelines.

12.2 Tenant's works

If the Landlord provides its consent for the Tenant to undertake Construction Works under **clause 12.1**:

- (a) the Tenant must ensure that everything relating to the design, construction and commissioning of the Construction Works is carried out:
 - (i) in a good and workmanlike manner and with due care and proper skill;
 - (ii) using good quality materials;
 - (iii) in accordance with:
 - (A) all requirements of any Authority in relation to any aspect of the Construction Works;
 - (B) all applicable Laws; and
 - (C) the Port Development Guidelines;
 - (iv) using its reasonable endeavours to ensure that the Construction Works are completed in a timely and cost effective manner;
 - (v) by providing the Landlord with all information reasonably requested by the Landlord from time to time in relation to the Construction Works;
 - (vi) by ensuring that the Tenant is the entity that enters into all major Construction Works construction contracts and Construction Works consultancy contracts (**Construction Works Contracts**) as principal;
 - (vii) by providing the Landlord with reasonable access to the Construction Works plans and specifications;
- (b) all work relating to the design, construction and commissioning of such works must be carried out in compliance with:
 - (i) all the requirements in accordance with Port Standards and Procedures;
 - (ii) any other applicable plans and guidelines as required the Landlord; and
 - (iii) all conditions imposed by the Landlord in relation to any approvals granted by the Landlord under **clause 12.1**;
- (c) any buffer zones required by Law or in order to comply with Good Industry Practices relating to any activity, installation or construction must be contained wholly within the Premises and must not affect in any way the use of any land, waters or seabed outside the Premises; and
- (d) the Tenant is responsible for paying to the Landlord the reasonable costs of supervision and consultancy (if any) relating to the Tenant's works, including where applicable:
 - (i) engineering support during the assessment and review of any development application approval;
 - (ii) setting of development conditions for engineering works;

- (iii) assessment and review of applications for construction approvals;
- (iv) quality assurance inspection, monitoring and auditing;
- (v) safety and environmental monitoring and auditing;
- (vi) commissioning and handover of works; and
- (vii) managing access and egress.

13 STOP WORK DIRECTION

- (a) If the Landlord believes that the obligations of the Tenant under this document in relation to the Construction Works are not being complied with (including non-compliance with any reasonable conditions attached to the Landlord's consent), the Landlord may give notice to the Tenant of its opinion together with reasons for that opinion (**Non-Compliance Notice**).
- (b) Within 5 Business Days of receipt of a Non-Compliance Notice, the Tenant must:
 - (i) notify the Landlord of any matters in respect of which it disagrees with the Landlord's opinion together with its reasons for doing so (**Explanation**); and
 - (ii) to the extent it does not disagree, provide a plan and a program for the rectification of any non-compliance (**Rectification Plan**).
- (c) If:
 - (i) the Landlord is not satisfied (acting reasonably) that the Explanation or the Rectification Plan address the non-compliance; or
 - (ii) the Tenant has not given the Landlord an Explanation and Rectification Plan (if required) within 5 Business Days of the Tenant's receipt of the Non-Compliance Notice,

the Landlord may direct the Tenant to stop carrying out all or any part of the Construction Works specified in the Non-Compliance Notice (**Stop Work Direction**) and the Tenant must ensure that the non-compliant work or activity is immediately ceased.

- (d) Except to the extent that the reason for the Stop Work Direction was caused by the negligence, wrongful act or default of the Landlord, the Landlord is not liable in any way to the Tenant for any delays caused or costs or losses incurred by the Tenant as a result of any Stop Work Direction.
- (e) Nothing in this **clause 13** limits or in any way diminishes any of the Landlord's other rights or remedies in relation to breaches or non-compliance under this document, the Port Act or otherwise at law or in equity.
- (f) The Tenant must not recommence any Construction Works the subject of a Stop Work Direction unless and until the Landlord:
 - (i) is satisfied, in its absolute discretion, that the Construction Works may recommence; and
 - (ii) provides that approval to the Tenant in writing.

14 INSURANCE

14.1 Tenant's insurance

The Tenant must (at the Tenant's cost) take out and maintain:

- (a) property insurance for physical damage to and destruction of (including the resultant loss of and/or loss of use of) the Tenant's and Tenant's Associates' property, for an amount not less than its replacement value covering risks normally covered in an industrial special risk policy. The policy must insure against loss or damage by fire, fusion, explosion, lightning, flood, storm, tempest, rainwater, cyclone, earthquake, riot, civil commotion, malicious damage, impact by vehicles or animals, sprinkler leakage, water damage, aircraft or other aerial devices and/or articles dropped therefrom. If an industrial special risk policy is not available to the Tenant an alternative commercial policy will be accepted by the Landlord provided that such policy must insure against the same risks as stated above.
- (b) public and products liability insurance covering the legal liability of the Tenant and Tenant's Associates [REDACTED]
[REDACTED]
[REDACTED] The insurance policy must be extended to indemnify the Landlord as principal to the extent of its vicarious liability arising out of the negligent acts or omissions of the Tenant and Tenant's Associates arising from or in connection with the Permitted Use. The insurance policy must be extended to include:
 - (i) the use of unregistered motor vehicles, plant and equipment; and
 - (ii) sudden and accidental Pollution;
- (c) motor vehicle third party liability insurance to cover legal liability against property damage and bodily injury to or death of persons (other than compulsory third party motor vehicle insurance) caused by motor vehicles used by the Tenant and the Tenant's Associates [REDACTED] for any one occurrence or accident;
- (d) compulsory third party motor vehicle insurance as required under any Law relating to motor vehicles used in connection with the Tenant's use or occupation of the Premises in relation to this document;
- (e) workers' compensation insurance in accordance with the provisions of the *Workers' Compensation and Injury Management Act 1981 (WA)*, and cover for common law liability [REDACTED] for any one event in respect of workers of the Tenant and Tenant's Associates. The insurance policy must be extended to indemnify the Landlord for claims and liability under section 175 of the *Workers' Compensation and Injury Management Act 1981 (WA)*; and
- (f) insurances as otherwise required by Law; and
- (g) insurances for any other risks the Landlord and the Tenant, both acting reasonably agree from time to time.

14.2 Tenant's insurance policies

All insurance policies for the cover taken out under **clause 14.1** must:

- (a) be with a reputable and solvent insurer (carrying a Standard & Poors rating of A- or better or its equivalent) which carries on insurance business in Australia and is authorised in Australia to operate as an insurance company;
- (b) In respect of clause 14.1(g) "be with a reputable and solvent insurer approved by Toll Holdings Pty. Limited and carrying a Standard & Poors rating of A- or better or its equivalent";
- (c) be in the name of the Tenant and (other than in relation to workers' compensation insurance, motor vehicle third party liability insurance and compulsory third party insurance) note the rights and interests of the Landlord; and
- (d) be for an amount, cover the risks and contain terms that are acceptable to or required by the Landlord, acting reasonably, from time to time.

14.3 Review of insurances

- (a) The Landlord may from time to time review the adequacy and appropriateness of the insurance coverage and limits referred to in **clause 14.1**. As part of this review, the Landlord must ascertain whether in the Landlord's reasonable opinion, following consultation with the Tenant, any additional insurance coverage is required or whether any insurance coverage and limits in effect at the time of the review are still required or require amendment
- (b) The Tenant must commence negotiations to obtain insurances or amend the insurance coverage or limits to reflect the results of the Landlord's review within 14 days after receiving Notice from the Landlord and must (subject to **clause 14.3(c)**), as soon as practicable thereafter, at the Tenant's own cost, obtain additional insurance policies or amend existing insurance policies to reflect the requirements of the Notice issued by the Landlord pursuant to this clause.
- (c) The Tenant must promptly give Notice to the Landlord if it is unable, or it becomes apparent that it will be unable to, comply with the requirements of the Notice issued by the Landlord in accordance with Clause 14.3(b). The parties must determine what action, if any, is to be taken following the Landlord's receipt of the Notice issued by the Tenant pursuant to this clause. If a dispute arises in respect of this matter, it must be referred for dispute resolution in accordance with **clause 27**.

14.4 Evidence of insurance

For each insurance policy for the cover taken out under **clause 14.1**, the Tenant must give a certificate of currency, to the Landlord promptly when requested.

14.5 Tenant's obligations

For all insurance policies for the cover taken out under **clause 14.1**, the Tenant must:

- (a) pay the premium for each policy on time;
- (b) not vary or cancel a policy without the Landlord's prior consent;
- (c) renew immediately any lapsed policy;
- (d) not knowingly or otherwise allow any circumstance to arise that might result in any of the policies being voided or prejudiced;

- (e) rectify immediately any situation when a policy has been voided or prejudiced (in breach of **clause 14.5(d)**);
- (f) notify the cancellation of a policy or any circumstance that may affect a policy or a claim or lead to a claim to the Landlord as soon as reasonably practicable after the Tenant becomes aware of it;
- (g) use the insurance proceeds received for a claim made under a policy for the replacement of the item insured or satisfaction of the claim made, or otherwise as directed by the Landlord, acting reasonably; and
- (h) not deal with any material claim under a policy without giving prior notice to the Landlord. The Landlord may require that it assume conduct of that claim or that its consent be obtained before anything is done about that claim.

14.6 Landlord's insurance

The Tenant must not allow any circumstance to arise that might result in:

- (a) any of the Landlord's insurance cover being voided or prejudiced;
- (b) a claim by the Landlord being refused;
- (c) the Landlord being required to pay an increased premium on any of its insurance cover, unless the Tenant pays that increased premium on demand by the Landlord;
- (d) the Landlord being in breach of any Law or the requirements of any Authority relating to fire prevention; or
- (e) any actual or potential fire hazard being created in or near the Premises or the Improvements.

14.7 Landlord's insurance cover


Except where otherwise stated in this document, the existence of the Landlord's insurance cover or the Tenant's contribution to the payment of the premiums for that insurance cover does not affect any liability of the Tenant or prejudice any right of the Landlord to make a claim against the Tenant if an event occurs for which the Landlord would be entitled to make a claim under that insurance.

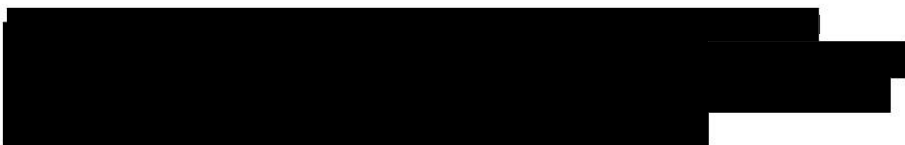
14.8 Cross liability

- (a) Where insurance is effected in joint names, the Tenant must ensure the policy provides that all conditions, agreements and endorsements (with the exception of limits of liability or indemnity) operate as if there was a separate policy of insurance, covering each of the insured.
- (b) The Tenant must ensure that each policy provides that:
 - (i) the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against any of the parties comprising the insured; and
 - (ii) failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured.

15 INSURANCE FOR CONSTRUCTION WORKS

If the Tenant carries out any Construction Works,

- (a) the Tenant must at its cost procure, maintain and keep current throughout the period during which Construction Works are being carried out:
- (i) contract works insurance;
 - (ii) in the joint names of the Landlord, the Tenant and all agents, contractors and subcontractors employed or engaged from time to time in connection with the Construction Works;
 - (iii) covering physical loss of or damage to the Construction Works, materials or items supplied in connection with or forming part of the Works and temporary works (including property of the Landlord used or supplied in connection with the Construction Works) from any cause or event not otherwise excluded;
 - (iv) for an amount not less than its replacement value (including escalation and inflation costs); and
 - (v) extended to include:
 - (A) the cost of removal of material and debris from the Premises including demolition costs;
 - (B) storage on and off the Premises and in transit to the Premises (any transit insurance must be worldwide coverage unless transit only occurs within Australia);
 - (C) professional or consultants fees and expediting expenses;
 - (D) loss or damage during testing and commissioning of the Construction Works;
 - (E) defects liability period of not less than twelve months; and
 - (F) the cost of making good resulting damage arising from faulty design;
- (b) The Tenant must ensure its consultants, agents, contractors and subcontractors employed or engaged from time to time in a professional capacity in connection with the Construction Works to procure professional indemnity insurance:
- (i) effective from the first date that the professional services are carried out in connection with the Construction Works and maintained for a period of at least 6 years after termination or expiration of any contracts applicable to the Construction Works or alternatively 6 year run-off cover;
 - (ii) covering liability arising from a breach of professional duty in the conduct and execution of the professional activities, services and duties of the insured parties;
 - (iii) 
 - (iv) extended to include:
 - (A) fraud, dishonesty, defamation, breach of confidentiality, infringement of patent, copyright, design, intellectual property or trade mark;
 - (B) loss of or damage to documents, data, software and computer programs;

- (C) breach of the *Competition and Consumer Act 2010* (Cth) and any similar law in any other State or Territory in so far as it relates to the provision of services provided in connection with the Construction Works; and
 - (D) an indemnity in the favour of the Landlord to the extent of its vicarious liability arising out of the negligent acts or omissions of the insured parties; and
- (c) The Tenant must ensure its consultants, agents, contractors and subcontractors employed or engaged from time to time procure and maintain public and products liability insurance:
- (i) in the joint names of the Landlord, all its consultants, agents, contractors and subcontractors employed or engaged from time to time in connection with the Construction Works;
 - (ii) covering legal liability for loss of or damage to and loss of use of any property (other than property insured under **clause 15(a)(i)**) and personal injury, death or illness to any person (other than liability required under workers compensation law) arising out of or in connection with the Construction Works;
 - (iii) 
 - (iv) extended to include:
 - (A) the use of unregistered motor vehicles, plant and equipment;
 - (B) sudden and accidental pollution; and
 - (C) defects liability period of not less than 12 months.

16 DEALINGS

16.1 Restriction on Dealings

Subject to **clause 16.4** and **clause 16.5** the Tenant must not complete a Dealing without the Landlord's prior written consent, which may be given or withheld in the Landlord's absolute discretion and, in the case of sub-letting, a mortgage or a charge, approval as required pursuant to section 18 of the *Land Administration Act 1997* (WA).

16.2 Excluded provisions

Sections 80 and 82 of the *Property Law Act 1969* (WA) do not apply to this document.

16.3 Change of Control

A Change in Control of the Tenant, or of any person who Controls the Tenant (in either case being a body corporate whose shares or units are not listed on the official list of ASX Limited ABN 98 008 624 691) is taken to be a proposed Dealing and **clause 16.1** shall apply.

16.4 Securities

The Tenant must not grant a Security:

- (a) over the Tenant's interest in this document; or

- (b) relating to the Tenant's Items,

without the Landlord's prior written consent. The Landlord will not unreasonably withhold its consent if the Tenant's financier is a bank or financial corporation approved by the Landlord and who enters into a deed with the Landlord on such terms as the Landlord reasonably requires.

16.5 Assignment etc to Related Tenant

So long as Toll Transport Pty. Limited or a Related Tenant is the Tenant:

- (a) the Tenant may assign or transfer this document or sub-lease, licence or part with possession of the Premises to a Related Tenant, with the Landlord's prior written consent, which will not be unreasonably withheld or delayed; and
- (b) the Landlord's consent under clause 16.1 to a proposed Dealing under clause 16.3 will not be unreasonably withheld or delayed.

17 RELEASE AND INDEMNITY

17.1 Release

Subject to **clause 17.4**:

- (a) the Tenant uses and occupies the Premises and the Improvements entirely at its own risk as if the Tenant is the owner and occupier of the freehold of the Premises;
- (b) the Tenant uses the Services entirely at its own risk;
- (c) the Tenant uses the Common Areas and the Port Facilities entirely at its own risk; and
- (d) the Landlord is not liable to the Tenant for and the Tenant releases the Landlord absolutely from all Loss paid, suffered or incurred by or available to the Tenant or the Tenant's Associates relating to their use or occupation of the Premises, the Improvements, the Services, the Common Areas and the Port Facilities including in particular Loss paid, suffered or incurred caused directly or indirectly by Contamination emanating from the Port (including in particular dust caused by the loading of vessels).

17.2 Interruption of Services

- (a) Except where the Loss is wholly or partly due to or arises out of any act or omission or default of the Landlord, the Landlord is not liable to the Tenant for and the Tenant releases the Landlord from any Loss paid, suffered or incurred by or available to the Tenant or the Tenant's Associates relating to:
 - (i) any failure in the supply, malfunction, failure to function or interruption of the Services from any cause; or
 - (ii) any inadequacy or unsuitability of water Services for the prevention, control or extinguishment of fires.
- (b) The Tenant may not:
 - (i) terminate this document;
 - (ii) (except where the failure is wholly or partly due to or arises out of any act or omission or default of the Landlord, and the Landlord has been given a

reasonable time to remedy the default, being not more than 14 days or such other period as may be agreed between the parties) make a claim; or

- (iii) withhold payments due under this document in connection with:
 - (A) any failure in the supply, malfunction, failure to function or interruption of the Services; or
 - (B) any inadequacy or unsuitability of water Services for the prevention, control or extinguishment of fires.

(c) **Clause 17.4** does not apply to this **clause 17.2**.

17.3 Indemnity

The Tenant indemnifies the Landlord (and agrees to keep the Landlord indemnified) from and against, and releases the Landlord in respect of, all claims or Losses whether arising out of or in connection with this document, under statute, in contract, in tort (for negligence or otherwise) or any other basis in law or equity which the Landlord may suffer or incur or which may at any time be brought, maintained or made against the Landlord in respect of or in connection with:

- (a) destruction, loss (including loss of use), injury or damage of any nature or kind (other than fair wear and tear) of or to property of any person and including the property of the Landlord, Landlord's Personnel, the Tenant or any Tenant's Associate;
- (b) in respect of any death of, or injury or illness sustained by, any person and including the Landlord, Landlord's Personnel, the Tenant or any Tenant's Associate;
- (c) breach by the Tenant or any Tenant's Associate of any Law or approval;
- (d) breach by the Tenant or any Tenant's Associate of this document; and
- (e) the termination of this document;

directly or indirectly caused by or arising out of or in connection with:

- (f) the use or occupation of the Premises or any part of the Premises by the Tenant or any Tenant's Associate pursuant to this document;
- (g) any activity of the Tenant or any Tenant's Associate at the Port;
- (h) any Contamination, Pollution or Environmental Harm of the Premises or elsewhere in the Port to the extent caused or contributed to by the use of the Premises by the Tenant or any Tenant's Associate;
- (i) any rehabilitation required to be carried out by the Tenant under this document in respect of the Premises or surrounding areas pursuant to any notice from any Authority;
- (j) any default by the Tenant in the due and punctual performance, observance and compliance with any of the Tenant's obligations under this document;
- (k) any act or omission by the Tenant or any Tenant's Associate in any activity, function or task, including arising from, in connection with, in relation to or in respect of any undertaking or completing any activity of the Tenant in the Port; or

the Tenant or any Tenant's Associate presence in the Port pursuant to this document..

17.4 Extent of Loss

The release and indemnity under this **clause 17** does not apply to the extent that any Loss is wholly or partly due to or arises out of any act or omission or default of the Landlord.

17.5 Other Authorities

The Tenant acknowledges and agrees that:

- (a) there are Authorities, including but not limited to the local authority, the State, the Commonwealth Government (and related entities) with jurisdiction over aspects of the activities undertaken by the Tenant, including but not limited to the Tenant's Permitted Use and the undertaking of any works by the Tenant;
- (b) such Authorities may from time to time exercise their regulatory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Tenant's use of the Premises; and
- (c) except as otherwise provided in this document, the Tenant bears the full risk of all occurrences referred to in **clause 17.5(b)** and will not be entitled to make any claim against the Landlord arising out of or in any way in connection with such occurrences.

17.6 Indirect or consequential loss

Notwithstanding any other provision of this document and to the maximum extent permitted by Law, the Landlord will not be liable to the Tenant for Indirect or Consequential Loss, whether arising out of or in connection with this document, under statute, in contract, in tort (for negligence or otherwise) or any other basis in law or equity, incurred or suffered by the Tenant.

17.7 Scope of indemnity

The indemnity in clause 17:

- (a) is a continuing obligation, separate and independent from the other obligations of the Tenant;
- (b) survives the termination of this document; and
- (c) extends to any Loss.

18 LANDLORD'S OBLIGATIONS

18.1 Quiet enjoyment

Subject to **clause 20** and to **clause 21** and any other rights the Landlord may have under this document or at law or in equity, so long as the Tenant complies with its obligations under this document, the Tenant may use and occupy the Premises without any disturbance by the Landlord or any person lawfully claiming under the Landlord.

18.2 Common Areas

The Landlord must, subject to **clause 21.5**, allow the Tenant to use the Common Areas in common with the Landlord and other persons authorised by the Landlord.

19 GUARANTEE AND INDEMNITY

19.1 Acknowledgment

The Guarantor acknowledges that the Landlord enters into this document at the request of the Guarantor relying on (amongst other things) the Guarantor executing this document to assure the performance by the Tenant of its obligations under this document.

19.2 Guarantee

In consideration of the Landlord entering into this document at the request of the Guarantor, the Guarantor irrevocably and unconditionally guarantees to the Landlord the punctual payment by the Tenant of the Guaranteed Money and the performance by the Tenant of the obligations of the Tenant under this document.

19.3 Payment on demand under guarantee

If the Tenant defaults in the punctual payment of any of the Guaranteed Money, the Guarantor must pay that Guaranteed Money on first demand by the Landlord. The Landlord may demand payment from the Guarantor from time to time and whether or not the Landlord has made demand on the Tenant or any other person.

19.4 Compliance

The Guarantor agrees with the Landlord that the Guarantor will use its best endeavours to ensure the Tenant's compliance with the terms of this document.

19.5 Indemnity

- (a) As a separate covenant, the Guarantor unconditionally and irrevocably indemnifies the Landlord against all Loss paid, suffered or incurred by the Landlord (including all Loss incurred by the Landlord in the enforcement or attempted enforcement of the obligations of the Tenant or the Guarantor under this document) relating directly or indirectly to:
 - (i) any failure by the Tenant to pay the Guaranteed Money or to comply with any of its obligations under this document; or
 - (ii) this document or a related security, transaction or document being or becoming unenforceable in accordance with its terms or the priority or effectiveness of any of them being adversely affected.
- (b) The Guarantor must pay any amounts payable to the Landlord under this **clause 19** on demand by the Landlord.

19.6 Guarantee and indemnity not affected

- (a) The liability of the Guarantor under this **clause 19** is a principal, unconditional and absolute obligation and is not adversely affected by:
 - (i) the granting of time, forbearance or other concession to the Guarantor or to the Tenant;

- (ii) the making of any arrangement, composition or compromise with or the discharge or release of the Tenant;
 - (iii) the actual or alleged invalidity or unenforceability of any term of this document;
 - (iv) any delay, laches, acquiescence, mistake, negligence or other act or omission of the Landlord;
 - (v) any Transfer or any renewal, release, surrender, termination, variation or novation of this document or any Sublease;
 - (vi) any Guarantor not executing or not properly executing this document;
 - (vii) this document not being registered; or
 - (viii) anything else which, but for this **clause 19**, could operate to adversely affect this Guarantee and Indemnity.
- (b) If a payment made by the Tenant is set aside or avoided by any Law or otherwise, that payment is taken not to have been made and does not reduce the liability of the Guarantor under this document.

19.7 Continuing guarantee and indemnity

This Guarantee and Indemnity:

- (a) is a continuing guarantee and indemnity;
- (b) is irrevocable; and
- (c) remains in full force, despite termination or expiry of this document, until all obligations of the Tenant under this document have been performed in full to the Landlord's satisfaction.

19.8 No competition

Until the Tenant has fully performed all its obligations under this document to the Landlord's satisfaction, the Guarantor must not:

- (a) reduce its liability under this Guarantee and Indemnity by:
- (b) raising a set-off or counter-claim available to itself, the Tenant or a co-surety or co-indemnifier against the Landlord; or
- (c) claiming a set-off or making a counter-claim against the Landlord; or
- (d) prove in competition with the Landlord against the Tenant,
- (e) without the prior consent of the Landlord.

19.9 Guarantee and indemnity in addition to other rights of the Landlord

This Guarantee and Indemnity:

- (a) is in addition to any other security or right which the Landlord may now have or may subsequently take or hold against the Tenant or the Guarantor; and
- (b) may be enforced without first recourse to that other security or right and without taking steps or proceedings against the Tenant, despite any rule of law or equity or any Law to the contrary.

19.10 Warranties by the Guarantor

The Guarantor warrants to the Landlord that:

- (a) if a Guarantor is a corporation, it has the corporate power to enter into and perform and has taken all necessary corporate and other action to authorise the execution and performance of this document;
- (b) if a Guarantor is a natural person, it has the capacity to enter into and perform this document;
- (c) this Guarantee and Indemnity constitutes a legal and binding obligation of the Guarantor;
- (d) the execution and performance of this document does not violate:
 - (i) existing Law;
 - (ii) the constitution of the Guarantor if a Guarantor is a corporation; or
 - (iii) any mortgage, contract or other undertaking to which the Guarantor is a party or which is binding on the Guarantor or its assets; and
- (e) the Guarantor is not aware of any matter material to the decision of the Landlord to enter into this document which has not been adequately disclosed to the Landlord in writing.

19.11 Assignment

The Landlord may assign the benefit of this Guarantee and Indemnity in its absolute discretion.

20 LANDLORD'S RIGHTS

20.1 Notice of exercise of rights

Whenever the Landlord exercises any of its rights under this **clause 20** or **clause 21** or elsewhere under this document or at law or in equity, the Landlord may enter the Premises at all reasonable times on reasonable notice and accompanied by a representative of the Tenant and otherwise in compliance with the Tenant's site security and safety requirements, except that the Landlord may enter at any time without notice in the case of any default by the Tenant under this document or if, in the Landlord's reasonable opinion, there is an Emergency.

20.2 Entry by Landlord

The Tenant must permit entry to the Premises by the Landlord:

- (a) to inspect the Premises to determine whether the Tenant is complying with its obligations under this document;
- (b) to inspect or deal with anything concerning an Emergency; or
- (c) to do anything incidental to the Landlord's functions under the Port Act.

20.3 Repairs

The Landlord may give a notice to the Tenant requiring the Tenant to carry out specified maintenance or repairs that are the Tenant's responsibility within the period specified in the notice. If the Tenant fails to comply with the Landlord's notice, the Landlord may enter the Premises and carry out the specified maintenance or repairs at the Tenant's cost.

20.4 Agents

The Landlord may appoint agents to exercise any of its rights or carry out any of its obligations under this document. The Tenant must comply with any reasonable directions from or requirements of an agent unless they are inconsistent with any communication from the Landlord.

20.5 Rules

The Landlord may make, vary and repeal Rules from time to time by giving notice to the Tenant if those new or varied Rules do not prejudice or are not inconsistent with the Tenant's rights under this document. The Landlord is not liable to the Tenant if the Landlord refuses or fails to enforce the Rules against any other tenant or occupier of the Port or the Port Land.

20.6 Landlord may perform Tenant's obligations

If the Tenant fails to perform an obligation under this document to the Landlord's reasonable satisfaction after being given reasonable notice by the Landlord, the Landlord may perform that obligation at the Tenant's cost.

20.7 New Landlord

If for any reason (including a sale, transfer or disposal of the Port Land or an alteration in the vesting of the Port Land), any person becomes entitled to the benefit of this document in substitution for the Landlord:

- (a) the Landlord is released from its obligations under this document after that event takes place, but without affecting rights that have arisen before that event;
- (b) without limiting any other liability of the Tenant to the Landlord, the Tenant remains liable to the Landlord for any obligations accrued or arising before that event, including the obligation to pay Rent and must make any further payments on demand by the Landlord; and
- (c) anything that the Tenant is required to give under this document in favour of the Landlord or do in the name of the Landlord must be amended at the Landlord's reasonable cost so that it is in favour of or in the name of the new person.

20.8 Covenants to bind the Landlord

- (a) The covenants on the part of the Landlord pursuant to the terms of this document will bind the Landlord only for so long as the Premises are vested in the Landlord and not otherwise.
- (b) Without limitation, the Landlord covenants that the terms and conditions of the lease constituted by this document will pass with the Premises if, at any time during the Term, the Premises are not vested in the Landlord.

21 LANDLORD'S RIGHTS – WORKS

21.1 Premises works required by Law

The Landlord may carry out any works in or to the Premises that are not the Tenant's responsibility to satisfy any Law or the requirements of any Authority that the Landlord sees fit in its absolute discretion provided that the Landlord complies with **clause 20.1** and minimises interference with the Tenant's use of the Premises and the conduct of the Tenant's business from the Premises

21.2 Port works

The Landlord may carry out any works (including any development, extension or alteration) in or to the Port as the Landlord sees fit in its absolute discretion.

21.3 Services

The Landlord may install, remove, use, maintain, repair, temporarily interrupt, alter, replace or otherwise deal with any of the Services, including the Services passing through or servicing the Premises as the Landlord sees fit in its absolute discretion and provided that the Landlord has given the Tenant as much notice as is reasonably practicable in the circumstances and proceeds promptly to restore the Services to their condition before such interruption, alteration or replacement.

21.4 Dealings with Port Land

The Landlord may:

- (a) grant an easement or any other right relating to the Port Land or the Premises to any person;
- (b) subdivide the Port Land; and
- (c) grant a Security over the Port Land,

on terms as it sees fit in its absolute discretion, provided the proposed dealing does not substantially or adversely interfere with the Tenant's use of the Premises.

21.5 Common Areas and Port Facilities

The Landlord may:

- (a) restrict access to the Common Areas or the Port Facilities;
- (b) change the direction of pedestrian, vehicular or railway traffic to, from or through the Premises;
- (c) change the size or location of the Common Areas or the Port Facilities;
- (d) without limiting **clause 21.2**, carry out any works in the Common Areas; and
- (e) regulate the use and operation of any conveyors, pipes, roads, railways, paths and car parks in the Port Land,

on terms as it sees fit in its absolute discretion, provided this does not substantially and permanently interfere with the Tenant's use of the Premises.

21.6 Port Works in Premises

The Landlord may carry out Port Works in or to the Premises on terms as it sees fit in its absolute discretion.

21.7 Tenant must not object

Notwithstanding any other term of this document or any rights of the Tenant at law or in equity, the Tenant must not object to or claim compensation or abatement of Rent or any concession (other than under and in accordance with **clause 22**) for any temporary disturbance to (which does not substantially and permanently interfere with) the Tenant's use and occupation of the Premises by reason of or relating to the carrying out of any works described in this **clause 21**.

22 EXERCISE OF LANDLORD'S RIGHTS – WORKS

22.1 No material interruption

Whenever the Landlord exercises its right of entry to the Premises under **clause 21**, the Landlord must use best endeavours not cause any undue interruption to the Tenant's use and occupation of the Premises.

22.2 Tenant to co-operate

The Tenant must co-operate with the Landlord to facilitate the exercise of any rights or the carrying out of works described in **clause 21**.

22.3 No objection or compensation

Notwithstanding any other term of this document or any rights of the Tenant at law or in equity, the Tenant must not object to or claim compensation or abatement of Rent or any concession for any disturbance to the Tenant's use and occupation of the Premises by reason of or relating to the exercise of any rights or the carrying out of any works under **clause 21**, subject, in the case of the exercise of a right of entry to the Premises, to compliance by the Landlord with **clause 22.1**.

23 SURRENDER

- (a) If the Tenant fails to use the Premises for the Permitted Use for a period of at least 90 consecutive days, the Landlord may (by written notice) request that the Tenant surrender its interest in this document.
- (b) If the Tenant does not either:
 - (i) deliver to the Landlord a deed of surrender of this document, in a form and which terms are acceptable to the Landlord, acting reasonably; or
 - (ii) commence and continue to use the Premises for the Permitted Use,within 7 days of receipt of the Landlord's notice in **clause 23(a)**, the Landlord may do all such things as are required for the Tenant to surrender its interest in this document. For this purpose, the Tenant irrevocably appoints the Landlord as its true and lawful attorney to execute on its behalf a deed of surrender of this document, in a form and which terms are acceptable to the Landlord, acting reasonably, and to do all such other things in the name of the Tenant required to surrender its interest in the lease.
- (c) **Clause 23(a)** shall not apply to the extent the Tenant's failure to use the Premises for the Permitted Use was caused as a result of the Tenant complying with the Landlord's direction.

24 LEASE END

24.1 Tenant to vacate

On the Lease End Date the Tenant must vacate the Premises and, subject to **clause 24.2**, give them back to the Landlord.

24.2 Tenant's obligations

On or within thirty Business Days after the Lease End Date, the Tenant must:

- (a) at the Landlord's election, either:

- (i) reinstate; or
- (ii) pay or reimburse the Landlord on demand for any costs and expenses incurred by the Landlord for reinstating,

any of the Services that were altered during the Tenant's or any previous tenant's occupation of the Premises to the location and condition as required by the Landlord;

- (b) remove all the Tenant's Items and Improvements;
- (c) make good any damage caused by any removal or reinstatement carried out under this **clause 24.2**; and
- (d) leave the Premises in a condition consistent with the Tenant having complied with its obligations under this document (including in particular the obligations in **clause 8**) and clean and free of rubbish.

The Tenant must comply with the Landlord's reasonable requirements relating to the removal of the Tenant's Items and the Improvements or reinstatement of the Services and the Premises.

Clause 24.2 shall not require the Tenant to remove, or to pay or reimburse the Landlord for any costs and expenses incurred by the Landlord in removing, below ground infrastructure for Services, other than where:

- (a) removal is required in order to reinstate Services under clause 24.2(a); or
- (b) the infrastructure was installed by the Tenant or the Tenant's Associates without the Landlord's consent.

24.3 Tenant's Items not removed

If the Tenant is in default under **clause 24.2**, the Landlord may:

- (a) as the agent of the Tenant, remove any of the Improvements or Tenant's Items remaining and store them at the cost and risk of the Tenant with a power of sale for non-payment of storage charges and except to the extent the Loss is caused by the negligence, wrongful act or default of the Landlord the Tenant releases the Landlord absolutely from all Loss paid, suffered or incurred by or available to the Tenant or the Tenant's Associates in that case;
- (b) treat any of the Improvements or Tenant's Items remaining as abandoned and deal with them as it sees fit in its absolute discretion at the Tenant's cost; and
- (c) carry out the Tenant's obligations under **clause 24.2** at the Tenant's cost.

24.4 Transfer of title

The Landlord may elect to deal with any of the Improvements or Tenant's Items remaining on the Premises in accordance with either **clause 24.3(a)** or **clause 24.3(b)**. The unencumbered title to those of the Improvements or Tenant's Items that the Landlord elects to deal with under **clause 24.3(b)** is transferred to the Landlord when the Landlord either:

- (a) gives a notice to the Tenant; or
- (b) takes unequivocal action,

that confirms that **clause 24.3(b)** applies.

25 HOLDING OVER

25.1 Monthly tenant

If the Tenant continues to use or occupy the Premises after the Expiry Date with the Landlord's prior consent, then the Tenant will be holding over as a tenant from month to month of the Landlord:

- (a) at a monthly rent equal to one-twelfth of the amount payable for Rent as at the Expiry Date and otherwise subject to review from time to time in the Landlord's absolute discretion; and
- (b) otherwise on the same terms as in this document to the extent to which they can be applied to a monthly tenancy.

25.2 Termination of monthly tenancy

A party may terminate the monthly tenancy by giving at least one month's notice to the other party. The notice may expire at any time.

26 DEFAULT

26.1 When a default occurs

The Tenant is in default if the Tenant fails to comply with any obligation under this document.

26.2 Landlord may give notice

- (a) If the Tenant is in default, the Landlord may give the Tenant a notice specifying the non-compliance giving rise to the default.
- (b) If the non-compliance specified in the notice cannot be remedied (in the opinion of the Landlord, acting reasonably), the notice must include a statement to that effect.
- (c) If the non-compliance specified in the notice can be remedied (in the opinion of the Landlord, acting reasonably), the notice must require the Tenant to remedy the non-compliance to the reasonable satisfaction of the Landlord within a reasonable time being not less than 14 days.
- (d) If the Landlord wishes to claim compensation from the Tenant for the non-compliance specified in the notice, the notice must require the Tenant to pay to the Landlord reasonable compensation within a reasonable time being not less than 14 days.

26.3 Landlord's termination rights following a default

if:

- (a) the Tenant fails to pay any amount payable by it under this document on the due date for payment or within 10 Business Days of default notice being given by the Landlord (whether or not any demand for payment is made or notice is given);
- (b) the Landlord issues a notice of the type referred to in **clause 26.2(b)**; or
- (c) the Tenant fails to comply with the requirements of a notice issued under **clause 26.2** (not being a notice of the type referred to in **clause 26.2(b)**),

the Landlord may, subject to the requirements of any applicable Law:

- (d) re-enter and take possession of the Premises and eject the Tenant and all other persons from the Premises;
- (e) terminate this document by giving notice to the Tenant;
- (f) elect to convert the unexpired portion of the Term into a tenancy from month to month by giving notice to the Tenant (in which case **clause 25** will apply to that tenancy from month to month except that the amount payable for Rent will be based on the amount payable by the Tenant at the date the Landlord's notice is given under this **clause 26.3(f)**); or
- (g) take any other action which may be available to it under the Law.

The Landlord may take action under this **clause 26.3** immediately or at any time after the default occurs. The termination of this document will not affect or limit the entitlement of the Landlord to recover damages under **clause 26.4** or at law or in equity.

26.4 Damages for default

If the Tenant is in default:

- (a) the Tenant must indemnify and compensate the Landlord for and the Landlord may recover from the Tenant all Loss paid, suffered or incurred by the Landlord relating directly or indirectly to the default of the Tenant; and
- (b) if this Document is terminated, the Tenant must indemnify and compensate the Landlord for and the Landlord may recover from the Tenant:
 - (i) all Loss paid, suffered or incurred by the Landlord relating directly or indirectly to any action taken under **clause 26.3**;
 - (ii) damages for the loss of bargain for the amount representing the difference between:
 - (A) what the Landlord would have received or recovered from the Tenant under this document had the Tenant continued to occupy the Premises for the full Term and complied with all of its obligations under this document; and
 - (B) what the Landlord can reasonably expect to receive from a substitute tenant for the Premises on the same basis, taking into account any incentives or inducements required to procure that substitute tenant, the costs associated with procuring that substitute tenant and any reasonable letting-up periods; and
 - (iii) any other damages that the Landlord may be entitled to under any applicable Law or at law or in equity.

The Landlord acknowledges that it is obliged to mitigate its loss. The Landlord's rights under this **clause 26.4** and the Tenant's obligation to indemnify or compensate the Landlord are not in substitution for or derogation from any other rights the Landlord may have under this document or at law or in equity.

26.5 Waiver

A waiver by the Landlord:

- (a) of a non-compliance of an obligation is not a waiver of a further non-compliance of the same or another obligation; and
- (b) does not arise from any delay or failure to act on the Landlord's part.

26.6 Custom

A custom that develops between the parties does not affect the Landlord's right to demand strict compliance with an obligation in the future.

26.7 Subsequent payments

Any payment made by the Tenant or accepted by the Landlord after termination does not amount to a waiver or evidence of a fresh tenancy and may be applied by the Landlord in its absolute discretion.

26.8 Landlord's rights and entitlements

The Landlord's rights and entitlements under this **clause 26** are not affected or limited by:

- (a) any lawful conduct of the Landlord;
- (b) any action taken under **clause 26.3**;
- (c) the Landlord taking any steps to mitigate its loss; or
- (d) any other circumstance amounting to surrender by operation of law.

27 DISPUTE RESOLUTION

27.1 Application

All disputes or differences under this document must be resolved in accordance with this **clause 27**.

27.2 Notice of dispute

If a dispute arises, a party may give notice of the dispute or difference (including reasonable particulars of the dispute or difference) to the other party.

27.3 Senior Representatives to negotiate

- (a) If the Landlord and the Tenant are unable to resolve the dispute or difference within 10 Business Days of receipt of the notice under **clause 27.2**, either party may refer the dispute or difference to the Senior Representatives.
- (b) If the Senior Representatives are unable to:
 - (i) resolve a dispute or difference referred to them under **clause 27.3(a)**; or
 - (ii) agree on a method for resolving the dispute,

within 20 Business Days of the dispute being referred to the Senior Representatives, either party may commence litigation in respect of the dispute or difference.

27.4 General provisions

- (a) Service of the notices under, and in compliance with the process outlined in this **clause 27** are conditions precedent to the commencement of any litigation in respect of a dispute or difference.
- (b) Despite the existence of a dispute, the parties must continue to perform their respective obligations under this document.

28 BANK GUARANTEE

28.1 Tenant to give Bank Guarantee

The Tenant must give the Bank Guarantee to the Landlord on or before the earlier of:

- (a) the date the Tenant returns this document properly executed by the Tenant to the Landlord; and
- (b) the Commencement Date.

28.2 Form of Bank Guarantee

The Bank Guarantee must:

- (a) be from an Australian trading bank or financial corporation reasonably approved by the Landlord with a paying branch in Western Australia;
- (b) be in favour of the Landlord;
- (c) be in form and content reasonably satisfactory to the Landlord;
- (d) either not have an expiry date or have an expiry date no earlier than the date which is 6 months after the Expiry Date; and
- (e) be payable:
 - (i) either in whole or in part;
 - (ii) on written demand from or on behalf of the Landlord without reference or prior notice to the Tenant;
 - (iii) irrespective of the performance or non-performance by the Tenant or the Landlord under this document;
 - (iv) despite any variation of this document or extension of time granted under this document; and
 - (v) despite any notice given to the issuer not to pay to the Landlord any amount payable under the Bank Guarantee.

28.3 Tenant to maintain Bank Guarantee

The Tenant must make sure that the Bank Guarantee is current and enforceable at all times.

28.4 Landlord may demand payment

If the Tenant fails to comply with any of its obligations under this document, the Landlord may demand payment under the Bank Guarantee at any time and from time to time. The exercise of the Landlord's rights under this **clause 28.4** is not in substitution for or derogation from any other rights the Landlord may have under this document or at law or in equity.

28.5 Tenant to top-up or replace Bank Guarantee

If at any time the amount available to the Landlord under the Bank Guarantee, is less than the Bank Guarantee Amount, the Landlord may demand and in that event the Tenant must give a further or replacement Bank Guarantee to the Landlord.

The Landlord must give a notice to the Tenant stating the amount of the further or replacement Bank Guarantee required and the Landlord's determination is final and binding on the parties unless manifestly wrong. The Tenant must give the further or replacement Bank Guarantee to the Landlord within ten Business Days after the Landlord gives the notice to the Tenant.

28.6 New Landlord

If for any reason (including a sale, transfer or disposal of the Premises), any person becomes entitled to the benefit of this document in substitution for the Landlord:

- (a) that person has the benefit of the Bank Guarantee; and
- (b) if the Bank Guarantee is in a form that is not assignable, the Tenant must on request give a replacement Bank Guarantee to and in favour of the new person. The Tenant must do so within ten Business Days after the Tenant is given a notice stating the request. The Landlord will, if required by the Tenant, exchange the Bank Guarantee held by the Landlord for a satisfactory replacement Bank Guarantee.

28.7 Lease end

Within 6 months after the Lease End Date and if the Tenant has complied with all of its obligations under this document to the Landlord's satisfaction, the Landlord must return any remaining Bank Guarantee to the Tenant.

29 NOTICES

29.1 General

A notice, demand, certification, process, consent, request, waiver, agreement or other communication relating to this document must be in writing in English and may be given by an agent of the sender and is not effective unless it is in writing.

29.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current address for notices;
- (c) sent to the party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) emailed to the party's current email address for notices.

29.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially as specified in the **reference schedule** and are taken to be the current particulars unless **clause 29.3(b)** applies.
- (b) Each party may change its particulars for delivery of notices by notice to each other party and the changed particulars will then be taken to be the current particulars.

29.4 Communications by post

Subject to **clause 29.6**, a communication is given if posted:

- (a) within Australia to an Australian address, three Business Days after posting; or
- (b) in any other case, ten Business Days after posting.

29.5 Communications by email

Subject to **clause 29.6**, a communication is given if sent by email, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the addressee.

29.6 After hours communications

If a communication is given:

- (a) after 5.00pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

29.7 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this document may be served by any method contemplated by this **clause 29** or in accordance with any applicable Law.

30 COSTS AND DUTY

30.1 Landlord's costs

The Tenant must pay and if paid by the Landlord reimburse the Landlord on demand:

- (a) all costs and expenses (including reasonable legal fees, costs and disbursements) incurred in connection with negotiating, preparing, executing, stamping and registering this document and any subsequent consent, agreement, approval, waiver or amendment relating to this document; and
- (b) all expenses (including legal fees, costs and disbursements) incurred in connection with exercising, enforcing, preserving or attempting to exercise, enforce or preserve rights under this document.

30.2 Extent of Landlord's costs

In relation to any matter under **clause 30.1**, the Landlord's:

- (a) legal costs and expenses are payable on a solicitor and client basis or on a full indemnity basis, whichever is the higher; and
- (b) other costs and expenses include:
 - (i) fees payable to any consultant, agent or other person retained by the Landlord; and
 - (ii) its administration costs.

30.3 Tenant's costs

- (a) Except as expressly stated otherwise in this document, the Tenant must pay its own legal and other costs and expenses of negotiating, preparing and executing this document.
- (b) Except as expressly stated otherwise in this document, the Tenant must pay its own legal and other costs and expenses of complying with its obligations under this document.

30.4 Duty

- (a) The Tenant as between the parties is liable for and must pay all duty (including any fine or penalty except if it arises from default by any other party) on or relating to this document, any document executed under it or any dutiable transaction evidenced or effected by it.

- (b) If a party other than the Tenant pays any duty (including any fine or penalty) on or relating to this document, any document executed under it or any dutiable transaction evidenced or effected by it, the Tenant must pay that amount to the paying party on demand.

31 GST

31.1 Interpretation

In this document:

- (a) words and expressions which are not defined in this document but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
- (b) **GST Law** has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

31.2 Consideration GST exclusive

Unless otherwise expressly stated, all amounts or other sums payable or consideration to be provided under this document are exclusive of GST.

31.3 Payment of GST

If GST is payable by a supplier, or by the representative member for a GST group of which the supplier is a member, on any supply made under this document, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

31.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 31.3** in addition to and at the same time that the consideration for the supply is to be provided under this document.

31.5 Tax invoice

The supplier must deliver a tax invoice, or an adjustment note to the recipient before the supplier is entitled to payment of an amount under **clause 31.3**. The recipient can withhold payment of the amount until the supplier provides a tax invoice or an adjustment note, as appropriate.

31.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under this document, the amount payable by the recipient under **clause 31.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

31.7 Reimbursements

Where a party is required under this document to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

32 MISCELLANEOUS

32.1 Statements

A notice by the Landlord stating any amount payable or determined or any other thing to be done or not done under this document is sufficient evidence of that fact unless manifestly wrong.

32.2 Permissive behaviour

If the Tenant is required not to do something under this document, then the Tenant must use reasonable endeavours to also not allow that thing to be done.

32.3 Tenant's Associates

- (a) The Tenant must make sure that the Tenant's Associates comply with the terms of this document.
- (b) Without affecting the application of any other provision of this document, the Tenant is not relieved of any of its obligations or liabilities under this document, as a result of the Tenant engaging any person to undertake any of the activities of the Tenant at the Premises, or in the Port or any tasks arising out of or in connection with any of the activities of the Tenant at the Premises, or in the Port.
- (c) Any act or omission of a Tenant's Associate in connection with any of the activities of the Tenant at the Premises, or in the Port (including negligent acts and omissions) is taken to be an act or omission of the Tenant for the purposes of this document.

32.4 Exclusion of statutory provisions

- (a) The obligations and powers implied in leases by the *Transfer of Land Act 1893* (WA) do not apply to this document.
- (b) So far as it is possible to do so, the application of any moratorium or Law affecting the operation of this document, or any rights of the Landlord, is excluded.
- (c) Any term of this document that does not comply with any applicable Law must be read down so that it does comply. If that is not possible, the term must be severed from this document.

32.5 Continuing obligations

Obligations that are due for performance but which have not been performed by the Lease End Date continue in force.

32.6 Prior defaults

Termination of this document does not affect rights that arise before termination.

32.7 Caveats

The Tenant must not lodge a caveat on the title to the Port Land without the Landlord's prior consent. Consent will not be unreasonably withheld if the caveat is a "subject to claim" caveat and refers only to the Tenant's interest under this document. If the Tenant lodges a caveat, the Tenant must immediately at its cost consent to any dealing by the Landlord with the Port or the Premises that does not materially prejudice the Tenant's rights under this document.

32.8 Registration

The Landlord may require that this document be registered as a lease under the *Transfer of Land Act 1893 (WA)*, in which case the Tenant must (at the Tenant's cost) do all things necessary to cause registration to occur.

33 CONFIDENTIALITY

- (a) Except as required by Law or by a stock exchange:
 - (i) the negotiations of the parties relating to this document and the subject matter and terms and existence of this document must be kept confidential and may only be disclosed by a party to its professional advisers on condition that they agree to be bound by the terms of this clause, or to other persons with the prior written consent of all the other parties; and
 - (ii) the Tenant must not make any press release or announcement without the prior written consent of the Landlord.
- (b) A party must not unreasonably withhold its consent under this **clause 33**.
- (c) In the event that this document is registered, this clause shall be of no further force and effect.
- (d) The Tenant may disclose the Lease to a bona fide potential purchaser of: all or any part of the assets of the Tenant; any interest in any or all of the issued share capital of the Tenant; or any body corporate which Controls the Tenant, subject to such potential purchaser entering into a confidentiality agreement directly with the Tenant under which the potential purchaser is obliged to keep the Lease confidential. The confidentiality agreement is not required if this document is registered.
- (e) The Landlord may disclose this document to an Authority.

34 Signage

When the Tenant is Toll Transport Pty. Limited the Tenant may erect and maintain in, on or over the Premises any signs (including illuminated signs), logos, advertisements or notices relating to the Tenant, or any Related Tenant or any sub-tenant of the Tenant, or the nature or conduct of the business on the Premises, subject only to obtaining:

- (a) any necessary approvals or permits from the Authorities;
- (b) compliance with the Landlord's Port Development Guidelines, Port policies and procedures; and
- (c) the prior written consent of the Landlord.

35 GENERAL

35.1 Force Majeure

A party is not in breach or default of any obligation under this document in circumstances where the party's compliance with the particular obligation was interfered with or delayed or prevented by a Force Majeure Event. Any party which is unable to comply with any obligation under this document due to a Force Majeure Event must advise the other party promptly and must use its best endeavours to overcome the

Force Majeure Event and resume its ability to comply with all of its obligations under this document as soon as possible.

35.2 Amendment

This document may only be varied or replaced by a document executed by the parties.

35.3 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any Loss of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

35.4 Binding on parties

This document binds all of the parties to it whether or not all of the parties have executed or properly executed the document.

35.5 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

35.6 Consents

Except as expressly stated otherwise in this document, a party must not unreasonably withhold any consent to be given under this document.

35.7 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

35.8 Governing Law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the Law applicable in Western Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

35.9 Liability

An obligation of two or more persons binds them separately and together.

35.10 Civil Liability Act 2002

All of the provisions in Part 1F of the *Civil Liability Act 2002 (WA)* are expressly excluded and do not apply to anything arising out of this document.

35.11 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

35.12 Entire understanding

- (a) This document contains the entire understanding between the parties as to the subject matter of this document.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this document are

merged in and superseded by this document and are of no effect. No party is liable to any other party in respect of those matters.

- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this document; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

35.13 Relationship of parties

This document is not intended to create a partnership, joint venture or agency relationship between the parties.

35.14 Attorneys

Each person who executes this document on behalf of a party under a power of attorney declares that he or she has been duly appointed, remains authorised and is not aware of any fact or circumstance that might affect his or her authority to do so.

EXECUTION

Executed as a deed.

Executed by Pilbara Ports Authority)
ABN 94 987 448 870 pursuant to section)
156 of the *Government Trading*)
Enterprises Act 2023 (WA):



[insert office] (print)



[insert office] (print)

who each declare no notice of termination of their authority to sign has been given.

Signed sealed and delivered for and on behalf of
Toll Transport Pty. Limited ACN
006 604 191
by its attorneys under Power of Attorney dated 16 March 2022 registered number P116079 PA in the presence of;

sign here [Redacted Signature] *sign here*
Signature of Witness

[Redacted Signature] *sign here*
Attorney

print name
[Redacted Name]

print name and role of Attorney
[Redacted Name and Role]

[Redacted Address]
Level 6, 380 St Kilda Road
Melbourne VIC 3004
An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Victoria)

sign here [Redacted Signature] *sign here*
Attorney

print name and role of Attorney
[Redacted Name and Role]

Signed sealed and delivered for and on behalf of
Toll Holdings Pty. Limited ACN
006 592 089
by its attorneys under Power of Attorney dated 16 March 2022 registered number P116079 PA in the presence of:

sign here [Redacted Signature] *sign here*
Signature of Witness

[Redacted Signature] *sign here*
Attorney

print name
[Redacted Name]

print name and role of Attorney
[Redacted Name and Role]

[Redacted Address]
Level 6, 380 St Kilda Road
Melbourne VIC 3004
An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Victoria)

sign here [Redacted Signature] *sign here*
Attorney

print name and role of Attorney
[Redacted Name and Role]

ANNEXURE A

Plan of Premises



