



Australian Government Solicitor

LICENCE

The Commonwealth of Australia represented by the Department of Defence
(the Licensor)

and

Royal Melbourne Institute of Technology
(the Licensee)

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THIS LICENCE is made on the 7 day of April 2022

BETWEEN

THE COMMONWEALTH OF AUSTRALIA (represented by the Department of Defence) ("Licensor")

AND

ROYAL MELBOURNE INSTITUTE OF TECHNOLOGY established by the Royal Melbourne Institute of Technology Act 1992 (Vic) the principal office of which is at 124 La Trobe Street, Melbourne ("Licensee")

RECITALS

- A. The Licensor owns the Land.
- B. The Licensee owns or is entitled to use the Aircraft with the consent of the owner of the Aircraft.
- C. The parties have agreed for the Licensee to enter and use the parts of the Land in order to carry out the Permitted Use on the terms and conditions of this Licence.
- D. The Airfield is not a licensed airfield.
- E. The parties acknowledge that the Licensor enters into this Licence in its capacity as land owner and nothing in this Licence is to be construed as the Licensor acting in any regulatory capacity or assuming regulatory responsibility.
- F. In consideration of the payment of the Licence Fee and Access Fee and the covenants and conditions of this Licence the Licensor has agreed to grant the licence herein described on the terms and conditions contained in this Licence.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1. Definitions

- 1.1.1. In this Licence unless the contrary intention appears:

"Air Base Command Post" means Aerodrome Operation Support or such other person or organisation notified by the Licensor to the Licensee from time to time.

"Airfield Use Terms and Conditions" means the terms and conditions which entitles the Licensee to operate aircraft at and from the Land on the terms and conditions attached at Schedule 4.

"Building" means the building described as such in Item 6 of the Reference Schedule.

"Commencement Date" means the date specified in Item 2 of the Reference Schedule.

"Common Parts" means those parts of RAAF Base Point Cook which are from time to time designated by the Licensor as being intended for common use.

"Defence Common Access Card" means the access card issued by the Licensor to the Licensee enabling access to the Land.

"Expiry Date" means the date specified in Item 3 of the Reference Schedule.

"Fixed Review Date" means the date specified in Item 4B of the Reference Schedule alongside the words "Fixed Review Date".

"Licence Fee" means the monthly fee specified in Item 4 of the Reference Schedule.

"Land" means the land known as RAAF Base Point Cook and described in Certificate of title Volume 5980 Folio 928 and includes the Licensed Premises.

"Licence" means this Licence and includes the Airfield Use Terms and Conditions, all schedules, annexures and appendices thereto.

"Licence Fee" means the fee specified in Item 4 of the Reference Schedule.

"Licensed Premises" means those areas of the Land described in Item 6 of the Reference Schedule being the areas that the Licensee is authorised to use in accordance with this Licence Agreement.

"Licensee" means the Licensee named in Item 1 of the Reference Schedule and where the context so permits the employees, agents, contractors and invitees of the Licensee and where there is more than one Licensee includes each of them jointly and severally.

"Licensee's Fittings" means any structure, building, edifices, improvements, fixtures or chattels constructed by the Licensee or on its behalf for the purposes of the Permitted Use.

"Licensee's Removable Property" means those items specified in Item 8 of the Reference Schedule.

"Licensor" means the Licensor named in the Reference Schedule and includes its successors and assigns and where the context so permits, the employees, agents, contractors and invitees of the Licensor.

"Market Review Date" means the date specified in Item 4B of the Reference Schedule alongside the words "Market Review Date".

"month" means calendar month.

"Monthly Instalment Date" means the first day of each month.

"Outgoings" means:

- a. all rates, taxes and charges (whether the same are payable at law or by virtue of the Licensor agreeing that ex gratia payments will be made to the relevant authority) imposed, charged or assessed on or against the Licensed Premises, the Land, the Licensor or the Licensee or payable by the owner or occupier of the Licensed Premises and any charges payable under the Act or any other Act (Commonwealth or State) or any regulations under any Act;
- b. water, excess water, electricity, gas and other charges separately assessed, charged or metered (as the case may be) on or in respect of the Licensed Premises and the Building;
- c. all meter rents, the cost of future installation of any meter wiring or other apparatus necessitated by the use of electricity, gas or other power on the Licensed Premises; and
- d. repairs to and maintenance of the Building, including any gardening or landscaping;
- e. operating, repairing and maintaining heating, ventilation and air conditioning systems within and for the benefit of the Building;
- f. operating, repairing and maintaining security, hydraulic, fire safety systems within and for the benefit of the Building; and
- g. cleaning the Building but excluding the Licensed Premises.

"Permitted Use" means the business or activity to be carried on at or from the Land as permitted under clause 2 and as specified in Item 5 of the Reference Schedule.

"Reference Schedule" means the reference schedule to this Licence.

"Review Date" means the Market Review Dates and Fixed Review Dates.

"Security Rules" means those requirements established from time to time by either the Licensor, the Air Base Command Post or other person or body having jurisdiction in respect of security and safety as being essential to the security and safety of the Land, area, aircraft movements and/or flying activities including, without limitation, in relation to:

- (a) emergency procedures;
- (b) security clearances;
- (c) security screening (personnel and goods);
- (d) security identification cards;
- (e) the payment of fees as set by the Commonwealth from time to time to cover such security; and
- (f) site access including site access card use.

"Services" means the services running through or servicing the Licensed Premises including without limitation power, water, gas, electricity, telecommunications and any other utility services.

"State" means the State of Victoria.

1.2. Interpretation

- 1.2.1. Terms appearing in this Licence have the same meaning as set in clause 1.1.1 of the Airfield Use Terms and Conditions.
- 1.2.2. A reference to a person includes a reference to a body corporate.
- 1.2.3. Words in the singular include the plural and words and vice versa.
- 1.2.4. Words importing the masculine gender include the feminine and neuter.
- 1.2.5. Any reference in this Licence to any statute or regulation includes all amendments and revisions made from time to time to that statute or regulation.

- 1.2.6. Headings in this Licence have been inserted for convenience and reference only.
- 1.2.7. In the interpretation of this Licence no rules of construction apply to the disadvantage of any party on the basis that it put forward this Licence.
- 1.2.8. A covenant on the part of two or more persons binds them jointly and severally and a covenant for the benefit of two or more persons is for the benefit of them jointly and severally.

2. LICENCE

2.1. Grant of licence

- 2.1.1. Subject to this Licence, the Licensors grants to the Licensee a non-exclusive licence to use the Licensed Premises so as to enable the Licensee to carry on the Permitted Use together with the right in common with others of access to the Licensed Premises (with or without vehicles).

2.2. Reservations

- 2.2.1. The Licensors reserves to itself the rights specified in item 9 of the Reference Schedule.
- 2.2.2. Notwithstanding any other provision of this Licence, the Licensors may at any time and in its discretion refuse access to the Land or any part of the Land and the Licensee shall not be entitled to make any claim against the Licensors or seek compensation in respect of such refusal.

3. PERIOD OF LICENCE

This Licence shall commence on the Commencement Date and subject to earlier termination of this Licence, shall continue until the Expiry Date and thereafter on overholding from month to month on the same terms and conditions as this Licence to the extent that they can be applied to a monthly tenancy, until determined by no less than one month's notice of termination (to expire at any time) in writing given by one party to the other.

4. LICENCE FEE

4.1. Payment of Licence Fee

- 4.1.1. The Licensee shall pay the Licence Fee (whether formally demanded or not and without deduction) to the Licensors at the place and in the manner directed by the Licensors on the first day of each month during the currency of this Licence.
- 4.1.2. If this Licence ends on a day other than the last day of a month, the Licensee must pay to the Licensors in respect of the broken month at its commencement the proportion of the monthly instalment of the Licence Fee for the broken month, which proportion is to be calculated by multiplying the number of days in the broken month by the annual Licence Fee and dividing the result by 365.

- 4.1.3. The Licence Fee payable under this Licence shall be reviewed on the Review Dates in accordance with clauses 4.2 and 4.3.
- 4.2. Market Review**
- 4.2.1. If Item 4B of the Reference Schedule specifies a "Market Review Date" then this clause 4.2 applies.
- 4.2.2. The Licensor may at any time serve a notice in writing upon the Licensee specifying the reviewed Licence Fee ("Review Notice"). The Review Notice shall specify the Market Review Date which shall be:
- a. the Market Review Date specified in Item 4B of the Reference Schedule; and
 - b. in the case of a monthly overholding - the date specified in the Review Notice as the Market Review Date.
- 4.2.3. If the Licensee objects to the reviewed Licence Fee it must notify the Licensor of its objection and the basis therefore by notice in writing ("Objection Notice") no later than fourteen (14) days after the giving of the Review Notice. If the Licensee does not object to the Review Notice within the time stipulated in this clause 4.2.3 the reviewed Licence Fee shall be that specified by the Licensor in the Review Notice.
- 4.2.4. If the Licensee serves an Objection Notice within the time specified in clause 4.2.2 then the parties must negotiate in good faith to reach agreement upon a mutually acceptable Licence Fee within fourteen (14) days of the Objection Notice. If agreement is reached then the reviewed Licence Fee shall be that mutually agreed by the parties under this Clause 4.2.4.
- 4.2.5. If the parties do not reach agreement upon a mutually acceptable Licence Fee under Clause 4.2.4 then the reviewed Licence Fee must be determined in accordance with Clause 4.2.6 and Clause 4.2.7.
- 4.2.6. The dispute shall within seven (7) days of expiry of the fourteen (14) day period referred to in Clause 4.2.4 be referred for determination to two valuers, one to be appointed by each party. Each party must immediately on appointment of its valuer inform the other party of the same in writing. If either party does not appoint its valuer and inform the other party of the appointment within the seven (7) day period the other party may appoint the second valuer. In the event of no determination having been made by the valuers within one month of their appointment the dispute shall immediately be referred to an umpire appointed in accordance with clause 4.2.7 who will provide his determination within fourteen (14) days of his appointment. The written determination of the valuers or umpire as the case may be shall be conclusive and binding on the parties.
- 4.2.7. The following provisions shall apply in relation to appointment of the valuers and umpire under Clause 4.2.6.

- a. Each valuer and the umpire shall be a member of the Australian Property Institute (Victorian Division).
- b. If the valuers are not appointed on the same day then the date of appointment of both valuers shall be deemed to be the date of appointment of the later appointed valuer.
- c. If no determination has been made by the valuers within one month of their appointment then, on the written request of either valuer, an umpire shall be appointed within seven (7) days of the request by the valuer/s by the President or the senior official for the time being of the Australian Property Institute (Victorian Division) or, if there is no such body in existence at the time of the request, the umpire shall be appointed by the senior official for the time being of the Real Estate Institute of Victoria.
- d. Immediately upon appointment of the umpire, each valuer shall provide the umpire with a written opinion as to the market licence value of the Licensed Premises and the reasons for such opinion.
- e. The valuers and/or the umpire shall determine the market Licence Fee for the Licensed Premises on the relevant Market Review Date (as determined by reference to clause 4.2.2). In determining the market Licence Fee for the Licensed Premises in a Licence Fee review dispute, the valuers and the umpire shall as nearly as possible determine the market Licence Fee for the Licensed Premises having regard to Licence Fees ruling in the vicinity and to all such other matters and circumstances as may be relevant at the date on which the Licence Fee is to commence.
- f. In determining any dispute, the valuers and the umpire shall be deemed to be acting as experts and not as arbitrators and the laws of the State of Victoria from time to time in force relating to arbitration shall not apply.
- g. The fees and expenses of the valuers and the umpire shall be borne and paid by the parties in equal shares notwithstanding the result of a determination.

4.2.8. Until the Reviewed Licence Fee has been agreed or determined, the Licensee shall continue to pay the Licence Fee applying immediately prior to the Market Review Date which shall be adjusted subsequently to give effect to the parties' agreement or the determination from the Market Review Date. The amount of any adjustment shall:

- a. if the Licensee owes money to the Licensor, be paid by the Licensee to the Licensor within fourteen (14) days of the date upon which the reviewed Licence Fee has been agreed or determined; or
- b. if the Licensor owes money to the Licensee, be credited by the Licensor to the Licensee and set off against future Licence Fee payments until the amount owing to it has been satisfied in full.

4.3. Fixed Increase

If the Item 4B of the Reference Schedule specifies a Fixed Review Date, then on each Fixed Review Date which is during the term or any further term (excluding any Market Review Date), the Licence Fee will be increased by the percentage specified in Item 4B.

5. OUTGOINGS**5.1. Definitions****5.1.1. In this Lease****Base Year**

means the 2020/2021 financial year as updated in accordance with clause 5.3.1.

Base Year Amount

means s47G as updated in accordance with clause 5.3.1 calculated on the assumption that for the whole of the Base Year:

- a. the Building was fully completed, occupied and operational;
- b. the Licensor did not have the benefit of any guarantee or warranty relating to the Building; and
- c. all contracts for the maintenance of the Land and the Building were in place and operational.

Outgoings

has the same meaning as specified in clause 1.1.1.

Outgoings Year

means the period of 12 months commencing on 1 July and ending on 30 June even if part of that 12 month period does not fall within the Term.

Licensee's Contribution

means the amount determined from time to time in accordance with the following formula:

$$C = \frac{P \times N}{Y}$$

Y

where:

C is the Licensee's Contribution;

P is the Licensee's Proportion expressed as a percentage;

N is the number of days of the Term falling within the

relevant Outgoings Year;

Y is 365 (or 366 in the case of a leap year).

**Licensee's
Proportion**

means the proportion that the net lettable area of the Premises bears to the net lettable area of the Building being 37.1%

5.2. Licensee to Pay Increases in Outgoings over Base Year Amount

5.2.1. The Licensee must pay to the Licensor the Licensee's Contribution for an Outgoings Year within 14 days of being so notified by the Licensor.

5.3. Update to Base Year and Base Year Amount

5.3.1. On each Market Review Date:

- a. the Base Year will be updated to be the full financial year immediately preceding the relevant Market Review Date as the Base Year applicable from that Market Review Date; and
- b. the Base Year Amount will be updated to the amount of Outgoings paid or payable by the Licensor during the full financial year immediately preceding the Market Review Date.

6. TERMS AND CONDITIONS OF LICENCE

The Licensee hereby covenants and agrees with the Licensor as follows:

6.1. Activities of the Licensee from Licensed Premises Only

The Licensee will not carry on the Permitted Use in any area of the Land other than upon the Licensed Premises and any other locations authorised in writing from time to time by the Licensor.

6.2. Unacceptable Employees and Invitees

The Licensee will not:

- a. employ or continue to employ at the Land, or
- b. consent to any person entering Land or visiting the Licensee or allow to remain on the Land

any person who the Licensee has been notified in writing by the Licensor is a person who the Licensor reasonably considers should not be employed at or be present on the Land. If the Licensee gives a notice under this clause 6.2 the Licensor shall provide its reasons for the determination and the Licensee may within 14 days of the date of the notice object on reasonable grounds to the determination of the Licensor and make submissions relevant to the issue. The Licensor's final determination shall take into account those submissions and the Licensee shall not make any claim or objection against the Licensor in respect of any such notification or determination.

6.3. Compliance with Licensor's Directions

6.3.1. The Licensee will comply with all directions given from time to time by the Licensor in relation to:

- a. the storage of petrol, oil or other materials of an explosive or flammable nature in any of the Licensee's motor vehicles or other equipment or machinery;
- b. the security of the Land including the provision of keys to the Licensor of all buildings and structures in the Licensed Premises and ensuring that all the Licensee's staff and personnel are clearly identifiable;
- c. the road rules and signs including those relating to parking and will ensure that all its vehicles are clearly identifiable;
- d. conducting the Permitted Use so that there is no interference with flying operations and so as to ensure that there is full compliance with all air safety requirements including those specified by the Licensor or the Air Base Command Post or any other person authorised in respect of such requirements;
- e. access to other parts of the Land. Access is not permitted by the Licensee to restricted areas of the Land, or other areas of the Land as specified from time to time by the Licensor, the Air Base Command Post or other person authorised by the Licensor; and
- f. heritage and environmental requirements applicable to the Licensed Premises or any part of them, or the Land.

6.4. Stamp Duty and Legal Costs

6.4.1. The Licensee will pay all stamp duty including any fines or penalties in connection with the stamping of this Licence. In the event that the Licensor arranges for lodgement of such documents for assessment of stamp duty the Licensee will pay such stamp duty within seven (7) days of notification of such assessment.

6.4.2. The Licensee will on the earlier of either seven (7) days of demand or on the date of execution of this Licence, pay the Licensor's legal costs and disbursements (on a solicitor/own client basis) associated with the preparation, negotiation, settling, execution, completion, enforcement (whether actual or

contemplated), preservation of any rights, consent, approval or other action relating to this Licence.

6.4.3. The Licensee will on the earlier of seven (7) days of demand or at the time of execution of this Licence by the Licensee pay the Licensor's administrative and consultancy costs and disbursements associated with the preparation and enforcement (whether actual or contemplated) or preservation of any rights or other action relating to this Licence).

6.4.4. The Licensee will within fourteen (14) days of demand pay to the Licensor fair and reasonable administrative costs associated with service charges (including but not limited to the meter readings).

6.5. Licensee's Works

6.5.1. The Licensee must as soon as practicable and prior to commencement of any works on the Licensed Premises, advise the Licensor of details of the works to be undertaken by the Licensee.

6.5.2. No works will be allowed to proceed without the Licensor's prior consent (which may be given or refused at the Licensor's absolute discretion). The Licensee must comply with any requirements of the Licensor in respect of any works. For the avoidance of doubt, the final sentence of clause 11 does not apply in connection with this clause 5.5.2.

6.6. Assignment of Rights Prohibited

6.6.1. The Licensee acknowledges that this Licence is personal to the Licensee and that it will not:

- a. assign this Licence or any right, authority, privilege, benefit or obligation arising or which may arise pursuant to this Licence; or
- b. conduct the Permitted Use for or on behalf of any other person; or
- c. conduct the Flying Operations as defined in the Airfield Use Terms and Conditions for on behalf of any other person,

without the prior written consent of the Licensor.

6.6.2. Any consent of the Licensor under this clause may be given on such terms and conditions as the Licensor in its absolute discretion thinks fit.

6.7. Nuisance

The Licensee will not do anything on the Land which may constitute a nuisance, annoyance or danger to any person on the Land.

6.8. Advertising Signs

The Licensee will not display any advertisement, placard or sign other than those the contents, form and location of which have been approved in writing by

The Licensor and shall remove or obliterate forthwith any advertisement, placard or sign whether previously approved or not when so directed by the Licensor.

6.9. Indemnity

The Licensee shall indemnify and keep indemnified the Licensor, its employees, contractors, invitees and agents, from and against all claims, actions, liabilities and losses arising from, and any costs, charges and expenses incurred in connection with:

- a. loss of or damage to any property;
- b. injury or death of to any person; or
- c. economic loss suffered by any person

caused by;

- d. any act, negligence or default of the Licensee or of the Licensee's employees, agents, contractors or invitees;
- e. any danger created by the Licensee or the Licensee's employees, agents, contractors or invitees (whether or not the existence of that danger was or ought to have been known to the Licensee);
- f. the operation of any equipment machinery or thing by any person (other than the negligent operation of any equipment, machinery or thing by an employee, agent or contractor of the Licensor); or
- g. any other act, omission or thing other than the negligence or default of the Licensor

which may arise from or in relation to the use of the Land for the Permitted Use, entry upon the Land by virtue of this Licence or otherwise in connection with this Licence.

6.10. Insurance

6.10.1. The Licensee will take out a public liability insurance policy in respect of the Permitted Use in the joint names of the Licensor and the Licensee and which in the Licensor's opinion adequately protects the Licensor, and the Licensee will ensure that the interest in this insurance is evidenced in writing by the insurer, to a minimum liability of twenty million dollars (\$20,000,000) (or such greater amount as the Licensor may from time to time require) for any single event and such policy will be taken out with an insurer approved by the Licensor from time to time and the Licensee will provide upon demand evidence to the Licensor of the currency of such insurance policy or policies.

6.10.2. The Licensee will take out a property damage insurance policy in the joint names of the Licensor and the Licensee adequately protecting the Licensor against damage to its property from the use of the Licensed Premises, the conduct of the Permitted Use, fire, lightning, flood, storm, earthquake, water damage (including sprinkler leakage and rain water and, in respect of rain water, only to

the extent that this can be obtained taking into account the condition of the roof, drainage and guttering on the Licensed Premises at the Commencement Date) explosion, impact by vehicles or aircraft or articles dropped from aircraft, riots, strikes, malicious damage, radiation (to the extent that insurance cover for radiation is legally available) and fusion and will ensure that the Licensor's interest in this insurance is evidenced in writing by the insurer, to a minimum liability of five million dollars (\$5,000,000) (or such other amount as the Licensor may from time to time require taking into account the nature of the Licensed Premises) for any single event and such policy will be taken out with an insurer approved by the Licensor from time to time and the Licensee will provide upon demand evidence to the Licensor of the currency of such insurance policy or policies.

6.10.3. The Licensee will take out workers compensation insurance to the fullest extent required by law and such policy will be taken out with an insurer approved by the Licensor from time to time and the Licensee will provide upon demand evidence to the Licensor of the currency of such insurance policy or policies.

6.10.4. The Licensee will not do anything or omit to do anything whereby any insurance effected pursuant to this Licence may become vitiated or non-effective.

6.11. Supply of Information

The Licensee will, if required by notice in writing by the Licensor, supply to the Licensor such information as the Licensor may reasonably require concerning the conduct of the Permitted Use or the Flying Operations. Information sought pursuant to this clause will be provided within seven (7) days of service of the said notice or if the said notice specifies a time period then it will be provided within that time period.

6.12. Licensee to Advise Licensor

The Licensee shall advise the Licensor forthwith of any change in:

- a. the name of the Licensee;
- b. the address or registered office of the Licensee;
- c. the directors of the Licensee, if any

which occur during the period of this Licence.

6.13. Interest in Arrears of Payments

If any amount due and payable to the Licensor is not paid within fourteen (14) days of the date on which the amount becomes due and payable under this Licence, the Licensee shall pay the Licensor interest at the rate of 1.5% per month (calculated cumulatively) on all such amounts from the date they become due and payable.

6.14. Rectification by Licensor

If within a reasonable period after notice in writing given by the Licensor to the Licensee requiring any act to be done in accordance with the Licensee's obligations under this Licence, the Licensee shall fail or neglect to do the act, the Licensor may do the act and the expense of so doing (of which expense a certificate by the Licensor shall be conclusive) shall be a debt due by the Licensee to the Licensor.

6.15. Observance of Regulations

The Licensee will observe all directions rules and regulations for the time being in force relating to the means of access to and egress from the Licensed Premises and in respect of any activities on the Land.

6.16. Disposal of Refuse

The Licensee will comply with all the Licensor's directions as to disposal of waste and debris and without limiting the generality of any other provision the Licensee will keep the Licensed Premises tidy and free from rubbish, carcasses, debris, garbage, rabbits, vermin, thistles and noxious weeds and will comply with the requirements of the *Catchment and Land Protection Act 1994* (Vic) and all Commonwealth and State laws in force from time to time.

6.17. Standard of Cleanliness

6.17.1. The Licensee will at all times keep the Licensed Premises in a thoroughly clean and serviceable condition to the satisfaction of the Licensor having regard to the nature of the Permitted Use. Without limitation the Licensee must at its own cost keep the Licensed Premises free of pests and rodents at all times.

6.17.2. The Licensee together with other occupants of the Building must at all times keep and maintain the Common Parts clean and tidy, the cost of the same to be shared with co-Licensees.

6.18. Services

6.18.1. The Licensee must obtain the Licensor's prior approval before undertaking any works or alterations likely to affect the Services.

6.19. Approval of Licensor

Save and except for the Licensee's right to carry out routine maintenance on the equipment, facilities, buildings, fixtures or fittings erected on the Licensed Premises in accordance with this Licence, the Licensee will not remove, replace,

exchange or alter any part of the equipment, facilities, installations, buildings, fixtures or fittings erected on the Licensed Premises pursuant to this Licence unless it has first received the written consent of the Licensor and the Licensor has issued written approval. Any request by the Licensee pursuant to this clause 6.19 shall clearly set out the nature and extent of the removal, replacement, exchange or alteration sought to be made. The Licensor may in its absolute discretion grant the said approval, or grant the said approval subject to such conditions as it considers appropriate or refuse the said approval.

6.20. Heritage Requirements

- 6.20.1. The Licensee acknowledges and accepts that the Licensed Premises are of significant heritage value. The Licensee shall at all times occupy the Licensed Premises and conduct the Permitted Use in a manner which will ensure that the heritage requirements for the Licensed Premises are adhered to and that the heritage value of the Licensed Premises is not compromised. Without limiting the generality of the foregoing the Licensee must comply with all requirements of the Australian Heritage Council and the Commonwealth Department of Defence relating to the use, management, maintenance and preservation of the Licensed Premises or any improvements thereon.
- 6.20.2. The Licensee shall at its cost repair and maintain the Licensed Premises so as to ensure that they are maintained in a sound, safe and good Tenatable condition, taking into account the condition of the Licensed Premises at the Commencement Date, and in accordance with the requirements of this Licence (including without limitation the requirements of Clause 5.20.1). All repairs and maintenance must comply with the requirements of the Australian Heritage Council and the Commonwealth Department of Defence.
- 6.20.3. Without limiting any other obligation of the Licensee under this Licence the Licensee must not make any alteration or addition to the Licensed Premises, install any fittings or display any merchandise or other objects which impair or detract from the architectural form, style, appearance or heritage significance of the buildings forming the Licensed Premises.

5.21 Prohibition on Liquor and smoking

- 6.20.4. The Licensee shall ensure that:
 - a. ensure that intoxicating liquor is not consumed, brought onto or kept in the Licensed Premises or the Land, and
 - b. comply with the Licensor's no smoking policies at the Land.

6.21. Telephones and Data systems

- 6.22. The Licensee shall install and maintain at its own cost telephones and data network and supply systems together with all ancillary cabling thereto within and serving the Licensed Premises. The Licensee shall pay when due all costs incurred in connection with the supply and usage of telephone and data from the Licensed Premises.

6.23. Use of Common Parts

- 6.23.1. The Licensee may together with other occupants of the Building subject to the terms of this Licence have access to and use of the Common Parts of the Land for the purposes of accessing the Licensed Premises and the Airfield. The Licensee is prohibited from using Common Parts for any business or commercial purpose or for the display or advertisement of any goods or services or for any purpose other than accessing the Licensed Premises or the Airfield.
- 6.23.2. The Licensors may at the cost of the Licensee make good any damage to the Common Parts or any facility or appurtenance thereof occasioned by want of care, misuse or abuse by the Licensee.
- 6.23.3. The Licensee shall not in any way obstruct or permit the obstruction of the Common Parts or any part thereof of fire doors, or escape doors within or near the Licensed Premises.

6.24. Conduct of Licensee

The Licensee shall ensure that it and its employees, contractors, agents and invitees do not conduct themselves or undertake any action or activity which may cause the reputation of the Licensors to be brought into disrepute or which may give rise to complaint or criticism.

7. Airfield Use Terms and Conditions

The Licensee will at all times comply with the Airfield Use Terms and Conditions.

8. TERMINATION, WORKS, MAINTENANCE, RATES AND DAMAGE

8.1. Termination Provisions

- 8.1.1. In addition to its rights under clause 3, the Licensors may terminate this Licence forthwith upon written notice to the Licensee if:
- a. any money due to the Licensors by the Licensee under this Licence remains unpaid for a period of fourteen (14) days after it falls due, whether formally demanded or not;
 - b. the Licensee omits or fails to observe or perform any of the terms, conditions or covenants of this Licence required to be observed or performed by the Licensee, after the Licensors have given the Licensee a notice in writing requiring the Licensee to remedy the omission or failure or

to observe or perform the term, condition or covenant within fourteen (14) days of the date of the notice;

- c. in the case of the Licensee being a company, the company comes under one of the forms of external administration referred to in chapter 5 of the Corporations Act 2001 (Cth), or has an order made against it for the purpose of placing it under external administration;
- d. a representation or warranty made or taken to be made by or on behalf of the Licensee in connection with this Licence is found or notified by the Licensee to be incorrect or misleading when made or taken to be made;
- e. any other agreement to which the Licensor and the Licensee are parties is terminated; or
- f. the Licensee repudiates this Licence,

and this Licence shall thereupon determine on the date specified in the notice but without prejudice to any claim, right of action or remedy which the Licensor may have against the Licensee in respect of any breach of this Licence.

8.2. Removal of Licensee's Works and Property

8.2.1. The Licensee shall (unless the Licensor advises otherwise in writing no later than fourteen (14) days prior to expiry or sooner determination of this Licence) at the expiration or sooner determination of this Licence at its expense remove from the Licensed Premises the Licensee's Removable Property and the Licensee's fittings ensuring that in such removal no damage is done to the Licensed Premises and shall forthwith make good and restore the Licensed Premises to the condition that the same were in prior to the Licence, fair wear and tear excepted. If the Licensee fails to make good or restore the Licensed Premises, then the Licensor may make good the same, recovering the cost of so doing from the Licensee.

8.2.2. If the Licensee fails to remove any of the Licensee's Removable Property and the Licensee's fittings from the Licensed Premises, then the Licensor may either keep or remove and dispose of the same as it thinks fit without being liable to the Licensee or any other person for damages or otherwise and the Licensee hereby releases and indemnifies the Licensor from and against any such liability.

8.2.3. The Licensee must at the expiry or termination of this Licence yield up the Licensed Premises in good and tenantable repair and condition and in a clean and tidy condition and in accordance with the standards required by this Licence.

8.3. Maintenance and Repair

8.3.1. The Licensee must during the term keep and repair the Licensed Premises (including the fittings and other things on the Licensed Premises which are not the property of the Licensee) in good and tenantable repair and condition, (fair wear and tear excepted) and shall be responsible for the safety and fire protection of the Licensed Premises and in connection with the conduct of the Permitted Use. The Licensee will not, unless caused or contributed to by the

negligence, default, act or omission of the Licensee, its employees, officers, agents, contractors, licensees or invitees, be liable for structural repairs of the Licensed Premises.

- 8.3.2. The Licensee shall not bring, move, remove or permit to be brought, moved or removed into, about or from those parts of the Licensed Premises comprising buildings any heavy articles or distribute or alter the distribution of loads on any floor thereof without the prior written consent of the Licensor. If such consent is given any bringing, moving, removing or distribution of such heavy articles or loads (as the case may be) shall be effected in the manner and at the times approved by the Licensor and the Licensee shall immediately at its cost make good any damage caused thereby.
- 8.3.3. The Licensee will not without the prior written consent of the Licensor install or operate any electrical or other equipment in the Licensed Premises or the Land which would or might overload the cables, switchboards or sub boards through which electricity is connected or conveyed to the Licensed Premises or the Land or which would or might interfere with communication equipment at the Land or in aircraft.
- 8.3.4. The Licensee must give to the Licensor prompt written notice (except in the case of emergency when verbal notice may be given) of any accident to or defect or want of repair to the Land, in any Services, fixtures, fittings, plant or equipment in the Land or Licensed Premises and of any circumstance likely to be or to cause any danger risk or hazard to the Land, Licensed Premises, any part of them or to any person in or in the vicinity of the Land or Licensed Premises or any part of them.
- 8.3.5. The Licensee shall at its cost replace all electric globes and fluorescent tubes in the Licensed Premises which may be damaged or broken or fail for any reason.
- 8.3.6. Without limiting any other obligations of the Licensee, the Licensee will at its cost be responsible for all minor maintenance works and repairs to the Licensed Premises (including all fittings and other property in or on the Licensed Premises) to ensure that the Licensed Premises and the fittings and fixtures therein are maintained in good tenable repair and condition.

8.4. Rates, Taxes and Outgoings

- 8.4.1. The Licensor will pay the Outgoings:

8.5. Vermin

The Licensee will take all reasonable precautions to keep the Licensed Premises free of rodents, vermin, insects, pests, birds and other animals, and, if required by the Licensor, the Licensee shall at its own cost employ from time to time or periodically pest exterminators approved by the Licensor.

8.6. Damage and Destruction

8.6.1. In the event that the Licensed Premises or the Land are destroyed or damaged to the extent that the Licensee cannot use or have access to the Licensed Premises or the Land including for Flying Operations, then the Licensor may, at its option rebuild or repair the Licensed Premises in whole or in part (as the case requires) or restore the Land.

8.6.2. If the Licensor elects not to rebuild or repair the Licensed Premises or restore the Land within a reasonable time then this Licence may be terminated by either party by written notice expiring on the date specified in the notice.

8.6.3. The Lessor shall not be liable to pay compensation to the Licensee for any of the matters referred to in this clause 8.6.

8.6.4. The Licensor may reduce the Licence Fee by a reasonable amount (taking into account the type and extent of the destruction or damage of the Licensed Premises) until the Licensed Premises are again fit for use or this Licence is terminated under clause 8.6.2.

8.6.5. The Licensee shall not be entitled to terminate this Licence under clause 8.6.2 or obtain a reduction in the Licence Fee under clause 8.6.4 and the Licensee must continue to pay the Licence Fee without deduction if the destruction or damage was caused or contributed to by the Licensee.

9. GENERAL

9.1. Service of Notices

9.1.1. Any notice to be given or served upon the Licensee under this Licence shall be deemed to have been duly given or served if it is in writing, signed on behalf of the Licensor by an officer of the Department of Defence or by or from the Australian Government Solicitor or by or from an authorised representative of the Department of Defence, and is either delivered by hand, posted in a prepaid envelope, or sent by email to the address of the Licensee specified in Item 11 of the Reference Schedule or such other address for service notified by the Licensee.

9.1.2. Any notice to be given to or served upon the Licensor under this Licence shall be deemed to have been duly given or served if it is in writing signed by or on behalf of the Licensee and is either delivered by hand, posted in a prepaid envelope or sent by email to the address specified at Item 11 of the Reference Schedule or such other address as is notified from time to time.

9.1.3. Any notice sent by:

- a. post shall be deemed to have been received at the time of two business days after the date of posting; and,
- b. email shall be deemed to have been received on the day of sending.

9.2. **Approval**

Any consent or approval given by the Licensor to the Licensee under this Licence may be given:

- a. by the Licensor or such other person authorised by the Licensor; and
- b. subject to such terms and conditions as the Licensor or its representative may in its absolute discretion deem fit.

9.3. Variation or Waiver

Except as otherwise provided in this Licence, no term or condition of this Licence shall be varied or waived except in writing signed by the parties.

9.4. Requirements of Authorities

The Licensee shall at its own cost comply with all statutes ordinances proclamations by-laws orders or regulations present or future affecting or relating to the Land the Licensee or the Permitted Use and with all lawful requirements which may be made or notice or orders which may be given to the Licensor or the Licensee in respect of the same by any competent authority having jurisdiction or lawful authority over or in respect of the Land, the Licensee or the Permitted Use and the Licensee will keep the Licensor indemnified in respect of all such matters in this clause referred to PROVIDED ALWAYS that if the Licensee shall fail neglect or refuse to comply with any such statute ordinance proclamation by-law order regulation requirement or notice it shall be lawful for but not obligatory upon the Licensor to comply with the same and all monies paid by the Licensor in connection therewith shall be payable by the Licensee to the Licensor on demand as a liquidated debt.

9.5. Security Rules

The Licensee will comply with the requirements of any Security Rules and a breach or failure by the Licensee to do so gives the Licensor, in addition to its other rights and powers, the right to require the Licensee to rectify such non-compliance within a reasonable time and failure by the Licensee to comply shall entitle the Licensor to do such things at the Licensee's cost as may enable the Security Rules to be satisfied. Without limiting this clause, the Licensee must return to the Licensor those Defence Common Access Cards in respect of the invitees notified by the Licensor to the Licensee. If the Licensee fails to do so then the Licensor may nonetheless deny to the Land access to the relevant card holder, and confiscate the relevant Defence Common Access Card.

9.6. Permitted Use

In addition to an obligation under Commonwealth law the Licensee must carry on the Permitted Use on the same basis as it would be obliged to do so if the Permitted Use was carried out in the State other than at the Land and was subject to State laws.

9.7. Commonwealth Place

The Licensee agrees that notwithstanding that the Licensor may not be required to comply with legislation (other than legislation of the Commonwealth of Australia) the Licensee must comply with all legislation and other obligations which would apply if the Permitted Use or the Flying Operations were not carried out at the Land or other Commonwealth place.

9.8. Scope of Licence

- 9.8.1. The Licensee acknowledges that it is aware that the rights under this Licence are not exclusive and are strictly limited in scope to the Permitted Use (as

defined) and the Flying Operations, and that it must apply for consent to carry out any other activities at the Land. For the avoidance of doubt the decision of the Licensor is final and binding in the event of a dispute as to the extent of the Permitted Use or the Flying Operations.

- 9.8.2. The Licensee acknowledges that this Licence creates contractual rights only and does not confer any estate or interest in land on the Licensee.

10. SECURITY DEPOSIT/BANK GUARANTEE

- 10.1. The Licensee will, on or before the signing of this Licence, arrange for either:
- a. the issue by a trading bank or other organisation approved by the Licensor of a guarantee on such terms as the Licensor may require in favour of the Licensor for an amount specified in Item 7 of the Reference Schedule; or
 - b. the provision of a security deposit for an amount specified in Item 7 of the Reference Schedule to held by the Licensor in an appropriate account.
- 10.2. The Licensor may at any time and without reference to the Licensee call for payment under the guarantee or deduct moneys from the security deposit to pay for or reimburse the Licensor for costs incurred by the Licensor as the result of any breach of this Licence by the Licensee. Subject to compliance by the Licensee of its obligations under this Licence, following the expiry or sooner determination of this Licence, the Licensor will release the guarantee or refund the security deposit (whichever is appropriate and without interest) to the extent that the guarantee or security deposit has not been called upon by the Licensor. In the event of a deduction from the guarantee or security deposit the Licensee shall forthwith upon demand in writing by the Licensor lodge a further guarantee or security deposit in an amount equal to the sum so deducted which amount shall be added to the residue of and form part of the guarantee or security deposit (as the case may be). The claiming against the guarantee or security deposit or lodgement of a further guarantee or security deposit will not limit any other right the Licensor may have as a result of a breach by the Licensee of any provision of this Licence.

9. GUARANTEES

Deleted

11. LICENSOR'S ENTRY

The Licensor may at any time on giving reasonable notice (except in the case of emergency in which case notice is not required) enter the Licensed Premises for the purpose of inspecting the same and, if found necessary, for remedying the cause of any emergency or breach.

12. PRECEDENCE OF DEFENCE FUNCTIONS

The Licensee expressly agrees and acknowledges that the Land is a Defence facility and that Commonwealth activities will take precedence over the

Permitted Use. The Licensee shall not be entitled to make any claims or seek any Licence Fee or Access Fee abatement or deduction as a result of interference with or restrictions on the conduct of the Permitted Use or access to the Land arising from or in connection with the Commonwealth's use of the Land for its purposes and functions (which includes the permitted activities of other airfield operators, Licensees and licensees). The Licensor and the Licensee agree to liaise in a co-operative and reasonable manner to facilitate mutually satisfactory arrangements for the various activities on the Land.

13. NO GUARANTEE OF TRADE

The Licensee acknowledges that the Licensor by its officers, employees, consultants or agents has made no representation express or implied to the Licensee as to the volume of business or trade which might reasonably be anticipated by the Licensee in the conduct of the Permitted Use or the Flying Operations and that the Licensor, its officers, employees, consultants and agents shall not be answerable to the Licensee for any loss of profit or diminution in business resulting from the use of the Land by the Commonwealth or from any interruption due to flights or movements on the Land howsoever caused or from any restriction to trade either voluntarily assumed by the Licensee or imposed on it by a third party or for any loss or decrease in the revenue of the Licensee due to any cause whatsoever

14. INFORMATION

The Licensee shall not furnish any information nor issue any document or written or printed material concerning the Department of Defence, this Licence, other Airfield users, or any other matter pertaining to the Commonwealth of Australia or the Land for publication or broadcast in any of the media or by way of advertising or promotional material without the prior written approval of the Licensor.

15. ACKNOWLEDGEMENTS

15.1. The parties agree that and the Licensee acknowledges that:

- a. any provision of this Licence (not being a fundamental term) which is in breach of any statute regulation by-law or ordinance and in consequence of such breach or for any other reason is void, voidable, unenforceable or invalid shall in any such case be severable from this Licence and this Licence shall be read as though such provision did not form part of the same at any time;
- b. notwithstanding that the Licensor may not be required to comply with legislation (other than legislation of the Commonwealth of Australia) should the Licensor so require the Licensee must comply with all legislation and other obligations which would apply if the Licensed Premises or the Land were not situated on a Commonwealth place and if the Licensor were not able to claim the immunity of the Crown. In addition the Licensee must comply with all requirements imposed by the Licensor;
- c. the Licensee has made and relied on its own enquiries in relation to all matters relevant to its decision whether or not to enter into this Licence and

has not relied on any representation, warranty or undertaking (except as expressly contained in this Licence) given by the Licensor in determining whether or not to enter into this Licence; the Airfield is not a licensed airfield;

- d. the Licensor does not expressly or impliedly warrant or represent that the Land or the Licensed Premises are or will remain suitable, fit or adequate for the Permitted Use or that access to the Licensed Premises will be available at all times;
- e. the Licensor does not expressly or impliedly warrant or represent that the Airfield is or will remain suitable, fit or adequate for use as an airfield or that access to the Airfield will be available at all times; and,
- f. the Licensor enters into this Licence in its capacity as land owner and nothing in this Licence is to be construed as the Licensor acting in any regulatory capacity or assuming regulatory responsibilities.

16. APPLICABLE LAW

The parties agree, subject to this Licence, that the Courts of competent jurisdiction of the State of Victoria shall have jurisdiction to entertain any action in respect of, or arising out of, this Licence.

17. SECURITY

The Licensee is responsible for the security of the Licensed Premises and shall ensure that all necessary arrangements are made and maintained for the safety and security of the Licensed Premises and all persons and items therein at all times.

18. CAR PARKING

18.1. The Licensee will ensure that its employees, agents and visitors only park in the designated car parking areas (if any) approved by the Licensor from time to time.

18.2. The Licensee hereby releases and indemnifies the Licensor, its invitees, agents, employees and contractors from all claims and costs incurred in connection with any damage or injury to property or person or theft of property arising from the use by the Licensee its employees, contractors, invitees and agents of the car parking bays.

19. AIRCONDITIONING

19.1. The Licensee acknowledges and accepts that the Licensor does not warrant the fitness or ongoing operation of the airconditioning system and the Licensee will not be entitled to make any claim or seek any abatement in respect of any malfunction or cessation of operation of the airconditioning system.

19.2. The Licensor will endeavour to keep the airconditioning plant operating during the hours of 7.00 am to 7.00 pm Monday to Friday (inclusive) excepting public holidays.

19.3. The Licensor will make natural or mechanical ventilation available on request after 7.00 pm and on weekends and public holidays and during any hours where it is bound by applicable laws to do so.

19.4. The Licensee shall immediately upon becoming aware of any malfunction in the operation of the airconditioning system advise the Licensor of the same and the Licensor shall as soon as reasonably practicable (having regard to the cause and nature of the malfunction, the extent of the remedial works and the extent to which the malfunction has been caused by factors within its control) after being so notified by the Licensee take reasonable steps to remedy or repair the malfunction.

19.5. Not Used.

19.6. The Licensee releases the Licensor from any claim, liability, demand or cause of action arising from the insufficiency or the failure of the operation of the airconditioning system.

20. NO WARRANTY

20.1. The Licensee expressly agrees that the Licensor does not expressly or impliedly warrant or represent that:

- a. the Licensed Premises are or will remain suitable or adequate for all or any part of the Permitted Use, or
- b. the Land is or will remain suitable or adequate for all or any part of the Flying Operations,

and any warranties or representations are hereby expressly negated.

20.2. The Licensee hereby releases the Licensor from any claims, costs, actions or demands which may be made against or sustained by the Licensor as a result of or in connection with:

- a. the Licensed Premises not being or remaining fit for all or any part of the Permitted Use unless the same is due to the Licensor not complying with its covenants under this Licence, or
- b. the Land not being or remaining fit for all or any part of the Flying Operations or this Licence.

20.3. The Licensee shall not require the Licensor to upgrade or alter the Licensed Premises, the Land or the Airfield or any part of them to render them suitable for the Permitted Use or the Flying Operations. Any upgrading or alteration shall be undertaken by the Licensee at its cost and subject to the provisions of this Licence.

21. RELEASES AND INDEMNITIES

The releases and indemnities given by the Licensee under this Licence shall survive the expiration or termination of this Licence.

22. RENEWED LICENCE

22.1. If the Licensee wishes to take a renewed licence of the Licensed Premises for a further term set out in Item 10 of the Reference Schedule commencing upon the expiration of the term hereby granted and;

- a. the Licensee gives notice to the Licensor of that wish not less than three (3) months prior to the expiration of the term of this Licence;
- b. the Licensee is not and has not been in breach or default under this Licence; and
- c. the Licensed Premises is available for the Permitted Use, as determined by the Licensor.

then the Licensor may grant to the Licensee a new Licence of the Licensed Premises for the said further term and:

- d. at an initial Licence Fee which is determined in accordance with clause 4.2

- e. at an initial Access Fee which is determined in accordance with clause 4.2; and,
- f. and otherwise on the same terms and conditions contained herein.

22.2. The renewed Licence referred to in clause 20.1 will include this clause only if Item 10 of the Reference Schedule refers to a further term after that for which the new Licence is being granted.

23. EARLY TERMINATION NOTICE

- 23.1. Notwithstanding any other provision of Licence if:
- a. the Land or the Airfield any part of them is required by the Licensor for the conduct of Defence functions or any other Commonwealth or government related activities; or
 - b. the Licensor elects to restrict or remove access to the Land or the Airfield; or
 - c. the Licensor alters the administrative arrangements for the Land or the Airfield or any part of them; or
 - d. if the Licensor disposes of its interest in the Land in any manner, or
 - e. the Licensor intends to redevelop the Building or the Land,
- and
- f. the Licensor informs the Licensee of the same in writing,
- then the Licensor may serve a written notice ("Early Termination Notice") on the Licensee terminating this Licence on a date nominated in the Early Termination Notice ("the Early Termination Date") provided that the Early Termination Notice shall be served on the Licensee at least one (1) month prior to the Early Termination Date. The Early Termination Notice may be served at any time. The Licence shall terminate on the Early Termination Date but without prejudice to any antecedent rights and remedies which the Licensor may have against the Licensee.

- 23.2. The Licensee hereby acknowledges and agrees that it shall have no entitlement to compensation, damages, costs or expenses howsoever incurred arising directly or indirectly by the Licensor exercising its rights pursuant to this clause 23 and the Licensee hereby releases the Licensor from and against all claims, costs, expenses or actions which may be made incurred by or brought against the Licensor as a result of the Licensor exercising its rights pursuant to this clause.
- 23.3. The Licensee may terminate this Licence at any time by serving a notice on the Licensor, in which case this Licence will terminate on the date specified in the Licensee's notice but without prejudice to any antecedent rights and remedies which the Licensor may have against the Licensee.
- 23.4. Notwithstanding anything contained in this Licence the Licensee will not be entitled to a refund of the Licence Fee or any costs paid in advance if this Licence is terminated under clause 23.3.

24. GST

- 24.1. In this Licence "GST" means a Commonwealth goods and services tax which arises from "A New Tax System (Goods and Services Tax) Act 1999" ("GST Act") as amended.
- 24.2. In this clause 24 words and phrases defined in the GST Act have the meaning attributed to them in the GST Act (unless the context otherwise requires).
- 24.3. Unless otherwise indicated, all consideration for any supply made under this Licence is exclusive of any GST imposed on the supply.
- 24.4. Subject to this clause 24, if one party (Supplier) makes a taxable supply under this Licence to the other party (Recipient), the Recipient on receipt of a tax invoice from the Supplier must pay without setoff an additional amount to the Supplier equal to the GST imposed on the supply in question.
- 24.5. No party may claim or retain from the other party any amount in relation to a supply made under this Lease for which the first party can obtain an input tax credit or decreasing adjustment.
- 24.6. If any payment under this Licence is calculated as a percentage of or by reference to another amount or revenue, that payment will be calculated by reference to or as a percentage of that other amount or revenue, net of any GST component.

25. LICENSEE'S WORKS

At the expiry or earlier termination of this Licence, if the Licensor so requests in writing, the Licensee must, at its cost, reinstate and restore the Licensed Premises to their condition at the time the Licensee took possession of the Licensed Premises to the satisfaction of the Licensor and the Licensee indemnifies the Licensor for any costs incurred by the Licensor as a result of the Licensee's failure to comply with this clause 25.

26. ACKNOWLEDGEMENT BY LICENSEE

The Licensee acknowledges that nothing in this Licence is intended to grant to the Licensee exclusive rights to use or occupy the Licensed Premises. The Licensee also acknowledges that the Air Base Command Post or any other person authorised by the Licensor is entitled to use the Licensed Premises for the purposes of accessing those parts of the Building which are excluded from the Licensed Premises or for any other purpose authorised by the Licensor.

SCHEDULE 1 REFERENCE SCHEDULE**ITEM 1****Parties****Licensor:**

The Commonwealth of Australia represented by the
Department of Defence
ABN 68 706 814 312
C/- JLL,
GPO Box 2068,
Canberra ACT 2601
Email: s47E(d) @defence.gov.au

Licensee:

Royal Melbourne Institute of Technology
ABN 49 781 030 034
C/- RMIT University – Property Services
Level 27/180 Lonsdale St
MELBOURNE VIC 3000

ITEM 2
(Clause 1.1)**Commencement Date**

1 January 2022

ITEM 3
(Clause 1.1)**Expiry Date**

31 December 2024

ITEM 4
(Clause 1.1)**A. Licence Fee****The Licence Fee:**

s47G
inclusive of GST per annum, and

payable by equal monthly instalments on each Monthly
Instalment Date, subject to review as set out in Clause 4
and Item 4B of this Reference Schedule.

B. Licence Fee Review Dates**Market Review Date:**

1 January 2025

1 January 2026

1 January 2027

Fixed Review Dates and fixed percentage increase:

3% fixed increase on 1 January 2022

and thereafter on each anniversary of the Commencement Date (except 1 January 2025) during any further term and overholding (excluding any Market Review Date).

ITEM 5
(Clause 1.1)**Permitted Use**

Office accommodation and classroom facilities associated with RMIT Flight Training and specifically excludes all other uses.

ITEM 6
(Clause 1.1)**(1) Licensed Premises**

An area of approximately 1,028.5 square metres comprising:

(a) 35 square metres being part of s47G and

(b) 993.5 square metres being the whole of s47G

at RAAF Base Point Cook as highlighted yellow on the attached plans at Schedule 2.

(2) Building

s47G at RAAF Base Point Cook.

ITEM 7
(Clause 10)**Security Deposit/Bank Guarantee**

Not applicable.

ITEM 8
(Clause 8.2)**Licensee's Removable Property**

Those items listed at Schedule 3.

ITEM 9
(Clause 2.2)**Licensor's Reserved Rights**

The right to pass or run water, air, electricity, sewerage, drainage, gas or other substances through pipes, lines, tubes, conduits, ducts and cables running through the Licensed Premises together with rights of access and usage of the Licensed Premises as necessary for the Licensor's functions and activities and such other rights as the Licensor is entitled to at law by virtue of the grant of a non exclusive licence creating contractual rights between the parties.

ITEM 10
(Clause 22)

Three (3) further terms of one (1) year each.

ITEM 11
(Clause 9.1)**Notices to Licensor**

Department of Defence
C/- C/- JLL,
Level 7, 121 Marcus Clarke Street
Canberra ACT 2600
Email: s47E(d) [REDACTED]@defence.gov.au

Notice to Licensee:

RMIT University – Property Services
Level 27/180 Lonsdale St
MELBOURNE VIC 3000

ITEM 12 Special Conditions

Not applicable.

EXECUTED as a Deed on the day and year first hereinbefore written

Executed for and on behalf of the
Commonwealth of Australia by a duly
authorised officer in the presence of:

s22
[Redacted]
Signature of Authorised Officer

s47E(c)
[Redacted]
Name of Authorised Officer (print)
Position Number: s47E(c)
Position Name: *Dir. Estate licensing and leasing*
Defence Estate & Infrastructure Group

SIGNED for and on behalf of **ROYAL
MELBOURNE INSTITUTE OF
TECHNOLOGY ABN 49 781 030 034** by
a duly authorised officer

s22
[Redacted]
Signature
s47F
[Redacted]
SVP Strategy & Operations
Name & Title

SCHEDULE 2 PLAN

SCHEDULE 3 LICENSEE'S REMOVABLE PROPERTY

RMIT Flight Training, Point Cook Campus

RMIT Flight Training, Point Cook Campus
Asset Register (as at 21/5/21)

Location	Asset description	Quantity
450.01.	Flight simulator	2
450.01.	Desk	2
450.02.001	Staff Desk	1
450.02.001	Student desks	20
450.02.001	Student chairs	32
450.02.001	Bookcases	6
450.02.002	Student desks	11
450.02.002	Student chairs	40
450.02.002	Couch	1
450.02.002	Bookcases	3
450.02.002	Teamboard	2
450.02.002	Staff Desk	1
450.02.003	Staff desk	4
450.02.003	Staff chair	7
450.02.003	Bookcases	3
450.02.003	Desktop computer	4
450.02.004	Student desks	33
450.02.004	Student chairs	53
450.02.004	Desktop computer	1
450.02.004	Filing Cabinets	4
450.02.004	Bookcases	4
450.02.005	Student desks	41
450.02.005	Student chairs	61
450.02.005	Staff desk	1
450.02.005	Filing Cabinet	1
450.02.005	Bookcases	2
450.02.006	Staff desk	3
450.02.006	Staff chair	5
450.02.006	Bookcases	1
450.02.006	Desktop computer	3
450.02.007	Staff desk	3
450.02.007	Staff chair	6
450.02.007	Desktop computer	3
450.02.007	Bookcase	1
450.02.008	Tambour unit	2
450.02.008	Bookcases	2
450.02.008	Printer	1
450.02.008	Filing Cabinet	1
450.02.009	Staff chair	5
450.02.009	Staff desk	3
450.02.009	Bookcase	1

450.02.009	Desktop computer	3
450.02.009	Credenza	1
450.02.009	Filing cabinet	2
450.02.010	Staff desk	7
450.02.010	Staff chair	13
450.02.010	Desktop computer	7
450.02.010	Television	1
450.02.010	Credenzas	4
450.02.010	Bookcases	5
450.02.011	Staff desk	1
450.02.011	Staff chair	1
450.02.011	Desktop computer	1
450.02.011	Visitor chair	2
450.02.011	Filing cabinet	1
450.02.011	Bookcases	2
450.02.012	Staff desk	1
450.02.012	Staff chair	1
450.02.012	Desktop computer	1
450.02.012	Filing cabinet	3
450.02.012	Couch	2
450.02.012	Printer	1
450.02.012	Tambour unit	1
450.02.013	Fridge	2
450.02.013	Microwave	1
450.02.013	Coffee machine	1
450.02.014	Conference table	1
450.02.014	Television	1
450.02.014	Credenzas	3
450.02.014	Chairs	14
450.02.015	Desktop computer	1
450.02.015	Staff desk	1
450.02.015	Staff chair	1
450.02.015	Meeting table	1
450.02.015	Visitor chair	2
450.02.016	Student desk	1
450.02.016	Chairs	4
450.02.016	Credenza	1
450.02.017	Flight Simulator	1
450.02.017	Staff desk	1
450.02.017	Staff chair	1
450.02.017	Computer	1
450.02.018	Staff desk	4
450.02.018	credenza	1
450.02.018	Staff chair	5
450.02.018	Meeting Desk	1
450.02.019	Filing cabinet	1
450.02.019	Server rack	1
450.02.019	Tambour unit	2

450.02.019	Student desk	1
450.02.019	Bookcases	2
450.02.020	Couches	4
450.02.020	Student desks	4
450.02.020	Student chairs	9
450.02.021	Coffee Machine	1
450.02.021	Fridge	1
450.02.021	Microwave	2
450.02.102	Bookcases	2
450.02.102	Lockers	102
450.02.103	Lockers	18
450.02.103	Filing Cabinets	5
450.02 Corridor	Television	1
450.02	Printer	1
450.02 Corridor	Credenza	1
	Tables	142
	chairs	249
	fridge	3
	microwave	3
	Coffee machine	2

SCHEDULE 4 AIRFIELD USE TERMS AND CONDITIONS**1. Interpretation****1.1. Definitions**

- 1.1.1. In these Airfield Use Terms and Conditions unless the contrary intention appears:

"Airfield Access Fee" means that part of the Licence Fee identified as such in Item 4 of the Reference Schedule.

"Aircraft" means the aircraft specified in 6 owned by the parties specified in that Schedule.

"Airfield Rights" means the rights to use the parts of the Land designated in these Terms and Conditions for the purpose of Flying Operations as permitted under these Terms and Conditions.

"Airfield" means those areas of the Land delineated on the plan in Schedule 5 being the areas that the Licensee is authorised to use in accordance with these Terms and Conditions.

"Circuit Zone Procedures" means the circuit zone procedures applicable to RAAF Base Point Cook, a copy of which is attached at Schedule 8, as amended from time to time as notified by the Licensor.

"Flying Operations" means the use of the Aircraft for the purposes landing, taxiing, take off and parking of Aircraft.

"Licensee's Assets" means the Aircraft together with those items specified in specified in Schedule 7.

"Operative Provisions" means clauses 1 to 26 (inclusive) of the operative provisions and Schedules Schedule 1 to Schedule 3 (inclusive) of this Licence.

"Period of Notice of Intended Access" means 48 hours or such other period notified by the Licensor from time to time.

"Terms and Conditions" means these Airfield Use Terms and Conditions and includes all schedules, attachments, annexures and appendices to them.

- 1.1.2. Unless otherwise expressly specified, a reference in these Terms and Conditions to a clause means a clause of the Terms and Conditions.

- 1.1.3. Terms appearing in these Terms and Conditions have the same meaning as set in clause 1.1 of the Licence unless otherwise defined in these Terms and Conditions.
- 1.1.4. Subject to clause 1.1.5, the Operative Provisions of the Licence will apply to the Licensor and the Licensee in exercising their rights and obligations under these Terms and Conditions.
- 1.1.5. If there is any inconsistency between these Terms and Conditions and the Operative Provisions of the Licence in respect of the Flying Operations, the Airfield or the Flying Operations, these Terms and Conditions will prevail.

2. Access to Land and Airfield Rights

2.1. Access

- 2.1.1. Subject to these Terms and Conditions, the Licensor grants to the Licensee a non-exclusive licence to use those parts of the Land approved by the Licensor under these Terms and Conditions so as to enable the Licensee to have access for the purposes of carrying out Flying Operations.
- 2.1.2. The rights conferred by this clause 2 are expressly subject to the Licensee providing the Licensor with prior notice of no less than 48 hours of its intended access and use.
- 2.1.3. If the Licensee fails to give the notice specified in clause 2.1.2 the Licensor may in its absolute discretion deny access to the Licensee.
- 2.1.4. Notwithstanding any other provision of these Terms and Conditions, the Licensor may at any time and in its discretion refuse access to the Land or any part of the Land and the Licensee shall not be entitled to make any claim against the Licensor or seek compensation in respect of such refusal.
- 2.1.5. Without limiting clause 2.1.4, the Licensee acknowledges and agrees that the Licensee will not have access to and will not be permitted to use the flight circuit when the flight circuit is required by the Licensor and as promulgated within the Air Services En Route Supplement Australia publication or current NOTAM (Notice to Airmen). The Licensee shall not be entitled to make any claim against the Licensor or seek compensation in respect of the denial of access and use of the flight circuit.
- 2.1.6. The Licensee must comply with any requirements, directions or notification of or from the Licensor relating to access and use including but not limited to hours of use for the Airfield and the Licensee shall not be entitled to make any claim against the Licensor or seek compensation from respect of the Licensor exercising its rights under this clause 2.1.6.

2.2. Compliance with Terms and Conditions

- 2.2.1. The Licensee must comply with these Terms and Conditions (including without limitation the Circuit Zone Procedures).
- 2.2.2. Subject to these Terms and Conditions and in consideration of the payment of the Access Fee by the Licensee the Licensor grants to the Licensee the Airfield Rights upon the terms and conditions specified in these Terms and Conditions.

3. Use of the Airfield, the Aircraft and Flying Activities

The Licensee hereby covenants and agrees with the Licensor as follows:

3.1. Activities of the Licensee from the Land

The Licensee will not carry on any activities permitted by these Terms and Conditions in any area of the Land other than in those parts of the Airfield or the Land approved by the Licensor under these Terms and Conditions and any other locations authorised in writing from time to time by the Licensor.

3.2. Unacceptable Employees and Invitees

The Licensee will not bring onto the Aircraft on the Land or allow to remain on the Aircraft on the Land any person who the Licensee has been notified in writing by the Licensor is a person who the Licensor reasonably considers should not be employed at or be present on the Land and the Licensee shall not make any claim or objection against the Licensor in respect of such notification.

3.3. Compliance with Licensor's Directions

Without limiting the Operative Provisions of the Licence the Licensee will comply with all directions given from time to time by the Licensor in relation to:

- a. Airfield rules and signs including those relating to parking and movement of aircraft on the Land and will ensure that all the Aircraft are clearly identifiable; and,
- b. conducting the Flying Operations so that there is no interference with flying activities and so as to ensure that there is full compliance with all air safety requirements.

3.4. Licensee not to Interfere with Aircraft and the Land

The Licensee will not remove, replace, exchange, tamper with or alter any part of any other aircraft or any equipment, facilities, installations, buildings, fixtures or fittings erected or located on the Land.

3.5. Removal of Licensee's Property

- 3.5.1. The Licensee shall at the expiration or sooner determination of this Licence at its expense remove from the Land the Aircraft, the Licensee's Assets and any other items brought onto the Land for the purposes of the Flying Operations and ensuring that in such removal no damage is done to any other aircraft, or any

property, building or person on the Land. If the Licensee fails to comply with this clause 3.5.1 then the Licensor may remove any property (including the Aircraft) not so removed and shall deal with the same as the Licensor deems fit and the Licensor shall be entitled to recover any loss or expense incurred in so doing from the Licensee immediately upon demand.

3.5.2. Without limiting clause 3.5.1 if the Licensee fails to remove the Aircraft, the Licensee's Assets or other items brought onto the Land from the Land, then the Licensor may either

- a. keep; or
- b. remove and dispose of the same

as it thinks fit without being liable to the Licensee or any other person for damages or otherwise and the Licensee hereby releases and indemnifies the Licensor from and against any such liability.

3.5.3. The Licensee shall pay on demand any costs incurred by the Licensor in connection with the Licensor exercising any of its rights under this clause 3.5.

3.6. Landing of Aircraft

3.6.1. Except in the event of emergency or as a precautionary measure to ensure the safety of the Aircraft, its occupants or other persons or property, the Licensee shall not land at any landing areas at the Land other than those expressly approved by the Licensor under these Terms and Conditions.

4. AIRCRAFT AND FLYING OPERATIONS

4.1. Aircraft Ownership

The Licensee warrants that it is the registered owner of or authorised by the registered owner to use the Aircraft.

4.2. Aircraft at Licensee's Risk

4.2.1. The Licensee is responsible for the safety and security of the Aircraft and shall ensure that all necessary arrangements are made and maintained for the safety and security of the Aircraft and all persons and items therein at all times.

4.2.2. The Licensee shall be exclusively liable for any loss, theft, damage or destruction of the Aircraft (howsoever caused) and the Licensee hereby releases and indemnifies the Licensor, its officers, employees, contractors, invitees and agents (referred to in this clause as "the indemnified") from all claims, actions, liabilities and losses arising from, and any costs, charges and expenses incurred or sustained by the indemnified or any of them as a result of or in connection with any loss, theft, damage or destruction of the Aircraft.

5. COMPLIANCE WITH LAWS

5.1. Compliance with all Laws and Requirements

5.1.1. The Licensee shall at its own cost comply with all statutes, ordinances, proclamations, by-laws, orders or regulations present or future affecting or relating to the Land, the Licensee, the Aircraft, Flying Operations, flying activities or otherwise in connection with these Terms and Conditions or the use of the Aircraft and with all lawful requirements which may be made or notice, orders or directions which may be given to the Licensor or the Licensee in respect of the same by any competent authority having jurisdiction or lawful authority over or in respect of the Land, the Aircraft, Flying Operations, flying activities or otherwise in connection with these Terms and Conditions (including all notices, orders or directions of the Licensor) and will keep the Licensor indemnified in respect of all such matters in this clause referred to PROVIDED ALWAYS that if the Licensee shall fail neglect or refuse to comply with any such statute, ordinance, proclamation, by-law, order, regulation, requirement, notice, order or direction it shall be lawful for but not obligatory upon the Licensor to comply with the same and all monies paid by the Licensor in connection therewith shall be payable by the Licensee to the Licensor on demand as a liquidated debt.

5.1.2. The Licensee will observe all directions, requirements, rules and regulations for the time being in force relating to the means of access to and egress from the Land and in respect of any activities on the Land.

5.2. Compliance with Laws and Requirements

Without limiting clause 9.6 of the Operative Provisions, in addition to any obligation under Commonwealth law, rules, regulations, directions or requirements the Licensee must carry on its activities under these Terms and Conditions on the same basis as it would be obliged to do so if the activities was carried out in the State other than at the Land and was subject to State laws.

5.3. Licensor Place

The Licensee agrees that notwithstanding that the Licensor may not be required to comply with legislation (other than legislation of the Commonwealth of Australia) the Licensee must comply with all legislation and other obligations which would apply if its activities were not carried out at the Land or other Commonwealth place.

6. INSURANCE

6.1. Additional Insurance

6.1.1. In addition to the insurances required to be taken out and maintained by the Licensee pursuant to clause 6.10 of the Operative Provisions, the Licensee must take out and maintain the insurances set out in this clause 6 of the Terms and Conditions.

6.2. Public Liability Insurance

The Licensee shall take out and maintain a public liability insurance policy in a form acceptable to the Licensors (including if the Licensors so requires in the joint names of the Licensors and the Licensee) and which in the Licensors' opinion adequately protects the Licensors and the policy shall, without limitation, contain a waiver by the insurer of any rights of subrogation against the Licensors and extend to indemnify the insured (and if the Licensors is co insured also the Licensors) for claims in respect of bodily injury or death to any person and loss or damage to any property or land arising from the use or operation of the Aircraft or its presence on the Land (including but not limited to flying conducted by the Licensee or any other person and whether or not the injury, death, loss or damage is caused or contributed to by the negligence of the Licensors, its officers, employees or agents or by the negligence of approved pilots or aircrew). The Licensee shall ensure that the interest in this insurance is evidenced in writing to a minimum liability of twenty million dollars (\$20,000,000.00) (or such other amount as the Licensors may from time to time require taking into account the nature, status and use of the Land or Airfield, the nature and use of the Aircraft, any matters relating the Land, Airfield, Aircraft or the Licensee or any other circumstances which the Licensors considers relevant) for any single event and such policy will be taken out with an insurer approved by the Licensors from time to time. The Licensee will provide upon demand evidence to the Licensors of the currency of such insurance policy or policies.

6.3. Aircraft Insurance

The Licensee shall take out and maintain the usual property damage, aircraft damage and pilot insurance which a prudent aircraft Licensee would take out. The Licensee will provide upon demand evidence to the Licensors of the currency of such insurance policy or policies.

6.4. Licensee not to Vitate Insurance

The Licensee will not do anything or omit to do anything whereby any insurance effected pursuant to these Terms and Conditions may become vitiated or non-effective.

7. RELEASE AND INDEMNITY

7.1.1. Without limiting the Operative Provisions of the Licence, the Licensee hereby releases and indemnifies the Licensors, its officers, employees, contractors, invitees and agents (referred to in this clause as "the indemnified") from and against all claims, actions, liabilities and losses arising from or in connection with, and any costs, charges and expenses incurred or sustained by the indemnified (or any of them) as a result of or in connection with:

- a. injury to or death of any person; or
- b. loss of or damage to any property or land; or

- c. loss of or damage to the Aircraft or any other aircraft; or
- d. economic loss suffered by any person
caused or contributed to by:
- e. any act, omission, negligence or default of the Licensee or of the Licensee's employees, agents, contractors or invitees; or
- f. any danger created by the Licensee or the Licensee's employees, agents, contractors or invitees (whether or not the existence of that danger was or ought to have been known to the Licensee); or
- g. the use of the Aircraft; or
- h. the presence of the Aircraft on the Land; or
- i. the operation of any equipment, machinery or thing by any person;
- j. any other act, omission or thing (excluding any negligent act of the Licensor relating to flying activities at the Airfield)

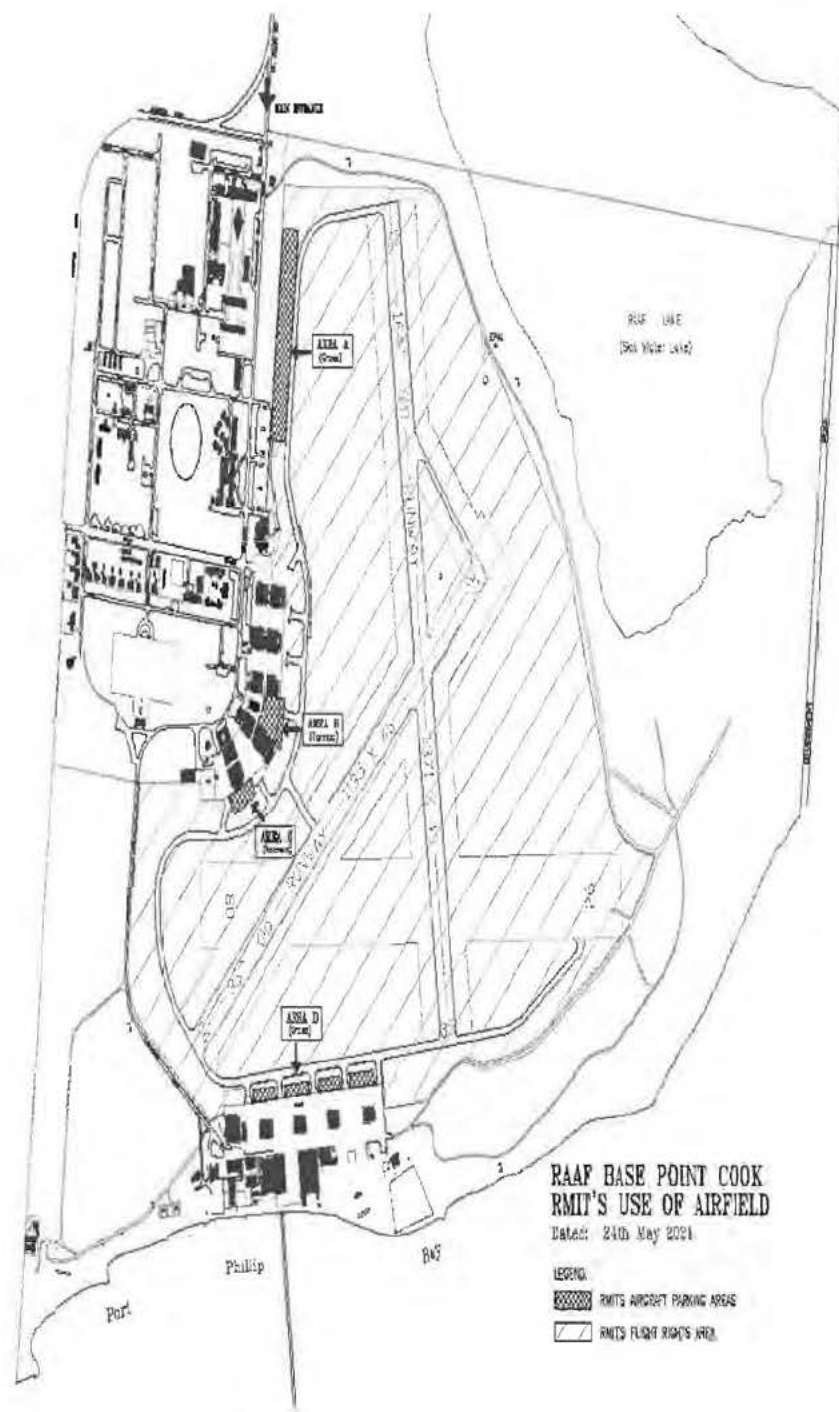
which may arise from or in relation to the use of the Land for the purpose of these Terms and Conditions, entry upon the Land by virtue of these Terms and Conditions, the use, or operation of the Aircraft, any flying activities to, from or over the Land, the presence of the Aircraft on the Land or otherwise in connection with these Terms and Conditions.

- 7.1.2. The parties expressly agree that the exclusion in clause 7.1.1.j(referring to any negligent act of the Licensor relating to flying activities at the Airfield), shall not be relied upon by the Licensee or any person or construed to extend to anything relating to the maintenance, repair, condition or status of the Airfield, and the Licensee agrees that the Licensor is under no obligation to repair, maintain or upgrade the Airfield so as to render or maintain it suitable for flying or airfield activities and the Licensee agrees that the exercise of its access rights under these Terms and Conditions is in all respects at its own risk.

8. PRECEDENCE OF DEFENCE FUNCTIONS

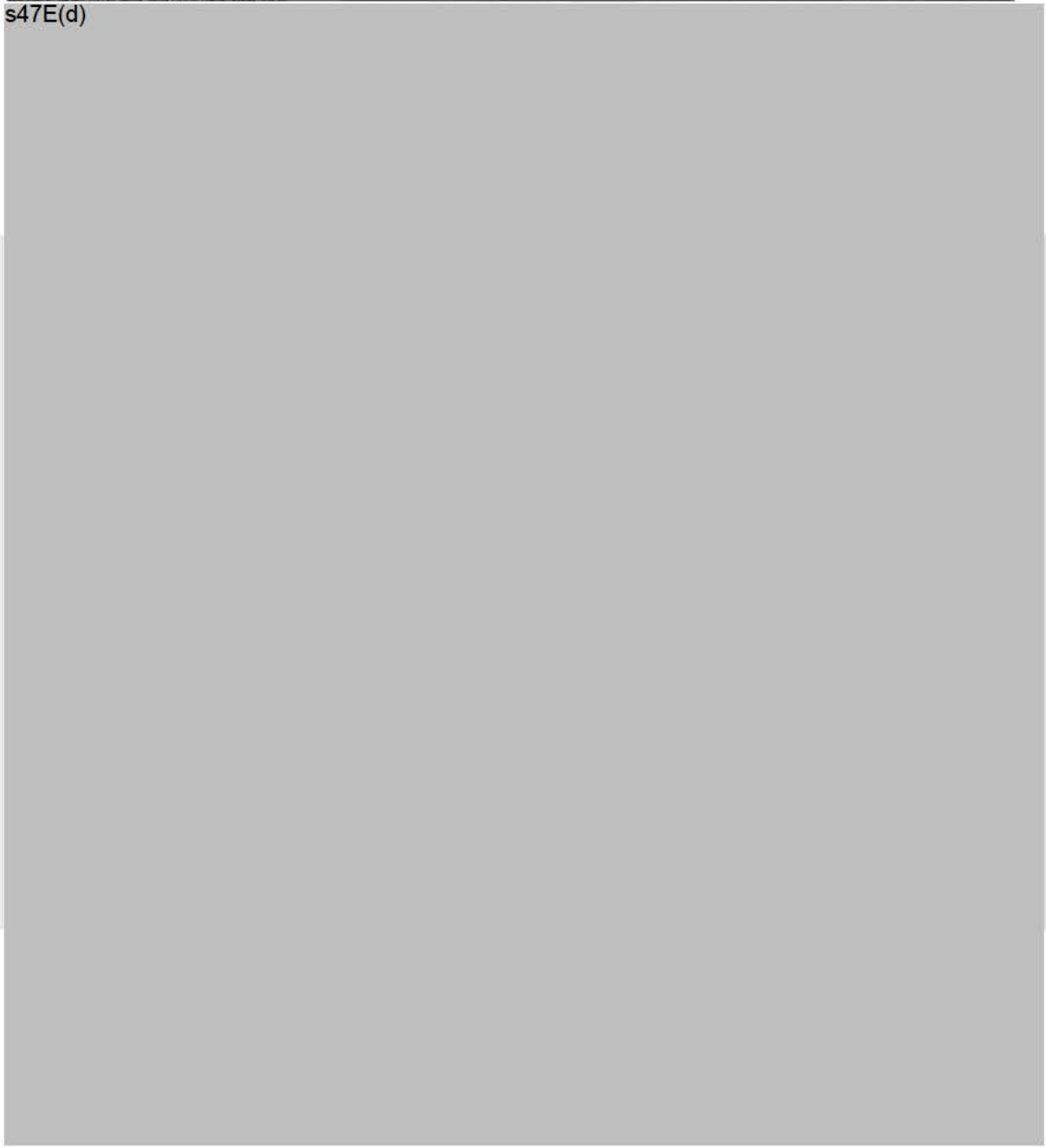
The Licensee expressly agrees and acknowledges that the Land is a Defence facility and that Licensor activities will take precedence over the Flying Operations. The Licensee shall not be entitled to make any claims or seek any abatement or deduction or claim any compensation, loss, damage or expenses whatsoever as a result of interference with or restrictions on the conduct of the Flying Operations or access to the Land arising from or in connection with the Licensor's use of the Land for its purposes and functions (which includes the permitted activities of other airfield Licensees, Licensees and licensees).

SCHEDULE 5 PLAN OF AIRFIELD



SCHEDULE 6 AIRCRAFT

s47E(d)



SCHEDULE 7 LICENSEE'S ASSETS

Not applicable

SCHEDULE 8 CIRCUIT ZONE PROCEDURES

The Circuit Zone Procedures also include the following requirements:

1. There will be no more than six (6) aircraft allowed to fly circuit patterns by the Licensee when the Licensee is the only Airfield user at any one time.
2. There will be a maximum of 4 aircraft allowed to fly circuit patterns when multiple Airfield users including the Licensor are operating at any one time.
3. During times when other Airfield users are flying circuit patterns, the Licensee is limited to no less than two (2) of the four (4) aircraft in the circuit.