

## **HIRE AGREEMENT**

### **WHELDON & ASSOCIATES**

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## SCHEDULE A

<b>Item 1</b>	<b>Owner</b>	<b>Name</b>
	Terry Cubit as Trustee for the Cubit Superfund	PO Box 2049, Beenleigh Qld 4207
<b>Item 2</b>	<b>Hirer</b>	<b>Name</b>
	East Coast Storage Pty Ltd	75 Christensen Road, Staplyton Qld 4207
<b>Items 3</b>	<b>Start Date</b>	<b>1 December 2016</b>
<b>Item 4</b>	<b>Start Date</b>	4 year (Fixed Term) Hirer has first option to purchase at a price to be agreed between the parties. In the event of dispute in this regards the determination by independent Valuer to be appointed by the Owner shall be final and binding upon the parties.
<b>Item 5</b>	<b>Rental</b>	\$ (plus GST) to be paid in accordance with the monthly invoices issued by the Owner.
<b>Item 6</b>	<b>Equipment</b>	
_As per attached		

## TERMS AND CONDITIONS

### 1. INTERPRETATION

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#### Definitions

#### 1.1 In this Agreement:

- Agreement** means the contract constituted by these terms and conditions including the schedule.
- Agreement Demand** means a demand that a registration of a Security Interest be amended in accordance with the PPS Act.
- Approved Address** means the address at which the Goods will be located during the Term as set out in Item 2.
- Claim** means in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent.
- Goods** means the goods/equipment supplied by the Owner to the Hirer, as detailed in Item 6.
- Insolvent** means:
- (a) in the case of a person, they are, state that they are or take any step which results or may result in their becoming an insolvent under administration as defined in section 9 of the *Corporations Act*; or
  - (b) in the case of a corporation (or related party), it is, states that it is or takes any step which results or may result in it becoming an externally administered body corporate as defined in section 9 of the *Corporations Act*.

<b>Term</b>	means the period that the Goods/equipment are to be hired by the Hirer specified in Item 4 and includes the day the Goods are collected from the Owner's premises and includes the day on which the Goods are returned to the Owner's premises.
<b>Manufacturer's Specifications</b>	means the manufacturers specifications..
<b>PPS Act</b>	means the <i>Personal Properties and Securities Act 2009</i> (Cth).
<b>PPS Lease</b>	has the same meaning as section 13 of the PPS Act.
<b>PPS Register</b>	has the same meaning as "register" under the PPS Act.
<b>Purchase Money Security Interest</b>	has the meaning given to it in section 14 of the PPS Act.
<b>Rental</b>	means the amount per month payable by the Hirer to the Owner for the hire of the Goods as set out in Item 5.
<b>Security Interest</b>	means a security interest within the meaning of section 12 of the PPS Act or a Purchase Money Security Interest as the context requires.

#### **Construction**

1.2 In this document:

- (a) words in singular include the plural and vice versa;
- (b) words indicating any gender indicate the appropriate gender;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

- (d) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
- (e) references to any document (including this document) include references to the document as amended, consolidated, supplemented, novated or replaced;
- (f) a reference to a statute includes a reference to or citation of all enactments amending or consolidating the statute and to an enactment substituted for the statute;
- (g) monetary references are references to Australian currency;
- (h) the Schedule and Annexures form part of this document;
- (i) a reference to an Item is a reference to an Item in the Schedule to this document; and
- (j) headings are included for convenience only and do not affect interpretation of this document.

## **2. HIRING, DELIVERY AND OWNERSHIP OF GOODS**

- 2.1 The Owner grants to the Hirer the exclusive right to use the Goods during the Term.
- 2.2 The hiring of the Good under this Agreement will commence on the Start Date and will continue for the Term.
- 2.3 The Hirer must arrange and pay for collection and delivery of the Goods from the Owner's premises all delivery costs incurred by the Owner are payable by the Hirer plus an additional charge of 10% of the delivery costs.
- 2.4 The Hirer must not remove the Goods from the Approved Address without the Owner's prior written consent.
- 2.5 Nothing in this Agreement gives the Hirer a right or obligation to purchase the Goods. If the Hirer makes an offer to purchase the Goods, the offer may be accepted or rejected at the Owner's absolute discretion.

## **3. RENTAL AND OTHER PAYMENTS**

- 3.1 The Hirer must pay to the Owner the Rental in accordance with the Standard Terms.

- 3.2 All money payable by the Hirer under this Agreement must be paid to the Owner's bank as specified in the Schedule or at such other place as the Owner may direct in writing, and must be paid free and clear of any and all deductions, set-offs or counter-claims.
- 3.3 If the Hirer fails to make a Rental payment in full when due, the Owner may, without prejudice to any other right under this agreement or remedy the Owner may have under this Agreement, charge an administration fee to be imposed at the owners reasonable discretion and to charge default interest at the rate of ten (10%) per cent per annum on all monies outstanding. In the event a rental payment is outstanding for more than fourteen (14) days and an active default has occurred all monies due and payable pursuant to the terms of this Agreement may be accelerated and all monies due and payable pursuant to the terms of this Agreement will thereafter be recoverable by the Owner against the Hirer as a liquidated debt.

#### **4. OPERATION AND MAINTENANCE**

- 4.1 The Hirer must, at its own expense, keep, maintain, store and use the Goods in proper working order and in good and substantial condition under any relevant industry guidelines or compliance programs.
- 4.2 The Hirer must operate the Goods/equipment with due care and diligence and in accordance with the Manufacturer's Specifications.
- 4.3 The Hirer must:
- (a) not use the Goods in any activity which is likely to have an adverse effect on the safety or condition of the Goods;
  - (b) not modify the Goods without the Owner's prior written consent;
  - (c) not repair or service the Goods without the Owner's prior written consent unless done so in accordance with the manufacturers specifications or other regulatory requirements.
  - (d) not use the Goods for an illegal purpose;
  - (e) observe all safety and manufacturer's instructions provided with the Goods and the Manufacturer's Specifications;
  - (f) use the Goods in accordance with the Manufacturer's Specifications;

- (g) use the Goods only for their intended purposes;
- (h) comply with all requirements of the Owner, and all public and statutory authorities when operating the Goods, storing, loading or unloading the Goods; and
- (i) make the Goods available for examination and testing by the Owner at all times, after reasonable notice from the Owner and ensure that all equipment is registered at all times in the name nominated by the owner.
- (j) Hirer is responsible for registration and associated fees.

## 5. FAILURE OF GOODS

- 5.1 The Hirer must immediately notify the Owner if the Goods are:
- (a) stolen;
  - (b) lost;
  - (c) destroyed;
  - (d) confiscated by any person; or
  - (e) damaged.
- 5.2 If the Goods are stolen the Hirer must immediately report the theft to the police and provide the Owner with a copy of the police report within two business days of making the report.
- 5.3 If the Goods breakdown or become unsafe to use, the Hirer must immediately:
- (a) discontinue use of the Goods; and
  - (b) give notice to the Owner of the description of the item and its fault.
- 5.4 If the failure is caused by reasonable wear and tear and for no other reason including the Hirer's negligence or misuse, the Owner agrees, at its discretion to:
- (a) repair the Goods within a reasonable time;

(b) make replacement Goods available; or

(c) adjust the Rental.

5.5 The Owner will not be liable for any loss sustained by the Hirer by reason of the Goods failing or becoming unsafe for use.

5.6 The Hirer must pay the Owner for the cost to repair or replace, at the Owner's discretion, for any Goods not returned, or returned faulty or damaged, plus 10%.

## **6. LIENS AND ENCUMBRANCES**

6.1 The Hirer acknowledges that:

(a) The Owner retains title to the Goods;

(b) The Hirer is bailee of the Goods; and

(c) Nothing in this Agreement confers on the Hirer any title or interest in or to the Goods.

6.2 The Hirer must not assign, mortgage, pledge, sell, charge, encumber, part with possession of, grant and lien, security interest or other encumbrance over, or otherwise dispose of or deal with, or permit or suffer to exist any lien, security interest or other encumbrance over any of the Goods or any of the rights of the Hirer under this Agreement.

## **7. PERSONAL PROPERTY SECURITY ACT**

7.1 This agreement constitutes a security agreement for the purposes of the PPS Act and creates a security interest, which is PPS Lease, in the Goods.

7.2 The Hirer agrees to implement, maintain and comply in all material respects with procedures for the perfection of the Owner's security interests as set out in clause 7.1

7.3 The Hirer must do all things necessary to assist the Owner to continuously perfect any security interest arising under this agreement, including signing any documents or providing any information that the Owner reasonably requests for the purposes of protecting its interest under the PPS Act.

7.4 The Hirer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to any security interest under this agreement.

7.5 Everything which the Hirer is required to do under this clause 7 is to be done at the expense of the Hirer and the Hirer agrees to reimburse the Owner for these costs including any expenses incurred by the Owner in registering or removing a financing statement or financing change statement on the PPS Register.

7.6 The Hirer must not lodge or permit the lodgement of a financing change statement or an Amendment Demand in respect of the goods without the consent of the Owner.

7.7 To the maximum extent permitted by the PPS Act:

- (a) the Owner does not have to give a notice to the Hirer of any action the Owner takes in accordance with the sections 95 or 121(4) of the PPS Act.
- (b) the Owner does not have to give a notice under section 130 of the PPS Act.
- (c) the Owner does not have to give the details required under section 132(3)(d) of the PPS Act;
- (d) the Owner does not have to give a written statement of account under section 132(4) of the PPS Act;
- (e) the Owner does not have to give a notice required under section 135 of the PPS Act;
- (f) no person can redeem the Security Interest in the Goods under section 142 of the PPS Act without the Owner's consent; and
- (g) no person may reinstate the security agreement under section 143 of the PPS Act without the Owner's consent.

7.8 For the purpose of section 275(6) of the PPS Act, the Hirer must keep confidential any information relating to this agreement which is in the nature of information which an interested person could access under section 275(1) of the PPS Act.

## **8. OWNER'S WARRANTY AND RELEASE**

- 8.1 The Owner warrants that the goods are in good repair and condition as at the Start Date.
- 8.2 The Owner is not liable for the results or outcome of any work, procedure or actions undertaken by the Hirer using the Goods.
- 8.3 The Hirer is responsible for ensuring that the Goods hired are appropriate for the work required to be undertaken by the Hirer.
- 8.4 At the expiry or sooner determination of this Agreement all equipment is to be returned in good working order and condition by the Hirer to the Owner with fair wear and tear accepted.

## **9. RISK AND INSURANCE**

- 9.1 The Hirer must keep the Goods insured against all third party risks including liability for damage or injury of any kind to the Goods, other property or person and also against any other risks including liability for damage or injury of any kind to the Goods, any property or person and also against any other risks to the extent required by law by a policy insuring both the Hirer and the Owner.
- 9.2 The Hirer assumes all risks and liabilities for and in respect of the Goods arising from theft, fire and flood and for injuries to or death of persons and damage to property howsoever arising from the possession, use or maintenance of the Goods.
- 9.3 The Hirer assumes full responsibility, including without limitation civil, criminal and financial liability, for all acts undertaken by persons in control of the Goods, including without limitation all offences at law in relation to the conduct and control of the Goods.
- 9.4 The Hirer must indemnify the Owner against the loss, theft of, or damage to the Goods and will indemnify the Owner and hold the Owner harmless from all Claims, (including legal costs) incurred as a result of or in connection with the possession or use of the Goods.
- 9.5 The Hirer must not do any act or thing which might in any way invalidate or prejudice any policy of insurance or the Owner's interest in the Goods.
- 9.6 The Hirer is to provide the Owner with a certificate of insurance notifying the Owners interest. Such certificate will be to the Owners reasonable satisfaction.

## **10. RELIANCE AND WARRANTIES**

- 10.1 Nothing in this Agreement is intended to exclude, restrict or modify rights which the Hirer may have under the *Competition and Consumer Act 2010* or any other legislation.
- 10.2 The Hirer warrants that it has not relied on any representations made by or on behalf of the Owner, in entering into this Agreement or hiring the Goods.

## **11. ASSIGNMENT**

- 11.1 The Owner may assign the benefit of this Agreement without the Hirer's consent.
- 11.2 The Hirer must not assign the benefit of this Agreement without the Owner's prior written consent.
- 11.3 The Hirer must not sell or offer for sale, assign, part with the possession, or re-hire, mortgage pledge or otherwise deal with the Goods or any part of the Goods in a manner contrary to the Owner's ownership interest without the Owner's prior written consent.

## **12. DEFAULT AND TERMINATION**

- 12.1 Each of the following events is an event of default:
- (a) fails to pay any Rental or other money payable under this Agreement within seven days of it being due for payment;
  - (b) the Hirer fails to observe or perform any obligations, liability or other provisions of this Agreement on its part to be observed or performed and such failure continues for a period of 14 days or more after notice in writing has been given by the Owner requiring the Hirer to remedy the breach;
  - (c) the Goods are lost or stolen and not recovered by the Owner within seven days;
  - (d) any insurance policy in respect of the Goods is cancelled or is not renewed;

- (e) the Hirer enters or proposes to enter into any arrangement, reconstruction or composition with any of its creditors;
- (f) the Hirer being a body corporate ceases or threatens to cease to carry on its business or is unable to pay its debts as they fall due or suspends payment generally; or
- (g) there is a material adverse change in the business or financial condition of the Hirer which could adversely affect the ability of the Hirer to meet its obligations under this Agreement.

12.2 The occurrence of an event of default is repudiation by the Hirer of this Agreement.

12.3 If an event of default occurs, the Owner may exercise any one or more of the following remedies:

- (a) terminate this Agreement by written notice to the Hirer;
- (b) require the Hirer to return the Goods;
- (c) take all necessary steps to enter any premises where the Owner believes the Goods may be located and repossess the Goods; and/or
- (d) seek any other remedies available at law.

12.4 If this Agreement is terminated under clause 12.3, the Hirer must:

- (a) Immediately pay all Rental and other money due and outstanding under this Agreement which monies shall be recoverable by the Owner from the Hirer as a liquidated debt.
- (b) return the Goods to the owner; and
- (c) indemnify the Owner against all costs incurred by the Owner in taking action to recover payments due under this Agreement.

### 13. TERMINATION

13.1 Other than pursuant to clause 12, this Agreement may only be terminated by the Owner and the Hirer before the expiration of the Term by mutual agreement in writing.

13.2 On expiry or termination of this Agreement, the Hirer must immediately return the Goods to the Owner's premises.

#### **14. NOTICES**

14.1 All notices given under this document must be in writing and may be delivered in person or by mail or by the medium specified in the Schedule.

14.2 A party may change its particulars for service by notice in writing to the other parties.

14.3 A notice sent by post will be deemed received three days after posting.

14.4 A notice sent by facsimile transmission will be deemed received on the date stated on the facsimile transmission report produced by the machine sending the facsimile.

14.5 A notice sent by email will be deemed received at the time and on the date that it is sent, unless the sender receives notification that the delivery of the email was unsuccessful, in which case the email will not be deemed to have been received.

14.6 For the purposes of clause 14.5, "delivery" of an email means the time that an email reaches the recipient's server.

#### **15. REFERENCES TO AND CALCULATIONS OF TIME**

15.1 Where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

15.2 Where something is done or received after 5.00pm on any day, it will be taken to have been done or received on the following day.

15.3 Where a provision in this agreement requires anything to be done on a Saturday, Sunday or public holidays, that matter or thing may be done or will be taken to have been done on the next succeeding day which is not a Saturday, Sunday or public holiday.

#### **16. GST**

16.1 The consideration payable by the Hirer has been fixed without regard to the impact of the GST.

- 16.2 If GST is or becomes payable on a Taxable Supply made under or in connection with this document, the party providing consideration for that Taxable Supply (recipient) must pay an additional amount equal to the GST payable on the Taxable Supply.
- 16.3 The additional amount payable under clause 16.2 must be paid at the same time as the consideration for the Taxable Supply or on the date on which the party making the supply delivers a Tax Invoice (whichever is later).

## **17. GENERAL**

### **Governing law**

- 17.1 This document will be construed in accordance with the laws in force in Queensland and the parties submit to the jurisdiction of the Courts of Queensland.

### **Reference to a party**

- 17.2 Any reference to a party in this document includes, and any obligation or benefit under this document will bind or take effect for the benefit of, that party's executors, trustees, administrators, successors in title and permitted assigns. The parties acknowledge and agree that the Hirer will only be permitted to assign its interest in this Agreement to a third party only in circumstances where the Owner has given prior written consent and imposes such conditions on such consent as the Owner may consider reasonable in the circumstances. The Owner is a liberty at all times not to grant any such consent.

### **Duty and legal fees**

- 17.3 Each party will bear its own legal and other costs and expenses relating to this document. The Hirer must pay and duty.

### **Entire Agreement**

- 17.4 This document represents the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings between the parties.

### **Severability**

17.5 If any part of this document is invalid or unenforceable, that part will (if possible) be read down to the extent necessary to avoid the invalidity or unenforceability, or alternatively will be deemed deleted; and this document will remain otherwise in full force.

**Amendments to be in writing**

17.6 No amendment to this document has any force unless it is in writing and signed by all of the parties to this document.

**Further assurances**

17.7 Each party will sign and complete all further documents and do anything else that may be reasonably necessary to effect, perfect or complete the provisions of this document and the transactions to which it relates.

**Joint and several**

17.8 An obligation of two or more persons under this document binds them jointly and severally and every expressed or implied agreement or undertaking by which two or more persons derive any benefit in terms of this document will take effect for the benefit of those persons jointly and severally.

**Waiver**

17.9 The failure of a party to this document to enforce a provision or the granting of any time or indulgence will not be construed as a waiver of the provision nor of a waiver of the right of the party at a later time to enforce the provision.

**Counterparts**

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

**Time of the essence**

17.11 Time will be of the essence as regards a date or period determined under this document except that a date or period may be altered by agreement in which case time will be of the essence for date or period as altered.

18. The Hirer must pay any duty accessible with respect to the provisions of this Agreement.



**EXECUTED AS AN AGREEMENT.**

**SIGNED** on behalf of \_\_\_\_\_ )  
in accordance with \_\_\_\_\_ )  
its Constitution by a Director and a \_\_\_\_\_ )  
director/secretary or by a sole director \_\_\_\_\_ )  
(if applicable) in the presence of: \_\_\_\_\_ )  
of: \_\_\_\_\_ )

  
\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

Signature of witness

Print name of witness

**SIGNED on behalf of the Hirer** in \_\_\_\_\_ )  
accordance with its Constitution by a \_\_\_\_\_ )  
director and a director/secretary or by a \_\_\_\_\_ )  
sole director (if applicable) in the \_\_\_\_\_ )  
presence of: \_\_\_\_\_ )

 (27/01/17)  
\_\_\_\_\_  
General Manager

Signature of witness

Print name of witness

**SIGNED** by the Hirer in the presence \_\_\_\_\_ )  
of: \_\_\_\_\_ )

\_\_\_\_\_  
Signature

Signature of witness



Print name of witness

