

# **HIRE AGREEMENT**

**WHELDON & ASSOCIATES**

Solicitors

12 Zamia Street, Sunnybank

Brisbane Qld 4109

T (07) 3323 9788

F (07) 3344 1455

Email: [info@wheldons.com](mailto:info@wheldons.com)

## SCHEDULE

Item 1	Owner	Address
	Terry Cubit as Trustee for The Cubit Superfund	PO BOX 2514 RUNCORN QLD 4113
Item 2	Hirer	Address
	East Coast Storage Pty Ltd	
Item 3	Start Date	TBA 1 <sup>st</sup> DECEMBER 2014
Item 4	Term	4 Year (Fixed Term)
		Hirer has first option to purchase at a price to be agreed between the parties
Item 5	Rental	\$55.00 per hour (plus GST) to be paid in accordance with the monthly invoices issued by the Owner.
Item 6	Goods	
Make: AA Model: 908H2 C2 Serial Number: JRD02045 Engine Number: 8DC00608  <u>Description:</u> 2014 Caterpillar - 908H2 - Wheel Loader – Front Loader		

# TERMS AND CONDITIONS

## 1. INTERPRETATION

---

### Definitions

#### 1.1 In this Agreement:

<b>Agreement</b>	means the contract constituted by these terms and conditions including the schedule.
<b>Agreement Demand</b>	means a demand that a registration of a Security Interest be amended in accordance with the PPS Act.
<b>Approved Address</b>	means the address at which the Goods will be located during the Term as set out in Item 3.
<b>Claim</b>	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.
<b>Equipment</b>	means the equipment described in Item 6 of the Schedule.
<b>Goods</b>	means the goods supplied by the Owner to the Hirer, as detailed in Item 6.
<b>Hirer</b>	means the person or persons, corporation, partnership, trust or other legal entity hiring the Equipment from the Owner and identified as the Hirer in the Schedule.
<b>Immediately Available Funds</b>	means cash, bank cheque or telegraphic or other electronic means of transfer of cleared funds into a bank account nominated by the Owner.
<b>Insolvent</b>	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 <i>Corporations Act</i> ; or (b) in the case of a corporation, 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 <i>Corporations Act</i> .
<b>Insurable Value</b>	means the value in respect which the Hirer must maintain a policy of insurance for the Equipment while in the Hirer's possession or control.

<b>Interest</b>	has the meaning given to it in section 14 of the PPS Act.
<b>Loss</b>	means any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment and includes legal costs and expenses on an indemnity basis.
<b>Manufacturer's Specifications</b>	means the specifications attached in Annexure A.
<b>Owner</b>	means the entity identified in Item 1 of the Schedule.
<b>PPS Act</b>	means the <i>Personal Properties and Securities Act 2009</i> (Cth) (as amended or replaced from time to time).
<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>Renter Protection</b>	means an amount paid by the Hirer to reduce the Hirer's financial liability in respect of the loss or damage to the Equipment, such amount being determined by agreement.
<b>Rental Rate</b>	means the hourly, daily, weekly, monthly rate of hire to be paid by the Hirer to the Owner as specified in the Schedule.
<b>Term</b>	means the period that the Goods are to be hired by the Hirer specified in Item 5 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>Rental</b>	means the amount per day payable by the Hirer to the Owner for the hire of the Goods as set out in Item 6.
<b>Security Agreement</b>	means the security agreement under the PPSA created between the Hirer and the Owner by these conditions of hire.
<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.
<b>Standard Terms</b>	means the standard terms attached in Annexure C.

#### **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 TERM OF AGREEMENT

This Agreement commences on the date when the Hirer takes possession of the Equipment and continues for the Rental Term unless terminated earlier in accordance with the terms of this Agreement.

- 2.2 The Owner grants to the Hirer the exclusive right to use the Goods during the Term.
- 2.3 The hiring of the Good under this Agreement will commence on the Start Date and will continue for the Term.
- 2.4 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.
- 2.5 The Hirer must not remove the Goods from the Approved Address without the Owner's prior written consent.
- 2.6 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. HIRER'S WARRANTIES & OBLIGATIONS

#### 3.1 HIRER'S WARRANTIES

The Hirer warrants that:-

- (a) For the purposes of entering into this Agreement and selecting the Equipment, it has not relied upon any representations made by or on behalf of the Owner;
- (b) It has satisfied itself prior to entering into this Agreement that the Equipment is suitable for its purposes;
- (c) The Equipment will at all times be operated by a qualified and licenced operator;
- (d) The Hirer will operate the Equipment safely, strictly in accordance with all laws, only for its intended use, and in accordance with any manufacturer's instructions (whether supplied by the Owner or posted on the Equipment);
- (e) It will conduct a thorough hazard and risk assessment prior to operating the Equipment and comply with all workplace health and safety laws relating to the Equipment and its operation;
- (f) It has power to enter into and perform its obligations under this Agreement; and
- (g) Its obligations under this Agreement are valid and binding, and are enforceable against it in accordance with these terms.

#### 3.2 HIRER'S OBLIGATIONS

##### 3.2.1 **(Maintenance)** The Hirer agrees:

- (a) Not to damage the Equipment and at the Hirer's cost to keep the Equipment in good order and repair;
- (b) To be responsible for the maintenance and repair of all tyres and replacement of tyres where necessary (fair wear and tear excepted) at the cost of the Hirer unless otherwise provided;
- (c) To advise the Owner of any malfunctioning of the Equipment as soon as practically possible and to cease operating the Equipment as soon as it becomes aware of any malfunction;
- (d) Not to alter or make any addition to the Equipment without the prior written consent of the Owner;
- (e) Where the Hirer undertakes repair of the Equipment resulting in the replacement of existing parts of the Equipment, to use only replacement parts recommended by the Owner, and such parts will become the property of the Owner; and
- (f) Not to fit any accessories to the Equipment without the consent of the Owner and where consent is given, such accessories will form and be part of the Equipment.

##### 3.2.2 **(Payment)** The Hirer agrees:

- (a) To pay the Owner the Rental Rate in Immediately Available Funds within the time period specified in the Schedule;
- (b) If so requested by the Owner, to pay to the Owner interest calculated at the Default Rate on any late payment of the Rental Rate;
- (c) To repay to the Owner on demand any expenses the Owner may incur by reason of the Owner repossessing or attempting to repossess the Equipment;
- (d) To repay to the Owner on demand any costs or monies that the Owner incurs or pays to make good any failure by the Hirer to comply with its obligations, and any costs or monies incurred or expended by the Owner in protection of the Equipment.



3.2.3 **(Indemnity)** The Hirer agrees to indemnify the Owner against:

- (a) Any Loss arising out of the destruction of, or loss or damage to, the Equipment during the Rental Term;
- (b) All taxes and duties payable in respect of this Agreement or any receipts or payments under this Agreement;
- (c) Any Loss suffered or incurred by the Owner in connection with the Hirer's breach of this Agreement; and
- (d) Any claim made by a third party (including any employee, contractor, supplier or customer of the Hirer) in respect of any property damage, death or personal injury suffered or caused (whether directly or indirectly) by the Hirer's use, transport, storage, maintenance or repair of the Equipment.

3.2.4 **(Possession)** The Hirer agrees:

- (a) The Equipment will remain in the possession and control of the Hirer at all times during the Rental Term;
- (b) This Agreement will not be assigned without the consent of the Owner first being obtained in writing;
- (c) To notify the Owner immediately in writing of any change in the Hirer's address and/or the address where the Equipment is located; and
- (d) The Equipment is personal property of the Owner and will not be affixed to any land.

3.2.5 **(Insurance)** The Hirer agrees:

- (a) To insure and keep the Equipment insured with a reputable insurer for the Insurable Value against fire, accident, theft, damage and transport and such other risks as the Owner may reasonably require;
- (b) To pay promptly all premiums and stamp duty in respect of such policy of insurance and irrevocably authorises the Owner to receive all insurance monies;
- (c) Not to do or permit or allow to be done anything which might or could prejudice any insurance of the Equipment;
- (d) To maintain policies of insurance for third party and public liability and property damage indemnity cover of not less than ten million dollars per occurrence;
- (e) To provide the Owner with evidence of compliance with this clause (including certificates of currency of insurance) when requested by the Owner; and
- (f) To pay any excess in the event that a claim is made against the Hirer's insurance policy.

3.2.6 **(Return of the Equipment)** The Hirer agrees:

- (a) At the expiration of the Rental Term or upon earlier termination of this Agreement, to deliver the Equipment to the Owner at the nearest office of the Owner's business; and
- (b) To be responsible for the transportation of the Equipment to and from the Owner.

3.2.7 **(Equipment Breakdown)** The Hirer agrees:

- (a) Apart from the repair of any major component failure covered by the manufacturer's warranty, the Hirer will be responsible to repair and maintain the Equipment during the Rental Term;

- (b) To undertake such maintenance, and where the Hirer fails to undertake such maintenance and such failure breaches the manufacturer's warranty, to indemnify the Owner for the costs incurred by the Owner to undertake all repairs of the Equipment;
- (c) The obligation to pay the Rental Rate will continue notwithstanding any breakdown or failure of the Equipment; and
- (d) The Owner will not be liable to the Hirer for indirect or consequential losses (including but not limited to loss of revenue, profit, production, good will or reputation) in any circumstances.

#### **4. TITLE AND RISK IN THE EQUIPMENT**

- 4.1 The risk of loss and damage to the Equipment passes to the Hirer upon the Equipment being loaded onto transport at the Owner's premises, and does not pass back to the Owner until the Equipment is unloaded from transport at the Owner's premises at the end of the Rental Term.
- 4.2 In the event the Equipment is lost, damaged or destroyed, the Hirer is not release from its obligations under this Agreement until the Owner is paid all amounts due to it under this Agreement.
- 4.3 The Owner retains title in the Equipment at all times and the Hirer does not obtain any proprietary interest in the Equipment by entering into this Agreement.

#### **5. EVENT OF DEFAULT**

- 5.1 There is an event of Default by the Hirer where, during the rental term:
  - (a) The Hirer does not pay the Rental Rate as required by this Agreement on time or at all;
  - (b) The Hirer fails to rectify within 7 days a breach of this Agreement after written notice of the breach is served by the Owner;
  - (c) In respect of a company, the Hirer by resolution resolves to wind up the company or by application seeks an order that the company be wound up or placed in administration;
  - (d) In respect of a trust, the winding up of the trust or removal of the trustee for any reason;
  - (e) In respect of an individual, the Hirer is declared or applies for bankruptcy, enters into a debt agreement or enters into personal insolvency agreement;
  - (f) Any execution or other process of any court or authority is issued against the Hirer or the Hirer's assets;
  - (g) A receiver, receiver and manager, administrator, controller or liquidator is appointed to the Hirer;
  - (h) The Hirer ceases or threatens to cease to carry on its business;
  - (i) Any insurance renewal or insurance proposal made by the Hirer in respect of the Equipment is declined;
  - (j) Any insurance policy in respect of the Equipment is cancelled;
  - (k) The Hirer commits an act of insolvency (as defined in the *Corporations Act 2001* (Cth) or an act of bankruptcy (as defined in the *Bankruptcy Act 1966* (Cth)); and/or
  - (l) The Hirer fails to return the Equipment at the end of the Rental Term or in accordance with Clause 8.1.
- 5.2 Where there is an Event of Default, the Owner may by notice in writing served on the Hirer, do one or more of the following:



- (a) Terminate this Agreement;
- (b) Repossess the Equipment;
- (c) Enforce performance of this Agreement; and/or
- (d) Recover damages for breach of this Agreement.

5.3 The Owner may take any or all of the actions set forth in paragraph 5.2 notwithstanding that the Owner may have waived any previous default or defaults by the Hirer.

## **6. RIGHTS ON TERMINATION**

6.1 At the expiration of the Rental Term or where the Owner exercises its right of termination pursuant to Clause 5.2, the Hirer will at its own expense immediately return the Equipment to the nearest office of the owner's business.

6.2 The Owner will be entitled to recover from the Hirer without demand:

- (a) Any payment of the Rental Rate or other monies becoming payable to the Owner under this Agreement; and
- (b) The cost of any cleaning, renovation or repairs performed by the Owner to return the Equipment to good order and repair, fair wear and tear excepted.

6.3 The Hirer acknowledges that the Owner will not be required to mitigate its loss by sale of the Equipment or account to the Hirer for any proceeds of sale in the event the Equipment is sold by the Owner

## **7. REPOSSESSION OF THE EQUIPMENT**

7.1 Where the Owner exercises its right to repossess the Equipment pursuant to Clause 5.2, the Hirer's obligation to pay the Rental Rate will continue for the full rental term until termination of this Agreement by the Owner or the re-hiring of the Equipment.

7.2 Where the Owner exercises its right to repossess the Equipment pursuant to this Agreement or the common law, the Hirer authorises the Owner to enter upon the property of the Hirer for the purposes of repossessing the Equipment and if necessary, to sever the Equipment from the land and to do such things as are necessary or incidental in that regard. The Hirer indemnifies the Owner against any and all actions, claims, suits or demands for damage from such entry, severance or removal of the Equipment.

7.3 The Owner may recover from the Hirer as a debt due and owing without demand:

- (a) All costs incurred by the Owner in repossessing the Equipment (including legal costs);
- (b) All storage fees paid in respect of the Equipment;
- (c) All transportation costs in respect of the repossession of the Equipment; and
- (d) All costs of cleaning, renovation, repair or maintenance of the Equipment to return the Equipment to good order and repair, fair wear and tear excepted.

## **8. HOLDING OVER**

8.1 Upon expiration of this Agreement, the parties may agree to continue to hire the Equipment upon the same terms and condition, except that:

- (a) This Agreement will be deemed an agreement for hire from month to month;
- (b) The Owner may demand the possession of the Equipment at any time; and
- (c) The Hirer may return possession of the Equipment at any time provided that the Hirer will pay for the full month's hire.

## **9. WARRANTIES**

- 9.1 The Hirer will have the benefit of any manufacturer's warranty with respect to the Equipment during the rental term.
- 9.2 Other than the warranty referred to in 9.1, all warranties with respect to the Equipment are excluded to the full extent permissible by law.
- 9.3 In circumstances where the law does not permit the Owner to exclude or limit its liability under this Agreement, then the liability of the Owner for any breach of condition, warranty or damages or loss suffered will be limited to (at the Owner's discretion):
  - (a) The resupply of the Equipment;
  - (b) The supply of equivalent machinery; or
  - (c) The repair of the Equipment.
- 9.4 The Hirer acknowledges that neither the Owner, nor any person acting on the Owner's behalf, has made any representation or made any promise or undertaking in relation to the quality of the Equipment, its fitness for purpose, or the use of the Equipment.

## **10. RENTAL AND OTHER PAYMENTS**

- 10.1 The Hirer must pay to the Owner the Rental in accordance with the Standard Terms.
- 10.2 All money payable by the Hirer under this Agreement must be paid at the Owner's address 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.
- 10.3 If the Hirer fails to make a Rental payment in full when due, the Owner may, without prejudice to any other right or remedy the Owner may have under this Agreement, charge an administration fee of \$35.00. The Hirer agrees that this is a genuine pre-estimate of the actual loss that the Owner will suffer as a result of the Hirer's failure to make the Rental payment.
- 10.4 All payments made to the Owner must be made without set-off, deduction or counter-claim.

## **11. OPERATION AND MAINTENANCE**

- 11.1 The Hirer must ensure that the Equipment will only be operated by properly licensed and skilled operators and services by qualified personnel at all times.
- 11.2 The Hirer must not use the Equipment to carry or move any illegal, prohibited or dangerous substance.
- 11.3 The Hirer must ensure that the Equipment is subject to full fuel service at all times.
- 11.4 The Hirer must only use the Equipment for the nature of the work for which it was designed.

- 11.5 The Hirer must, at its own expense, keep, maintain, store and use the Goods in proper working order and in good and substantial condition.
- 11.6 The Hirer must operate the Goods with due care and diligence and in accordance with the Manufacturer's Specifications.
- 11.7 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;
  - (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) install thread protectors on all threaded tubular Goods at all times when not in use;
  - (i) comply with all requirements of the Owner, and all public and statutory authorities when operating the Goods, storing, loading or unloading the Goods;
  - (j) make the Goods available for examination and testing by the Owner at all reasonable times, after reasonable notice from the Owner;
  - (k) ensure that the Owner has full access to the Equipment and the Equipment's odometer at all times;
  - (l) The Hirer must provide the Owner with a monthly odometer report at the expense of the Hirer; and
  - (m) The Hirer must ensure that the odometer is not interfered with at any time during the Rental Term.
- 11.8 The Hirer must return the Goods to the Owner for repairs and servicing.

## **12. FAILURE OF GOODS**

- 12.1 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.

12.2 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.

12.3 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.

12.4 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.

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

### **13. LIENS AND ENCUMBRANCES**

13.1 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.

13.2 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.

### **14. PERSONAL PROPERTY SECURITY ACT**

14.1 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.

14.2 The Hirer must not:

(a) Create any Security Interest over the Equipment;

(b) Lease, hire, bail or give possession of the Equipment to another person;

(c) Permit the Equipment to become and accession to or commingled with any other asset of the Hirer or any other person; or

(d) Change its name without first giving the Owner 14 days' notice of the new name or relocate its principle place of business outside Australia or change its place of registration or incorporation.

- 14.3 The Hirer must do anything (such as obtaining consents and signing documents), which the Owner requires for the purposes of:
- (a) Ensuring that the Owner's Security Interest in the Equipment is enforceable, perfected and otherwise effective under the PPSA;
  - (b) Enabling the Owner to gain first priority (or any other priority agreed to by the Owner in writing) for its Security Interest in the Equipment; and
  - (c) Enabling the Owner to exercise its rights in connection with the Security Interest over the Equipment.
- 14.4 The Hirer hereby gives the Owner an irrevocable power of attorney to do anything the Owner considers the Hirer should do under this Clause 14.
- 14.5 Neither the Owner nor the Hirer will disclose information of the kind mentioned in section 275(1) of the PPSA and the Hirer will not authorise, and will ensure that no other party authorises, the disclosure of such information. This clause does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.
- 14.6 To the extent that Chapter 4 of the PPSA applies to any Security Interest under this Agreement, the following provisions of the PPSA do not apply and, for the purposes of section 115 of the PPSA are "contracted out" of under this Agreement:
- (a) Section 95 (notice of removal of accession to the extent it requires the Owner to give a notice to the Hirer);
  - (b) Section 96 (retention of accession);
  - (c) Section 121(4) (notice to grantor);
  - (d) Section 125 (obligation to dispose of or retain collateral);
  - (e) Section 129(2) (notice of disposal by purchase);
  - (f) Section 130 (notice of disposal to the extent it requires the Owner to give a notice to the Hirer);
  - (g) Section 132(3)(d) (contents of statement of account after disposal);
  - (h) Section 132(4) (statement of account if not disposal);
  - (i) Section 135 (notice of retention);
  - (j) Section 142 (redemption of collateral); and
  - (k) Section 143 (re-instatement of security agreement).
- 14.7 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, under s 157 of the PPSA.
- 14.8 Everything which the Hirer is required to do under this clause 14 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.
- 14.9 The Hirer agrees to pay all expenses (including legal expenses on an indemnity basis) arising from the collection of overdue monies or registration, maintenance, enforcement or discharge of the Owner's Security Interest in the Equipment. Such costs and legal expenses may be recovered as a liquidated debt due and owing to the Owner.
- 14.10 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.



- 14.11 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.

**15. OWNER'S WARRANTY AND RELEASE**

- 15.1 The Owner warrants that the goods are in good repair and condition as at the Start Date.
- 15.2 The Owner is not liable for the results or outcome of any work, procedure or actions undertaken by the Hirer using the Goods.
- 15.3 The Hirer is responsible for ensuring that the Goods hired are appropriate for the work required to be undertaken by the Hirer.

**16. RISK AND INSURANCE**

- 16.1 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.
- 16.2 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.
- 16.3 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.
- 16.4 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.
- 16.5 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.

**17. RELIANCE AND WARRANTIES**

- 17.1 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.
- 17.2 Notwithstanding any other remedy available to the Owner under this Agreement or at law, if the Hirer fails to pay an amount owing to the Owner on the date due for payment, the Hirer is liable for interest at the Default Rate from the due date for payment until the date that payment is made.
- 17.3 If an amount claimed by the Owner is in dispute:
- (a) The amount not in dispute must be paid by the Hirer in accordance with this Agreement; and



- (b) Any disputed amount that is ultimately determined to have been payable to the Owner must be paid by the Hirer with interest at the Default Rate from the original due date until the payment is made.

**18. ASSIGNMENT**

- 18.1 The Owner may assign the benefit of this Agreement without the Hirer's consent.
- 18.2 The Hirer must not assign the benefit of this Agreement without the Owner's prior written consent.
- 18.3 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.

**19. NOTICES**

- 19.1 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.
- 19.2 A party may change its particulars for service by notice in writing to the other parties.
- 19.3 A notice sent by post will be deemed received three days after posting.
- 19.4 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.
- 19.5 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.
- 19.6 For the purposes of clause 14.5, "delivery" of an email means the time that an email reaches the recipient's server.

**20. REFERENCES TO AND CALCULATIONS OF TIME**

- 20.1 Where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.
- 20.2 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.
- 20.3 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.

**21. GST**

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

- 21.2 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.

## **22. GENERAL**

### **Governing law**

- 22.1 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**

- 22.2 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.

### **Duty and legal fees**

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

### **Entire Agreement**

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

### **Severability**

- 22.5 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**

- 22.6 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**

- 22.7 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**

- 22.8 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**

- 22.9 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**

- 22.10 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**

- 22.11 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.

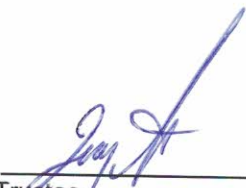


**EXECUTED AS AN AGREEMENT.**

**SIGNED** on behalf of **THE CUBIT  
SUPERANNUATION FUND** )  
 )  
in accordance with its )  
Constitution by the sole Trustee in the presence )  
of: )  
of: )

 COB 63778  
Signature of witness

ANTHONY LAWLIS  
Print name of witness

  
Trustee

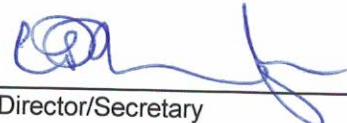
Director/Secretary

**SIGNED** on behalf of the Hirer **EAST  
COAST STORAGE PTY LTD** in accordance )  
 )  
with its Constitution by a director and a )  
director/secretary or by a sole director (if )  
applicable) in the presence of: )

 COB 63778  
Signature of witness

ANTHONY LAWLIS  
Print name of witness

  
Director

  
Director/Secretary

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

 COB 63778  
Signature of witness

ANTHONY LAWLIS  
Print name of witness

  
Signature

**ANNEXURE A**  
**MANUFACTURER'S SPECIFICATIONS**