

**DUBBO REGIONAL COUNCIL  
ABN 53 539 070 928**

**AND**

**STEPHEN RICHARD SMITH AND SHARON LEANNE SMITH**

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**DEED OF LICENCE  
GRAZING AND CROPPING**

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Dubbo Regional Council  
Cnr Church and Darling Streets  
DUBBO NSW 2830  
Email: [council@dubbo.nsw.gov.au](mailto:council@dubbo.nsw.gov.au)

**THIS DEED OF LICENCE** is made on the                      day of                      2023

**PARTIES:**

**DUBBO REGIONAL COUNCIL**  
**ABN 53 539 070 928**  
of Cnr Church and Darling Streets  
Dubbo in the State of New South Wales 2830  
**(Licensor).**

and

**STEPHEN RICHARD SMITH AND SHARON LEANNE SMITH**  
21R Old Dubbo Road  
Dubbo in the State of New South Wales 2830  
**(Licensee).**

**RECITALS:**

- A.** The Licensor is the registered proprietor of the land, as the relevant Roads Authority for the Dubbo Local Government area pursuant to Part 1 Section 7 of the *Roads Act* 1993 for the road reserve of which the Licenced Area forms part.
- B.** The Licensee wishes to use the Licenced Area and has requested the Licensor to grant to it a licence to use and occupy the Licenced Area for the Permitted Use.
- C.** The Licensor has agreed to grant a licence to the Licensee pursuant to Part 10 Division 2 of the *Roads Act* 1993 and on the terms set out in this Agreement.

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## **OPERATIVE PART:**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this Licence, unless the context otherwise requires, the following expressions shall have the following meanings:

<b><i>Agreement</i></b>	means this licence agreement and any annexures, attachments and schedules attached to it.
<b><i>Bank</i></b>	means a bank authorised under the <i>Banking Act 1959</i> (Cth)
<b><i>Bank Guarantee</i></b>	means a bank guarantee that is: (a) issued by a Bank on terms reasonably satisfactory to the Licensor; (b) unconditional and does not have an expiry date; and (c) for an amount equivalent to the Bank Guarantee Amount.
<b><i>Bank Guarantee Amount</i></b>	means the amount outlined in Item 13.
<b><i>Building</i></b>	means the building or buildings erected on the Licenced Area.
<b><i>Business Day</i></b>	means a day other on which banks are open for general banking business in New South Wales, but does not include Saturdays, Sundays or public holidays.
<b><i>Carrying Capacity</i></b>	means the optimum average dry sheep equivalent or the equivalent head of cattle carrying capacity of the Licence Area over a twelve (12) month period without having regard to any deleterious conditions of the Land caused by any breach of this Licence by the Licensee
<b><i>Carrying Capacity Variation Notice</i></b>	Has the meaning described in Clause 21.3
<b><i>Commencement Date</i></b>	is the date specified in Item 2.
<b><i>Common Areas</i></b>	has the meaning described in Clause 2.1(b).
<b><i>Constructions Works</i></b>	has the meaning described in Clause 8.
<b><i>Corporations Act</i></b>	means the <i>Corporations Act 2001 (Cth) 2001</i> .
<b><i>Dealing</i></b>	means the Licensee: (a) transferring this Agreement or sub-licensing the Premises; (b) mortgaging or encumbering its interest in this Agreement;

	<p>(c) entering into an agreement that gives any person the right to enter into occupation or possession of the Licenced Area or any part of the Land or any goods or property on the Land; or</p> <p>(d) entering into a share-farming arrangement in relation to the Licenced Area.</p>
<b>Dispute</b>	has the meaning described in Clause 14.1.
<b>Dispute Notice</b>	has the meaning described in Clause 14.1(a).
<b>District Agronomist</b>	means the person appointed by the Department of Primary Industries (or the government department then carrying on the functions of the body) as the district agronomist for the area in which the Licence Area is located.
<b>Enclosure Permit</b>	has the meaning described in Clause 20.8
<b>Environmental Law</b>	means all laws and regulations, consent, permits, environmental protection policies and directions, standards and guideline, including determinations, of any authority, including federal, state or local government authorities, (and any other like bodies) regulating or otherwise relating to the environment, including land use, planning, heritage, Aboriginal cultural heritage, coastal protection, water catchments, pollution or air or waters, noise, soil or ground water contamination, chemical, waste, waste management, use of hazardous or dangerous goods or substances, building regulations, public and occupational health and safety, noxious trades and use of biodegradable/non biodegradable products.
<b>Equipment</b>	has the meaning described in Clause 4.2(a).
<b>Event of Default</b>	has the meaning described in Clause 11.1.
<b>Farm Management Program</b>	means a detailed program of the proposed farm productions and operations to be undertaken on the Licenced Area, as described in Clause 22.1.
<b>Fire-Fighting Equipment</b>	Included water pumps, fire-fighting tanks, bushfire foam, fire beaters, axes, fire hoses, fire reels, and any other fire-fighting equipment.
<b>GST</b>	has the meaning described in Clause 15.
<b>GST Law</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> and any other Act or regulation relating to the imposition or administration of the GST.
<b>Hazardous Substances</b>	means all substances of a hazardous or potentially hazardous nature including any fuels, chemical, oils, lubricants, and associated items.
<b>Insolvency Event</b>	<p>means the happening of any of the following events:</p> <p>(a) application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up;</p>

	<p>(b) an application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order;</p> <p>(c) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;</p> <p>(d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved;</p> <p>(e) a body corporate is or states that it is insolvent;</p> <p>(f) As a result of the operation of section 459F(1) of the Corporations Act, a body corporate is taken to have failed to comply with a statutory demand;</p> <p>(g) a body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act;</p> <p>(h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate;</p> <p>(i) a person becomes an insolvent under administration as defined in s9 of the Corporations Act or action is taken which could result in that event;</p> <p>(j) a receiver, manager or receiver and manager is appointed to the Licensee;</p> <p>(k) a body corporate becomes an externally administered body corporate within the meaning of the Corporations Act;</p> <p>(l) a claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court; or</p> <p>(m) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.</p>
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<b>Land</b>	means the Rural Road Reserve adjacent Lot 92 DP 574695, 21R Old Dubbo Road Dubbo in the State of New South Wales.
<b>Licence</b>	has the meaning described in Clause 2.1(a).
<b>Licenced Area</b>	is the area described in Item 1 in the Schedule; and includes the Licensor's Goods and Equipment and all fixtures within the Licenced Area belonging to the Licensor.
<b>Licensee</b>	refers to the entity named on page 2 of this Agreement, and where the context permits, includes its invitees, employees, volunteers and contractors.
<b>Licensee's Share of Outgoings</b>	is the Licensee's share of Outgoings as set out in Item 7.
<b>Licensee's Work</b>	has the meaning described in Clause 5.1(a).
<b>Licensor's Goods and Equipment</b>	refers to the goods and equipment listed in Item 11 in the Schedule belonging to the Licensor.
<b>Licence Fee</b>	is the fee referred to Item 6.
<b>Licence Fee Review Date</b>	is the date/s set out in Item 9.
<b>Licence Fee Review Method</b>	is the review method referred to in Item 8.
<b>Make Good Works</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) reinstating the Licenced Area to the same condition (save for fair wear and tear) that the Licenced Area was delivered to the Licensee at the Commencement Date;</li> <li>(b) removing, reinstating and making good any of the alterations made to the Licenced Area, by the Licensee at the reasonable direction of the Licensor; and</li> <li>(c) specifically in relation to the Building: <ul style="list-style-type: none"> <li>(1) repainting the Building in colours and to a standard reasonably required by the Licensor; and</li> <li>(2) removing, reinstating and making good the Licensee's fit-out, alterations, additions, fitting and furniture (including equipment) at the reasonable direction of the Licensor.</li> </ul> </li> </ul>
<b>Monthly Licence</b>	has the meaning described in Clause 2.2(c).
<b>Option</b>	has the meaning described in Clause 2.3(a).
<b>Option Commencement Date</b>	means the commencement date of the relevant Option outlined in Item 5(b)
<b>Option Details</b>	means the details of and Option (if any) outlined in Item 5.

<b>Option Notice</b>	has the meaning described in Clause 2.3(b)(i).
<b>Option Term</b>	is the period specified in Item 5.
<b>Option Termination Date</b>	means the termination date of the relevant Option outlined in Item 5(c).
<b>Outgoings</b>	<p>means all rates, taxes (not including land tax), costs and expenses of the Licensor payable or otherwise incurred upon or in respect of the use of the Licenced Area including but not limited to:</p> <ul style="list-style-type: none"> <li>(a) all charges for and costs in relation to the supply of water, sewerage and drainage, and water usage;</li> <li>(b) all charges for lighting, power, heating, air conditioning and ventilation;</li> <li>(c) the cost of any fire services so that the Licenced Area complies with Australian Standards; and</li> <li>(d) the cost of any telecommunication, security, cleaning, rubbish and other related services.</li> </ul>
<b>Permitted Use</b>	the permitted use of the Licenced Area referred to in Item 10.
<b>Person Conducting a Business or Undertaking</b>	has the same meaning as in the WHS Act
<b>PIC</b>	means the Property Identification Code issued by the NSW Local Land Services.
<b>Reviewed Licence Fee</b>	has the meaning described in Clause 3.2.
<b>Schedule</b>	refers to the schedule attached to the rear of this Agreement.
<b>Services</b>	has the meaning described in Clause 6.2(a).
<b>Term</b>	means the term of the Licence as specified in Item 4 of the Schedule.
<b>Termination Date</b>	is the date specified in Item 3 in the Schedule.
<b>WHS Act</b>	means the <i>Work Health and Safety Act 2022</i> (NSW)
<b>Work Notice</b>	has the meaning described in Clause 5.4(a).



## **1.2 Interpretation**

In this Agreement:

- (a) the headings are for convenience only and do not affect the construction of this Agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) a reference to a gender includes a reference to any gender;
- (d) where any word or expression is given a defined meaning, any other part of speech or any other grammatical form in respect of such word or expression shall have a corresponding meaning;
- (e) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated.
- (f) a reference to a party includes a reference to the party's successors in title and permitted assigns or as the case may be the party's administrators and assigns, and if a party consists of two or more persons, obligations of that party can be enforced against any one or more of them;
- (g) a reference to a person or individual includes a corporation, partnership or, without limitation, any form of body corporate;
- (h) references to annexures, clauses, items and schedules are references to annexures, clauses, items and schedules of this Agreement;
- (i) a reference to an item is a reference to an item in the Schedule;
- (j) references to Acts, statutes, regulations or other laws include all Acts, statutes, regulations or other laws amending, consolidating or replacing the Acts, statutes, regulation or other laws referred to; and
- (k) where a party consists of two or more persons or a term is used in this Agreement to refer to more than one party:
  - (i) an obligation of those persons is joint and several; and
  - (ii) a right of those persons is held by each of them jointly and severally.

## **1.3 Licensor as a Local Government Authority**

The Licensee acknowledges that the Licensor is a local government authority with statutory rights and obligations pursuant to the terms of the *Local Government Act 1993*, the *Environmental Planning and Assessment Act 1979*, the *Roads Act 1993*, or any other applicable legislation as amended or any regulation which is deemed to apply and agrees that:

- (a) no provision of this Agreement is to be construed or operate so as to restrict, fetter, modify or otherwise interfere with the power of the Licensor as a local government authority;
- (b) this Agreement is not to be considered or construed as an approval of any development or other application required from the Licensor in its capacity as a local government authority or any other statutory authority;
- (c) if any provision of this Agreement would, or could likely, operate so as to fetter, restrict or otherwise interfere with the exercise of the Licensor's powers as a local government authority, then that provision is, to the extent necessary for it not to fetter, restrict or otherwise interfere with the exercise of the Licensor's powers as a local government authority, be read down (if possible) or severed from this Agreement; and
- (d) it will not make any claim on account of any action of the Licensor that is carried out in the Licensor's capacity as a local government authority.

#### **1.4 Severability**

If any provision of this Agreement is or becomes legally ineffective, under the general law or by force of legislation, the ineffective provision shall be severed from this Agreement which otherwise continues to be valid and operative.

#### **1.5 Exclusion of statutes**

The covenants implied into licence agreements by legislation are excluded.

### **2. LICENCE**

#### **2.1 Grant of Licence**

- (a) The Licensor grants a licence of the Licenced Area to the Licensee (**Licence**) subject to the terms and conditions set out in this Agreement.
- (b) If the Land or Building has areas, facilities and services shared in common with other persons (**Common Areas**), then the Licensee shares the Common Areas with such other persons, which may include the Licensor and other licensees/ lessees of the Land. The Licensor can set reasonable rules for the use of the Building and the Common Areas.
- (c) The Licensee acknowledges and agrees that the Licence does not give rise to a right of exclusive occupation of the Licenced Area. The Licensee may not exclude the Licensor, its officers, employees and invitees from:
  - (i) entry onto the Licenced Area or the Land;
  - (ii) apprehending persons suspected of having committed a breach of the law;
  - (iii) the performance of any works on the Licenced Area or the Land,

provided that such entry onto, inspection of and/or performance of work on the Licenced Area does not unreasonable interfere with the conduct of the Permitted Use by the Licensee.

- (d) The Licence is personal to the Licensee and cannot be encumbered or assigned (either directly or indirectly) without the Licensors prior written consent.
- (e) The relationship between the Licensor and the Licensee constituted by this Agreement is licensor – licensee only. No term of this Agreement is to be construed so as to give rise to any of the following relationships:
  - (i) principal and independent contractor;
  - (ii) joint venturers;
  - (iii) partners;
  - (iv) trustee and beneficiary; or
  - (v) employer and employee.
- (f) Each party must ensure that they do not conduct themselves so as to hold out, or otherwise represent, that a relationship other than licensor - licensee exists between them.

## 2.2 Term

- (a) The Licence commences on the Commencement Date and ends on the Termination Date.
- (b) Unless terminated earlier in accordance with the terms of this Agreement, the Licence will continue for the Term.
- (c) If the Licensee remains in possession of the Licenced Area with the consent of the Licensor after the Termination Date, the Licensee is deemed to occupy the Licenced Area on a monthly licence (**Monthly Licence**) and:
  - (i) at the monthly Licence Fee which was payable for the last month of the Term increased by five percent (5%);
  - (ii) on the same terms as those contained within this Agreement, except those terms which are inappropriate to a monthly licence agreement; and.
  - (iii) either party may terminate the Monthly Licence by giving one (1) month's written notice to the other party.

## 2.3 Renewal of Term

- (a) If Item 5 is completed, the Licensor grants the Licensee an option to renew the Licence for the Option Term (**Option**).
- (b) To exercise the Option, the Licensee must:
  - (i) give written notice to the Licensor, not more than six (6) months and not less than three (3) months before the Termination Date, that the Licensee wishes to exercise the Option(**Option Notice**); and

- (ii) not be breach of this Agreement at the time when Option Notice is given to the Licensor.
- (c) Upon validly exercising the Option, the terms of this Agreement remain unchanged except:
  - (i) the Licence Fee shall be amended in accordance with Clause 3.2;
  - (ii) this Clause 2.3 and Item 5 is deleted; and
  - (iii) the date or dates for the relevant Option in Item 5 ( including the Option Commencement Date and Option Termination Date) will be inserted into Item 2 and Item 3 as appropriate, and the details for that option will be deleted from Item 5.

### **3. MONEY**

#### **3.1 Payment of Monies**

- (a) The Licensee must pay to the Licensor:
  - (i) the Licence Fee;
  - (ii) the Licensee's Share of Outgoings;
  - (iii) the reasonable cost to the Licensor incurred as a result of remedying any default by the Licensee under this Agreement;
  - (iv) the reasonable cost to the Licensor of dealing with any application by the Licensee for the Licensor's consent under this Agreement (whether or not it is given);
  - (v) interest at the rate stated in Item 15, calculated daily and compounded monthly, on any moneys that are more than fourteen (14) days overdue for payment, calculated from the due date to the actual date of payment;
  - (vi) if the Licensee defaults or breaches any term of this Agreement - the Licensor's reasonable legal costs relating to the default by the Licensee;
  - (vii) the Licensor's reasonable costs and expenses incurred in connection with the preparation, negotiation and execution of this Agreement;
  - (viii) GST in accordance with Clause 15;
  - (ix) any stamp duty payable with respect to this Agreement; and
  - (x) any other monies required to be paid under this Agreement.
- (b) The Licence Fee is to be paid in advance on or prior to the Commencement Date.

- (c) A payment under clause 3.1(a)(ii) must be paid on the next rent day after a request for payment is made by the Licensor. A request for payment by the Licensor to the Licensee can be made:
  - (i) after the Licensor has paid an outgoing; or
  - (ii) after the Licensor has received an assessment or account for payment of an outgoing.
- (d) The Licensee must pay all charges for electricity, lighting, gas, water, telephone and any other utility used on or in respect of the Licenced Area.
- (e) The Licensee will during the term of this Licence submit to Local Land Services all necessary returns and will pay all or any rates and assessments issued by Local Land Services with respect to the Licenced Area.

### 3.2 Review of Licence Fee

- (a) The Licence Fee will be reviewed on the Licence Fee Review Date.
- (b) The Licensee must continue to pay the Licence Fee until the new Licence Fee is reviewed in accordance with the Licence Fee Review Method (**Reviewed Licence Fee**). The Licensee is to pay the Reviewed Licence Fee from the next business day, together with any shortfall between the Licence Fee and the Reviewed Licence Fee for the period since the Licence Fee Review Date. If the Reviewed Licence Fee would be less than the amount paid by the Licensee immediately prior to the Licence Fee Review Date, the Licence Fee will be the greater of the two amounts.
- (c) If the Licence Fee Review Method is by Consumer Price Index, the Licence Fee will be reviewed as follows:
  - (i) use the Licence Fee amount as at the later of the last Licence Fee Review Date or the Commencement Date (\$X);
  - (ii) divide the Licence Fee by the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just prior to the relevant date in Clause 3.2(c)(i) (CPI1);
  - (iii) multiply the result of Clause 3.2(c)(ii) (above) by the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just before the Licence Fee Review Date (CPI2); and
  - (iv) the resulting amount is the Reviewed Licence Fee (\$Y), written as a formula:

$$\frac{\$X}{\text{CPI1}} \times \text{CPI2} = \$Y$$

### 3.3 Security

- (a) Upon the execution of this Agreement, the Licensee must pay to the Licensor the Bank Guarantee.

- (b) The Licensee indemnifies the Licenser against any claims, fines or losses incurred by the Licenser as a result of the failure of the Licensee to comply with Clause 3.3(a).
- (c) If the Licenser, in good faith, believes that the Licensee has defaulted under this Agreement, the Licenser may demand payment under the Bank Guarantee for the amount necessary to remedy the default and to indemnify the Licenser for all loss it sustains as a consequence of the default.
- (d) If the Licenser calls up any money under the Bank Guarantee, the Licensee must within ten (10) Business Days of notice from the Licenser of the amount called up forward to the Licenser a Bank Guarantee in identical terms to the Bank Guarantee which was called up.
- (e) If ownership of the Licenced Area is transferred, the Licensee must, if required, procure within ten (10) Business Days the issue of a replacement Bank Guarantee to the new owner, if the original Bank Guarantee is returned.
- (f) The Licenser must, on expiry or termination of this Agreement, return the Bank Guarantee to the Licensee, provided:
  - (i) the Licensee has complied with all of its obligations under this Agreement; and
  - (ii) the Bank Guarantee has not been called up by the Licenser.

#### **4. USE OF LICENCED AREA**

##### **4.1 Permitted Use**

- (a) The Licensee may only use and occupy the Licenced Area for the Permitted Use.
- (b) The Licenser may consent to a change of the Permitted Use in its sole discretion.
- (c) The Licensee uses and occupies the Licenced Area at its own risk.
- (d) The Licensee must:
  - (i) carry on its business in a lawful, proper, efficient and upright manner at all times and in accordance with the reasonable and lawful directions and policies of the Licenser;
  - (ii) keep the Licenced Area clean and dispose of waste properly and regularly;
  - (iii) repair and maintain the Licenced Area in a good condition, fair wear and tear excepted;
  - (iv) ensure that noise levels emanating from the Licenced Area (including but not limited to music) are kept to a reasonable level ordinarily expected for a business operating under the Permitted Use;

- (v) ensure that its invitees, contractors, employees, franchisees, servants and agents:
    - (1) conduct themselves in a good, courteous, civil and inoffensive manner;
    - (2) cause as little inconvenience and disturbance to neighbouring businesses, lessee/s, licensee/s or members of the public; and
    - (3) conduct themselves in accordance with the Licensor's policies and procedures;
  - (vi) comply with all laws, statutes, regulations, ordinances, by-laws or direction of any relevant authority (including the Licensor in its capacity as a local government entity) relating to;
    - (1) the Land and/or the Permitted Use;
    - (2) bushfire prevention, environment protection, conservation and land management; and
    - (3) any operations conducted by the Licensee within the Licenced Area.
  - (vii) comply with the reasonable directions of the Licensor relating to the Land and/ or the Permitted Use;
  - (viii) comply with all notices, directions, orders or other requests served to the Licensee or the Licensor and which arise from the conduct of the Permitted Use on the Licenced Area by the Licensee;
  - (ix) comply with all relevant workplace health and safety legislation;
  - (x) keep the Licenced Area free and clear of rodents, termites, cockroaches and other vermin;
  - (xi) obtain any consents, licences and/ or permits required for the Licensee's business and its use of the Land for the Permitted Use, including a PIC (if applicable), and comply with any such conditions of consent, licences and/ or permits;
  - (xii) keep current any licences, permits and/ or registrations needed for the use of the Licenced Area or for the conduct of the Licensee's business on the Licenced Area; and
  - (xiii) take all reasonable precautions to ensure livestock and other animals are secured within the boundaries of the Licenced Area and prevent them from straying on other parts of the Land, adjoining and/or neighbouring land, and roads.
- (e) The Licensee must not:
- (i) raise or keep pigs within the Licenced Area;
  - (ii) grow, cultivate, or process poppies and/or poppy material on the Licenced Area;
  - (iii) permit any stock from adjoining and/or neighbouring land to stray onto or graze on the Land;

- (iv) permit any access in or over the Land by any person without the prior written approval of the Licensor;
- (v) without the prior written consent of the Licensor:
  - (1) de-pasture or allow to be de-pastured on the Licenced Area more livestock than that presently de-pastured and the progeny of that livestock;
  - (2) use the Common Areas for any purpose other than for access to and egress from the Licenced Area;
- (vi) use any part of the Building, development, structure or fixture on the Land (including any part of the Common Areas) for human habitation;
- (vii) do anything that might invalidate or increase the insurance premium of any insurance policy relating to the Licenced Area;
- (viii) store or keep in or on the Licenced Area any dangerous or objectionable substances, including substances liable to sudden explosion, inflammation or ignition nor allow rubbish or useless property to accumulate in or on the Licenced Area;
- (ix) use any fixtures and/or the Building within the Land for any purpose other than the purpose(s) for which they were constructed, designed or intended to be used;
- (x) manufacture any dangerous substances on the Licenced Area;
- (xi) bring any dangerous substances onto the Licenced Area;
- (xii) breach any fire safety regulation;
- (xiii) use any part of the Licenced Area (or allow the use of it)
  - (1) as a residence; or
  - (2) for any activity that is dangerous, offensive, noxious, illegal or immoral or that is or may become a nuisance or annoyance to the Licensor or to the owner or occupier of any neighbouring property;
- (f) The Licensee expressly agrees that the Licensor is not required to give the Licensee any notice of any change in the normal trading hours of any other business, lessee or licensee operating on or within the Land.

#### **4.2 General management of the Licenced Area**

- (a) The Licensee must manage the Licenced Area and adopt and use ecologically sustainable soil and water management practices and technology in the maintenance of the Licenced Area.
- (b) The Licensee acknowledges that burning of vegetation for the purposes of encouraging new grass is not to be undertaken without the prior written approval of the Licensor and all relevant authorities.



- (c) The Licensee must, at its own cost, take all reasonable steps to keep the Licenced Area free of all forms of feral animals, noxious animals and noxious weeds, and comply with all directives or notices received from the Licensor, the Livestock Health and Pest Authority and / or any other relevant authority.
- (d) The Licensee must not, without the prior written approval of the Licensor, lay or place dams, pipes, pumps or channels on, over or through the Land, or allow any other person to do so.
- (e) The Licensee must take all reasonable steps to prevent flooding of the Licenced Area, the Land and any adjacent land, and the Licensor may reasonably direct the Licensee to construct improvements or alterations to the Licenced Area by way of levy banks, channels or basins to assist with flood mitigation measures.

#### **4.3 Equipment**

- (a) The Licensee will provide at its own cost, all equipment, services and goods (other than the Licensor's Goods and Equipment) necessary to properly conduct its business on the Licenced Area (**Equipment**). The Equipment will remain at the sole property of the Licensee.
- (b) The Licensee must not place any Equipment within the Licenced Area without the prior written consent of the Licensor.
- (c) All Equipment:
  - (i) not fixed to the Land must be safely and securely stored within the Licenced Area when not in use; and
  - (ii) that are of an electrical nature, must be inspected and tagged by a qualified electrician at the cost of the Licensee.
- (d) Any Equipment placed within the Licenced Area must be maintained in a clean and tidy condition at all times by the Licensee.

#### **4.4 Licensor's Goods and Equipment**

If Item 11 is completed, the Licensor will supply, for the use of the Licensee in the Licenced Area (and not otherwise), the Licensor's Goods and Equipment. The provision of the Licensor's Goods and Equipment shall be subject to compliance by the Licensee with the terms and conditions for the supply of the Licensor's Goods and Equipment as outlined in Item 12.

#### **4.5 Erection of signage**

- (a) The Licensee must not:
  - (i) inscribe, paint, erect, affix, place or exhibit; or
  - (ii) permit to be inscribed, painted, erected, affixed, placed or exhibited,

any signs, notices or advertisements to any part of the Licenced Area without the prior written consent of the Licensor.

- (b) The Licensee must comply with any conditions imposed by the Licensor as part of any consent granted under Clause 4.5(a).

#### **4.6 No warranty as to suitability for use**

- (a) The Licensee acknowledges and agrees that the Licensor has not made any representation or warranty to the Licensee regarding the suitability of the Licenced Area and/or the Building for the Permitted Use.
- (b) The Licensor provides no guarantee as to the correctness of the area of the Land and the Licenced Area. No objection, requisition or claim for the compensation will be made by the Licensee in respect of any deficiency in such areas.

- (c) The Licensee acknowledges that there may be:

- (i) road or reservation of roads traversing the Land and the Licenced Area;
  - (ii) gates erected across a road or roads traversing the Land and the Licenced Area;
- and

The Licensor may not hold any permits to enclose roads within the boundary of the Land and/or the Licenced Area.

- (d) The Licensee acknowledges that fences may not be located on the correct boundary lines or may be the subject of arrangement agreements or orders of any Land Board or Court or other competent authority relating to give and take fences.
- (e) The Licensee acknowledges that the boundaries of the Land and the Licenced Area may be unfenced.
- (f) The Licensee acknowledges that telephone or electricity lines, pipes or water channels may traverse the Land and other persons may have rights to use or benefit from such infrastructure.
- (g) The Licensee acknowledges that an application, lease, licence, authority to enter or authority to prospect has or may have been made or granted, relating to mining or exploration for minerals, petroleum or other products within the Land, and the person who holds the lease, license or authority may enter onto the Land and/ or the Licenced Area.

#### **4.7 Environmental Laws**

- (a) The Licensee must, in relation to the Licenced Area:
  - (i) comply with all Environmental Laws:
  - (ii) do all things necessary to prevent a breach of any Environmental Law including but not limited to ensuring vegetation is not removed from the Licenced Area by the Licensee or the Licensee's agents without the Licensor's consent: and

- (iii) promptly notify the Licensor of any breach of any Environmental Law and of details of notices received by or proceedings commenced under an Environmental Law:
  - (1) relating to a breach or alleged breach of an Environmental Law; or
  - (2) requiring any works to be carried out in relation to the Licenced Area.
- (b) The Licensee indemnifies the Licensor against any liability or loss which the Licensor may incur directly or indirectly from any breach of any Environmental Laws in respect of the Licenced Area except to the extent that such liability or loss:
  - (i) is or was caused by the Licensor;
  - (ii) existed before the Commencement Date; or
  - (iii) was caused by an event which occurred before the Commencement Date.

#### **4.8 Hazardous Substances**

- (a) The Licensee must not bring onto or store on the Land any Hazardous Substances other than those which are reasonably required to be used in association with the Permitted Use, in reasonable quantities.
- (b) The Licensee must ensure that all Hazardous Substances brought or stored on Licenced Area are kept safely in appropriately containers.
- (c) The Licensee must use its best endeavours to avoid any leak, spillage or contamination of any Hazardous Substances on the Land.
- (d) The Licensee must, at the Licensee's cost, comply with any notice, order or requirement of the Licensor (acting reasonably) and of any government, semi-government, shire, health, licensing, civic or other authority in relation to storage or handling of Hazardous Substances or the disposal, removal or rendering safe of any Hazardous Substances brought on to the Land by the Licensee.
- (e) The Licensee indemnifies the Licensor against all claims, demands, summonses, actions writs, proceedings, judgments, orders, damages, fines, penalties, costs, losses and expenses of any nature which the Licensor suffers or incurs in connection with any breach by the Licensee of the provisions of this Clause 4.8 and it is agreed that such indemnity will not merge on the expiration or termination of this Agreement.

#### **4.9 Timber**

- (a) The Licensee must not cut down or destroy any trees on the Land unless the Permitted Use allows same for fencing and/ or cultivation.
- (b) All firewood collected within the Licenced Area must be used only for domestic purposes and must not be removed from the Licenced Area.
- (c) If any trees forming part of a shade or shelter belt or any ornamental trees die during the Term, the Licensee must, without delay, replace that tree with a seedling of the same type.

- (d) The Licensee must not, without the written consent of the Licensor, remove or permit to be removed timber, whether green or dead, standing or fallen, from the Land.

## **5. LICENSEE'S WORKS**

### **5.1 No alterations without Licensor's consent**

- (a) The Licensee must not make any alterations or improvements to the Licenced Area (including fencing, earthworks, construction of dams, construction of channels or the installation of equipment, fixtures, fittings or services) (**Licensee's Work**) without the prior written consent of the Licensor.
- (b) The Licensee must, when seeking the Licensor's consent under Clause 5.1(a), submit all relevant information and plans for the proposed alteration and/ or improvement, including:
  - (i) engineering plans prepared by a professionally qualified engineer;
  - (ii) survey plans prepared by a professionally qualified cadastral surveyor;
  - (iii) environmental plans;
  - (iv) cultural heritage plans; and
  - (v) a statement of the purpose for which it is intended to use the proposed alteration and/or improvement.
- (c) If the Licensor gives consent to a Licensee's Work, the Licensee must comply with condition that the Licensor imposes. Including that the Licensee:
  - (i) pay the reasonable costs of the Licensor's architect, engineer or other expert for reviewing the plans, specifications, examples of finishes and work programme;
  - (ii) submit professionally drawn plans and specifications, samples of finishes and a work programme;
  - (iii) obtain and keep insurance as the Licensor reasonably requires;
  - (iv) give the Licensor copies of all approvals prior to commencing the Licensee's Work;
  - (v) give the Licensor drawings of all the Licensee's Work within a reasonable time after completion;
  - (vi) give the Licensor within two (2) Business Days of completion of the Licensee's Work certification which permits occupation of the Licenced Area, as required by law or the applicable authority; and
  - (vii) pay all costs associated with the Licensee's Work including payments to authorities.
- (d) In carrying out the Licensee's Work, the Licensee must:

- (i) comply with all laws (including the WHS Act) and the requirements of authorities;
- (ii) complete the Licensee's Work:
  - (1) in a proper and workmanlike manner;
  - (2) by contractors approved by the Licensor (that approval not to be unreasonably withheld);
  - (3) in accordance with the Licensee's plans;
  - (4) in accordance with the Licensor's approvals;
  - (5) in accordance with the Licensor's reasonable requirements and directions;
- (iii) ensure that the Licensee's Work and the Licensee's contractors do not disturb or disrupt other occupants of the Land and neighbouring lands; and
- (iv) not cause any material interference with the use of the Land.

## 5.2 Structural Maintenance

The Licensee must undertake maintenance works to the Licensed Area that includes work of a structural nature, where the work is such that it would not have been required but for:

- (a) the grant of this Licence;
- (b) the erection or retention of the Licensee's partitions, Equipment, furniture, fixtures and fittings in or on the Licensed Area; or
- (c) the Licensee's negligent actions,

but excludes repairs required as a consequence of fair wear and tear, fire, storm, tempest and accident not caused by the act or default of the Licensee.

## 5.3 Works to be performed by professional tradesperson/s

Any alterations or improvements to the Licenced Area or works which the Licensee is obliged to carry out in the discharge of its obligations under this Agreement must be performed by professionally licenced contractor/s approved by the Licensor, which approval shall not be unreasonably withheld.

## 5.4 Licensor to undertake works

- (a) If the Licensee fails to do any work that the Licensee is required to do under this Agreement, the Licensor may give the Licensee written notice requiring the Licensee to undertake such work (**Work Notice**).

- (b) Within fourteen (14) days of the date of the Work Notice, the Licensee must commence the work in a diligent manner.
- (c) If the Licensee:
  - (i) fails to commence the work required in the Work Notice within the time outlined in Clause 5.4(b); or
  - (ii) does not complete such work within a reasonable time of commencement,the Licenser may undertake and/or complete such work at the Licensee's cost.

## **5.5 Work Health and Safety**

The Licensee:

- (a) acknowledges that it is a Person Conducting a Business or Undertaking at the Premises; and
- (b) must comply with the obligations it has as a Person Conducting a Business or Undertaking under the WHS Act.

## **6. MAINTENANCE AND REPAIR**

### **6.1 Cleaning**

The Licensee must ensure that at all times the Licenced Area is maintained in a clean, tidy and sanitary manner.

### **6.2 Interference with Services**

- (a) The Licensee must not interfere with any water, gas, electrical, plumbing or other services situated near, on, under or over the Licenced Area (**Services**).
- (b) The Licensee must not in any manner obstruct or hinder access to any Services.
- (c) The Licenser must take reasonable action to ensure that the Services are made available to the Licenced Area.

### **6.3 Interruption of services**

Except to the extent prohibited by law, the Licenser is not liable to the Licensee for any loss or damage suffered by the Licensee caused by any malfunction of, failure to function of or interruption to:

- (a) lighting equipment;
- (b) the water, gas, electricity or other services to the Land; or

- (c) for the blockage of any sewers, wastes, drains, gutters, downpipes or stormwater drains from any cause whatsoever,

unless such malfunction, failure to function or interruption is caused or contributed to by the negligence or default of the Licensor.

#### **6.4 Notice of damage**

The Licensee must:

- (a) promptly advise the Licensor in writing of any damage sustained to, or defect with the whole or any part of the Licenced Area, the Building and/ or the Land, including the water pipes, gas pipes, waste pipes, electric light fixtures/ fittings, or any installed appliances; and
- (b) ensure that any of the floors, walls, ceilings or other parts of the Building are not cut, marked, defaced, drilled or damaged, except so far as may be reasonably necessary for the conduct of the Permitted Use.

#### **6.5 Fencing, roads and other improvements**

- (a) Where fences do not exist on the boundary of the Licenced Area, the Licensee, at its own cost, must erect new fences on the relevant boundary/ boundaries to specifications approved by the Licensor and in accordance with Clause 5.
- (b) All fences are to be repaired and maintained by the Licensee at the Licensee's cost.
- (c) The Licensee will not be entitled to claim compensation against the Licensor by reason of the condition of the existing fences.
- (d) The Licensee must maintain all roads within the Licenced Area, and all access roads on the Land leading to the Licenced Area, in the same condition as they were in at the Commencement Date. For the purposes of this Clause 6.5(d) – the term “road” includes culverts, ramps, grids, bridges, table drains and causeways but does not include roads which the Commonwealth, State or local governments or statutory authorities have the duty to maintain.

#### **6.6 Fire-Fighting Equipment and firebreaks**

- (a) The Licensee must ensure that at all times, there is adequate Fire-Fighting Equipment located within the Licenced Area for the fighting of bushfire.
- (b) The Licensee must ensure that the Fire-Fighting Equipment is appropriately maintained, kept current, regularly serviced, and be ready for instant use.
- (c) The Licensee must maintain fire breaks within the Licenced Area, and any such additional fire breaks as is necessary, to prevent the spread of fire

## **7. INSURANCES AND INDEMNITIES**

### **7.1 Insurances**

The Licensee must effect and keep current and in force during the Term:

- (a) a standard policy of public liability insurance for an amount not less than twenty million dollars (\$20,000,000) with respect to the Licenced Area arising out of any one single accident or event;
- (b) insurance for the damage to and loss of Licensee's fixtures, Equipment, stock and/or crops on the Licensed Area or comprising part of the Licensed Area;
- (c) worker's compensation insurance, to insure against:
  - (i) any claim arising by virtue of any legislation relating to worker's compensation brought by any person employed by it in the operation of its business; and
  - (ii) the common law liability of the Licensee in respect of its employees.

### **7.2 Terms of insurance**

The policy of insurance required to be maintained by the Licensee under Clause 7.1 must:

- (a) note the interest of the Licenser as an interested party;
- (b) be maintained at the expense of the Licensee;
- (c) be maintained at all times throughout the Term; and
- (d) be produced to the Licenser upon request as evidence of the currency of such policy.

### **7.3 Cancellation of insurance**

If any policy is cancelled either by the Licensee or the insurer, the Licensee must notify the Licenser immediately.

### **7.4 Release and indemnity**

- (a) The Licensee releases the Licenser against any action, demand, cost or loss due to any damage, loss, injury or death occurring on or within the Licenced Area except to the extent that it is caused by the Licenser's act or negligence.
- (b) The Licensee indemnifies the Licenser against any action, demand, cost, liability or loss due to any damage, loss, injury or death caused or contributed to by
  - (i) the Licensee's act, omission or negligence;
  - (ii) the Licensee's use or occupation of the Licenced Area; or



- (iii) the Licensee's breach of this Agreement

except to the extent that it is caused by the Licensor's act or negligence.

## **7.5 No liability**

The Licensor accepts no responsibility or liability for any damage to persons or property due to the actions and activities of the Licensee its invitees, and its employees within the Licenced Area except to the extent that any such damage arose as a direct result of an act or omission of the Licensor.

## **7.6 Non-merger**

The parties agree that the Licensee's obligations under this Clause 7 shall continue after the expiry or termination of the Agreement in respect of any act, deed or matter which occurred prior to the expiry or termination, including an indemnity on the Licensor's reasonable legal costs on a full indemnity basis.

## **8. CONSTRUCTION AND MAINTENANCE IN OR AROUND THE LAND**

**8.1** The Licensor may, from time to time, conduct or authorise to be conducted, works including construction and maintenance in or around the Land (**Construction Works**) which may impact the Licenced Area and the Licensee's business.

**8.2** The Licensor will, where possible, give the Licensee fourteen (14) days' notice in writing of Construction Works.

**8.3** The Licensee expressly agrees not to make any claim whatsoever arising from the Construction Works.

## **9. DETERMINATION OF TERM**

### **9.1 Yielding up and make good**

(a) At the expiration or sooner determination of the Term, the Licensee, at its cost, must complete the Make Good Works unless the Licensor gives a notice to the Licensee that the Licensor does not require some or all of the Make Good Works to be completed.

(b) The parties acknowledge and agree that all fixtures within the Licenced Area (including gates, fences and bores), whether installed by the Licensor or the Licensee before or during the Term, will be and remain in the ownership of the Licensor, and at the expiration of the Agreement must not be removed from the Licenced Area unless the Licensor consents, in writing, to any such removal

### **9.2 Failure to make good**

If the Licensee does not comply with its obligations under Clause 9.1:

- (a) the Licensor may:

- (i) carry out the Make Good Works and the Licensee must pay the Licenser on written demand any costs incurred by the Licenser in carrying out such works;
  - (ii) place into storage any of the Licensee's goods, Equipment, furniture and/or items and the Licensee must pay the Licenser on written demand any costs incurred by the Licenser in arranging for such storage; and/or
  - (iii) retain ownership of any of the Licensee's goods, Equipment, furniture and/ or items and deduct its reasonable value from any costs due to the Licenser; and
- (b) the Licensee must pay the Licenser an amount equal to the Licence Fee and other amounts (calculated on a daily basis) which the Licenser would have been entitled to receive from the Licensee had the period within which such works are carried out been added to the Term, until the works have been completed.

## **10. DAMAGE OR DESTRUCTION**

**10.1** If the Licenced Area is wholly or partially destroyed or damaged by fire, storm, flood, accident or act of terrorism, and the destruction or damage is not caused by the act or omission of the Licensee:

- (a) the Licensee is not liable to pay Licence Fee that is attributable to any period during which the Licenced Area cannot be used or is inaccessible due to that damage; and
- (b) if the Licenced Area is still useable under this licence but its useability is diminished due to the damage, the Licensee's liability for the Licence Fee attributable to any period during which useability is diminished, is reduced in proportion to the reduction in useability caused by the damage.

**10.2** If the Licenser notifies the Licensee in writing that the Licenser considers the damage is such as to make its repair impracticable or undesirable, the Licenser or the Licensee can terminate this licence by giving not less than fourteen (14) days' notice in writing of termination to the other and no compensation is payable in respect of that termination.

**10.3** Nothing in this Clause 10 affects any right of the Licenser to recover damages from the Licensee in respect of any damage or destruction to which this Clause 10 applies.

**10.4** This Clause 10 does not oblige the Licenser to reinstate the Licenced Area (including any fencing within the Licenced Area), the Building and/ or the Land

## **11. DEFAULT IN PERFORMANCE**

### **11.1 Events of default**

The Licensee commits an **Event of Default** if it breaches a term of this Agreement in a manner:

- (a) capable of being rectified and fails to rectify the breach within fourteen (14) days of being requested to do so by the Licenser; or

- (b) not capable of being rectified and fails to pay compensation for the breach within fourteen (14) days of being requested to do so by the Licensor.

### **11.2 Consequence of Events of Default**

Where the Licensee commits an Event of Default, the Licensor may:

- (a) terminate this Agreement by re-entry, by notice or by any other action available to it;
- (b) by notice to the Licensee, convert the Term into a monthly licence agreement as if the Licensee was holding over at the end of the Term at the monthly Licence Fee current on receipt of the notice;
- (c) take any action it considers necessary or desirable in order to give effect to its rights under this Agreement;
- (d) elect to treat the conduct or failure to perform as a repudiation of this Agreement by the Licensee;
- (e) recover from the Licensee an amount equal to the damages or loss it sustains; and/or
- (f) apply the Bank Guarantee in reduction of its loss or damage

### **11.3 No restriction on rights**

The rights vested in the Licensor pursuant to Clause 11.2 do not prevent the Licensor from exercising any other rights that it may possess at law.

## **12. TERMINATION**

### **12.1 Termination**

This Agreement terminates:

- (a) if the parties mutually agree in writing to such termination;
- (b) on the Expiry Date, if Clause 2.2(c) does not apply;
- (c) an Insolvency Event affects a party; and/or
- (d) if it is terminated pursuant to Clause 11.2.

## **12.2 Consequence of termination**

Upon termination of this Agreement:

- (a) all future rights and obligations of the parties are discharged; and
- (b) all pre-existing rights and obligations of the parties continue to subsist.

## **12.3 Legal costs and expenses**

Where this Agreement is terminated by the Licensor in consequence of the Licensee committing an Event of Default, the Licensee must pay to the Licensor:

- (a) the amount of any damages suffered by the Licensor; and
- (b) any enforcement costs incurred by the Licensor in enforcing its rights under this Agreement including, without limitation, legal costs (on a solicitor-own client basis) and court costs.

## **13. RESERVATIONS AND OTHER INTERESTS**

### **13.1 The Licensor reserves the right to:**

- (a) run cables, pipes and other services and utilities through, under or over the Licenced Area;
- (b) enter the Licenced Area, at all reasonable times and after giving reasonable notice (except in the case of an emergency when no notice is required) to:
  - (i) view the state of repair;
  - (ii) inspect the Licenced Area;
  - (iii) do any works that the Licensor considers desirable;
  - (iv) exercise any of the Licensor's rights under this Agreement;
  - (v) carry out environmental, erosion and/ or land degradation remedial land management practices/ works/ infrastructure (including but not limited to the construction of dams or other structures, earthworks, tree planting and fences);
  - (vi) carry out installations, repairs, renovations or maintenance to the Licenced Area or its services; and
  - (vii) show the Licenced Area to prospective buyers, mortgagees or other licensees of the Licenced Area without causing any inconvenience to the Licensee's business;
- (c) if the Licensor enters the Licenced Area pursuant to Clause 13.1(b)(iii), (iv), (v) or (vi) – bring and store materials within the Licenced Area;
- (d) erect and maintain on the Licenced Area during the last six (6) months of the Term a notice advertising their availability for reletting; and

- (e) grant easements and other rights over or affecting the Licenced Area, the Building and/ or the Land, and the Licensee must sign any consent or other dealing necessary to effect registration of an instrument which creates or grants such easement or other right.

### **13.2 Superior estate**

The Licensee must permit any person having any estate or interest in the Licenced Area superior to or concurrent with the Licensors to:

- (a) exercise the Licensors' or such other person's powers to enter and view the Licenced Area;
- (b) carry out repairs, renovations, maintenance and other work; and
- (c) exercise or perform their lawful rights or obligations.

### **13.3 Strata title**

The Licensors may convert the title to the Licenced Area, the Building and/ or the Land to strata or community title by registration of the appropriate plan of subdivision. The Licensee must sign and consent to the plan provided that the size of the Licenced Area is not altered.

### **13.4 Mortgagee consent**

If the Licenced Area is mortgaged, this Agreement is condition on the mortgagee's consent. The Licensors must use its best endeavours to obtain that consent.

### **13.5 Compulsory acquisition**

- (a) If the Licenced Area or part of the Licenced Area is taken by compulsory acquisition by any government or other person or body having authority to do so, either party may terminate this Agreement by notice in writing to the other within thirty (30) days of receiving notice of the acquisition.
- (b) The Licensee may not claim any compensation from the Licensors in respect of termination of the Agreement under this clause. All monies paid by the resuming authority must be paid to the Licensors as full beneficial owner and the Licensee transfers and assigns to the Licensors all rights that the Licensee has to any compensation money.
- (c) This clause does not affect any rights that either party has in respect of the other party's performance of its obligations under this Agreement at the date of receipt of notice of the acquisition

## **14. DISPUTE RESOLUTION**

### **14.1 Notice of Dispute**

If there is a dispute between the parties arising from this Agreement (**Dispute**):

- (a) one party must give notice (**Dispute Notice**) in writing to the other party stating that there is a Dispute; and
- (b) the Dispute Notice must outline:
  - (i) what the party believes the Dispute to be; and
  - (ii) what the party wants to achieve; and
  - (iii) what the party believes will settle the Dispute.

### **14.2 Mediation**

- (a) Within fourteen (14) days of a Dispute Notice being served to the other party, the appointed representatives of the parties must meet in order to resolve the Dispute. If the parties do not resolve the Dispute within fourteen (14) days of the date the Dispute Notice is served, the Dispute must be submitted to mediation.
- (b) The Dispute submitted for mediation must be mediated by a mediator selected:
  - (i) by the parties; or
  - (ii) if the parties cannot agree on a mediator, by the President of the Australian Commercial Disputes Centre.
- (c) The parties must participate in the mediation in good faith and comply with any directions issued by the mediator.
- (d) Any costs incurred in the mediation of the Dispute are to be borne equally by the parties.
- (e) If the parties cannot resolve the Dispute within two (2) months of it being referred to mediation then the provisions of Clause 14.3 will apply.

### **14.3 Arbitration**

- (a) The parties must agree to the appointment of an arbitrator with experience in resolving disputes of a similar nature to the Dispute.
- (b) If an agreement cannot be reached regarding the appointment of an arbitrator the parties agree to the appointment of an arbitrator nominated by the President of the Australian Commercial Disputes Centre.

- (c) The arbitration will be conducted:
  - (i) by a single arbitrator;
  - (ii) in accordance with the arbitration rules of the Australian Commercial Disputes Centre;
  - (iii) in English; and
  - (iv) in Dubbo, Australia or online (if mutually agreed between the parties).
- (d) The parties must do all such acts and things as are necessary to facilitate the expeditious hearing of the Dispute by the arbitrator.
- (e) The costs of the arbitrator are to be borne:
  - (i) as ordered by the arbitrator; or
  - (ii) in the absence of a direction from the arbitrator – equally by the parties.
- (f) The decision of the arbitrator (in the absence of an error of law) is binding on both parties. Accordingly neither party is, after completion of the arbitration, entitled to commence proceedings to litigate the Dispute in any court of competent jurisdiction.

#### **14.4 Exclusivity of dispute resolution procedure**

- (a) Both parties must adhere to the dispute resolution procedure set out in this Clause 14.
- (b) The only time that either party may depart from the dispute resolution procedure set out in this Clause 14 is when urgent interlocutory relief is required to restrain a breach or threatened breach of this Agreement.

### **15. GOODS AND SERVICES TAX**

#### **15.1 Defined GST terms**

Defined terms used in this Clause 15 have the meaning ascribed to them in the GST Law.

#### **15.2 GST to be added to amounts payable**

- (a) If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (b) This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.

- (c) Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this Agreement are exclusive of GST.

### **15.3 GST obligations to survive termination**

This Clause 15 will continue to apply after the expiration or earlier termination of this Agreement.

## **16 DEALING WITH THE LICENCED AREA**

### **16.1 Consent to Dealing**

The Licensee must obtain the Licensor's written consent to any Dealing.

### **16.2 Requirements for consent**

The Licensor may withhold consent to a Dealing if:

- (a) the request for consent is not in writing; or
- (b) the Licensee is in default under this Agreement.

### **16.3 Transfer**

If a Dealing is a transfer of this Agreement:

- (a) neither the Licensee nor the Guarantor is released from their obligations to the Licensor;
- (b) the Licensee must:
  - (i) provide the Licensor with any information the Licensor reasonably requires about the identity, financial standing and business experience of the transferee;
  - (ii) satisfy the Licensor that the transferee has financial resources or business experience at least comparable to that of the Licensee; and
  - (iii) obtain for the Licensor any personal guarantees and indemnities of the transferee that the Licensor reasonably requires.
- (c) the Licensor may withhold consent if:
  - (i) the transferee proposes to change the Permitted Use;
  - (ii) the transferee is not, in the reasonable opinion of the Licensor, respectable, responsible and solvent;
  - (iii) the transferee does not provide the Bank Guarantee; or
  - (iv) the Licensor reasonably believes the transferee is a security risk.



#### **16.4 Sub-licence**

- (a) If a Dealing is a sub-licence of the whole of the Licenced Area:
  - (i) the Licensee acknowledges that any act or omission of a sub-licensee under a sub-licence is an act or omission of the Licensee under this Agreement;
  - (ii) the Licensee must:
    - (1) provide the Licensors with any information the Licensors reasonably requires about the identity, financial standing and business experience of the sub-licensee; and
    - (2) obtain for the Licensors any personal guarantees and indemnities from the sub-licensee that the Licensors reasonably requires; and
  - (iii) the Licensors may withhold consent if:
    - (1) the sub-licensee is not, in the reasonable opinion of the Licensors, respectable, responsible and solvent; or
    - (2) the Licensors reasonably believes the sub-licensee is a security risk.
- (b) If a Dealing is a sub-licence of part of the Licenced Area:
  - (i) the Licensee acknowledges that any act or omission of a sub-licensee under a sub-licence is an act or omission of the Licensee under this Agreement; and
  - (ii) the Licensors may withhold consent if the Licensors reasonably believes the sub-licensee is a security risk.

#### **16.5 Formalities**

- (a) The Licensors may attach reasonable conditions to the granting of consent to a Dealing, including requiring:
  - (i) the parties to the Dealing to execute a deed with the Licensors on terms required by the Licensors, including to comply with the terms of this Agreement; and
  - (ii) the Licensee to pay or reimburse the Licensors the Licensors' costs of considering the Licensee's request for consent.
- (b) The Licensee must fully satisfy any conditions attaching to the Licensors' consent and finalise any formalities before a Dealing takes effect

## **16.6 Change to directors or shareholders**

If the Licensee is a corporation that is not a listed corporation or a subsidiary of a listed corporation (as defined in section 9 of the *Corporations Act 2001* (Cth)), a substantial change in its directors or shareholders is deemed to constitute a Dealing under this Agreement. The reasonable opinion of the Licensors as to a substantial change is conclusive.

## **17. ADMINISTRATIVE PROVISIONS**

### **17.1 Licensors' policies**

The Licensed Area and the Land fall under the corporate policies of the Licensors. The Licensee is required to observe and abide by Licensors' respective policies and guidelines in regard to:

- (a) the use of the name and imaging of the Land, or the Licensors' branding, in all social media, media, marketing collateral and advertising – including print, broadcast, digital and out-of-home;
- (b) ensuring all communications produced to promote the Licensee's commercial operations within the Land precinct does not imply the Licensors' approval or support, unless otherwise agreed and approved by the Licensors (i.e. cross-promotional activities, co-sponsored activities, etc.);
- (c) ensuring all advertising and marketing activities promoting the Licensee's commercial operations associating the Land and its galleries by name or locality are approved by the Licensors prior to publication or broadcast; and
- (d) taking steps to ensure the Licensors' brand and reputation is protected when undertaking commercial activities within the Land, such as private functions, special events or other commercial activities. This includes ensuring the Licensee's communications activities (social media, media, advertising) do not adversely reflect on the Licensors' brand and reputation, or contradict the Licensors' policies.

### **17.2 Costs**

Unless prohibited by statute, the Licensee must pay:

- (a) the Licensors' legal, administrative and other costs, charges and expenses incidental to:
  - (i) the negotiation of this Agreement;
  - (ii) an application for the Licensors' consent to change this Agreement, whether or not that change occurs;
  - (iii) any Dealing;
  - (iv) any lawful notice given to the Licensee under this Agreement;
  - (v) the Licensors re-entering or attempting to re-enter the Licensed Area; and
  - (vi) any action taken by the Licensors as a result of a breach of this Agreement by the Licensee, including a request for legal advice;

- (b) the cost of complying with any obligations imposed on the Licensee under this Agreement;
- (c) any stamp duty, registration or other fees payable on this Agreement; and
- (d) any other reasonable costs incurred by the Licensor in considering or acting on a request by the Licensee

### **17.3 Notices**

- (a) Any notice, consent or other communication under this Agreement must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
  - (i) delivered to that person's address;
  - (ii) sent by pre-paid mail to that person's address; or
  - (iii) transmitted by email to that person's email address.
- (b) A notice given to a person in accordance with this Clause 17.3 is treated as having been given and received:
  - (i) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day; and
  - (ii) if sent by pre-paid mail, on the fourth (4<sup>th</sup>) Business Day after posting; and
  - (iii) if transmitted by email to a person's email address and a correct and complete read receipt is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (c) For the purpose of this Clause 17.3, the address of a person is the address set out in this Agreement or another address of which that person may from time to time give notice to each other person.

### **17.4 Governing law**

This Agreement shall be governed by and interpreted in accordance with the laws in force from time to time in New South Wales and each party submits to the non-exclusive jurisdiction of the courts of that State in respect of any proceedings in connection with this Agreement.

### **17.5 Entire agreement**

The parties agree that this Agreement constitutes the entire agreement relating to the subject matter and supersedes all prior understandings, representations, communications, negotiations, agreements, written or oral, express or implied, in relation thereto.

## **17.6 Variation of Agreement**

This Agreement may only be varied, supplemented or amended by agreement in writing between the parties.

## **17.7 Waiver**

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

## **17.8 Cooperation**

Each party must sign, execute and deliver all deeds, documents, instruments and act reasonably and effectively to carry out and give full effect to this document and the rights and obligations of the parties under it.

## **17.9 Counterparts**

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

## **17.10 Unenforceability**

Any provision of this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

## **17.11 Power of Attorney**

Each attorney who executes this document on behalf of a party declares that the attorney has no notice of:

- (a) the revocation or suspension of the power of attorney by the grantor; or
- (b) the death of the grantor.

## **18 WATER SUPPLY, LICENCES AND DAMS ETC.**

### **18.1** Intentionally Deleted.

### **18.2** The Licensee must maintain drains, watercourses, dams, channels and earthworks within and/or leading into the Licenced Area, in good order and condition using all reasonable methods to prevent or arrest soil erosion.

- 18.3** The Licensee acknowledges that dams may have been constructed on a creek or water course passing through the Land without appropriate authorities or approvals, or there may be other contraventions of laws relating to same, and the Licensee will not make claim against the Licensor because of this.

**19. GENERAL CONDITIONS – CROPPING**

- 19.1 The Licensee must not plant any crop (other than a fodder crop for stock) on the Licenced Area which, in the ordinary course, the Licensee would not be able to complete harvesting before the expiration of the Term.
- 19.2 The Licensee acknowledges and agrees that no ploughing or cultivation will take place on any pastures without the prior written approval of the Licensor, such approval not to be unreasonable withheld.
- 19.3 All crops on the Licenced Area sown by the Licensee during the Term are the property of the Licensee, and the Licensor agrees that the Licensee will be at liberty to harvest such crops for their exclusive use and benefit;
- 19.4 The Licensee must carry out all cropping and related activities in accordance with the rules of good husbandry and cropping production, and such proper practices which apply in the district where the Land is situated, including:
- (a) management of the sustainable cropping program to ensure improving soil structure and nutrient status of the soil;
  - (b) control and implementation of an active eradication program for any noxious weeds;
  - (c) correct rotational use of all chemicals to minimise chemical resistance by weeds and a full chemical application diary must be kept and regularly updated with a copy to be provided to the Licensor at least once per annum;
  - (d) machinery, including any harvesters, trucks, or spreaders, must not be brought onto the Land that has not been properly cleaned (with cleaning to occur off the Land) to minimise the introduction of any noxious weeds and/ or chemicals;
  - (e) firebreaks are to be maintained according to all relevant laws; and
  - (f) where possible, using minimum/ no tillage methods to minimize loss of soil structure through over working.
- 19.5 The Licensee must only use a manager or managers approved by the Licensor, with such approval not to be unreasonably withheld.
- 19.6 The Licensee must supply the Licensor with details of all cropping programmes and chemical applications numbers when requested, and from time to time allow the Licensor to enter the Licenced Area for the purposes of ensuring all the conditions of the Licence are being adhered to.

- 19.7 The Licensee must, at its own cost, comply with the Licensor's directions and policies, which may be amended from time to time, relating to:
- (a) pesticides and herbicides;
  - (b) noxious and environmental weeds; and
  - (c) genetically modified crops or grasses.
- 19.8 The Licensee must do all things reasonably necessary to ensure that any cropping quota, licence or permit, relating to the Licenced Area or use of the Licenced Area, is kept current, maintained and is preserved for the duration of the Term and the Licensee:
- (a) indemnifies the Licensor in relation to any loss the Licensor suffers as a result of the Licensee's breach of any quota, licence or permit; and
  - (b) must pay all fees (including renewal fees) relating to any such quota, licence or permit.

## **20. GENERAL CONDITIONS - GRAZING**

- 20.1** The Licensee must carry out all grazing and related activities in accordance with the rules of good husbandry and such proper practices which apply in the district where the Land is situated, including:
- (a) sensible sustainable grazing management;
  - (b) grazing management to ensure longevity and maximise pasture efficiencies;
  - (c) correct chemical rotations and management particularly in relation to herbicide resistance;
  - (d) no feeding of imported hays/ fodder contaminated in any way with insecticide or herbicide residue;
  - (e) no feeding of imported hays/ fodder contaminated with any noxious weed or with possibility of being contaminated; and
  - (f) absolute control over the introduction of notifiable diseases (especially Ovine and Bovine Johne's disease and footrot in sheep) and accountability for the same with the Livestock Health and Pest Authority.
- 20.2** The Licensee must not do or permit anything to be done to or on the Land that will cause, aggravate or accelerate soil erosion or allow the vegetative ground cover to fall below seventy percent (70%) of the total vegetative ground cover of the Licenced Area, regardless of the total vegetative ground cover of the Licenced Area at the Commencement Date (as to which the Licensor's opinion will be conclusive);
- 20.3** The Licensee must punctually observe and comply with the requirements of all laws, statutes, ordinances, proclamations, orders or regulations present or future relating to the grazing and related operations conducted by the Licensee on the Licenced Area;

- 20.4** The Licensee must utilise and employ good pasture management practices relating to and/ or including:
- (a) the up-keep and maintenance of introduced pasture species;
  - (b) the application of superphosphate or organic fertiliser to the Land, to a minimum level as required by the Licensor but not exceeding a limit of the equivalent of 125kg per hectare per annum of single strength superphosphate, unless:
    - (i) a greater application is recommended by the District Agronomist of NSW Agriculture for the area in which the Land is located; and
    - (ii) it is approved by the Licensor;
  - (c) the maintenance of an overall pasture cover to a level not less than seventy percent (70%) of vegetative ground cover.
- 20.5** At its own cost, the Licensee must comply with the Licensor's directions and policies, which may be amended from time to time, relating to:
- (a) pesticides and herbicides;
  - (b) noxious and environmental weeds; and
  - (c) genetically modified crops or grasses.
- 20.6** The Licensee must supply the Licensor with stock numbers, and from time to time allow the Licensor to enter the Licenced Area for the purposes of ensuring all the conditions of the Licence are being adhered to.
- 20.7** The Licensee must immediately notify the Licensor and all relevant authorities of any infectious illnesses affecting any stock on the Land, and:
- (a) take all necessary steps to contain such infection or to remove the affected stock from the Land;
  - (b) comply with any notice or direction of any public authority; and
  - (c) thoroughly fumigate the Licenced Area (and the Land, if required) to the Licensor's reasonable satisfaction.
- 20.8** Intentionally Deleted
- 20.9** The Licensee must do all things reasonably necessary to ensure that any stock quota, licence or permit, relating to the Licenced Area or use of the Licenced Area, is kept current, maintained and is preserved for the duration of the Term and the Licensee:

- (a) indemnifies the Licensor in relation to any loss the Licensor suffers as a result of the Licensee's breach of any quota, licence or permit; and
- (b) must pay all fees (including renewal fees) relating to any such quota, licence or permit.

## **21. CARRYING CAPACITY**

- 21.1** The Licensee acknowledges and agrees that the initial Carrying Capacity of the Licenced Area is and was determined by the District Agronomist and will not be varied without the prior written approval of the Licensor.
- 21.2** The Licensee will not graze stock in excess of the initial Carrying Capacity.
- 21.3** The Licensor reserves the right to vary the Carrying Capacity of the Licence Area by giving written notice of such variation to the Licensee (**Carrying Capacity Variation Notice**).
- 21.4** In the event that the Licensor issues a Carrying Capacity Variation Notice and the Licensee notifies the Licensor within one (1) month of receiving the Carrying Capacity Variation Notice that it objects to the varied Carrying Capacity notified by the Licensor then:
- (a) the future Carrying Capacity of the Licenced Area will be determined by the District Agronomist appointed at the request of either the Licensor or the Licensee;
  - (b) the cost of the determination by the District Agronomist will be borne by the Licensor and Licensee in equal shares;
  - (c) the decision of the District Agronomist will be final and binding on the Licensor and the Licensee.
- 21.5** The Licensee will not do or fail to do anything that causes a reduction in the Carrying Capacity and in making the determination the District Agronomist will have no regard to any deleterious conditions caused by the Licensee.
- 21.6** The Licensor gives no warranty as to the condition and the Carrying Capacity of the Licenced Area.

## **22. FARM MANAGEMENT PROGRAM**

- 22.1** On or before the Commencement Date, and on each anniversary of the Commencement Date, the Licensee must provide the Licensor with the Licensee's farm management program for the next twelve (12) months (**Farm Management Program**).
- 22.2** The Farm Management Program must specify:
- (a) the type of crops (including fodder crops for stock) to be grown, the proposed area within the Licenced Area where they will be grown, and the place where they are to be sown;
  - (b) the estimated sowing dates for each crop;
  - (c) the types, breeds, sexes, approximate ages and approximate numbers of livestock to be run on the Licenced Area;



- (d) the types and application rates of fertilisers to be applied to the Licenced Area and the areas of the Licenced Area that will be fertilised.

## **23 SPECIAL CONDITIONS**

- 23.1** The parties agree to be bound by each and all the special conditions (if any) set out in Item 14 as if those special conditions had been set out in the operative part of this Agreement.
- 23.2** The special conditions in Item 14 will prevail over any inconsistencies within the balance of this Agreement.

## SCHEDULE

Item No.	Heading	Detail
1	Licensed Area	Road Reserve adjacent to Lot 92 DP 574695, 21R Old Dubbo Road, Dubbo NSW 2830. An area approximately 0.64 hectares being shaded in red in the plan attached at Annexure A
2	Commencement Date	1 July 2022
3	Termination Date	30 June 2025
4	Term	Three (3) years
5	Option Details	Nil
6	Licence Fee	\$701.48 GST inclusive
7	Licensee's Share of Outgoings	100%
8	Licence Fee Review Method	CPI
9	Licence Fee Review Date	Anniversary of Commencement date
10	Permitted Use	Cropping and Grazing and Agistment of Stock
11	Licensor's Goods and Equipment	Nil
12	Terms and Conditions Related to the Licensors Goods and Equipment	Nil
13	Bank Guarantee Amount	Nil
14	Special Conditions	Nil
15	Interest	12%

**EXECUTED:**

Executed as a Deed on the                      day of                      2023

**Licensor:**

Signed for and on behalf of **Dubbo Regional Council** by the  
Chief Executive Officer under delegated authority as  
Resolved by Council at its Ordinary meeting held  
26 May 2022.

---

Chief Executive Officer – Murray Wood

---

Witness –

**Licensee:**

Signed for and on behalf of  
**Stephen Richard Smith and  
Sharon Leanne Smith**

---

Signature of Stephen Richard Smith

---

Signature of Witness:  
(Please print name under signature)

---

Name of Sharon Leanne Smith

---

Signature of Witness:  
(Please print name under signature)

## ANNEXURE 'A' - LICENCED AREA



DISCLAIMER - While every care is taken to ensure the accuracy of this data, the Dubbo Regional Council and the copyright owners, in permitting the use of this data, make no representations or warranties about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which you might incur as a result of the data being inaccurate or incomplete in any way and for any reason. © State of NSW Land and Property Information (LPI) 2018 © Dubbo Regional Council 2018

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### Licence Area



Meters

Projection: Transverse Mercator  
Coordinate system: MGA (GDA94) Zone 55

## Licence Agreement

*Dubbo Regional Council and Stephen Richard Smith and Sharon Leanne Smith.*