



Confidentiality Agreement

Dated _____

Perth Airport Pty Ltd ACN 077 153 130
and

Perth Airport
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2 George Wiencke Drive
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PARTIES

Perth Airport Pty Ltd ACN 077 153 130 of Level 2, 2 George Wiencke Drive, Perth Airport WA 6105 ("PAPL")

and

, ABN of
("Supplier")

BACKGROUND

- A. The Disclosing Party has agreed to disclose the Confidential Information to the Recipient Party subject to the terms and conditions of this agreement.
- B. The Disclosing Party wishes to protect its Confidential Information in accordance with the terms and conditions of this agreement.

OPERATIVE PROVISIONS

1. Access

The Recipient Party acknowledges that the Recipient Party may be given access to certain Confidential Information of the Disclosing Party for the Specified Purpose.

2. Obligation of Confidentiality

In consideration of the Disclosing Party allowing the Recipient Party to have access to the Confidential Information for the Specified Purpose, the Recipient Party agrees that to keep, and to ensure that its Representatives keep, confidential the Confidential Information unless and until the parties agree that the Confidential Information is in the public domain other than by a breach of this agreement.

3. Duties of Recipient Party

3.1 Disclosure to Representatives

The Recipient Party may disclose Confidential Information to its Representatives but only to the extent that:

- (1) disclosure to such Representatives or use by them of such Confidential Information is necessary or desirable for the Specified Purpose;
- (2) such Representatives have been made aware that the Confidential Information is confidential; and
- (3) the Recipient Party has procured that such Representatives do not do or omit to do anything which if done or omitted to be done by the Recipient Party would be a breach of the Recipient Party's obligations under this agreement or an obligation of confidence owed to the Disclosing Party or to any of its Representatives.

3.2 Non-Disclosure and Use

The Recipient Party must not and must ensure that its Representatives do not:

- (1) disclose any of the Confidential Information to any other person; or

- (2) use all or any of the Confidential Information otherwise than for the Specified Purpose.

3.3 Uncertainty

If the Recipient Party is uncertain as to whether any information is Confidential Information, the Recipient Party must treat the information as if it were Confidential Information and as not being in the public domain unless and until the Disclosing Party agrees in writing that the information is in the public domain.

3.4 Safeguarding

The Recipient Party must (at its cost) establish and maintain effective security measures to maintain the confidentiality of and safeguard the Confidential Information from use not authorised by this Agreement.

3.5 Unauthorised Disclosure or Use

The Recipient Party must immediately notify the Disclosing Party of any unauthorised disclosure or use of the Confidential Information of which the Recipient Party becomes aware and must take all steps which the Disclosing Party may reasonably require in relation to such unauthorised disclosure or use.

3.6 Return of Confidential Information

- (1) The Confidential Information remains at all times the property of the Disclosing Party. Other than as provided in this agreement, no rights in respect of Confidential Information are granted or conveyed to the Recipient Party.
- (2) Upon the written request of the Disclosing Party, at its own expense, the Recipient Party must:
 - (a) immediately deliver to the Disclosing Party all records and materials (and copies of those records and materials) containing or embodying the Confidential Information that are in the possession of the Recipient Party and its Representatives; or
 - (b) destroy any Confidential Information in its possession as directed by the Disclosing Party (in the case of computer software or other computer data, by erasing it from magnetic media or other device upon which it is stored, such that it cannot be recovered or in any way re-constructed or re-constituted; and
 - (c) provide the Disclosing Party a signed certificate stating that all Confidential Information in the Recipient Party's possession or control has been returned or destroyed (whichever the case may be).
- (3) Notwithstanding any other obligations under this agreement, the Recipient Party is entitled to retain any Confidential Information which it is required to retain at law (including without limitation Confidential Information included in the board papers and minutes of the Recipient Party or which has been captured as part of a periodic system back up) provided that such Confidential Information is maintained in accordance with prudent corporate governance practices. Nothing in this subclause affects the Recipient Party's obligations to keep confidential any Confidential Information which it is required to retain at law, in accordance with the terms of this agreement.

4. Exceptions

The Recipient Party must not be bound to keep confidential any information if and to the extent that:

- (1) the information is, or becomes part of the public domain otherwise than by breach of this agreement by the Recipient Party;
- (2) the information is lawfully obtained by the Recipient Party from another person without any restriction as to use and disclosure;
- (3) the information was in the Recipient Party's possession prior to disclosure to it by the Disclosing Party;
- (4) the information is required to be disclosed by the operation of any law, stock exchange, judicial or parliamentary body or governmental agency; or
- (5) the Disclosing Party has authorised in writing the disclosure of the information.

5. Remedy

- (1) The Recipient Party acknowledges and accepts that the Disclosing Party would suffer financial and other loss and damage if the Confidential Information were disclosed to any other person or used for any purpose other than the Specified Purpose and that monetary damages would be an insufficient remedy.
- (2) The Recipient Party acknowledges and accepts that, in addition to any other remedy which may be available in law or equity, the Disclosing Party is entitled to injunctive relief to prevent a breach of this agreement and to compel specific performance of this agreement.
- (3) The Recipient Party must immediately reimburse the Disclosing Party for all costs and expenses (including legal costs and disbursements on a full indemnity basis) incurred in enforcing the obligations of the Recipient Party under this agreement.

6. Indemnity

6.1 Indemnity for Costs

The Recipient Party indemnifies the Disclosing Party against all costs, expenses, actions or claims directly or indirectly incurred or suffered by the Disclosing Party in connection with any breach of this agreement by the Recipient Party.

6.2 Scope of Indemnity

The indemnity in clause 6.1 extends to and includes all costs, damages and expenses incurred by the Disclosing Party in defending and/or settling any such costs, expenses, actions, suits proceedings, claims or demands (including legal costs and disbursements on a full indemnity basis).

7. Accuracy of Information

7.1 No warranty by the Disclosing Party

The Disclosing Party makes no warranties or representations to the Recipient Party in relation to the Confidential Information including without limitation as to the accuracy or completeness of the Confidential Information.

7.2 Acknowledgment

The Recipient Party acknowledges and agrees that:

- (1) except where expressly identified as such, the Confidential Information has not been audited or independently verified;
- (2) the Disclosing Party does not give any assurances as to the degree of care or diligence used in compiling or preparing the Confidential Information;
- (3) any opinions expressed in the Confidential Information are based on the knowledge and approach of the persons forming the opinion at the date that the opinion was formed and may have ceased or may in the future cease to be appropriate in the light of subsequent knowledge or attitudes;
- (4) the Disclosing Party is under no obligation to notify the Recipient Party or provide any further information if the Disclosing Party becomes aware of any inaccuracy, incompleteness or change to the Confidential Information; and
- (5) nothing contained in the Confidential Information constitutes an offer, recommendation or invitation by the Disclosing Party to any person.

7.3 Recipient Party to make its own assessment

The Recipient Party agrees and acknowledges that:

- (1) it must make its own assessment of all Confidential Information and satisfy itself as to the accuracy, content, legality and completeness of that information;
- (2) any forecasts or estimates in the Confidential Information may not prove to be correct or be achieved; and
- (3) it will rely solely on its own investigations and analysis.

7.4 Disclaimer by Disclosing Party

Subject to any law to the contrary, and to the maximum extent permitted by law, the Disclosing Party and its Representatives disclaim all liability for any loss suffered by any person using, disclosing or acting on any Confidential Information and whether the loss arises in relation to, in connection with or as a result of any negligence, default or lack of care on the part of the Disclosing Party, or from any misrepresentation or any other cause.

7.5 Release and Waiver

To the maximum extent permitted by law, the Recipient Party:

- (1) releases the Disclosing Party and its Representatives from and against all claims, actions, damages and remedies (whether arising at common law, in equity or under any statute) in connection with the provision of, or any purported reliance on, the Confidential Information; and
- (2) waives any right it might have to bring or seek those claims, actions, damages and remedies.

7.6 No legal proceedings to be brought by Recipient Party

The Recipient Party agrees to:

- (1) not bring or institute any legal proceedings against the Disclosing Party or its Representatives in respect of any Confidential Information; and

- (2) ensure that any other person to whom the Recipient Party may disclose the Confidential Information under clause 3.1 does not bring or institute any proceedings of the kind specified in clause 7.5.

8. Enforceability

8.1 Effect of Ineffectiveness on Part of the Agreement

Any clause or part of a clause of this agreement which is Ineffective in any jurisdiction is Ineffective only to that extent in that jurisdiction.

8.2 Severance of Ineffective Parts of the Agreement

Where any clause or part of a clause is Ineffective it may be severed without affecting any other part of this agreement.

9. Waiver

9.1 No Waiver Except by Notice in Writing

No right under this agreement is waived or deemed to be waived except by notice in writing signed by the party waiving the right.

9.2 No Waiver of Subsequent Breaches

A waiver by one party under clause 9.1 does not prejudice its rights in respect of any subsequent breach of this agreement by the other party.

9.3 No Waiver by Extension or Forbearance

A party does not waive its rights under this agreement because it grants an extension or forbearance to the other party.

10. Variation

The parties may by agreement vary the agreement. A variation of this agreement must be in writing and signed by the parties.

11. Governing Law and Jurisdiction

11.1 Governing Law

This agreement is governed by the laws applying in the State of Western Australia.

11.2 Jurisdiction

The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Western Australia.

12. Cumulative Rights

The rights arising out of this agreement do not exclude any other rights of either party.

13. Relationship of the Parties

- (1) The parties are independent parties and nothing in this agreement constitutes a joint venture, partnership or agency relationship.

- (2) Neither party has, nor may hold itself out as having, any obligation to perform any activity or to enter into any business relationship in relation to the Specified Purpose.
- (3) The Recipient Party may not make any public announcement or press release concerning the Specified Purpose or this agreement without the prior written consent of the Disclosing Party.

14. Definitions

In this agreement:

- (1) **Confidential Information** means all information (whether in written, electronic, machine readable, oral or any other form) which is not publicly available relating to the Disclosing Party (including the business, property, operation or assets of the Disclosing Party or the process technology, equipment or techniques used by the Disclosing Party in the course of its business) and includes (without limitation):
 - (a) trade secrets, ideas, know-how, concepts;
 - (b) text, images, animation, maps, video, audio, graphic design;
 - (c) technical, financial and business information, traffic forecasts, business plans, business models, reports, corporate structure and market projections;
 - (d) names of potential customers and partners;
 - (e) proposed business deals, ideas and concepts;
 - (f) pricing arrangements, contracts and agreements;
 - (g) designs, specifications and drawings, technology, knowledge, strategies, know-how and models; and/or
 - (h) accounting systems and management information systems, software programs and data.
- (2) **Disclosing Party** means the party disclosing Confidential Information to the Recipient Party.
- (3) **Ineffective** means void, illegal or unenforceable.
- (4) **JFI** means the jet fuel infrastructure at Perth Airport, including the joint user hydrant installation and any bridger facility or other pipework infrastructure designated by PAPL from to time, as forming part of the JFI.
- (5) **Party or Parties** means those parties identified in the Parties nominations section of this Agreement.
- (6) **Recipient Party** means the party receiving Confidential Information from the Disclosing Party.
- (7) **Related Body Corporate** has the meaning given in the *Corporations Act 2001* (Cth).
- (8) **Representative** of a person or entity means:
 - (a) a Related Body Corporate of that person/entity; and/or

- (b) an employee, agent, financier, officer, consultant or other advisor of that person/entity or of a Related Body Corporate of that person/entity.
- (9) **Specified Purpose** means for sharing of information between the Parties in connection with the use of the JFI, including the potential supply of aviation fuel by the Supplier.

Executed as an agreement

Signing page

DATED:

EXECUTED for and on behalf of **PERTH**)
AIRPORT PTY LTD ACN 077 153 130)
acting with authority of the company in)
accordance with section 126(1) of the)
Corporations Act 2001 (Cth) in the)
presence of:)

.....)
Signature of Witness)

.....)
Name of witness (block letters))

.....)
Address of witness)

.....)
Occupation of witness)

.....)
Signature of authorised person)

.....)
Name of authorised person (block letters))

.....)
Office/position held)

EXECUTED for and on behalf of)

ABN)

by its authorised representative)

.....)
Signature of authorised person)

.....)
Name of authorised person (block letters))

.....)
Office/position held)

