

# SUBLEASE - ULURU-KATA TJUTA NATIONAL PARK

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**SCHEDULES**

DRAFT

# SUBLEASE - ULURU-KATA TJUṬA NATIONAL PARK

## PARTIES

**Director of National Parks** of GPO Box 787 Canberra, Australian Capital Territory

(ABN 13 051 694 963) (**Sublessor**)

and

<Name, ABN and address> (**Sublessee**)

## CONTEXT

- A. The Sublessor is responsible for the administration, management and control of Uluru – Kata Tjuṭa National Park under the *Environment Protection and Biodiversity Conservation Act 1999*.
- B. The land in the Park is Aboriginal land under the *Aboriginal Land Rights (Northern Territory) Act 1976* owned by the Uluru – Kata Tjuṭa Aboriginal Land Trust and leased to the Sublessor to be managed as a national park.
- C. The Park is jointly managed by the Sublessor and the traditional Aboriginal owners of the Park through the Uluru – Kata Tjuṭa Board of Management in accordance with the management plan in operation for the Park under the EPBC Act.
- D. The Sublessee wishes to take a sublease of the Sublease Area for the Sublease Purposes.
- E. The Uluru – Kata Tjuṭa Board of Management Sublessee has approved the grant of a sublease over the Sublease Area for the Sublease Purposes.
- F. The Uluru – Kata Tjuṭa Aboriginal Land Trust has consented to the grant of a sublease over the Sublease Area for the Sublease Purposes and has consented to the Sublessee making application for sub-division approval in the event that this lease constitutes a sub-division for the purposes of the *Planning Act (NT)* and *Land Title Act (NT)*.
- G. A copy of this Sublease will be provided to the Uluru – Kata Tjuṭa Aboriginal Land Trust if requested.

## PARTICULARS

<b>1. Sublease Area</b>	That part of the Park being <insert short description> and being more particularly described and shown in Schedule 1 [ <i>Sublease Area</i> ]
<b>2. Access Routes</b>	<insert description of any access routes required to be followed to the Sublease Area or insert Not Applicable>
<b>3. Sublease Purposes</b>	<insert description>
<b>4. Commencement Date</b>	
<b>5. Term</b>	
<b>6. Further Term</b>	<insert the further term or terms for which the Sublease may be renewed>
<b>7. Rent</b>	<insert agreed Rent or Rent calculation method, eg. fixed annual rent, percentage of revenue, per head fee for number of Sublessee's clients, or combination>
<b>8. Payment of Rent</b>	<insert when/how often Rent to be paid and how it is to be paid>
<b>9. Rent Review</b>	The Rent will be subject to review in accordance with the requirements in clause 6.<if no Rent Review delete text and insert Not Applicable>

<b>10. Rent Review Date/s</b>	<insert dates / frequency of Rent Review or insert Not Applicable if no Rent Review>
<b>11. Insurance</b>	<ol style="list-style-type: none"> <li>1. Public Liability Insurance for an amount of not less than \$20 million in respect of each claim, with an insurer that is licensed by the Australian Prudential Regulation Authority or otherwise approved by the Sublessor.</li> <li>2. Employer's liability and workers' compensation insurance as required by law.</li> <li>3. &lt;insert any other required insurances or delete this item&gt;</li> </ol>
<b>12. Sublessor's Representative</b>	<Position> <Postal address> Currently, <Name> <Email> <Telephone>
<b>13. Sublessee's Representative</b>	<Position> <Postal address> Currently, <Name> <Email> <Telephone>

## OPERATIVE PROVISIONS

- 1. DEFINITIONS AND INTERPRETATION**
- 1.1 Unless the contrary intention appears, terms used in this Sublease have the following meanings:
- Access Routes** means the routes (if any) specified in the Particulars;
- Business Day** means, in relation to the taking of an action or the occurrence of an event in a place, a day other than a Saturday, Sunday or public holiday in that place;
- Commencement Date** means the date specified in item 4 of the Particulars;
- EPBC Act** means the *Environment Protection and Biodiversity Conservation Act 1999*;
- EPBC Regulations** means the *Environment Protection and Biodiversity Conservation Regulations 2000*;
- Further Term** means the further term, if any, specified in item 6 of the Particulars, which may be granted in accordance with this Sublease;
- Improvement** includes a building, shed, structure, drain, bore, bore drain, well, ground tank, reservoir, dam, fence, gate, grid, ramp, road, telephone line, power line, wiring, water pipe, gas pipe, swimming pool, tennis court and fixed plant and equipment;
- Indigenous Cultural and Intellectual Property** includes all aspects of Aboriginal peoples' cultural products and expressions, as well as their

intangible cultural knowledge, and means the totality of cultural heritage of Aboriginal people, including, without limitation, their intangible heritage (such as songs, dances, stories, ecological and cultural knowledge), and cultural property, which includes Aboriginal human remains, artefacts, and any other tangible cultural objects;

**management plan** means the management plan in operation under the EPBC Act for the Park from time to time;

**Operating Rules** means the rules specified in Schedule 2, as varied from time to time in accordance with clause 11;

**Park** means Uluru – Kata Tjuṯa National Park;

**Party** means the Sublessor or the Sublessee, and **Parties** means both the Sublessor and the Sublessee;

**Personnel** means:

- (a) with respect to the Sublessor, the officers, employees, agents, or contractors of the Sublessor; and
- (b) with respect to the Sublessee, the officers, employees, agents, or contractors of the Sublessee, or any related entity, engaged in the performance of this Sublease and the conduct of the business operations in the Sublease Area;

**Relevant Aboriginals** means all the traditional Aboriginal owners of the Sublease Area (within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*) and the Aboriginals entitled to enter upon or use or occupy the Sublease Area in accordance with Aboriginal tradition governing the rights of that Aboriginal or group of Aboriginals with respect to the Sublease Area whether or not those rights are qualified as to place, time, circumstances, purpose, permission or any other factor and the Aboriginals permitted by them to reside in the Sublease Area;

**Rent** means the amount to be paid by the Sublessee to the Sublessor in respect of the Sublease, in accordance with clause 5;

**Sacred site** has the meaning given by the *Aboriginal Land Rights (Northern Territory) Act 1976*;

**Services** means all utilities and services on or in the Sublease Area including water, gas, electricity, lighting, sanitary, hot water, air-conditioning and ventilation systems, security systems, communication and telecommunication systems, fire safety systems and aerials installed on or in the Sublease Area and serving the Sublease Area and Improvements and includes all wires, cables, pipes, ducts, conduits, tanks, cisterns, electrical and mechanical plant and all other ancillary or associated parts and accessories;

**Special Conditions** means the conditions specified in Schedule 3, as varied from time in accordance with clause 11;

**Sublease** means this Sublease, including the schedules and any attachments or annexures;

**Sublease Purposes** means the Sublease Purposes specified in the Particulars;

**Sublessee's Clients** means all persons, other than the Sublessee or Sublessee Personnel, who are present in the Sublease Area in connection with the Sublease Purposes;

**Sublessee's Representative** means the person specified in the

Particulars or otherwise advised by the Sublessee in writing from time to time;

**Sublessor's Representative** means the person specified in the Particulars or otherwise advised by the Sublessor in writing from time to time;

**Term** means the period specified in the Particulars, and where the context permits any Further Term granted in accordance with this Sublease, unless this Sublease is earlier terminated.

- 1.2 Unless the contrary intention appears, in this Sublease:
  - (a) a word importing the singular includes the plural, and vice versa;
  - (b) a word importing one gender includes all other genders;
  - (c) a reference to a person includes a reference to a body corporate;
  - (d) a reference to an Act or legislation, or to a provision of an Act or legislation, includes a modification or re-enactment of it, a legislative provision substituted for it, and a regulation or statutory instrument issued under it;
  - (e) a reference to a government agency includes any agency that succeeds to the performance of its functions;
  - (f) if a word or phrase is defined, other grammatical forms of that word or phrase have corresponding meanings;
  - (g) the meaning of general words is not limited by specific examples introduced by terms such as "including" or "for example";
  - (h) a reference to a clause, schedule or attachment is to a clause, schedule or attachment of this Sublease;
  - (i) a reference to an Item is to an item of the relevant schedule;
  - (j) a reference to conduct includes an omission, statement or undertaking, whether or not in writing; and
  - (k) a provision that the Sublessee will perform an act or provide a thing at its cost means that the Sublessee will not be entitled to any compensation from the Sublessor, or reduction in Rent, for such act or thing.
- 1.3 In the event of inconsistency between the clauses of the Sublease and a schedule or attachment, the order of precedence will be as follows:
  - (a) Schedule 3 [Special Conditions];
  - (b) Schedule 2 [Operating Rules]
  - (c) Operative Provisions;
  - (d) Attachments and annexures (if any).
- 1.4 If a provision in this Sublease is for any reason invalid or unenforceable, the validity and enforceability of the remaining provisions will in no way be affected and will be valid and enforceable to the fullest extent permitted by law, provided that this clause will not apply in respect of a provision which is contrary to public policy or which would alter the basic nature of this Sublease.
- 1.5 A waiver by either Party in respect of a breach of this Sublease will be of no force or effect unless in writing and will not be taken to be a waiver in respect of any other or subsequent breach.
- 1.6 This Sublease represents the Parties' entire agreement and supersedes

all prior representations, agreements, statements and undertakings, whether oral or in writing, relating to this Sublease.

- 1.7 This Sublease is to be construed according to the laws of the Northern Territory, and the Parties agree to submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there in connection with matters concerning the Sublease.

## DEMISE AND RESERVATIONS

2. **GRANT OF LEASE**
- 2.1 In consideration of the Rent and the Sublessee's covenants the Sublessor grants to the Sublessee a sublease of the Sublease Area for the Term subject to the terms and conditions contained in this Sublease.
- 2.2 The Sublessee may use the Sublease Area for the Sublease Purposes and any use reasonably incidental to those Purposes, and not for any other purpose unless the Sublessor has given its prior consent in writing.
- 2.3 To the extent it cannot be contracted out of, the *Business Tenancies (Fair Dealings) Act* (Northern Territory) applies to this Sublease.
- 2.4 The Sublessor reserves the right to pass or run water, air, electricity, sewerage, drainage, gas and other substances through pipes, wires, tubes, conduits, ducts and cables running through the Sublease Area.
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3. **ACCESS ROUTES**
- 3.1 If any Access Routes are specified in the Particulars the Sublessee must not use any routes other than the Access Routes when travelling to and from the Sublease Area.
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4. **TRADITIONAL AND NATIVE TITLE RIGHTS NOT AFFECTED**
- 4.1 Nothing in this Sublease will be construed so as to affect or derogate from in any way any native title, Aboriginal or other rights, privileges or freedom of any Relevant Aboriginals or any of them or any other person that may subsist in the Park regardless of whether such rights, privileges and freedom are recognised, established or defined before or after the execution of this Sublease.

## SUBLEESSE'S COVENANTS

5. **RENT**
- 5.1 The Sublessee will during the Term pay to the Sublessor the Rent at the time and in the manner specified in the Particulars.
- 5.2 The Rent does not include any Park Entry/Use Fees or other charges payable under the EPBC Act in relation to use of the Park and the Sublessor must take all reasonable steps to ensure that the Sublessor's Clients do not include a person who is liable to pay but has not paid such charges.
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6. **RENT REVIEW**
- 6.1 <This clause to be included where Rent Review has been agreed having regard to the type and structure of the Rent and will set out the agreed Rent Review arrangements, eg. annual CPI or fixed percentage increase. If no Rent Review is to be carried out insert Not Applicable.>
- 
7. **GST**
- 7.1 For the purposes of this clause, the following terms have the following meanings:
- GST** has the meaning given in the GST Act;
- GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- taxable supply** has the meaning given in the GST Act.

- 7.2 The Rent is exclusive of GST.
- 7.3 If GST applies to any taxable supply by the Sublessor to the Sublessee under this Sublease, the Sublessee will reimburse the Sublessor for GST paid or payable by the Sublessor, subject to the Sublessor issuing the Sublessee with a valid tax invoice in accordance with the GST Act.
- 7.4 For the avoidance of doubt, clause 7.3 requires that the Sublessee must, with each payment made under clause 5, pay the Sublessor an amount equivalent to the GST paid or payable by the Sublessor in respect of the Rent.
- 7.5 If GST applies to a taxable supply by the Sublessee to the Sublessor under this Sublease, the Sublessor will reimburse the Sublessee for GST paid or payable by the Sublessee, subject to the Sublessee issuing the Sublessor with a valid tax invoice in accordance with the GST Act.
- 7.6 Nothing in this Sublease obliges a Party to reimburse the other for GST paid or payable by the other Party in respect of a taxable supply to the extent to which the other Party is entitled to claim an input tax credit.

**8. SERVICES, RATES AND TAXES**

- 8.1 The Sublessee is responsible, at the Sublessee's own cost, for the supply of any Services to the Sublease Area required by the Sublessee for use and enjoyment of the Sublease Area for the Sublease Purposes (and the Sublessee acknowledges that the Sublessor is under no obligation to supply any Services to the Sublease Area).
- 8.2 The Sublessee is responsible for payment of all rates and taxes that may be payable in respect of the Sublease Area.

**9. INTEREST ON MONIES UNPAID**

- 9.1 Without prejudice to the rights, powers and remedies of the Sublessor provided for under this Sublease or conferred by law, the Sublessee must pay interest to the Sublessor on the following terms:
- (a) at the rate then chargeable by the Sublessor's bank upon its usual overdraft on accounts;
  - (b) on all moneys due but unpaid for seven days;
  - (c) calculated from the due date for the payment until the payment of the relevant moneys in full;

**10. ACCOUNTS AND RECORDS**

- 10.1 <Requirements to be inserted depending on circumstances (in particular, depending on how Rent is to be calculated)
- (a) This clause would generally be included where Rent is calculated per head or based on a percentage of turnover or profit, but would not generally be necessary if the Rent is a fixed amount.
  - (b) If this clause is not required insert Not Applicable>

**11. USE OF SUBLEASE AREA AND SUBLEASE OPERATING RULES**

- 11.1 The Sublessee must not:
- (a) carry on or permit or suffer to be carried on in or upon the Sublease Area any unlawful noxious or offensive use, act, trade, business, occupation or calling;
  - (b) permit or suffer any riotous, disorderly, offensive or improper conduct upon or near the Sublease Area and or permit or suffer any person who is behaving in such a manner to be or remain upon or near the Sublease Area;
  - (c) cause, allow or suffer to occur any annoyance nuisance injury disturbance or obstruction to the Sublessor or other persons



rightfully using or being upon the Sublease Area or in the Park; or

(d) carry on or, allow to be carried on, any activities inconsistent with the Sublease Purposes.

11.2 The Sublessee must use and occupy the Sublease Area, and conduct its operations in the Sublease Area, in accordance with:

(a) the Operating Rules in Schedule 2; and

(b) the Special Conditions in Schedule 3.

11.3 The Sublessor may from time to time vary the Operating Rules and Special Conditions where, in the opinion of the Sublessor, it is reasonably necessary to do so for the protection and conservation of the values of the Park or the appropriate use, appreciation and enjoyment of the Park by the public.

11.4 Except in case of emergency, the Sublessor will consult with and have regard to the views of the Sublessee before making a decision to change the Operating Rules or Special Conditions.

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## **12. SUBLESSEE'S PERSONNEL**

12.1 The Sublessee must ensure its Personnel:

(a) have the necessary qualifications, experience and capacity for the Sublessee's operations in the Sublease Area;

(b) exercise the standards of diligence, skill and care normally exercised by qualified and competent persons in the performance of comparable work;

(c) understand the Sublessee's obligations under the Sublease;

(d) are under the control and direction of the Sublessee's own staff;

(e) are adequately managed and supervised at all times;

(f) cause no unreasonable or unnecessary disruption to the routines, procedures and responsibilities of the Sublessor's Personnel.

12.2 If the Sublessee is a company or other incorporated body the Sublessee must not, without the approval of the Sublessor, have as a director or office holder a person who has been convicted of an offence against the EPBC Act or Regulations within the previous ten years.

12.3 The Sublessee must not, without the approval of the Sublessor, use the services of any person who has within the previous ten years been convicted of an offence against the EPBC Act or EPBC Regulations.

12.4 If any of the Sublessee's Personnel contravene a provision of this Sublease, the Sublessor may:

(a) notify the Sublessee of the contravention;

(b) direct the Sublessee to cease using the services of that person within the Park for a specified time, and the Sublessee must immediately comply with that request.

12.5 The Sublessor may object to any of the Sublessee's Personnel who, in the opinion of the Sublessor's Representative, is lacking in appropriate skills or qualifications, engages in misconduct, or is incompetent or negligent.

12.6 Upon receipt of a notice from the Sublessor's Representative objecting to a member of the Sublessee's Personnel, the Sublessee must:

(a) remove such Personnel;

(b) not re-engage that person in connection with the Sublease

Purposes or the Sublease without the prior written consent of the Sublessor's Representative;

- (c) at its cost, replace removed Personnel with suitably qualified, competent, skilled and approved Personnel.

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**13. ANNUAL REPORTING AND PERFORMANCE MEASUREMENT**

- 13.1 The Sublessee must, within 20 Business Days of the anniversary of the Commencement Date each year, provide to the Sublessor an Annual Report in accordance with this clause.
- 13.2 The Sublessor will, at least three months prior to the anniversary of the Commencement Date each year, provide the Sublessee with a template for the Annual Report, setting out the details required to be submitted in the Annual Report.
- 13.3 An Annual Report may (but will not necessarily) be required to include:
  - (a) Numbers of Sublessee's Clients for the reporting period;
  - (b) Evidence of insurances;
  - (c) Evidence of accreditations;
  - (d) Evidence of currency of required licences, permits or other authorisations;
  - (e) Evidence that equipment used in the Sublessee's operations is being maintained to a high standard in accordance with the maintenance schedule provided at the time of application;
  - (f) Report on customer service, including details of awards and complaints;
  - (g) Report on provision of tangible support to traditional owners;
  - (h) Details of changes to equipment and Sublessee's Personnel;
  - (i) Evidence of compliance with the Operating Rules and Special Conditions;
  - (j) An audit of the Sublessee's operations in the Sublease Area by an appropriately qualified, independent expert, including the environmental impacts of the Licensed Activity;
  - (k) Feedback from the Sublessee in relation to its operations in the Park and the Sublease generally.
- 13.4 If the Sublessor does not provide the template at least three months prior to the anniversary of the Commencement Date, the due date for the Annual Report under clause 13.1 is extended by the number of Business Days the template is overdue.
- 13.5 Within 20 Business Days of receipt of the Sublessee's Annual Report, the Sublessor will:
  - (a) Review the Annual Report to ensure consistency with information provided in the Sublessee's application for this Licence and in previous Annual Reports under this clause;
  - (b) Check whether compliance issues (if any) have been resolved;
  - (c) Rate the Sublessee's performance as:
    - (d) Not satisfactory;
    - (e) Meets expectations;
    - (f) Exceeds expectations;

(g) Provide written feedback to the Sublessee.

13.6 If the Sublessee's performance has been assessed as Not satisfactory under clause 13.5, the Sublessor and the Sublessee must meet as soon as possible to discuss the assessment and any actions required to be taken by the Sublessee to improve performance.

13.7 If the Sublessee has been assessed as Meets expectations under clause 13.5, no further action is necessary.

13.8 If the Sublessee has been assessed as Exceeds expectations under clause 13.5, the Sublessor may (at its sole and absolute discretion) decide to reduce the Sublessee's reporting requirements in future years.

13.9 If the Sublessee's Annual Report is considered (on reasonable grounds) by the Sublessor to be inaccurate, the Sublessor may request that the Sublessee engage, at its cost, an appropriately qualified, independent expert to review the Annual Report within a reasonable period specified in the request; and the Sublessee must comply with the request and provide a copy of the expert's report to the Sublessor.

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**14. CARE AND MAINTENANCE**

14.1 The Sublessee will (having regard to their condition at the Commencement Date):

(a) keep and maintain the Sublease Area and Improvements in a good state of repair and carry out all necessary repairs and maintenance; and

(b) at the expiry or termination of the Sublease or any holding over deliver up the Sublease Area and any Improvements to remain in the Sublease Area to the Sublessor in good and tenantable repair and condition.

14.2 The Sublessee must arrange, at its own expense, cleaning services for the Sublease Area, and removal of litter from surrounding areas, on a daily basis and otherwise as required.

14.3 The Sublessee must maintain the Sublease Area to a high standard of presentation.

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**15. IMPROVEMENTS AND OTHER WORKS**

15.1 The Sublessee will not, without the Sublessor's prior written consent construct, erect, or place any new Improvements on the Sublease Area.

15.2 The Sublessee will not make any alterations or additions to the Improvements without the prior written consent of the Sublessor.

15.3 The Sublessee will not, without the Sublessor's prior written consent carry out any other works (including clearing vegetation and excavations) on the Sublease Area.

15.4 In considering a request for consent under this clause the Sublessor may require the Sublessee to:

(a) carry out an assessment of the likely impacts of the proposed works on the natural and cultural values of the Park;

(b) request from, and receive clearance advice from, the Central Land Council in relation to any Sacred Sites on the Sublease Area, including, if there are any Sacred Sites, specific advice as to any area which must remain undisturbed by any construction, and it complies with that clearance advice.

15.5 The Sublessee must inform all of its officers, employees, agents, or contractors and other persons acting directly or indirectly with the authority of the Lessee and engaged in any work on the Sublease Area

of the existence of any of Sacred Sites on the Sublease Area and of the obligation to avoid and prevent any harm or disturbance to them.

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**16. REMOVAL OF IMPROVEMENTS, FITTINGS, PLANT AND EQUIPMENT**

- 16.1 The Sublessee may, with the Sublessor's prior written consent, on, or immediately prior to the expiry or earlier termination of the Sublease:
- (a) remove the Sublessee's Improvements and fixtures to those Improvements from the Sublease Area;
  - (b) remove the Sublessee's fittings, plant and equipment and other items that the Sublessee has brought into the Sublease Area that are not Improvements or fixtures, unless the Sublessor agrees in writing that any or all of the items may be left in or on the Improvements, which agreement will not be unreasonably withheld.
- 16.2 The Sublessee will promptly make good to the Sublessor's reasonable satisfaction any damage occasioned by removal of the items referred to in clause 16.1.
- 16.3 The Sublessee will forfeit any Improvements, fixtures, fittings, plant or equipment that the Sublessee has not, within 60 days of the expiry or earlier termination of the Sublease, removed from the Sublease Area, and as between the parties these will become the property of the Sublessor and may be disposed of as the Sublessor thinks fit, at the expense of the Sublessor.

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**17. POLLUTION, WASTE AND PEST CONTROL**

- 17.1 The Sublessee will not place or tip or allow to be placed or tipped upon any land or on the bank in the bed or in the water of any watercourse or in any drain within the Sublease Area any refuse, garbage, petroleum products, trade waste or any offensive or polluting matter or liquid whatsoever.
- 17.2 The Sublessee will not without the prior written consent of the Sublessor place any obstruction, matter or deposit in the bed or in the water or any watercourse, stream or drain so as to cause the flow of such water to be restricted, obstructed or diverted.
- 17.3 Without affecting the liability of the Sublessee for damages or in respect of any other remedy available to the Sublessor, the Sublessee will remedy to the Sublessor's satisfaction, at the Sublessee's own expenses in all respects, any damage caused to the Sublease Area or the Park by the spillage of petroleum products or other pollutants on the Sublease Area or within the Park.
- 17.4 The Sublessee will not (except for normal applications in connection with the Sublease Purposes) use or store or permit or suffer to be used or stored any chemicals or inflammable gases, fluids or substance in or upon the Sublease Area or the Park.
- 17.5 The Sublessee will not cut down, fell, ringbark or otherwise injure or destroy any live tree on the Sublease Area (or allow the same) without the prior written consent of the Sublessor, which will not be unreasonably withheld.
- 17.6 The Sublessee will keep the Sublease Area clean and free from debris and rubbish and store and will keep all trade waste, trash and garbage in proper receptacles in accordance with relevant laws in force in the Northern Territory.
- 17.7 The Sublessee will:
- (a) take all reasonable precautions to keep the Sublease Area free of rodents, vermin, insects, pests, birds and other animals; and

- (b) if required by the Sublessor, employ (at the Sublessee's cost) from time to time or periodically, pest exterminators approved by the Sublessor.

17.8 The Sublessee will not introduce, or allow the introduction onto the Sublease Area of, noxious flora or any fauna (except wildlife endemic to the Park).

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**18. COMPLIANCE WITH LAWS**

18.1 The Licensee must comply with all applicable laws, including:

- (a) EPBC Act;
- (b) EPBC Regulations; and
- (c) the management plan,
- (d) and take out and keep current all licences, permits and authorisations required by or under such laws to carry on the Sublessee's operations on the Sublease Area.

18.2 The Licensee must not do, or cause or permit to be done, anything that may conflict with a statute, regulation, ordinance or by-law that may render the Sublessor liable to pay a penalty, damages, compensation, fees, costs, charges or expenses.

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**19. HEALTH AND SAFETY**

19.1 Definitions

- (a) For the purposes of this clause the following terms have the following meanings:

**WHS Act** means the Work Health and Safety Act 2011 (Cth);

**WHS law** includes the WHS Act, WHS Regulations, and all corresponding WHS laws;

**WHS Regulations** means the Work Health and Safety Regulations 2011 (Cth).

- (b) A word or expression in this clause that is used or defined in an applicable WHS law; and is not otherwise defined in this clause or in clause 1 has, for the purposes of this clause, the meaning it has under the applicable WHS law.
- (c) Without limiting paragraph 1(b), for the purposes of this clause the following terms have the meanings given by the WHS Act:
  - (i) corresponding WHS law;
  - (ii) officer;
  - (iii) worker.

19.2 The Sublessee:

- (a) acknowledges that the safety and protection of all Personnel is of paramount importance.
- (b) must ensure that the Sublessee's operations complies with all applicable laws, standards and policies, and the requirements of this Sublease, that relate to the health and safety of the Sublessee's Personnel and any third party.
- (c) The Sublessee must comply with its obligations under all applicable WHS laws, and must ensure, so far as is reasonably practicable, that its officers and workers comply with their obligations under applicable WHS laws.
- (d) The Sublessee must ensure that appropriate risk management

systems, strategies and procedures are in place to minimise foreseeable risks to the Sublessee's Personnel, Sublessee's Clients, and other members of the public and must produce evidence of such systems, strategies and procedures as requested by the Sublessor.

- 19.3 If an event occurs on the Sublease Area or in relation to the Sublessee's operations that leads, or could lead, to the death of, or an injury or illness to, a person (**Notifiable Incident**), the Sublessee must:
- (a) immediately report the matter to the Sublessor's Representative, including all relevant details that are known to the Sublessee; and,
  - (b) take all actions required by the Sublessor's Representative, including investigations, remedial action, and preventative action.

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**20. FIRE SAFETY AND FIRE FIGHTING EQUIPMENT**

- 20.1 The Sublessee will comply with all requirements notified to the Sublessee by the Sublessor or the relevant Northern Territory fire authority with respect to fire safety in the Sublease Area.
- 20.2 The Sublessee will provide and maintain in good order and condition and keep readily available for use appropriate fire fighting and extinguishing equipment to the satisfaction of the Sublessor and the relevant Northern Territory fire authority, and ensure that the Sublessee's Personnel are properly and sufficiently trained and instructed with regard to their operation.
- 20.3 The Sublessee will cooperate with the Sublessor in fire management activities in the Sublease Area.

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**21. SUBLESSOR'S RIGHT OF ENTRY**

- 21.1 The Sublessor may enter the Sublease Area:
- (a) on giving prior reasonable written notice;
  - (b) at reasonable times; and
  - (c) if required by the Sublessee, accompanied by a person appointed by the Sublessee,  
to:
    - (d) inspect the condition of the Sublease Area;
    - (e) re-inspect the Sublease Area where, following an inspection, the Sublessor has served a notice on the Sublessee properly requiring the Sublessee to effect repairs; or
    - (f) carry out repairs, maintenance or alteration of the Sublease Area if the work:
      - (g) is maintenance or repair for which the Sublessee is liable under this Sublease and has failed to carry out in accordance with a notice given by the Sublessor under this Sublease;
      - (h) is required by law to be done; or
      - (i) is required to be done for the safety of the Sublease Area or the occupants of the Sublease Area.
- 21.2 The Sublessor may enter the Sublease Area where it is reasonably necessary to do so for purposes connected with management of the Park:
- (a) on giving prior reasonable written notice;
  - (b) at reasonable times; and

- (c) if required by the Sublessee, accompanied by a person appointed by the Sublessee.
- 21.3 If there is an emergency the Sublessor may enter the Sublease Area:
- (a) at any time;
  - (b) without giving notice if that is impracticable; and
  - (c) unaccompanied,
  - (d) to ascertain and if necessary remedy the cause or limit the effect of the emergency.
- 21.4 The Sublessor will promptly inform the Sublessee in writing of any entry effected under clause 21.3.
- 21.5 In exercising its rights of entry under this clause the Sublessor will:
- (a) cause no undue interference to the occupation, use or enjoyment of the Sublease Area by the Sublessee;
  - (b) use its best endeavours to avoid damage to the Sublease Area or the Sublessee;
  - (c) immediately make good all damage caused to the Sublease Area or the Sublessee arising from the exercise of those rights; and
  - (d) indemnify and keep indemnified the Sublessee from and against all Claims in any way resulting from an act or omission involving fault on the part of the Sublessor in the exercise of those rights, except to the extent that any act or omission involving fault on the part of the Sublessor contributed to the relevant cost, liability, damage, loss or expense.

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## 22. INDEMNITY

- 22.1 The Sublessee indemnifies the Sublessor from and against all:
- (a) costs and liabilities incurred by the Sublessor;
  - (b) loss of and damage to property of the Sublessor;
  - (c) loss and expense incurred by the Sublessor in dealing with a claim against it, including legal costs and expenses on a solicitor/own client basis, and the cost of time spent, resourced used, and disbursements paid by the Sublessor;
- arising from either:
- (d) a breach by the Sublessee of this Sublease; or,
  - (e) an act or omission involving fault on the part of the Sublessee in connection with this Sublease.
- 22.2 The Sublessee must indemnify the Sublessor from and against all claims for which the Sublessor becomes liable and that arise from:
- (a) the negligent use or misuse by the Sublessee of the Services;
  - (b) overflow or leakage of water in or from the Sublease Area to the extent caused or contributed to by the negligent act or omission of the Sublessee;
  - (c) loss, damage or injury to property or to a person within or outside the Park to the extent caused or contributed to by the negligent act or omission of the Sublessee.
- 22.3 The Sublessee's liability to indemnify the Sublessor under this clause will be reduced proportionately to the extent that an act or omission involving fault on the part of the Sublessor caused the relevant cost,

liability, damage, loss or expense.

- 22.4 The right of the Sublessor to be indemnified under this clause is in addition to, and not exclusive of, all other rights, powers and remedies provided by law, but, for the avoidance of doubt, the Sublessor is not entitled to be compensated in excess of the amount of the relevant cost, liability, damage, loss or expense.
- 22.5 For the avoidance of doubt, a reference to the Sublessor in this clause includes the Sublessor Personnel.
- 22.6 This clause will survive the expiry or termination of the Sublease.
- 22.7 It is a precondition to the grant of this Sublease that the Sublessee must enter into a deed to indemnify the Uluru-Kata Tjuta Aboriginal Land Trust, as the landowner, and the Central Land Council, as its statutory representative under the *Aboriginal Land Rights (Northern Territory) Act 1976*, in the same terms as provided by this clause.

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## 23. INSURANCE

- 23.1 The Sublessee must, so long as obligations remain in connection with the Sublease, effect and maintain the insurances specified in the Particulars in respect of the Sublease Area, Improvements and the Sublessee's operations business conducted on the Sublease Area.
- 23.2 The Sublessee must, if required by the Sublessor, provide copies of all policies of insurance required to be effected and maintained by the Sublessee under this Sublease (or other evidence required by the Sublessor), together with the receipts for all premiums paid.
- 23.3 The Sublessee must not at any time, without the consent of the Sublessor's Representative, do any act, matter or thing whereby the insurance required to be effected and maintained by the Sublessee under this Sublease is, or is liable to be, rendered void or voidable or whereby the rate of premium on such insurance is, or is liable to be, increased.
- 23.4 If the Sublessee does or suffers to be done any act, matter or thing that has the effect of invalidating or avoiding a policy of insurance taken out by the Sublessor, the Sublessee will be responsible for all damage and loss that the Sublessor suffers or incurs as a result.

## SUBLESSOR'S COVENANTS

### 24. QUIET ENJOYMENT

- 24.1 In return for the Sublessee paying the Rent and otherwise complying with this Sublease, the Sublessee is entitled to peaceably hold and enjoy the Sublease Area without any interruption or disturbance from the Sublessor or any person lawfully claiming through or under the Sublessor.

### 25. NON-DEROGATION FROM GRANT

- 25.1 The Sublessor will not derogate from its grant of the Sublease and the rights conferred by this Sublease to the Sublessee and that obligation of the Sublessor will not be excluded or in any way limited by any other terms of this Sublease.

## MUTUAL COVENANTS

### 26. ASSIGNMENT

- 26.1 The Sublessee must not assign or transfer to any other person all or part of its rights under this Sublease without the prior written approval of the Sublessor's Representative.
- 26.2 If the Sublessee wishes to assign or transfer its rights under this Sublease, it must send a written request to the Sublessor's



Representative.

- 26.3 The Sublessee must provide the following information to the Sublessor in the request for consent to sublet or assign:
- (a) the name and address of the proposed assignee or sublessee;
  - (b) two references as to the proposed assignee or sublessee's financial circumstances;
  - (c) a copy of the proposed deed of assignment or sublease;
  - (d) all additional information reasonably required by the Sublessor.
- 26.4 If the Sublessor's Representative requires additional information to make a decision in relation to a request under this clause, he or she will advise the Sublessee of all information required within 15 Business Days of the request.
- 26.5 The Sublessor will not unreasonably withhold or delay giving consent for the Sublessee to assign, sublet or part with possession of the Sublease Area or any part of it.

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**27. TERMINATION FOR DEFAULT**

- 27.1 The Sublessor may, by written notice, immediately terminate this Sublease without prejudice to any cause of action by either Party in respect of the breach or non-performance of the Sublease, if:
- (a) an amount of money payable by the Sublessee under this Sublease is in arrears for 15 Business Days, regardless of whether a formal demand for it has been made;
  - (b) the Sublessee, being a corporation, enters into a Scheme of Arrangement or goes into liquidation otherwise than for the purpose of reconstruction, or if a receiver of the Sublessee's property or assets, or any of them, is appointed, or an official manager of the Sublessee is appointed;
  - (c) the Sublessee, being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors;
  - (d) the Sublessee ceases, or threatens to cease, to carry on the Sublease Purposes;
  - (e) execution is levied by creditors of the Sublessee against any assets of the Sublessee situated in the Park; or,
  - (f) the Sublessee remains in default in fulfilling any of the terms or provisions of this Sublease, after 15 Business Days' notice in writing from the Sublessor requiring rectification of the default.

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**28. SUBLEASE AREA UNFIT FOR OCCUPATION AND USE**

- 28.1 If during the Term the Sublease Area or the Improvements or any part thereof are destroyed or damaged so as to render the Sublease Area wholly or partially unfit for the Sublessee to occupy, use or enjoy then:
- (a) the Rent and all other moneys becoming payable by the Sublessee under this Sublease after the date of such destruction or damage or a fair and just proportion thereof (as agreed or determined in accordance with clause 28.3) according to the nature and extent of the effect upon the Sublease Area and the Improvements will be suspended and cease to be payable until:
  - (b) the Sublease Area and Improvements have been rebuilt, reinstated and repaired so as to be fit for occupation, use and enjoyment by the Sublessee; and
  - (c) a further period has elapsed which is reasonable in all the

circumstances to allow the Sublessee to carry out any necessary refitting out of the Sublease Area and Improvements;

- (d) the Sublessee's covenant of care and maintenance will cease and be suspended for so long as the Sublease Area or part thereof are unfit to occupy, use or enjoy by reason of such destruction or damage;
- (e) where the Sublease Area or Improvements are wholly unfit for occupation, use or enjoyment and likely to remain wholly unfit for not less than 3 months after the date of destruction or damage, the Sublessee may by one month's notice in writing to the Sublessor terminate this Sublease.

28.2 Any termination of this Sublease under this clause will be without prejudice to any rights or claim for damages which may have accrued to either Party prior to that termination.

28.3 If the Sublessor and Sublessee are unable to agree as the amount of rent payable under clause 28.1(a) within thirty (30) days of the destruction or damage then either Party may request the then President of the Australian Institute of Valuers (or the principal officer of any successor organisation) to appoint a Northern Territory member of that Institute to determine a fair rent and which members determination shall be made as an expert and shall be final and binding on the Sublessor and the Sublessee.

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**29. SURRENDER ON TERMINATION OR EXPIRY**

29.1 At the end of the Term (as extended by the Extension Periods, if any), the Sublessee must peaceably surrender and yield up the Sublease Area to the Sublessor in good order and condition, reasonable wear and tear excepted.

29.2 The Parties may negotiate the sale by the Sublessee and purchase by the Sublessor of the Sublessee's equipment, plant, goods, chattels, fixtures and fittings, or any other item in the Sublease Area belonging to the Sublessee at the end of the Term.

29.3 All negotiations conducted in accordance with this clause must be undertaken in good faith.

29.4 The Sublessor reserves the right to require the Sublessee to provide evidence of ownership of items prior to paying the Sublessee for them.

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**30. FURTHER TERM**

30.1 This clause applies if a Further Term is specified in the Particulars.

30.2 The Sublessor will grant the Sublessee an extension of this Sublease for the Further Term if:

- (a) the Sublessee gives the Sublessor written notice of its intention to extend the Sublease at least three months prior to the expiration of the Term;
- (b) the Sublessee has not failed to pay Rent as specified in this Sublease;
- (c) the Sublessee has not failed to comply with its obligations (other than payment of Rent) under this Sublease in a way that has been serious or persistent;
- (d) a failure by the Sublessee to comply with its obligations (other than payment of Rent) under this Sublease has been waived or rectified, or in the case of negative covenant, has been discontinued;
- (e) the Sublessee complies with all of its obligations under this

Sublease between the time of giving notice of its intention to extend the Sublease and the expiration of the Term.

- 30.3 The Sublessor may, before the expiration of the Term, revoke a grant of extension for the Further Term if the Sublessee fails to comply with an obligation under the Sublease between the time of giving notice of intention to extend the Sublease and the expiration of the Term.
- 30.4 The Sublessor may, at its discretion and upon the written request of the Sublessee, grant an extension of the Sublease where the conditions listed in clause 30.1 are not met.
- 30.5 This clause will not have effect during the final Further Term.

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**31. HOLDING OVER**

- 31.1 If the Sublessee continues to occupy the Sublease Area after the expiration of the Term without the Sublessor demanding possession then the Sublessee is:
- (a) deemed to hold the Sublease Area under a monthly tenancy determinable at any time upon one month's notice (which notice may expire at any time) given by either Party to the other;
  - (b) at the same Rent; and
  - (c) on the same terms as are contained in this Sublease so far as they can be applied to a monthly tenancy.

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**32. SUBDIVISION**

- 32.1 In the event that this lease constitutes a sub-division for the purposes of the *Planning Act* (NT) and *Land Title Act* (NT), the Sublessee accepts the obligation to pursue at its own cost all necessary applications for sub-division approval.

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**33. DISPUTES**

- 33.1 Each Party agrees not to commence legal proceedings in respect of a dispute arising under this Sublease until it has utilised the procedure provided by this clause.
- 33.2 Each Party agrees that a dispute arising during the course of this Sublease will be dealt with as follows:
- (a) First, the Party claiming that there is a dispute will send the other Party a notice setting out the nature of the dispute;
  - (b) Second, the Parties will try to resolve the dispute through direct negotiation by persons to whom they have given authority to resolve the dispute on their behalf;
  - (c) The Parties have ten Business Days from the sending of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some other alternative dispute resolution procedure;
  - (d) Lastly, if:
    - (i) there is no resolution of the dispute or submission to alternative dispute resolution; or,
    - (ii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the Parties may agree in writing before the expiry of the 15 Business Days,then, either Party may commence legal proceedings.

- 33.3 Despite the existence of a dispute, the Sublessee must (unless requested in writing by the Sublessor's Representative not to do so)

continue to perform the Sublease Purposes.

- 33.4 This clause does not apply to action by the Sublessor under clause 27, nor does it preclude either Party from commencing legal proceedings for urgent interlocutory relief.
- 33.5 Each Party must bear its own costs of complying with this clause, and the Parties must equally bear the cost of any third person appointed by, or on behalf of, the Parties for the purpose of resolving a dispute in accordance with this clause.

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**34. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY**

- 34.1 The Sublessee acknowledges and declares that it is not an agent, partner, joint venturer, subcontractor, servant or employee of the Sublessor.
- 34.2 Nothing in this Sublease is taken to confer on the Sublessee authority to act on behalf of the Sublessor.
- 34.3 The Sublessee agrees not to represent itself as being agent, partner, joint venturer, subcontractor, servant or employee of the Sublessor, or as otherwise able to bind or represent the Sublessor in any way.

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**35. COSTS AND OTHER PAYMENTS**

- 35.1 Each Party will meet its own costs (including all solicitors' costs) in completing this Sublease.
- 35.2 The Sublessee must pay to the Sublessor on demand all monies expended by the Sublessor in respect of a liability imposed on the Sublessee under or by virtue of this Sublease.
- 35.3 The Sublessee must pay to the Sublessor on demand all legal costs, charges and expenses for which the Sublessor becomes liable in consequence of, or in connection with, a default by the Sublessee in performing or observing its obligations under this Sublease.
- 35.4 If the Sublessee does not perform its obligations under this Sublease, including the payment of money, the Sublessor may, as the Sublessee's agent, do all acts and things and incur such expenses as are necessary to perform the Sublessee's obligations, and all costs incurred by the Sublessor in doing so constitute a liquidated debt to the Sublessor and must be paid by the Sublessee on demand.

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**36. CONDITIONS OF APPROVALS**

- 36.1 Any approval or consent given by the Sublessor or the Sublessor's Representative under this Sublease may be given subject to such conditions as he or she see fit, including requiring payment of a reasonable fee, and the Sublessee must comply with all conditions.

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**37. VARIATIONS**

- 37.1 No agreement or understanding varying or extending this Sublease is legally binding on either Party unless it is agreed in writing signed by the Parties.

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**38. REPRESENTATIVES**

- 38.1 The Sublessor's Representative is the only person authorised to give directions for and on behalf of the Sublessor. Directions given to the Sublessee by persons other than the Sublessor's Representative will not bind the Sublessor unless ratified by the Sublessor's Representative.
- 38.2 A direction given by the Sublessor's Representative is deemed to have been given to the Sublessee for and on behalf of the Sublessor and the Sublessee must comply with the direction.
- 38.3 All documents signed, and communications given, by the Sublessee's Representative are deemed to have been signed or given by the Sublessee, and matters within the knowledge of the Sublessee's Representative are deemed to be within the knowledge of the

Sublessee.

38.4 Either Party may from time to time:

- (a) revoke the appointment of its representative and appoint another person as its representative;
- (b) delegate the responsibilities of its representative to another person on a temporary basis,

and that Party must give notice of the revocation and appointment to the other Party.

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## 39. NOTICES

39.1 For the purposes of this clause, **electronic communication** and **received** have the same meaning as under the *Electronic Transactions Act 1999* (Cth).

39.2 A notice given under this Sublease must be in writing or electronic form and given to the relevant Party's Representative at the address listed in the Particulars or as otherwise advised from time to time.

39.3 All notices must be delivered by hand, sent by pre-paid post, or by electronic communication.

39.4 A notice is taken to have been received:

- (a) If delivered by hand, upon delivery;
- (b) If sent by pre-paid ordinary post, upon the expiration of three working days after the date on which it was posted;
- (c) If transmitted electronically, when it is received by the addressee.

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## SCHEDULE 2 – SUBLEASE OPERATING RULES

- A.1 The Sublessee must use the Sublease Area solely for the Sublease Purposes and must not use, or cause or permit to be used, the Sublease Area for any other purpose unless authorised by another permit or licence.
- A.2 The Sublessee must not conduct its operations anywhere in the Park outside the Sublease Area unless authorised by this Sublease or another permit or licence from the Sublessor.
- A.3 The Sublessee must conduct its operations to a high standard and in accordance with relevant best practice and comply with all applicable Commonwealth and industry standards and guidelines, including relevant current Australian Standards published by the Standards Association of Australia.
- A.4 Subject to this item, and unless otherwise agreed by the Sublessor, the Sublessee will conduct its operations in accordance with:
- (a) The Sublessee's proposal or application to the Sublessor for this Sublease.
  - (b) Any environmental impact assessment carried out in relation to the Sublessee's application.
- A.5 If required by the Sublessor the Sublessee must hold and maintain accreditation under relevant programs licensed by Tourism Accreditation Australia Ltd (TAAL).
- A.6 The Sublessee must ensure a sufficient number of thoroughly trained competent Personnel are engaged in the conduct of the Sublease Purposes to enable the activities to be conducted in a professional businesslike manner consistent with certification required under Item A.5.
- A.7 The Sublessee must hold all permits, licences and other authorities required by law for the conduct of the Sublessee's operations in the Sublease Area.
- A.8 The Sublessee must maintain relevant training, qualifications and experience to competently conduct its operations.
- A.9 Where the Sublessee seeks:
- (a) to engage indigenous persons to contribute Indigenous Cultural and Intellectual Property; or
  - (b) to access Indigenous Cultural and Intellectual Property,
- in connection with the conduct of the Sublease Purposes, the Sublessee must do so under an agreement with the relevant indigenous persons or their representatives, and provide a copy of the agreement or terms of the agreement (if in writing) to the Sublessor if requested.

## SCHEDULE 3 - SPECIAL CONDITIONS

### A. Interpretation

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A.1 In these conditions, unless the contrary intention appears:

**captured**, for an image, means recorded or reproduced by artistic representation, or on film, videotape, disc or other electronic medium and includes recorded sound;

**park staff** means a person employed by the Department of the Environment to perform duties in relation to the Park.

### B. Commercial Tourism Operation Conditions

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B.1 The Sublessee must ensure that its supervision of the Sublessee's Clients is reasonable in the circumstances of the Sublessee's Clients' differing levels of fitness, experience and abilities.

B.2 The Sublessee must ensure that the Sublessee's Personnel involved in managing the Sublease Area have knowledge of the safety information that appears in the park visitor guide, so they can be accurate in their answers to questions asked by the Sublessee's Clients.

B.3 The Sublessee must explain to the Sublessee's Clients, in both oral and written form in a language understood by the Clients, the standard safety information that appears in the park visitor guide and all foreseeable hazards and conditions they may encounter in the Sublease Area.

B.4 The Sublessee must ensure that an appropriate number of the Sublessee's Personnel working in the Sublease Area holds a current first aid qualification, the minimum standard for which is Level 2 Senior First Aid Certificate or equivalent.

B.5 The Sublessee must ensure that a comprehensive first aid kit that is suitable for the types of incidents that may occur in the Sublease Area is available in the Sublease Area.

B.6 The Sublessee must not, and must take all reasonable steps to ensure that the Sublessee's Clients do not:

- (a) behave contrary to any warning or regulatory signs;
- (b) pick fruits, flowers or branches, or otherwise damage any native plants;
- (c) interfere with, feed, handle or disturb any native animal, or damage or disturb a nest or dwelling place of a native animal;
- (d) touch or interfere with any rock art, sacred site or cultural artefact;
- (e) impede public access to any part of the Park.

B.7 If the Sublessee or any of the Sublessee's Clients is killed, injured, becomes ill, goes missing or is involved in a dangerous incident while in the park, a member of park staff must be notified as soon as possible and the Sublessee and the Sublessee's Clients must comply with any requests or directions from a member of park staff in relation to the safety of that person or any other person.

Note: In this condition "dangerous incident" means an incident that exposes a person to a serious risk to their health or safety.

### C. Park-Specific Conditions

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C.1 The Sublessee's Clients must not include a person aged five years or over unless:

- (a) the person is a Northern Territory resident; or
- (b) the Park entry fee has been paid by the person and they are in possession of a Park Pass for the period the person will be in the Park and the Pass has the name of the person and expiry date of the Pass written on it; or



- (c) the person is recorded by the Sublessee in a passenger manifest or other document carried by the Sublessee that evidences the Park entry fee has been paid in relation to the person for the period the person will be in the Park
- C.2 The Sublessee must hold a current permit issued by the Sublessor for the use for commercial gain of captured images of a Commonwealth reserve, for all of the Sublessee's promotional material relating to the Sublessee's operations in the Park, including pamphlets, brochures and internet material such as web-pages.
- C.3 The Sublessee must only use the emergency call devices (ECDs or radio alarms) that are located in the park to request medical help or a search and rescue operation, or to notify a member of park staff of a death, injury, missing person or other incident.

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