

STANDARD TERMS AND CONDITIONS
GROUND TRANSPORT OPERATIONS AT GOLD COAST AIRPORT
AS AT 1 JULY 2010

1. Background

1.1 Ground transport operators (**Operator**) are put on notice that:

- (a) the Airport is private property, and entry onto the Airport by the Operator is at the discretion of GCAPL;
- (b) if with the consent of GCAPL the Operator enters onto the Airport such entry constitutes acceptance of these terms and conditions;
- (c) ground transport activities at Gold Coast Airport are subject to statutory controls imposed under the Act and the *Airports (Control of On Airport Activities) Regulations 1997* (Cth) .

2. Non-exclusive personal licence rights granted

2.1 The rights granted are (only):

- (d) to enter onto the Airport; and
- (e) an authority for the Operator and its servants or its agents to conduct the Business on the Airport.

2.2 The granting of the authority granted by the Licence does not preclude GCAPL from granting licences to a similar effect to other persons.

2.3 The Licence is personal to the Operator. The Operator may not assign or otherwise deal with any right authority privilege benefit or obligation arising or which may arise pursuant to the Licence

2.4 A change in control of the Operator (in terms of the provisions of Clause 20 of this Licence) is a dealing with this Licence for the purposes of Clause 2.3 - meaning that if the new entities in control of the Operator wish to continue to operate from the Airport, a fresh licence will need to be entered into by the new controlling entities with GCAPL.

3. No warranty

3.1 GCAPL by its officers servants or agents makes no representation, express or implied, to the Operator as to the volume of trade which might be anticipated by the Operator in the conduct of the Business.

4. Operator's capacity

4.1 The Operator must establish, if so required by GCAPL, both before the Commencement Date and during the term of the Licence, to the reasonable satisfaction of GCAPL:

- (f) its financial capacity to comply with its obligations under the Licence; and
- (g) that its financial position and business experience will allow it to provide a reasonable level of service in the conduct of the Business.

4.2 The Operator acknowledges that if GCAPL is not so satisfied, GCAPL has the right to terminate the Licence immediately.

5. Payment Dates

If a payment to GCAPL becomes due on a day which is not a Business Day, the date for payment is the next Business Day.

6. Interest on Arrears of Payments

If any amount due and payable is not paid to GCAPL by the Operator within 5 Business Days from the due date, the Operator must pay GCAPL interest at the rate of 1.5% per month or part thereof (calculated cumulatively) on all such amounts from the date they became due and payable.

7. GST

7.1 The amount payable for any Supply made under the Licence will (unless the sum is specified as being GST inclusive) be increased by the GST imposed on or in respect of that Supply.

7.2 If after 1 July 2000 the rate at which GST is imposed increases then the amount payable for that Supply on or after the GST Increase Date will be increased accordingly.

8. Conduct of the Business

8.1 The Operator must at all times conduct the Business in a proper manner:

- (a) without any Touting;
- (b) to the satisfaction of GCAPL acting reasonably; and
- (c) in accordance with its obligations under the Licence.

8.2 The Operator must not conduct the Business for or on behalf of any other person.

8.3 The Operator must not conduct any paperwork (whether related to customers or the Business generally) inside the Terminal.

8.4 The Operator must take proactive steps to ensure that all persons (including for example and without limitation drivers of vehicles engaged in the Business) are aware of the terms and conditions of the Licence. The Operator must establish, to the reasonable satisfaction of GCAPL, if so required by GCAPL, both before the Commencement Date and during the term of the Licence, that the Operator is meeting this requirement.

9. Nuisance

The Operator must not do anything at the Airport that may constitute a nuisance, annoyance or danger to any person or to any part of the Airport.

10. Use of Airport

- (a) The Operator must not use the access rights granted under the Licence in connection with any commercial enterprise other than the Business.
- (b) The Operator must not enter any part of the Airport with a vehicle other than in connection with the operation of the Business, or where the vehicle is being used by the Operator as a means of private transportation to and/or from the Airport and will either be parked in one of the public car parks and/or is simply dropping-off.

11. Signs

11.1 The Operator must not display at the Airport any advertisement placard or sign other than professionally designed constructed and erected signs or advertisements the content form and

location of which are approved in writing by GCAPL or the General Manager - Commercial before the advertisement placard or sign in question is placed or erected.

- 11.2 The Operator must remove or obliterate forthwith any non-approved advertisement placard or sign when so directed by GCAPL in its absolute discretion.

12. Unacceptable Employees

The Operator must not employ or continue to employ on the Airport any person if the Operator has been notified in writing by GCAPL (acting reasonably having regard to its obligations under the Act) that such person must not be employed at the Airport.

13. Clothing and Gratuities

The Operator must ensure that all its staff, at all times when engaged in serving customers are neatly dressed in a uniform with identification badges bearing the person's name and title. The Operator must forbid the soliciting of gratuities by staff and must take all necessary steps to prevent such conduct.

14. Drivers Licences and Official Stickers

- 14.1 The Operator must ensure that any person employed by the Operator in the conduct of the Business who drives a vehicle at the Airport in the course of their employment:

- (a) possesses a valid drivers' licence to enable the person employed by the Operator to drive in both Queensland and New South Wales; and
- (b) at all times displays an official Airport access sticker, issued by GCAPL, attached to the lower left hand corner of the vehicle windscreen; and
- (c) displays (in the manner reasonably prescribed by GCAPL from time to time) on his or her person an official Airport access tag (or similar device) issued by the Licensor.

- 14.2 GCAPL must be notified, and the Airport access sticker must be removed from the vehicle, immediately a vehicle ceases to be used in the Business.

- 14.3 GCAPL will be entitled to charge a reasonable fee for the provision of replacement Airport access stickers.

15. Undesirable Connections

From time to time the Commonwealth of Australia prohibits Australian citizens and companies from dealing with certain persons or States. The Operator must immediately advise GCAPL of any material interest held in the Operator by, or any contractual or other business relationship (of whatever kind or nature) conducted with, persons or countries affected by such Government policy from time to time.

16. Approvals

- 16.1 The Operator warrants that it has received and undertakes to maintain all necessary Governmental and regulatory approvals to operate the Business.

- 16.2 The Operator must immediately inform GCAPL if those approvals are amended or revoked.

17. Compliance with Legislation and other Requirements

- 17.1 The Operator must in the exercise of the rights granted under the Licence comply with:

- (a) the Act;

- (b) all regulations, by-laws, orders and proclamations made or issued under the Act;
- (c) all proper requirements of all statutory authorities and all statutes, ordinances, regulations and by-laws relating to the Airport and the conduct of the Business, including without limitation requirements:
 - (i) under the *Transport Operations (Passenger Transport) Act 1994* (Qld);
 - (ii) under the *Transport Operations (Road Use Management) Act 1995* (Qld);
 - (iii) under the *Trade Practices Act 1974* (Cth);
 - (iv) relating to the storage of petrol, oil or other materials of an explosive or flammable nature on the Airport;
 - (v) for the provision and installation of suppressors on the Operator's electrical equipment to prevent interference with radio or television transmission and reception and any computer radar communication or other electrical equipment; and
 - (vi) to take all reasonable precautions against the outbreak of fire, and to observe and comply with all directions for the time being in force relating to the prevention, outbreak, spread and control of fire on the Airport;
- (d) all reasonable rules, directions and orders made from time to time in respect of the Business by GCAPL and without limitation in respect of:
 - (i) access to, and use of, facilities which GCAPL designates for use by Operators;
 - (ii) the use of roads within the Airport;
 - (iii) restrictions on the size, weight and type of vehicles accessing the Airport; and
- (e) all applicable industry codes of conduct and the like;
- (f) the Airport Environmental Strategy.

18. Improvements

- 18.1 With the exception of improvements approved by GCAPL, the Operator must not:
- (a) erect or construct any fixture or improvement upon any part of the Airport; or
 - (b) make any alteration or addition to a building fixture or improvement upon any part of the Airport.
- 18.2 On being required by GCAPL so to do the Operator must immediately:
- (a) remove any unauthorised building fixture improvement alteration or addition; and
 - (b) restore the Airport to the satisfaction of GCAPL.
- 18.3 If the Operator fails to comply with this requirement within 30 days GCAPL may carry out the required work and recover the reasonable costs of so doing from the Operator as a liquidated debt payable on demand.
- 18.4 The Operator recognises that the Airport is an area which is subject to continuous change, development and redevelopment by GCAPL and, as such, those changes may result in the removal or relocation of any facility within the Airport.

- 18.5 If the facility within the Airport used by the Operator from time to time is relocated, GCAPL may at any time by giving 30 days notice in writing require the Operator to relocate its approved improvements to the alternative location determined by GCAPL and to make good the old location. The Operator must comply promptly with any such notice.
- 18.6 The terms and conditions of the Licence apply to the alternative location and to the approved improvements in their new location.
- 18.7 GCAPL will not be responsible for any costs, losses or damages incurred by the Operator by reason of or in consequence of the Operator having to remove or relocate any improvements in order to comply with its obligations under this clause.

19. Insurance

- 19.1 The Operator must take out and keep current a public liability insurance policy covering personal injury and property damage claims arising out of the exercise of the rights under the Licence:
- (a) noting GCAPL as an insured;
 - (b) for the sum of \$20,000,000.00 in respect of any one event; and
 - (c) with an insurer approved by GCAPL which approval will not be unreasonably withheld or delayed.
- 19.2 The Operator must provide GCAPL with a Certificate of Currency whenever reasonably required.
- 19.3 If the Operator fails to:
- (a) maintain the required insurance policies GCAPL may (but is not obliged to) effect such insurance and the premium amounts so paid will be a liquidated debt payable on demand by the Operator to GCAPL;
 - (b) pay any premiums or other moneys due in respect of its public liability insurance then GCAPL may (but is not obliged to) pay the same and the amounts paid will be a liquidated debt payable on demand by the Operator to GCAPL.
- 19.4 The Operator must not do anything or omit to do anything whereby any insurance effected in accordance with the Licence may become vitiated or non-effective.

20. Operator to Advise GCAPL

- 20.1 The Operator must advise GCAPL forthwith of any change which occurs during the term of the Licence in:
- (a) the business or trading name of the Operator;
 - (b) the address or registered office of the Operator;
 - (c) control of the Operator – meaning (as applicable) a change in the:
 - (i) directors of the Operator controlling the Business;
 - (ii) contact person for the Operator with whom GCAPL should communicate; or
 - (iii) ownership of more than 50% of the ordinary share capital of the Operator.

21. Termination Events

- 21.1 The Licence terminates if:

- (a) any money due to GCAPL by the Operator under the Licence remains unpaid for a period of 10 Business Days after it falls due, whether formally demanded or not;
- (b) the Operator omits or fails to observe or perform any of the terms of the Licence required to be observed or performed by the Operator, after GCAPL has given the Operator a notice in writing, requiring the Operator to remedy the omission or failure or to observe or perform the term, condition or covenant within 14 days of the date of the notice;
- (c) an Insolvency Event occurs in respect of the Operator;
- (d) the Operator ceases to carry on the Business;
- (e) where the Operator is an individual, the Operator dies; or
- (f) GCAPL exercises its right of termination pursuant to clause 4.2.

22. Force Majeure

Despite any other provisions of the Licence, GCAPL and the Operator will promptly meet to discuss and determine the continued operation of the provisions of the Licence (and, if necessary, to amend the terms of the Licence) if events render it impossible for GCAPL or the Operator to continue to perform their respective obligations under the Licence due to causes beyond their control (but not occasioned by the gross negligence or wilful misconduct of GCAPL or the Operator) including, but not limited to, civil war, insurrections, riots, fires, floods, explosions, earthquake, acts of God or the public enemy, labour disputes and any statute, order, regulation, proclamation, ordinance, demand or requirement of any governmental agency imposed after the Commencement Date.

23. Operator's Property

Any of the Operator's Property not removed from the Airport within 28 days of the expiration or sooner determination of the Licence (if not sold to an incoming Operator authorised by GCAPL to carry on the Business) becomes the absolute property of GCAPL at the expiration of that period of 28 days.

24. Suspension and cancellation of Licence

24.1 The GMCT may suspend for up to 3 months or cancel the Licence by written notice to the Operator for a breach of, or non-compliance with a term or condition of the Licence.

24.2 Before suspending or cancelling the Licence under Clause 24.1 (**proposed action**), the GMCT must give the Operator a written notice:

- (a) stating the proposed action;
- (b) stating the grounds for the proposed action;
- (c) outlining the facts and circumstances constituting the grounds;
- (d) if the proposed action is to suspend the Licence – stating the period of the proposed suspension; and
- (e) inviting the Operator to make written submissions to the GMCT on the proposed action within a stated time of at least 14 days.

24.3 After considering all written submissions made within the stated time, the GMCT may:

- (a) if the proposed action was to suspend the Licence – suspend the Licence for no longer than the period stated in the notice;

- (b) if the proposed action was to cancel the Licence – cancel the Licence or suspend it for up to 3 months; or
- (c) determine that the proposed action will not be taken.

24.4 The GMCT must inform the Operator of the decision by written notice.

24.5 If the GMCT decides to suspend or cancel the Licence, the notice must state:

- (a) the reason for the decision;
- (b) that the Operator may apply for a review of the decision within 28 days; and
- (c) how the Operator may apply for a review of the decision.

25. Refusal to grant or renew a Licence

25.1 The GMCT may refuse to grant or renew the Licence to a person by written notice given to the person.

25.2 The notice must state:

- (a) the reason for the decision;
- (b) that the person may apply for a review of the decision within 28 days; and
- (c) how the person may apply for a review of the decision.

26. Review

26.1 A person whose interests are affected by a decision of the GMCT to suspend or cancel the Licence or refuse to grant or renew the Licence (**Original Decision**) may apply to the Chief Operating Officer of the Airport from time to time (**COO**) for a review of the Original Decision;

26.2 The COO may confirm or amend the Original Decision or substitute another decision by written notice given to the person.

27. Further Review

27.1 If the Operator is affected by a decision of the COO to suspend or cancel the Licence or refuse to grant or renew the Licence the Operator may apply to have the decision mediated for a further review (**review**) of the Original Decision. The mediator must be agreed by all parties or if not agreed is to be appointed by the Australian Commercial Disputes Centre Limited in accordance with its guidelines.

27.2 The estimated costs of the mediation process are to be shared equally between the parties and are to be paid before the mediation process begins.

27.3 The mediator will not have the power to impose a settlement on the parties, but will attempt to assist the parties to reach a satisfactory solution to the dispute.

27.4 If a satisfactory solution is not obtained within 14 days of commencing the mediation, either party may terminate the mediation.

27.5 If the dispute is not settled at mediation, then the Operator may give GCAPL a notice requiring that the matter be referred to arbitration.

27.6 The arbitrator must be agreed between the parties, or, if not agreed, is to be an arbitrator nominated by the President of the Institute of Arbitrators in accordance with its guidelines.

28. Indemnity

- 28.1 The Operator must indemnify and keep indemnified GCAPL its officers servants and agents from and against all liabilities damages costs charges expenses actions and claims whatsoever which are suffered incurred brought or made against them or any of them in respect of:
- (a) any damage directly or indirectly sustained by the Operator or by any other person whether in respect of person or property which may arise from the use of the Airport or any part thereof;
 - (b) the observance or non-observance (as the case may be) of any of the Operator's obligations under the Licence; and
 - (c) defending or settling any such actions or claims - provided that the Operator will be entitled to have the handling and control of any such actions or claims as may be the subject of the indemnity created by this clause 28.
- 28.2 The indemnity does not cover any actions and claims arising out of the negligent acts omissions or default of GCAPL or any officer servant or agent of GCAPL.
- 28.3 The indemnity in the Licence is a continuing obligation, separate and independent from the other obligations of the Operator and survives termination of the Licence. It is not necessary for GCAPL to incur expense or make payment before enforcing a right of indemnity conferred by the Licence.

29. Third Parties

The Operator waives any rights it may have, and agrees not to make a claim of any kind against GCAPL, in relation to damage or loss of any kind which may be sustained by the Operator in relation to the Business as a consequence of any act or omission of any third party including acts or omissions of government bodies or agencies.

30. Non-Disclosure by GCAPL

- 30.1 Subject to any disclosure required by any court or governmental authority GCAPL and its officers and agents must not disclose to any person not employed by or working with GCAPL any financial and/or trading information obtained by GCAPL pursuant to the Licence, without either the prior consent in writing of the Operator (such consent not to be unreasonably withheld or delayed) or without a court order.
- 30.2 If the Airport ceases to be operational as an airport, or its control is transferred by GCAPL to any person or authority, then the Licence will remain in full force and effect and in particular all rights and causes of action of GCAPL or the Operator by virtue of anything done or omitted to be done in relation to the Airport or the conduct of the Business thereon will be preserved in respect of the period up to the date of transfer of control of the Airport.
- 30.3 GCAPL will endeavour (but is not obliged) to include in any transfer agreement the right of continuity of trade for the Operator at the Airport until the operation of the Licence would have otherwise ceased.

31. Conditions of Approval

Unless specifically dealt with, any consent or approval given by GCAPL to the Operator under the Licence may be given subject to such terms and conditions as GCAPL may in its absolute discretion deem fit provided that any consents or approvals are based on the application of standards which are consistent for all operators carrying on a business similar to the Business.

32. Service of Notices

- 32.1 Any notice, determination, approval, consent, demand or other communication to be given or served upon the Operator under the Licence will be deemed to have been duly given or served if it

is in writing, signed on behalf of GCAPL by any officer designated for that purpose and is either delivered by hand or posted in a prepaid envelope addressed to the Operator at its registered office or last known principal place of business.

32.2 Any notice statement or other communication to be given to or served upon GCAPL under the Licence will be deemed to have been duly given or served if it is in writing signed by or on behalf of the Operator and is either delivered by hand or posted in a prepaid envelope to the office of the GMCT at the Airport.

32.3 Any notice, approval, consent, demand or other communication sent by post will be deemed to have been received at the time at which it would have been received in the ordinary course of post.

33. **Officers of GCAPL**

Any and every right power and/or remedy conferred on GCAPL under the Licence or implied by law may be exercised on behalf of GCAPL by an employee of GCAPL so authorised.

34. **Mandatory Terms – Airports Regulation**

34.1 The Licence automatically terminates upon the creation of an interest in the Licence in favour of a person (other than a qualified company that has been approved by the Minister under paragraph 33 (1) (a) of the Airports Act) that is, either alone or with 1 or more associates, in a position to exercise control over either or both of:

- (a) the operation of the whole, or a substantial part of, the Airport concerned; or
- (b) the direction to be taken in the development of the whole, or a substantial part of the Airport.

34.2 The parties acknowledge that despite the likely irrelevance of Clause 34.1, the clause must be included in the Licence as a matter of law.

35. **Definitions**

35.1 In this document:

- (a) **Act** means the Airports Act, 1996 (Cth) and any statute regulation or the like having application to the rights and obligations of GCAPL and the Operator;
- (b) **Airport Environmental Strategy** means the strategy in force at any time during the period of the Licence which has been developed and approved by the responsible minister under the Act and implemented by GCAPL for the management of the Environment at the Airport.
- (c) **Business** means the Operator's business in connection with which the Operator enters the Airport and all conduct in relation to that business;
- (d) **Environment** means and includes:
 - (i) ecosystems and their constituent parts, including people and communities; and
 - (ii) all natural and physical resources including animal and plant life; and
 - (iii) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and
 - (iv) the social, economic, aesthetic and cultural conditions that affect or are affected by things mentioned in paragraphs (a) to (c)

- (e) **GMCT** means the General Manager Commercial and Terminals of the Airport and includes any person acting as the GMCT and any person authorised by the GMCT to act on his or her behalf;
- (f) **GST** means goods and services tax and other similar taxes imposed by law;
- (g) **GST Increase Date** means a date (if any) after 1 July 2000 when the rate at which GST is imposed increases;
- (h) **Insolvency Event** means the happening of any of these events:
 - (i) an application is made to a court (and not dismissed or withdrawn within 30 days) for an order or an order is made that a body corporate be wound up; or
 - (ii) an application is made to a court (and not dismissed or withdrawn within 30 days) 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; or
 - (iii) a meeting is convened or a resolution is passed to appoint an official manager in respect of a body corporate; or
 - (iv) except to reconstruct or amalgamate while solvent on terms approved by GCAPL, a body corporate enters into, or resolves to enter into, a scheme of 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; or
 - (v) 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 on terms approved by GCAPL or is otherwise wound up or dissolved; or
 - (vi) a body corporate is or states that it is unable to pay its debts when they fall due; or
 - (vii) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an receiver or receiver manager or administrator is appointed to a body corporate; or
 - (viii) a person becomes an insolvent under administration as defined in the *Corporations Act, 2001 (Cth)* or action is taken which could result in that event; or
 - (ix) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;
- (i) **Licence** means the licence and authority contemplated by Clause 1;
- (j) **Operator's Property** means any item that can be detached and removed undamaged from the Airport without the use of any tool or implement and without doing any damage to the Airport;
- (k) **Supply** means taxable supplies and taxable importations as defined in or under any legislation imposing GST;
- (l) **Terminal** means the buildings used for the embarkation and disembarkation of international and domestic passengers at the Airport known at the Commencement Date as Terminal One and Terminal Two;

- (m) **Touting** means acting in an unduly aggressive loud or otherwise objectionable manner at the Airport in an attempt to intercept or attract prospective customers.

36. Interpretation

36.1 In this Licence unless the contrary intention appears:

- (a) a reference to the Licence or another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- (e) unless specifically stated otherwise, a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) a reference to an accounting term is to be interpreted in accordance with accounting standards under generally accepted principles and practices in Australia consistently applied by a body corporate or as between bodies corporate and over time;
- (g) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (h) any note appearing as a heading in the Licence is inserted for convenience and reference only.