



Jetty Licence Conditions

- A. The Licensee COVENANTS AND AGREES with the CEO of the Department of Transport (“the Licensor”) that the jetty licence issued by the Licensor to the Licensee/s shall be governed by each of the conditions below as relevantly apply to the jetty for which a licence is granted by the Licensor.
- B. The Guarantor hereby GUARANTEES to the Licensor the due and punctual payment by the Licensee of the licence fee and the performance by the Licensee of the covenants, conditions and stipulations of the licence during the period of the licence and any extensions or renewal AND AGREES to the conditions set out below that relevantly apply to the Licensee/s and also to the conditions for guarantors.
- C. In these conditions:
- i. Words expressed in the singular include the plural and vice versa.
 - ii. References to ‘the Department’ mean the Department of Transport.
 - iii. The word ‘Licensor’ includes the Licensor’s agent or authorized employee of the Department.
 - iv. Any person authorized by the Licensor may exercise any power, authority, duty or function of the CEO in relation to or arising from jetty licence or otherwise and may be appointed generally without reference to the jetty licence and either before or after the jetty licence.
 - v. Nothing in the jetty licence is to fetter, restrict or affect the CEO’s discretion as to the use of the CEO’s statutory powers.
 - vi. The word ‘Licensee’ includes an individual, a body corporate, and includes, in the case of a natural person, a reference to the person’s personal representatives, executors, administrators, successors and assigns and, in the case of a body corporate, a reference to its successors and assigns.
 - vii. The word ‘Licensee’ in the case of joint applicants for a jetty licence, or jetty licence holders is a reference to each applicant, in which case these conditions shall bind each Licensee jointly and severally.
 - viii. The expression “the Guarantor” wherever appearing in these conditions shall in the case of two or more guarantors, mean and include the guarantors jointly and each of them severally.
 - ix. The Licensor’s address for GPO Box C102, Perth, WA 6839 or
Maritime.Licensing@transport.wa.gov.au

Conditions for all jetty licences

1. The Licensee’s obligations will continue throughout the duration of the licence.
2. The Licensee will:

- 2.1. punctually pay the licence fee;
- 2.2. permit the Licensor with or without appliances and equipment at all reasonable times to enter upon and to inspect the jetty for the purpose of ensuring that the Licensee is observing, performing and complying with the covenants, conditions and obligations in these conditions;
- 2.3. maintain and keep the jetty in good, proper and safe condition to the Licensor's satisfaction and in a clean and tidy condition, clear and free of rubbish and debris;
- 2.4. at his or her own expense, make good and repair to the stipulation of the Licensor any damage or disrepair to the jetty howsoever caused;
- 2.5. not use the jetty, or permit it to be used, unless it is in good repair and in a safe condition;
- 2.6. not permit any advertisement to be exhibited on any part of the jetty or its surrounding area, except as provided in these conditions;
- 2.7. ensure that any vessel moored to the jetty is properly secured;
- 2.8. not permanently moor or berth a vessel at the jetty unless approved by the Licensor;
- 2.9. in using and maintaining the jetty or any vessel moored, not cause interference or nuisance or damage to adjacent jetties, waterways or property;
- 2.10. ensure that satisfactory measures are taken to prevent pollution of the waterways surrounding the jetty;
- 2.11. display to the satisfaction of the Licensor the licence number allocated to the individual jetty on such part or parts of the jetty as the Licensor directs in writing, so as to be clearly visible from the shore and the water;
- 2.12. comply in all respects with the requirements of all laws in carrying out all works required to be done and equipment required to be used in connection with the jetty;
- 2.13. comply with all written laws, including but not limited to statutes, subsidiary legislation (such as regulations, rules and by-laws), local laws and planning schemes, in force from time to time relating to the jetty;
- 2.14. not assign or transfer the rights conferred by the jetty licence, or grant any sub-licence, except by applying to the Licensor for a replacement jetty licence;
- 2.15. at all times indemnify and keep indemnified: -
 - 2.15.1. the Licensor, any relevant local government, the Crown in right of the State of Western Australia and all instrumentalities of the Crown and any officers, agents or employees of each of them from and against all destruction, loss, injury or damage to any property or any person (including death) caused, in whole or in part, by any act, neglect or default of the Licensee, the Licensee's agents, employees, contractors, workers or guests, during the erection, construction, maintenance or use by the Licensee or by any of the Licensee's agents, employees, contractors, workers or guests, on the waterways or properties adjacent to the jetty;
- 2.16. not without the prior written consent and approval of the Licensor by obtaining an Amended Jetty Licence:-

- 2.16.1. make any alteration, addition or extension to the jetty or any part thereof; or
 - 2.16.2. remove, demolish or take away any part of the jetty; or
 - 2.16.3. carry out any works which may have the effect of altering the character, nature or purpose of the jetty originally approved by the Licensor; or
 - 2.16.4. lay, install, construct, release, or place in or upon or below, the jetty or surface of the water surrounding the jetty, any material, article, structure, pile, buoy or equipment;
3. The Licensor gives no warranty and the Licensee acknowledges that no promise, representation, warranty, assurance or undertaking has been given by or on behalf of the Licensor or the Department to the Licensee as to:
 - 3.1. the use to which the jetty or its surrounding area may be put, or
 - 3.2. the suitability or fitness of the jetty or its surrounding area for any purpose or use or for any proposed development or business to be made or carried on thereon; or
 - 3.3. the grant or refusal by any competent authority of approval for any development to be made or, business to be carried on by the Licensee on the jetty or its surrounding area; or
 - 3.4. the time within which any such approval may be granted or refused; or the furnishings, fittings, fixtures or finish of the jetty, or any plant, machinery and equipment on, or permitted to be upon, the jetty or in its waterways or surrounding area; and
4. The Licensee accepts the licence for the jetty at its specified location for the duration of the licence:
 - 4.1. with full knowledge of, and subject to, any prohibition or restriction on its use, or development under, or pursuant to, any Act, regulations or planning requirements or conditions; and
 - 4.2. knowing that if the development, use or business, proposed to be carried out or conducted by the Licensee upon the jetty or its surrounding area is permissible only with any necessary consent, pursuant to any Act, regulations or planning requirements or conditions, the Licensee shall obtain that consent at the Licensee's own expense; and
 - 4.3. while acknowledging that the Licensee will have no right to bring any action or claim against the Licensor in respect of the need for, refusal, or delay in receiving, such consent, or any conditions that may be attached to it.
5. The Licensee or the Licensor may cancel the licence by each giving to the other, at any time during the duration of the licence, one month's notice in writing. At the expiry of that notice, the licence shall cease and terminate but without prejudice to the remedies of the Licensor against the Licensee in respect of any antecedent claim or breach of covenant.
6. Upon the termination or expiry of the licence the Licensee shall, if requested by the Licensor, within one month after such request, remove from the waterways and area around the jetty, the jetty itself, including all piles and other parts of the jetty that are below the water level and fill in all holes and level off and consolidate the ground, seabed or riverbed, and leave the site on or near which the jetty was located, clean and free from rubbish. If the Licensee breaches this obligation, it shall be lawful for the Licensor to undertake all work to remedy the Licensee's breach, at the cost of the

Licensee and such cost shall be a debt due and owing to the Licensor recoverable in a court of competent jurisdiction.

7. If a jetty is not in good, proper and safe condition the Licensor may give to the Licensee:
 - 7.1. a notice of repair and suspension of the jetty licence, requiring repairs to be done to the jetty within fourteen (14) days; and
 - 7.2. if the Licensee breaches its obligation under clause 7.1, a notice of cancellation of the jetty licence and for removal of the jetty within a further fourteen (14) days; and
 - 7.3. if the Licensee breaches its obligation under clause 7.2, it shall be lawful for the Licensor to remove the jetty and recover from the Licensee the total cost of such removal and related or incidental work. Such cost shall be a debt due and owing to the Licensor recoverable in a court of competent jurisdiction
8. If a jetty is dangerously unsafe the Licensor shall, in addition to any other right, have the right to immediately remove the jetty. Any rights granted to the Licensee by the jetty licence shall then cease and the Licensor may recover from the Licensee the total cost of such removal and related or incidental work.
9. If any of the covenants of this jetty licence are breached by the Licensee or the Licensee's servants, agents, workers, contractors, guests, licensees or sub-licensees, the Licensor may, by notice require the Licensee to cease anything the Licensee is doing at the jetty or direct the Licensee to rectify or remedy any non-compliance. If the Licensee does not comply with such notice the Licensor may terminate the jetty licence by notice.
10. If there is a serious breach of the covenants of this jetty licence by the Licensee or the Licensee's servants, agents, workers, contractors, guests, licensees or sub-licensees, the jetty licence may, at the sole discretion of the Licensor and in addition to any other right of the Licensor, be immediately cancelled by written notice to this effect given to the Licensee.
11. The Licensee will not be entitled to any compensation, costs or damages on any suspension, expiration, surrender, cancellation, termination, or revocation of the jetty licence whether under any condition of the jetty licence or otherwise.
12. Any notice signed by the Licensor shall be sufficiently given, or served, if posted to the Licensee at the address or email address of the Licensee stated on the jetty licence application form, or at the address as last known to the Licensor. A posted notice shall be deemed to be received by the Licensee on the date such letter would in the ordinary course of post reach such address.
13. A notice signed by the Licensee shall be sufficiently given, or served, if posted to the Licensor at GPOX Box C102 Perth WA 6839 and shall be deemed to be received by the Licensor on the date such letter would in the ordinary course of post reach such address. Alternatively, such a notice shall, if sent by email to Maritime.Licensing@transport.wa.gov.au, be deemed to be served by the Licensee [twenty-four (24) hours thereafter].

Additional conditions - For erect or construct jetty licences

14. The Licensee will erect or construct a jetty only in accordance with the plans and specifications presented by the Licensee to the Licensor and first approved in writing by the Licensor.
15. The erection or construction will be completed within one (1) year from the date of the erect or construct jetty licence.
16. While constructing or erecting a jetty, the Licensee and any contractor engaged by the Licensee, will comply in all respects with the requirements of all laws relating to the carrying out any work during such erection or construction of the jetty and ensure that any equipment used complies with all relevant laws or regulations;
17. When the erection or construction of the jetty is complete the Licensee must within 14 days of completion, provide to the Licensor, a Statutory Declaration giving the name of the builder of the jetty and stating that the jetty has been constructed in accordance with the approved plans, drawings and specifications and that the jetty is complete and structurally sound and safe for use in the location it is erected or constructed.
18. The Licensee will not use the jetty until the required Statutory Declaration has been lodged with the Department.

Additional conditions - For amended jetty licences

19. The Licensee will make modifications to an existing jetty only in accordance with the plans, drawings and specifications for modification of the jetty presented by the Licensee to the Licensor and first approved in writing by the Licensor.
20. The erection or construction of the modifications to the existing jetty will be completed within one (1) year from the date of the Amended jetty licence.
21. While modifying a jetty, the Licensee and any contractor engaged by the Licensee, will comply in all respects with the requirements of all laws relating to the carrying out any work during such modification of the jetty and ensure that any equipment used complies with all relevant laws or regulations.
22. When the modifications to the jetty are complete the Licensee must within 14 days of completion, provide to the Licensor, a Statutory Declaration giving the name of the builder of the jetty and stating that the jetty has been modified in accordance with the approved modification plans, drawings and specifications, that the modifications are complete and the modified jetty is structurally sound and safe for use in the location it is erected or constructed.
23. The Licensee will not use the modified jetty until the required Statutory Declaration has been lodged with the Department.

Additional conditions - For jetties north of Carnarvon which are cyclone and flooding prone areas

24. The Licensee acknowledges and agrees that the Licensee has been made aware and fully realises that any jetty north of Carnarvon and its surrounding areas is prone from time to time to severe flooding, cyclones, extraordinarily sized waves and other similar Acts of God. The Licensee of any such jetty takes and enjoys the licence entirely at the Licensee's own risk.
25. The Licensee, the Licensee's agents, employees, contractors, workers or guests, shall have no right to bring any action or claim against the Licensor, the Crown in right of the State of Western Australia and all instrumentalities of the Crown or any officers, agents or employees of each of them, whether in negligence or otherwise howsoever, for any destruction, loss, damage, cost, expense, liability or personal injury (including death) suffered or incurred by the Licensee, the Licensee's agents, employees, contractors, workers or guests, on account of or in connection with:
- 25.1. the licence in such an area;
 - 25.2. the jetty, the subject of the licence or any property, plant, equipment, fixtures, signs or vessels associated with the jetty in such an area;
 - 25.3. the Licensee's enjoyment of the licence;
 - 25.4. any Act of God or other natural phenomena adversely affecting the jetty, or waterways in the vicinity of the jetty or the property of anyone (including the Licensee);
26. The Licensee, will in the event of a cyclone or extreme weather event, take all necessary precautions to safeguard the jetty or any property, plant, equipment, fixtures, signs or vessels associated with or related to the jetty.
27. In preparing for any cyclone or extreme weather event, the Licensee will comply with the requirements, rules or guidelines of any local or nearby marina management plans including mooring guidelines, as amended from time to time, and the Licensee will first familiarise him or herself with any local fact sheet or other publication in which such rules, guidelines, management plans or mooring guidelines are set out.

Additional conditions - For business jetty licences

28. The Licensee will permit signs or advertisements to be exhibited on any portion of the jetty or its surrounding area, only in accordance with the prior written permission of the Licensor.

Conditions for guarantors

29. The Guarantor guarantees to the Licensor, the due performance by the Licensee of the Licensee's covenants and obligations under the licence.
30. The Guarantor also agrees that:-
- 30.1. if and whenever any licence fee or instalments of the licence fee payable by the Licensee or any other money payable to the Licensor pursuant to the licence is in arrears or unpaid for

- seven (7) days after it has become due and payable, the Guarantor shall upon demand, pay to the Licensor the amount which is in arrears or unpaid by the Licensor;
- 30.2. if and whenever there shall be a breach on the part of the Licensee of any of the covenants, conditions and stipulations of the licence and on the part of the Licensee to be performed and observed, the Guarantor shall, upon written request being made by the Licensor, cause such breach to be remedied forthwith and pay to the Licensor all losses, damages, expenses and costs which the Licensor is entitled to recover from the Licensee by reason of such breach;
- 30.3. the Licensor shall have the fullest liberty, without affecting this guarantee, to postpone for any time, and from time to time, the exercise of all or any of the powers, rights, authorities and discretions conferred upon the Licensor by the licence. No such postponement or any forbearance on the part of the Licensor shall release the Guarantor or affect any other remedies or securities available to the Licensor;
- 30.4. this guarantee shall continue for the duration of the licence and for any extension or renewal thereof and any holding over and shall extend to the acts and defaults of the Licensee during any such extension or renewal or holding over;
- 30.5. this guarantee shall not be affected or prejudiced by any compounding compromise, release, abandonment, waiver, of the licence conditions or variation or modification or renewal of the period of the licence or any omission on the part of the Licensor;
- 30.6. this guarantee shall not affect or be affected by any or any further securities, now or hereafter to be, held or taken by the Licensor or by any loss by the Licensor of any such collateral or other security, or by the Licensor failing or neglecting to recover by the realisation of any collateral or other security or otherwise, any of the licence fee or monies at any time owing by the Licensee to the Licensor or by any lapses or mistakes on the part of the Licensor;
- 30.7. this guarantee shall at all times be valid and enforceable against the Guarantor notwithstanding: -
- 30.7.1. that no demand for the payment of the licence fee payable under the licence has been made by the Licensor;
- 30.7.2. that the Licensee was prohibited (whether expressly or by implication) by law, contract or otherwise from applying for, or taking the Licence, or agreeing to its conditions, or was without capacity, power or authority to apply for, or take the licence, or agree to its conditions;
- 30.7.3. that the Licensor ought to have had knowledge of any such prohibition or lack of capacity, power or authority as aforesaid;
- 30.7.4. that a transfer, assignment or sub-licence of the jetty or the land adjacent to jetty, or of the jetty licence has been made by the Licensee to any party with or without the consent of the Guarantor;
- 30.7.5. that the Licensor has granted time, forbearance, release, concession or other indulgence to the Licensee or to any person connected with the Licensee;

30.7.6. any scheme, arrangement or composition (as the case may be) is made by the Licensee or the Guarantor with their creditors under any law or rules relating to insolvency;

30.7.7. the death, bankruptcy, insolvency or liquidation (as the case may be) of the Licensee or the Guarantor or any one or more of them; and

30.7.8. the happening of any matter or thing which under the law relating to sureties would, but for this provision, have the effect of releasing the Guarantor from this guarantee or of discharging this guarantee;

31. Any demand or notice to be made upon the Guarantor by or on behalf of the Licensor hereunder shall be deemed to be duly made if the demand or notice is in writing and executed by the Licensor or the Department or its authorised agent or employee and the demand or notice shall be left or sent through the post by prepaid ordinary mail or by email, addressed to the Guarantor at the address or email address of the Guarantor stated on the jetty licence application form or at the last physical or email address of the Guarantor last known to the Licensor.