



# **COMMERCIAL MOORING LICENCE**

**TERMS AND CONDITIONS**

**DECEMBER 2011**

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## BETWEEN

**ACTING MARINE OPERATIONS DIRECTOR, MARINE SAFETY** of the Department of Transport of the State of Western Australia acting as the delegate of the Minister for Transport (“Minister”) pursuant to an instrument of delegations made under section 116 (1) of the *Western Australian Marine Act 1982* (“Licensor”).

And

(“Licensee”)

## BACKGROUND

- A. By section 65 of the *Western Australian Marine Act 1982* (“the Act”) the minister is authorised to grant a licence to any person conferring on that person the right to use, exclusively or in common with another person or persons, the waters in the licence for the purpose of mooring vessels;
- B. The Minister has delegated to the Licensor the power to grant such Licences;
- C. Upon the application of the Licensee, the Licensor has agreed to grant to the Licensee a licence to use those waters specified in item 1 of the Schedule (“the Mooring Waters”) for the purpose of mooring vessels therein and thereon for the term at the rental and upon and subject to the terms and conditions hereinafter contained;
- D. The granting of this Licence by the Licensor may be a future act that affects native title rights and interests in the Mooring Waters;
- E. If an approved determination of native title is made in relation to land or waters that includes the Mooring Waters, and if such determination is that native title exists, the use of the Mooring Waters for the Permitted Use must discontinue forthwith and this Licence shall expire on the date of such determination

## OPERATIVE PART

The Parties covenant and agree on the matters set out above as follows:

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### 1. DEFINITIONS AND INTERPRATION

#### 1.1. DEFINITIONS

In this Licence the following terms shall have the following meaning:

**Acceptable Civil Engineer /Naval Architect** means a reputable and independent civil engineer with at least five (5) years experience on matters involving the design requirements of moorings.

**Act** means the *Western Australian Marine Act 1982*.

**Annual Licence Fee** means the licence fee specified in item 6(a) of the Schedule.

**Authorisation** includes consent, authorisation, permit, licence, approval, agreement, certificate, authority or exemption from, by or with a Governmental Agency and all conditions attached to those authorisations.

**Authorised Mooring** means a mooring that is authorised to be installed, is installed or has been modified in accordance with plans and specifications to which a Mooring Installation Consent has been given.

**Authorised Mooring Site** means that part of the seabed to which the Authorised Mooring is connected or authorised to be connected that has its centre point at the intersection of the latitude and longitude specified in item 1 of the Schedule or as varied from time to time.

**Authorised Vessel** is a vessel described in clause 4.

**Business Day** means a day other than a Saturday, Sunday or Public Holiday in Western Australia.

**Certificate of Survey** means a Certificate of Survey issued under the W.A. Marine (Surveys and Certificates of Survey) Regulations 1983.

**Commencement Date** means the date of commencement specified in item 5(a) of the Schedule.

**Department** means the department principally assisting the Minister in the administration of the Act being at the Date of Commencement, the Department of Transport.

**Environment** has the meaning given by section 3 of the *Environmental Protection Act 1986*.

**Environmental Harm** has the same meaning as that term is defined in the *Environmental Protection Act 1986*.

**Environmental Law** means all planning, environmental, contamination or pollution laws and any regulations, orders, directions, ordinances or all requirements, permission, permits or licences issued there-under.

**Environmental Notice** means any notice, direction, order, demand or other requirement to take any action or refrain from taking any action from any Governmental Agency, whether written or oral and in connection with any Environmental Law.

**Expiry Date** means the date of expiry specified in item 5(b) of the Schedule.

**Governmental Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**Installed Mooring Inspection Report** means a written report in an approved form to the Licensor that an Authorised Mooring has been installed,

- a) At the Authorised Mooring Site or
- b) At the latitude and longitude stated in the report as the centre point of the Mooring that complies with plans and specifications to which a Mooring Installation Consent has been given.

**Law** includes any requirement of any statute, regulation, proclamation, ordinance or by-law present or future whether State, Federal or otherwise.

**Licence** means the contractual rights granted to the Licensee under clause 2 and the rights granted under this Licence necessary for the exercise of the rights granted under clause 2.

**Licence Certificate** means a certificate issued by the Licensor on which is recorded

- a) Such of the matter set out in the Schedule, with details current at the date of the certificate; and

- b) Any other information relating to the Licence that the Licensor may consider to be relevant.

**Licensed Vessel** means the vessel described in item 3 of the Schedule or clause 4 as the Licensed Vessel (Original) or pursuant to clause 4, a substitute Licensed Vessel.

**Licensee's Agents** includes the officers, employees, agents, contractors, consultants, invitees and any other person acting with the authority of the Licensee.

**Licensee's Property** means all plant, equipment, structures, materials, and other property brought, placed or erected on or in the Mooring Waters by, on behalf of or with the authority of the Licensee.

**Maximum Draught** means the maximum depth of a vessel in the water at the deepest point of the keel specified in item 4 of the Schedule.

**Maximum Gross Tonnage** means the maximum gross weight of a vessel in metric tonnes specified in item 4 of the Schedule.

**Maximum Mooring Loading** means the maximum loading capability specified in item 2 of the Schedule of a Mooring to hold a vessel, its loading and its Tender.

**Maximum Vessel Length** means the maximum length of a vessel in metres specified in item 4 of the Schedule.

**Maximum Vessel Loading** means the maximum loading rating of a vessel in metric tonnes specified in item 4 of the Schedule.

**Minister** means the Minister of the Crown to whom the administration of the Western Australian Marine Act, 1982 is for the time being committed by the Governor.

**Modified Mooring Consent** means a written consent by the Licensor to the modification or replacement, by the Licensee, of an Authorised Mooring in accordance with plans and specifications, approved by an Acceptable Civil Engineer/Naval Architect, submitted by the Licensee to the Licensor.

**Modified Mooring Inspection Report** means a written report in an approved form to the Licensor by a Mooring Contractor that a modification to or replacement of an Authorised Mooring

- a) Complies with plans and specifications to which a Modified Mooring Consent has been given or
- b) States the location of the centre point of the Authorised Mooring after it has been relocated to a new Mooring Site and that the Authorised Mooring is in good repair and fit for purpose.

**Mooring** means any gear (including an anchor or stake) set out in a permanent manner to which a vessel or other floating structure may be secured by a chain, cable, wire or rope.

**Mooring Contractor** means a person who

- a) Installs, modifies, maintains and repairs Moorings;
- b) Provides Installed Mooring Inspection Reports and Mooring Inspection Reports;

- c) Holds a public liability insurance policy and a personal indemnity policy with an insurer acceptable to the Licensor, for coverage, on terms and conditions and for amounts that are all acceptable to the Licensor; and
- d) Satisfies additional requirements of the Licensor in respect of which the Licensor has given thirty (30) days written notice to the Licensee.

**Mooring Inspection Report** means a report in an approved form to the Licensor by a Mooring Contractor that states that an Authorised Mooring is in good repair and fit for purpose.

**Mooring Installation Consent** means a written consent by the Licensor to the installation by the Licensee of a Mooring in accordance with

- a) Plans and specifications (“original plans”), **approved by an Acceptable Civil Engineer/Naval Architect, submitted by the Licensee to the Licensor** on or before the granting of the Licence; or
- b) Replacement or modified original plans and specifications, **approved by an Acceptable Civil Engineer/Naval Architect**, submitted by the Licensee to the Licensor after consent was given to the original plans.

**Mooring Waters** means the waters specified in item 1 of the Schedule or as varied from time to time.

**Parties** mean the Licensor and the Licensee.

**Party** means the Licensor or the Licensee, as the case may be.

**Permitted Use** has the meaning given to this term in sub-clause 2.1.

**Pollution** means anything that is Pollution within the meaning of the *Environmental Protection Act 1986*, which is not authorised under any Law.

**Schedule** means the Schedule to this Licence.

**Shipping and Marine Legislation** means any Written Law relating to vessels including but not limited to the *Navigation Act 1912*, *Marine and Harbours Act 1981*, *Shipping and Pilotage Act 1967*, *Western Australian Marine Act 1982* and the *Navigable Waters Regulations 1958*.

**Tender** means a vessel used exclusively for the carriage of persons, goods, supplies or catch between an Authorised Vessel at the Authorised Mooring and

- a) An adjacent shore, jetty or base from which the Authorised Vessel may operate; or
- b) Another vessel

**Term** means the period from and including the Commencement Date to and including the Expiry Date specified in item 2 of the Schedule.

**Vessel** shall have the meaning given to “ship or vessel” in the Act.

**Written Law** means “written law” as defined in the *Interpretation Act 1984* and any Act of the Commonwealth of Australia and any instrument (including any rules, regulations or by-laws) made granted or issued under a power conferred by such an Act

## 1.2. INTERPRETATION

In this Licence:

- a) Clause headings are for convenient reference only and shall have no effect in limiting or extending the language of the provisions to which they refer;
  - b) A reference to a clause, schedule or annexure is a reference to a clause of or schedule or annexure to the document in which the reference appears;
  - c) A reference to any Law includes consolidations, amendments, re-enactments or replacements of it;
  - d) The singular includes the plural, the plural includes the singular and any gender includes each other gender;
  - e) Reference to a person includes
    - I. To a corporation or government body; and
    - II. To the legal representatives, successors and assigns;
  - f) Covenants by two or more persons shall be deemed joint and several;
  - g) a reference to the word "including" is deemed to be followed by the words "but not limited to".
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## 2. GRANT OF LICENCE

### 2.1. GRANT OF LICENCE

Subject to sub clause 2.2 and in consideration of the matters set out in this Licence and the payment of the Annual Licence Fee by the Licensee to the Licensor, the Licensor hereby GRANTS to the Licensee the right for the Term to use the Mooring Waters, for the purpose of mooring Authorised Vessels therein ("the Permitted Use") in accordance with and subject to the terms and conditions set out in this Licence.

### 2.2. APPROVED DETERMINATION OF NATIVE TITLE

Notwithstanding any other provision in this Licence providing for the determination, expiration or termination of this Licence, the Licensor and Licensee agree that:

- a) This Licence shall determine on the date of an approved determination of native title made in relation to any land or waters included in the Mooring Waters by any court or tribunal, if the determination is that native title exists, notwithstanding that neither party to this Licence has given or received notice of such approved determination of native title;
- b) The Licensee shall comply with the provisions of clause 9 of this Licence as soon as is reasonably practicable after the Licensee becomes aware of a determination that native title exists (sub-clause 9.1.4 will not be applicable);
- c) Such determination of this Licence shall not give the Licensee any right to damages or compensation other than the refund of any part of the Annual Licence Fee and GST then paid by the Licensee attributable to a period extending beyond the date of the approved determination of native title; and

- d) Such determination of this Licence shall not affect any rights or obligations that are expressed in this Licence to survive determination, expiration or early termination of this Licence and is without prejudice to the rights of the Licensor in respect of any antecedent breach of the terms, covenants and conditions, contained or implied in this Licence, by the Licensee.

### 2.3. NO ESTATE OR INTEREST IN LAND

The Licence acknowledges and agrees that the rights conferred by this Licence rest in contract only and do not create in or confer upon the Licensee any tenancy or any estate or interest in, over or under the Mooring Waters and the rights of the Licensee will be those of a licensee only.

### 2.4. COMPLY WITH LAWS AND ORDERS

2.4.1. The Licensee shall punctually comply with and observe, at the expense of the Licensee, all Laws and all lawful orders and requirements of any statutory, public or other Governmental Agency which relates to the Mooring Waters or any part of it, or the use or occupancy of the Mooring Waters, or applicable to an Authorised Vessel using a mooring in the Mooring Waters, and with all lawful notices received either by the Licensor or the Licensee from any such Governmental Agency.

2.4.2. Without limiting the generality of this clause, the Licensee will obtain, comply with and observe, at the expense of the Licensee, all Authorisations or other requirements under any Law necessary to use the Mooring Waters for the Permitted Use.

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## 3. TERM AND LICENCE FEE

3.1. The term shall commence in the Commencement Date and shall expire

3.1.1. On the Expiry Date; or

3.1.2. Seven (7) months from the Commencement Date if

- a) A Licensed Vessel (original ) is not specified in item 3 of the Schedule and a vessel has not become a Licensed Vessel (Original) pursuant to sub-clauses 4.3 or 4.5 before the expiration of the above period of seven (7) months;
- b) the Licensee has not submitted an Installed Mooring Inspection Report within six (6) months of the Commencement Date to the Licensor; or
- c) the Licensee has submitted one or more Installed Mooring Inspection Reports within six (6) months of the Commencement Date but the Licensor has, before the expiration of the above period of seven (7) months, given written notice or notices to the Licensee that the Licensor has declined to accept the submitted Installed Mooring Inspection Report;

whichever shall first occur.

3.2. The Licensee must pay the Annual Licence Fee to the Licensor at the times specified in item 6 (b) of the Schedule.

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## 4. AUTHORISED VESSELS

4.1. The vessels authorised to use the Authorised Mooring are:

4.1.1. the Licensed Vessel, provided that it;



- a) Its loading and its Tender together do not exceed the Maximum Mooring Loading nor when moored intrude into waters outside the Mooring Waters;
- b) Its has a current valid Certificate of Survey or is otherwise approved by the Minister;
- c) It has a current marine insurance policy with an insurer, for coverage, on terms and conditions and for amounts that are all consistent with prudent commercial practice and shall, if required by the Licensor, provide to the Licensor, a copy of such policy and the Licensee shall submit evidence to the Licensor, if and as often as is reasonably required by the Licensor, which shows that such policy is current;
- d) It is in a seaworthy condition so that it is capable of taking a voyage; and

4.1.2. A vessel other than the Licensed Vessel provided that

- a) The vessel is approved to do so by the Licensee.
- b) The vessel does not exceed the Maximum Vessel Loading, Maximum Gross Tonnage, Maximum Vessel Length and Maximum Draught;
- c) The vessel, its loading and its Tender together do not exceed the Maximum Mooring Loading nor when moored intrude into waters outside the Mooring Waters;
- d) The vessel has a current valid Certificate of Survey or is otherwise approved by the Minister;
- e) The vessel has a current marine insurance policy with an insurer, for coverage, on terms and conditions and for amounts that are all consistent with prudent commercial practice and shall, if required by the Licensor, provide to the Licensor, a copy of such policy and the Licensee shall submit evidence to the Licensor, if and as often as is reasonably required by the Licensor, which shows that such policy is current;
- f) The vessel is in a seaworthy condition so that the vessel is capable of taking a voyage;
- g) There is a vessel that is the Licensed Vessel.

- 4.2. Unless a vessel is specified in item 3 of the Schedule, the Licensee shall advise the Licensor in writing in an approved form within six months of the Commencement Date of the name and registration number of a vessel that the Licensee is nominating to be the Licensed Vessel (Original) for the purposes of this Licence.
- 4.3. The Licensor by written notice to the Licensee may, in the absolute and unfettered discretion of the Licensor, agree to accept the nomination of a vessel as the Licensed Vessel (Original) and the nominated vessel shall then become the Licensed Vessel (Original) as at the date of the Licensor's acceptance by written notice or issue of a new Licence Certificate.
- 4.4. If the Licensor rejects the nomination of a vessel as the Licensed Vessel (Original) then the Licensee shall on or before six (6) months after the Commencement Date or fourteen (14) days after the date of such rejection notice, whichever shall be the later, nominate another vessel to be the Licensed Vessel (Original).
- 4.5. In the event of sub-clause 4.4 applying and subject to the Term not having expired pursuant to item (b) of sub-clause 3.1, sub-clauses 4.3 and 4.4 shall apply with the necessary changes to that and any subsequent nomination.

- 4.6. The Licensee may, by written notice in an approved form, request the Licensor to agree to the substitution of another vessel that complies with item 4 of the Schedule for the then Licensed Vessel.
- 4.7. The Licensor by written notice to the Licensee may, in the absolute and unfettered discretion of the Licensor, accept such substitution and as at the date of the Licensor's acceptance by written notice or issue of a new Licence Certificate, the substitute vessel shall become the Licensed Vessel in place of the other vessel.
- 4.8. Only one vessel at a time may be the Licensed Vessel for the purposes of this Licence.
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## **5. MOORING SITE**

- 5.1. If the Mooring is not installed on the Authorised Mooring Site because a secure mooring cannot be provided at the Authorised Mooring Site or for any other reason then;
- a) The Licensee may by written application in an approved form request the Licensor to vary the Authorised Mooring Site by changing the latitude and/or longitude specified in Item 1 of the Schedule to a different latitude and/or longitude.
  - b) The Licensee shall in such application state the reason for the request.
  - c) The Licensor by written notice to the Licensee may, in the absolute and unfettered discretion of the Licensor, agree to accept the changing of the Authorised Mooring Site to the latitude and/or longitude requested by the Licensee and the requested Authorised Mooring Site shall then become the Authorised Mooring Site as at the date of the Licensor's acceptance by written notice or issue of a new Licence Certificate.
  - d) The Licensor by written notice to the Licensee may in the absolute and unfettered discretion of the Licensor, reject the application referred to in item (c) or specify an alternative Mooring Site.
  - e) If the Licensor has given notice to the Licensee specifying an alternative Mooring Site and the Licensee, within fourteen (14) days after the date of such notice, by notice to the Licensor in the approved form, accepts that alternative Mooring Site to be the new Authorised Mooring Site, then the alternative Mooring Site shall become the Authorised Mooring Site as at the date of the Licensor's receipt of such notice.
- 5.2. The Licensor, by thirty (30) days written notice to the Licensee, may:
- a) Vary the location of the Authorised Mooring Site (and Mooring Waters); and
  - b) Require the Licensee to relocate the mooring to the new Authorised Mooring Site within ninety (90) days (or such lesser or longer period as is reasonably specified) of the date of notice. At the expiration of such notice the Licence shall be amended accordingly as at the date of expiration of the notice.
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## **6. LICENSEE'S COVENANT'S WITH LICENSOR**

The Licensee covenants with the Licensor that the Licence and the Licensee's Agents:

- a) Shall use their best endeavours and cause the officers, employees, agents, contractors, consultants, invitees and any other person acting with the authority of

the Licensee's Agents to use their best endeavours to interfere as little as possible with the public rights of navigation in and over the waters of the Mooring Waters;

- b) Shall not authorise or permit the use of the Authorised Mooring by vessels other than the Licensed Vessel on more than one half (1/2) of the days between the Commencement Date or the date on which there is a Licensed Vessel; whichever shall last occur and the anniversary of the Commencement Date and thereafter between each anniversary of the Commencement Date;
- c) Shall not use or permit the Authorised Mooring to be used, simultaneously by more than one vessel other than a vessel's Tender attached to a vessel that is attached to the Authorised Mooring;
- d) Shall ensure than an Authorised Vessel is appropriately moored and secured when not in use;
- e) Shall remove a vessel from the Authorised Mooring at any time the Minister, or the Licensor has given notice in writing that the Minister, or the Licensor as the case may be is of the opinion that;
  - I. The vessel is a hazard to safe and unimpeded navigation;
  - II. The vessel is impeding the use of another mooring site in the area;
  - III. There is a breach of any of the terms and conditions of the Licence or non-compliance with any associated Shipping and Marine Legislation by the Licensee;
- f) Subject to clause 5, shall only install and when installed shall maintain the Authorised Mooring at the Authorised Mooring Site
- g) Shall relocate the Authorised Mooring in accordance with a notice in writing from the Licensor issued under sub-clause 5.2;
- h) Shall only install a mooring of a nature, material, dimension, size, type and construction that will provide a secure mooring
  - I. For any vessel of up to the Maximum Vessel Loading, Maximum Gross Tonnage, Maximum Vessel Length and Maximum Draught; and
  - II. That has the Maximum Mooring Loading
- i) Shall not construct or erect r permit to be constructed or erected any structure, improvement of fixture, other than the Authorised Mooring, on or in the Mooring Waters;
- j) Shall ensure than an Authorised Vessel, its loading and its Tender together do not
  - I. Exceed the Maximum Mooring Loading and
  - II. When moored at the Authorised Mooring, do not intrude into waters outside the Mooring Waters
- k) Shall ensure that Tenders are attached to Authorised Vessels in the Mooring Waters only for as long as shall be necessary to load and unload persons, goods, supplies and catch on or from the Authorised Vessel

- l) Shall only make alterations to the Mooring in accordance with a Modified Mooring Consent
- m) Shall provide to the Licensor within seven (7) days of the Authorised Mooring being installed, modified or relocated
  - I. An Installed Mooring Inspection Report or a Modified Mooring Inspection Report, as may be appropriate and
  - II. Detailed as built design drawings of the installed or modified mooring
- n) If the Licensor by notice in writing advises the Licensee that the Licensor is not satisfied with an Installed Mooring Inspection Report, a Modified Mooring Inspection Report or a Mooring Inspection Report, shall provide another Report by a different Mooring Contractor (acceptable to the Licensor) within seven (7) days of such
- o) Shall ensure that all mooring lines, hawsers and equipment used to moor any vessel on the Authorised Mooring are
  - I. Suitable for securing the vessel;
  - II. In a good and safe condition;
  - III. Not used and replaced immediately if they are frayed, suspect or faulty; and
  - IV. Adjusted appropriately when necessary to accommodate changes in the tide and other conditions in the Mooring Waters;
- p) Provide a Mooring Inspection Report to the Licensor within seven (7) days of
  - I. written notice from the Licensor; and
  - II. each anniversary of the Commencement Date
- q) Shall keep the Authorised Mooring in good and safe repair and condition, and fit for purpose
- r) shall, where the Authorised Mooring deteriorates to the extent that it is dangerous, unusable, in need of repair, or where the Authorised Mooring is no longer affixed or securely affixed to the Authorised Mooring Site, repair, relocate or remove the mooring within a time specified in a notice in writing by the Licensor
- s) shall reinstate the Authorised Mooring Site and Mooring Waters on the termination of this Licence, in accordance with clause 9
  - I. Shall place or cause to be placed on the surface of the waters above the Authorised Mooring Site a buoy as will to the reasonable satisfaction of the Licensor define its centre point; and
  - II. Shall at all times after so doing keep and cause to be kept that buoy as accurately as reasonably possible in the position in which it is so placed and keep and maintain it or cause it to be kept and maintained in good repair, working order and condition and when necessary replace it with one of the same quality and type approved by the Minister or the Licensor and;

- III. Shall ensure that the buoy is of a size, shape and colour approved by the Minister or the Licensor and, unless different specifications in writing are given by the Minister or the Licensor, shall comply with the following specifications
- a. Bright yellow in colour;
  - b. Constructed of environmentally friendly material and sound components
  - c. The Mooring Buoy is embossed or otherwise legibly painted or marked with the mooring identification and the words "AUTHORISED USE ONLY"
  - d. The Mooring Identification letter/numbers must be black in colour with each digit being a minimum of 150mm high and be clearly visible at all times
  - e. The Mooring Buoy may be required to be lit in accordance with the Licensor's requirements
  - f. Display the Mooring Identification Number specified in item 2 of the Schedule in a manner approved by the Licensor.
- t) Shall not cause or permit any Pollution, Environmental Harm or other damage to occur in, on or under the Mooring Waters, and if any Pollution, Environmental Harm or other damage is caused by the Licensee or the Licensee's Agents, the Licensee shall minimise and remediate any resultant damage and harm to the reasonable satisfaction of the Licensor
- u) Without limiting the generality of the above, shall not permit the discharge of any excrement, sullage, rubbish, fuel, oil or other waste matter or pollutant from an Authorised Vessel using the Mooring Waters
- v) Shall permit the Licensor and the Department by their officers, employees, agents, contractors, consultants and any other person acting with the authority of the Licensor or the Department with or without appliances and equipment at any time to inspect the Authorised Mooring for the purpose of ensuring that the Licensee is observing performing and complying with the terms and conditions contained herein and shall afford a person carrying out such inspection reasonable access to the Authorised Mooring and such other assistance as that person may reasonably require
- w) Shall provide any information that is reasonably required by the Licensor to enable the Licensor to check and monitor the Licensee's compliance with its obligations under these terms and conditions
- x) Shall notify the Licensor in writing in an approved form of
- I. Any changes in particulars as set out in the Schedule or subsequently advised (including, but not limited to, any change of address)
  - II. The name(s) and business and after hours telephone numbers of a contact person or persons and of any changes in those particulars
- Within seven (7) days of such revocations or changes taking place
- y) Shall pay all outgoings payable in respect of the Authorised Mooring
- z) Shall punctually comply with and observe
- I. All Laws; and
  - II. All notices received either by the Minister, the Licensor, the Department or the Licensee from, and the requirements of, any relevant Governmental Agency

- aa) Shall obtain, keep current and comply with all consents, approvals permits, licences or other requirements under any Law, if any, to use the Mooring Waters for the purposes permitted under this Licence
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## 7. INDEMNITY, RELEASE AND INSURANCE

### 7.1. INDEMNITY AND RELEASE

7.1.1. The Licensee hereby releases and indemnifies and agrees to keep released and indemnified the Licensor, the Department, the State, the Crown, all Ministers of the Crown, and all officers, employees, agents, contractors, consultants, invitees and licensees of any of them (the **Indemnified Parties**) from and against all claims, demands, actions, suits, proceedings, judgments, damages, costs, charges, expenses (including legal costs of defending or settling any action, claim or proceeding) and losses of any nature whatsoever whether based in contract, tort or statute or any combination thereof which the Indemnified Parties (or any of them) may suffer or incur or which may at any time be brought maintained or made against them (or any of them) in respect of or in connection with

- a) In respect of any destruction, loss (including loss of use), injury or damage of any nature or kind of or to property of any person whether or not on in or under the Mooring Waters and including the property of
  - I. Any of the Indemnified Parties or
  - II. The Licensee or the Licensee's Agents and
- b) In respect of any death of, or injury or illness sustained by and person and including:
  - I. The Indemnified Parties or
  - II. The Licensee or the Licensee's Agents directly caused by, arising out of or in connection with
    - a. The Licensee's or Licensee's Agents use or enjoyment of the Mooring Waters or any part of the Mooring Waters pursuant to the terms of this Licence;
    - b. Any works carried out by or on behalf of the Licensee under this Licence;
    - c. The exercise or enjoyment of any rights conferred upon the Licensee under this Licence;
    - d. Any Pollution, Environmental Harm or other damage caused or contributed to by the Licensee or the Licensee's Agents of the Mooring Waters;
    - e. Any remediation required in respect of the Mooring Waters or otherwise having to comply with any Environmental notice or any other notice received from any Governmental Agency;
    - f. Any default by the Licensee in the due and punctual performance, observance and compliance with any of the Licensee's covenants or obligations under this Licence; or
    - g. Any other act, neglect, default or omission by the Licensee or the Licensee's Agents.

## 7.2. INSURANCE

7.2.1. The Licensee must during the Term of this Licence effect, maintain and keep current with an insurer, a public liability insurance policy with terms and conditions that are all consistent with prudent commercial practice for the amount specified in item 10 of the Schedule for any one claim (or any other amount reasonably required by the Licensor from time to time consistent with usual prudent commercial practice) and which policy includes, but is not limited to, coverage in respect of

- a) Any injury to, illness of, or death of, any person
  - b) Any loss, damage or destruction to any property including to the property of any of the Indemnified Parties;
  - c) The loss of use of any property, including the property of any of the Indemnified Parties;
  - d) liability arising out of any Pollution, Environmental Harm or other damage of the Mooring Waters or the seabed; and
- a) any claims, risk and events covered under the indemnities provided by the Licensee to the Licensor under this Licence

7.2.2. The Licensee shall if required by the Licensor, provide to the Licensor a copy of the policy of insurance referred to in sub-clause 7.2.1 and the Licensee is to submit evidence to the Licensor if and as often as is reasonably required by the Licensor, which shows that the insurance policy referred to is current

7.2.3. The Licensee shall effect and maintain all insurance required to be effected by it by law. Without limiting the generality hereof, the Licensee shall have all necessary insurance with respect to its employees under the relevant Laws and shall, if required by the Licensor produce evidence of such insurance at any time

7.2.4. The Licensee will not do or omit to do any act or thing or bring onto or keep anything on, in or under the Mooring Waters which might render the above insurances void or voidable

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## 8. TERMINATION OF LICENCE

### 8.1. DEFAULT

8.1.1. The Licence and the rights granted to the Licensee pursuant to it, may be terminated by the Licensor by notice in writing to the Licensee

- a) If monies payable under this Licence are in arrears and unpaid for 14 days after formal demand;
- b) If the Licensor is of the opinion that the Licensee has breached or failed to observe any of the terms and conditions on the Licensee's part expressed or implied in this Licence, other than the obligation referred to in item (a) of this sub-clause and the breach has not been remedied by the Licensee within 14 days after service of a notice from the Licensor requiring the Licensee to remedy the breach or non observance
- c) If the Licensee;
  - i. Being a corporation, goes into compulsory or voluntary liquidation

- II. Enters into any composition with its creditors; or
- III. Has execution issued against it

And this Licence and rights granted pursuant to it will terminate on expiry of the notice period specified in the notice

8.1.2. No compensation or money is payable to, or recoverable by, the Licensee from the Licensor for termination of the Licence under this clause

8.1.3. Any termination of the Licence under this clause

- a) Does not affect any rights and obligations that are expressed in this Licence to survive expiry or earlier termination of this Licence; and
- b) Is without prejudice to the rights of the Licensor in respect of any antecedent breach of the terms, covenants or conditions contained or implied in this Licence by the Licensee

## 8.2. LICENSOR'S RIGHT TO REMEDY

8.2.1. If the Licensee has breached or failed to observe any of the terms of this Licence on its part contained or implied in this Licence, and that breach or non-performance has continued for at least 14 days after the service of a written notice on the Licensee requiring it to remedy the same, without affecting its other rights under this Licence, the Licensor may (but is not obliged to) remedy the breach, including the payment of monies

8.2.2. For this purpose, the Licensee acknowledges and agrees that

- a) The Licensor, the Department and either of their officers, employees, agents, contractors and consultants may, at any time, with all necessary materials and equipment execute all or any required works to the Mooring as the Licensor thinks fit; and
- b) All debts costs and expenses incurred by the Licensor and the Department, including legal costs and expenses, in remedying a default is a debt due to the Licensor, and must be paid by the Licensee to the Licensor on demand

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## 9. REMOVAL OF PROPERTY ON EXPIRY OF TERMINATION

### 9.1. OBLIGATION TO REMOVE PROPERTY AND RESTORE

9.1.1. Subject to sub-clause 9.1.4, the Licensee must upon the expiration of this Licence or its earlier termination by the end of the period of this Licence or within ninety (90) days after the earlier termination of this Licence

- a) Remove all of the Licensee's Property from the Mooring Waters, to the Licensor's absolute satisfaction
- b) Reinststate the Mooring Waters to the state and condition in which they were at the date on which they became the Mooring Waters under this Licence
- c) Promptly make good to the satisfaction of the Licensor any damage caused by the removal of the Licensee's Property referred to in item (a) of this sub-clause; and



d) Remediate any Pollution, Environmental Harm or other damage to the Mooring Waters caused by the Licensee or the Licensee's Agents or arising out of the Permitted Use

9.1.2. The Licensee must within ninety (90) days of the relocation of the Approved Mooring Site and Mooring Waters reinstate those parts of the previous Approved Mooring Site and Mooring Waters that are not part of the new Mooring Site and Mooring Waters in accordance with items (a) to (d) inclusive of sub-clause 9.1.1

9.1.3. The Licensee's obligations under sub-clauses 9.1.1 and 9.1.2 will survive the expiration or other termination of this Licence

9.1.4. If upon or after the expiry or earlier termination of this Licence, the Minister grants a licence to another person for the purpose of mooring a vessel in waters that include the Authorised Mooring Site, the Licensor may, following receipt of a written application from the Licensee and that other person (in the absolute and unfettered discretion of the Licensor to consent or decline to consent without giving reasons for the decision made) consent to the Licensee's Property or a specified part thereof remaining in place on the terms and conditions of the new licence

## 9.2. FAILURE TO REMOVE

9.2.1. Unless the Licensor consents in writing to the Authorised Mooring remaining in place pursuant to sub-clause 9.1, if the Licensee's Property is not removed in accordance with sub-clause 9.1, its presence in and on the Mooring Waters or previous Mooring Waters under the Licence after the expiry of the relevant period referred to in sub-clauses 9.1.1 or 9.1.2 shall no longer be authorised by this Licence and

- a) Shall be an unauthorised structure under section 270 of the LAA
- b) Sections 270, 271 and 272 of the LAA will apply with respect to the removal of any such alleged unauthorised structure; and
- c) If any costs are incurred by a Government Agency at the request of the Licensor or by the Licensor in doing any matter under section 270(6) of the LAA, they shall be a debt due by the Licensee to the Licensor and may be recovered in a Court of competent jurisdiction

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## 10. NO ASSIGNMENT

10.1. The rights granted by this Licence are for the benefit of the party named as "Licensee" in this Licence

10.2. The Licensee shall not

- a) Assign or transfer its rights under this Licence to any person; or
- b) mortgage, charge or encumber its rights under this Licence

10.3. To the extent that sections 80 and 82 of the *Property Law Act 1969* may be applicable, they are expressly excluded

10.4. For the purposes of sub-clause 10.2, where the Licensee is a corporation (not being a corporation where shares are listed on any Stock Exchange in Australia) any intended change in the beneficial ownership or control of the Licensee which will have the consequence of altering the effective control of the Licensee is deemed to be an assignment of the Licensee's rights under this Licence

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## 11. GENERAL PROVISIONS

### 11.1. COSTS AND STAM DUTY

The Licensee will pay stamp duty (if any) assessed on this Licence and any copies of it.

### 11.2. FEES AND CHARGES

11.2.1. The Licensee will pay all statutory and other fees and charges (if any) relating to this Licence within 30 days of the due date

11.2.2. Without derogating from the generality of sub-clause 11.2.1, the Licensee will when applying under sub-clause 4.6 to substitute another vessel for the Licensed Vessel pay an application fee being the same amount as that payable under the *Mooring Regulations 1998* for substitution of a vessel for a Licensed Vessel

### 11.3. NOTICES

11.3.1. Any notice that must or may be served under or pursuant to this Licence may be signed by the Party giving the notice or by any solicitor or duly appointed representative of the Party giving the notice, and will be sufficiently served on the Party or the Minister if

- a) Left at the address or forwarded to the Party or the Minister by registered post to the address; or
- b) Sent by facsimile transmission to the facsimile number specified in item 7 of the Schedule (in the case of a notice being given to the Licensor) or in item 8 of the Schedule (in the case of a notice being given to the Licensee), or in item 9 of the Schedule (in the case of a notice being given to the Minister), or such other address as is notified by the Party to the other Party
- c) Sent by electronic communication to the electronic mail address specified in item 7 of the Schedule (in the case of a notice being given to the Licensor) or in item 8 of the Schedule (in the case of a notice being given to the Licensee), or in item 9 of the Schedule (in the case of a notice being given to the Minister), or such other address as is notified by the Party to the other Party

11.3.2. A notice sent by post will be deemed to be given at the time when it ought to be delivered in the ordinary course of a post whether the contrary is shown or not

11.3.3. A notice given by facsimile transmission will be deemed to have been given on the date on which the facsimile transmission report of the machine from which it was sent, shows that it was successfully transmitted in its entirety

11.3.4. A notice given by electronic communication will be deemed to have been given on the date on which it enters the information system for the relevant electronic mail address referred to in item (c) of sub-clause 11.3.1

### 11.4. BREAK CLAUSE

11.4.1. The Licensor or the Licensee shall be at liberty at any time during the period of the Licence to terminate this Licence by giving to the other of them thirty (30) days notice in writing of its intention to so terminate and upon the expiration of such notice period this Licence will terminate, but without affecting any obligations which accrued before the date of such termination, or that are stated to survive expiry or earlier termination of this Licence

11.4.2. If the Licensor gives notice of termination under sub-clause 11.4.1 the Licensee may within fourteen (14) days of such notice make representations to the Licensor to withdraw such notice of termination. Unless the Licensor within fourteen (14) days of receipt of such representations confirms the notice of termination, the notice of termination shall be deemed to be withdrawn and the Licence shall continue in full force and effect

11.4.3. The Licensee may give notice to the Minister and to the Licensor that it wishes to terminate this Licence subject to the grant of a new Licence with the same or a proposed new Licensed Vessel but otherwise on the same terms and conditions, commencing on the date of termination to a person nominated by the Licensee. The Minister may, following receipt of a written application from the nominated person (in the absolute and unfettered discretion of the Minister grant, decline to grant or grant subject to different terms and conditions) a Licence to the nominated person without giving reasons for the decision made. If a Mooring Licence is granted to the nominated person in respect of the Mooring Waters, the Licence the subject of this deed shall immediately terminate

11.4.4. Without limiting the discretion to decline to grant a Licence to the nominated person, an example of where an application under sub-clause 11.4.3 may be rejected is if there is an applicant on a wait list for the General Location described in item 1 of the Schedule that would be granted the Licence if the Mooring Site specified in the Licence were available

#### 11.5. EFFECT OF WAIVER

No consent or waiver express or implied by the Licensor or the Department or either of their officers, employees, agents, contractors, consultants or any of them, to or of any breach of any covenants conditions or stipulations of the Licensee will be construed as a consent or waiver to or of any other breach of the same or any other covenants conditions or stipulations contained or implied in this Licence

#### 11.6. GOVERNING LAW

11.6.1. This Licence shall be construed and interpreted in accordance with the laws in force in the State of Western Australia

11.6.2. The Parties submit to the non-exclusive jurisdiction of the Courts of Western Australia

#### 11.7. VARIATION

Except as expressly provided herein, this Licence cannot be altered or varied by the Parties except by deed

#### 11.8. LICENCE CERTIFICATE

The Licensor may from time to time issues a Licence Certificate to the Licensee

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## 12. GOODS AND SERVICES TAX

### 12.1. DEFINITIONS

In this clause the following terms have the following meanings

- a) GST Act means a *New Tax System (Goods and Services Tax) Act 1999* and any legislation substituted for or amending that Act
- b) The terms **GST**, **GST law**, **Tax Invoice** and **Taxable Supply** have the meaning given in section 195-1 of the GST Act.

## 12.2. LICENCE FEE EXCLUSIVE OF GST

12.2.1. The Annual Licence Fee and any other amounts payable by the Licensee to the Licensor, under this Licence, are exclusive of GST

## 12.3. LICENSEE TO PAY GST

12.3.1. The Licensee must pay to the Licensor, in addition to and at the same time of payment of the Annual Licence Fee and any other monies payable under this Licence the full amount of GST which may be payable on or in respect of the Annual Licence Fee or any other monies payable under this Licence and the Licensee acknowledges that any additional amount payable on account of GST by the Licensee is to be calculated without any deduction or offset of any other amount by multiplying the value of the Annual Licence Fee or any other monies payable under this Licence by the prevailing GST rate

12.3.2. In relation to all other amounts payable by the Licensee under this Licence to persons other than the Licensor in respect of or in the nature of outgoings, expenses or any other amount on account of or in connection with the Authorised Mooring, the Licensee must pay in addition to and at the same time for payment of those amounts any applicable GST

12.3.3. Any benefit arising to the Licensor by way of credit, offset or otherwise arising from any payment made by it, the Department or the Licensee is to be disregarded in calculating the amount of any payment payable by the Licensee under this Licence

## 12.4. TAX INVOICE

Where GST is payable, the Licensor or the Department will provide to the Licensee, a Tax Invoice in the format and form required as set out in the GST law

## 12.5. NOTIFICATION IS CONCLUSIVE

A written notification given to the Licensee by the Licensor of the amount of GST that the Licensor is liable to pay on a Taxable Supply made or to be made under this Licence is conclusive between the Parties except in the case of an obvious error

## 12.6. TIME FOR PAYMENT

The Licensee must pay to the Licensor the amount of the GST that the Licensee is liable to pay under this Licence

- a) At the same time and
- b) In the same manner

As the Licensee is obliged to pay for the taxable supply

## 12.7. APPORTIONMENT OF GST

Where a Taxable Supply is not separately supplied to the Licensee, the liability of the Licensee for any amount for GST, in relation to that Taxable Supply, is determined on the same basis as the Licensee's proportion of that Taxable Supply is determined

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## SCHEDULE

ITEM	TERM	DEFINITION
1.	Mooring Waters	<p>Those waters within a Radius of (M..) metres of the intersection of</p> <p style="margin-left: 40px;">(i) latitude...</p> <p style="margin-left: 40px;">(ii) longitude</p> <p>In the General Location of</p> <p>In the Region of:</p> <p>The above location has been established by Differential Geographical Positioning System (DGPS) and is expressed in degrees and decimal minutes using Datum WGS84</p>
2.	<p><b>Mooring Requirements</b></p> <p>Mooring Buoy Identification Number</p> <p>Maximum Mooring Loading</p>	
3.	<p><b>Licensed Vessel (Original)</b></p> <p>Name</p> <p>Registration Number/Survey/IMO</p> <p>Nationality/Port of Registry</p>	
4.	<p><b>Vessel Requirements</b></p> <p>Maximum Vessel Loading</p> <p>Maximum Gross Tonnage</p> <p>Maximum Vessel Length</p> <p>Maximum Draught</p>	
5.	<p><b>Term</b></p> <p>(a) Commencement Date</p> <p>(b) Expiry Date</p>	
6.	(a) Annual Licence Fee	<p>Dollars (\$1,030 ) or (if the Term is longer than one (1) year) such other amount as may from time to time be notified by no less than thirty (30) days written notice to the Licensee by the Licensor in respect of each succeeding year</p>
(b)	<b>Payment Date</b>	<p>On or before the Commencement Date and (if the Term is longer than one (1) year) thereafter in advance on or before the day before the anniversary of the</p>

Commencement Date in every year during the continuance of this Licence

**7. Licensor's Address for Service of Notices**

General Manager Marine Safety  
Department of Transport  
14 Capo D'Orlando Drive  
FREMANTLE WA 6160

Attention: Team Leader,  
Moorings

Facsimile No: (08) 9431 1019

Phone No: (08) 9431 1027

Electronic Mail Address:

[moorings@transport.wa.gov.au](mailto:moorings@transport.wa.gov.au)

**8. Licensee's Address for Service of Notices**

Facsimile No:

Phone No:

Electronic Mail Address

**9. Minister's Address for Service of Notices**

Same as the Licensor

**10. Insurance        \$10,000,000.00**