



By using the Vessel Accommodation, you, the Customer, are agreeing to these terms and conditions with the CEO of the Department of Transport.

Acronyms: VA = Vessel Accommodation, includes pen, slip or similar facility, NV = Nominated Vessel and DoT = Department of Transport

1. Quiet Enjoyment

The CEO and DoT will, except as provided in this Agreement, allow the Customer quiet use of the VA for their vessel (being a NV) and enjoy the rights granted to the Customer under this Agreement during the term without any interruption, subject to the Customer complying with all marine legislation and these Terms and Conditions.

The Customer acknowledges that:

- (a) any vessel moored in VA is entirely at the risk of the Customer.
- (b) neither DoT, the CEO nor the State of WA will in any way be liable or responsible for:
 - (i) any damage that any vessel including the NV may at any time sustain while in the VA, however that damage is caused, including negligence and regardless of who caused that damage; nor
 - (ii) for any loss or damage resulting from the theft of any vessel including the NV or any part of it, its equipment or contents while in the VA; nor
 - (iii) any injuries which the Customer or any guest or invitee of the Customer may sustain while in or about or upon the VA or associated infrastructure.

2. Continuing Obligations of the Customer

The Customer's obligations under this Agreement continue for as long as the Customer continues to use the VA for their NV or at all, irrespective of whether or not they have signed the vessel accommodation form for any new or additional period of use of the VA. These obligations, including, without limitation, the obligations to pay pen fees in clause 3, will continue until the Customer officially relinquishes the use of the pen/VA and removes the NV and all other objects.

3. Obligation to pay pen fees – right of DoT to terminate this Agreement

Pen fees are prescribed fees in the *Jetties Regulations 1940* and are payable in advance by the Customer for period of the stay nominated on the VA application form. The rights of the Customer under the terms and conditions of this Agreement are subject to the payment of the pen fees at the start of each year. Where the Customer fails or refuses to pay the pen fees, and they are unpaid for a period of more than 30 days from the date of the invoice, the Agreement will be cancelled terminating the right of the Customer to use the VA for their NV, or at all. DoT will be entitled to remove the Customer's NV or any vessel on the VA if they refuse to move it as directed by an officer of DoT.

4. Sale of NV

The Customer must immediately notify DoT of any sale of the NV and acknowledges that the VA and any rights under this Agreement are not transferable nor assignable with the sale of the NV. If the Customer sells the NV, then the new owner must enter into a separate licence Agreement with the CEO for the rights to use VA. The Customer acknowledges that DoT is not obliged to grant a licence to the new owner in the event the ownership of the NV changes.

5. No assignment and No Sale of VA

This Agreement is with the Customer only, and the Customer must not assign, transfer, mortgage, charge, sub licence or otherwise part with the benefit of this Agreement. Note: the rights under this Agreement are a licence to use the VA and cannot under any circumstances be sold or transferred.

6. Insurance Details

The Customer agrees at all times whilst using the VA to have in place a valid and current insurance policy for their NV and must provide DoT evidence of the insurance.

7. Electrical, gas and insurance requirements

The Customer agrees to comply with the guidelines and requirements in the DoT publication *Electrical, Gas and Insurance Requirements for Transport Operated Maritime Facilities*.

8. Cyclone contingency plan

Customers who operate their vessel in cyclone prone areas must have their own vessel cyclone contingency plan and should obtain a copy of a relevant DoT maritime facility *Cyclone Community Information Sheet*.

9. Live onboard requirements

The Customer agrees to comply with the requirements in the DoT publication, *Live Onboard Policy*.

10. Use of VA

Except where specifically agreed in writing by DoT, the Customer must not:

- (a) use the jetty in the DoT for any purpose other than for access to and from VA;
- (b) use VA for any purpose other than mooring one NV and one tender to the NV;
- (c) any tender to the NV must sit within the pen envelope and not exceed/encroach onto navigable fairways;
- (d) moor or permit to be moored any vessel other than the NV and the tender to the NV in the pen. Temporary use of the VA by another vessel must be authorised by DoT and may be subject to payment of fees;
- (e) use or leave any docking or berthing device other than mooring ropes within VA without the prior written consent of DoT;
- (f) moor or permit to be moored in VA any vessel:
 - (i) with an overall length which is greater than the length of VA; and
 - (ii) that is unregistered, dilapidated, unseaworthy or liable to sink.

11. Redesignation of VA

The Customer acknowledges that this Agreement only gives the Customer a right to use VA, but not any particular VA. DoT may at any time during the term, due to the operational or maintenance requirements of the maritime facility, by notice in writing to the Customer assign another VA of similar size and type. If that occurs, the Customer must move its NV to the designated VA within seven days of receiving a notice from DoT.

12. Change of Customer address

The Customer must notify DoT in writing within seven days of any alteration to their identity, address or telephone number.

13. Change to NV

The Customer must not change the NV in the VA, without the prior written consent of DoT.

14. Repair and maintain VA

The Customer must:

- (a) at his/her cost maintain all mooring ropes in or to VA in a safe operational condition and in good repair;
- (b) advise DoT of any damage caused to VA or associated infrastructure, by collision of the NV or any other vessel. DoT will then arrange for the necessary repairs to VA or associated infrastructure to be carried out at the Customer's expense and the Customer must on demand pay DoT for the cost of those repairs;

- (c) not make any structural change, alteration to or demolish any part of VA without the prior written consent of DoT.
- (d) permit entry to VA by any DoT officer, authorised contractor or other person with or without plant, equipment and materials for the purpose of:
 - (i) inspecting the state of repair of VA and to ensure compliance with this Agreement;
 - (ii) remedying any breach of this Agreement; and
 - (iii) executing any repairs to VA or associated infrastructure which DoT wishes to make.

15. Yield up of the VA

On the expiry or termination of this Agreement, the Customer must:

- (a) yield up to DoT VA in a condition complying with this Agreement, and make good any damage to the VA caused by the Customer's use;
- (b) remove from VA and the jetty all property that is not a fixture and make good any damage caused by that removal;
- (c) remove the NV or any vessel from the VA; and
- (d) return to DoT all security access keys and devices providing access to the VA or associated infrastructure held by the Customer.

If the Customer fails to comply with these requirements DOT will arrange for the necessary repairs to any damage and can pursue the Customer to recover those costs or any other costs associated with a breach of the requirements in this clause.

16. Rubbish, pollution and jetty access

The customer must:

- (a) keep the VA and associated infrastructure clean and free from rubbish and must not deposit, discharge or leave any rubbish waste or other material or article in VA or the surrounding waters, except in any rubbish containers which may be provided;
- (b) remove all waste oil, drums, filters and batteries from VA to an appropriate site for disposal;
- (c) do all things necessary to prevent pollution or contamination of the facility by garbage, refuse, waste material including human or animal waste, vessel maintenance products, petroleum products, oil and other pollutants whether by storm water or other run off or arising from the use of VA;
- (d) not restrict access to the jetty;
- (e) not leave any property or equipment including water hoses, electrical cords and uncoiled mooring lines on the deck of the jetty; and
- (f) not leave NV or any vessel access steps on the jetty without the prior written consent of DoT.

17. Moor and operate vessel safely

The Customer must ensure that:

- (a) the NV is at all times safely moored within the nominated length of the particular VA;
- (b) any tender or other vessel used in conjunction with the NV:
 - (i) is at all times secured within the nominated length of VA;
 - (ii) is not to impede use of an adjacent VA; and
 - (iii) is not to be placed on any VA walkway or finger.
- (c) the NV, tender or any other vessel is at all times controlled by a competent and responsible person holding the required qualifications; and
- (d) any damage caused to the VA or any other part of the facility or another vessel is reported to DoT.

18. Maintain security

The Customer must:

- (a) not make copies of security access keys and devices;
- (b) secure any lockable gate after use; and
- (c) ensure that only the Customer and their guests have access to or use of those security access keys and devices for the purpose of gaining access to VA.

19. Advertisements, signs or notices

The Customer must not affix to the NV or the VA any advertisement, sign or notice and must not advertise for

business verbally or by use of sound-producing equipment from the NV or VA without the prior written consent of DoT.

20. Storage of private equipment

The Customer must not store private equipment, including jinkers, on DoT land or facilities without prior written consent of DoT. Fees and charges apply.

21. Comply with directions

The Customer must comply with all reasonable directions and restrictions imposed by DoT or officers of DoT.

22. Removal of vessel in emergency

In the event of an emergency the Customer must on demand by DoT immediately move the NV. If in an emergency the Customer is unable to immediately remove the NV from VA, or if DoT is unable to contact the Customer, or if due to the nature of the emergency DoT does not have time to contact the Customer, then DoT may move that NV or vessel and the Customer indemnifies DoT and DoT's authorised representatives against all claims.

23. No offensive activities and other restrictions

The Customer and their guests must not in the maritime facilities:

- (a) do any harmful, hazardous, offensive, anti-social or illegal act, matter or thing including but not limited to acts of deliberate vandalism;
- (b) behave in a drunk, disorderly or anti-social manner;
- (c) do anything which causes nuisance, damage or disturbance to any other facility Customer;
- (d) obstruct the waterways of the facility by the NV, tender, any other vessel or any object;
- (e) store on the NV any inflammable and / or combustible fuel except contained in tanks or lines which form a permanent part of a vessel or comply with all safety standards relating to the storage of marine fuel or other substances;
- (f) refuel any vessel in the VA;
- (g) carry on any commercial business from the VA without prior written consent of DoT;
- (h) pump out the bilge or sullage tank of the NV into the waters of the facility;
- (i) if the NV is a charter vessel, load/unload passengers from the VA without the prior written consent of DoT;
- (j) carry out any major repairs to the NV while in the VA;
- (k) carry out any external maintenance to any vessel with non-biodegradable substances;
- (l) hang any towel or clothing from the VA;
- (m) permit any animal to enter the VA, without the prior written consent of DoT, and then subject to the animal being under effective control at all times;
- (n) fish from VA or NV;
- (o) swim, dive within the waters of the facility without the prior written consent of DoT; and
- (p) interfere with any lighting or CCTV on or in the vicinity of VA or associated infrastructure.

The Customer accepts that engaging in any of these activities may lead to DoT cancelling the Customer's right to use the VA for their NV or at all, and the CEO can terminate this Agreement with the Customer without prior

24. Indemnity

The Customer agrees that it will indemnify the State of Western Australia, DoT and the CEO of Transport against all claims, demands, losses, damages, costs and expenses for which the State, DoT or the CEO becomes liable in respect of:

- (a) any loss or damage to property; or
 - (b) death or injury of any nature or kind;
- however or wherever sustained:
- (i) resulting from an act or omission of the Customer; or
 - (ii) caused or contributed to by the use or occupancy of the VA;

except to the extent caused or contributed to by the act or default of DoT.