



**BASE MARINE PTY LTD**  
**Schedule 7 – General Terms and Conditions**

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Document Owner:	Base Marine Pty Ltd
Revision No:	0001
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**1. DEFINITIONS**

The Following terms shall bear the following meanings in this Services Agreement (which includes the Recitals and all Schedules) unless the context otherwise requires:

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

**Boat Pen** means area of water surrounded in pylons embedded in the sea floor that are cyclone rated and leased by the Company to the Client for the purpose of mooring Vessels.

**Box** means a box or boxes set out in Schedule 1 of this Services Agreement (as the context requires).

**Claim** Includes any legal action, suit, proceeding, application or demand of any kind.

**Client** means the company or persons named in this Services Agreement's particulars as the 'Client', and includes any related bodies corporate (as defined in the *Corporations Act 2001* (Cth)) of such a company, in which the Vessels may be operated or managed through.

**Client Equipment** means any equipment owned or leased by the Client from time to time or any substituted equipment which is provided at any time by the Client to the Company for the purposes of carrying out the matters contemplated by this Services Agreement.

**Clients Vessel(s)** means any vessel owned, manned, operated or managed by the Client.

**Collateral** means all the Client's present and after-acquired property whether real or personal and it includes anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in.

**Commencement Date** means the date the contract commences as set out in Box 4 of Schedule 1.

**Company** means Base Marine Pty Ltd.

**Company Environmental, Health, Safety and Security Standards** means all of the Company's environmental, health or safety or security guidelines, standards, policies, regulations, manuals, procedures or other references from time to time.

**Company Equipment** means any equipment, other than Client Equipment that is owned or leased by the Company from time to time, or any substituted equipment, which is provided at any time by the Company to or for the benefit of the Client for the purposes of performing the Company's obligations under this Services Agreement.

**Company Policies** means any rules or procedures provided by the Company in writing to the Client from time to time in relation to the use of, or operations on, the Site.

**Completion Date** means the date the contract completes, as set out in Box 5 of Schedule 1 or such later date at the Parties agree in writing.

**Confidential Information** means any information (in whatever form) or documentation of a confidential nature (or which the recipient or its Personnel reasonably expects to be confidential) that relates to the business, affairs or activities of a Party.

**Contamination** means the presence of a substance in, on, or under the water or land at a concentration above the concentration at which the substance is normally present in that same locality, being a concentration that presents, or has the potential to present, a risk of harm to human health or the environment.

**Default** means a breach of any term or condition of the Services Agreement.

**Environment** means living things, their physical and social surroundings and interactions between all of these.

**Environmental Harm** means any serious or material harm, damage or detriment to the environment which is not pollution or contamination.

**Fees** means the amount payable to the Company by the Client (per units of time or other measure) for the provision of the services identified in Box 1 or 2 as set out in Schedules 3 and 6 (as applicable) and as adjusted from time to time under clause 6.

**Government Authorisations** means all approvals, consents, authorisations, permits, clearances, licenses or other requirements that are required from Government agencies for the Company to perform its obligations under this Services Agreement.

**Government Notice** means any notice direction, order, demand or other requirement to take any action from any Government agency whether written, oral or otherwise.

**GST** means Goods and Services Tax, as defined in the GST Act.

**GST Act** means *A New Tax system (Goods and Services Tax) Act 1999* (Cth) as it may be amended from time to time and all regulations made under that Act.

**Hazardous Substances** means any substance with potential to cause harm to persons, property or the Environment because of the chemical, physical and/or biological properties of the substance.

**Liabilities** means damages, Claims, losses, liabilities, cost and expenses of any kind.

**Native Vegetation** means aquatic and/or terrestrial vegetation that is indigenous to the region in which it is located.

**Party or Parties** as the context requires means a Party or Parties to this Services Agreement. Third Party means a party other than the Parties.

**Personnel** means:

- a) in relation to the Company or the Client respectively any of its employees, subcontractors, agents and representatives.
- b) in relation to a subcontractor of the Client or the Company, any of its employees, agents or representatives involved either directly or indirectly in the provision of the Services under this Services Agreement.

**Pollution** means any alteration of the environment which involves the release of any substance, the discharge of waste, an excessive emission of noise, any odour or electromagnetic radiation or the transmission of electromagnetic radiation.

**Primary Assigned Vessel** means the Vessel nominated by the Client and accepted by the Company as the primary Vessel to occupy that particular Boat Pen.

**Remedial Work** means any work to remediate land or water affected by Pollution, Contamination or Environmental Harm including to:

- a) remove, destroy or reduce;
- b) dispose of or disperse;
- c) contain or encapsulate;
- d) treat;
- e) manage (including restricted or prohibit access to or use of the affected land); or
- f) abate or control, any Pollution, Contamination or Environmental Harm and to remove or minimise the potential risk it presents to human health or the environment.

**Remediation Date** means the earlier of:

- a) the Completion Date; or

- b) 60 days after the date this Services Agreement is terminated.

**Secondary Assigned Vessel** means the second Vessel nominated by the Client and accepted by the Company to occupy a particular Boat Pen that already has a Primary Assigned Vessel allocated to it.

**Services Agreement** means the Services Agreement to which this Schedule 7 is attached to and forms part of and includes the Recitals and schedule 1 to 6 also attached to and forming part of.

**Services** means the activities that Company shall perform or cause to be performed referred to in Box 1 and 2 of Schedule 1.

**Site** means the facilities located as specified in Box 3, and includes all buildings and other improvements, the seabed, the land and offshore waters occupied by the Company and all Company Equipment comprising the facilities from time to time and includes the Boat Pens.

**Secured Money** means all moneys from time to time actually or contingently owing or payable by the Client to the Company.

**Term** means the term of this Services Agreement commencing on the Commencement Date and ending on earlier of:

- a) the date this Services Agreement is terminated; and  
b) the Completion Date.

**Vessel** means a craft capable of being used, in navigation by water.

## 2. PROVISION OF SERVICES

### 2.1 Scope

- a) The Company agrees to provide the Services referred to in Box 1 and 2 of Schedule 1 to the Client at, unless otherwise agreed, the Site.  
b) The scope of the Service referred to in Box 1 and 2 of Schedule 1 to be provided by the Company to the Client may be amended or varied, as agreed in writing by the Parties from time to time.

### 2.2 Responsibilities and obligations of the Client

The Client must use its best efforts to ensure that all Client Personnel on the Site:

- a) shall use all reasonable care in the access and use of the Site so as not to cause injury to any person or damage to property of any person;  
b) comply with the Company Environmental, Health and Safety Standards and the Company Policies (that are available for inspection upon request) while on the Site;  
c) comply with any reasonable and lawful directions of the Company relating to the provision of the Services;  
d) ensure that any Company and the Client Equipment within the Client's possession or control is kept in good working condition;  
e) at all times ensure that any part of the Site used for the Services are secure and safe;  
f) comply with any directions given by the Company to remove any Vessel, Client Personnel from the Site upon request by the Company to do so; and  
g) do not otherwise act in a manner which disrupts or adversely affects Company's business operations at the Site, reputation, interest and goodwill.

The Company reserves the right to direct the Client from time to time to move any plant, Vessel, equipment or cargo from a location on the Site to another location on the Site and all reasonable requests must be followed by the Client.

### 2.3 Commencement and duration

- a) The Services may be provided during the Term.  
b) Upon reaching Completion Date, the Company may give a minimum of 24 hours' notice that the Client must vacate the Boat Pen and the Site. The Client must do so within 24 Hours of receiving the notice.  
c) Should the Services Agreement reach Completion Date and the Company chooses not to give notice in writing to the Client to vacate the Boat Pen Site, the Client may continue to use the Site and access the Services on a casual periodic agreement and the terms of this Services Agreement will apply to such continued use and access of Services as applicable.

### 2.4 Termination

On termination or expiration of this Services Agreement the Client must leave the Site, to the extent used by the Client, in a clean and tidy condition and if damaged by any act or omission of the Client or its employees, agents or contractors, reinstate such parts of the Site to the same condition as at the Commencement Date subject to reasonable wear and tear having regard to the activities of the Client in its use of the Site in accordance with this Services Agreement. This clause survives the termination or expiry of this Services Agreement.

### 2.5 Restrictions and Working Hours

- a) Unless otherwise agreed, the Client agrees to observe the same working hours as the Company may from time to time on the Site. No activities causing excessive noise and/or inconvenience to neighbours being carried out after 9pm or before 6am, Monday to Saturday, and not at all on Sunday or Public Holidays and noise emissions at all times shall not exceed the levels prescribed in the *Environmental Protection (Noise) Regulations 1997 (WA)*.  
b) Any lighting used on the Site must be approved by the Company prior to use. The Company in its sole discretion can determine whether lighting is allowed and what form of lighting can be used.

### 2.6 Mooring of Vessels

- a) The Client acknowledges that the Department of Transport as Head Lessor and the title holder to the Site has certain rights in relation to the direction of mooring of Vessels at the Site.  
b) The Client shall comply with any direction or notice given by the Department of Transport with which the Company or the Client is obliged to comply.  
c) The Client will provide its own ropes for securing Vessels and method of embarkation for the Vessel.  
d) In the event of a Cyclone Warning being issued by the Australian Government, Bureau of Meteorology, the Client shall only use ropes, chains, flexible steel wire rope or other material that is rated in line with appropriate Australian Standards to a minimum breaking strain as per the



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guidelines set out in the Exmouth Boat Harbour Cyclone Contingency Plan or Base Marines cyclone contingency plan for a Vessel of that size or to align the safe working load of the rope with the maximum wind rating of the piles encompassing the Boat Pen.

- e) In the event that mooring lines part or a Vessel comes away from her mooring for any reason, it remains the sole responsibility of the Client that that Vessel's Master as agent for the Client.

### **3. REPRESENTATIONS AND WARRANTIES**

#### **3.1 Client Representations and Warranties**

The Client acknowledges and declares that by entering into this Services Agreement, the Client has relied solely on its own inspection, enquiry, perusal and opinion in relation to the suitability of the Company's property and facilities at the Site, the Company Equipment and has not relied on any promise, representation, warrants or undertaking given by or on behalf of the Company in respect of the suitability of the Company's property or the Site for any use requested by the Client and all warranties (if any) implied by law are hereby expressly negated so far as legally possible .

#### **3.2 Survival**

Each of the representatives and warranties in this clause 3 remain in full force and effect despite the expiry or termination for any reason of this Services Agreement.

### **4. PERSONNEL**

#### **4.1 Care and Protection**

During the Term, the Client will:

- a) take measures necessary to protect people and property from reasonably foreseeable risks of injury or damage;
- b) use all reasonable endeavours to avoid interference with the passage of other people and vehicles; and
- c) prevent nuisance and unreasonable noise and disturbance, on and around the Site.

#### **4.2 Equipment**

All Client Equipment, goods or materials located on Vessels berthed at the Site are entirely at the risk of the Client and the Company shall have no liability for loss of or damage to the goods and materials, however caused.

### **5. FEES**

#### **5.1 Fees**

- a) Fees are calculated by applying the relevant service rates set out in Schedules 3 and 6 (as applicable to the physicals used).
- b) The Schedule of Rates are exclusive of GST unless otherwise specified.

### **6. PAYMENT**

#### **6.1 Payment on provision of invoice**

- a) Subject to clause 6.2 of this Schedule 7, the Client will pay the Company all Fees on a monthly basis or within 30 days' notice of any invoice issued by the Company.
- b) If payment of any relevant Fees is not made by Client to Company within 30 days after the date of the invoice, the Company is entitled to charge interest at the rate of 10%pa of the amount outstanding from and including the due date until payment is received in full.

- c) Where an invoice is disputed by the Client and cannot be resolved 7 Business Days before the invoice is due for payment, the Client will pay the undisputed portion of the invoice on or before the due date for the invoice but shall be entitled to withhold payment of the disputed portion provided that portion is reasonably disputed in good faith and the Client provides Company with written reason of the dispute.
- d) Should the Company prove the validity of a dispute portion of the invoice, the Client will pay the balance of the invoice within 5 Business Days after the dispute is resolved. Interest will be charged at 10%pa on the unpaid balance, calculated to the nearest day.
- e) Should the Client's claim be valid, a revised invoice will be issued by the Company. In this instance, interest will not be charged on the disputed portion of the invoice.
- f) If the dispute cannot be resolved then the dispute will be resolved in accordance with clause 14 of this Schedule 7.

#### **6.2 Long Term Boat Pen Lease Fees**

- a) For all leases of Boat Pens in excess of 3 months, payment of 3 month's rent in advance will be made. This three month payment is used to secure the Boat Pen in the first instance until the Boat Pen is occupied by the Client. The Boat Pen fees are then charged monthly in advance commencing on the second month for the occupation of the Boat Pen. At the end of the lease, all monies held by the Company for forward payments under the lease, will be reimbursed to the Client within 30 days minus any Claims the Company has against the Client for damage of property or costs incurred by the Company as a result of the Client's use or misuse of the Site or any other Claims the Company may have against the Client whether under this Services Agreement or at law or in equity.

#### **6.3 Claims**

- a) The Client must make any Claim in relation to this Services Agreement with the earlier of:
- i. 3 months after the provision of the Service to which the Claim relates; and
- ii. 3 months after the Term, after which the Client acknowledges and agrees that any liability of the Company for that Claim is extinguished.

- b) This clause, 6.3 survives the expiry or termination of this Services Agreement.

### **7. DEFAULT**

#### **7.1 Tow Away Vessels**

If the Client is in breach of any term of this Services Agreement including the payment of monies due and the breach has not been rectified within 7 days of notice to rectify the breach then:

- a) the Company may cause the Vessel to be towed away from the Site and stored;
- b) the Company may remove goods or materials stored at the Site; and
- c) the Company may take whatever action necessary to recoup the monies owed by the Client to the Company,

and the Client must pay to the Company on demand all costs and expenses incurred by the Company in towing and storing the Vessel, and moving and storing goods and

materials whether incurred before or after termination of this Services Agreement.

### 7.2 Termination with cause

The Company may terminate this Services Agreement immediately by written notice to the Client if the Client:

- a) fails to make any payment which pursuant to this Services Agreement it is required to make to the Company by the due date;
- b) commits or allows to be committed any breach or non-observance of any of the other obligations on its part to be performed and observed under this Services Agreement, and fails to remedy or to take effective action to remedy that breach or non-observance, so far as reasonably practical, within 7 days after being requested in writing by the other Party to do so;
- c) becomes insolvent or unable to pay its debts as they become due, or becomes liable to be or is dissolved;
- d) goes into liquidation, whether voluntarily or compulsorily, otherwise than solely for the purpose of reconstruction;
- e) has an order entered against it under any law relating to liquidation of insolvent companies appointing a liquidator, provisional liquidator, official manager or trustee in respect to any of its assets;
- f) files any voluntary petition or similar proceeding under any bankruptcy act, institutes any voluntary proceeding in any court to declare such Party insolvent or unable to meet debts, makes an assignment for the benefit of creditors or consents to the appointment of a receiver for any property of such Party; or
- g) has filed against it any involuntary petition or similar proceeding under any bankruptcy act, has instituted against it any involuntary proceeding in any court to declare such Party insolvent or unable to meet debts, has all or substantially all of its property levied upon or attached by process of law or has a receiver appointed for any of its property, and the same is not dismissed, vacated, set aside or released within forty-five (45) days thereafter.

### 7.3 Effect of Termination

Upon termination of this Services Agreement, the Client's right to use the Site or to access any Services shall terminate immediately.

## 8. ENVIRONMENTAL, HEALTH AND SAFETY

### 8.1 Compliance with Laws, Authorisations etc

- a) While on Site, the Client must at all times comply with and ensure that the Client's Personnel comply with:
  - i. all applicable laws, including industrial awards and agreements;
  - ii. all Company Environmental, Health, Safety and Security Standards; and
  - iii. all Government Authorisations.
- b) The Client must, at its own cost, comply with any Government Notice issued in respect of which is addressed to the Client, and must do all things reasonably necessary to ensure that action or inaction of the Client does not cause the Company to not comply with any Government Notice addressed to the Company, and of which the Client is made aware.

### 8.2 Entry onto the Site

- a) If the Client enters, or is to enter, the Site, the Client must ensure that the Client and its Personnel:
  - i. complete Company's safety induction and visitors' site orientation programs before entering the Site;
  - ii. comply with all directions and orders given by the Company or the Company's Representative whilst on the Site;
  - iii. do not interfere with any of the activities of Company or any other person at the Site;
  - iv. ensure that all rubbish and other debris is removed from the Site and that the Site is left secure, clean, orderly and fit for any use specified by Company, failing which is the creation of a debt is due to Company from the Client for any cost the Company incurs to ensure the Site is secure, clean, orderly and fit for any use specified by the Company; and
  - v. ensure that any Vessel, tools, equipment, materials or other products brought onto Site are kept secure from theft or damage and comply with any relevant Law, manufacturer or owner specifications or standards, Company Environmental, Health, Safety and Security Standards, Company Policies and Government Authorisations.
- b) The Client shall ensure that it closes any gate which it uses for access and locks any gate found locked.
- c) The Client shall direct any other person or contractor using the Site to close any gate which it uses for access and lock any gate found locked.

### 8.3 Hazardous Substances

- a) The Client and its Personnel must not, without the prior written consent of Company, cause or allow any Hazardous Substances to be brought onto, produced on, transported to or from, treated, stored or disposed of on the Site.
- b) Before bringing any Hazardous substances onto the Site the Client must provide Company with material safety data sheets on each of the Hazardous Substances regarding the potential effects on the Environment and risks to human health of that substance.

### 8.4 Pollution, Contamination and Environmental Harm

- a) The Client and its Personnel must not cause or allow Pollution, Contamination or Environmental Harm to occur in, on or under the Site or surrounding land or waters.
- b) The Client must promptly notify Company of any discharge, release or threatened release of a Hazardous Substance on or from the Site or surrounding land that the Client or its Personnel become aware of.

## 9. REMEDIATION

### 9.1 Remediation

- a) If the Client or its Personnel cause, allow or contribute to the Site or the surrounding land becoming affected or potentially affected by Pollution, Contamination or Environmental Harm the Client must, at its own cost and as soon as practicable but not later than the Remediation Date, perform Remedial Work to the Company's satisfaction to prevent, mitigate and rectify any resulting damage or potential damage to the Site or the surrounding land to the extent that the Pollution, Contamination or



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Environmental Harm was caused or contributed to by the Client or its Personnel.

- b) The Company reserves the right to determine the method and means of Remedial Work performed by the Client under this clause 9.
- c) If the Client fails to perform the Remedial Work required by this clause 9 in a timely fashion that the Company finds acceptable, the Company may do those things required by this clause 9 (including engaging a third party to do those things) at the Clients expense, and the Client indemnifies the Company for all such costs. This includes but not limited to completing the Remedial Work prior to the Remediation Date.
- d) This clause 9 survives the expiry on termination of this Services Agreement.
- e) The Client agrees to procure each of its Personnel to comply with this clause 9 and any breach of this clause 9 by Client Personnel of an obligation imposed on the Client or Client Personnel will be deemed to be a breach of this Services Agreement by the Client.

**9.2 Disclosure**

- a) Except where required by law, the Client and its Personnel must not disclose information concerning the environmental condition of the Site or surrounding land to any person, including any Government Agency, without the Company's prior consent.
- b) Where disclosure of information concerning the environmental condition of the Site or surrounding land is required by law, the Client and/or its personnel must notify the Company before disclosing the information.

**9.3 Environmental Release**

The Client releases the Company and each Company Personnel from all Claims the Client may have against Company arising from or connected with directly, or indirectly, the presence of any Pollution, Contamination, or Environmental Harm in, on or under the Site and surrounding land and water at any time during or after the Term.

**9.4 Environmental Indemnity**

Without limiting this clause 9, the Client indemnifies the Company and each Company Personnel against any Liability incurred or suffered by the Company or any Company Personnel in respect of or arising from (directly or indirectly):

- a) default by the Client or its Personnel under this clause 9; and
- b) to the extent caused or contributed to by the Client or its Personnel, any Pollution, Contamination, or Environmental Harm, in or under the Site or surrounding land during or after the Term.

**9.5 Rights to Exclude People**

- a) Except with the prior written consent of the Company, the Client must not allow any person other than Company's Personnel or the Clients Personnel to enter the site.
- b) The Company may (and may instruct the Client to) remove from, or refuse entry to the Site any person including a person who, in the Company's opinion is:
  - i) engaged in activities which are contrary or detrimental to the interests of the Company

- ii) guilty of misconduct; and
- iii) any other reason that the Company sees fit to exclude.

**10. INDEMNITIES AND EXCLUSIONS OF LIABILITY**

**10.1 General Indemnity**

To the maximum extent permissible at law, the Client indemnifies and will keep indemnified the Company and each and every Company Personnel from and against all Claims or loss or damage relating to the Clients Equipment, the Clients Vessel or their use, occupation or access of the Site however arising and arising at any time (whether before or after the expiry of the Term) including without limitation any direct or indirect loss or damage (including consequential or pecuniary loss or damage or loss profits or otherwise) whether arising from, or caused or contributed to by, any negligence or breach of statutory or other duty by the Company or any Company Personnel or otherwise.

**10.2 Release**

To the maximum extent permissible by law, the Client hereby releases the Company and each and every Company Personnel, from all Claims or loss or damage arising from or relating Clients Equipment, the Clients Vessel or their use, occupation or access of the Site however arising and arising at any time (whether before or after the expiry or termination of the Term) including without limitation any Claims for direct or indirect loss or damage (including consequential or pecuniary loss or damage or loss of profits or otherwise) whether arising from, or caused or contributed to by, any negligence or breach of statutory or other duty by the Company or any Company Personnel or otherwise.

**10.3 Weather Events**

- a) The Client acknowledges that the Site is located in an area prone to cyclones, flooding large waves and other severe weather events. Without limiting any other provision of this clause 10, the Company shall have no liability to the Client for any loss of damage caused directly or indirectly to the Client from any such adverse weather events.
- b) The Client shall comply with the directions of the Company or any public authority or other person authorised by law for the safety of persons or property in any actual or forecast adverse weather event.
- c) The Client must have it's own Cyclone Contingency Plan in respect of its Vessels or Client Equipment and this must be provided to the Company on request.

**11. STORAGE OF GOODS**

If the Services include the storage of goods at the Site then the following provisions apply:

**11.1 Storage**

The Client may store materials and goods to be loaded or having been offloaded from Vessels moored at the Site and for delivery to and from the Site. The Client is responsible for the safe stowage of all the materials and goods stored at the Site.

**11.2 Storage location**

The Client shall locate goods and materials for storage at the locations in the Site designated by the Company from time to time.

#### **11.3 Hard stand and cover**

Under cover storage shall not be provided and the Client shall be responsible for covering, securing and weather protection of all materials and goods stored.

#### **11.4 Chemicals and Inflammable Substances**

The Client may not use or store any chemical or inflammable substance at the Site, including on any Vessel moored at the Site, except:

- a) as a reasonably necessary and in reasonable quantities for the permitted use of the Site by the Client;
- b) in accordance with all applicable laws and regulations; and
- c) only with permission of the Company (which may be withheld in the Company's discretion) after the Company receives a written request from the Client including details of the substance and Material Safety Data Sheets.

#### **11.5 Storage on Vessels**

Goods or materials belonging to the Client that are on Site or stored on Vessels are entirely at the risk of the Client and the Company shall have no liability for loss of or damage to the goods and materials, however caused.

#### **11.6 Offensive Substances**

- a) The Client must not store any noxious or offensive substance at the Site unless proper arrangements for safe containment are first agreed with the Company.
- b) The Client must not store explosives at the Site.

### **12. INSURANCE**

#### **12.1 Insurance policies**

The Client shall at its sole cost and expense effect and maintain at all times prior to the commencement of, for the duration of, and for the obligations that survive expiry or termination of this Services Agreement:

- a) Marine Hull and Protection & Indemnity Insurance including wreck removal insurance; with limits of not less than the value of the Vessel for Marine Hull, and twenty million dollars (\$20,000,000) (or such higher amount as may be reasonably required by the Company from time to time) for Protection & Indemnity covering liability risks;
- b) Insurance of all Client equipment, goods and materials owned or in the control of the Client against physical loss and/or damage whilst in transit or stored at the Site to their full replacement value;
- c) comprehensive General Liability Insurance; including Contractual Liability Coverage, against bodily injury, death and property damage with liability limits of not less than twenty million dollars (\$20,000,000) combined single limit (or such higher amount as may be reasonably required by the Company from time to time and specified in the schedule); and
- d) workers compensation Insurance as required by Legislation in respect of workers employed.

#### **12.2 Requirements for insurance policies**

All the above policies:

- a) shall be with an insurer approved by the Company;
- b) shall be endorsed by the insurer to waive subrogation against the Company and all Company Personnel;

- c) shall contain a non-cancellation clause binding the insurer to give at least one month's written notice to the Company of its intention to cancel the policy;
- d) with the exception of Worker's Compensation, shall name the Company as a co-insured; and
- e) shall include cover for contractors of the Client, or the Client shall ensure that its contractors effect and maintain insurances substantially the same as the insurances required by the Client under this clause 12.

#### **12.3 Certificates of Currency**

- a) The Client shall promptly deliver to the Company upon request certificates of currency and policies of insurance.
- b) The Client shall promptly notify the Company if any policy or policies of insurance relevant to this Services Agreement will or may be cancelled, or are to have their coverage reduced in any respect by an Insurer.

#### **12.4 Comply with Insurance**

- a) The Client shall comply with all the terms warranties and conditions of the insurance policies effected in accordance with this clause 12 and shall not do or fail to do any act matter or thing that may cause the insurance to be prejudiced or liable to be cancelled or avoided or whereby any claim on the policy may be reduced or payment withheld either in whole or in part.
- b) If the Client does or permits to be done any act matter or thing which has the effect of invalidating, avoiding, or prejudicing any policy of insurance taken out by or effected under this Services Agreement for the benefit of the Company, then the Client shall pay to the Company on demand the full amount of any damage or loss which the Company may suffer or incur as a result thereof.

### **13. TERMINATION**

#### **13.1 Termination by notice**

- a) The Company may, at any time and without reason, terminate this Services Agreement or any part of it by giving the Client not less than ten (10) working days' notice of its intention to do so.
- b) The agreement terminates under this clause 13 on the day immediately after the expiry of the notice period.

### **14. DISPUTE RESOLUTION**

- a) Any issue or dispute relating to this Services Agreement must first be referred to the Company and the Client who must in good faith endeavour to resolve the issue or dispute or to agree on methods of resolving the dispute by other means.
- b) In the event that the dispute has not been resolved within 30 days from the date it is referred to the Parties, the dispute may be referred to arbitration by either Party. The Parties will share the costs of arbitration equally and the decision of the arbitrator (there shall be 1 arbitrator to the arbitration) will be final and binding on the Parties.
- c) The arbitration shall be held in Perth, Western Australia in accordance with the *Commercial Arbitration Act 2012* (WA) or any statutory modification or re-enactment thereof. The arbitration will be subject to the Rules of Arbitration of the International Chamber of Commerce ("the rules").

### **15. CONFIDENTIALITY**



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Each Party must keep confidential the terms and conditions of this Services Agreement, the contents of all negotiations leading to its preparation and all other Confidential Information, and must not disclose or permit the disclosure of such information or any Confidential Information of the other Party to any other person except with the consent of the other Party unless the disclosure is required by law or to the Parties legal and financial advisors.

**16. COMMON USE**

- a) The Site and Services are provided for the use of the Client on a non-exclusive basis and will be accessed in common by the Company and other persons authorised by the Company.
- b) The Company shall provide the Site and Services for the Client's use as provided in this Services Agreement, and the Client shall use all reasonable endeavours not to interfere with the use of the Site and Services by the Company and other persons authorised by the Company.
- c) The Client will work with the Company to facilitate other works and follow all reasonable instructions to allow other work to be undertaken on the Site by the Company and other clients of the Company.

**17. GOODS AND SERVICES TAX (GST)**

- a) If GST is payable on a Taxable Supply (as defined in the GST Act) made under, by reference to or in connection with this Services Agreement, the Party providing the consideration for that Taxable Supply must also pay GST on the consideration as additional consideration.
- b) Any reference in the calculation of consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability.
- c) Any reference in this Services Agreement to price, value, sales, revenue or a similar amount is a reference to that Revenue exclusive of GST, unless the context otherwise requires.
- d) Any reference in this Services Agreement (other than in the calculation of consideration) to cost, expense or other similar amount is a reference to that amount exclusive of GST.
- e) The supplier of the Taxable Supply shall provide a tax invoice in the form required by the GST Act.

**18. FORCE MAJEURE**

- a) The obligations of a Party shall be suspended while such Party is prevented from complying with the terms of this Services Agreement by any event beyond the control of such Party including, but not be limited to, strikes, lockouts, labour and civil disturbances, acts of God, unavoidable accidents, laws, regulations, orders or decrees of any national, municipal or other governmental agency, whether domestic or foreign, acts of war, or conditions arising out of or attributable to war (declared or undeclared), shortage of necessary equipment, materials, or labour, or restrictions on them, or limitations on their use, inability to obtain necessary consents from any authorities or Governments, delays in transportation, or any other matters beyond the control of such Party, whether similar to the matters listed above or otherwise ("force majeure").
- b) No party shall be entitled to the benefit of the provisions of this clause 18 if the event of force majeure is caused by lack of funds or by the negligence of the Party claiming suspension.

- c) If force majeure causes a suspension of the obligations of any Party, that Party shall give notice of suspension as soon as reasonably possible to the other Party stating the date and extent of such suspension, whether in whole or in part, and the nature of the force majeure.
- d) Any Party whose obligations have been suspended shall resume the performance of such obligations as soon as reasonably possible after the removal of the force majeure and shall so notify the other Party.
- e) If an event of force majeure continues for more than 45 days then either Party may by notice to the other Party terminate this Services Agreement.

**19. BOAT PENS**

- a) Boat Pens are leased on fixed term lease agreements. Sub-leasing of Boat Pens is not permitted without the express permission of the Company. Should the Client wish to Sub-Lease a Boat Pen, the Client shall apply in writing for permission from the Company. The Company reserves the right to decline.
- b) Securing Vessel's in Cyclone season must be compliant with Exmouth Boat Harbour's Cyclone Contingency Plan and clause 2.6 of this Schedule 7.
- c) One Vessel is allowed per lease of a single Boat Pen unless permitted by Schedule 3 of the Service Agreement.
- d) Where a second Vessel is given permission by the Company to enter the Boat Pen, all documents pertaining to that Vessel, including Insurance documents, Vessel Particulars and anything else the Company may reasonably request, shall be provided to the Company prior to the Vessel entering the Site.

**20. Security Interest**

- a) In consideration of the Company agreeing to provide the Services in accordance with this Services Agreement, the Client grants a first ranking security interest, charge and mortgage in the Collateral to the Company to secure payment of the Secured Money by the Client.
- b) The Client shall deposit with the Company all any original, duplicate or counterpart certificate or document evidencing title or ownership of any Collateral and the Company shall be entitled to hold those documents until all Secured Moneys have been paid in full.
- c) The Client hereby appoints the Company and each of its officers jointly and severally its lawful attorney with power in the name of the Client at any time hereafter:
  - (i) to take all such steps and proceedings (including without limitation legal proceedings) and to do and execute all such acts, deeds and things as may be necessary or desirable for the purposes of securing or registering or perfecting the security interest, charger and mortgage herein contained (including registration on the Personal Property Securities Register), protecting any of the Collateral and to execute on behalf of the Client all such legal mortgages, transfers, assignments and other assurances as required and determined by the Company; and
  - (ii) selling and disposing of all or any part of the Collateral.
- d) If requested to do so, the Client will enter into a deed with the Company, on terms acceptable to the Company, to more fully document the terms and conditions of the security interest, charge and mortgage granted above.

**21. GENERAL  
21.1 Governing Law**



**BASE MARINE PTY LTD**  
**Schedule 7 – General Terms and Conditions**

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- a) This agreement is governed by the law of the State of Western Australia and the applicable Laws of the Commonwealth of Australia.
- b) The Client and the Company irrevocably and unconditionally submit to the jurisdiction of the Courts of Western Australia.

**21.2 Further Acts**

The Parties will promptly do and perform all acts and things and execute all documents as may from time to time be required, and at all times will act in good faith, for the purposes of or to give effect to this Services Agreement.

**21.3 Costs**

Each Party must bear its own costs arising out of the negotiation, preparation and signing of this Services Agreement

**21.4 Notices**

Any notice request election or other communication required to be given by one Party to another under this Services Agreement or given by one Party to another in connection with this Services Agreement must be in writing, addressed to the other Party at the address appearing in this Services Agreement or such other address as may be notified in writing from time to time and:

- a) delivered to that Party's address;
- b) sent by prepaid certified machine; and
- c) if transmitted by email, if no non-receipt, sending failure or delay message is received by the sender's transmission account.

For the purposes of this clause, "business day" means a day when major banks are open for business in Western Australia.

**21.5 Entire Agreement**

This Agreement constitutes the entire contract between the Parties with regard to the matters dealt with in this Services Agreement and no representations, terms, conditions or warranties not contained in this Services Agreement shall be binding on the Parties.

**21.6 Variation**

No agreement varying, adding to, deleting from or cancelling this Services Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

**21.7 Waiver**

No indulgence granted by a Party shall constitute a waiver of any of that Party's rights under this Services Agreement and that Party shall not be precluded as a consequence of having granted such indulgence from exercising any rights against the other Party which may have arisen in the past or which may arise in the future.

**21.8 Successors and Assigns**

The provisions of this Services Agreement shall ensure for the benefit of and be binding upon the Parties and their respective successors and permitted assignees.

**21.9 Relationship**

- a) The relationship between the Company and the Client is strictly that of licensor and licensee.

- b) This agreement does not constitute either party a joint ventures, partner, agent, employee or fiduciary of the other and subject to any other agreement between them any act or omission of either Party shall not bind or obligate the other except as expressly set forth in this Services Agreement.

**21.10 Legal Costs**

Each Party shall bear its own legal costs of and incidental to the preparation, negotiation and execution of this Services Agreement.

**21.11 Further Assurance**

Each Party will do, execute, acknowledge and deliver all and every such further act, deeds, agreements, covenants, applications, assignments and other assurances as may be necessary or expedient for the purposes of giving full effect to the terms and conditions and purposes of this Services Agreement.

**21.12 Joint and Several Obligations**

If the Client comprises more than one person or company then the warranties, covenants and obligations expressed to be given by or imposed on the Client hereunder shall be binding on the persons or companies comprising the Client both jointly and severally.

**21.13 Access and Use**

The Client may access the Site subject to any time restrictions in this Services Agreement and providing the Client ensures that the terms of this Services Agreement are complied with at all times. Vessels in Boat Pens are accessible 24 hours a day, 7 days a week by approved Personnel.