



**BASE MARINE PTY LTD
Services Agreement**

Document No: BM-COM-FO-002
Document Owner: Base Marine Pty Ltd
Revision No: 0020
Issue Date: 02/09/2020
Page: 1 of 24

Schedule 7

General Terms and Conditions

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:

Affiliate means in relation to a Party means a Related Body Corporate of the Party or any associate of a Party or any company with which the Party is collaborating or acting in concert.

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

Boat Lifting Facility means the area of land and all improvements and facilities thereon as set out in Schedule 5 as the Boat Lifting Facility which is located at Department of Transport Lease area H and H1.

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 of such a company, in which any Vessels may be operated or managed through.

Client Personnel means any of:

- a) the Client's (or any of its Related Bodies Corporate's) directors, officers, employees, subcontractors, agents, representatives and any of its invitees which are invited onto any part of the Site; and
- b) any of the Client's contractors or sub-contractors and their directors, officers, employees, agents, representatives or invitees (which invitees which are invited onto the Site by anyone).

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

Clients Vessel(s) or Vessel means any vessel owned, leased, manned, operated or managed by the Client or a Client Affiliate, or a customer of the Client or a Client Affiliate, or in respect of which the Client or a Client Affiliate has contracted to provide any Services of the kind mentioned in Box 1 of Schedule 1, including the initial vessels described in Schedule 2.

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 Personnel means any of:

- c) the Company's (or any of its Related Bodies Corporate's) directors, officers, employees, subcontractors, agents, representatives and any of its invitees which are invited onto the Site; and
- d) any of the Company's contractors or sub-contractors and their directors, officers, employees, agents, representatives or invitees (which invitees are invited onto any part of the Site by anyone).

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, or in the possession of, the Company from time to time, or any 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.

Completion Date means the date the contract completes, as set out in Box 5 of Schedule 1 or such other date as 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 (which in relation to the Company means r Company Personnel, and in relation to the Client, means Client Personnel) reasonably expects to be confidential) that relates to the business, affairs or activities of a Party except to the extent any information is in the public domain.

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.

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) or as provided for or determined as indicated for elsewhere in the Services Agreement and in relation to Schedules 3 and 6 means any rate as varied from time to time under clause 5 or as otherwise agreed to by the Parties in writing from time to time.

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.

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.

Pollution means any alteration or damage or change to the environment or part of the Site which involves the release of any substance (including without limitation paint, oil or petrol or other contaminants but excluding discharge into appropriate waste disposal containers as nominated by the Company for that purpose), the discharge of waste, an excessive emission of noise, any odor or electromagnetic radiation or the transmission of electromagnetic radiation.

Port means the Port of Ashburton in Western Australia or the Port of Exmouth in Western Australia as relevant to where the Services are provided.

Related Body Corporate has the meaning given in section 9 of the Corporations Act 2001.

Remedial Work means any work required to remediate, repair and rectify any damage to land or water or any part of the Site (including repair



**BASE MARINE PTY LTD
Services Agreement**

Document No: BM-COM-FO-002
Document Owner: Base Marine Pty Ltd
Revision No: 0020
Issue Date: 02/09/2020
Page: 2 of 24

to at least the condition the part of the Site was in before the event causing the damage occurred) affected by Pollution, Contamination or Environmental Harm including without limitation work to:

- a) remove, destroy or reduce;
- b) dispose of or disperse;
- c) contain or encapsulate;
- d) treat or rectify;
- e) repair any damage;
- f) manage (including restricted or prohibit access to or use of the affected land); or
- g) 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) any reasonable date specified in a notice by the Company to the Client. For the avoidance of doubt, a date will be reasonable if a third party contractor capable of carrying out the Remedial Work considers that the work can be completed by that date and advises the Company of that; or
- b) the Completion Date; or
- c) 60 days after the date this Services Agreement is terminated; or
- d) the date required by any Governmental Agency for any Remedial Work.

Services Agreement means the Services Agreement to which this Schedule 7 is attached to and forms part of and includes the Recitals and all schedules

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

Site means the area of the Company's facilities at the Port and any areas of the Port where the Company has the right to operate or provide Services.

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

Systems and Policies means a Party's systems, standards protocols, procedures, rules or policies relating to its activities including occupational health and safety, security and the environment.

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.

2. PROVISION OF SERVICES

2.1 Scope

- a) The Company agrees to provide the Services (as and when the Company has the capacity in relation to Services) referred to in Box 1 and 2 of Schedule 1 to the Client, and the Client agrees to exclusively engage the Company to provide such Services for the duration of the Term at, unless otherwise agreed, the Site including as otherwise described in Schedule 2.
- b) The scope of the Services referred to in Box 1 and 2 of Schedule 1 are set out in Schedule 2 and may be amended or varied, as agreed in writing by the Parties from time to time.
- c) For clarity, the Company is at liberty to provide services similar to, the same as or different to the Services in Box 1 of Schedule to other customers at the Port or elsewhere.

2.2 Responsibilities and obligations of the Client

- a) The Client must ensure that the Client, and must procure that all Client Personnel working on or accessing or traveling to and from the Site or when using or accessing any Company Equipment:
 - i. must not engage in any act or omission which may cause injury or death to any person or damage the property of any person;
 - ii. must comply with the Client's Systems and Policies relating to its activities at and when travelling to and from the Site;
 - iii. must comply with the Company's Systems and Policies (which are available for inspection upon request) while on the Site except to the extent of any inconsistency with the Client's Systems and Policies in which case the Client's Systems and Policies will prevail. For the avoidance of doubt the Client is responsible for management all Client Systems and Policies as applicable whilst Client Personnel are at the Site;
 - iv. are provided, prior to or immediately upon accessing the Site, a comprehensive, formal and tailored induction by the Client or other Client Personnel as to the Client's Systems and Policies and how they apply to the Site and activities on the Site;
 - v. must comply with any reasonable and lawful directions of the Company relating to the provision and receipt of the Services and use of any Company Equipment;
 - vi. must ensure that any Company Equipment and the Client Equipment within the Client's possession or control is kept in good working condition, secure and it not used for any purpose other than for which it was manufactured;
 - vii. must at all times ensure that any part of the Site used for the Services are secure and safe;
 - viii. must 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
 - ix. do not otherwise act in a manner which disrupts or adversely affects Company's business operations at the Site, reputation, interest and goodwill.
- b) 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.
- c) The Client must immediately at its cost rectify any damage occasioned to, or destruction of, any part of the Site or any facilities, buildings equipment or infrastructure thereon which is caused or contributed to by any act or omission of the Client or any Client Personnel. If any rectification works required to be carried out under this clause are not commenced within 7 days or are not carried out without delay, then the Company can engaged third party contractors to carry out the works at the cost of the Client with all such costs being payable by the Client upon demand.
- d) The Client is not permitted to invite Client Personnel or other contractors on to the Site (including the Boat Lifting Facility) or Port to carry out any of the following services without the prior written consent of the Company (which may be withheld in the Company's discretion) and must otherwise engage the Company to carry out the services: forklift operations, crane operations, high pressure cleaning, transferring of fuel, abrasive blasting, elevated work platform use and the use of any other types of machinery.



**BASE MARINE PTY LTD
Services Agreement**

Document No: BM-COM-FO-002
Document Owner: Base Marine Pty Ltd
Revision No: 0020
Issue Date: 02/09/2020
Page: 3 of 24

- e) Except to the extent required by law, the Company provides no warranties relating to the Services and will not be liable for any loss or liability arising out of the provision of the Services.

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 Site. The Client must do so within 24 Hours of receiving the notice.
c) Other than for one off Services, the Company may request the Clients representative on Site to sign a daily activity sheet confirming the Services received by the Client on that day. Upon request the Client shall procure its representative to sign the daily or weekly activity sheet which shall be taken as recording the Client's agreement that the Services so noted have been carried out and will (except in the case of manifest error) for the basis of the invoice for Services on that day. If the Company discovers any error in any daily or weekly activity sheet it shall notify the Client immediately and may invoice the Client for additional Services rendered but not invoiced.]

2.4 Termination

Subject to clause 2.3(c), 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 any Client Personnel, 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 Pilbara Port Authority or other relevant port authority at the Port may have certain rights in relation to the direction of mooring of Vessels at the Site and associated matters.
b) The Client shall comply with any direction or notice given by any such authority.
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 guidelines set out in the Port Cyclone Contingency Plan or Base Marines cyclone contingency plan for a Vessel of that size.
e) In the event that mooring lines part or a Vessel comes away from her mooring for any reason, the coming away from her mooring and any event thereafter involving the Vessel remains the sole responsibility of the Client and the Client releases and indemnifies the Company for any Claim relating to such events by any person.

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 relating to the Site or the provision of the Services are hereby expressly negated so far as legally possible.

3.2 Survival

Each of the representations 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, and will procure that all Client personnel will take, all 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 in and around the Site; and
c) prevent nuisance and unreasonable noise and disturbance,
on and around the Site.

4.2 Equipment

The Client acknowledges and agrees that all Client Equipment, goods or materials located on Vessels berthed at the Site, and transiting through or being stored on 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 and the Client indemnifies the Company for any Claim made by any person against the Company in respect of the same.

5. FEES

5.1 Fees

- a) Except where otherwise indicated fees payable by the Client to the Company under this Services Contract are calculated by applying the relevant service rates set out in Schedules 3 and 6 or as set out elsewhere in this Services Agreement (as applicable to the Services used).
b) The Schedule of Rates are exclusive of GST unless otherwise specified.
c) The Company may from time to time review and vary the rates in Schedules 3 and 6 (or any other rates or fees determined under this Services Contract) having regard to changes in the costs of providing the Services and/or changes in market rates for providing any of the Services (from



**BASE MARINE PTY LTD
Services Agreement**

Document No: BM-COM-FO-002
Document Owner: Base Marine Pty Ltd
Revision No: 0020
Issue Date: 02/09/2020
Page: 4 of 24

an equivalent port facility to the Port) and once the Company notifies the Client of any varied rate, such varied rate will apply in lieu of the relevant rate in Schedules 3 and 6 or such other determined rate (as applicable).

- d) For clarity the Fees payable to the Company are in addition to any charges levied by the relevant Port Authority in relation to the use of the Port (including without limitation gazette charges) and the Client is also liable for such charges. To the extent the Company pays any such charges on behalf of the Client, the Client will on invoice reimburse the Company for such charges plus 10% to cover administration and funding costs.

6. PAYMENT

6.1 Payment on provision of invoice

- a) Subject to clause 6.2 of this Schedule 7:
- the Client must pay for all fuel supplied by the Company at or before the time of delivery (or such later time as the Company nominates in writing);
 - the Client must pay for all boat lifting Fees prior to the Vessel being lifted into or back into the water or if the Vessel is not entering back into the water after being lifted from the water then within 7 days of being lifted or if the Vessel. For the avoidance of doubt, the Company is not obliged to lift any Vessel (which has been lifted by the Company from the water) back into the water until the boat lifting Fee has been paid;
 - the Client will pay the Company all other Fees on a monthly basis or within 30 days' notice of any invoice issued by the Company.
- b) If payment of any relevant Fees, or any other sum payable by the Client pursuant to any term of this Services Agreement, is not made by Client to Company on the relevant date for payment, the Company is entitled to charge interest at the rate of 10% per annum calculated daily and compounded monthly of the amount outstanding from and including the due date until payment is received in full and the Client must pay such interest on demand.
- 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) If any or all of the disputed portion is agreed or determined to be payable, the Client will pay the such amount within 5 Business Days after the dispute is resolved. Interest will be charged at 10% per annum on such amount, calculated daily and compounded monthly, from the date the amount was due until the date of actual payment.
- e) To the extent Client's claim is valid, a revised invoice will be issued by the Company. In this instance, interest will not be charged on the amount determined or agreed not to be payable
- f) If the dispute cannot be resolved then the dispute will be resolved in accordance with clause 14 of this Schedule 7.

6.2 Claims

- a) The Client must make any Claim which it may have against the Company or Company Personnel in relation to or arising under this Services Agreement within the earlier of:
- 3 months after the provision of the Service to which the Claim relates; and
 - 3 months after the Term,
- after which the Client acknowledges and agrees that any liability of the Company for that Claim is extinguished and the Client hereby releases the Company and Company Personnel in respect of such Claims.
- b) This clause, 6.3 survives the expiry or termination of this Services Agreement.

7. DEFAULT

7.1 Tow Away or lifting of Vessels

If the Client is in breach of any term of this Services Agreement, including without limitation breach the payment of monies due and the breach has not been rectified within 7 days of notice to rectify the breach, or if the Company has any Claim against the Client arising under this Services Agreement, then:

- the Company may cause any Vessel to be towed away from the Site, or lifted from the waters around the Site, and stored and/ or sold;
- the Company may remove goods or materials stored at the Site and store and/or sell them; and
- the Company may take whatever action necessary to recoup the monies owed by the Client to the Company including without limitation selling any Vessels, goods and materials of the Client and remitting the sales price to the Client less than the amount of the Company's Claim which may be retained by the Company,

and the Client must pay to the Company on demand all costs and expenses incurred by the Company in towing, storing and/ or selling any Vessel, and moving, storing and/ or selling the goods and materials whether incurred before or after termination of this Services Agreement.

The Company's rights under this clause are without prejudice and in addition to any other rights or remedies the Company may otherwise have at law or in equity.

7.2 Termination with cause

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

- fails to make any payment which pursuant to this Services Agreement it is required to make to the Company by the due date;
- 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 Company to do so;
- becomes insolvent or unable to pay its debts as they become due, or becomes liable to be or is dissolved;
- goes into liquidation, whether voluntarily or compulsorily, otherwise than solely for the purpose of reconstruction;
- 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;
- 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
- 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.



**BASE MARINE PTY LTD
Services Agreement**

Document No: BM-COM-FO-002
Document Owner: Base Marine Pty Ltd
Revision No: 0020
Issue Date: 02/09/2020
Page: 5 of 24

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 but without prejudice to the right of the Company to recover damages from the Client including damages for the loss of the benefits that would have accrued to the Company had the Services Agreement been fully performed for the full Term and not terminated.

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 Client Systems and Policies and all Company Systems and Policies (with Client Systems and Policies prevailing to the extent of inconsistencies); 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

- b) If the Client or Client Personnel enters, or is to enter, the Site, the Client must ensure that the Client and all Client Personnel:
 - i. in addition to the obligation in clause 2.2(a)(iv), complete, review and comply with the Company's safety induction and visitors' site orientation programs and the Client must keep a record of all Client Personnel so inducted on the bridge of the Vessel for the duration of their stay which the Company may review and take copies of upon request and the Client acknowledges that the Company may audit compliance with this clause and enter the Vessel for such auditing;
 - ii. comply with all directions and orders given by the Company or any Company Personnel 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 caused by the Client or Client Personnel 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 (payable upon demand) 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 by the Client or Client Personnel are kept secure from theft or damage and comply with any relevant Law, manufacturer or owner specifications or standards, each Party's Systems and Policies and Government Authorisations.
- c) The Client shall ensure that it and all Client Personnel closes any gate which it uses for access and locks any gate found locked.
- d) 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 must not, and must procure that all Client Personnel must not, without the prior written consent of Company and after complying with all legal obligations relating to the transport and handling of Hazardous Substances, 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 must not, and must procure that all Client Personnel must not, cause by any action or omission 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 Client Personnel become aware of whether or not caused by the Client or Client Personnel.
- c) The Client must immediately notify the Company of any Pollution, Contamination or Environmental Harm to occur in, on or under the Site or surrounding land or waters whether or not caused by the Client or Client Personnel.

9. REMEDIATION

9.1 Remediation

- a) If clause 8.4(a) of this Schedule 7 is breached or the Client or Client 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 immediately take steps at its costs to mitigate the extent of damage occurring and, 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 Environmental Harm was caused or contributed to by the Client or Client 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 or as required by any law or Governmental Agency, the Company may do those things required by this clause 9 (including engaging a third party to do those things) at the Client's expense, and the Client indemnifies the Company for all such costs which are payable upon demand. 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 Client 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 must not, and must procure that all Client 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 must notify, and the Client must procure that all Client 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



**BASE MARINE PTY LTD
Services Agreement**

Document No: BM-COM-FO-002
Document Owner: Base Marine Pty Ltd
Revision No: 0020
Issue Date: 02/09/2020
Page: 6 of 24

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 howsoever caused.

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 deemed default by Client Personnel under clause 8.4 or this clause 9 of the Schedule 7; 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. is not in compliance with the Company's Systems and Policies;
 - ii. engaged in activities which are contrary or detrimental to the interests of the Company
 - iii. guilty of misconduct; and
 - iv. any other reason that the Company sees fit to exclude.

10. INDEMNITIES AND EXCLUSIONS OF LIABILITY

10.1 Direct, indirect or consequential loss

The Company shall not, and no Company Personnel shall, be liable in contract, tort (including negligence or breach of statutory duty) or otherwise to the Client or any Client Personnel in connection with the Services Agreement or any matter arising thereunder (whether or not such costs or losses were foreseeable at the time of entering into the Services Agreement), including by the fault or default of the Company or any Company Personnel, for any direct loss or indirect or consequential loss or damage including without limitation:

- a) costs or expenses;
- b) loss of reputation;
- c) loss or impairment of profit, contracts or revenues or expected revenues or savings; or
- d) loss of opportunity enter into or complete any contracts or arrangements with third parties.

10.2 General Indemnities

- a) To the extent not already covered by an indemnity elsewhere in this Services Agreement, the Client shall be responsible for and shall indemnify, defend and hold harmless the Company and all Company Personnel and all Company Related Bodies Corporate (including their own Personnel) from and against all Claims by the Client or any other person relating to:
 - i. liability for injury or sickness to, or death of, any Client Personnel; or
 - ii. loss of or damage to any Client Equipment,

arising out of or in connection with the performance of the Services Agreement, or arising out of or in connection with access (including ingress and egress to the Site) or use or occupation of the Site by the Client and Client Personnel, howsoever caused and irrespective of the negligence or breach of duty or breach of contract or breach of law (whether statutory or otherwise) of the Company or the Client or any Company or Client Personnel.

- b) The Client shall be responsible for and shall indemnify, defend and hold harmless the Company and all Company Personnel and all Company Related Bodies Corporate from and against all Claims relating to:
 - i. personal injury sickness or death; or
 - ii. loss of or damage to or loss of use of property whether owned, leased or hired,

of third parties, or of the Company or Company Personnel, caused or contributed to by the acts, omissions, negligence or breach of duty of the Client or any Client Personnel in connection with the performance of the Services Agreement, or arising out of or in connection with access (including ingress and egress to the Site) or use or occupation of the Site by the Client and any Client Personnel.

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, and the Client hereby releases the Company and each Company Personnel, for any injury to persons or death or loss of damage to property caused directly or indirectly to the Client or any Client Personnel from any such adverse weather events whilst the Client Personnel or any of their equipment or Vessels are at the Site and the Client indemnifies the Company and all Company Personnel in respect of any Claims made against the Company and all Company Personnel in relation to any such matters that arise.
- 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 and comply with its own Cyclone Contingency Plan in respect of its Vessels or Client Equipment and this must be provided to the Company on request and the Client must also comply well as the Company's tie down guidelines and any reasonable direction of the Company in relation to increasing their chains and tie down straps in the event of a Cyclone.
- d) Notwithstanding (c) above, the Client releases the same, for any and all liability if the Client or any Client Personnel suffer any injury, sickness or death or damage to property after complying with the Company's tie down guidelines or reasonable directions described in (c) above and the Client indemnifies the Company and all Company Personnel for all Claims arising in relation thereto.

11. STORAGE OF GOODS

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

11.1 Short Term Storage



**BASE MARINE PTY LTD
Services Agreement**

Document No: BM-COM-FO-002
Document Owner: Base Marine Pty Ltd
Revision No: 0020
Issue Date: 02/09/2020
Page: 7 of 24

The Client may temporarily 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 for periods of up to 7 days per group of materials (**Short Term Storage**). The Client is responsible for the safe stowage and stacking of all the materials and goods stored at the Site on such areas as set out in this Services Agreement or as otherwise notified by the Company from time to time. If the Company requires the goods and materials to be relocated to another part of the Site the Client must do so immediately at its cost.

11.2 Long Term Storage

- a) If the Services include storage of material, goods and or Vessels in excess of 7 days, the Client is granted an exclusive license of the relevant hardstand area for the relevant period for that purpose (and not for any other purpose) (**Long Term Storage**).
- b) If the Company requires the Client to relocate the goods materials and or Vessels at another location on the Site for operational reasons, the Client will comply with a request for relocating provided the new area has is of the same size and that new area will then become the new Long Term Storage area.

11.3 Terms of Short Term Storage and Long Term Storage

In relation to any Short Term Storage and Long Term Storage the following provisions apply in addition to the balance of this Services Agreement:

- a) under cover storage shall not be provided;
- b) the Client shall be responsible for safe stowage, covering, securing and weather protection of all materials, goods and or Vessels stored.
- c) the Client must keep the area of the Site set aside for storage by the Client (**Storage Area**) in a clean and tidy condition;
- d) the Client must not use the area for any purpose other than storing its materials, goods and/ or Vessels and must not use the area for any purpose not permitted by any relevant law or regulation;
- e) the Client is responsible for managing any health and safety risks and events occurring on the Storage Area;
- f) upon completion of the use of the Storage Area, the Client must return the area to the condition it was in prior to use of the Storage Area and shall promptly rectify all damage caused or contributed to by the Client or Client Personnel at the Client's cost;
- g) the Client is responsible for and is in control of the Storage Area and indemnifies the Company and all Company Personnel, and release the Company and all Company Personnel from all Claims relating to any activities, acts or omissions of any nature occurring on or emanating from the Storage Area;
- h) if the Client requests the Company to lift its Vessel on blocks at the Storage Area, the Company will do so at the direction of the Client and such storage will be at the risk of the Client and Client will be responsible for tying down the Vessel. In any event the Client releases the Company and all Company Personnel from, and indemnifies the Company and all Company Personnel from, any liability or Claim relating to injury or death to a person or damage to the Vessel or other property resulting from the placement of the Vessel on blocks or any other service performed by the Company or Company Personnel in relation to securing the Vessel;
- i) the Client releases the Company and all Company Personnel from, and indemnifies any liability arising from the placement by the Company of the Vessel on the storage area or on blocks;
- j) if the Client needs more Storage Area than as agreed by the Parties or as set out in this Services Agreement, then subject to availability the Client may license additional area at a square meterage rate to be agreed by Parties in writing and failing agreement at such storage area rates are as set out in this Agreement.

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:

- k) as a reasonably necessary and in reasonable quantities for the permitted use of the Site by the Client;
- l) in accordance with all applicable laws and regulations; and
- m) 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.
- n)

11.5 Storage on Vessels

Goods or materials belonging to the Client that are on Site or stored on Vessels and 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 or Vessels, 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 during the Term and prior to the commencement of, and 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 or as a party to whom the benefit of the contract of insurance extends; and



**BASE MARINE PTY LTD
Services Agreement**

Document No: BM-COM-FO-002
Document Owner: Base Marine Pty Ltd
Revision No: 0020
Issue Date: 02/09/2020
Page: 8 of 24

- 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.
c) To the extent that, during the Term, any Client Affiliate or any contractor to or customer of a Client or Client Affiliate at any time carries on activities at the Port in connection with the Services or has Vessels owned or chartered by it at the Port, the Client will ensure that Client Affiliate, contractor or customer (as the case may be) has the insurances specified in this clause 12 as though it was the Client.

13. TERMINATION

13.1 Termination by notice

- a) The Company may, at any time and without reason, terminate this Services Agreement or any part without penalty of it by giving the Client not less than six months' 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"). The decision of the arbitrator shall be final and binding on the Parties and the costs of the arbitration shall be shared equally by the Parties.

15. CONFIDENTIALITY

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) Except for any Services providing for exclusive use, 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 invoices 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.



**BASE MARINE PTY LTD
Services Agreement**

Document No: BM-COM-FO-002
Document Owner: Base Marine Pty Ltd
Revision No: 0020
Issue Date: 02/09/2020
Page: 9 of 24

19. 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 any and all 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.

20. GENERAL

20.1 Governing Law

- 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.

20.2 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.

20.3 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.

20.4 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.

20.5 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.

20.6 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.

20.7 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.

20.8 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.

20.9 Legal Costs

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

20.10 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.

20.11 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.

20.12 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.

21.22 Assignment

The Company may assign its rights, title and interest in any or all of this Services Agreement without notice to, or consent from, the Client. The Client may not assign any of its rights title or interest under this Services Agreement without the prior written consent of the Company.