

## **SERVICE AGREEMENT**

**AMC Management (WA) Pty Ltd (Operator)**

ACN: 100 354 336

**and**

**User Name (User)**

ACN: xxx xxx xxx

**Contract No. C-XXXXXX S**

Australian Marine Complex - Common User Facility  
Floating Dock and Self Propelled Modular Transporters

Month/Year

## Contents

<b>Parties .....</b>	<b>3</b>
<b>Background .....</b>	<b>3</b>
<b>Operative Provisions .....</b>	<b>3</b>
1. Designated Services.....	3
2. Contract Price .....	3
3. Completion of Designated Services .....	3
4. Designated Services Variation Orders.....	3
5. Payment.....	3
6. Operator's right to subcontract.....	4
7. Use of the Infrastructure .....	4
8. User's Obligations.....	5
9. Limitation of Liability.....	8
10. Indemnities .....	8
11. Insurance .....	10
12. Bond.....	10
13. Warranties.....	11
14. Force Majeure .....	12
15. Negotiation of disputes.....	13
16. Termination .....	13
17. Notices.....	14
18. The Operator's rights .....	14
19. General.....	15
20. Definitions and interpretation.....	16
<b>Execution and date .....</b>	<b>19</b>
<b>The Schedule .....</b>	<b>20</b>
<b>Annexure 1: Schedule of Rates .....</b>	<b>22</b>

## Parties

**AMC Management (WA) Pty Ltd** ACN 100 354 336 of 124 Quill Way, Henderson, Western Australia (Operator)

**[Insert details of User including ACN if applicable]** of **[insert address]** (User)

## Background

- A The Operator is the duly appointed operator of the Infrastructure for DevelopmentWA.
- B The User owns, operates, manages or otherwise represents the Owner of the Vessel or Cargo that will use the Infrastructure.
- C The User would like the Operator to perform the Designated Services to the Vessel or Cargo using some or all of the Infrastructure.
- D The Operator is willing to perform the Designated Services for the price set forth in this Agreement.

## Operative Provisions

### 1. Designated Services

- 1.1 The Operator shall provide suitable facilities, labour and materials and shall perform the Designated Services together with any additions, deductions or variations that may be made in accordance with this Agreement.

### 2. Contract Price

- 2.1 The Contract Price shall be the total amount of price for the Designated Services in accordance with the Schedule of Rates and the price for any Designated Services Variation Orders, if any.

### 3. Completion of Designated Services

#### Key Dates

- 3.1 The Operator shall, subject to any Designated Services Variation Orders or Force Majeure Event, use its best endeavours to meet the Key Dates.
- 3.2 Where there are any additions, deductions or variations made in accordance with this Agreement, the Parties shall agree in writing on revised Key Dates once the scope of the additions, deductions or variations are known.

#### Failure to Vacate Infrastructure

- 3.3 In the event of any delay in completing using the Infrastructure within the agreed period caused by anyone other than the Operator the User shall pay to the Operator all reasonable costs and expenses resulting from the failure to leave the

Infrastructure including but not limited to storage, wharfage and Transfer System fees.

- 3.4 If the User fails to remedy any delay in Undocking or removing the Vessel from the Infrastructure within five (5) days of written notice to do so by the Operator the Operator may:
  - 3.4.1 relocate the Vessel as necessary
  - 3.4.2 make the Vessel in a fit condition to undock
  - 3.4.3 undock the Vessel
  - 3.4.4 secure the Vessel to a mooring
  - 3.4.5 arrange storage and
  - 3.4.6 carry out any other acts necessary or ancillary to the above,
 all at the cost of the User.

### 4. Designated Services Variation Orders

- 4.1 The User may, by Designated Services Variation Order, vary the Designated Services which may alter the Contract Price and Key Dates.
- 4.2 The Designated Services Variation Order must be agreed to by both Parties and recorded in a signed written document.

### 5. Payment

#### Contract Price

- 5.1 The User shall pay the Contract Price, as adjusted by any Designated Services Variation Orders, to the Operator in accordance with the Payment Terms.

#### Invoicing

- 5.2 The Operator will invoice the User for the Designated Services, at the time set out in the Payment Terms. Each invoice must be a valid tax invoice or relevant adjustment note for GST purposes.

#### **GST**

- 5.3 All amounts payable under this Agreement (other than a reimbursement for any GST inclusive payment or outgoing made by the reimbursed party and in respect of which the reimbursed party is entitled to an input tax credit) are exclusive of GST. GST is payable by the User to the Operator at the same time and in the same manner as is any other amount payable under this Agreement, where that amount is subject to GST. If the User does not pay to the Operator the GST payable on any supply made by the Operator to the User within the time set out in clause 5.4 of this Agreement, all penalties, interest or costs incurred by the Operator in connection with that late payment of GST will also be payable by the User.

#### **Payment**

- 5.4 Any invoice received from the Operator by the User will (unless the Payment Terms state otherwise) be payable on or before the later of:
- 5.4.1 the last day of the month following the month in which the invoice is dated
  - 5.4.2 the 10th Business Day after the date of receipt by the User of that invoice.

#### **Disputed invoices**

- 5.5 If the User disputes any portion of any amount appearing as payable on any invoice issued by the Operator:
- 5.5.1 the User will notify the Operator of such dispute at the earliest reasonable opportunity
  - 5.5.2 the undisputed portion will remain payable on the due date for payment under clause 5.4 and
  - 5.5.3 the User will not be obliged to pay the disputed part of the invoice until the parties' dispute has been resolved by an agreement between the parties or in the absence of such agreement, in accordance with clause 15.

#### **Late Payment**

- 5.6 Any amounts (other than amounts which are the subject of a dispute between the parties) which are not paid when due will be subject to default interest (calculated daily at the Default Rate) from the date on which payment of that amount falls overdue until the date on which payment of the overdue amount is made in full.

#### **Restriction of Access**

- 5.7 In the event that the payment shall remain outstanding for a period of fourteen (14) days past the due date for payment, the Operator may restrict the User's access to the Infrastructure. The restriction can apply to the management, staff and vehicles of the User or parties in any way connected to the User. The restriction can apply until all amounts owing by the User have been paid or arrangements satisfactory to the Operator for payment have been made.

#### **Lien**

- 5.8 The Operator shall be entitled to exercise a lien on the Vessel for all sums due to the Operator on or before Undocking.

#### **6. Operator's right to subcontract**

- 6.1 The Operator shall have the right to employ subcontractors to perform any part of the Designated Services provided that the Operator remains responsible for all of its subcontractors' action. In the event of such a subcontract the Operator shall remain liable for the due performance of its obligations under this Agreement.

#### **7. Use of the Infrastructure**

##### **Licence and access**

- 7.1 Subject to clause 7.4.1, the Operator grants the User a non exclusive licence to make the Permitted Use of the Infrastructure, in common with the Operator and the Operator's employees, agents, contractors, customers, visitors, licensees, invitees, and all other persons authorised by the Operator including other persons authorised to use the Infrastructure and on the basis set out in this Agreement.

##### **Responsibility**

- 7.2 Subject to compliance by the User with clause 8, the Operator will be solely responsible for Docking and Undocking the Vessel and/or transportation of the Cargo.
- 7.3 The User shall at all times be responsible for the safety of a Vessel or Cargo. In all circumstance and notwithstanding any assistance, advice or instructions given in respect of the Vessel, Cargo, docking or transportation, whether by way of towing or berthing services, pilotage, the provision of navigational facilities including buoys, dolphins, navigational marks, Operator advice or otherwise, the User is solely responsible for the safety and proper navigation of that Vessel or Cargo.

##### **Use of the Infrastructure**

- 7.4 In using the Infrastructure, the User must:
- 7.4.1 Obtain the Operator's permission before entering, or before any of its personnel,

- employees, agents or subcontractors enter any part of the Infrastructure and comply with the Operator's safety rules and insurance requirements when on or about the Infrastructure;
- 7.4.2 make no use of the Infrastructure other than the Permitted Use;
- 7.4.3 not access any part of the Infrastructure outside the Hours of Permitted Use;
- 7.4.4 comply with the Port Facilities Security Plan and all other security requirements relating to the Infrastructure, as notified by the Operator to the User from time to time;
- 7.4.5 not cause any loss or damage to the Infrastructure; and
- 7.4.6 comply with all the Infrastructure Regulations.

#### **Directions of the Operator**

- 7.5 The User must at all times comply with the directions of the Operator and agrees that at all times it shall be under the reasonable directions and supervision of the Operator.
- 7.6 Without limiting the powers of the Operator, the Operator shall be empowered to direct the User to:
- 7.6.1 temporarily or permanently stop any works or activity;
- 7.6.2 regulate the movement of any personnel or goods or services onto or across the Infrastructure;
- 7.6.3 direct any personnel engaged in the Permitted Use (whether an employee, agent or contractor of the User or otherwise) not to continue with any activity or to immediately leave the Infrastructure;
- 7.7 In the event that the User for any reason whatsoever fails or neglects to respond to a request from the Operator for directions, instructions or decisions under this agreement and as a consequence delay is caused in the performance of the Designated Services then the User shall pay for the duration of such delay to the Operator the amount that would otherwise be payable in respect of the use of the Floating Dock.
- 7.8 The delay referred to in clause 7.7 hereof shall be deemed to commence from the date that the Operator gives notice of the delay to the User and shall continue until the appropriate response from the User so as to enable the Designated Services to continue in the manner planned by the Operator.

#### **Information**

- 7.9 The Operator may provide the User with such information and instructions in respect of accessing and using the Infrastructure as may reasonably be required by User.

#### **Damage**

- 7.10 Any damage to the Infrastructure is to be made good at the completion of the Designated Services by the User at its cost.

#### **Clean up**

- 7.11 The Infrastructure is to be left clean and tidy with all tools, excess materials and rubbish removed. Any clean up or repair by the Operator after the Designated Services have been completed, will be charged to the User's account.

### **8. User's Obligations**

#### **GENERAL**

##### **User Agreement**

- 8.1 The User must comply with all its obligations under the User Agreement.

##### **Personnel**

- 8.2 The User must ensure that a sufficient number of qualified personnel are on board the Vessel while entering or leaving the Floating Dock for the purpose of warping the Vessel in and out of the Floating Dock, and attending to such orders as may be given by the Dockmaster. If, in the opinion of the Dockmaster, the number of qualified personnel is insufficient, the Dockmaster may refuse to work the Vessel until the User provides such additional qualified personnel as the Dockmaster considers necessary. The User must ensure that a sufficient number of qualified personnel attend Transfer System operations to ensure User obligations are met. If, in the opinion of the Operator the number of qualified personnel is insufficient, the Operator may postpone a transportation until additional personnel are provided.
- 8.3 The User may use only Approved Personnel for any Permitted Use of the Infrastructure, as notified by the User to the Operator from time to time.
- 8.4 The Operator may require any Approved Personnel to be removed immediately from the Infrastructure if the Operator believes that the Approved Personnel does or might pose a safety or security risk to the Infrastructure.

##### **Authorisations**

- 8.5 The User must, at its cost, maintain at all times while performing the User Activities all licences, permits, authorisations, consents, registrations, approvals, authorities, exemptions and certificates required by Law other than those held by the Operator and which the Operator agrees can be utilized by the User (**Authorisations**) in order for it to perform the

User Activities and provide to the Operator written confirmation that it has all such Authorisations. If any such Authorisation is cancelled or modified to any material extent, the User must immediately notify the Operator in writing.

### **Incidents**

- 8.6 The User must notify the Operator immediately of any Incident which occurs and shall make available to the Operator all relevant records, documents and personnel as the Operator shall request to allow the Operator to carry out a full investigation of the Incident.

### **DOCKING REQUIREMENTS**

#### **Trim and Stability**

- 8.7 During Docking and Undocking, the User must ensure that the Vessel maintains Docking trim, within limits set by the Operator; and Positive stability (i.e. positive transverse metacentric height) throughout the Docking/Undocking operation.

#### **Liability**

- 8.8 Notwithstanding any other provision of this Agreement, the User is liable for any loss or damage or injury to any person caused by the Vessel, or by a fault of the navigation of that Vessel whether by the User, the master of the Vessel or otherwise.

#### **Condition and Inspection**

- 8.9 The User must:
- 8.9.1 Allow the Operator to inspect the Vessel prior to Docking and at any time while it is in the Floating Dock and to carry out such tests, at the User's expense, as the Operator reasonably considers necessary to ensure compliance with the User's obligations under this Service Agreement.
  - 8.9.2 While the Vessel is in the Floating Dock, not carry out any structural alteration to the Vessel, or redistribute or add items of significant weight to the Vessel, without the Operator's prior written approval.

#### **Environmental**

- 8.10 The User must:
- 8.10.1 Not permit any water, sewage, refuse or hazardous waste (including, without limitation, any overseas ballast water) to be discharged into Cockburn Sound or the Southern Harbour including in or adjacent to the Floating Dock. The User will immediately notify the Operator in the event of any unauthorised discharge, and will take all necessary steps to remedy the effect of such

discharge. The User must be able to provide evidence to the Operator and Dockmaster, such as a ship's log, that any necessary ballast water exchanges have taken place prior to Docking.

- 8.10.2 Advise the Operator, no later than five (5) business days prior to Docking, of any explosives or dangerous goods which will be on board the Vessel at the time of Docking. The Operator may refuse entry by, or require the removal of, the Vessel to or from the Floating Dock if the Vessel is or has been carrying any dangerous goods (including any flammable oils or gases).
- 8.10.3 Prior to commencement of the Designated Services under this Agreement, notify the Operator if any materials that may be regarded as dangerous, hazardous or toxic substances under any relevant Laws are located on or about the Vessel and prior to Docking, provide the Operator with a safety data sheet in respect of each such material.
- 8.10.4 Comply with its obligations under the Contaminated Sites Act with respect to the Infrastructure and its activities under this Agreement and immediately notify the Operator in writing if it becomes aware of or suspects any contamination (as defined under the Contaminated Sites Act) on or adjacent to the Infrastructure.
- 8.10.5 Comply with the Environmental Management Plan.

#### **Disposal**

- 8.11 The User must ensure that all refuse of any sort arising from any work carried out on the Vessel is disposed of by the User:
- 8.11.1 In the specified waste disposal manner required by the Operator.
  - 8.11.2 In accordance with any disposal instructions advised by the Operator to the User
  - 8.11.3 At the User's expense.

#### **Antifouling**

- 8.12 The User must certify to the Operator in writing, at least five (5) working days prior to Docking, whether the Vessel's antifouling coating contains any hazardous substance (including, without limitation, any organo tin compound) and, if the User fails to do so, the Operator may, at the User's expense, carry out an analysis of the Vessel's antifouling coating to establish its composition

#### **Work involving Hazardous Substances**

- 8.13 To the extent that any work carried out on the Vessel while it is in the Floating Dock:
- 8.13.1 is carried out other than by the Operator and



- 8.13.2 includes work which involves the use or handling of hazardous substances (including, without limitation, organo tin compounds, lead and asbestos), the User must ensure that:
- (a) all solid waste collected from the Vessel, and which contains or might contain any hazardous substances, is disposed of as required by the Environmental Management Plan;
  - (b) water-blasting run off is pumped from the Floating Dock into treatment facilities provided by the User for that purpose;
  - (c) sludge arising from treatment of any water-blasting run off and cleaning of the Floating Dock is transferred to drums provided by the User for that purpose, and disposal of any such waste will be at the User's expense.

#### **Vessel on Floating Dock**

- 8.14 The User must ensure that the Vessel is ready to be taken on to the Floating Dock or removed from the Floating Dock on the date and at the time appointed by the Dockmaster.
- 8.15 Whether or not the Vessel is taken on the Floating Dock at the time appointed by the Dockmaster shall be subject to weather and sea conditions and in the event that the Dockmaster is of the opinion that the weather and sea conditions are unfavourable then the Vessel shall not be taken on to the Floating Dock or removed. Both parties acknowledge and agree that the Dockmaster's decisions in this regard shall be final and binding.
- 8.16 Upon being given notice by the Dockmaster that the Floating Dock is ready for the Vessel to be docked the Users shall cause the Vessel to be brought to the Floating Dock where directed by the Dockmaster and the User shall ensure that the Vessel is secured in a manner to the complete satisfaction of the Dockmaster.
- 8.17 The Vessel must not run or start or attempt to start its engines whilst on the Floating Dock and no engines connected to propellers shall be turned or be caused to be turned by the User unless it has previously been ascertained that there are no persons engaged or likely to be engaged in the vicinity of the Vessel's propellers and furthermore no engines shall be turned or caused to be turned by the User unless it is established that there is no scaffolding or other obstructions in the vicinity of the Vessel's propellers.
- 8.18 Unless otherwise agreed, the User must prepare the Floating Dock to receive the Vessel and notify the Dockmaster when the Floating Dock setup is satisfactorily completed. The User shall be liable for all damages which may be sustained by the

Vessel or the Floating Dock or the equipment of the Floating Dock should the docking plans or dock setup be incorrect. In the event the Operator supplies labour for dock setup, this shall be under the direction of the User.

- 8.19 In the event of a docking plan, stability information of other pre-requisites not being supplied by the User, the Operator may agree to undertake these as an optional service, such extra charges being as shown in the Schedule.
- 8.20 No ballast or other weight, the shifting of which could cause the Vessel to list or alter her draft shall be shifted whilst the Vessel is on the Floating Dock without the prior express written consent of the Dockmaster.
- 8.21 When the Vessel is about to be undocked or removed from the Floating Dock responsibility for ensuring that all inlets and outlets and all openings in the hull of the Vessel are closed shall rest with the User.
- 8.22 Should wind, weather or tide hinder the Vessel being removed, the Vessel may be allowed to remain on the Floating Dock until it is safely able to be moved, at the Operator's absolute discretion.
- 8.23 The Vessel will be under the direction of the Dockmaster while in the Floating Dock and when entering or leaving the Floating Dock. During such times the User must ensure that the person in charge of the Vessel and any contractors engaged by the User, attend to and obey the directions of the Dockmaster.
- 8.24 The Operator may at any time while the Vessel is in the Common User Facility permit the Floating Dock (to the extent space is available) to be used for other vessels (at its absolute discretion).

#### **Drawings and Specifications**

- 8.25 Drawings and Specifications of Vessels to be docked and/or loads to be transported must be supplied, in English, by the User to the Operator at least 30 days prior to the Designated Services. Details shall include hull protuberances, openings and special requirements relating to the docking.
- 8.26 The User warrants the accuracy and correctness of the Drawings and Specifications and any other information and representations all of which the Operator relies upon to perform the Works.

#### **Wreck**

- 8.27 Subject to any Applicable Law, if any vessel becomes an actual, constructive, comprised or arranged total loss or a wreck prior to or subsequent to Docking due to damage or faulty repair and, as a result, becomes an obstruction to navigation or operations of the Operator or on

the Common User Facility, the User must, if requested by the Operator, as soon as reasonably practicable remove the vessel (including any related debris) to the Operator's reasonable satisfaction and at the User's cost and expense. If the User does not do so the Operator may do so at the User's expense.

## **TRANSFER SYSTEM**

### **Weight and Centres of Gravity**

8.28 The User must ensure the accuracy of the weight and centres of gravity of Cargo as agreed with the Operator.

### **Drawings and Specifications**

8.29 The User must ensure the Cargo to be transported and its supports are configured in accordance with approved drawings and the requirements of the Transfer System.

8.30 Drawings and Specifications of Cargo to be transported, support layouts, routes and laydown areas shall be supplied by the User to the Operator at least 30 days prior to the Designated Services.

8.31 The User warrants the accuracy and correctness of the Drawings and Specifications and any other information and representations all of which the Operator relies upon to perform the Designated Services.

## **Environmental**

8.32 Prior to commencement of the Designated Services under this Agreement, notify the Operator if any materials that may be regarded as dangerous, hazardous or toxic substances under any relevant Laws are located on or about the Cargo and prior to transportation, provide the Operator with a safety data sheet in respect of each hazardous material.

## **Obstruction**

8.33 Subject to any Applicable Law, if any Cargo on the Transfer System before, during or after a transportation obstructs access within the Common User Facility, the User must, if requested by the Operator, as soon as reasonably practicable remove the Cargo (including any related debris) to the Operator's reasonable satisfaction and at the User's cost and expense. If the User does not do so the Operator may do so at the User's expense.

## **9. Limitation of Liability**

9.1 Unless the Designated Services are required for personal, domestic or household use, the Operator's liability to the User whether in contract, tort or otherwise shall, notwithstanding any other provision in this Agreement, be limited

to the extent permitted under Part V of the Trade Practices Act 1974 and State Fair Trading legislation namely:

- 9.1.1 in the case of goods, any one or more of the following:
  - (a) the replacement of the goods or the supply of the equivalent goods
  - (b) the repair of the goods
  - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods
  - (d) the payment of the cost of having the goods repaired or
- 9.1.2 in the case of services:
  - (a) the supply of the services again or
  - (b) the payment of the cost of having the services supplied again.

9.2 Under no circumstances will the Operator be liable to the User, whether in contract, warranty, tort or otherwise, for Incidental or Consequential Damages of any nature whatsoever.

9.3 All claims whatsoever against the Operator relating to the Designated Services must be made by the User in writing to the Operator within one month from the completion of the Designated Services.

9.4 Any claims not made in accordance with clause 9.3 are time-barred and the User waives all rights to institute legal proceedings in respect of such claims.

## **10. Indemnities**

### **The User**

#### *Personnel:*

- 10.1 The User shall release, defend, indemnify and hold the Operator harmless from and against all liability, claims, losses, damages, costs, expenses, legal fees, demands, suits and causes of action of every kind and character:
  - 10.1.1 arising in favour of any personnel or employees of the User
  - 10.1.2 on account of personal injury or death of any personnel or employee of the User and
  - 10.1.3 in any way incident to, or in connection with, or arising out of or under this Agreement.

10.2 The indemnity provided in clause 10.1 operates irrespective of any negligence, fault or strict liability of the Operator.

#### *Third parties:*

- 10.3 The User shall release, defend, indemnify and hold the Operator harmless from and against all liability, claims, losses, damages, costs, expenses, legal fees, demands, suits and causes of action of every kind and character:



- 10.3.1 arising in favour of any party other than personnel or employees of the User or the Operator
- 10.3.2 on account of personal injury or death or damage to property and
- 10.3.3 in any way incident to, or in connection with, or arising out of or under this Agreement.

10.4 The indemnity provided in clause 10.3 is limited to the extent that the Operator's exposure or the claim(s) against the Operator were caused by the negligence or other legal liability of the User.

*Pollution:*

- 10.5 The User shall release, defend, indemnify and hold the Operator harmless from and against claims, demands, suits, causes of action, damages, natural resource damage assessments, response, cleanup, containment or disposal expenses and other liabilities, including, but not limited to, legal fees and the costs of litigation or administrative proceedings:
  - 10.5.1 arising from any spill, discharge, escape, release of or exposure to any waste, rubbish, petroleum, chemical or hazardous substance, whether solid, liquid or gas or
  - 10.5.2 arising from Contamination (as defined in the Contaminated Sites Act) or
  - 10.5.3 originating from any equipment, facility or User Property, or from the handling, removal, transportation or disposal of User Property and
  - 10.5.4 in any way incidental to, or in connection with, or arising out of or under this Agreement.

10.6 The indemnity provided in clause 10.5 is excluded to the extent that the Operator's exposure or the claim(s) against the Operator were caused by the conduct of the Operator.

*Property damage to Infrastructure:*

- 10.7 The User shall release, indemnify, defend and hold the Operator harmless from and against all claims, costs, losses or liabilities including legal costs arising from, or relating to, destruction of or damage to the Infrastructure.
- 10.8 The indemnity provided in clause 10.7 is limited to the extent that the destruction of or damage to the Operator's property were caused by the User's negligence.

**The Operator**

*Personnel:*

- 10.9 The Operator shall release, defend, indemnify and hold the User harmless from and against all liability, claims, losses, damages, costs, expenses, legal fees, demands, suits and causes of action of every kind and character:

- 10.9.1 arising in favour of the Operator, its personnel or employees
- 10.9.2 on account of personal injury or death of any personnel or employee of the Operator and
- 10.9.3 in any way incident to, or in connection with, or arising out of or under this Agreement.

10.10 The indemnity provided in clause 10.9 operates irrespective of any negligence, fault or strict liability of the User.

*Third parties:*

- 10.11 The Operator shall release, defend, indemnify and hold the User harmless from and against all liability, claims, losses, damages, costs, expenses, legal fees, demands, suits and causes of action of every kind and character:
  - 10.11.1 arising in favour of any party other than personnel or employees of the User or the Operator
  - 10.11.2 on account of personal injury or death or damage to property and
  - 10.11.3 in any way incident to, or in connection with, or arising out of or under this Agreement.
- 10.12 The indemnity provided in clause 10.11 is limited to the extent that the User's exposure or the claim(s) against the User were caused by the negligence or other legal liability of the Operator.

*Pollution:*

- 10.13 The Operator shall release, defend, indemnify and hold the User harmless from and against claims, demands, suits, causes of action, damages, natural resource damage assessments, response, cleanup, containment or disposal expenses and other liabilities, including, but not limited to, legal fees and the costs of litigation or administrative proceedings:
  - 10.13.1 arising from any spill, discharge, escape, release of or exposure to any waste, rubbish, petroleum, chemical or hazardous substance, whether solid, liquid or gas or
  - 10.13.2 originating from any equipment, facility or property of the Operator or from the handling, removal, transportation or disposal thereof and
  - 10.13.3 in any way incidental to, or in connection with, or arising out of or under this Agreement.

10.14 The indemnity provided in clause 10.13 is excluded to the extent that the User's exposure or the claim(s) against the User were caused by the conduct of the User.

*Property damage to User property:*

- 10.15 The Operator shall release, indemnify, defend and hold the User harmless from and against all claims, costs, losses or liabilities including legal

costs arising from, or relating to, destruction of or damage to the User's property.

- 10.16 The indemnity provided in clause 10.15 is limited to the extent that the destruction of or damage to the User's property was caused by the Operator's negligence.

*Overall limit to Operator's liability:*

- 10.17 The indemnities provided by the Operator in this clause 10 shall in no circumstances exceed the value of the Contract Price.

*Extent of Operator indemnities:*

- 10.18 The indemnity obligations provided in clause 10 operate to the extent that they are not prohibited by Law.

## **11. Insurance**

- 11.1 The User shall at its sole cost and expense carry and maintain at all times prior to the commencement of and for the duration of the Designated Services and for the obligations that survive expiry or termination of this Agreement:
- 11.1.1 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 other amount as may be specified in the schedule (or such higher amount as may be reasonably required by the Operator from time to time).
  - 11.1.2 Workers Compensation Coverage; including Employers Liability Coverage for bodily injury or death, for maximum recovery allowed by the Laws applicable where the workers perform.
  - 11.1.3 Hull and Protection & Indemnity Insurance including wreck removal insurance; with limits of not less than the value of the Vessel for Hull, and twenty million dollars (\$20,000,000) (or such higher amount as may be reasonably required by the Operator from time to time) for Protection & Indemnity covering liability risks.
  - 11.1.4 An appropriate policy insuring the Cargo for its full insurable value.
  - 11.1.5 Such other insurances as may be reasonably required by the Operator from time to time.
- 11.2 All the above policies:
- 11.2.1 shall be with an insurer approved by the Operator;
  - 11.2.2 shall be endorsed to waive subrogation against the Operator;
  - 11.2.3 shall contain a non-cancellation clause binding the insurer to give at least one

month's written notice of its intention to cancel the policy; and

- 11.2.4 with the exception of Worker's Compensation, shall name the Operator as an additional Insured; and the User agrees to provide evidence of these insurances to the Operator prior to the Docking Commencement Date.

- 11.3 The User shall promptly notify the Operator if any policy or policies of insurance relevant to the Agreement:
- 11.3.1 are cancelled by an insurer;
  - 11.3.2 are to have their coverage reduced in any material respect; or
  - 11.3.3 if the User reasonably believes that a policy or policies of insurance relevant to the Agreement will or may be cancelled.

- 11.4 If the User does or permits to be done any act matter or thing which has the effect of invalidating or avoiding any policy of insurance taken out by or effected under this Agreement for the benefit of the Operator then the User shall pay to the Operator on demand the full amount of any damage or loss which the Operator may suffer or incur as a result thereof.

- 11.5 The User shall comply with all the terms warranties and conditions of the insurance policies effected in accordance with this clause 11 or the requirements of the insurer relating to the policy in respect of insurance taken out by the User and 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.

## **12. Bond**

### **User to deliver**

- 12.1 If the Schedule states that a bond is required, the User must deliver to the Operator, prior to accessing any part of the Infrastructure, the Bonded Amount. Each such bond must be from a surety and on terms which are approved by the Operator (at its discretion) and must be validly executed and enforceable.

### **Application of Bonded Amount**

- 12.2 The Operator will apply the Bonded Amount in the following manner:
- 12.2.1 the Bonded Amount received will be offset against any amount which is or is likely to be payable by the User to the Operator under this Agreement and
  - 12.2.2 if the amount received exceeds, in the reasonable opinion of the Operator, the aggregate of all the amounts which are or are likely to be payable by the User to the Operator under this Agreement,

the Operator will pay to the User that excess.

### **Release by the Operator**

- 12.3 If requested in writing by the User to do so, the Operator must, within twenty (20) Business Days following completion of the Designated Services, release the Bonded Amount, or the appropriate part of the Bonded Amount dependent upon the use of the Bonded Amount by the Operator under clause 12.2.

### **Insufficient Security**

- 12.4 If at any time the Operator reasonably considers the Bonded Amount does not represent sufficient security to the Operator, having regard to the User's undischarged liabilities (including any contingent liabilities) or obligations under this Agreement, the User must, within five (5) Business Days after receiving written Notice from the Operator to do so, procure a replacement or additional bond from one or more sureties reasonably acceptable to the Operator. In any such event, this Agreement will be construed (as the context permits) so that clauses 12.2 to 12.4 (inclusive) apply equally to the replacement or additional bond.

## **13. Warranties**

### **Reciprocal Warranties**

- 13.1 Each party in this clause 13.1, **(First Party)** warrants to the other party that:
- 13.1.1 it has the right, power, authority and has taken all corporate action to validly enter into, and perform its obligations under, this Agreement
  - 13.1.2 its obligations under this Agreement are valid and binding and are enforceable against it in accordance with their terms
  - 13.1.3 it is not aware of any fact or circumstance which would or might prevent other parties from performing its obligations under this Agreement and
  - 13.1.4 all information provided to the other party, by or on behalf of the First Party, in relation to this Agreement is, or will be when disclosed, complete and accurate in all material requests and was complete and accurate at the time it was given.

### **User's Warranties**

- 13.2 The User warrants to the Operator that:
- 13.2.1 It has all Authorisations (as referred to in clause 8.5) required to perform the User Activities.
  - 13.2.2 Its obligations to make payments under this Agreement rank at least equally with all unsecured and unsubordinated

indebtedness of the User except debts mandatorily preferred by Law.

- 13.2.3 It is not in default under a Law affecting it or its assets, or any obligation or undertaking by which it or any of its assets are bound in a manner which will, or might reasonably be expected to, materially affect its ability to perform its obligations under this Agreement.
- 13.2.4 There is no pending or threatened action or proceeding affecting it or its assets before a court, referee, Government Agency, commission, arbitrator or other tribunal which will, or might reasonably be expected to, materially affect its ability to perform its obligations under this Agreement and
- 13.2.5 Where the User is now acting or in the future may act as trustee, the User covenants with and warrants to the Operator that the User has or will have full powers pursuant to its Constitution and its deed of trust (**Trust**) under which it purports to act when entering into this Agreement, to enter into and give effect to this Agreement and that:
  - (a) the Trust is lawfully and validly constituted and all deeds and other instruments in respect of it have been properly executed
  - (b) the Trust is and throughout this Agreement will remain unrevoked and not varied other than with the written consent of the Operator, which must not be unreasonably withheld and
  - (c) the assets of the Trust and the assets of the User will at all times be available to satisfy the obligations of the User under this Agreement.
- 13.2.6 the User and its subcontractors, consultants and employees shall at all times be suitably qualified and experienced and shall exercise due skill, care and diligence in the execution and completion of tasks under this Agreement for which the User has engaged them.
- 13.2.7 that the details of the dimensions of the Vessel or Cargo as set out in the request for Designated Services are true and correct.

### **Application of Warranties**

- 13.3 The representations and warranties in this clause 13 are made on and from the execution of this Agreement, and are by force of this clause to be taken to be made anew on each day during the term of this Agreement.

### **Exclusion of Warranties**

- 13.4 Except for the express warranties and representations set out in this Agreement and

those implied provisions or warranties that are imposed by any Law that are mandatory and cannot be excluded, the Operator gives no warranties and makes no representations (expressed or implied):

- 13.4.1 regarding this Agreement or
- 13.4.2 that the Infrastructure and any premises, property, gear, craft or equipment provided by the Operator are now, or will remain suitable or adequate for all or part of the Designated Services or the Permitted Use and any warranties as to suitability and adequacy of the Infrastructure implied by Law are expressly denied.

## **14. Force Majeure**

### **Effect of Force Majeure**

14.1 If to the extent to which either party is not able to carry out any of its obligations under this Agreement because of any event or circumstance which is, in relation to that party, a Force Majeure event (such party being referred to in this clause 14.1 as the **Non Performing Party**), subject to clauses 14.2 and 14.3, the Non Performing Party will have no liability to the other party in respect of the non performance of such obligations, provided that:

- 14.1.1 the Non Performing Party must endeavour to overcome, and to mitigate the effects of, the Force Majeure and to complete its obligations under this Agreement on time. If, despite complying with this clause 14.1.1, the Non Performing Party reasonably requires any exception of time in order to comply with any obligations, the Non Performing Party will notify the other party in writing as soon as possible of the extension required. The other party will be deemed to have agreed to the extension unless it expressly notifies the Non Performing Party in writing to the contrary (and that other party may do so upon reasonably grounds only)
- 14.1.2 the Non Performing Party will as soon as reasonably practicable after becoming aware of the cessation of the Force Majeure event, notify the other party in writing accordingly and
- 14.1.3 this Agreement will otherwise remain in effect in all respects.

### **Obligation to pay Service Fee continues**

14.2 The obligation to comply with the Payment Terms continues during an event of Force Majeure subject to abatement under clause 14.3.

### **Abatement**

14.3 If it is reasonably impracticable for the User to carry on the Permitted Use as a result of the

Infrastructure being destroyed or damaged, then if:

- 14.3.1 such destruction or damage does not occur in consequence (directly or indirectly) of some act or default of the User or the Approved Personnel and
- 14.3.2 the policy of insurance effected by the Operator or the User and covering such destruction or damage has not been vitiated or payment of the policy moneys refused in consequence of some act or default of the User or the Approved Personnel,

then, a proportionate part of the Service Fee will be abated, according to the nature and extent to which it is reasonably impracticable for the User to carry on the Permitted Use, until the Infrastructure is again rendered fit for the User to carry on the Permitted Use or until this Agreement is terminated under clause 14.6.1.

### **Expert determination**

14.4 If a dispute arises as to an abatement under clause 14.3, then:

- 14.4.1 the dispute will be referred for a determination to an expert agreed between the parties, or failing agreement within fifteen (15) Business Days of a written Notice from one party to the other, to an expert appointed by the President of the Institution of Engineers in Australia (**Expert**)
- 14.4.2 the Expert shall act as an expert and not as an arbitrator and any decision of the Expert shall be final and binding on the parties and
- 14.4.3 the full Service Fee must be paid by the User without any deduction or abatement until the date of such the Expert's determination, following which (if applicable), the Operator must refund any part of the Service Fee which according to the determination has been overpaid,

provided that this clause does not apply if the destruction or damage referred to in clause 14.3 occurs in consequence (directly or indirectly) of some act or default of the User or the Approved Personnel, or if the Operator's or the User's policy of insurance is vitiated or payment of the policy moneys refused in consequence of some act or default of the User or the Approved Personnel.

### **Suspension**

14.5 The Operator may suspend any or all of the Designated Services or the User's rights under this Agreement at any time, with or without prior Notice, as required to avoid or mitigate the effects of any Force Majeure.

### **Termination as a result of Force Majeure**

14.6 If any Force Majeure event is of such magnitude or duration that it is reasonably likely to be

impossible or impractical for the Non Performing Party to comply, to any material extent, with the Non Performing Party's obligations under this Agreement (taken as a whole) for a period of twenty (20) Business Days or longer, either party may terminate this Agreement by written Notice to the other party, and:

- 14.6.1 such Notice, in order to have effect, must state:
- (a) the Force Majeure event which the party giving that Notice considers to have led to, or to be likely to lead to, the impossibility or impracticality referred to in this clause (**Relevant Force Majeure**) and
  - (b) that the party giving that Notice has concluded that the Relevant Force Majeure will have that effect, including all material particulars to support that conclusion
- 14.6.2 subject to complying with the requirements of clause 15 if any dispute has arisen between the parties, the Agreement will terminate on the date which is five (5) Business Days (or such longer period as may be specified in that Notice) after the date on which the Notice is received by the other party
- 14.6.3 that Notice will cease to have effect if, within the time period referred to in clause 14.6.2 (or such longer period as may be specified in that Notice) the Relevant Force Majeure ceases, to have the effect referred to in clause 14.1.

## **15. Negotiation of disputes**

### **Notice of Dispute**

- 15.1 A party to this Agreement claiming that a dispute has arisen under this Agreement must give written notice to the other party of the dispute designating as its representative in negotiations relating to the dispute a person with authority to settle the dispute and the other party must within three (3) days of receipt of such notice give notice in writing to the first party designating as its representative in negotiations relating to the dispute a person with like authority.

### **Investigation and Negotiation**

- 15.2 The designated persons must within ten (10) days after the last designation required by clause 15.1, following whatever investigation each deems appropriate, seek to resolve the dispute.

### **Dispute Resolution Process**

- 15.3 If the dispute is not resolved within twenty (20) days after the written notice advising of the dispute (or within such further period as the representatives may agree is appropriate) the

parties must within a further ten (10) days (or within such further period as the representatives may agree is appropriate) seek to agree on a process for resolving the whole or part of the dispute through further negotiations, mediation or conciliation; and on

- 15.3.1 the procedure and timetable for any exchange of documents and other information relating to the dispute
- 15.3.2 procedural rules and a timetable for the conduct of the selected mode of proceeding
- 15.3.3 a procedure for selection and compensation of any neutral person who may be employed by the parties in dispute and
- 15.3.4 whether the parties should seek the assistance of a dispute resolution organisation

PROVIDED THAT if the process and procedure has not been agreed in writing by the expiration of the further ten (10) days (or within such further period as the representatives may agree in writing is appropriate) for any reason, any party may proceed with respect to the dispute in any manner they think fit, including arbitration or court proceedings.

If a party wishes to refer the matter to arbitration it shall be referred to an arbitrator agreed upon by the parties to the dispute for determination pursuant to the provisions of the Commercial Arbitration Act 1985 of Western Australia. If the parties cannot agree to an arbitrator within fourteen days after an application by either party to the other, then the dispute shall be referred to an arbitrator for such determination who shall be appointed by the president for the time being of the Law Society of Western Australia Inc. and the cost arising of or incidental thereto shall be borne by the Parties as determined by the arbitrator. In any arbitration a party may be represented by a legal practitioner.

### **Court Proceedings**

- 15.4 Nothing in this clause shall prejudice the right of a party to institute proceedings to seek urgent injunctive or declaratory relief in respect of any matter arising under this Agreement.

## **16. Termination**

### **Mutual right to terminate**

- 16.1 Either party (**First Party**) may terminate this Agreement immediately upon written Notice, if the other party breaches any material obligation under this Agreement, or under any other agreement between the parties, relating to the Designated Services or the Infrastructure, including, without limiting the generality, a breach of the payment provisions in clause 5, and such breach has not been remedied within ten (10) Business Days after the First Party has



given the other party written Notice requesting it to remedy the breach, or failing remedy, arrangements have not been made to the reasonable satisfaction of the other party including, if the default is not capable of being otherwise rectified or remedied, payment within the twenty (20) Business Day period of reasonable compensation (in lieu of rectification or other remedy) which takes into account the other party's obligation to take reasonable steps (if any) to mitigate its loss (if any)).

### **Undocking**

16.2 Upon termination of this Agreement for whatever reason, the User will immediately arrange for the Undocking of the Vessel. If the User fails to in Undock or remove the Vessel from the Infrastructure the provisions of clause 3.4 shall apply.

### **Remove all User Property**

16.3 On termination of this Agreement the User, at its own expense and at the earliest reasonable opportunity, must remove from the Infrastructure all fixtures, fittings, plant, machinery, equipment which are the property of the User.

### **Cease using Other Property**

16.4 On termination of this Agreement the User shall cease using any property belonging to the Operator or to any other user in relation to this Agreement.

### **Insolvency**

16.5 Either party may immediately terminate this Agreement upon any Insolvency Event occurring in respect of the other party.

### **Vacating Infrastructure**

16.6 In addition to clause 16.2, upon termination of this Agreement whether by effluxion of time or otherwise, the User must immediately vacate the Infrastructure and remove all plant, equipment and other property brought onto the Infrastructure by the User and leave the Infrastructure in a condition consistent with the complete and proper compliance by the User of the obligations by the User under this Agreement and generally in a condition the same as at the date of commencement of this Agreement.

16.7 In removing any property, the User must make good any damage caused by that removal.

16.8 Upon termination for any reason, the User must deliver all keys and security access devices providing access to the Infrastructure held by the User and whether or not provided to the User by the Operator.

## **17. Notices**

### **Method of delivery of Notices**

17.1 Any written Notice required under this Agreement must be signed by a duly authorised senior representative of the party giving the Notice and will be deemed validly given if:

- 17.1.1 delivered by hand or sent by pre-paid mail to the intended recipient's address as set out below (for Notices to the Operator) or as set out in the Schedule (for Notices to the User) or
- 17.1.2 sent by facsimile to the intended recipient's facsimile number as set out below (for Notices to the Operator) or as set out in the Schedule (for Notices to the User) and the sender's facsimile machine confirms transmission to the intended recipient in full without error.

*Notices to the Operator:*

*Address: 124 Quill Way  
Henderson, Western Australia, 6166*

*Fax No: +61 8 94370555*

*Attention: General Manager  
AMC Management (WA) Pty Ltd*

### **Time of delivery of Notices**

17.2 For the purposes of this Agreement, any Notice given in accordance with this clause 15 will be deemed to have been received:

- 17.2.1 if transmitted by facsimile or delivered by hand before 5.00pm on a Business Day, at the time of transmission or on the day of delivery (as applicable), or otherwise at 9.00am on the next Business Day or
- 17.2.2 if sent by pre-paid mail within Australia, on the second Business Day after posting,  
(being, in each case, the time of day at the intended place of receipt of that Notice).

## **18. The Operator's rights**

### **Suspension for User's breach**

18.1 Without prejudice to the Operator's right to terminate this Agreement under clause 16.1, if and for so long as the User is in default under this Agreement, then provided the Operator has first given the User ten (10) Business Days written Notice to remedy the default under clause 16.1, the Operator may by written Notice to the User suspend the User's rights and obligations under this Agreement for the period of the User's default. Nothing in this clause extends the term of this Agreement.

### **Interruptions and postponements**



18.2 The Operator may, by written notice to the User, postpone or interrupt the Designated Services if, and to the extent to which, it is in the absolute discretion of the Operator necessary to do so, due to the occurrence of any event (including, but not limited to) which:

18.2.1 necessitates the use of the Infrastructure other than by the User, for reasons of national security or due to a state of national emergency, national civil defence emergency, regional civil defence emergency, or local civil defence emergency having been declared; or

18.2.2 necessitates the use of the Infrastructure other than by the User by virtue of obligations of the Operator or DevelopmentWA to ASC Pty Ltd (ABN 64 008 605 034) in relation to an unplanned or emergency Docking of a submarine; or

18.2.3 necessitates the use of the Infrastructure other than by the User in relation to an unplanned or emergency Docking of a Commonwealth of Australia vessel; or

18.2.4 is otherwise beyond the reasonable control of the Operator.

#### **Consequences**

18.3 If the Operator postpones or interrupts the Designated Services, the Operator will:

18.3.1 use its reasonable endeavours to make the Infrastructure available to the User at the next mutually convenient opportunity;

18.3.2 refund the Service Fee to the User unless the User agrees to suitable alternative arrangements for the use of the Infrastructure;

18.3.3 not be liable to the User for any expense or loss incurred by the User as a result of any such postponement or interruption; and

18.3.4 reduce the Service Fee by an amount which corresponds to any reduction in the Designated Services which the User would have otherwise received.

### **19. General**

#### **Assignment**

19.1 The User will not assign, transfer, sublicense or part with possession of any of its rights or liabilities under this Agreement, without the prior written consent of the Operator (which the Operator may withhold at its absolute discretion).

#### **Governing Law**

19.2 This Agreement is governed by the Laws of the State of Western Australia. The parties submit to

the exclusive jurisdiction of the courts of Western Australia.

#### **Entire arrangement**

19.3 This Agreement with the User Agreement records the entire arrangement between the parties relating to all matters dealt with in this Agreement and supersedes all previous arrangements whether written, oral or both, relating to such matters.

#### **Copies**

19.4 Any facsimile copy of this Agreement or any Notice given pursuant to this Agreement (including any signature on any such document) may be relied upon by the parties as though it were an original. This Agreement may be signed in one or more counterpart copies which, read together, will constitute one and the same agreement.

#### **Waiver**

19.5 No waiver of any breach, or failure or delay to enforce any provision, of this Agreement at any time by either party will in any way limit or waive the right of such party to subsequently enforce and compel strict compliance with the provisions of this Agreement.

#### **Costs and duty**

19.6 Subject to any express contrary provision of this Agreement, each party will bear its own costs and expenses in connection with the negotiation, preparation, execution and implementation of this Agreement. The User shall pay all or any duty on this Agreement.

#### **Further assurances**

19.7 Each party will make all applications, do all things and execute all documents reasonably required in order to give effect to the provisions and intent of this Agreement.

#### **Remedies cumulative**

19.8 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by Law.

#### **Relationship between Parties**

19.9 Nothing in this Agreement will constitute either party as the partner, agent, employee or officer of, or as a joint venturer with, the other party, and neither party will make any contrary representation to any third person.

#### **Amendment**

19.10 No amendment or variation of this Agreement is valid or binding on a party unless made in writing executed by the Parties.

### **Enforceability**

- 19.11 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 19.12 If any clause or part of a clause of this Agreement is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

### **Changes to Law**

- 19.13 The Parties acknowledge that there may be changes to the Applicable Laws and that those changes may require amendments to be made to this Agreement. The Parties will cooperate to make any amendments to this Agreement that may reasonably be required as a consequence of those changes. This Agreement will be considered to be amended accordingly from the date the amendment is agreed.

## **20. Definitions and interpretation**

- 20.1 In this Agreement the following definitions apply:

**Agreement** means this Service Agreement including any schedules, annexures, and attachments.

**Applicable Laws** means all and any laws, regulations and statutory provisions applicable to the manner in which the Infrastructure is used by the User or any of its Approved Personnel.

**Approved Personnel** means the persons, including the User's employees, subcontractors, consultants, agents and any related third parties, entitled to access and use the Infrastructure on behalf of the User as notified by the User to the Operator from time to time under clause 8.3.

**Bill Rate** means the corporate overdraft reference rate for overdrafts greater than \$100,000 (monthly charging cycle) applied from time to time by the National Australia Bank Limited.

**Bonded Amount** means the amount stated (if any) as the bonded amount in the Schedule.

**Business Day** means any day other than a Saturday, Sunday or public holiday observed in the State of Western Australia.

**Cargo** means a load to be transported using the Transfer System including, without limiting the generality, a Vessel.

**Common User Facility** means the breakwater, harbour and on-site facilities, forming part of the Australian Marine Complex (Cockburn Sound) as set out in the map appended to the User Agreement.

**Contract Price** means the amount calculated in accordance with clause 2.

**Default Rate** means the Bill Rate plus 2%.

**Designated Services** means the designated services set out in the Schedule together with any additions, deductions or variations that may be made in accordance with this Agreement.

**Designated Services Variation Order** means a written document created in accordance with clause 4.1.

**DevelopmentWA** means Western Australian Land Authority of 40 The Esplanade, Perth, Western Australia.

**Docking** means the placement of the Vessel in position at the Floating Dock.

**Docking Commencement Date** means the date advised by the Operator to the User as the first date on which the Floating Dock is available for use by the User in accordance with this Agreement.

**Docking Period** means the period from the Docking Commencement Date to the Docking Termination Date (inclusive).

**Docking Termination Date** means the date advised by the Operator to the User as the last date on which the Floating Dock is available for use by the User in accordance with this Agreement.

**Dockmaster** means the dockmaster appointed by the Operator to control the Docking operations.

**Environmental Management Plan** means the Operator's Environmental Management Plan for the Common User Facility, as amended from time to time, and as made available to the User

**Estimated Contract Price** means the estimated contract price set out in the Schedule.

**Floating Dock** means the floating dock designed and constructed by the DevelopmentWA and operated by the Operator.

**Force Majeure** means, in relation to either party (**Affected Party**) an event or circumstance which is beyond the reasonable control of that party, including any:

- (a) act of God;
- (b) Industrial Action by, or amongst, or pertaining to, Approved

- Personnel of, a person other than the Affected Party;
- (c) act of public enemy, or declared or undeclared war or threat of war;
  - (d) terrorist act, blockage, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the Affected Party);
  - (e) governmental, regional or local authority restraint, legislation or bylaw,
  - (f) which is beyond the control of that Affected Party, but does not include any:
  - (g) effect or circumstance which could have been avoided by the exercise, by the Affected Party, of Good Industry Practice;
  - (h) lack of funds on the part of the Affected Party; or
  - (i) Industrial Action by, or amongst Approved Personnel of the Affected Party.

**Good Industry Practice** means, in relation to any activity, the exercise of a degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in Australia in the same type of activity, under the same or similar circumstances.

**GST** has the meaning it bears in the A New Tax System (Goods and Services Tax Administration) Act 1999, at the rate prevailing from time to time.

**Hours of Permitted Use** means the hours of permitted use as set out in the Schedule.

**Incident** means a notifiable event which occurs involving the User and its conduct of any activity under this Agreement which event is required at law to be reported to any of the Police, Coroner, WorkSafe, Comcare or any relevant regulatory authority.

**Incidental or Consequential Damage** includes, without derogating from the generality in clause 9.2 of this Agreement, loss of use, loss of any opportunity, loss of profit, pure economic loss, fines, penalties or damages under any other agreement.

**Industrial Action** means:

- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of the work;
- (b) a ban, limitation or restriction on the performance of work, or an acceptance of or offering for work;

- (c) a failure or refusal by persons to attend for work or a failure or refusal to perform any work at all by persons who attend for work;
- (d) a strike;
- (e) a lock out;
- (f) a picket line established in, on, near or about the Infrastructure; or
- (g) any act, omission, or circumstance done, effected, or brought about by any person for the purpose of compelling another person to accept any terms or conditions of employment or engagement or to enforce compliance with any demand relating to employment or engagement.

**Infrastructure** means the Floating Dock, the Transfer System, Land Transfer Interface and includes:

- (a) all equipment systems;
- (b) portable roadway and access ramps;
- (c) dock shore power, sewerage transfer and holding, refuelling, fresh water services;
- (d) hoses, cables, ropes, layup moorings and any other connection between dock and shore;
- (e) Transfer System, maintenance facilities, washdown and separator equipment;
- (f) wharves and heavy load roadways as applicable to transfer operations; and
- (g) cradles and dock blocks.

**Infrastructure Regulations** means those rules developed by the Operator which govern the use of and conduct of activities at the Infrastructure.

**Insolvency Event** means, in respect of either party, having a liquidator, provisional liquidator, administrator, receiver, manager, or receiver and manager appointed (**appointment**), becoming bankrupt or insolvent within the meaning of section 95A(2) of the Corporations Act 2001 (Cth), or having any meeting called for the consideration of, or any resolution passed, or any application made, any petition filed, any order made or any direction given for any of the above appointments.

**Key Dates** means the key dates referred to in the Schedule.

**Land Transfer Interface** means the wharf at the CUF over which Vessels will be transferred from the Floating Dock to the hardstand on the shore.

**Law** includes all present and future:

- (a) written and unwritten laws of the Commonwealth, laws of Western

- Australia and laws of any other state, territory or foreign country having jurisdiction over the subject matter of this Agreement; and
- (b) judgments, determinations, decisions, rulings, directions, notices, regulations, by-laws, statutory instruments and orders given or made under any of those laws.

**Notice** means a notice, request, consent, approval, demand, invoice, report or other communication.

**Operator** means AMC Management (WA) Pty Ltd ACN 100 354 336; in its role of operator for the Floating Dock and / or the Self Propelled Modular Transporters, operating assets within the Common User Facility.

**Party** means a party to this Agreement.

**Payment Terms** means the terms and conditions for payment of the Contract Price set out in the Schedule.

**Permitted Use** means the permitted use set out in the Schedule.

**Pollution** means direct or indirect alteration of the environment:

- (a) to its detriment or degradation;
- (b) to the detriment of any beneficial use; or
- (c) of a kind prescribed pursuant to the Environmental Protection Act 1986.

**Port Facilities Security Plan** means the Operator's security plan for the Common User Facility as amended from time to time.

**Port Services** means the use of any tug, floating crane, tank cleaning vessel or other port services vessel and wharf side services, provided to the User by or through the Operator.

**Schedule** means the schedule attached to this Agreement.

**Schedule of Rates** means the schedule of rates in Annexure 1.

**Special Conditions** means any special conditions set out in the Schedule.

**Transfer System** means the self propelled modular transporters (SPMT) transfer system for moving Vessels and Cargo.

**Undocking** means the removal of the Vessel from the Floating Dock (including the entrance to the Floating Dock).

**User Activities** means all activities carried out by the User in relation to the use of the Floating Dock and / or the Self Propelled Modular Transporters within the Common User Facility under this Agreement (including, for the avoidance of doubt, the Permitted Use of Infrastructure, and all incidental activities by the User, within the Common User Facility).

**User Agreement** means a user agreement between the User and DevelopmentWA providing for use by the User of the Common User Facility in accordance with its terms.

**User Property** means movable property belonging to the User, including the Vessel and Cargo.

**Vessel** means the vessel set out in the Schedule

### Interpretation

- 20.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- 20.2.1 The singular includes the plural and vice versa.
  - 20.2.2 Use of the past, present or future tense includes the other tenses
  - 20.2.3 A reference to:
    - (a) A person includes a firm, body corporate, an unincorporated association and an authority.
    - (b) A person includes that person's employees, directors, personnel, agents, executors, administrators, liquidators, transferees, assigns and successors.
    - (c) A document means that document as amended or replaced.
    - (d) Any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
    - (e) An attachment means an attachment to this Agreement.
  - 20.2.4 Where a period of time is expressed to be calculated within a period of time after an event, the day that the event takes place is not included in the period of time.
  - 20.2.5 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
  - 20.2.6 If the day on which any act, matter or thing is to be done under this document is not a Business Day, the act, matter or thing must be done on the next Business Day.
  - 20.2.7 A reference in this document to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.

**Special Conditions**

20.2.8 The terms of the Special Conditions (if any) contained in the Schedule apply to this Agreement and to the extent that there is any

conflict between the Special Conditions and the terms of this Agreement, the Special Conditions shall take precedence.

**Execution and date**

Signed for and on behalf of  
**AMC Management (WA) Pty Ltd**  
ACN: 100 354 336

By its authorised representative:

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
General Manager

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Signed for and on behalf of  
**Name of User**  
ACN: xxx xxx xxx

By its authorised representative:

\_\_\_\_\_  
Name (print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## The Schedule

### Address for Notices for the User (Clause 17.1.1)

Address: [insert Address]  
Fax number: [insert fax number]  
Attention: [insert contact name]  
[insert company name]

### Bonded Amount (Clause 12)

[insert Bonded Amount if required]

### Designated Services (Clause 1)

[insert Designated Services]

### Hours of Permitted Use (Clause 7.4)

[insert Hours of Permitted Use]

### Insurance (Clause 11)

### Key Dates (Clause 3)

Estimated date for access to Floating Dock or Transfer System: [dd/mm/yyyy]  
Estimated Docking Date (if applicable): [dd/mm/yyyy]  
Estimated Undocking Date (if applicable): [dd/mm/yyyy]  
Estimated latest date for access Period: [dd/mm/yyyy]

### Permitted Use (Clause 7.1)

- 1 Accessing those parts of the Infrastructure only for the times necessary and for the purposes of mobilisation and demobilisation for the Designated Services.
- 2 Such other Permitted Uses agreed in writing between the Operator and the User.

### Special Conditions (Clause 20.2.8)

- 1 The User must execute a User Agreement on or before executing this Agreement.
- 2 Maritime Transport and Offshore Facilities Security Act 2003

The Common User Facility complies with all requirements of the *Maritime Transport and Offshore Facilities Security Act 2003* and the *Maritime Transport and Offshore Facilities Security Regulations 2003*. As such any User, including any Approved Personnel of the



User, accessing the wharves will need to hold the appropriated Maritime Security Identification Card (MSIC) prior to entering the and have arrangements in place at the wharf to ensure the Landside Restricted Zone (LRZ) is not compromised by unauthorised access. This may require additional security to be provided. The cost of providing these additional services will be to the User's account.

**Vessel**

1 [insert name of Vessel]

## **Annexure 1: Schedule of Rates**

[Current Schedule of Rates for FDTs to be inserted on this page]

FOR INFORMATION ONLY