

USER AGREEMENT

Western Australian Land Authority (LandCorp)

ABN: 34 868 192 835

and

User Name (User)

ABN: XX XXX XXX XXX

Contract No. C-XXXXXX

Australian Marine Complex - Common User Facility

Description of Services / Works / Project Name

Month/Year

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The Schedule

Item 1 Parties (Conditions 1 and 2.4)

Western Australian Land Authority of Level 6, 40 The Esplanade Perth, Western Australia, trading as LandCorp ABN: 34 868 192 835 (“LandCorp”)

AND

User Company of **registered address** ABN: **xx xxx xxx xxx** (“User”)

Item 2 Commencement Date **dd/mm/yyyy**

Item 3 Term (Expiry Date) **dd/mm/yyyy**

Item 4 Designated Facility (Condition 4.1)

[User specific information to be inserted here]

Laydown area as agreed with the Manager.

Additional facilities, assets and services of the AMC-CUF as may be available and agreed with the Manager.

Any unused area must be accessible by the Manager for third party use, otherwise it will be deemed to be utilised.

Item 5 Permitted Use (Condition 4.1(a))

Permitted Use specific to **[User's project name to be inserted here]** is as follows:

[User specific information to be inserted here]

Berthing, stowage, loading/offloading, minor works on vessel.

Additional temporary facilities such as car park, storage area, cribs, toilets and offices may be installed within the Designated Facility.

Important: Any change of use (e.g. new project) requires a new User Activity Questionnaire to be submitted to the Manager, prior to commencement.

Item 6 Hours of Permitted Use (Condition 4.1(b))

24 hours per day / 7 days per week access is permitted

Item 7 Licence Fees (Condition 8.1)

The Licence Fees for facilities and/or services shall be in accordance with the published Schedule of Rates applicable at the date the facilities and/or services are used. The current Schedule of Rates is as shown in the following table.

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

FOR INFORMATION ONLY

Item 8 Payment Requirements (Condition 8)

Invoicing: Invoiced at the end of the month
Payment: As per Condition 8.4

Item 9 Insurance As per Condition 10.8

Item 10 Bonded Amount (Condition 11) Nil

Item 11 Address for Notices for the User (Condition 21.1)

Notices:

Name P: (xx) xxxx xxxx
Position M: xxxx xxx xxx
Company E:
Address 1
Address 2

Accounts:

Name P: (xx) xxxx xxxx
Position/Department M: xxxx xxx xxx
Company E:
Address 1
Address 2

Item 12 Special Conditions (Condition 2.10)

12.1 Environment and Maintenance

The User will comply with all environmental laws and any other requirements specified in this User Agreement and in particular will ensure that nothing is discharged into Cockburn Sound or the Southern Harbour.

Without limiting any ongoing obligations under the User Agreement, any damage to the Designated Facility is to be made good by the User.

The Designated Facility is to be left clean and tidy with all tools, excess materials and rubbish removed. Any clean up or repair by LandCorp will be charged to the User's account.

12.2 Maritime Transport and Offshore Facilities Security Act 2003

The operations of the CUF complies with all requirements of the *Maritime Transport and Offshore Facilities Security Act 2003* and the *Maritime Transport and Offshore Facilities Security Regulations 2003*. Accordingly, any user accessing the wharves will need to hold the appropriate Maritime Security Identification Card (MSIC) prior to entering the CUF 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 details of which are to be provided by the Manager. The cost of providing these additional services will be to the User's account.

12.3 Where this User Agreement relates to the use of Berths at the CUF then the following provisions shall apply:

(a) Interruptions and postponements

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

- (i) necessitates the use of Berths 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
- (ii) necessitates the use of Berths other than by the User by virtue of obligations of the operator of the Floating Dock or LandCorp to ASC Pty Ltd (ABN 64 008 605 034) in relation to an unplanned or emergency docking of a submarine; or
- (iii) is otherwise beyond the reasonable control of the Manager.

(b) Consequences

If the Manager postpones or interrupts the access of Berths, the Manager will:

- (i) use its reasonable endeavours to make Berths available to the User at the next mutually convenient opportunity;
- (ii) refund any applicable part of the Licence Fee paid by the User for Berths unless the User agrees to suitable alternative arrangements at other Berths.
- (iii) 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
- (iv) reduce the Licence Fee by an amount which corresponds to any reduction in Berths to which the User would have otherwise received access.

12.4 User Acting as an Agent

Where the User acts as agent only for Principals who wish to call at this facility within the Port of Fremantle for the purpose of offloading and discharging cargo, the User shall complete an Application for Berth form. The User thereby warrants that the Principal is bound by this Agreement.

Where the User acts other than as Agent, it remains bound in its own right.

12.5 In relation to Condition 7.1 of the General Conditions the following applies where the User is acting as an Agent; when using the facility for berthing of a vessel only, there is no requirement to comply with Condition 7.1 of the General Conditions. When using the facilities for other than berthing of a vessel, submission of the appropriate OSH, Environmental and Employee Relations Management Plans will be required by the Manager.

Execution and Date

Signed for and on behalf of
Western Australian Land Authority
ABN: 34 868 192 835

By its authorised representative:

Name
General Manager
AMC Management (WA) Pty Ltd

Title

Date

Signed for and on behalf of
Name of User
ABN: xx xxx xxx xxx

By its authorised representative:

Name

Title

Date

General Conditions

1. Definitions

Definitions: In these Conditions, unless the context otherwise requires:

"Affiliates" means any legal entity which controls, is controlled by, or is under common control with, another legal entity. An entity is deemed to "control" another if it owns directly or indirectly more than fifty percent (50%) of either of the following:

- (a) the shares entitled to vote at a general election of directors of such other entity; and
- (b) the voting interest in such other entity if such entity does not have either shares or directors.

"Agreement" means the Schedule and these General Conditions;

"Applicable Laws" means all and any laws and statutory provisions applicable to the manner in which the Common User Facility is used by the User or any of its Approved Personnel;

"Appropriate Authority" means the organisations or individuals designated as such in the Facility Rules and includes the Manager.

"Approved Personnel" means the persons, including the User's employees, subcontractors, consultants, agents and any related third parties, entitled to access and use the Designated Facility on behalf of the User as notified by the User to LandCorp from time to time under Condition 9.1 and who have undertaken the appropriate facility inductions;

"Authorisation" includes:

- (a) a consent, authorisation, registration, agreement, certification, permission, licence, approval, authority or exemption from, by or with a Local or Public Authority and whether granted to LandCorp (and permitted by LandCorp to be used by the User) or to the User; or
- (b) in relation to anything under which will be prohibited or restricted in whole or in part by Law if a Local or Public Authority intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without that intervention or action.

"Berth" means each of or all of AMC1, AMC2, AMC3, AMC4, AMC5 and the Jetty as identified in Appendix 1 as the context requires forming part of the Common User Facility or as otherwise varied by LandCorp from time to time;

"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) in Item 10 of the Schedule;

"Business Day" means a day on which banks are open for business in Perth, Western Australia, excluding Saturdays, Sundays and public holidays;

"Change of Control" in respect of a User means:

- (a) if a person who Controls the User at the date of this Agreement ("relevant date") ceases to Control the User; and/or
- (b) if a person who did not Control the User at the relevant date, obtains Control in respect of that User.

"Commencement Date" means the date on which the Term is to commence as specified in Item 2 of the Schedule;

"Common User Facility" or "CUF" means the breakwater, harbour and on-site facilities, forming part of the Australian Marine Complex (Cockburn Sound) as set out in the map in Appendix 1 of this Agreement or as otherwise varied by LandCorp from time to time;

"Compliance Plans" means each compliance plan submitted to LandCorp pursuant to Condition 7.1 and as amended from time to time or any further plan or policy.

"Conditions" means these General Conditions.

"Consequential Loss" means any loss or damage suffered which is indirect or consequential, or which is by way of loss of revenue, loss of profits (whether actual, direct, indirect, anticipated or otherwise), loss of product, loss of expected saving, loss of credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, rent or holding costs, loss of expected productivity, loss of business (including loss or reduction of goodwill or opportunity) damage to credit rating, loss or denial of opportunity, or increased overhead costs (regardless of whether any or all of these things are considered to be direct or consequential losses or damages), or which is not an immediate result of the breach, negligence or other tortious act or omission.

"Contamination" has the meaning given in section 4 of the CSA.

"Control" means the following:

- (a) a person "Controls" a body corporate or other entity if:
 - (i) the person (alone or with its associates or Affiliates) determines the composition of the board of directors (or similar body or person) of the entity;

- (ii) the board of directors (or similar body or person) of the entity is accustomed to act in accordance with the instructions, directions or wishes of the person;
 - (iii) the person holds or owns (alone or with its associates or Affiliates):
 - (A) the majority of the issued voting shares of the entity;
 - (B) the majority of the issues voting shares or other voting interests of the ultimate holding company of the entity; or
 - (C) the majority of any securities or other rights granted by the entity entitling holders to distributions based on the profits, earnings or net liquidation proceeds of the body corporate; or
 - (iv) the person (alone or with its associates or Affiliates) has the power to dominate or determine the financial or operating policies of the entity.
- (b) a person "Controls" a trust if:
- (i) the person is the sole trustee of the trust;
 - (ii) the composition of the board of directors of any corporate trustee of the trust is determined by the person (alone or with its associates or Affiliates);
 - (iii) the board of directors of any trustee of the trust is accustomed to act in accordance with the instructions, directions or wishes of the person; or
 - (iv) the person holds or owns (alone or with its associates or Affiliates):
 - (A) the majority of the issued voting shares of any corporate trustee of the trust;
 - (B) the majority of the issued voting shares of the ultimate holding company of any corporate trustee of the trust; or
 - (C) the majority of the units, securities or other rights granted by the trust entitling holders to distributions from the trust,

and the word "**Controlled**" has a corresponding meaning.

"**CSA**" means the *Contaminated Sites Act 2003 (WA)*.

"**Default Rate**" means 1.5% per month calculated on a daily basis.

"**Designated Facility**" means that part of the Common User Facility that is designated for use by the User as specified in Item 4 of the Schedule;

"**Environmental Harm**" has the same meaning as that term is defined in section 3A of the *Environmental Protection Act 1986 (WA)*.

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

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

"**Facility Rules**" means those rules developed by the Manager, on behalf of LandCorp, which govern the use of, and conduct of activities at, the Common User Facility, as varied from time to time;

"**Force Majeure**" means, in relation to either party (the "**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,
- which is beyond the control of that Affected Party, but does not include any:
- (f) effect or circumstance which could have been avoided by the exercise, by the Affected Party, of Good Industry Practice;
 - (g) lack of funds on the part of the Affected Party; or
 - (h) 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) Act 1999*, at the rate prevailing from time to time;

"**Hours of Permitted Use**" means the hours of Permitted Use, as set out in Item 6 of the Schedule;

"**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 Common User Facility; 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.

"**Insolvency Event**" means any of the following:

- (a) a person is or states that the person is unable to pay from the person's own money all the person's debts as and when they become due and payable;
- (b) a person is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;
- (c) an administrator, provisional liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven (7) day;
- (d) a receiver or receiver and manager is appointed in respect of any property of a corporation;
- (e) a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation;
- (f) a distress, attachment or execution is levied or becomes enforceable against any property of a person;

- (g) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or members of a moratorium involving any of them;
- (h) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven (7) days or a person presents a petition against himself or herself;
- (i) a person presents a declaration of intention under section 54A of the *Bankruptcy Act 1996 (Cth)*; or
- (j) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of a person.

"**Jetty**" means both of or each of the north side and south side of the jetty situated at Lot 19 Clarence Beach Road, Henderson, as the context requires.

"**LandCorp**" means the Western Australian Land Authority trading as LandCorp;

"**Law**" or "**Laws**" 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;
- (b) judgments, determinations, decisions, rulings, directions, notices, regulations, by-laws, statutory instruments and orders given or made under any of those laws; and
- (c) the Applicable Laws.

"**Licence Fee**" means collectively, the licence fees set out in Item 7 of the Schedule;

"**Local or Public Authority**" means any governmental, semi-governmental, statutory, local or public authority and every and any other board, person or authority whatsoever now or hereafter exercising under any present or future Act of Parliament (Federal or State) any control or jurisdiction over or power in connection with the Designated Facility and/or the CUF and/or in connection with any Permitted Use and every officer or person acting under the authority of such local or public authority or under the authority of any such Act or By-law.

"**Manager**" means AMC Management (WA) Pty Ltd, (ACN 100 354 336) or any other manager who may from time to time be appointed by LandCorp;

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

"Notifiable Incident" means any incident which is required by law to be reported to the Police, State Coroner or any regulatory authority including but not limited to Worksafe and the Department of Environment Regulation;

"OSH Legislation" means the *Occupational Safety and Health Act 1984 (WA)*, the *Occupational Safety and Health Regulations 1996 (WA)*, *Dangerous Goods Safety Act 2004 (WA)* and associated regulations, other legislation (Commonwealth and State), Local Authority regulations or by-laws, codes of practice, other compliance codes, directions on safety or notices issued by any relevant authority and standards relating to occupational safety and health.

"Payment Requirements" means the payment requirements set out in Item 8 of the Schedule;

"Permitted Use" means, in respect of the Designated Facility, the use to which the Designated Facility may be put by the User as set out in Item 5 of 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 Officer" and **"PFSO"** means the person appointed from time to time pursuant to the provisions of Port Facilities Security Plan.

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

"Safety Management Plan" means any safety management plan prepared by or on behalf of the User to satisfy the requirements of OSH Legislation and relevant to the Permitted Use.

"Safe Work Procedures" means any safe work procedures or safe work method statement prepared by or on behalf of the User to satisfy the requirements of OSH Legislation and relevant to the Permitted Use.

"Schedule" means the Schedule which precedes these Conditions;

"Services" means all public utility services, footpaths, water supply, sewerage, drainage, electricity and gas reticulation and telecommunications facilities.

"Special Conditions" means any special conditions set out in Item 12 of the Schedule;

"Term" means, subject to Condition 3.3, the period during which the User is permitted to use the Designated Facility, including any option to renew this Agreement, ending on the expiry date as set out in Item 3 of the Schedule;

"User" means the person named as user in Item 1 of the Schedule;

"User Activities" means all activities carried out by the User within the Common User Facility or the Designated Facility under this Agreement (including, for the avoidance of doubt, the Permitted Use of the Designated Facility, and all incidental activities by the User, within the Common User Facility); and

"User Management Plans" means each management plan submitted by the User to LandCorp pursuant to Condition 7.1 and as amended from time to time or any further plan or policy.

2. Interpretation

In these Conditions, unless the context indicates otherwise:

- 2.1 Inclusive Expressions:** wherever the words "includes" or "including" (or any similar words) are used, they are deemed to be followed by the words "without limitation";
- 2.2 Monetary Amounts:** all monetary amounts are stated exclusive of GST and in Australian currency;
- 2.3 Plural and Singular:** the singular includes the plural and vice versa;
- 2.4 Parties:** references to any "party" mean a party to this Agreement and includes that party's successors, executors, administrators and permitted assignees (as the case may be);
- 2.5 Documents:** references to any document (however described) are references to that document:
 - (a) as modified, novated, supplemented, varied or replaced from time to time; and
 - (b) in any form, whether paper based or in electronic form;
- 2.6 Months/Years:** references to a month or a year are references to a calendar month or calendar year;
- 2.7 Statutory Provisions:** references to any statutory provision are to statutory provisions in force in Western Australia and include:
 - (a) any statutory provision which amends or replaces it; and
 - (b) any bylaw, regulation, order, statutory instrument or other determination made under it;
- 2.8 Persons:** where the context permits, references to a "person" include an individual, firm, company, corporation or unincorporated body of persons, any public, territorial or regional

authority, any government, and any agency of any government or of any such authority; and

2.9 Where two (2) or more Persons are parties to this Agreement, the obligations on their part will bind and be observed and performed by them jointly and each of them severally;

2.10 Special Conditions: the terms of the Special Conditions (if any) contained in the Schedule apply to the Agreement and to the extent that there is any conflict between the Special Conditions and the terms of this Agreement, the Special Conditions take precedence.

3. Licence, Access and Term

3.1 Licence and Access: LandCorp grants the User, subject to the User paying the Licence Fee and complying with the Payment Requirements and the Facility Rules:

- (a) an exclusive licence for the Term to make the Permitted Use of the Designated Facility, subject to LandCorp's and its employees, independent contractors, consultants and agents (including the Manager), rights under these Conditions; and
- (b) to the extent necessary to give effect to Condition 3.1(a), a non exclusive licence for the right to use, enjoy and have access to and egress from the Designated Facility across the CUF as specified by LandCorp, in common with LandCorp, the Manager, LandCorp's and the Manager's employees, agents, contractors, customers, visitors, licensees, invitees, and all other persons authorised by LandCorp including other Persons authorized to use the Common User Facility,

on the basis set out in this Agreement.

3.2 No Interest in Designated Facility or CUF: The licence granted under Condition 3.1 is in contract only and does not create any tenancy or other interest in the Designated Facility or the Common User Facility.

3.3 Term: Subject to Condition 3.4, this Agreement is for the Term and commences on the Commencement Date.

3.4 Amendments to the Term: The Term may be:

- (a) extended by mutual agreement between the parties recorded in writing, subject to payment by the User of an additional fee as determined by LandCorp; or
- (b) reduced by written notice given by LandCorp, acting reasonably, to the User.

3.5 Variation to Licence Fee: Where LandCorp's published Schedule of Rates for the CUF change from time to time during the Term, the Licence Fee will be the amounts charged under the revised Schedule of Rates payable as and from the date of change of those Schedule or Rates.

4. Use of Designated Facility and Common User Facility

4.1 Designated Facility: Subject to Condition 3.1(b), the User is not permitted under this Agreement to use any part of the Common User Facility other than the Designated Facility. In using the Designated Facility, the User must:

- (a) make no use of the Designated Facility other than the Permitted Use;
- (b) not access any part of the Common User Facility outside the Hours of Permitted Use;
- (c) comply with the Port Facilities Security Plan and all other security requirements relating to the Common User Facility, as notified by LandCorp to the User from time to time;
- (d) comply with the requirements of the Defence Security Authority (Commonwealth) in relation to the use of the CUF;
- (e) not cause any loss or damage to the Common User Facility; and
- (f) comply with all Facility Rules as may be revised from time to time.

4.2 Sole Risk: The use of the Designated Facility for the Permitted Use and access to the CUF will be at the sole risk of the User from the Commencement Date.

4.3 Surveillance: For security and safety purposes, along with the orderly running of the CUF, both audio and visual recording equipment including but not limited to CCTV is in operation in, on, at or about the CUF and at the entrances to the CUF.

By executing this Agreement, the User consents to and acknowledges that the User (including the User's Approved Personnel) is subject to surveillance using audio/visual equipment including CCTV.

The User will ensure that the Approved Personnel acknowledge and agree to this Condition before they enter the CUF.

5. Role of Manager

5.1 Authority of Manager: The Manager is authorised to act as LandCorp's agent for all

purposes relating to the Agreement. The Manager is the agent for LandCorp and is not a party to the Agreement in its personal capacity. All:

- (a) rights expressed to arise under the Agreement in favour of the Manager; and
- (b) obligations expressed under the Agreement to be performed by the Manager,

are not personal to the Manager, and are held and performed by the Manager as agent for and on behalf of LandCorp.

5.2 Communications: LandCorp may directly communicate with the User under this Agreement, but unless LandCorp notifies the User otherwise, in dealing with LandCorp under this Agreement, the User must deal only with the Manager and every written Notice to be given under this Agreement to LandCorp must be given to the Manager in accordance with Condition 21.

5.3 Privity: Condition 5.1 is intended to be for the benefit of, and enforceable by, the Manager.

5.4 Directions of Manager

- (a) The User must at all times comply with the directions of the Manager in all areas outside of the Designated Facility;
- (b) The User agrees that the Manager is empowered to direct the User to:
 - (i) temporarily stop any works or activity;
 - (ii) regulate the movement of any personnel or goods or services onto or across the Common User Facility;
 - (iii) 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 Common User Facility.

5.5 Nothing in Condition 5 gives the Manager the right or power to direct the User how to undertake the Permitted Use or in any way give the Manager any right to control the User's activities in the Designated Facility except to the extent necessary to minimise or eliminate risk of injury or harm to other users or other persons at the Common User Facility or for the purposes of evacuation or for the purpose of ensuring the safe movement of vehicles in the Common User Facility.

6. LandCorp's Obligations

6.1 Information: LandCorp may provide the User with such information and instructions in respect of accessing and using the Common User Facility as may reasonably be required by the User.

7. User's Obligations - General

7.1 Compliance with Plans for the Common User Facility: Prior to entering the Common User Facility and prior to making any use of the Common User Facility, the User must submit to LandCorp for LandCorp's approval, Compliance Plans which specify how the User will manage the User Activities within the parameters of the:

- (a) Port Facilities Security Plan;
- (b) Facility Rules; and
- (c) any further plan or policy.

LandCorp may require changes to be made to the proposed Compliance Plans before access to the Common User Facility is permitted. LandCorp may from time to time require the User to amend any Compliance Plan or require any additional plan or policy.

7.2 User Activities: Without limiting any express provision of this Agreement, the User will, in its use of the Designated Facility and while carrying out any User Activities:

- (a) comply with all Applicable Laws;
- (b) comply with the Facility Rules;
- (c) comply with all User Management Plans;
- (d) if the use to which the User puts the Designated Facility requires any Authorisation, the User must obtain that Authorisation;
- (e) comply with all Authorisations and the requirements of any Local or Public Authority;
- (f) exercise Good Industry Practice;
- (g) comply with any reasonable directions given by or on behalf of LandCorp to the User (to the extent that these are not inconsistent with any express provision of this Agreement);
- (h) report to, and liaise primarily with the Manager in relation to its rights and obligations under this Agreement (unless LandCorp directs the User to do otherwise);
- (i) co-operate with LandCorp's employees, the Manager's employees, and all other contractors, subcontractors and agents

- working in the Common User Facility who are not users of the Common User Facility;
- (j) ensure that it does not interfere with any other user of the Common User Facility;
 - (k) whenever reasonably requested by LandCorp, permit LandCorp and the Manager to inspect and audit any of the User Activities and the level of compliance with the User Management Plans;
 - (l) allow LandCorp (including its employees, contractors, agents, consultants or other authorised representatives) access to any Services running through or servicing the Designated Facility for any purpose required by LandCorp;
 - (m) not (and may not permit anyone else to) except with LandCorp's written consent:
 - (i) store or use inflammable, volatile or explosive substances on the Designated Facility except those normally used as part of the Permitted Use if they are stored in proper containers and only in accordance with all relevant Laws; or
 - (ii) interfere with or obstruct the operation of or access to the Services on or outside the Designated Facility; or
 - (iii) use any facilities in or near the Designated including drains for any improper purpose; or
 - (iv) use the Designated Facility for any activity which is offensive, illegal or immoral or which is or may become a nuisance to anyone; or
 - (v) use any dangerous or hazardous substance on the Designated Facility or do any activity which could cause harm to anyone unless required as part of the Permitted Use and subject to all Authorisations;
 - (n) permit entry to the Designated Facility by LandCorp at all reasonable times either with workmen or any other persons and any plant, equipment and materials to:
 - (i) inspect the condition of the Designated Facility and to ensure compliance with the User's obligations; and
 - (ii) comply with any requirement, notification or order of any Local or Public Authority which is the responsibility of LandCorp; and
 - (iii) remove anything which is harmful or dangerous; and
 - (iv) do anything else which LandCorp is required to do by law or is permitted to do under this Agreement;
 - (o) report promptly to LandCorp in writing and, in the case of emergency, verbally, any circumstance of which the User becomes aware and which is likely to:
 - (i) be a danger; or
 - (ii) cause any damage or danger;
 - (p) immediately notify LandCorp of any theft of, or damage to, any part of the Common User Facility or materials owned by LandCorp, the Manager, the User or any other person from the Common User Facility;
 - (q) not do anything to cause any damage to the Designated Facility or injury to any person or property or any loss or damage to LandCorp;
 - (r) not do or leave undone or suffer to be done or left undone any act, matter or thing whereby a nuisance or danger or anything in the nature of a nuisance or danger or which may be deemed to be a nuisance or danger by the Local or Public Authority may exist or continue upon or in connection with the Designated Facility;
 - (s) deliver to the Manager during the Term copies of any notices relating to the Designated Facility received by the User from any Local or Public Authority;
 - (t) keep and leave the Designated Facility and any part of the Common User Facility used by the User, in a clean, tidy and safe condition during and upon completion of the User Activities;
 - (u) during the Term:
 - (i) keep and maintain the Designated Facility in good condition and repair at all times; and
 - (ii) ensure that the Designated Facility is kept in a safe condition at all times;

- (v) upon expiration or termination of this Agreement leave the Designated Facility in the same condition as at the Commencement Date (subject to fair wear and tear),

and the User must ensure that the Approved Personnel comply with this Condition.

7.3 Removal of Property: The User will not move or remove any property belonging to either LandCorp or the Manager from the Designated Facility or the Common User Facility without LandCorp's prior written consent.

7.4 Authorisations: The User will, at its cost, maintain at all times while performing the User Activities all Authorisations in order for it to perform the User Activities and provide to LandCorp written confirmation that it has all such Authorisations. If any such Authorisation is cancelled or modified to any material extent, the User will immediately notify LandCorp in writing.

7.5 Damage: If the User damages or destroys the property of any person while performing the User Activities or otherwise, the User will immediately:

- (a) notify LandCorp of the nature and extent of that damage or destruction and such other details of such damage or destruction as LandCorp may require;
- (b) notify the owner of the property of the damage or destruction; and
- (c) arrange, at the User's expense, for the damage to be repaired or for the relevant property to be replaced to the reasonable satisfaction of the owner of the property.

7.6 Signs: The User must not without the prior written consent of LandCorp construct, display, affix, exhibit or permit to be affixed or exhibited on the Common User Facility any signs, lights, embellishments, advertisements, placards, posters, names or notices.

7.7 Waterways: The User must comply with all the requirements of LandCorp and all Applicable Laws in relation to the use of any water, waterway or foreshore adjacent to the Common User Facility and (without limiting the effect of this Condition) the User must not:

- (a) place, move or permit the placement or movement of any vessel or other object at or from the Common User Facility except in such manner and at such times as LandCorp has first approved;
- (b) not create or allow to be created any danger, hazard or nuisance to any person, vessel, jetty or any other object which is or is likely to be in a waterway or any seabed or foreshore adjacent to the

Common User Facility (and the User must immediately report to LandCorp any such danger, hazard or nuisance of which the User becomes aware); and

- (c) not do anything in connection with the Common User Facility or the Designated Facility that interferes or is likely to interfere with the access by any Local or Public Authority or other person or to cause all damage, Pollution or Contamination to:

- (i) any water, waterway or seabed under the jurisdiction or control of that Local or Public Authority; or
- (ii) any foreshore, retaining wall, jetty structure, work or property on, over, under or in the vicinity of the Common User Facility.

7.8 Navigational Aids: The User must not move, remove, obscure, alter, paint or otherwise change any marker or the location, function, colour, shape, appearance or utility of any buoy, navigational aid, lights, indicators or other objects in, about or adjoining the Common User Facility.

7.9 No Removal: The User must not:

- (a) carry out or permit any dredging or other removal of any rock, soil or marine growth of any kind from the Common User Facility without the prior written approval of LandCorp; and
- (b) not use or deal with any rock, soil or marine growth of any kind from the Common User Facility without the prior written approval of LandCorp.

7.10 No Improvements or Additions or Alterations: The User must not:

- (a) alter the configuration of the Common User Facility; or
- (b) build, affix or install or permit to be built, affixed or installed on, to, through, over or under the Common User Facility any improvements, infrastructure, buildings or other structures,
- (c) modify or replace any property of LandCorp or other property installed by the User with approval from the Manager or LandCorp including but not limited to electrical and plumbing installations;

without the prior written approval of LandCorp at its sole discretion (which approval may include conditions) and where applicable in accordance with the Facility Rules.

7.11 Ownership, Risk and Maintenance of Property:

- (a) Any property of LandCorp supplied (including modifications to such property as may be carried out or authorised by LandCorp from time to time) will, unless LandCorp elects otherwise in writing at its sole discretion, be managed and maintained by the Manager at the User's sole cost. If requested in writing by the User, the Manager will provide the User with a budget estimate before carrying out the maintenance works. LandCorp supplied property remain the property of LandCorp at all times but risk for and in that property is assumed by the User upon the Commencement Date for the duration of the Term.
- (b) Any property supplied by the User to the Designated Facility as permitted under these Conditions remain the property of the User and will be maintained in good order by the User at its own cost for the duration of the Term. Risk for and in the property of the User remains with the User at all times.
- (c) Any new item of property, replacement of or modification to existing property (whether originally supplied by LandCorp or the User) that LandCorp may approve permitting the User to construct the property, replacement or modification in or on or about the Designated Facility is subject to the following conditions:
 - (i) Any works on new property, replacement of or modification to existing property (whether originally supplied by LandCorp or the User) that directly or indirectly connects to existing LandCorp or CUF property or services will be carried out at the User's sole cost by the Manager unless the Manager waives this condition in writing;
 - (ii) Any new property, replacement of or modification to existing property (whether originally supplied by LandCorp or the User) that directly or indirectly connects to existing LandCorp or CUF property or services including potable water, power, sewer, storm water or communications become the property of LandCorp on completion of their construction from the point of connection to the existing CUF property or services up to the last point of isolation (or emergence from the ground);

- (iii) Any property, replacements or modifications constructed by the User must be maintained by the User in the as-built condition during the Term, fair wear and tear excepted. The Manager will conduct all maintenance up to the last point of service isolation (or emergence from the ground) at the User's sole cost. The User may elect to maintain the remaining part of the property itself or, subject to the Manager's written agreement, have the Manager conduct the maintenance of the remaining part of the property at the User's sole cost; and
- (iv) Any other conditions as determined by LandCorp at its sole discretion.

7.12 No Contamination or Pollution: The User will do all things necessary to prevent, and not do or permit or suffer to be done anything likely to cause Contamination or Pollution whether to:

- (a) the Designated Facility; or
- (b) the Common User Facility; or
- (c) any groundwater or sub surface area or any waters adjoining or near the Common User Facility; or
- (d) any other marine environment surrounding the Common User Facility.

In the event of a spillage into waters or marine environment or onto the Common User Facility, the User must immediately contact the Appropriate Authorities and provide the full details of the spillage. The User must at all times have access to equipment and resources at its own cost to recover or clean up any spillage to any land or waters or marine environment in accordance with the directions of Appropriate Authorities and in accordance with the Law.

7.13 Notifiable Incident:

- (a) The User must advise the Manager of any Notifiable Incident which occurs within the Designated Facility or involving the User, the User's employees, contractors or agents at any location within the Common User Facility;
- (b) In the event that there is a Notifiable Incident at the Common User Facility including the Designated Facility involving the User or the User's employees, contractors or agents the User will make available to the Manager all records, documents and personnel as the Manager requests and the User must instruct all of its contractors and agents to cooperate

with the Manager to allow the Manager to undertake a full investigation of the Notifiable Incident.

8. Invoicing/Payment

8.1 Licence Fee: The User must pay the Licence Fee (as may be varied from time to time) to LandCorp, in accordance with the Payment Requirements, in consideration for the grant of the licence under Condition 3.1.

8.2 Invoicing: LandCorp will invoice the User for the Permitted Use of the Designated Facility, at the time set out in the Payment Requirements. Each invoice must be a valid tax invoice or relevant adjustment note for GST purposes.

8.3 GST: 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 LandCorp 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 LandCorp the GST payable on any supply made by LandCorp to the User within the time set out in Condition 8.4 of this Agreement, all penalties, interest or costs incurred by LandCorp in connection with that late payment of GST will also be payable by the User.

8.4 Payment: Any invoice received from LandCorp by the User will (unless the Payment Requirements state otherwise) be payable on or before the later of:

- (a) the last day of the month following the month in which the invoice is dated;
- (b) the 10th Business Day after the date of receipt by the User of that invoice.

8.5 Disputed Invoices: If the User (acting reasonably) disputes any portion of any amount appearing as payable on any invoice issued by LandCorp:

- (a) the User will notify LandCorp of such dispute at the earliest reasonable opportunity;
- (b) the undisputed portion will remain payable on the due date for payment under Condition 8.4; and
- (c) 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 Condition 19.

8.6 Late Payment: 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.

8.7 User's Purchase Orders: Subject to the provisions of Condition 24.4, LandCorp may accept purchase orders issued by the User solely for the purpose of quoting the User's purchase order number on invoices issued to the User in connection with this Agreement and any terms and conditions (if any) forming part of the User's purchase order do not apply to this Agreement.

9. Approved Personnel

9.1 Use of Approved Personnel: The User may use only Approved Personnel for any Permitted Use of the Designated Facility, as notified by the User to LandCorp from time to time.

9.2 Removal: LandCorp may require any Approved Personnel to be removed immediately from the Common User Facility if LandCorp believes that the Approved Personnel does or might pose a safety or security risk to the Common User Facility.

10. Liability/Indemnity/Insurance

10.1 Exclusion of LandCorp's Liability: Nothing expressed or implied in this Agreement confers any liability on LandCorp in respect of any loss, damage, cost or expense suffered or incurred by the User, to the extent that this results from any act or omission by any other person authorised by LandCorp to have access to and use of the Common User Facility.

10.2 Indemnity: Notwithstanding the existence of any policy or policies of insurance in the name of LandCorp, or in the name of LandCorp and any other person including the User, or that the User or any other person may hold a licence, permit or authority from any Local or Public Authority, the User hereby indemnifies and agrees to keep indemnified LandCorp from and against all damage, sums of money, costs, charges, expenses, actions, claims and demands (including Consequential Losses) which may be claimed, sustained or suffered by LandCorp, or recovered or made by the User (or any other person) against LandCorp arising out of or in connection with:

- (a) loss or damage to the Designated Facility or the CUF or any other loss (including loss of use) or the adjoining or nearby property caused by the User or any employee, agent, customer or invitee of the User PROVIDED THAT the User is not

responsible for any damage caused by the act, negligence or default of LandCorp or its employees, agents or contractors or of those LandCorp permits to enter upon or use the Designated Facility;

- (b) any injury or death the User or any other person may sustain when on, using or entering or near the Designated Facility or the CUF or any appliance connected with the Designated Facility or the CUF or arising from or in any way related to this Agreement or its subject matter whether or not such injury arises or has arisen as a result of the negligence of or as a result of the creation of some dangerous thing or state of affairs by LandCorp or the employees, agents, licensees, customers or invitees of LandCorp and whether the existence of such dangerous thing or dangerous state of affairs was or ought to have been known to LandCorp or not;
- (c) the use or occupation of the Designated Facility or the CUF by the User or its employees, licensees, customers, invitees, agents or contractors;
- (d) any work carried out by or on behalf of the User or its employees, agents or contractors (including work carried out on behalf of the User by LandCorp or the Manager or their contractors or subcontractors);
- (e) the User's activities, operations, business or other use of any land under this Agreement;
- (f) Contamination or Pollution of the Designated Facility or the CUF or any land or sub-surface area or groundwater or ocean adjoining or near the Designated Facility or the CUF and of the air generally above the Designated Facility or the CUF by any act or omission of the User or its employees, licensees, customers, invitees, agents or contractors whatsoever, including but not limited to the escape from the Designated Facility or the CUF of petroleum or any other inherently dangerous or inflammable liquid or matter;
- (g) any breach of the User's obligations under these Conditions; and
- (h) the proper exercise or attempted exercise of LandCorp of its remedies.

10.3 The User indemnifies and must keep indemnified LandCorp from and against all claims, costs, proceedings, suits, writs, demands and expenses relating to, or in respect of, the remediation of Contamination or Pollution required under any Environmental Law or by any Local or Public Authority as a result of any Contamination or

Pollution emanating on, or from the Designated Facility or the CUF as a result of, or relating to, the use or occupation of the Designated Facility or the CUF by the User.

10.4 The obligations of the User and indemnities provided by the User under Conditions 10.2 and 10.3:

- (a) are unaffected by the obligation of the User to take out insurance and the obligations of the User to indemnify are paramount; and
- (b) continue after the expiration or earlier determination of this Agreement in respect of any act, deed, matter or thing occurring before the expiration or earlier determination of this Agreement.

10.5 Subject to Condition 10.7 and without limiting Condition 10.1, to the full extent permitted by Law, LandCorp excludes all liability in tort (including negligence), contract, statute or otherwise for any loss or damage incurred by the User in connection with any act or omission by LandCorp under or in relation to this Agreement or the CUF and excludes all warranties, rights and remedies the User would otherwise be entitled to at Law or in equity or under any legislation.

10.6 The User agrees to be subject to the same responsibilities to which it would be subject in respect of persons and property if during the Term it was the owner and occupier of the freehold of the Designated Facility.

10.7 Limits of Liability:

- (a) LandCorp is not liable for any failure to comply with any obligations on the part of LandCorp due to any reason beyond LandCorp's direct control.
- (b) Notwithstanding anything else contained in this Agreement under no circumstances will LandCorp be liable to the User in contract, tort (excluding negligence) or otherwise howsoever and whatsoever its cause for any Consequential Losses.
- (c) The limit of the liability of LandCorp arising out of any breach of this Agreement by LandCorp or arising out of any tortious act or omission of LandCorp will be limited to an amount being one (1) year's Licence Fee payable as at the date of any claim against LandCorp under this Agreement.

10.8 Insurances:

- (a) The User will at its sole cost effect and keep in force at all times during the Term in the name of the User and noting the

interest of LandCorp (except for Workers' Compensation insurance) the following policies of insurance with an insurer reasonably acceptable to LandCorp:

- (i) a Public Liability Policy including cover against liability of the User and LandCorp to any person for any reason arising from the act error or omission of the User in or about the Designated Facility or the CUF for an amount of indemnity of not less than TWENTY MILLION DOLLARS (\$20,000,000) for each and every occurrence and unlimited in the aggregate for public liability claims (or any higher sum as is reasonably determined by LandCorp from time to time) including but not limited to:
 - (A) any injury of, or illness to, or death of, any person;
 - (B) any loss, damage or destruction to any property including to the property of LandCorp; and
 - (C) the loss of use of any property, including the property of LandCorp, the Designated Facility and any adjoining property.
- (ii) Workers' Compensation Common Law and Statutory Liability insurance in respect of employees of the User employed in or about the Designated Facility or the CUF covering liability arising under any relevant legislation and having a limit of not less than \$50,000,000 per occurrence or event for Workers' Compensation Common Law coverage or such other amount as may be specified in the Schedule (Item 9);
- (iii) unless covered by the Public Liability policy required pursuant to Condition 10.8(a)(i), a policy covering loss or damage to the Designated Facility, the CUF or any adjoining property or injury to any person as a result of any activity by the User or its employees, contractors, agents, licensees or invitees on or near the Designated Facility or the CUF; and
- (iv) such other insurances as may be reasonably required by LandCorp from time to time.

- (b) The User must during the continuance of this Agreement effect, maintain and keep current the policies of insurance required pursuant to this Condition and ensure that each of its contractors or sub-contractors effects, maintains and keeps current for the duration of the Term:
 - (i) similar policies of insurance as required under this Condition; and
 - (ii) a contractors risk insurance policy to cover all works undertaken or to be undertaken in relation to the Permitted Use;

and the User indemnifies LandCorp against any and all loss arising from a breach of this Condition.
- (c) The User must prior to being granted access to the CUF and whenever required by LandCorp produce to LandCorp certificates of currency acceptable to LandCorp or the Manager in respect of any policy required pursuant to this Condition. The User will also produce, if so required by LandCorp, a copy of any policy of insurance required pursuant to this Condition.
- (d) 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 LandCorp, then the User will pay to LandCorp on demand the full amount of any damage or loss which LandCorp may suffer or incur as a result.
- (e) The User must comply with all the terms, warranties and conditions of the insurance policies effected in relation to the Designated Facility or the CUF or for public liability or any other insurance or the requirements of the insurer relating to the policy and the Designated Facility and the CUF in respect of insurance taken out by the User or by LandCorp and not do or fail to do any act, matter or thing that may cause the premium to be increased or 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.
- (f) The User will pay any additional premium (whether incurred by LandCorp or the User) incurred as a result of the nature of the business carried on by the User on or about the Designated Facility or as a result of the User's occupation of the Designated Facility.

- (g) Where any loss or damage is caused to the Designated Facility or the CUF and any insurance effected in respect of that loss or damage has been rendered irrecoverable by some act or default of any of the User or of the Approved Personnel then the User will make good any loss or repair any damage and in default will pay to LandCorp the costs and expenses incurred by LandCorp in making good any loss or repairing any damage.
- (h) The User is:
- (i) not to, and is not to permit any person to, do anything which adversely affects the continuation, validity, extent of cover or ability to make a claim under the insurance policies mentioned in this Condition;
 - (ii) to notify LandCorp immediately if an event occurs which gives rise or might give rise to a claim under the relevant insurance or which could prejudice the insurance policies required under these Conditions;
 - (iii) to comply with the requirements of any Local or Public Authority, the Insurance Council of Australia and any insurer in relation to fire protection of any improvements, when they are being, or are constructed;
 - (iv) to expend any moneys received in respect of a claim made under the insurance policies in reinstating or replacing the damaged or destroyed property in respect of which the claim was made;
 - (v) to ensure that under the insurance policies mentioned in this Condition, the insurer has no rights of subrogation against LandCorp, and the User indemnifies LandCorp against any loss arising from a breach of this Condition;
 - (vi) to ensure that all premiums in respect of the insurance policies and renewals of insurance policies are paid punctually;
 - (vii) to ensure that it does not at any time during the Term do or bring upon the Designated Facility anything where the insurance policies may be rendered void or voidable; and
 - (viii) to ensure that if the User does anything or brings anything onto the Designated Facility where the rate of premium on the insurance policies will be liable to be increased, the User will obtain insurance cover for such increased risk and pay all additional premiums in respect of the Designated Facility (if any) required on account of the additional risk caused by the use to which the Designated Facility is put by the User.

11. Bond

11.1 User to Deliver: If the Schedule states that a bond is required, the User must deliver to LandCorp, prior to accessing any part of the Designated Facility or the Common User Facility, the Bonded Amount. Each such bond must be from a surety and on terms which are approved by LandCorp (at its sole discretion) and must be validly executed and enforceable.

11.2 Application of Bonded Amount: LandCorp will apply the Bonded Amount in the following manner:

- (a) the Bonded Amount received will be offset against any amount which is or is likely to be payable by the User to LandCorp under the Agreement; and
- (b) if the amount received exceeds, in the reasonable opinion of LandCorp, the aggregate of all the amounts which are or are likely to be payable by the User to LandCorp under the Agreement, LandCorp will upon termination of this Agreement pay to the User that excess.

11.3 Release by LandCorp: If requested in writing by the User to do so, LandCorp will, within 20 Business Days following termination of the Agreement, release the Bonded Amount, or the appropriate part of the Bonded Amount dependent upon the use of the Bonded Amount by LandCorp under Condition 11.2.

11.4 Insufficient Security: If at any time LandCorp reasonably considers the Bonded Amount does not represent sufficient security to LandCorp, having regard to the User's undischarged liabilities (including any contingent liabilities) or obligations under this Agreement, the User will, within 5 Business Days after receiving written Notice from LandCorp to do so, procure a replacement or additional bond from one or more sureties reasonably acceptable to LandCorp. In any such event, this Agreement will be construed (as the context permits) so that Conditions 11.2 to 11.4 (inclusive) apply equally to the replacement or additional bond.

12. Warranties

12.1 Capacity Warranties: The User represents and warrants to LandCorp that:

- (a) it has the right, power, authority and has taken all corporate action to validly enter into, and perform its obligations under, this Agreement;
- (b) its obligations under this Agreement are valid and binding and are enforceable against it in accordance with their terms;
- (c) it is not aware of any fact or circumstance which would or might prevent other parties from performing its obligations under this Agreement; and
- (d) all information provided to LandCorp or the Manager, by or on behalf of the User, 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.

12.2 Other User's Warranties: The User warrants to LandCorp that:

- (a) it has all Authorisations required to perform the User Activities;
- (b) 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;
- (c) neither the User is in default under a law affecting it or its property, or any obligation or undertaking by which it or any of its property are bound in a manner which will, or might reasonably be expected to, materially affect its ability to perform its obligations under this Agreement;
- (d) there is no pending or threatened action or proceeding affecting it or its property before a court, referee, Local or Public Authority, 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
- (e) where the User is now acting or in the future may act as trustee, the User covenants with and warrants to LandCorp 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:

- (i) the Trust is lawfully and validly constituted and all deeds and other instruments in respect of it have been properly executed;
- (ii) the Trust is and throughout this Agreement will remain unrevoked and not varied other than with the written consent of LandCorp, which must not be unreasonably withheld;
- (iii) the property of the Trust and the property of the User will at all times be available to satisfy the obligations of the User under this Agreement; and
- (iv) there is and will at all times be no restriction on the right of the trustee to be indemnified for the property of the Trust.

12.3 Application of Warranties: The representations and warranties in this Condition 12 are made on and from the execution of this Agreement, and are by force of this Condition to be taken to be made anew on each day during the Term of this Agreement.

12.4 Exclusion of Warranties: 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, LandCorp gives no warranties and makes no representations (expressed or implied):

- (a) regarding this Agreement; or
- (b) that the Designated Facility is now, or will remain suitable or adequate for all or part of the Permitted Use and any warranties as to suitability and adequacy of the Designated Facility implied by Law are expressly denied.

13. Force Majeure

13.1 Effect of Force Majeure: 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 Condition 13.1 as the "**Non Performing Party**"), subject to Conditions 13.2 and 13.3, the Non Performing Party will have no liability to the other party in respect of the non performance of such obligations, provided that:

- (a) 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 Condition 13.1(a), the Non Performing Party reasonably requires any extension 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 reasonable grounds only);

- (b) 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
- (c) this Agreement will otherwise remain in effect in all respects.

13.2 Obligation to pay Licence Fee continues: The obligation to comply with the Payment Requirements continues during an event of Force Majeure subject to abatement under Condition 13.3.

13.3 Abatement: If it is reasonably impracticable for the User to carry on the Permitted Use as a result of the Designated Facility being destroyed or damaged by an event of Force Majeure, then if:

- (a) 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
- (b) the policy of insurance effected by LandCorp 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 Licence 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 Designated Facility is again rendered fit for the User to carry on the Permitted Use or until this Agreement is terminated under Condition 13.6.

13.4 Expert determination: If a dispute arises as to an abatement under Condition 13.3, then:

- (a) the dispute will be referred for a determination to an expert agreed between the parties, or failing agreement within 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**");

- (b) the Expert will act as an expert and not as an arbitrator and any decision of the Expert is final and binding on the parties; and
- (c) the full Licence Fee must be paid by the User without any deduction or abatement until the date of such Expert's determination, following which (if applicable), LandCorp must refund any part of the Licence Fee which according to the determination has been overpaid,

provided that this Condition does not apply if the destruction or damage referred to in Condition 13.3 occurs in consequence (directly or indirectly) of some act or default of the User, or if LandCorp'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.

13.5 Suspension: LandCorp may suspend any or all of 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.

13.6 Termination as a Result of Force Majeure: 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 20 Business Days or longer, either party may terminate this Agreement by written Notice to the other party, and:

- (a) such Notice, in order to have effect, must state:
 - (i) 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 Condition (the "**Relevant Force Majeure**"); and
 - (ii) 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;

- (b) subject to complying with the requirements of Condition 19 if any dispute has arisen between the parties, the Agreement will terminate on the date which is 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;

- (c) that Notice will cease to have effect if, within the time period referred to in Condition 13.6(b) (or such longer period as may be specified in that Notice) the Relevant Force Majeure ceases, to have the effect referred to in Condition 13.1.

14. User's Responsibility for Safety

14.1 The User agrees that for the purposes of the OSH Legislation, the User has sole control of the Designated Facility.

14.2 The User must comply with all relevant OSH Legislation in respect of the Permitted Use. The User must also prepare a Safety Management Plan and Safe Work Procedures and comply with them.

14.3 For the purposes of demonstrating its compliance with this Condition and with OSH Legislation, the User must provide to the Manager a certificate in a form required by the Manager from time to time, from a suitably qualified person as determined by the Manager acting reasonably, certifying that an appropriate Safety Management Plan and Safe Work Procedures have been prepared in accordance with Condition 14.2.

14.4 For the purposes of demonstrating its compliance with this Condition and with OSH Legislation, the User must provide to LandCorp as soon as reasonably practicable after an incident occurs which requires notification:

- (a) a copy of any report the User has provided to the regulator pursuant to OSH Legislation in respect of notifiable incidents;
- (b) statements of the action to be taken to prevent any repetition of the notifiable incident; and
- (c) a copy of its Safety Management Plan and Safe Work Procedures incorporating actions to prevent any repetition of the notifiable incident.

14.5 The User must ensure that works and operations for the Permitted Use are carried out and completed in accordance with the Safety Management Plan and the Safe Work Procedures.

14.6 The User releases and indemnifies and agrees to keep indemnified LandCorp from and against all actions, claims, demands, losses, damages, costs and expenses for or in respect of the User's occupation of the Designated Facility which LandCorp is or may be or become liable by reason of the OSH Legislation in respect of the Designated Facility or its use.

14.7 The User must take all necessary precautions and appropriate action to avoid and prevent the uncontrolled escape of petroleum or any other inherently dangerous or inflammable liquid or matter from the Designated Facility. In the event of escape of petroleum or other liquid or matter (whether with or without fault or negligence on the part of the User or its employees, agents, customers, invitees or contractors) the User must, at its own cost and expense, take immediate action to stop the escape of petroleum or other liquid or matter and rectify and repair any injury or damage whatsoever caused and clean up and reinstate the Designated Facility to its former condition prior to the escape.

14.8 The User must take all reasonable precautions against causing an outbreak of fire on the Designated Facility and must comply with all Laws and all lawful requirements, notices or orders of any Local or Public Authority relating to fire prevention.

14.9 The User must install and maintain fire fighting and control equipment on the Designated Facility to the requirements of Fire and Emergency Services Authority of Western Australia.

14.10 The User agrees to implement all reasonable measures to ensure that all improvements and all operations upon the Designated Facility will, at all times, be safe and not cause physical injury to any persons or damage to any property.

15. Operations

15.1 Operation Requirements

During the Term, the User must carry out any works on the Designated Facility on the following basis:

- (a) pursuant to plans and specifications previously approved in writing by the Manager and all Local or Public Authorities;
- (b) only for the purposes connected with the Permitted Use and not for any other purposes; and
- (c) with all proper care, skill and diligence;
- (d) in accordance with Good Industry Practices;
- (e) in compliance with all applicable Laws and regulations and the requirements of all relevant Local or Public Authorities;
- (f) in a proper, efficient and workmanlike manner exercising due care and skill;

- (g) using materials which are in good condition and suitable to the purpose for which they are intended;
- (h) in such a manner so as to prevent Contamination or Pollution of the Designated Facility and any adjoining land including from:
 - (i) storm water or other run-off;
 - (ii) waste materials arising from the works and use and occupancy of the Designated Facility by making adequate provision for the collection and disposal of those waste materials; and
 - (iii) fill, building materials or other rubbish from or arising out of the works.
- (i) in a manner which complies with all Authorisations and any relevant Law or standard; and
- (j) otherwise to the satisfaction of LandCorp.

- (A) the existence of any Contamination affecting the Designated Facility which relates to or arises from the User's use of the Designated Facility;
- (B) any Pollution affecting the Designated Facility which relates to or arises from the User's use of the Designated Facility;
- (C) an Environmental Notice being served on the User or any other person which relates to or arises from the User's use of the Designated Facility; or
- (D) the making of a complaint to any person, including but not limited to, the User or the commencement of proceedings against the User relating to an alleged failure by the User to observe or perform an obligation under an Environmental Law or Authorisation; and

16. Environmental

16.1 General Obligations

- (a) The User:
 - (i) must obtain any Authorisation required for any conduct, activity or use undertaken by the User on the Designated Facility, including the Permitted Use before that conduct, activity or use is undertaken and must keep all such Authorisations in full force and effect throughout the Term;
 - (ii) must use the Designated Facility in a manner which complies with each Environmental Law and each Authorisation held by the User;
 - (iii) must not do or omit to do any act which might directly or indirectly result in the revocation, suspension or modification of an Authorisation in relation to the Designated Facility or any conduct or activity relating to the use of the Designated Facility;
 - (iv) must not cause or permit any Contamination, Pollution or Environmental Harm to the Designated Facility;
 - (v) must notify LandCorp immediately on becoming aware of:

- (vi) must comply, at the User's cost, with every Environmental Notice issued in respect of, arising from or relating to, the User's use of the Designated Facility, whether the notice is served on LandCorp or the User.
 - (b) Without affecting:
 - (i) the obligations of the User in this Condition; or
 - (ii) limiting any right of, or indemnity in favour of, LandCorp,
- if any Contamination, Pollution or Environmental Harm occurs in breach of sub-condition (a), the User must do everything necessary to minimise the effect of the Contamination, Pollution or Environmental Harm as soon as reasonably practicable and must remediate any resultant damage and harm, to the reasonable satisfaction of LandCorp and in compliance with any Environmental Notice or Environmental Law.
- (c) The obligations of the User under this Condition continue after the expiration or earlier determination of this Agreement.
 - (d) At the expiry date, cessation or sooner determination of the Term the User must:

- (i) ensure that all Contamination whether on or below the surface of the Designated Facility or in the Designated Facility is remediated or removed or otherwise contained as reasonably required by LandCorp and in accordance with the requirements of any Local or Public Authority and in accordance with this Condition.
 - (ii) promptly make good and rehabilitate the Licensed Area and remediate any Contamination, Pollution or Environmental Harm of or to the Designated Facility arising from, or connected with, the use and occupation of the Designated Facility by the User or the User's employees, agents, contractors, invitees or licensees, whether such use and occupation is or was under the terms of this Agreement.
- (i) remove, contain or otherwise deal with any Contamination it has caused or contributed to as reasonably required by LandCorp and in accordance with the requirements of any Local or Public Authority; and
 - (ii) deliver up the Designated Facility in a condition consistent with the performance of the User's obligations under this Agreement.
- (f) The User must promptly inform LandCorp if it becomes aware of or suspects the presence of Contamination on the Designated Facility.

16.2 Liability of Environmental Matters

- (a) The User acknowledges and agrees that:
- (i) it has inspected the Designated Facility; and
 - (ii) it has had the opportunity prior to the execution of this Agreement to test the Designated Facility and undertake due diligence on the Designated Facility to satisfy itself as to the environmental and other conditions of the Designated facility.
- (b) The User agrees that it will be liable for Remediation (as defined in the CSA) of any Contamination it has caused or contributed to, to the extent required under the provisions of the CSA.
- (c) The User is fully responsible and liable for all investigations, remediation (whether in situ clean up, removal or disposal of Contamination) and all other costs whether direct or indirect associated with Contamination on the Designated Facility caused or contributed to by the User.
- (d) The User agrees it will comply with all present or future Laws in relation to the removal, containment or Remediation (as defined in the CSA) of any Contamination on the Designated Facility.
- (e) For the purposes of the provisions of this Agreement relating to termination, the User will ensure that on termination of this Agreement the User will:

17. No Warranty by LandCorp

17.1 The User acknowledges and declares that in entering into this Agreement the User has:

- (a) accepted the Designated Facility as it stands with all existing faults, defects and characteristics whether they are apparent or ascertainable on inspection or not and without any obligation of LandCorp to particularise any faults, defects or characteristics known to LandCorp; and
- (b) inspected the Designated Facility and that it has not relied on any promise, representation, warranty or undertaking given by or on behalf of LandCorp in respect to the suitability of the Designated Facility for any business to be carried on therein and all warranties (if any) implied by law are hereby so far as legally possible expressly negated.

17.2 LandCorp gives no warranty whatsoever that the Designated Facility will be or is suitable for undertaking any use whatsoever and the User relies solely upon its own opinion or the opinion of any engineering, architectural, geotechnical, planning, environmental or other expert or consultant opinion or advice as to the suitability of the Designated Facility for any proposed use.

17.3 The User is taken to have satisfied itself:

- (a) by physical examination, testing and inspection and relying on the opinion or advice of such experts as the User may wish to consult as to the state and condition, quality and quantity of the Designated Facility and each and every part thereof;
- (b) by enquiry of all relevant authorities as to the zoning of the Designated Facility and the use to which the Designated Facility may be put and the easements or other agreements to which the Designated Facility may be subject and as to the

requirements of each and every authority, body, city or commissioner which has control or jurisdiction over the Designated Facility in relation to the use of the Designated Facility;

- (c) that the Designated Facility is in every respect suitable and safe for the purpose of any proposed use; and
- (d) as to the provision of, or lack of, water, drainage, sewerage, gas, electricity, telephone or other services or connections to the Designated Facility or in respect of the fact that any services or connections may be joint services to other land, or because any facilities for services for other land pass through the Designated Facility.

17.4 The User is deemed to enter into this Agreement in reliance solely upon such examination, inspection, enquiry, perusal, opinion and advice only and not upon any or any alleged statement, warranty, condition or representation whatsoever made or alleged to have been made to the User by LandCorp or any employee or agent of LandCorp.

17.5 The terms, covenants, conditions and provisions contained in this Agreement expressly or by statutory implication cover and comprise the whole of the Agreement between the parties and it is expressly agreed and declared that no further or other terms, covenants or provisions whether in respect of the Designated Facility or otherwise will be deemed to be implied herein or to arise between the parties hereto by way of collateral or other agreement.

17.6 To the extent that any one or more of the provisions in these Conditions is prohibited by any applicable Law including the *Competition and Consumer Act 2010 (Cth)* such provisions and each of them will to such extent be ineffective without invalidating or modifying the remaining provisions which will continue in full force and effect as if the provisions so prohibited had not been included.

17.7 The User acknowledges that it takes this Agreement on the basis of the condition of the Designated Facility as at the Commencement Date and will not make any claim whatsoever against LandCorp in relation to the condition of the Designated Facility as at the Commencement Date.

17.8 Without affecting the generality of this Condition, LandCorp does not represent or warrant that the zoning of the Designated Facility will allow the Designated Facility to be used for the Permitted Use, whether with the approval or permission of the relevant planning authority or otherwise. It is the User's responsibility to make its own enquiries about zoning, and the User warrants that, before

executing this Agreement, the User has done so to the User's own satisfaction.

17.9 LandCorp is not liable for any damage or loss suffered by the User as a result of:

- (a) any breakage, malfunction, interruption, accident or damage of or to any buildings, fixtures or other improvements on the Designated Facility;
- (b) any act or omission of any person on the Designated Facility; or
- (c) damage to or loss of any property or injury to any person on or near the Designated Facility due to any cause,

except to the extent it may be caused by the wilful misconduct of LandCorp or its officers, employees or agents.

17.10 LandCorp does not make any representation or warranty concerning the existence or non-existence of Contamination, Pollution or Environmental Harm in relation to the Designated Facility.

17.11 The User relies on its own investigations concerning the existence or non-existence of Contamination, Pollution or Environmental Harm in relation to the Designated Facility.

18. Release

18.1 The User:

- (a) agrees to occupy, use and keep the Designated Facility at the risk of the User; and
- (b) releases to the full extent permitted by law LandCorp or its officers, employees or agents including the Manager from any liability, claims, demands, costs, expenses and losses of any kind including caused by, arising from, or relating to:
 - (i) any accident or damage to property or death or injury to, or illness of any person, of any nature in or near the Designated Facility, including from carrying out the Permitted Use;
 - (ii) any loss of profits or business of the User;
 - (iii) any act or default by any person accessing the Designated Facility;
 - (iv) loss of or damage to fixtures or personal property of the User or the User's Agents,

except to the extent it may be caused by the wilful misconduct of LandCorp, its officers, employees or agents.

18.2 The obligations of the User under this Condition continue after the expiration or earlier determination of this Agreement in respect of any act, matter or thing occurring before the expiration or earlier determination of this Agreement.

19. Dispute Resolution

19.1 Discussions: The parties will meet and discuss any dispute between them arising out of this Agreement.

19.2 Mediation: If the discussions referred to in Condition 19.1 fail to resolve the dispute within 20 Business Days, either party may (by written Notice to the other party) require that the dispute be submitted to mediation by a single mediator appointed by agreement of both parties, or failing agreement, nominated by the President of the Law Society of Western Australia. In the event of any such submission to mediation:

- (a) the mediator will be deemed to be not acting as an expert or as an arbitrator;
- (b) the mediator will determine the procedure in timetable for the mediation; and
- (c) the cost of the mediation will be shared equally between the parties.

19.3 Legal Proceedings: Except in the case of either party seeking urgent interlocutory relief or any proceedings in relation to Industrial Action, neither party may issue any legal proceedings in respect of any such dispute unless that party has first taken reasonable steps to comply with Condition 19.2.

20. Termination

20.1 Right to Terminate: LandCorp may terminate this Agreement immediately upon written Notice, if the User breaches any obligation under the Agreement, or under any other agreement between the parties, and such breach has not been remedied within 10 Business Days after LandCorp has given the User notice requesting it to remedy the breach, or if the default is not capable of being otherwise rectified or remedied, payment is made to LandCorp within the 20 Business Day period of reasonable compensation (in lieu of rectification or other remedy).

20.2 Cease Using Other Property: On termination of this Agreement the User must cease using any property belonging to LandCorp in relation to this Agreement.

20.3 Insolvency: LandCorp may immediately upon written Notice terminate this Agreement upon an Insolvency Event occurring in respect of the User.

20.4 Vacating Designated Facility:

- (a) Upon termination of this Agreement whether by effluxion of time or otherwise, the User must immediately vacate the Designated Facility and the CUF and, unless otherwise waived in writing by LandCorp, remove all plant, equipment, property and other property brought onto the Designated Facility or the CUF by the User and leave the Designated Facility and the CUF 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 Commencement Date;
- (b) If LandCorp waives in writing (in agreement with the User) the requirement to remove any property from the Designated Facility pursuant to Condition 20.4 (a), the ownership of those property will transfer to LandCorp at the end of the Term;
- (c) In removing any property, the User must make good any damage caused by that removal;
- (d) Where necessary, as determined by LandCorp at its sole discretion, the User must restore each part of the Designated Facility and the CUF for which the User is liable under this Agreement and repair, restore or replace the Designated Facility and the CUF to the state and condition as at the Commencement Date;
- (e) Upon termination for any reason, the User must deliver all keys and security access devices providing access to or across or within the Common User Facility or the Designated Facility held by the User and whether or not provided to the User by LandCorp.

21. Notices

21.1 Method of Delivery of Notices: 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:

- (a) delivered by hand or sent by pre-paid mail to the intended recipient's address as set out below (for Notices to LandCorp) or as set out in Item 11 of the Schedule (for Notices to the User); or

- (b) sent by facsimile to the intended recipient's facsimile number as set out below (for Notices to LandCorp) or as set out in Item 11 of the Schedule (for Notices to the User) and the sender's facsimile machine confirms transmission to the intended recipient in full without error.
- (c) sent by email to the email address as may have been notified by a party to the other party from time to time. An email must be signed by means of an electronically produced signature of a person authorised by a party or must state that it is being sent by a person authorised to send the email on behalf of a party.

Notices to LandCorp:

Address: 124 Quill Way, Henderson,
Western Australia 6166

Fax No: +61 8 94370555

Attention: AMC Facility Manager

21.2 Time of Delivery of Notices: For the purposes of this Agreement, any Notice given in accordance with this Condition 21 will be deemed to have been received:

- (a) 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;
- (b) if sent by pre-paid mail within Australia, on the second Business Day after posting; or
- (c) if sent by email, as soon as it enters the recipient's information system (as shown on a confirmation of delivery report from the sender's information system),

(being, in each case, the time of day at the intended place of receipt of that Notice).

22. LandCorp's Rights

22.1 Suspension for User's breach: Without prejudice to LandCorp's right to terminate this Agreement under Condition 20.1, if and for so long as the User is in default under this Agreement, then provided LandCorp has first given the User written Notice to remedy the default under Condition 20.1, LandCorp 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 Condition extends the Term of this Agreement.

22.2 Right of Interruption: LandCorp reserves to itself and to its employees, consultants,

independent contractors and agents, including the Manager, the right to enter, pass over and remain upon the Designated Facility at all reasonable times with all necessary materials and appliances to:

- (a) erect, make, excavate, lay or install in, on, over, through or under the Designated Facility any works including any fences, posts, drains, trenches, pipes, conduits, ducts, cables, wires or other things reasonably required for any existing or future activity or service to the Designated Facility or any adjacent land;
- (b) operate, inspect, remove, maintain, renew, replace alter or add to any works, including any work referred to in Condition 22.2(a); and
- (c) use or access land adjacent to the Designated Facility.

In exercising its rights under this Condition, LandCorp will not cause any unreasonable interference to the use of the Designated Facility by the User.

23. Use of Berth

23.1 Where the Permitted Use includes the use of a Berth to allow the use of or cause a vessel to be berthed and to load out structures, materials and plant and equipment then the following provisions apply.

23.2 All provisions to this Agreement apply to the mooring of any vessel at the Berth or the use of the Berth on the basis that the Berth is part of the Common User Facility.

23.3 The User will cause any vessel to dock at the Berth and be moored at the Berth only for the Permitted Use and for such berthing to be effected in accordance with:

- (a) Good Industry Practice;
- (b) all requirements and directions of the Manager;
- (c) in accordance with all applicable Laws;
- (d) the requirements of any Local or Public Authority.

23.4 The User is solely responsible for the operations of any vessel moored at the Berth and the provisions of this Agreement will extend to and apply to all operations of the vessel as if the vessel was situated on the Common User Facility and owned by the User.

23.5 The User is not entitled to use the Berth for the mooring of any vessel at the Berth unless the User has first given not less than 10 Business

Days notice in writing to the Manager in such form as may be required by the Manager for such notification and the Manager has approved the use of the Berth. If required by LandCorp or the Manager, it may impose any reasonable conditions relating to the use of the Berth.

23.6 The User is solely liable for all arrangements in respect of the berthing of the vessel by itself or through any agent or contractor of the User.

23.7 Where this User Agreement includes use of the Jetty, the following provisions will apply:

- (a) the User must comply with the Jetty Licence entered into between the State and LandCorp, a copy of which will be made available to the User upon request to the Manager, and
- (b) the User must comply with any Facility Rules relating to the Jetty.

24. General

24.1 Assignment: 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 LandCorp (which LandCorp may withhold at its absolute discretion).

24.2 Agreement – Deemed Assignment

- (a) If the User or a Related Body Corporate is a corporation (other than a corporation listed on a recognized Stock Exchange) any Change in Control of the corporation will be deemed to be an assignment of the benefit of this Agreement for the purposes of this Condition.
- (b) If the User is a trust, any change in the beneficial interests or Change of Control of the trust, which has the effect of changing control of the trust, will be deemed to be an assignment of the benefit of this Agreement for the purposes of this Condition.
- (c) The User must not, without the prior consent in writing of LandCorp:
 - (i) hold the User's interest in this Agreement on trust for any party other than pursuant to the trust (if any) described herein;
 - (ii) declare a trust of the User's interest pursuant to this Agreement;
 - (iii) in the event of approval of a trust by LandCorp, vary, amend, alter or revoke the terms contained in

any trust add to or vary the beneficiaries; or

- (iv) distribute or join in the distribution of any or all of the capital of such trust or in any other way vest such trust, and

any such holding, declaration, variation, amendment, alteration, revocation, addition, distribution or vesting will be deemed to be an assignment to which the provisions of this Condition apply.

24.3 Governing Law: 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.

24.4 Entire Arrangement: This 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.

24.5 Copies: Any facsimile copy or emailed 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.

24.6 Waiver: 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.

24.7 Costs and Duty: 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 will pay all or any duty under the Duties Act on this Agreement.

24.8 Further Assurances: 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.

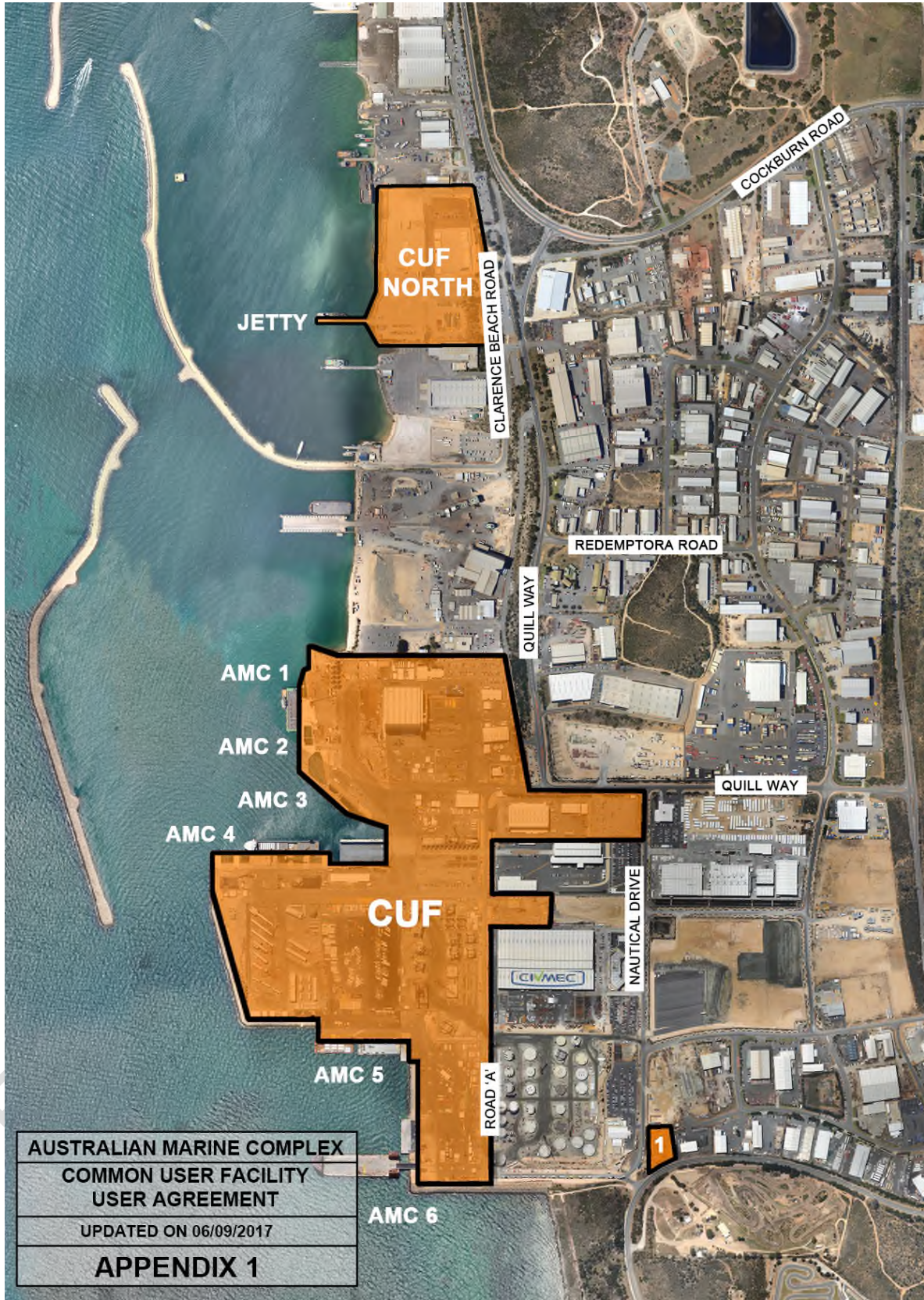
24.9 Remedies Cumulative: The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by Law.

24.10 Relationship Between the Parties: 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.

24.11 Amendment: No amendment or variation of this Agreement is valid or binding on a party unless made in writing executed by the parties.

FOR INFORMATION ONLY

Appendix 1: Map of the Common User Facility



Appendix 2: Assembly Area Definition

