

## TASPORTS BERTHING LICENCE

### Terms and Conditions

#### 1 DEFINITIONS

In this Licence, unless the contrary intention appears:

**Authority** means any governmental or other public body, local authority or other authority of any kind;

**Business Day** means any week day on which banks are generally open for business in Hobart, Tasmania;

**Commencement Date** means the date specified as such in Item 6 of the Order Form;

**Common Areas** means:

(a) the areas of TasPorts' Land, during the period that they are not let or licensed to other persons, which are designated or are permitted by TasPorts for common use by lessees and other persons authorised by TasPorts; and

(b) the Pier; and

(c) the areas identified by TasPorts as providing access to and egress from the Licensed Berth and the Port;

**Contamination** means the presence of any substance, gas, liquid, chemical, mineral or other physical or biological matter that presents a risk of harm to human health or the Environment or that is controlled, prohibited or regulated from time to time by any Environmental Law, including by-products and derivatives of any such matter in land or water at a concentration above the concentration at which it is naturally present at the same locality and which presents a risk of harm to human health or the Environment;

**Environment** means the physical factors of the surroundings of human and non-human life forms, including without limitation the land, soil, plants, habitat, waters, atmosphere, climate, sounds, odours, tastes, biodiversity and the social and aesthetic values of landscape;

**Environmental Law** means any Law, whether statute (including regulations, policies, orders and guidelines enforceable by statute) or common law (including the laws of negligence, trespass and nuisance), relating to the Environment including any law relating to land use, planning, pollution of air, water, soil or groundwater, chemicals, waste, heritage, vegetation, the use of transport, the storage and handling of dangerous goods, the health or safety of any person, or any other matters relating to but not limited to the protection of the Environment, health or property.

**Expiry Date** means the date specified in Item 6 of the Order Form;

**GST** has the meaning given in the GST Act;

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth;

**Item** means an item in the Order Form;

**Law** includes any statute, rule, regulation, proclamation, ordinance or by-law whether Commonwealth, state, territorial or local;

**Licence** means this document and includes the Order Form, schedules, appendices and annexures to this Licence;

**Licence Fee** means the licence fee set out in Item 7 of the Order Form as amended in accordance with this Licence.

**Licence Fee Increase:** means the percentage increase of the Licence Fee as set out in Item 7 of the Order Form;

**Licensee** means the person specified as such in Item 2 of the Order Form and includes:

(a) when an individual, the individual's legal personal representatives and permitted assigns;

(b) when a company or corporation, its permitted successors and assigns,

and unless a contrary meaning appears, includes the Licensee's Personnel or any other person claiming through or under the Licensee;

**Licensed Berth** means the licensed berth referred to in Item 4 of the Order Form or such alternative berth as advised by TasPorts from time to time giving reasonable prior notice;

**Marina** means the marina described in Item 5A of the Order Form;

**Marine and Safety Tasmania** means the statutory Authority that was established by the *Marine and Safety Authority Act 1997* (Tas) to manage functions relating to the safe operation of recreational boats and commercial vessels in Tasmania;

**Order Form** means the Order Form attached to this Licence;

**Outgoings** mean:

(a) all rates, taxes, levies (including waste management levy), charges, assessments, duties, impositions and fees payable to or chargeable by any public municipal or government body, authority or department;

(b) all other duties and taxes paid or payable by TasPorts (including GST, land tax but excluding income tax) in consequence of the receipt by TasPorts of the Licence Fee and other moneys payable under this Licence;

(c) all charges for Services (including, if requested by the Licensee, any charges relating to the installation and supply of three phase power) and other facilities furnished or supplied at or to the Licensed Berth and/or the Marina whether charged by TasPorts or otherwise.

Where Outgoings are not separately metered or do not relate solely to the Licensed Berth and/or the Marina they shall be apportioned based on the area that the Licensed Berth bears to the area in respect of which the relevant assessment is made;

**Permitted Use** has the meaning given in clause 4.3;

**Personnel** means all employees, agents, contractors, volunteers or invitees;

**Pier** means the pier structure located at the Port and against which the Licensed Berth is located;

**Port** means the port described at Item 5B of the Order Form;

**Rules** means the Rules attached at Appendix C to this Licence (and as amended by TasPorts and notified to the Licensee from time to time);

**Schedule of Charges** means the Schedule of Charges attached at Appendix A (as amended annually by TasPorts);

**Services** means the services running through or servicing the Licensed Berth (whether or not they serve any other berth) including, without limitation, roads and driveways, power, electricity, light, gas, oil, water, sewers, pumps, air conditioning, CCTV, telecommunications, security services, waste removal, environmental management and fire lines, together with any car parking and other facilities provided by TasPorts to the Licensee.

**Special Conditions** means the special conditions contained in Item 11 of the Order Form;

**TasPorts** means the entity described in Item 1 of the Order Form and includes TasPorts' successors and, where the context permits, any person authorised by TasPorts to do any act on TasPorts' behalf for the purposes of this Licence;

**TasPorts' Land** means the land owned by TasPorts including the Marina;

**Term** has the meaning given to it in Item 6 of the Order Form and clause 4.1;

**Vessel** means the vessel owned and/or operated by the Licensee and detailed in Item 3 of the Order Form.

## 2 INTERPRETATION

2.1 In this Licence unless the contrary intention appears:

- (a) a reference to this Licence or another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments re-enactments or replacements of any of them occurring at any time before or after the date of this Licence;
- (c) the singular includes the plural and vice versa;
- (d) words expressed in one gender include the other genders, as is appropriate in the context;
- (e) "including" and similar expressions are not words of limitation;
- (f) a reference to a clause is a reference to a clause in this Licence;
- (g) the word "person" includes a firm, a body corporate, an unincorporated association or an Authority;
- (h) a reference to any body or Authority shall, if the body or Authority has ceased to exist, be deemed a reference to the body or Authority as then

serves substantially the same objects as that body or Authority;

- (i) headings are inserted for convenience and do not affect the interpretation of this Licence;
- (j) If this Licence prohibits the Licensee from doing a thing:
  - (i) the Licensee must do everything necessary to ensure that the Licensee's Personnel do not do that thing; and
  - (ii) the Licensee must not allow or cause any person to do that thing.
- (k) If a party is made up of more than one person, or a term is used in this Licence to refer to more than one party, then:
  - (i) a reference to a party includes each and every person;
  - (ii) those persons are bound separately; and
  - (iii) any two or more persons are bound jointly and severally.

## 3 LICENCE

- 3.1 In consideration for the payment of the Licence Fee by the Licensee to TasPorts, and subject to clauses 4.3 and 4.6, TasPorts hereby grants to the Licensee a non-exclusive licence to berth the Vessel at the Licensed Berth by mooring to the Pier structure immediately adjoining the Licensed Berth and to any poles or any other structures designated from time to time by TasPorts for the Term subject to the terms and conditions expressed in this Licence.
- 3.2 In addition to the grant of licence pursuant to clause 3.1, and subject to clause 4.3, TasPorts further provides the Licensee with the right to use the Common Areas during the Term upon the terms and conditions contained in this Licence.

## 4 TERM

- 4.1 This Licence commences on the Commencement Date and continues until the Expiry Date unless otherwise terminated in accordance with this Licence.
- 4.2 After the Expiry Date, if the Licensee continues to use the Licensed Berth with the consent of TasPorts this Licence continues as a monthly licence:
  - (a) commencing on the day immediately following the Expiry Date;
  - (b) the Licence Fee being payable in advance, comprising a monthly Licence Fee proportionate to the Licence Fee payable by the Licensee immediately before the Expiry Date; and
  - (c) on the terms contained in this Licence, except those terms which are inapplicable to a monthly licence,
  - (d) being terminable by either party by giving fourteen (14) days' written notice expiring at any time.

- 4.3 The Licensee acknowledges and agrees that the licence conferred by this Licence is granted for the sole purpose of providing the Licensee with a right to berth the Vessel in accordance with clause 3.1 **(Permitted Use)**.
- 4.4 The Licensee agrees to:
- (a) use the allocated Licensed Berth for the berthing of the Vessel;
  - (b) keep clean and tidy and maintain the Licensed Berth in the same state of repair and condition as at the commencement of each use of the Licensed Berth by the Licensee (fair wear and tear excepted);
  - (c) subject to clause 4.4(b), immediately make good as nearly as is practicable or compensate TasPorts for any damage caused to the Licensed Berth or surrounding area by or in connection with the use of the Licensed Berth by the Licensee or its Personnel;
  - (d) comply with any directions of TasPorts (including a request to relocate the Vessel to another location to enable TasPorts or its Personnel to undertake maintenance works and or implement policies regarding the storage, bunkering and refuelling of the Vessel at the Port), and obtain any necessary permits required by TasPorts, in connection with this Licence;
  - (e) comply with TasPorts' requirements in relation to accessing the Licensed Berth;
  - (f) comply with all Laws (including in relation to health and safety) and all requirements of any Authority applicable to the Licensee's use of the Licensed Berth;
  - (g) duly and punctually comply with the Rules and any signage erected by TasPorts;
  - (h) ensure the Licensee and its Personnel do not engage in disorderly conduct;
  - (i) give prompt notice to TasPorts of any of the following events as soon as the Licensee or the Licensee's Personnel becomes aware of its occurrence:
    - (i) any event where material damage of any kind is caused to any vessel, the Licensed Berth or any person or property during the course of using the Berth; or
    - (ii) any suspected security breach or security threat.
  - (j) ensure that each of its Personnel comply with the Licensee's obligations under this Licence; and
  - (k) comply with any Pier loading and weight limits that TasPorts may impose and notify the Licensee of (including by way of signage) from time to time, whilst using the Pier.
- 4.5 The Licensee agrees that it will not:
- (a) use the Vessel as a permanent residence at the Licensed Berth;
  - (b) allow another vessel other than the Vessel to berth in the Licensed Berth;
  - (c) do, or permit to be done, any act or thing which interrupts or interferes with or is likely to interrupt or interfere with TasPorts' Port operations;
  - (d) cause or allow a nuisance on or from the Licensed Berth;
  - (e) do anything which might adversely affect any insurance policies of TasPorts in relation to the Port, the Pier or the Licensed Berth, whether by causing:
    - (i) such policies to become void or voidable;
    - (ii) any claim on such policies being rejected; or
    - (iii) a premium to be increased or otherwise;
  - (f) refuel its Vessel in or about the Licensed Berth or anywhere in the Port, other than those places within the Port which are specifically identified by TasPorts as being a refuelling berth and notified to the Licensee from time to time;
  - (g) store any goods, equipment or cargo in or about the Licensed Berth or the Common Areas; or
  - (h) store any fuel in or about the Licensed Berth or the Common Areas.
- 4.6 TasPorts and the Licensee acknowledge and agree that:
- (a) the Licensee has priority over the Licensed Berth;
  - (b) TasPorts cannot guarantee the Licensee access to the Licensed Berth in certain circumstances including:
    - (i) during Special Events;
    - (ii) due to circumstances which are beyond TasPorts' reasonable control, including natural disasters;
    - (iii) where there is major structural damage to the Pier; and
    - (iv) in the event of an emergency or operational necessity;
  - (c) TasPorts will not allow other vessels to load or unload passengers, goods or equipment over the Licensed Berth except in an emergency, or exceptional operational circumstances; and
  - (d) TasPorts will use all reasonable endeavours not to interfere with the Licensee's use of the Licensed Berth.
- 4.7 TasPorts or a person authorised by TasPorts, may at any time whether in the presence of the Licensee, or not and without notice:
- (a) access and inspect the Licensed Berth and the activities being undertaken on it;
  - (b) order the cessation of activities if, in the reasonable opinion of TasPorts, it is unsafe or dangerous to permit the activities on the Licensed Berth until such time as TasPorts considers the cessation no longer necessary.
- 4.8 The Licensee warrants that the Licensee owns the Vessel or is in charge of the Vessel and has all necessary authority to enter into this Licence.

4.9 In exercising the Licensee's rights under this Licence, the Licensee acknowledges that the Licensee is acting at its own risk.

## 5 USE OF LICENSED BERTH

- 5.1 The Licensee has full responsibility, at its expense, to ensure that all approvals, permits, consents and licences required for the use of the Licensed Berth are obtained and maintained by the Licensee throughout the Term and that all their conditions are observed.
- 5.2 The Licensee acknowledges that TasPorts will not be liable for any loss or damage to, or theft of, the Vessel (including gear, equipment and other contents in the Vessel) except to the extent caused by the negligence or wilful default of TasPorts, its employees or agents.
- 5.3 When necessary for the proper management of the Marina and Port, TasPorts may notify the Licensee by giving reasonable prior notice (unless in an emergency) that the Licensed Berth is unable to be used by the Licensee and may, in its absolute discretion, offer the Licensee the use of a berth other than the Licensed Berth (**Alternative Berth**) for any period of time advised by TasPorts.
- 5.4 In the event that TasPorts offers the Licensee an Alternative Berth pursuant to clause 5.3 the terms and conditions of this Licence will continue to apply in relation to use of the Alternative Berth as if references in this Licence to "Licensed Berth" were replaced with "Alternative Berth". If the Licensee does not wish to occupy the Alternative Berth, it may terminate this Licence by giving written notice to TasPorts in which case this Licence will end.
- 5.5 The Licensee acknowledges that this Licence does not confer any proprietary interest in the Licensed Berth on the Licensee.
- 5.6 The Licensee acknowledges that TasPorts and its other licensees and lessees may at all times from time to time exercise all their rights including (but without in any way limiting the generality of this provision) their rights to use, possess and enjoy the whole or any part of the Pier or the Port.
- 5.7 Special events may be held at the Marina (**Special Events**) during which the Licensee may be required to vacate the Licensed Berth as notified by TasPorts from time to time in writing. Within 7 days of such notice from TasPorts, the Licensee must vacate the Licensed Berth and acknowledges that no alternative berth will be provided by TasPorts for the duration of the Special Events.

## 6 COMMON AREAS

- 6.1 The Licensee and its Personnel may use the Common Areas subject to:
- (a) the restrictions imposed by this Licence;
  - (b) any other restrictions, rules and conditions imposed by TasPorts and notified to the Licensee from time-to-time;
  - (c) any applicable Laws; and
  - (d) any notices or requirements of any relevant Authority.
- 6.2 The Licensee acknowledges that TasPorts has control over the Common Areas and that it may, in respect of the Common Areas:
- (a) restrict or prohibit access to or by particular lessees, licensees, persons or classes of persons;
  - (b) restrict or prohibit access during certain hours or days;
  - (c) close them temporarily for as long as TasPorts' reasonably considers necessary for the purpose of maintenance.
- 6.3 The Licensee must not obstruct, and must do everything reasonably necessary to prevent its Personnel from obstructing, the entrances, exits, driveways and any other parts of the Common Areas.
- 6.4 TasPorts may give a lease or a licence to a person on any terms of any part of the Common Areas without being liable to the Licensee in any way and without affecting the Licensee's obligations under this Licence, provided that TasPorts must not unreasonably interfere with the Licensee's access to the Licensed Berth.

## 7 ACT OF NON-COMPLIANCE

- 7.1 Subject to clause 7.2, if TasPorts becomes aware that any of the Licensee's Personnel have done or are doing anything which does not comply with the provisions of this Licence (**Act of Non-Compliance**):
- (a) TasPorts may give a written notice to the Licensee specifying the Act of Non-Compliance and the timeframe within which the Act of Non-Compliance must be rectified (**Non-Compliance Notice**); and
  - (b) the Licensee must ensure that that the Act of Non-Compliance is rectified in the timeframe specified within the Non-Compliance Notice.
- 7.2 TasPorts may, in the name of and as agent for the Licensee, revoke the licence to enter on TasPorts' Land of any of the Licensee's Personnel who have done or are doing an Act of Non-Compliance, at any time without notice to the Licensee if:
- (a) TasPorts reasonably considers that the Act of Non-Compliance:
    - (i) poses a threat to the safety of the Licensed Berth, or to any person or thing within TasPorts' Land or on the Licensed Berth; or

- (ii) relates to a work health and safety or security issue,
- (b) any Act of Non-Compliance set out in a Non-Compliance Notice is not rectified in accordance with the Non-Compliance Notice or re-occurs after that Act of Non-Compliance has been rectified.

## **8 LICENCE FEES**

- 8.1 The Licensee must pay the Licence Fee, the Outgoings and any other charges under this Licence, plus GST to TasPorts in accordance with Item 7 of the Order Form in equal instalments as set out in Item 8 of the Order Form.
- 8.2 TasPorts will issue a valid tax invoice (for the purposes of the GST Act) to the Licensee for quarterly, six monthly or yearly instalments of the Licence Fee as set out in Item 8.
- 8.3 The Licensee will pay to TasPorts interest on any amounts owing or overdue under this Licence at the interest rate of two percent (2%) per annum above the prime bank rate from time to time charged by an Australian bank nominated by TasPorts on overdraft facilities in excess of \$100,000.00 from the date upon which payment is due until the date payment is received by TasPorts.
- 8.4 On and from each Review Date, the Licence Fee payable by the Licensee will be adjusted:
  - (a) by increasing the Licence Fee by the Licence Fee Increase; or
  - (b) in accordance with the Schedule of Charges issued for each financial year by TasPorts.

## **9 TASPOTS' OBLIGATIONS**

- 9.1 Subject to clause 13, TasPorts will use all reasonable endeavours to:
  - (a) maintain the Port in a clean and tidy condition;
  - (b) provide waste or refuse containers at or near the Licensed Berth;
  - (c) provide water, single-phase power, three-phase power and light at or near the Licensed Berth;
  - (d) keep and maintain all improvements in or on the Licensed Berth in good repair (fair wear and tear excepted); and
  - (e) provide lighting on walkways and jetties to the Licensed Berth.
- 9.2 For the avoidance of doubt, the Licensee is responsible for the payment for use of any Services provided by TasPorts in accordance with clause 9.1(c)

## **10 OPERATIONAL ISSUES**

- 10.1 The Licensee must not erect or cause to be erected any signage in or about the Licensed Berth unless and until it has obtained:
  - (a) the prior written consent of TasPorts; and

- (b) all approvals and permits required by any relevant Authority which has jurisdiction over the Pier and/or the Port.

- 10.2 The Licensee agrees to comply with all reasonable lawful directions given by TasPorts' authorised personnel.
- 10.3 The Licensee agrees to comply with the Special Conditions.

## **11 RULES**

- 11.1 TasPorts may from time to time make such further Rules as it may consider necessary for the proper management of the Marina and may alter and repeal any or all of the Rules from time to time as it thinks fit and will promptly advise the Licensee of any such change.

## **12 ENVIRONMENTAL ISSUES**

- 12.1 The Licensee must not permit any Contamination, petroleum product, oil, grease, waste product, litter or any noxious, dangerous or poisonous chemical or substance to be discharged into the Licensed Berth, Port or any nearby body of water and will discharge those products and materials only if permitted by the relevant statutory Authorities, as required by Law and in accordance with any conditions imposed by those Authorities.
- 12.2 The Licensee must notify TasPorts as soon as it becomes aware of any breach of clause 12.1.
- 12.3 The Licensee will comply with the demands, notices and requirements of relevant regulatory Authorities in respect of Contamination of the waters surrounding the Licensed Berth caused by the Licensee or by its Personnel including any notices to remediate.
- 12.4 The Licensee must notify TasPorts within forty eight (48) hours after receiving any demand or notice from an Authority in respect of any Contamination in or about the Licensed Berth.
- 12.5 The Licensee agrees to indemnify TasPorts and its Personnel against any liability, loss, damage, expense or claim which TasPorts may incur as a consequence of the breach by the Licensee or any of its Personnel of any obligation under this clause 12 including fines, reasonable legal costs, consultants' fees and remediation costs except to the extent caused by the negligence or wilful default of TasPorts or TasPorts' Personnel.
- 12.6 This clause 12 survives the expiry or termination (for any reason) of this Licence.

### **13 EXCLUSION AND LIMITATION OF LIABILITY**

- 13.1 Subject to the other terms of this clause 13, TasPorts excludes all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms in relation to the Licensed Berth that are not expressly set out in this Licence to the maximum extent permitted by law.
- 13.2 Subject to the other terms of this clause 13, TasPorts' maximum aggregate liability to the Licensee for any loss or damage or injury arising out of or in connection with the supply of services under this Licence (including a supply of the Licensed Berth), including any breach by TasPorts of this Licence however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis, is limited to \$10,000.00.
- 13.3 Nothing in this Licence is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the Australian Consumer Law (as set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth)) (**ACL**), or the exercise of a right conferred by such a provision, or any liability of TasPorts in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of services.
- 13.4 If TasPorts is liable to the Licensee in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, TasPorts' total liability to the Licensee for that failure is limited to the resupply of the Licensed Berth or the payment of the cost of resupply. This clause 13.4 does not apply where the supply is of a kind ordinarily required for personal, domestic or household use or consumption.
- 13.5 Notwithstanding anything else in this clause 13, the liability will be reduced to the extent the loss or damage is caused by or contributed to by the Licensee, the Licensee's employees, agents or contractors.

### **14 PUBLIC LIABILITY INDEMNITY AND INSURANCE**

- 14.1 The Licensee must ensure that, when using the Licensed Berth, the Vessel is berthed and moored in such a way as to ensure the safety of the Licensee's Personnel and the general public and so as not to expose the Licensee's Personnel or the general public to the risk of injury.
- 14.2 The Licensee must indemnify and hold harmless TasPorts from and against all damages, sums of money, costs, charges, expenses, actions, claims and demands which may be sustained or suffered or recovered or made against TasPorts by any person for any injury such person may sustain when using or

entering or near the Licensed Berth where 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 the Licensee or by Personnel of the Licensee except to the extent caused by the negligence or wilful default of TasPorts or TasPorts' Personnel.

- 14.3 The Licensee must effect and maintain throughout the Term with a reputable insurance company a policy of public risk insurance in the sum of at least the amount specified in Item 10 of the Order Form in respect of any single event or accident, including fire, flood and explosion with respect to the Licensed Berth and the Permitted Use and the Pier.
- 14.4 The policy of public risk insurance must cover death of or injury to any person and damage to the property of any person (including liability of the Licensee to TasPorts and any Personnel of the Licensee) while such person is using, upon, entering or leaving the Licensed Berth and be extended to include claims, risks and events covered under indemnities provided by the Licensee to TasPorts under this Licence.
- 14.5 The public risk insurance policy must be in the name of the Licensee with the TasPorts' interest noted on the policy.
- 14.6 The Licensee must also effect and maintain throughout the Term with a reputable insurance company a policy of protection and indemnity insurance (P&I Insurance) in respect of the Vessel for no less than the amount specified in Item 10 of the Order Form for liability arising out of any single accident or event.
- 14.7 A certificate of currency with respect to the:
- (a) public risk insurance;
  - (b) P&I Insurance; and
  - (c) insurances required pursuant to clause 14.9 (if any specified in Item 10),
- must be provided to TasPorts:
- (a) 7 days prior to the Commencement Date or within such other timeframe prior to the Commencement Date as agreed to by TasPorts; and
  - (b) prior to the expiration of each of the insurance policies or at such other reasonable times as requested by TasPorts,
- together with either a receipt for the payment of the last premium in respect of that insurance or an email of the certificate of currency from the insurer to the email address specified in Item 1.
- 14.8 In the event that the Licensee does not comply with clause 14.6, TasPorts may direct the Licensee not to permit the Vessel to be berthed at the Licensed Berth and the Licensee must comply with such direction.

14.9 The Licensee must also effect and maintain throughout the Term with a reputable insurance company any other insurances that are specified in Item 10 or that TasPorts reasonably requests.

14.10 This clause 14 survives the expiry or termination (for any reason) of this Licence.

## 15 TRANSFERABILITY

15.1 The Licensee covenants with TasPorts not to assign, sublet, transfer, mortgage or pledge the licence which is the subject of this Licence.

15.2 TasPorts must only assign its rights and obligations under this Licence with the Licensee's prior written consent (such consent not to be unreasonably withheld or delayed).

## 16 TERMINATION

16.1 If the Licensee:

- (a) fails to pay all or any part of the Licence Fee or other amount payable pursuant to the terms of this Licence within fourteen (14) days after such amounts become due and payable; or
- (b) breaches or fails to comply with any provision of this Licence; or
- (c) fails to comply with any direction issued by TasPorts or Marine and Safety Tasmania or its lawful delegates, or
- (d) any of the Licensee's Personnel, engage in any unlawful or disorderly conduct whilst in the Marina, or,

then TasPorts will be entitled, without prejudice to any other rights it has under this Licence, to terminate this Licence on giving written notice to the Licensee.

16.2 If TasPorts:

- (a) breaches or fails to comply with any provision of this Licence; or
- (b) subject to compliance with Chapter 5 of the Corporations Act, an Insolvency Event occurs with respect to TasPorts
- (c) then the Licensee will be entitled, without prejudice to any other rights it has under this Licence, to terminate this Licence on giving written notice to TasPorts.

16.3 Either party may terminate this Licence at any time for its sole convenience, and for any reason without liability to the other party, by giving thirty (30) days written notice to the other party. The termination will be effective from the date stated in the notice in which case TasPorts will refund (on a pro-rata basis) that part of the Licence Fee received by TasPorts in respect of any period of time after the date stated in the notice.

16.4 If this Licence is terminated under clause 16.1 or clause 16.2 by the non-defaulting party (**Non-defaulting Party**):

(a) the defaulting party (**Defaulting Party**)

indemnifies the Non-defaulting Party against any liability or loss arising and any cost incurred (whether before or after termination of this Licence) in connection with the Defaulting Party's breach of this Licence and the termination of this Licence;

(b) the Non-defaulting Party must take reasonable steps to mitigate its loss;

(c) the parties are relieved from future performance of this Licence, without prejudice to any right of action that has accrued prior to the date of termination; and

(d) rights to recover damages are not affected by the termination.

16.5 Clause 16.4 survives the expiry or termination (for any reason) of this Licence.

## 17 OBLIGATIONS FOLLOWING TERMINATION

17.1 The Licensee must immediately remove the Vessel from the Licensed Berth on or before the end of the Term or on the earlier determination of this Licence.

17.2 If the Licensee fails to remove the Vessel, TasPorts may at the Licensee's cost and expense, remove the Vessel from the Licensed Berth and the Port, take possession of the Licensed Berth and grant another licence to any person to use the Licensed Berth on whatever terms TasPorts determines reasonably appropriate.

17.3 In respect of all or any of the Licensee's property which the Licensee has failed to remove from the Licensed Berth, the Licensee is deemed to have abandoned the property and title to it if the Licensee has not removed the Licensee's property within 14 days of the end of the Term or earlier determination of the Licence and TasPorts at its option may acquire title to that property through abandonment.

## 18 PRIVACY

The Licensee irrevocably authorises TasPorts to disclose to, or obtain from, a credit reporting agency, such personal and/or trade information as is permitted to be disclosed or obtained, pursuant to the *Privacy Act 1988 (Cth)* (**Privacy Act**) and to use such information in any manner and for any purpose permitted under the Privacy Act at any time during the currency of this Licence.

## 19 PERSONAL INFORMATION

19.1 In this clause, '**personal information**' means information about an individual whose identity is apparent, or can reasonably be ascertained.

19.2 In relation to any personal information disclosed to TasPorts by the Licensee in connection with this Licence, the Licensee acknowledges that TasPorts may:

- (a) use or disclose the information for the purpose of exercising its rights or fulfilling its obligations under this Licence, except where otherwise required by law; and
  - (b) use or disclose the information when reasonably necessary in connection with its operation or management of the Port of which the Licensed Berth forms part.
- 19.3 In exercising its rights under this clause TasPorts must take reasonable steps to ensure that any persons to whom the information is given comply with the requirements of *Privacy and Personal Information Protection Act 2004* (Tas).

19.4 This clause will continue to have effect after the expiry or termination of this Licence.

## 20 GOODS AND SERVICES TAX

- 20.1 Unless otherwise stated in this Licence, all amounts payable by one party to another party are exclusive of GST.
- 20.2 If GST is imposed or payable on any supply made by a party under this Licence, the recipient of the supply must pay to the supplier, in addition to the GST exclusive consideration for that supply, an additional amount equal to the GST exclusive consideration multiplied by the prevailing GST rate. The additional amount is payable at the same time and in the same manner as the consideration for the supply, subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.
- 20.3 Expressions defined in the GST Act have the same meaning when used in this clause 19.

## 21 INDEMNITIES

- 21.1 The Licensee is responsible for and indemnifies TasPorts from and against all costs (including legal costs on a solicitor and client basis), losses, liabilities, expenses and claims (including in relation to any loss, damage or injury to property or person or death) arising during or after the Term, in connection with or arising directly or indirectly from, and all costs incurred in connection with:
- (a) the presence of the Vessel at the Berth or in the Port;
  - (b) the use or occupation of the Licensed Berth by or on the part of the Licensee or the Licensee's Personnel, except to the extent caused by the negligence or wilful default of TasPorts or TasPorts' Personnel;
  - (c) any unlawful or negligent act or omission of the Licensee or the Licensee's Personnel, in or on the Licensed Berth, TasPorts' Land or at the Port;
  - (d) TasPorts doing anything which the Licensee must do under this Licence but has not done; and

(e) any breach of this Licence by the Licensee or the Licensee's Personnel except to the extent caused by TasPorts or its employees or agents.

- 21.2 Amounts due under the indemnity in clause 21.1 (the Licensee Indemnity) must be paid by the Licensee to TasPorts on demand.
- 21.3 This clause 21 survives the expiry or termination (for any reason) of this Licence.

## 22 NOTICES

22.1 Any notice, consent approval, waiver and other communications to be given under or in connection with this Licence must be in writing, signed or clearly sanctioned by an authorised officer of the sender and marked for the attention of the contact as set out or referred to in the Order Form or, if the recipient has notified otherwise, then marked for attention in the way last notified.

- 22.2 Notices must be:
- (a) left at the address set out or referred to in the Order Form; or
  - (b) sent by prepaid post to the address set out or referred to in the Order Form; or
  - (c) sent by email to the email address set out or referred to in the Order Form.

However, if the intended recipient has notified a changed postal address or changed email address, then the communication must be to that postal address or email address.

- 22.3 If sent by post, they are taken to be received 6 (6) days after posting (or ten (10) days after posting if sent to or from a place outside Australia).
- 22.4 If sent by email, they are taken to be received at the time the email message is sent unless:
- (a) the sender receives automated email notification that the email transmission has failed or has been delayed within 12 hours of sending the notice; or
  - (b) the sender receives automated email notification to the effect that the recipient is not likely to receive the notice until a later date, which will then become the deemed date of receipt.
- 22.5 Despite clauses 22.3 and 22.4, if they are received after 5pm in the place of receipt or on a non-Business Day, they are taken to be received at 9am on the next Business Day.

## 23 DISPUTE

- 23.1 If a party has a dispute or complaint against the other, that party (**Notifying Party**) must notify the other party in one of the ways described in clause 22. The Notifying Party must ensure that the notice contains specific detail identifying the nature of the dispute or complaint.
- 23.2 Within 10 Business Days of the delivery of a dispute notice, representatives of each of the parties with



authority to resolve the dispute or complaint must meet and use their best endeavours to:

- (a) resolve the dispute or complaint to the mutual satisfaction of both parties as soon as possible; or
- (b) submit the dispute or complaint to mediation provided that both parties agree.

- 23.3 If the parties are not able to reach a resolution of the dispute or complaint within a reasonable period of time (in any event being no more than 30 Business Days after the date of receipt of the notice of the complaint or dispute), then the dispute or complaint must be submitted for arbitration in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Fast Track Arbitration Rules.
- 23.4 For disputes which involve a claim for less than \$50,000.00, arbitration will take place by way of written submissions supported by relevant Deeds alone unless both parties agree otherwise.
- 23.5 Nothing in this clause 23 prevents either party:
- (a) from seeking urgent interlocutory relief; or
  - (b) from seeking recovery for any claim that that party reasonably considers to be a monetary claim, from a Court of competent jurisdiction or by such other manner as is appropriate in the circumstances.
- 23.6 The parties agree to continue to perform their obligations under this Licence, notwithstanding the existence of a dispute or complaint.

## **24 GENERAL**

- 24.1 An amendment or variation to this Licence is not effective unless it is in writing and signed by the parties.
- 24.2 Unless this Licence expressly provides otherwise, a consent under this Licence may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.
- 24.3 Each party must promptly do all further acts and execute and deliver all further documents (in a form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this Licence.
- 24.4 The non-exercise of, or delay in exercising, any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.
- 24.5 If anything in this Licence is unenforceable, illegal or void then it is severed and the rest of this Licence remains in force, unless the severance would change

the underlying principal commercial purpose or effect of this Licence.

- 24.6 This Licence constitutes the entire agreement between the parties in relation to its subject matter and supersedes all previous agreements, negotiations and understandings between the parties in relation to its subject matter.
- 24.7 The parties acknowledge and agree that this Licence and the performance of this Licence does not represent or imply a partnership, agency, fiduciary relationship, employment relationship, joint venture, distribution or any other category of commercial or personal relationship between the parties recognised at Law or in equity as giving rise to forms of specific rights and obligations.
- 24.8 Each party acknowledges that it has had the opportunity to review this Licence before entering into it and has not relied on any oral or written representations made by or on behalf of the other party as an inducement to enter into this Licence.
- 24.9 Each party agrees to pay their own costs, charges and expenses of and incidental to the preparation, completion and execution of this Licence.
- 24.10 The Laws of Tasmania govern this Licence and the parties submit to the non-exclusive jurisdiction of the courts of Tasmania.