

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 (Clauses 1 and 2.4)

Western Australian Land Authority of Level 3, 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 (Clause 4.1)

Item 5 Permitted Use (Clause 4.1(a))

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

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

Item 7 Licence Fees (Clause 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 COM-001 as shown in the table over.

[Current Schedule of Rates for CUF (COM-001) to be inserted on this page]

FOR INFORMATION ONLY

Item 8 Payment Requirements (Clause 8)

Invoicing: Invoiced at the end of the month **or other**
Payment: As per Clause 8.4 **or other**

Item 9 Insurance (Clause 10.3) Specified sum \$20 million

Item 10 Bonded Amount (Clause 11) Nil

Item 11 Address for Notices for the User (Clause 16.1)

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 F: xxxx xxx xxx
Company E:
Address 1
Address 2

Item 12 Special Conditions (Clause 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 AMC-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 AMC-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:

12.3.1 Interruptions and postponements

12.3.1.1 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:

12.3.1.1.1 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

12.3.1.1.2 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

12.3.1.1.3 is otherwise beyond the reasonable control of the Manager.

12.3.2 Consequences

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

12.3.2.1.1 use its reasonable endeavours to make Berths available to the User at the next mutually convenient opportunity;

12.3.2.1.2 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.

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

12.3.2.1.4 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 Clause 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 Clause 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.

12.6 Use of 300tn Southern Wharf Pedestal Crane (300T Crane)

If the User under the Permitted Use is agreeing to use the 300T Crane the User accepts that they have read, understand and will comply with the requirements contained in the document UM-CR01 User Manual 300T Crane.

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

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 of Contract

1. Definitions

Definitions: In this Agreement, unless the context otherwise requires:

"Agreement" means the Schedule and these General Conditions of Contract;

"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 clause 9.1 and who have undertaken the appropriate facility inductions;

"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;

"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;

"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 clause 7.1 and as amended from time to time or any further plan or policy.

"Contamination" means the meaning given under Section 4 of the Contaminated Sites Act (WA) 2003.

"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;

"Employee Relations Policy" means LandCorp's employee relations policy for the Common User Facility, as amended from time to time, and as made available to the User;

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

"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 Administration) Act 1999*, at the rate prevailing from time to time;

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

"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" includes all present and future:

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

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

"Manager" means AMC Management (WA) Pty Ltd, (ACN 100 354 336);

"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 and Conservation;

"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.

"Schedule" means the Schedule which precedes these General Conditions of Contract;

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

"Term" means, subject to clause 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 in Item 1 of the Schedule; and

"User Activities" means all activities carried out by the User within the Common User 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).

"User Management Plans" means each management plan submitted by the User to LandCorp pursuant to

clause 7.1 and as amended from time to time or any further plan or policy

2. Interpretation

In this Agreement 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 shall 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 this Agreement and to the extent that there is any conflict between the Special Conditions and the terms of this Agreement, the Special Conditions shall take precedence.

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 clauses 7.2 and 17.2; and
- (b) to the extent necessary to give effect to clause 3.1(a), a non exclusive licence for the right to use, enjoy and have access to and egress from the Designated Facility, 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 Term: Subject to clause 3.3, this Agreement is for the Term and commences on the Commencement Date.

3.3 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.

4. Use of the Common User Facility

4.1 Designated Facility: Subject to clause 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.

- (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;

4.2 The User acknowledges that once it has taken possession of the Designated Facility pursuant to this User Agreement that the User is in full control of the Designated Facility and the activities carried out therein subject only to the matters set out in Clauses 5.5 and 17.2 of this User Agreement.

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 clause 16.

5.3 Privity: Clause 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) In addition the Manager shall be empowered to direct the User to:

5.5 Nothing in this clause 5 shall give 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 etc: 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 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 Port Facilities Security Plan Environmental Management Plan, and Employee Relations Policy or 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 must, 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) 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);
- (e) 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);
- (f) 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;
- (g) ensure that it does not interfere with any other user of the Common User Facility;
- (h) 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;
- (i) 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;
- (j) keep and leave the Common User Facility, in a clean, tidy and safe condition during and upon completion of the User Activities;
- (k) 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 clause.

7.3 Removal of Property: The User will not remove any property belonging to either LandCorp or the Manager from 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 licences, permits, authorisations, consents, registrations, approvals, authorities, exemptions and certificates required by Law other than those held by LandCorp which LandCorp is permitted to allow the User to have the benefit of and which LandCorp agrees can be utilized by the User ("**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, 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 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 clause) 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 that interferes or is likely to interfere with the access by any local or public authority or other person 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 or about the Common User Facility without the prior written approval of LandCorp.

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 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, buildings or other structures,
- (c) modify or replace any of Landcorp supplied assets including but not limited to electrical and plumbing installations:

without the prior approval of LandCorp and where applicable in accordance with the Facility Rules.

7.11 No Contamination or Pollution: The User shall 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 the Designated Area or the Common User Facility or any groundwater or sub surface area or any waters adjoining or near the Common User Facility or 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 shall immediately contact the Appropriate Authorities and provide the full details of the spillage. The User shall 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 the Appropriate Authorities and in accordance with the Law.

7.12 Notifiable Incident:

- (a) The User must advise the Manager of any Notifiable Incident which occurs within the Designated Facility or involving 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 shall make available to the Manager all records, documents and personnel as the Manager shall request and the User shall 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 to LandCorp, in accordance with the Payment Requirements, in consideration for the grant of the licence under clause 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 clause 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 clause 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 clause 14.

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 Restriction of Access: In the event that the payment shall remain outstanding for a period of 14 days past the due date for payment, the Manager may restrict the Users access to the Common User Facility.

The restriction can apply to the Management, Staff and Vehicles of the User or parties in any way connected to the User.

The restriction can apply until all amounts owing by the User have been paid or arrangements satisfactory to the Manager for payment have been made.

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 shall confer 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, the User hereby indemnifies and agrees to keep indemnified LandCorp to the extent caused or contributed to by the User from and against:

- (a) all loss or damage to the Designated Area and the Common User Facility caused by the negligence of the User or any employee, agent, licensee, customer or invitee of the User;
- (b) all loss or damage arising from the use or occupation of the Designated Area by the User or its employees, agents or contractors;
- (c) all damage, sums of money, costs, charges, expenses, actions, claims and demands which may be sustained or suffered or recovered or made against LandCorp by the User or by any other person for any injury, loss or damage the User or such other person may sustain when using or entering the Designated Area or the Common User Facility or any appliance connected with the Designated Area or the Common User Facility including any injury which 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 User or the employees, agents, licensees, customers or invitees of the User and whether or not the existence of such dangerous thing or dangerous state of affairs was or ought to have been known to the User;
- (d) all loss or damage arising from any work carried out by or on behalf of the User or its employees, agents or contractors under this Agreement;
- (e) all loss or damage arising from the User activities, operations, business or other use of any land under this Agreement;
- (f) all loss or damage arising from Pollution or Contamination of the Designated Area or the Common User Facility or any groundwater or sub surface area or any land adjoining the area or near the Designated Area or the Common User Facility and of the air generally above the Designated Area or the Common User Facility by any act of the User whatsoever;
- (g) all loss or damage arising from any breach of the obligations of the User under this Agreement;

- (h) all loss or damage arising from the exercise or attempted exercise of LandCorp's remedies arising from a breach of the obligations of the User under this Agreement.

10.3 Insurances:

- (a) The User will at its sole cost insure and keep insured in the name of LandCorp and of the User (as to their respective rights and interests) in respect of:
 - (i) liability for personal injury, loss, injury or damage to any person or the Designated Facility or the Common User Facility (including the User and the officers employees agents customers invitees and licensees or any of them) caused by or arising out of any act of or omission by any of LandCorp the User or the officers employees agents customers invitees and licensees of any of them on in or about or to or from or in relation to the Designated Facility or the Common User Facility or the condition or state of repair thereof or the business carried on therein or there from in the sum of \$20,000,000 or such other amount as may be specified in the Schedule (Item 9) in respect of any single accident or event (or such higher amount as may be reasonably required by LandCorp from time to time);
 - (ii) damage or loss to any property (including LandCorp's property) to the full replacement value of such property in respect of any single accident or event;
 - (iii) all other insurance reasonably required by LandCorp including Workers' Compensation Common Law and Statutory Liability insurance in respect of employees employed in or about the Designated Facility;
- (b) where the User is authorised by this to use the Berth, then the insurance will include damage to the Berth and associated facilities to the full replacement value of such property in respect of any single accident or event.
- (c) The User will ensure that the insurance required to be effected shall be effected with an insurer approved by LandCorp ("**Approved Insurer**"), and must prior to the Commencement Date produce to

LandCorp certificates of currency issued by the Approved Insurer, and at any time upon demand the original of, any policies of insurance required to be taken out by the User under this Agreement and the receipts relating to the payment of premiums on them and upon demand produce certificates of renewal for them (if applicable) and upon demand produce certificates of currency for them.

10.4 Comply with Insurance: The User shall comply with all the terms, warranties and conditions of the insurance policies effected under this Agreement or for public liability or any other insurance or the requirements of the insurer relating to the policy and not do or fail to do any act, matter or thing that causes 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.

10.5 Limits of Liability:

- (a) LandCorp shall not be liable for any failure to comply with any obligations on the part of LandCorp due to any reason beyond LandCorp's direct control;
- (b) In any event and notwithstanding anything else contained in this Agreement, in no circumstances will LandCorp be liable in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatsoever its cause for any:
 - (i) increased costs or expenses;
 - (ii) loss of use or reputation;
 - (iii) loss of profit, business contracts or revenues (actual or anticipated) or anticipated savings;
 - (iv) lost opportunities to enter into or complete any contracts or arrangements with third parties or any indirect, contingent, special, consequential claim or losses, damages or injury to any person or other entity of any nature whatsoever.

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 Common User Facility, the Bonded Amount. Each such bond must be from a surety and on terms which are approved by LandCorp (at its

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 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 clause 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 clauses 11.2 to 11.4 (inclusive) apply equally to the replacement or additional bond.

12. Warranties

12.1 Reciprocal Warranties: Each party (in this clause 12.1, (the "First Party") warrants to the other party 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 the other party, by or on behalf of the First Party, in relation to this Agreement is, or will

be when disclosed, complete and accurate in all material requests and was complete and accurate at the time it was given.

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

- (a) it has all Authorisations (as referred to in clause 7.4) 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 assets, or any obligation or undertaking by which it or any of its assets are bound in a manner which will, or might reasonably be expected to, materially affect its ability to perform its obligations under this Agreement;
- (d) there is no pending or threatened action or proceeding affecting it or its assets before a court, referee, Government Agency, commission, arbitrator or other tribunal which will, or might reasonably be expected to, materially affect its ability to perform its obligations under this Agreement; and
- (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 ("the 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; and
 - (iii) the assets of the Trust and the assets of the User will at all times be available to satisfy the obligations of the User under this Agreement.

12.3 Application of Warranties: The representations and warranties in this clause 12

are made on and from the execution of this Agreement, and are by force of this clause to be taken to be made anew on each day during the Term of this Agreement.

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 clause 13.1 as the "**Non Performing Party**"), subject to clauses 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 clause 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 reasonably 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 clause 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, 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 clause 13.6.

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

provided that this clause does not apply if the destruction or damage referred to in clause 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 clause (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 clause 14 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 clause 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 clause 13.1.

14. Dispute Resolution

14.1 Good Faith Discussions: The parties will meet and discuss in good faith any dispute between them arising out of this Agreement.

14.2 Mediation: If the discussions referred to in clause 14.1 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.

14.3 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 clause 14.2.

15. Termination

15.1 Mutual Right to Terminate: Either party ("**First Party**") may terminate this Agreement immediately upon written Notice, if the other party breaches any material obligation under the Agreement, or under any other agreement between the parties, relating to the Common User Facility, and such breach has not been remedied within 10 Business Days after the First Party has given the other party written Notice requesting it to remedy the breach, or failing remedy, arrangements have not been made to the reasonable satisfaction of the other party including, if the default is not capable of being otherwise rectified or remedied, payment within the 20 Business Day period of reasonable compensation (in lieu of rectification or other remedy) which takes into account the other party's obligation to take reasonable steps (if any) to mitigate its loss (if any).

15.2 Remove All User Property: On termination of this Agreement the User, at its own expense and at the earliest reasonable opportunity, must remove from the Common User Facility all fixtures, fittings, plant, machinery, equipment which are the property of the User.

15.3 Cease Using Other Property: On termination of this Agreement the User shall cease using any property belonging to LandCorp or to any other user in relation to this Agreement.

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

15.5 Vacating Designated Area:

- (a) Upon termination of this Agreement whether by effluxion of time or otherwise, the User must immediately vacate the Designated Area and remove all plant, equipment and other property

brought onto the Designated Area by the User and leave the Designated Area 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) In removing any property, the User must make good any damage caused by that removal;
- (c) Where necessary, the User shall restore each part of the Designated Area for which the User is liable under this Agreement and repair, restore or replace the Designated Area to the state and condition as at the Commencement Date;
- (d) 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 Area held by the User and whether or not provided to the User by LandCorp.

16. Notices

16.1 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.

Notices to LandCorp:

Address: 124 Quill Way
HENDERSON Western Australia 6166
and

Level 3, 40 The Esplanade
PERTH Western Australia 6000

Fax No: +61 8 9437 0555

Attention: AMC-CUF Facility Manager

16.2 Time of Delivery of Notices: For the purposes of this Agreement, any Notice given in accordance with this clause 16 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; or
- (b) if sent by pre-paid mail within Australia, on the second Business Day after posting,

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

17. LandCorp's Rights

17.1 Suspension for User's Breach: Without prejudice to LandCorp's right to terminate this Agreement under clause 15.1, or the provisions of clause 8.7 if and for so long as the User is in default under this Agreement, then provided LandCorp has first given the User 20 Business Days written Notice to remedy the default under clause 15.1, 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 clause extends the Term of this Agreement.

17.2 Right of Interruption: Subject to causing as little inconvenience and damage to the User as is reasonably practicable in the circumstances, 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 clause 17.2(a); and
- (c) use or access land adjacent to the Designated Facility.

18. Use of Berth

18.1 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 shall apply.

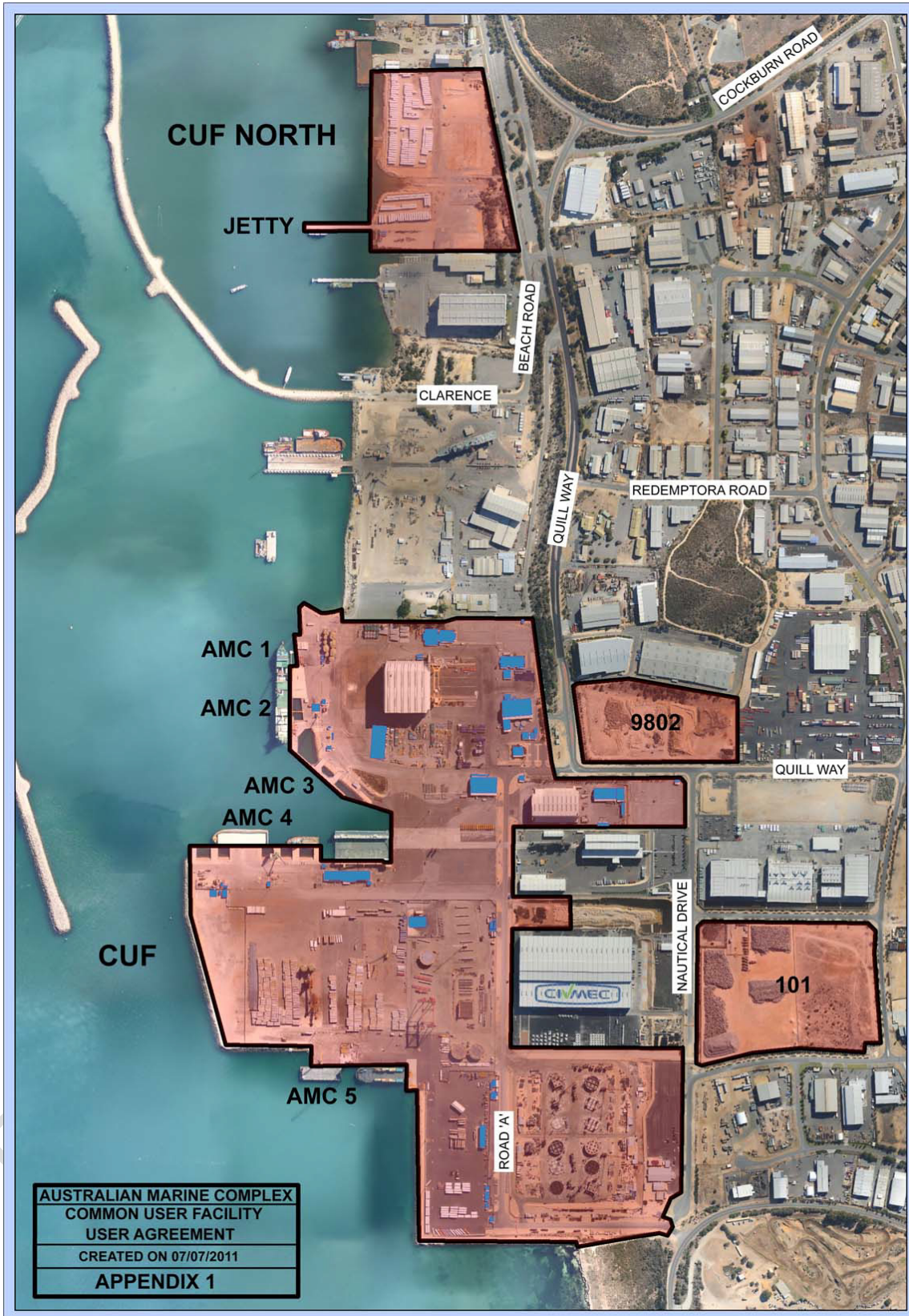
- 18.2** All provisions to this Agreement shall apply to the mooring of any vessel at the Berth or the use of the Berth on the basis that the Berth is part of the Common User Facility.
- 18.3** The User shall cause any vessel to dock at the Berth and be moored at the Berth only for the Permitted Use 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.
- 18.4** The User shall be solely responsible for the operations of any vessel moored at the Berth and the provisions of this Agreement shall 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.
- 18.5** The User shall not be 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 LandCorp in such form as may be required by LandCorp for such notification and LandCorp has approved the use of the Berth.
- 18.6** The User shall be solely liable for all arrangements in respect of the berthing of the vessel by itself or through any agent or contractor of the User.
- 18.7** 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.
 - (b) the User shall comply with any Facility Rules relating to the Jetty.

19. General

- 19.1 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).
- 19.2 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.

- 19.3 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.
- 19.4 Copies:** Any facsimile copy of this Agreement or any Notice given pursuant to this Agreement (including any signature on any such document) may be relied upon by the parties as though it were an original. This Agreement may be signed in one or more counterpart copies which, read together, will constitute one and the same agreement.
- 19.5 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.
- 19.6 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 shall pay all or any duty under the Duties Act on this Agreement.
- 19.7 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.
- 19.8 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.
- 19.9 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.
- 19.10 Amendment:** No amendment or variation of this Agreement is valid or binding on a party unless made in writing executed by the parties.

Appendix 1: Map of the Common User Facility



Appendix 2: Assembly Area Definition

