

298 Marine Terrace
PO Box 1856
GERALDTON WA 6531
Telephone: (08) 9964 0520

Geraldton Fishing Boat Harbour

Date of Application

The Licensee, by signing this application, offers to take from the Mid West Ports Authority (MWPA) a licence to use and occupy a pen on the conditions attached to or given to the Licensee with this application. The Licensee warrants that the information in this form is correct.

Licensee's details

Full Trading Name.....
Licensee's Name and ABN.....
Postal Address

Residential Address

Telephone 1 Telephone 2 (mobile)

Email Address

Other Contact Name (i.e. Skipper or Factory)

Email Address

Telephone 1 Telephone 2 (mobile)

Vessel Details

Name DOT, LFB or Registration No

Measured Length (meters) Beam Draft

Weight of vessel (dead weight/DWT)

Type of Propulsion

Hull Construction

Make and Colour of Hull (e.g. Conquest/GBB)

Year Launched

Normal Use of Vessel (e.g. Lobster, Prawn, Scallop, Charter etc)

Normal Operating Area (e.g. Freshwater, Abrolhos etc)

Pen Details

Pen Number.....
Pen Length.....

Guarantor's details

Name.....
Postal Address

Residential Address

Telephone 1 Telephone 2 (mobile)

Email Address

The personal information provided by you in this application will only be used to process the application for and then administer a pen licence. You can access and correct personal information about you held by the MWPA by contacting us in writing. The MWPA will not disclose your personal information to any other person or use it for any other purpose unless there is a legal requirement to do so. However, the MWPA may disclose your personal information to its employees and agents.

Please sign on page four and return entire document.

PEN LICENCE – TERMS AND CONDITIONS

The MWPA grants to the Licensee a non-exclusive licence to use the Pen for the Term on the following conditions.

1. CONDITIONS OF USE

- 1.1 The Pen may be used for the Term and only used for the purpose of mooring the Vessel.
- 1.2 The Licensee has the right of access and passage to and from the Pen across the Landing.
- 1.3 The Licensee must not discharge or leave any chattels or waste material on or within the Pen or the water or land surrounding the Pen, except in waste and rubbish receptacles provided by or approved by the MWPA.
- 1.4 The Licensee has the right to use rubbish bins provided at various locations in the FBH for rubbish and waste generated from activities associated with the use of the Vessel. Use of the rubbish bins for household or personal rubbish and waste may result in a termination of this licence.
- 1.5 The Licensee must not refuel the Vessel or any other vessel in the Pen or allow any petroleum products to be discharged from the Vessel into the Pen.
- 1.6 The Licensee must keep the Pen in good and substantial repair, order and condition (fair wear and tear and damage by fire, earthquake, storm, tempest and other act of God excepted) and in good, clean and safe condition to the satisfaction of the MWPA. The Licensee must promptly make good to the MWPA's satisfaction any damage to the Pen caused by the negligence, misuse or other wilful act or omission of the Licensee or any Permitted Person.
- 1.7 No alteration or addition to or erection of any sign, advertisement or notice on the Pen, Landing, or any other land or structure the property of the MWPA is permitted without the prior written approval of the MWPA.
- 1.8 The Licensee must comply with all laws in relation to the use of the Pen, access and egress from the Pen, crossing the Landing, and the use of the Vessel within the Port.
- 1.9 The Licensee must not do anything which might in any way endanger the property of the MWPA or any person in or on the Pen, the Landing or within the Port and must not carry on any illegal, immoral, offensive or unlawful activities, business or use on any part of the Pen, the Landing or within the Port.
- 1.10 The Licensee must not interfere with the MWPA's operations at the Port.

2. NO LIABILITY The security of the Pen (including the control of persons who may access the Pen), the Vessel and any other vessel moored within the Port owned by the Licensee are entirely the responsibility of and at the risk of the Licensee and the MWPA will not be liable to the Licensee for any loss or damage sustained by the Licensee whether or not that loss or damage is caused by (without limitation):

- (a) any accident;
- (b) as a consequence of the MWPA evicting or causing the Vessel to be towed away from the Pen or the Port; or
- (c) the MWPA's operations at the Port

3. LICENCE FEE

- 3.1 The Licensee must pay to the MWPA the Licence Fee upon signing of the Application Form and any further Licence Fee payable under clause 4.2.
- 3.2 The Licensee must pay any and all interest which is applied to the Licensee's account for Licence Fees which are not paid in accordance with the MWPA payments terms (which are specified on invoices from the MWPA).

4. CONTINUATION OF TERM

- 4.1 Unless, between 1 May and 30 May in a year of the Term:
 - (a) the Licensee gives written notice to the MWPA that it does not wish the Term to continue past 30 June of that year; or
 - (b) the MWPA, in its absolute discretion, gives written notice to the Licensee that it will not renew the Term past 30 June of that year,this licence is automatically granted for a further term of 12 months commencing on 1 July of that year.
- 4.2 The Licensee must pay the Licence Fee invoiced by the MWPA for a renewed term pursuant to clause 4.1.
- 4.3 If during the Term the Licensee gives written notice to the MWPA that it wishes to surrender this licence, then the MWPA may, at its discretion, accept that surrender. If the MWPA so accepts, the Term will end on the date the Licensee's notice is given to the MWPA and the MWPA must refund the part of the

Licence Fee paid which is referable to the period from the date that notice is given to the MWPA to (what would have been) the last day of the Term.

5. ENTRY BY AUTHORITY The Licensee must permit the MWPA, by its authorised officers and with or without workmen, at any reasonable time to enter upon the Pen (except in the case of emergency when the MWPA may enter at any time without notice), the Vessel or any other vessels occupying the Pen to:

- (a) assess the Licensee's compliance with these conditions;
- (b) view the Pen and execute any maintenance or repairs to the Pen that the MWPA wishes to make; and
- (c) to comply with any requirement, notification or order of any government authority.

6. ASSIGNING, SUBLICENSING The Licensee may not assign or grant a sub-licence of this licence without the MWPA's prior written approval. Sections 80 and 82 of the *Property Law Act 1969* (WA) are excluded from the terms of this licence.

7. RELOCATION OF PEN

- (a) At any time, the MWPA may change the location of the Pen by giving notice to the Licensee, which notice must identify the location and number of the new Pen (**New Pen**).
- (b) The Licensee must move any Vessel from the existing Pen to the New Pen within the time specified in the notice given by the MWPA under clause 7(a).
- (c) If the Licensee does not move the Vessel in accordance with clause 7(b), the MWPA may cause the Vessel to be towed away from the existing Pen and relocated to the New Pen with all costs of relocation incurred by MWPA being to the account of the Licensee.

8. DEFAULT

8.1 If the Licensee breaches any of these conditions and that breach continues for 14 days after notice has been given to the Licensee or if the Licensee becomes an Externally-administered Body Corporate, the MWPA may without any notice or demand at any time enter and repossess the Pen and, on re-entry, the Term will immediately determine but without affecting any accrued right of the MWPA.

8.2 All costs incurred by the MWPA arising out of a breach of these conditions must be paid by the Licensee on demand.

9. INDEMNITY AND INSURANCE

9.1 The Licensee uses the Pen, the Landing, waters surrounding the Pen and any other part of the Port at its own risk.

9.2 The Licensee indemnifies and releases the MWPA and its officers, employees and agents from each and every action, claim, expense, liability, cost and loss of any kind whatsoever and all damages which result from any act or omission of the Licensee or any Permitted Person or which are caused or contributed to by the use of the Pen, the Landing, the waters surrounding the Pen or any part of the Port by the Licensee or any Permitted Person, including but not limited to:

- (a) a breach of these conditions by the Licensee;
- (b) the death of, or injury to, any person;
- (c) any loss or damage to any property of any person; or
- (d) any loss or damage to the environment,

except to the extent that the loss or damage is caused or contributed to by the negligence of the MWPA.

9.3 The Licensee must, at its own cost, maintain public liability insurance, endorsed to cover the MWPA's interest, for a minimum of \$5,000,000 per claim or any higher amount required by the MWPA. On request by the MWPA, the Licensee will provide a certificate of currency to the MWPA.

10. TERMINATION

10.1 The MWPA may terminate this licence at any time by giving the Licensee not less than 7 days' notice.

10.2 On the expiry or earlier termination of the Term, the Licensee must:

- (a) surrender and yield up to the MWPA the Pen (in a condition complying with these conditions and all laws) and all access devices concerning the Pen; and
- (b) remove from the Pen and the Landing all of its property and promptly make good to the satisfaction of the MWPA any damage caused by that removal.

10.3 The Licensee removes its property from the Pen and the Landing under clause 10.2 at its own risk.

10.4 Any property remaining on the Pen or the Landing in breach of clause 10.2(b) may be removed by the MWPA and, unless the MWPA receives a claim for that property and payment of the storage cost within 14 days from the date of removal, title to that property passes to the MWPA at the end of that 14 day period.

- 10.5 Upon title passing to the MWPA under clause 10.4, the MWPA may sell and dispose of the property on its own account and without any liability to the Licensee to account for the proceeds of such sale or disposal.
- 11 **ENTIRE AGREEMENT** The Application Form and these conditions constitute the entire agreement between the MWPA and the Licensee concerning the Pen.
- 12 **GST**
- 12.1 Amounts in the Application Form and these conditions are GST-exclusive. If a taxable supply is made under this licence, then the amount payable for it is increased by the GST rate, the additional amount is payable at the same time as the amount to which it relates and the supplier must issue a tax invoice to the recipient of the supply at the time for that payment.
- 12.2 If a party is entitled to be reimbursed under this licence, the amount of the reimbursement will be net of any input tax credit which may be claimed by the party being reimbursed.
- 13 **GOVERNING LAW** This licence is governed by the laws of Western Australia. The parties agree to submit to the non-exclusive jurisdiction of its courts.
- 14 **GUARANTEE**
- 14.1 In consideration of the MWPA granting this Licence to the Licensee, the Guarantor guarantees:
- (a) to duly and punctually pay to the MWPA on demand, any money payable by the Licensee under the Licence; and
- (b) the observance and performance of the Licensee's obligation under the Licence.
- 14.2 The Guarantor indemnifies the MWPA against all loss or damage suffered or incurred by the MWPA as a result of the Licensee breaching any of its obligations under the Licence.
- 14.4 The obligations of the Guarantor under this clause 14 are irrevocable and continuing, and the Guarantor will not be released or discharged from its obligations as a guarantor or an indemnifier, including by the bankruptcy, liquidation or winding up of any person.
- 15 **Definitions**
- 15.1 **Application Form** means the application form attached to or given to the Licensee with these conditions.
- 15.2 **Externally-administered Body Corporate** is defined in the *Corporations Act 2001* (Cth).
- 15.3 **FBH** means the area of the Port referred to as the 'fishing boat harbour' or FBH.
- 15.4 **Landing** means the landing and other structures on the landing adjoining the Pen.
- 15.5 **Licence Fee** means the fee for the right to occupy a Pen in accordance with this licence which will be calculated based on the pen length multiplied by the rate advised in the Schedule of Tariffs.
- 15.6 **Pen** means the pen located at the Port, identified by the Pen Number set out on the cover page to this licence.
- 15.7 **Permitted Person** means the Licensee's officers, employees and agents.
- 15.8 **Port** means the Port of Geraldton.
- 15.9 **Schedule of Tariffs** means the schedule of tariffs as determined and published by MWPA on its website (as amended, superseded or varied from time to time).
- 15.10 **Term** means the period from the date the Application Form is signed by the MWPA up to and including the next 30 June and any renewal of that term under clause 4.1.

A word or phrase given a meaning in the Application Form has the same meaning in these conditions. A word or phrase defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning in clause 12.

Licensee

Signed Date

Name (Surname) (First Names)

MWPA

The MWPA, by signing this application, accepts the Licensee's offer referred to above.

Signed: Pen Number
Fishing Boat Harbour Manager

Insurance certificate ...Y N

Guarantor (can't be a company or trust)

Signed Date

Name
(Surname) (First Names)
