

SCHEDULE

TERMS & CONDITIONS FOR USE OF LOCAL GOVERNMENT JETTY

(Clause 3.1 of the City of Busselton Jetties Local Law 2014)

1. The City of Busselton (**City**) hereby grants the Permit Holder for the duration of this Permit the use of the Busselton Jetty (**Jetty**) for the Permitted Use subject to the terms and conditions of this Permit.
2. The Permit Holder must not:
 - (a) Operate outside the dates, times and places specified in this Permit.
 - (b) Use the Jetty for anything else than the Permitted Use.
3. The Permit Holder must:
 - (a) Comply with and use the Jetty and surrounding waters in accordance with all written laws and boating rules relating to the Jetty and the surrounding waters, including but not limited to:
 - (i) Shipping and Pilotage Act 1967 (WA);
 - (ii) Jetties Act 1926 (WA);
 - (iii) Western Australian Marine Act 1982 (WA);
 - (iv) All subsidiary legislation and/or orders made or given pursuant to written laws relating to the Jetty and the surrounding waters;
 - (v) Boating rules and/or marine safety guidelines issued or directed from time to time by the Western Australian Department of Transport; and
 - (vi) The **City of Busselton Jetties Local Law 2014**, and in particular the provisions under **Part 2 – USE OF JETTY AND LAND**;

(Relevant Legislation)
 - (b) Comply with any/all conditions imposed under other permits, authorisations or approvals in relation to the Permitted Use; and
 - (c) Obtain all consents, licenses and authorities required by the Permit Holder for the Permitted Use.
4. The Permit Holder accepts the Jetty subject to any existing prohibition or restriction on the use of the Jetty. The City gives no warranty that the Jetty is fit or suitable for the Permitted Use or that the City or any other authority or agency will issue any consents, approvals, authorities, permits or licenses required by the Permit Holder under any written law for its use of the Jetty.
5. The rights conferred on the Permit Holder in terms of this Permit are in contract only and does not create or confer on the Permit Holder any estate or interest whatsoever in or to the Jetty or any right to the exclusive use or possession thereof.
6. The Permit Holder must pay on demand to the City the Application Fee, Fee for Use of the Jetty and all other fees and charges payable in relation to this Permit as determined by the City from time to time.
7. The Permit Holder must pay on demand to the City all charges for consuming or using municipal services at the Jetty (like water, electricity, gas, sewerage disposal, refuse removal or telecoms supplied).
8. The Permit Holder must keep and display the Permit (or a copy thereof) on the Vessel at all times of operation.
9. The Permit Holder must not and must see to it that Permitted Persons do not:
 - (a) Cause nuisance or become a disturbance or annoyance to the public or other business operators at or on the Jetty and surrounding waters;

- (b) Unreasonably interfere with the free movement of persons on the Jetty or in the surrounding waters; or
 - (c) Obstruct or interfere with the free movement of a vessel approaching, leaving or passing the Jetty.
- 10. The Permit Holder may not do or suffer anything to be done whereby any policy of insurance in respect of the Jetty may become void or voidable or whereby the rate or premium on any policy of insurance in respect of the Jetty may be increased.
- 11. The Permit Holder shall, if it is a requirement under this Permit, at his/its cost effect and keep in force for the duration of this Permit:
 - (a) a public liability policy of insurance acceptable to the City in respect of the Jetty and the Permit Holder's use thereof for an amount not less than the amount specified in the Permit;
 - (b) if the Permit Holder has any employees, workers' compensation and employer's indemnity insurance acceptable to the City in respect of such employees; and
 - (c) Such other insurances required by the City in relation to this Permit,and provide to the City on request, or in any event prior to the commencement date of this Permit, a certificate of currency of such insurances.
- 12. All risk in relation to the use of the Jetty and surrounding waters and conducting of the Permitted Use remains with the Permit Holder.
- 13. The Permit Holder indemnifies the City and covenants and agrees to keep the City indemnified from and against all claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any nature whatsoever which the City may suffer or incur in connection with loss of life, personal injury or damage to property:
 - (a) Arising from the conducting of the Permitted Use; or
 - (b) Out of any occurrence in, upon or at the Jetty or the use by the Permit Holder of the Jetty or to the property of any person using or entering or near the Jetty or occasioned (wherever it may occur), wholly or in part by any act, neglect, default or omission of the Permit Holder or a Permitted Person.
- 14. This Permit may not be assigned or transferred without the prior written consent of the City, which consent the City shall in its sole discretion be absolutely entitled to grant or refuse.
- 15. The City through its employees, contractors or agents may at any time have access to the Jetty, or any part thereof, and the surrounding water for purposes of:
 - (a) inspecting the Jetty to ascertain whether the obligations of the Permit Holder under this Permit are being performed and observed;
 - (b) undertaking works or maintaining the Jetty or the City's property; or
 - (c) carrying out the observance or performance of any covenant, condition or obligation of this Permit which the Permit Holder failed to observe.
- 16. The Permit Holder shall not moor or fasten to or berth the Vessel at the Jetty unless:
 - (a) It is moored or fasten to or berthed at an Approved Mooring;
 - (b) It is for purposes of embarking or disembarking of passengers associated with the Permitted Use;
 - (c) It is for purposes of loading or off-loading goods or materials associated with the Permitted Use; or
 - (d) The vessel is in distress such that repairs are required and then only to effect the minimum repairs necessary to enable the vessel to be moved elsewhere.

17. The Permit Holder shall at its costs and in accordance with relevant industry standards provide, use and adequately maintain:
 - (a) Mooring lines sufficient to ensure the safe mooring of vessels to the Jetty; and
 - (b) Steps, ladders, lifts and/or other equipment to ensure passengers and goods are safely transferred to and from vessels and the Jetty.
18. The Permit Holder must not drive or permit any vehicle to be driven on the Jetty unless the City's prior written approval has been obtained.
19. The Permit Holder must, to the City's satisfaction:
 - (a) For so long as the Permit Holder uses the Jetty or any part thereof, or remains in possession or occupation thereof, promptly clean and keep the Jetty at all times in good repair and neat and tidy; and
 - (b) Upon expiry or cancellation of this Permit (whichever occurs earlier) immediately remove from the Jetty all things brought on to the Jetty by the Permit Holder and leave the Jetty in good order and condition and to make good any damage done to the Jetty.
20. The Permit Holder must not and must see to it that Permitted Persons do not in any unreasonable manner cause or permit any contamination, pollution or environmental harm to occur on, under or in the waters surrounding the Jetty and, if any such contamination, pollution or environmental harm is caused, the Permit Holder must give notice of it as soon as practicable to the City and the Permit Holder must at its cost do all things necessary to minimise and remediate any resultant damage and harm to the reasonable satisfaction of the City and any governmental agency.
21. The Permit Holder must promptly report to the City any damage to or accident at the Jetty.
22. The Permit Holder shall pay to the City on demand all legal costs, charges and expenses for which the City shall become liable in consequence of or in connection with any default by the Permit Holder in observing or performing any of the Permit Holder's covenants or obligations expressed or implied in this Permit, under any Relevant Legislation or otherwise.
23. The City may apply any bond required from the Permit Holder towards the cost of complying with the Permit Holder's obligations or paying for any arrears, loss, damage and/or cost incurred by or on behalf of the City in rectifying any default by the Permit Holder in observing or performing any of the Permit Holder's covenants or obligations expressed or implied in this Permit or otherwise.
24. The City may, without prejudice to any of its rights, immediately cancel this Permit if:
 - (a) The Permit Holder commits a substantial breach of this Permit or the terms and conditions thereunder;
 - (b) The Jetty or any part thereof are closed for public safety or other operational reasons, as contemplated under clause 2.17 of the **City of Busselton Jetty Local Law 2014**;
 - (c) Required under any Relevant Legislation; or
 - (d) If the Jetty is damaged or destroyed to such an extent that it is unfit for conducting the Permitted Use.
25. If this Permit is cancelled by the City due to a substantial breach by the Permit Holder, the Permit Holder shall not be entitled to a refund of any fees or charges.
26. Unless the contrary intention appears:

- (a) words and expressions in this Terms and Conditions shall have the same meaning as corresponding words and expression used in the relevant Application for Permit and this Permit;
- (b) words denoting the singular include the plural and vice versa;
- (c) words denoting a gender include each gender;
- (d) reference to a person includes a natural person, partnership, joint venture, association, or corporation and a government or any governmental, local authorities and agencies; and
- (e) the following words or expressions shall have the following meaning:

Application means the Permit Holder's APPLICATION FOR A PERMIT FOR USE OF LOCAL GOVERNMENT JETTY.

Approved Mooring means the moorings as described in the Permit.

Permit means the permit issued pursuant to the Application.

Permit Holder means the person/entity to whom the Permit is issued.

Permitted Persons means the Permit Holder's employees, agents, contractors, members, guests, customers or any other person using or upon the Jetty with the Permit Holder's consent or approval (whether expressed or implied).

Permitted Use means the activities/use as authorized under the Permit.

Relevant Legislation has the meaning given to it in clause 3(a).

written law has the same meaning as in the Interpretation Act 1984.

- 27. Failure to exercise or delay in exercising a right, power or privilege under this Permit or any written law by the City does not operate as a waiver of that right, power or privilege.
- 28. Should there be any conflict or inconsistency between any Relevant Legislation or any conditions under this Permit or any other permit, approval, authorization or agreement, the precedence shall be as follows:
 - (a) Provisions under Relevant legislation other than the **City of Busselton Jetty Local Law**
 - (b) **City of Busselton Jetty Local Law 2014**
 - (c) The terms and conditions under this Permit
 - (d) The other attachments to this Permit (Annexure A)
 - (e) Other permits, approvals, authorizations or agreements