

Towage Licence

Port of Newcastle
(unrestricted)

Newcastle Port Corporation trading as Port Authority of New South Wales
ABN 50 825 884 846

and

TBC
ABN **[insert]**

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Towage Licence

Parties

Newcastle Port Corporation trading as Port Authority of New South Wales ABN 50 825 884 846 of Level 4, 20 Windmill Street, Walsh Bay (“Port Authority”)

TBC (the ‘Licensee’)

Background

- A. The Port is situated in New South Wales.
- B. Under its PSOL, Port Authority is to promote the provision of safe and efficient towage services in the Port.
- C. The Harbour Master has issued a direction under section 88(1) of the MS Act that a Piloted Vessel may only enter, exit and move within the Port escorted by a tug or tugs operated by towage operator which has entered into an Unrestricted Towage Licence with Port Authority.
- D. The Licensee has applied for a licence to provide Towage Services in the Port.
- E. Port Authority has assessed the Licensee’s application and, as at the date of this Deed and based on the information provided by the Licensee, has determined that the Licensee meets the Current Eligibility Criteria.
- F. Port Authority licenses the Licensee to provide Towage Services in the Port for the Term on the terms set out in this Deed.

Agreed Terms

1 Definitions and Interpretation

1.1 Definitions

In this Deed:

Associates:

- (a) in relation to the Licensee, means the Licensee’s officers, employees, invitees, contractors, subcontractors and agents; and
- (b) in relation to Port Authority, means Port Authority’s officers, agents and employees, including but not limited to the Harbour Master but does not include the Licensee or the Licensee’s Associates.

AMSA means the Australian Maritime Safety Authority.

Back Up Tug means any tug which, in accordance with clause 5.1(b), is available to perform the Licensee’s Services and which complies with the specifications required in Item 3 of Schedule Two.

Back Up Tug Minimum Notice Period means the time specified in item 4 of Schedule Two.

Best Industry Practice means a standard of practice which is equal to or better than that which would reasonably be expected of experienced, competent, prudent, qualified and reputable providers of services equivalent to the Licensee's Services.

Bollard Pull means maximum force exerted through the tug's tow line by way of an approved methodology (as witnessed and endorsed by a Port Authority approved classification society) and notated on the tug's bollard pull certificate.

Booking means a request for Towage Services by a Vessel Party via the Communications System or otherwise, as may be amended from time to time by the Vessel Party.

Business Day means a day other than a Saturday, Sunday, public holiday or bank holiday in New South Wales.

CEO means the person appointed to the position of Chief Executive Officer of Port Authority or any other person authorised to exercise the functions of that position from time to time.

Certificate of Local Knowledge means a certificate of local knowledge issued under section 29 of the MS Act for the Port.

Claim means any claim, remedy, suit, debt, account, injury, cause of action, demand, action, proceeding, litigation, investigation, judgement, damage, loss, cost, expense, lien, demurrage, charge, proceeding or liability of any nature whatsoever and however arising.

Corporations Act means the *Corporations Act 2001* (Cth).

Commencement Date has the meaning in Item 4 of Schedule One.

Communications System means the system referred to in clause 4.4.

Current Eligibility Criteria means the Eligibility Criteria the Licensee was required to meet at the time it applied to enter into this Towage Licence as set out in Item 3 of Schedule One.

Deed means this Towage Licence issued to the Licensee.

Eligibility Criteria means the criteria, published by Port Authority from time to time, that a provider of Towage Services must meet to be eligible to enter into a Towage Licence with Port Authority for the Port.

Emergency means an event, incident, occurrence, circumstance or threat within the Port or the approaches to the Port that Port Authority, the Harbour Master or a relevant Government Authority considers:

- (a) is a risk to the safety of any person or the Environment,
- (b) is or may become a risk to the safe anchorage or mooring within the Port, a Vessel within the Port or at anchorage, safe navigation or the operations of the Port; or
- (c) constitutes or may lead to a Vessel Emergency; or
- (d) requires a response to, or action to be taken for under any Law or in accordance with any AMSA direction or MERCOCOM.

Emergency Response Time means the time specified in Item 7 of Schedule Two.

Emergency Services means the deployment of tugs (including Emergency Tugs), other

Licensee's Equipment and personnel by the Licensee in an Emergency, including for the provision of Towage Services or Support Services.

Emergency Specifications means the standards set out in Item 5 of Schedule Two.

Emergency Tug means any tug which complies with the Emergency Specifications as required by clause 5.2.

Escort Towage means a tug that has Class escort notation and a render/recovery winch or similar. The tug crew must have completed (and maintain, for the duration of this Deed) suitable training and verification programs adopted by the towage provider and approved in writing by the Port Authority, demonstrating crew competency in providing active escort towage and using all associated equipment.

Evaluation Period has the meaning in Item 5 of Schedule One or as extended in accordance with the terms of this Deed.

Environment includes all aspects of the surroundings of human beings including the physical characteristics of those surroundings such as land, waters and the atmosphere, the biological characteristics of those surroundings such as the animals, plants and other forms of life and the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.

Expiry Date has the meaning in Item 7 of Schedule One.

Force Majeure Event means any event or circumstance occurring during the term of this Deed which is beyond the reasonable control of a party and directly prevents or delays that party from performing its obligations under this Deed but not including:

- (a) any prevention or delay in the performance of obligations due to any wilful, unlawful or negligent act or omission on the part of the party or its Associates (excluding industrial action taken by its Associates); or
- (b) adverse changes to the environment, wet, windy, adverse or inclement weather, such as a storm or flood (predicted or unpredicted) unless and to the extent that the prevention or delay in performance of a party's obligations is a legitimate response to a risk to persons, property or the Environment.

Government Authority includes any governmental, or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, Minister, statutory corporation or instrumentality.

Gross Default means any wilful, deliberate or grossly negligent act or omission on the part of the Licensee which contravenes this Deed, any direction of the Harbour Master (including the Harbour Master's Directions) or which jeopardises the safety of navigation or the safety or operations of the Port or users of the Port.

Harbour Master means the Harbour Master for the Port appointed under section 85(1) of the MS Act, any deputy Harbour Master for the Port, any delegate of the Harbour Master for the Port or any other person appointed to or that carries out any of the Harbour Master's functions in the Port from time to time.

Harbour Master's Directions means the document(s) referred to in Item 11 of Schedule One and any other standing or general directions issued lawfully by the Harbour Master for the Port and published on Port Authority's website as updated from time to time.

Headline Capable (HLC) means a tug which meets the base minimum standard of any tug

otherwise required under this Deed, but additionally is capable of speeds of no less than 7 knots and which will be operated in that position at the requirement of the pilot.

Initial Expiry Date has the meaning in Item 6 of Schedule One.

Insolvency Event means if the Licensee:

- (a) stops or suspends or threatens to stop or suspend payment of all or any of its debts;
- (b) it becomes insolvent within the meaning of section 95A of the Corporations Act;
- (c) would be presumed by a court to be insolvent under section 459C(2) of the Corporations Act;
- (d) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act) and fails to remedy that failure within days after being required in writing to do so by the party issuing the statutory demand;
- (e) is the subject of a circumstance specified in section 461 of the Corporations Act (whether or not an application to court has been made under that section);
- (f) has a voluntary administrator appointed over all or any of its assets or undertaking or any step preliminary to the appointment of a voluntary administrator is taken;
- (g) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertaking; or
- (h) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting or an application to a court or has other steps taken for its winding up or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

KPIs means the key performance indicators set out in Schedule 3 as reviewed and amended by Port Authority after consultation with the Licensee to meet the safety or operational requirements of the Port from time to time by Port Authority providing written notice to the Licensee.

Law means:

- (a) the law in force in New South Wales and the Commonwealth of Australia including common law, legislation and subordinate legislation;
- (b) ordinances, regulations and by-laws of relevant Government Authorities; and
- (c) Australian Standards applicable to the Licensee's Services.

Licence Fee means the fee specified in Item 9 of Schedule One of this Agreement.

Licensee means the Licensee named on page 3 of this Agreement and, where the context permits, includes the Licensee's Associates.

Licensee's Equipment means all tugs, plant, machinery, equipment, property and other materials used in connection with the provision of the Licensee's Services, including as required by the Emergency Specifications.

Licensee's Obligations means the Licensee's obligations under this Deed.

Licensee's Representative(s) means the person(s) appointed by the Licensee under clause 8.1.

Licensee's Services means the Towage Services, Emergency Services and Support Services provided by the Licensee and where the context permits, the Licensee's Associates.

Marine Pilot means a marine pilot licensed to provide pilotage services to vessels in the Port.

MERCOM means the AMSA officer vested with powers under *the Protection of the Sea (Powers of Intervention) Act* (Cth) 1981 and who is responsible for coordinating and managing serious maritime incidents.

Minimum Notice Period means the time specified in Item 1 of Schedule Two measured from the time a Booking is received within the Communications System.

Minimum Tug Fleet means the tug fleet listed in Item 2 of Schedule Two of this Deed or as varied by Port Authority under clause 5.1(c), or any replacement tug approved by Port Authority in accordance with clause 5.3, including all Licensee's Equipment and sufficient personnel to man the Minimum Tug Fleet in accordance with this Deed.

MS Act means the *Marine Safety Act 1998* (NSW).

Ocean Towing Tug means any tug which complies with the specifications required in Item 6 of Schedule Two.

PAMA Act means the *Ports and Maritime Administration Act 1995* (NSW).

Piloted Vessel means a Vessel which satisfies the criteria set out in Item 2 of Schedule One.

Port has the meaning in Item 1 of Schedule One.

Port Authority means Newcastle Port Corporation trading as Port Authority of New South Wales and, where the context permits, includes Port Authority's Associates.

Port Authority Representative means the person specified in Item 10 of Schedule One or any other person Port Authority may notify to the Licensee from time to time.

Port Operator means the person specified in Item 13 of Schedule One.

PSOL means the Port Safety Operating Licence for the Port issued to Port Authority under section 12 of the PAMA Act from time to time.

Recognised Notification Time means:

- (a) the time specified in the Shipping Schedule for the movement of the Vessel if the time between making or varying the Booking exceeds the Minimum Notice Period; or
- (b) in all other cases, the Minimum Notice Period.

Review Period means the period of time specified in Item 8 of Schedule Two.

Schedule means a schedule to this Deed.

Security Plans means a maritime security plan developed for the purposes of Part 3 of the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth)

Shipping Schedule means the shipping schedule describing the intended shipping movements within the Port developed and published via website by the Port Operator or Port Authority (as relevant for the Port).

Subcontractor Warranty Deed Poll means the deed poll in the form specified in Schedule Five.

Support Services means support services, other than Towage Services, provided to Vessels in an Emergency and which may include firefighting services and first strike emergency towage assistance to disabled Vessels within or approaching the Port.

Term means the period referred to in Item 8 of Schedule One, commencing at midnight on the Commencement Date and ending at midnight on the Expiry Date or as extended in accordance with the terms of this Deed.

Towage Application means the application form and other documentation that Port Authority requires an applicant seeking to enter into a Towage Licence with Port Authority to complete and provide to Port Authority as updated or amended by Port Authority from time to time.

Towage Licence means this Deed or, as the context permits, a Deed entered into between Port Authority and any other towage provider to provide Towage Services.

Towage Services means any operation in connection with the holding, pushing, pulling, moving, escorting or guiding of Vessels by one or more tugs and ancillary services, including pilot, personnel, stores and water transfer at the Port.

Unrestricted Licensee means a holder of a towage licence for the Port who is required to meet the requirements specified in Schedule Two of this licence

Vessel means a "vessel" as defined in the MS Act and includes any other vessel, craft or object of whatever nature that the Licensee provides or may be required to provide the Licensee's Services to.

Vessel Emergency means any situation where a Vessel within the Port or on approach to the Port:

- (a) has a fire on board, or is at risk of having a fire on board;
- (b) poses a risk to the health or safety of any person, property of any kind, the Environment, safe navigation or, the operation of the Port; or
- (c) has, or is at risk of, running aground or is immobilised, adrift or for any other reason requires urgent relocation.

Vessel Party means the owner, operator, agent or master of a Vessel.

1.2 Interpretation

In this Deed:

- (a) headings are inserted for ease of reference and do not, unless otherwise expressed, affect the interpretation of this Deed;

- (b) reference to a person or party includes that person's or party's executors, successors, and permitted assigns;
- (c) words importing a natural person include a partnership, body corporate, firm, association, government body, authority or agency;
- (d) the singular includes the plural and vice versa;
- (e) reference to any gender includes other genders;
- (f) reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure of this Deed;
- (g) a reference to a statute, ordinance, code, or other Law includes regulations and other instruments under it and as modified, consolidated, re-enacted or replaced;
- (h) reference to a month or year is a reference to a calendar month or calendar year;
- (i) a reference to this Deed includes its schedules and annexures;
- (j) a reference to this Deed or any other document includes a reference to it as novated, altered or replaced;
- (k) a reference to "includes" or "including" is not a term of limitation and means "includes" or "including" without limitation;
- (l) no rule of construction will apply to a clause or this Deed to the disadvantage of a party because that party was responsible for preparing the clause or Deed.

2 Term

2.1 Term

- (a) Port Authority grants to the Licensee, and the Licensee accepts, a licence to provide the Licensee's Services in the Port during the Term on the terms and conditions of this Deed.
- (b) This Deed will commence on the Commencement Date and will continue for the Evaluation Period until the Initial Expiry date.
- (c) During the Evaluation Period, the Licensee must:
 - (i) take all reasonable steps to comply with the terms of this Licence;
 - (ii) make available information requested by Port Authority relating to the Licensee's Services or Licensee's Obligations;
 - (iii) must allow, and take reasonable steps to facilitate, Port Authority's Personnel to:
 - a. on reasonable notice, enter and have access to sites and premises controlled by the Licensee to assess the provision of the Licensee's Services;

- b. inspect any tug intended to perform the Licensee's Services;
 - c. access information or documents relevant to the provision of the Licensee's Services or;
 - d. have access to Licensee's Associates relevant to the provision of the Licensee's Services, including procuring access, information or documents from approved subcontractors
- (vi) any review, examination or inspection by Port Authority in accordance with (iii) will not constitute verification or acceptance by Port Authority of the adequacy of the Licensee's Services nor will it in any way lessen or otherwise affect any of the Licensee's obligations under this Licence or otherwise at law.
 - (v) comply with any conditions (such as rectifying a Licensee Default and/or undertaking such steps or a program satisfactory to Port Authority to reach compliance with the terms of this Licence) prior to the completion of the Evaluation Period.
- (d) By at least 30 days prior to the completion of the Evaluation Period, Port Authority will assess, acting reasonably, the Licensee's compliance with clause 2.1(c) and its demonstrated capability to meet the requirements of this Licence should the Licence be extended beyond the Initial Expiry Date. For the avoidance of doubt, the Licensee is under no obligation to perform requirements of the Licence that have not yet fallen due for performance. If Port Authority is not satisfied (acting reasonably) of the Licensee's capability, Port Authority will provide written confirmation that the term of the Licence will expire on the Initial Expiry Date. If no written confirmation is provided within 30 days prior to the Initial Expiry Date, the Licence will extend automatically to the Expiry Date.
- (e) Port Authority will extend the Evaluation Period if Port Authority considers, acting reasonably, that circumstances giving rise to the inability to meet the requirements of the Licence are beyond the Licensee's reasonable control and can be rectified if provided additional time. During the extended Evaluation Period, the Licensee will keep Port Authority informed of the Licensee's progress to comply with the requirements of this Licence.
- (g) If, at the conclusion of the Evaluation Period (as may be extended in accordance with this clause 2.1(e)), the term of the Licence is not extended until the Expiry Date, the Licence will terminate at the Initial Expiry Date.

2.2 Renewal

If the Licensee wishes to renew its Towage Licence with Port Authority immediately after the Expiry Date, then no earlier than 12 months and no later than 6 months before the Expiry Date, the Licensee must lodge a properly completed Towage Application with Port Authority.

Port Authority will provide an extension of Term of up to 3 years if the Licensee can demonstrate compliance with the terms of the Licence, and a demonstrated history of meeting its KPIs and agrees to comply with the Eligibility Criteria and Schedules current at the time of the application for renewal.

3 Acknowledgement

3.1 No Exclusivity or other Rights

- (a) This Deed does not grant to the Licensee any exclusive right to provide the Towage Services or any other of the Licensee's Services in the Port. The Licensee acknowledges that Port Authority may enter into a Towage Licence with other parties and that other parties may provide any or all of the Licensee's Services in the Port during the Term.
- (b) This Deed does not create or confer on the Licensee in contract or otherwise, any estate or interest in the Port (including its waters) or any right to occupy, use or access any part of the Port (including its waters). The Licensee acknowledges that it is solely responsible for obtaining any approvals, licenses or consents that may be required by the Licensee to occupy, access or use any part of the Port (including its waters).

3.2 No Warranty or Services by Port Authority and Acknowledgements

- (a) Port Authority makes no warranty or representation in relation to:
 - (i) the extent of business opportunities in the Port for the provision of Towage Services or any other Licensee's Services, or the likely success or otherwise of any towage business in the Port; or
 - (ii) the use to which the Port may be used or its suitability for any use.
- (b) The parties acknowledge and agree:
 - (i) Port Authority is not obliged to promote the Licensee's business in any way;
 - (ii) nothing in this Deed amounts to the provision or engagement of services of any kind by Port Authority or its Associates; and
 - (iii) this Deed does not create a relationship of employment, agency, trust, partnership, contractor, service supplier, tenancy, inviter/invitee or joint venture between the parties and that the Licensee must not represent or imply in any contract or other dealing with any third party that any such relationship is in existence.
- (c) The parties acknowledge and agree that nothing in this Deed, or arising from or in connection with this Deed:
 - (i) creates any duty of care, implied obligations, duties or responsibilities in favour of the Licensee on Port Authority or its Associates;
 - (ii) will in any way affect the unfettered discretion of Port Authority, the Harbour Master or any Marine Pilot to exercise (or the manner of exercise of) any of their functions, obligations and powers pursuant to any Law or Port Authority's PSOL. Without limiting this clause anything which Port Authority, the Harbour Master or any Marine Pilot does, fails to do or purports to do pursuant to its functions, obligations and powers under any Law or its PSOL will be deemed not to be an act or omission by that person under this Deed and will not entitle the Licensee to make any Claim against Port Authority, the Harbour Master or any Marine Pilot;
 - (iii) will in any way affect any requirement or direction contained in any Law, the Harbour Master's Directions or any other direction issued by

the Harbour Master from time to time. If there is any inconsistency between this Deed and a direction of the Harbour Master or any Law, then the Harbour Master's Direction or Law will apply to the extent of the inconsistency; and

- (iv) will in any way affect any protections under Law afforded to the State of New South Wales, Port Authority, the Harbour Master or any Marine Pilot.
- (d) The Licensee accepts all risks (and the cost of such risks) arising from or in connection with the provision of the Licensee's Services and the use of the Port and its facilities by the Licensee and the Licensee's Associates.
- (e) The Licensee is not entitled to make (and releases Port Authority and any Associate of Port Authority from) any Claim against Port Authority or any Associate of Port Authority arising from, or in connection with, the provision of the Licensee's Services or the use of the Port and its facilities by the Licensee. This provision does not apply to the extent that any loss or damage is caused or contributed to by Port Authority or any Associate of Port Authority
- (f) Except to the extent that any loss or damage is caused or contributed by Port Authority or any of the Port Authority's Associates, the Licensee indemnifies Port Authority and any Associate of Port Authority against any Claim due to any accident, damage, loss, injury or death to any person or property caused or contributed to by, or arising from or in connection with, the provision of the Licensee's Services or the use of the Port and its facilities by the Licensee or the Licensee's Associates.

4 The Licensee's Services

4.1 Availability of the Towage Services

The Licensee must ensure that:

- (a) the Towage Services are available to all Piloted Vessels within, to or from the Port 24 hours a day and each day of a year during the Term; and
- (b) the Towage Services for each Piloted Vessel are commenced or ready to be commenced within the Recognised Notification Time.

except to the extent that the Licensee is engaged in the provision of Emergency Services.

4.2 Emergency Services

- (a) The Licensee agrees to:
 - (i) maintain and keep in good order and condition the equipment required to comply with the Emergency Specifications on the minimum number of tugs specified out in Item 5 of Schedule Two.
 - (ii) at all times during the Term be ready and able to provide Emergency Services and to deploy the Licensee's Emergency Tug(s) required by clause 5.2(a) within the applicable Emergency Response Time upon the request of a Vessel Party, the Harbour Master, AMSA, Port Authority's Representative or any other Government Authority with responsibility for managing or responding to the applicable Emergency.

- (iii) Port Authority may make a request under this clause if:
 - a. Port Authority considers actual or forecast weather (including wind conditions) may give rise to an Emergency; or
 - b. Port Authority is aware or has received reports that there is or may be a fire:
 - i. on a Vessel;
 - ii. within the Port;
 - iii. or on land which Port Authority considers may be within range of the Licensee's firefighting capability.
 - c. Port Authority is aware that a Vessel has suffered an engine or steering failure and is or may be in danger of grounding.
- (iv) subject to clause 4.6(b), comply with any request or direction in an Emergency by the Harbour Master, Port Authority or any other Government Authority with responsibility for giving directions or responding to the applicable Emergency without delay, including allowing a Harbour Master, Port Authority staff member or member of staff of a Government Authority on board the Licensee's tugs.
- (b) The parties acknowledge and agree that any Licensee's Services provided to a Vessel by the Licensee or its Associates (including in an Emergency following the request or direction of Port Authority or any other person referred to in clause 4.2), constitutes the provision of services by the Licensee or its Associates to the Vessel (not as a volunteer) and does not amount to the provision of services to Port Authority. In these circumstances, the Licensee agrees that Port Authority has no liability for any Claims arising from, or in connection with, the provision of the Licensee's Services by the Licensee or its Associates to any Vessel or if the Licensee or its Associates readies its tugs for deployment in accordance with clause 4.2(a).
- (c) Port Authority agrees to pay to the Licensee the charges specified in Schedule 4 to respond to an Emergency specified in clause 4.2(a)(iii)(b), other than in relation to a Vessel.
- (d) Port Authority and the Licensee acknowledge that this clause does not exclude a claim or charges raised by the Licensee under any commercial agreement with the Vessel or any Vessel Party.

4.3 Additional Emergency Services Requirements

- (a) When providing Emergency Services the Licensee must, and must ensure that its Associates, without delay comply with the lawful directions (written or verbal) of the Government Authority responsible for responding to or managing the relevant Emergency, including Port Authority, the Harbour Master and AMSA.
- (b) The Licensee must, at its cost:
 - (i) make the Licensee's Tugs, crew(s) and related consumables available for such ongoing training (including exercises) as notified by Port Authority to the Licensee; and

- (ii) maintain and provide to Port Authority promptly upon request, records of the exercises referred to in clause 4.3(b)(i) which includes the date, name and duration of the exercise and the names of the tug(s) and crew used in the exercises.

4.4 Communications and Booking System

The Licensee must utilise the port operating system nominated by Port Authority by which any Vessel Party can book, amend or cancel requests for the Licensee's Towage Services. In addition, the Licensee must have in place a communications system available and operating 24 hours each day of a year during the Term as a contact in an Emergency. Contact details to access the communications system (which must include both telephone and email) must be published by the Licensee on its website.

4.5 Service Standards

The Licensee must:

- (a) provide and have available at all times during the Term all resources and assets, including personnel and Licensee's Equipment, necessary:
 - (i) for the provision of the Licensee's Services in accordance with this Deed;
 - (ii) to meet the Shipping Schedule, the requirements of berth operators in the Port and the requirements of the Port Operator;
 - (iii) to service the needs of its customers in their own right and not to hinder or compromise the safety and efficiency of the Port;
- (b) ensure that all persons used in the provision of the Licensee's Services, including the master and crew of any tug, including tugs operated by approved subcontractors:
 - (i) hold and comply with all certificates and approvals required by Law, Port Authority and any other Government Authority, and in respect of the master of any tug holds and complies with its Certificate of Local Knowledge; and
 - (ii) are appropriately qualified, fit to work and have the requisite knowledge, skill and experience to provide the Licensee's Services in accordance with Best Industry Practice and this Deed (including to use and operate the emergency equipment on the Emergency Tug and to provide Emergency Services);
- (c) have in place a compliance, training and competency checking program of a standard approved by Port Authority to ensure all persons including approved subcontractors, involved in the provision of the Licensee's Services comply with clause 4.5(b);
- (d) comply with the Current Eligibility Criteria at all times during the Term;
- (e) ensure that the Licensee's Services are provided in accordance with the Harbour Master's Directions and any other lawful direction (verbal or written) issued by the Harbour Master from time to time;
- (f) provide the Licensee's Services with due diligence and care and in a proper, timely, safe, competent, efficient, skilful and professional manner and in

accordance with Best Industry Practice;

- (g) obtain, maintain in full force and effect and comply with all licences, consents, approvals, certificates and permits which the Licensee is required by Law to have in order to provide the Licensee's Services and to comply with this Deed;
- (h) make available upon reasonable notice, at the Licensee's cost, the masters of the tugs utilised in the provision of the Licensee's Services to participate in joint simulation exercises, including for the purpose of training and professional development, port capacity modelling and incident investigation;
- (i) provide the Licensee's Services, exercise its rights and perform its obligations under this Deed and use the Port and its facilities in compliance with all Laws and the lawful requirements of any Government Authority, including Port Authority;
- (j) ensure the Licensee's Equipment is properly maintained in a good, clean, safe and efficient working condition and is serviced at regular intervals in accordance with all applicable Laws and Best Industry Practice;
- (k) during the Term, maintain an auditable safety management system for its Towing Services provided in the Port;
- (l) respond reasonably and effectively to any concerns raised by Port Authority or any Port user in relation to the reliability, timeliness or quality of the Licensee's Services;
- (m) keep itself up to date with current Harbour Master's Directions, Laws and any other procedures that apply to the Licensee's Services at the Port; and
- (n) routinely operate to service the needs of its customers and not hinder or compromise the safe and efficient operation of the Port.

4.6 Management and Control of the Licensee's Services

- (a) Subject to clause 4.6(b) and notwithstanding any review, inspection or audit of the Licensee's Services or the records or documents of the Licensee by Port Authority pursuant to this Deed or any Law, the parties acknowledge and agree the Licensee is solely responsible for and has exclusive management and control of:
 - (i) the Licensee's Services and all operations and activities (including work activities) carried out by or on behalf of the Licensee or its Associates in the Port; and
 - (ii) the health and safety of its Associates in connection with the Licensee's Services and the Licensee's Activities.
- (b) Nothing in this Deed affects the authority of the Master of a tug or his or her responsibility for the safety, conduct and navigation of the tug.

4.7 Subcontracting and Assignment

- (a) The Licensee may not assign or subcontract any of its obligations under this Deed without the prior written consent of Port Authority (which may not be unreasonably withheld).

- (b) The Licensee must procure from each subcontractor a Subcontractor Warranty Deed Poll, executed by the relevant subcontractor, in favour of, and directly enforceable by, Port Authority against the relevant subcontractor, which is substantially in the form of Schedule 5.
- (c) It is not unreasonable for Port Authority to withhold its consent to assignment or subcontracting if the proposed entity:
 - (i) cannot demonstrate compliance with the relevant Eligibility Criteria;
 - or
 - (ii) refuses to execute the Subcontractor Collateral Warranty Deed Poll.
- (d) The Licensee must ensure that its subcontractors possess and apply the skill, competence, diligence and experience necessary to enable them to perform that part of the Licensee's Services the Licensee has engaged them to perform.
- (e) During the Term of the Licence, the Licensee is at all times responsible for ensuring:
 - (i) that its subcontractors comply with all lawful directions given by the Harbour Master or Port Authority in accordance with this Licence, to the extent that such directions are not inconsistent with the terms of this Licence.
 - (iii) Notwithstanding any other provision of clause 4.7, the Licensee will remain responsible at all times to fully perform the Licensee's Services and for the acts, defaults and omissions of any subcontractor approved under clause 4.7(a), as if they were the acts, defaults or omissions of the Licensee.
- (f) No Subcontractor Collateral Warranty Deed Poll, nor an assignment under clause 4.7(a) will be construed in any way to modify or limit any of the rights, powers or remedies of Port Authority against the Licensee under this Licence or otherwise.

5 Tugs

5.1 Tug fleet

- (a) The Licensee must maintain the Minimum Tug Fleet in the Port at all times during the Term. The Minimum Tug Fleet must be operational, available and meet the standards required in this Deed, 24 hours a day every day of a year. It is not a breach of this clause if a Tug is temporarily unavailable for provision of the Licensee's Services due to the provision of Emergency Services either within or outside the Port.
- (b) The Licensee must maintain an approved Back Up Tug at all times during the Term. The Back Up Tug must be operational, meet the standards required in this Deed, and available to the Licensee in the Port by the Minimum Back Up Tug Notice Period. The Back Up Tug is to provide a resource to enable the Licensee to satisfy its obligation to maintain a Minimum Tug Fleet in the Port in the event of temporary unavailability of a tug. It is not a breach of this clause if the Back Up Tug is not permanently located within the Port and the Back Up Tug may be owned and/or operated by another Licensee or by an approved third party.
- (c) Port Authority may after the conclusion of a reasonable consultation period with

the Licensee, by written notice and allowing for a reasonable period as specified in the notice, require the Licensee to alter the size and/or composition of the Minimum Tug Fleet. Port Authority may only issue this notice when, in Port Authority's opinion, exercised reasonably, the alteration to the Minimum Tug Fleet is required for the safe and/or efficient operation of the Port. The Port Authority will act reasonably in considering the Licensee's views and input when exercising any powers under this clause 5.1(c).

5.2 Emergency Tugs

- (a) The Licensee must ensure that at least the number of tugs present within the Port as specified in Item 5 of Schedule Two are ready and able to provide Emergency Services 24 hours a day every day of a year, comply with this Deed and at all times have installed and maintained on board the equipment required to comply with the Emergency Specifications.

5.3 Tug replacement

- (a) The Licensee must not replace any tug comprising part of the Minimum Tug Fleet, Back Up Tug or an Emergency Tug without obtaining Port Authority's prior written approval (which must not be unreasonably withheld). Port Authority may approve changes to the Minimum Tug Fleet, Back Up Tug or an Emergency Tug on a temporary basis, including where such Tug requires maintenance (scheduled or unscheduled) or repairs.
- (b) Without limiting the factors that Port Authority may take into account when considering whether to approve a replacement tug, the Licensee acknowledges that Port Authority may withhold consent if the proposed replacement tug is not equivalent in all respects (including size, specification and quality) to the existing tug.

5.4 Tugs per Vessel movement

The Licensee acknowledges that the decision on how many and which particular Tugs (including no Tugs) to use on a Vessel movement and how to deploy any Tug(s) during a Vessel movement rests with the Harbour Master and/or Marine Pilot.

6 Delays and Unavailability

6.1 Delays and Unavailability Generally

Without limiting any of the Licensee's obligations under this Deed, if the Licensee is, or expects it may be, unable to provide or delayed in providing the Licensee's Services in accordance with this Deed, the Licensee must:

- (a) immediately notify and liaise with Port Authority, any affected Vessel Party, any affected customer of the Licensee or any other party who may reasonably be expected to be affected (**Interested Parties**) about the nature and extent of the unavailability or delay, the expected duration of the unavailability or delay, and provide an explanation of the reason for the unavailability or delay;
- (b) use its best endeavours to, as quickly as possible, re-commence providing the Licensee's Services in accordance with this Deed;
- (c) engage in discussions with the Vessel Party and/or other towage providers for any affected Vessel to receive Towage Services by alternative means, including by engaging other Towage Licensees or working with other Licensees to jointly

provide the Towage Services; and

- (d) keep the Interested Parties informed and up to date about the Licensee's progress in re-commencing provision of the Licensee's Services in accordance with this Deed and any action it has taken under clause 6.1(b).

6.2 Unavailability of Tugs

- (a) Without limiting the Licensee's obligations under this Deed, if a tug becomes unavailable or is likely to become unavailable to provide the Licensee's Services for any reason, such that an Emergency Tug is unavailable at any time or the Minimum Tug Fleet will not be available for a period of more than the Minimum Notice Period, the Licensee must:

- (i) immediately notify and liaise with affected Interested Parties about the nature and extent of the unavailability or delay, the expected duration of the unavailability or delay, and provide an explanation of the reason for the unavailability or delay;
- (ii) use its best endeavours to restore the tug(s) to service as quickly as possible;
- (iii) keep the Interested Parties informed and up to date about the Licensee's progress in restoring the tug to service.

- (b) If:

- (i) a tug becomes unavailable to provide the Licensee's Services at any time; or
- (ii) the Licensee is unable to meet a Booking for the Licensee's Services in accordance with this Deed,

the Licensee must use best endeavours for any affected Vessel to receive Towage Services within the Recognised Notification Time by:

- (i) deploying the Back Up Tug; and/or
- (ii) engage in discussions with the Vessel Party and/or other Towage Providers for any affected Vessel to receive Towage Services by alternative means, including by engaging other Towage Licensees or working with other Licensees to jointly provide the Towage Services.

6.3 Working with other Towage Providers

The Licensee must:

- (a) act reasonably and promptly when receiving requests from Vessels or other towage service providers to provide Towage Services; and
- (b) exercise best endeavours to comply with a request by another Licensee to provide Towage Services to the other Licensee's customers.

6.4 Inability to reach agreement with other Towage Providers

On the basis best endeavours have been made, the Licensee will not be in breach of clause

6.3 if it does not reach a commercial agreement with other towage provider/s to provide the Licensee's Services. It is not the intention of this clause that the Licensee agrees to commercial terms which will impact its ability to compete with another licensed towage provider; or to have the Licensee supply part of the number of tugs required to complete the Towage Services for the other Licensee. By way of an example, if the other Licensee wants to complete a towage job with 4 tugs, they are not entitled to supply 2 tugs and request the Licensee to supplement the additional 2 but rather would be required to request that the Licensee provide the complete towage services itself with the 4 required tugs.

7 General Licensee Obligations

7.1 Not Interfere

The Licensee must not interfere with the normal business and operations of the Port, or with the Licensees or other users of the Port, when providing the Licensee's Services.

7.2 Prevent Pollution

- (a) The Licensee must not (and must use its best endeavours to ensure its Associates do not) cause any spill, pollution or contamination within the Port.
- (b) The Licensee must take all reasonable precautions to prevent spills into, pollution of or contamination of the waters of the Port in connection with the Licensee's Services.
- (c) Immediately after becoming aware that the Licensee or its Associates are causing a spill into, pollution of or contamination of the waters of the Port, the Licensee must:
 - (i) without limiting or waiving the Licensee's obligations under any applicable legislation, notify Port Authority and take all reasonable steps to ensure the person responsible ceases causing the pollution, spill or contamination; and
 - (ii) assist Port Authority or any other Government Authority responsible for managing, responding to or cleaning up the pollution, spill or contamination.

7.3 Safety, Emergency Response and Environmental Management Plans

- (a) The Licensee must comply with at all times the Incident/Emergency Response Plans and any Security Plans, or requirements arising from Security Plans provided by Port Authority from time to time.
- (b) The Licensee must have in place and comply with at all times its "Safety Management Plan" and an "Environmental Management Plan" (the "**Management Plans**") which must be found satisfactory to the relevant Government Authority who has the legislative powers to determine such Management Plans and appropriately respond to the Incident/Emergency Response Plans referred to in clause 7.3(a). The Licensee must duly attend to any amendments to the Management Plans as directed by the relevant Government Authority and such amendments must be immediately carried out by the Licensee at the Licensee's expense.
- (c) The Licensee must ensure that all personnel taking part in the provision of the Licensee's Services are appropriately instructed and trained in the Management Plans.

- (d) The Licensee must supply a copy of the Management Plans to Port Authority and the Port Operator upon request.

7.4 Reporting of Accidents and Incidents

The Licensee must, as soon as possible after the Licensee becomes aware of it, notify Port Authority and the Port Operator (the latter only if requested by the Port Operator) in writing of every marine accident/incident in the Port resulting in:

- (a) a fatality;
- (b) major damage to infrastructure or Vessel;
- (c) a non-fatal accident with serious injuries, being an injury which requires hospitalisation;
- (d) a close quarters incident which could have resulted in an accident or incident as defined in clause (a) – (c) above or which triggers any hazard/ /risk management procedure or report;
- (e) a minor accident resulting in damage to infrastructure or a Vessel likely to exceed A\$20,000; or
- (f) any spill of oil, oily mixtures, chemical or noxious substances within the Port.

8 Services Management and Review

8.1 Licensee's Representative(s)

- (a) The Licensee must appoint one or more persons with authority to act on the Licensee's behalf and to bind the Licensee in all matters relating to or in connection with this Deed, including all queries, consents, approvals and complaints and receipt of all directions, notices or information from Port Authority (**Licensee's Representative(s)**). The Licensee's Representative at the time of execution of the Licence is the person specified in Item 10 of Schedule One.
- (b) The Licensee's Representative(s) must be available on call 24 hours a day, every day of a year. The Licensee must keep Port Authority informed of the name, postal address, email address and mobile phone number of the Licensee's Representative(s).

8.2 Recording and Monitoring of Performance

- (a) The Licensee must have in place a system to monitor, record and improve the quality of the Licensee's Services and its compliance with this Deed.
- (b) The Licensee must performance test the Licensee's Equipment at least annually.
- (c) The Licensee must maintain up to date, accurate and complete records of:
 - (i) the activities of the Licensee under this Deed, including records of performance testing conducted under clause 8.2(b);
 - (ii) the Communications System and any other Bookings received by the Licensee;

- (iii) all concerns or complaints the Licensee receives from Port users in relation to the reliability, timeliness or quality of the Licensee's Services;
 - (iv) information to enable determination of whether the Licensee has met the KPIs; and
 - (v) any other data or information reasonably required by Port Authority to enable it to assess the performance of the Licensee under this Deed.
- (d) The Licensee must retain the records referred to in clause 8.2(c) for at least 12 months after expiration of this Deed.

8.3 Review Meetings

- (a) The Licensee must participate in review meetings with Port Authority's Representative and other persons required by Port Authority each Review Period.
- (b) The purpose of the review meeting is to review the Licensee's performance under this Deed during the Review Period and will include consideration of the following matters:
 - (i) availability and standard of Towage Services provided by the Licensee (including the size and composition of the Minimum Tug Fleet);
 - (ii) availability and standard of the Emergency Services and Support Services provided by the Licensee;
 - (iii) the Licensee's compliance with its obligations under this Deed;
 - (iv) the Licensee's performance having regard to any KPIs;
 - (v) any incidents or accidents in the provision of the Licensee's Services;
 - (vi) complaints received by the Licensee or Port Authority in relation to the Licensee's Services;
 - (vii) the status of any improvements or corrective actions previously identified by the Parties;
 - (viii) operational and procedural improvements to the Licensee's Services; and
 - (ix) and any other matter reasonably determined by Port Authority;
- (c) The Licensee must take written minutes of the review meeting and circulate these minutes within a reasonable period following the meeting. The Licensee must make any amendments to these minutes reasonably requested by Port Authority.

8.4 Audit

- (a) Port Authority may, at any reasonable time and upon reasonable notice to the Licensee:
 - (i) inspect, or have inspected on a confidential basis by a third party, the

Licensee's Tugs, any records referred to in clause 8.2(c) and any other information in the Licensee's possession, custody or control reasonably required by Port Authority relevant to the performance of the Licensee's obligations under this Deed (the **Records**);

- (ii) take copies of any Records;
 - (iii) observe, or have observed, the provision of the Licensee's Services, for the purposes of auditing and/or monitoring the standard of the Licensee's Services and its compliance with this Deed.
- (b) Port Authority may contact users of the Licensee's Services for the purposes of auditing and/or monitoring the standard of the Licensee's Services and its compliance with this Deed.

9 Force Majeure

9.1 Force Majeure

A party which is prevented in whole or in part from carrying out its obligations under this Deed as a result of a Force Majeure Event (**Affected Party**) must promptly notify the other party.

9.2 Notice

The notice must specify:

- (a) the Force Majeure Event in detail;
- (b) which obligations under this Deed are or will be affected by that event;
- (c) the action that the Affected Party has taken and proposes to take to remedy or overcome the consequences of that event;
- (d) the Affected Party's estimate of the length of time during which the Affected Party will be unable to carry out any of its obligations owing to the Force Majeure Event; and
- (e) the Affected Party's opinion of the consequences likely to flow from that Force Majeure Event.

9.3 Suspension

Provided the Affected Party complies with the provisions of this clause 9, and provided that the Affected Party does not receive a notice disputing the categorisation of the event as a Force Majeure Event, following a notice of a Force Majeure Event in accordance with clause 9.2 and while the Force Majeure Event continues, the obligations of the Affected Party which cannot be performed because of the Force Majeure Event will be suspended.

9.4 Information

After giving a notice under clause 9.2, the Licensee must:

- (a) continue to provide Port Authority with all relevant information pertaining to the Force Majeure Event as and when it becomes known to the Licensee; and

- (b) use its reasonable endeavours to promptly remedy the Force Majeure Event.

9.5 Force Majeure Ceases

- (a) Port Authority or the Licensee may each notify the other that it is of the opinion that a Force Majeure Event has ceased or been overcome.
- (b) As soon as the Force Majeure Event has ceased, the Affected Party must recommence performance of all its affected obligations under this Licence.

9.6 Alternative Arrangements

During the continuance of a Force Majeure Event, the Licensee must use its reasonable endeavours to provide such of the Licensee's Services as are capable of being provided at or from the Port notwithstanding that Force Majeure Event (including utilising tugs from the Licensee's fleet in another port if required or engaging other towage Licensees). It is not a breach of this clause 9.6 if no agreement is ultimately reached with other towage providers provided that the Licensee has used best endeavours to agree on commercial terms for provision of all or part of the affected Licensee's Services.

9.7 No extension

The term of this Deed is not extended by any Force Majeure Event.

10 Cessation of Towage Services

- (a) The Licensee must as soon as reasonably practicable advise Port Authority in writing if the Licensee proposes to cease providing Towage Services in the Port during the Term.
- (b) The written notice provided under clause 10(a) must:
 - (i) be provided to Port Authority immediately upon the Licensee deciding that it wishes to cease providing Towage Services in the Port; and
 - (ii) set out the date on which the Licensee will cease providing the Towage Services and any other information reasonably required by Port Authority.
- (c) The Licensee must use its best endeavours to provide at least 6 months' notice of any intention to cease providing Towage Services in the Port during the Term.

11 Default, Suspension and Revocation

11.1 Notice of Licensee Default

- (a) In addition to Port Authority's rights under clause 11.3, if the Licensee fails to perform, comply with or fulfil any of its obligations under this Deed, which does not include a failure to meet a KPI (**Licensee Default**), Port Authority may give the Licensee a written notice notifying the Licensee of the Licensee Default (**Default Notice**). If the Licensee Default is capable of being rectified, this notice may require the Licensee to remedy the Licensee Default within the period of time specified in the notice, which shall be not less than 30 days.

- (b) If the Licensee Default is capable of being rectified and the Licensee does not remedy the Licensee Default within the period of time required by a Default Notice, Port Authority may give the Licensee a further Default Notice.

11.2 Revocation with Notice

- (a) In addition to Port Authority's rights under clause 11.3, Port Authority may terminate this Deed by giving at least 5 days written notice signed by Port Authority to the Licensee if the Licensee:
 - (i) is the subject of an Insolvency Event; or
 - (ii) receives 2 Default Notices within 6 months.
- (b) Instead of specifying a specific date of termination and to ensure that Towage Services remain available at the Port, Port Authority's notice under clause 11.2(a) may state that the Deed will be terminated upon the date that another provider of towage services enters into a towage licence with Port Authority in the Port.

11.3 Immediate Revocation

Port Authority may terminate this Deed with immediate effect by providing written notice to the Licensee if the Licensee commits a Gross Default.

11.4 Suspension

- (a) Port Authority may, in the circumstances in clause 11.2 or clause 11.3 instead of exercising its rights of termination under those clauses, suspend this Deed by serving a written notice signed by Port Authority on the Licensee (**Suspension Notice**).
- (b) Any suspension of this Deed under clause 11.4(a) will commence upon the date specified in the Suspension Notice (which in the case of a suspension issued for the reasons referred to in clause 11.2 must be no earlier than at least 5 days from the date of the Suspension Notice) and will cease upon the date specified in a written notice from Port Authority as being the date on which:
 - (i) this Deed will re-commence; or
 - (ii) this Deed is terminated.
- (c) Port Authority may require that the Licensee meet reasonable conditions (such as rectifying a Licensee Default and/or implementing a program satisfactory to Port Authority to address non-compliances with this Deed) prior to ending the suspension of this Deed.

11.5 Implementation of Compliance Program

- (a) Port Authority may, in its absolute discretion and instead of exercising its rights of termination or suspension under clauses 11.2 to 11.4, by written notice require the Licensee to meet certain conditions in relation to the provision of the Licensee's Services and/or implement a compliance program satisfactory to Port Authority to address any non-compliances by the Licensee under this Deed.

- (b) Any failure by the Licensee to comply with the conditions referred to in clause 11.5(a) or to implement or comply with a compliance program required by Port Authority under clause 11.5(a) will constitute a Gross Default by the Licensee and Port Authority may exercise its rights of termination and revocation under clause 11.3 or its right of suspension under clause 11.4.

11.6 Right of Internal Review

- (a) If the Licensee believes any suspension or termination of this Deed by Port Authority is unreasonable, the Licensee may, within 7 days of the date it receives the applicable suspension or revocation notice, request the CEO to review the reasonableness of the decision to suspend or cancel the Licensee's licence (**Review Request**). To be valid, the Review Request must be in writing and set out the reasons why the Licensee considers the suspension or cancellation to be unreasonable.
- (b) The CEO will consider a valid Review Request and, in his or her absolute discretion, decide whether it was unreasonable to terminate or suspend this Deed.
- (c) The CEO will, within 7 days of making his or her decision under clause 12.6(b), provide written notice to the Licensee of this decision.
- (d) In considering the Review Request, the CEO is not bound by the rules of evidence and may (in his or her absolute discretion):
 - (i) request additional information from the Licensee or Port Authority;
 - (ii) request a meeting with the Licensee, Port Authority or their Associates;
 - (iii) obtain the assistance of any third party or adviser;
 - (iv) inform him or herself of the circumstances relevant to the matter in any other way; and
 - (v) put in place such other procedures to consider the matter as he or she sees fit.
- (e) If the CEO decides that the suspension or termination of the Deed by Port Authority was unreasonable, this Deed will resume from the date specified in writing by the CEO.
- (f) If the CEO decides that the suspension or termination of this Deed was reasonable, then the CEO may find that the original decision stands or take the actions referred to in clause 11.5.

11.7 Indemnities to Survive

Each indemnity in this Licence is a continuing obligation, separate and independent from the other obligation of the parties, and survives termination, completion or expiration of this Licence.

11.8 Termination by Port Authority

Port Authority may, without liability to any person, terminate this Deed by written notice to the

Licensee upon a change of Laws in relation to the Licensee's Services or a revocation of the Harbour Master's direction referred to in Background C.

12 Notices

- (a) Unless otherwise specified, a notice, consent or approval required by this Deed must be:
 - (i) in writing, in English and signed by an authorised person; and
 - (ii) hand delivered, sent by prepaid post or sent by electronic mail to the recipient's address for Notices specified in Item 11 of Schedule One, as varied by any notice given by the recipient to the sender.
- (b) A notice given in accordance with clause 12(a) takes effect when it is received (or at a later time specified in it), and is taken to be received:
 - (i) when delivered (if delivered by hand);
 - (ii) two Business Days after the date of posting (if sent by prepaid post); and
 - (iii) in the case of electronic mail, if the message is correctly addressed to and successfully transmitted to that party's electronic mail address (e-mail address) when an acknowledgement of delivery is recorded on the sender's computer.
- (c) Unless otherwise specified, Port Authority's document or notice is valid when executed by its CEO or signed by Port Authority's Representative.

13 Other matters

13.1 Governing law

The Laws of New South Wales govern this Deed and the parties submit to the exclusive jurisdiction of the Courts of New South Wales.

13.2 Validity of Port Authority's Representative's Action

Unless otherwise specified, Port Authority's Representative may do anything that Port Authority may or must do in this Deed.

13.3 Complete agreement

This Deed is the full agreement between Port Authority and the Licensee in relation to this matter. The Licensee agrees that no matter was discussed or circumstance represented about the Port or this Deed that is not included in this Deed.

13.4 Severance of invalid and other provisions

If any provision of this Deed is void, voidable, unenforceable or illegal, then it is to be severed from this Deed and the remainder of this Deed will continue with full force and effect. Port Authority may modify or amend any provision of this Deed so that it is no longer void, voidable, unenforceable or illegal to place the parties in as similar a position as is possible if the provision was not void, voidable, unenforceable or illegal.

13.5 Variation

- (a) Subject to clause 13.5(b), a variation of this Deed must be in writing and

signed by both parties.

- (b) Port Authority can vary this Deed unilaterally by written notice to the Licensee if Port Authority considers that the variation is required for safety or Port operational reasons. Port Authority must consult the Licensee prior to issuing a notice under this clause, except in an Emergency when no consultation is required.
- (c) Without limiting clause 13.5(b), Port Authority may vary the Current Eligibility Criteria by written notice if Port Authority considers that the change to the Current Eligibility Criteria is required or desirable including due to changes in the Port or available technology. Port Authority must consult the Licensee prior to issuing a notice under this clause.

13.6 No waiver

No right under this Deed is waived, or deemed to be waived, except by notice signed by the party. No right under this Deed is waived by granting an extension or forbearance to another party.

13.7 Further action

Each party must take all necessary further action to give full effect to this Deed.

13.8 Counterparts

This Deed may be executed in any number of counterparts.

13.9 Assignment by Port Authority

Port Authority may assign or novate any of its rights and obligations under this Deed, or novate any or all of its rights or obligations under this Deed, to any Government Authority or person that employs the Harbour Master or holds a Port Safety Operating Licence for the Port. The Licensee agrees to execute any assignment or novation deed in the form required by Port Authority to give effect to any assignment or novation contemplated by this clause.

13.10 Binding

This Deed binds the Licensee whether or not the Licensee has executed or properly executed the Deed.

13.11 Costs

Each party must pay its own costs of preparing, reviewing and executing this Deed.

Execution page

EXECUTED as a deed.

EXECUTED for and on behalf **[insert]**
accordance with section 127 of the *Corporations Act 2001* (Cth) by:

.....
Signature of director/company secretary

.....
Signature of director

.....
Name of director/company secretary

.....
Name of director

EXECUTED for and on behalf of **Newcastle Port Corporation trading as Port Authority of New South Wales** (ABN 50 825 884 846) by its duly authorised representative in the presence of:

.....
Signature of witness

.....
Signature of authorised representative

.....
Name of witness

.....
Name of authorised representative

Schedule One Details

Item	Subject	Details
1.	Port	Newcastle as marked in the plan at Annexure One as varied from time to time by amendments to the Ports and Maritime Administration Regulation 2012
2.	Piloted Vessel	A vessel or vessels as defined in the <i>Marine Safety Act 1998</i> (NSW) as requiring pilotage in the Port being, as at the date of this licence, a Vessel: <ol style="list-style-type: none"> 1. that is not a recreational vessel; 2. is more than 30m in length; and 3. whose Master does not hold a certificate of local knowledge or a marine pilotage exemption certificate that applies to that port and vessel.
3.	Current Eligibility Criteria	<ol style="list-style-type: none"> 1. Nomination and availability of Minimum Tug Fleet as required by Item 2 of Schedule Two 2. Nomination and availability of Back Up Tug as required by Item 3 of Schedule Two 3. Compliance with Emergency Tugs and specifications set out in Item 5 of Schedule Two 4. Have in place an approved Safety Management System 5. A Classification Society (which has been approved by Port Authority, acting reasonably) issued current bollard pull certification for the Minimum Tug Fleet (within 5 years) 6. History of either full compliance with towage licences issued within Australia or demonstrated improvement to overcome future breaches.
4.	Commencement Date	The date the Harbour Master Direction referred to in Recital C comes into effect
5.	Evaluation Period	60 days from the Commencement Date, or as may be extended in accordance with the terms of this Deed
6.	Initial Expiry Date	The end of the Evaluation Period, or as may be extended in accordance with the terms of this Deed
7.	Expiry Date	2 years from the Commencement Date, or as may be extended in accordance with the terms of this Deed
8.	Term	2 years
9.	Licence Fee	\$1, if demanded
10.	Port Authority's Authorised Representative Licensee's Authorised Representative	Name: Chief Operating Officer or his or her delegate Postal Address: Level 4, 20 Windmill Street, Walsh Bay Street Address: Level 4, 20 Windmill Street, Walsh Bay Licensee: Name: <i>[insert]</i> Postal Address: <i>[insert]</i> Street Address: <i>[insert]</i>
11.	Notices	Port Authority Name: Chief Executive Officer Postal Address: Level 4, 20 Windmill Street, Walsh Bay Street Address: Level 4, 20 Windmill Street, Walsh Bay Licensee: Name: <i>[insert]</i> Postal Address: <i>[insert]</i> Street Address: <i>[insert]</i>

12.	Harbour Master's Directions	Harbour Master's Directions Newcastle
13.	Port Operator	Port of Newcastle (PON)

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Schedule Two

Services Requirements

This Schedule sets out the requirements for the Towage Services provided by the Licensee within the Port.

Item	Subject	Requirement
1.	Minimum Notice Period (clause 1.1)	2 hours
2.	Minimum Tug Fleet (clause 5.1)	<p>One Licensee in the Port</p> <p>Where there is one Unrestricted Licensee within the Port, the Licensee is to hold eight omnidirectional tugs to be approved by the Harbour Master;</p> <ul style="list-style-type: none"> • Six of not less than 64 tonnes static Bollard Pull; and • Two of not less than 47 tonnes Bollard Pull. <p>Two tugs within the Minimum Tug Fleet must meet the requirements of an Emergency Tug and both must be manned with crews ready to respond to an Emergency on an as required basis</p> <p>Two tugs within the Minimum Tug Fleet must be Headline Capable (HLC) Tugs</p> <p>Two tugs within the Minimum Tug Fleet must be capable of providing Escort Towage.</p> <p>Multiple Unrestricted Licensees in the Port</p> <p>While ever there is more than one Unrestricted Licensee within the Port, the Licensee must hold:</p> <p>(a) three omnidirectional tugs approved by the Harbour Master of not less than 64 tonnes Static Bollard Pull; and</p> <p>(b) one tug approved by the Harbour Master of not less than 47 tonnes Bollard Pull</p> <p>(c) one tug within the Minimum Tug Fleet must meet the requirements of an Emergency Tug and must be manned with crews ready to respond to an Emergency on an as required basis</p> <p>(d) one tug within the Minimum Tug Fleet must be a HLC</p> <p>(e) one tug within the Minimum Tug Fleet must be capable of providing Escort Towage</p> <p>Should the number of Unrestricted Licensees within the Port reduce to one at any time during the term of this Licence, the Licensee will activate the Back Up Tug in accordance with clause 5.1(b) and will have a period of 6 months to increase to the Minimum Tug Fleet as required by Item 2 of Schedule Two and increase its manned Emergency Tugs from one to two as required in item 7 of Schedule Two.</p>

		<p>Emergency Response</p> <p>All tugs within the Minimum Tug Fleet must be available and ready to respond to an Emergency within the applicable Emergency Response Time.</p> <p>Minimum Tug Fleets across other ports</p> <p>The Licensee may locate the tugs comprising of the Minimum Tug Fleet in any port for which the Licensee holds unrestricted licence in ports of New South Wales, providing always:</p> <ul style="list-style-type: none"> the Licensee must hold the combined total of tugs for each Minimum Tug Fleet for each port for which the Licensee holds an unrestricted licence; and the service requirements for each licence must be satisfied, including the Emergency Response capability of each licence. <p>Should Port Authority consider, acting reasonably, that the service requirements for each port are appropriate, Port Authority may reduce the required total number of minimum tug fleet numbers for a licensee holding multiple licenses across ports of New South Wales.</p>
3.	Back Up Tug (clause 5.1(b))	A tug approved by the Harbour Master of similar power and specification to the tug it is temporarily replacing and available to perform the Licensee's Services in the Port within the Backup Tug Minimum Notice Period. Without limiting the Harbour Master's discretion to approve, the Harbour Master may withhold approval of the Back Up Tug if the proposed tug forms part of the minimum tug fleet in another port or may otherwise compromise the service capability of any other port.
4.	Back Up Tug Minimum Notice Period	The nominated Backup Tug is required to be on station in the Port within 12 hours of notification that any tug within the Minimum Tug Fleet is unavailable in accordance with clause 6.2
5.	Emergency Tugs and Specifications (clause 5.2)	<p>An Ocean Towing Tug.</p> <p>Two tugs within the Minimum Tug Fleet are to be fitted with minimum water fire-fighting capacity of not less than 600 cubic metres per hour with a range of 80 metres and a water spray deluge system. No on board fire-fighting foam storage or carrying capacity is required.</p> <p>While ever there is more than one Unrestricted Licensee within the Port only one tug within the Minimum Tug Fleet is required to meet the Emergency Specifications.</p>
6.	Ocean Towing Tug	A tug capable of safe ocean towing that meets the survey standard for Class 2B vessels in the National Standard for Commercial Vessels, incorporating an aft tow winch and towline suitable for emergency towage, subject to acceptance of the towage arrangement/s by AMSA.

		This tug may either be within the Minimum Tug Fleet or may be located in Botany Bay or Sydney Harbour while the Licensee also holds an unrestricted licence to operate in those ports.
7.	Emergency Response Time (clause 4.2(a)(ii))	15 minute call out for the manned Emergency Tugs 2 hour call out for any other tugs 24 hours for Ocean Towing Tug
8.	Review Period (clause 8.3)	6 months

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Schedule Three

Key Performance Indicators

KPI No.	KPI	Measure	Data Source	Monthly Target	Review Period
1	Towage Services commenced or ready to be commenced within Recognised Notification Time	Number of late attendances	Licensee to maintain records of each occasion it is late to provide Towage Services, the period by which it is late and the reason for the lateness.	0	
2	Towage Services available 24 hours a day, 365 days a week	Number of towage jobs that the Licensee: (iii) Requires another towage provider to perform (iv) Is unable to service at the requested time	Licensee to maintain records of: all booking requests received; booking requests that are declined (including the reason for declining), bookings that are not met by the Licensee (including the reason) and booking requests that are outsourced to third parties (including the reason)	0	
3	Licensee's Equipment to be in good working order	Number of times the Licensee's Services are delayed or unable to be provided due to issues with the Licensee's Equipment.	Licensee to maintain written records of each occasion on which it is delayed in providing, or unable to provide the Licensee's Services due to equipment, failure, defects, malfunctions or unavailability. The nature of the equipment issue is to be specified.	0	
4	No broken tug lines	Number of broken tug lines	Licensee to maintain records of all broken tug lines including time, date, vessel and activity.	0	

5	Licensee's Services to be provided in a proper, safe, competent manner	Number of incidents/accidents as described in clause 7.4 involving a Licensee's tug or caused or contributed to by the Licensee.	Licensee to keep records of all such incidents and accidents and notify Port Authority in accordance with clause 7.4.	0	
6	Licensee not to pollute	Number of incidents as described in clause 7.2	Licensee to keep records of all such incidents and accidents and notify Port Authority in accordance with clause 7.4	0	
7	Licensee meets reporting requirements in clause 7.4	Number of incidents reported to Port Authority in accordance with clause 7.4 expressed as a percentage of all incidents that occurred in the Review Period.	Licensee to keeps records of all incidents/accidents and notify Port Authority in accordance with clause 7.4	100%	
8	service delivery			98%	

Schedule Four: Agreed Rates

Pursuant to clause 4.2(c) of this Licence, the Licensee may issue an invoice to Port Authority and on receipt of a valid tax invoice, Port Authority will pay the Licensee an amount for responding to requests for Emergency Services falling within clause 4.2(a)(iii)(b) of this Licence (other than in relation to a Vessel), the amounts calculated as follows:

1. Deployment of the **manned Emergency Tug** with less than 2 hours' notice (noting the minimum Emergency Response Time of 15 minutes):

Standard tariff of the Licensee in the Gross Tonnage (GT) Band corresponding to Average GT in Newcastle plus 50% surcharge.

2. Deployment of **additional Emergency Tugs** (noting the minimum Emergency Response Time of 2 hours) for up to 2 hours:

Standard tariff of the Licensee in the Gross Tonnage (GT) Band corresponding to Average GT in Newcastle to apply.

3. Additional time beyond initial two hour engagement of **all tugs**:

50% of the standard tariff of the Licensee in the Gross Tonnage (GT) Band corresponding to Average GT in Newcastle to apply per hour or part thereof.

Schedule Five: Subcontractor Collateral Warranty Deed Poll

Subcontractor's Collateral Warranty Deed made at _____ on _____

Parties **Newcastle Port Corporation trading as Port Authority of New South Wales (ABN 50 825 884 846)** of Level 4, 20 Windmill Street, Walsh Bay NSW 2000 (Port Authority)

[Insert subcontractor] ABN **[insert]** of **[insert address]** (Subcontractor)

Recitals

- A. Port Authority has licensed the Licensee to provide Towage Services in the Port on the terms set out in the Towage Licence.
- B. The Subcontractor has entered into an agreement with the Licensee for the Subcontractor's Services, which are required in connection with the Licensee's Services.
- C. In return for Port Authority allowing the Licensee's Services to be performed by the Subcontractor, the Subcontractor agrees to give the warranties, indemnities and other promises in this Deed Poll in favour of Port Authority. The obligations created by this Deed Poll are in addition to the obligations of the Subcontractor to the Licensee, and do not affect any other rights or remedies available to Port Authority against the Licensee or the Subcontractor.

Operative provisions

1. Definitions

In this Deed Poll:

Associates means

- (a) in relation to the Licensee, the Licensee's officers, employees, invitees, contractors, subcontractors and agents; and
- (b) in relation to Port Authority, Port Authority's officers, agents and employees, including but not limited to the Harbour Master but does not include the Licensee or the Licensee's Associates.

Licensee means **[insert name and ABN of towage licensee]**.

Licensee's Services means any services performed by the Licensee pursuant to the Licence.

Subcontractor's Services means any services or work performed by the Subcontractor pursuant to the Licence.

Towage Licence means the towage licence dated **[insert date]** between Port Authority and the Licensee in respect of the Licensee's Services.

2. Warranty

The Subcontractor warrants in favour of Port Authority that:

- (a) the Subcontractor's Services will comply in all respects with the requirements of the Licence; and

- (b) it will perform the Subcontractor's Services to the standard of professional care, skill, judgment and diligence expected of a competent professional contractor experienced in providing services and work of a nature similar to the Subcontractor's Services.

3. Indemnity

The Subcontractor indemnifies Port Authority against all costs, losses and damages suffered or incurred by Port Authority arising out of or in connection with any breach by the Subcontractor of clause 0 of this Deed Poll.

4. Release

The Subcontractor is not entitled to make (and releases Port Authority and any Associate of Port Authority from) any Claim against Port Authority or any Associate of Port Authority arising from or in connection with, the provision of the Subcontractor's Services or the use of the Port and its facilities by the Subcontractor. This provision does not apply to the extent that any loss or damage is caused or contributed to by Port Authority or an Associate of Port Authority.

5. Governing law and jurisdiction

This Deed Poll is governed by the laws of the State of New South Wales, and the parties to this Deed Poll irrevocably submit to the jurisdiction of the courts of that State and any courts competent to hear appeals from those courts.

Executed as a deed poll.

Executed by **[insert name of Subcontractor]** in accordance with s 127 of the *Corporations Act 2001* (Cth):



Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Annexure One Plan of the Port

