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THIS DEED OF LICENCE is made on the                      day of

BETWEEN

**THE STATE OF WESTERN AUSTRALIA ACTING THROUGH THE MINISTER FOR LANDS**, a body corporate under the *Land Administration Act 1997*, care of Department of Planning, Lands and Heritage, 140 William Street, Perth, Western Australia (**Licensor**)

AND

**Town of Cottesloe (ABN 19 824 630 520)** of 109 Broome Street, Cottesloe, Western Australia 6011 (**Licensee**)

## BACKGROUND

- A. The Licence Area is a portion of Crown land. Crown land is administered by the Minister through the Department on behalf of the State of Western Australia.
- B. The Licensee wishes to have access to the Licence Area for the Permitted Use.
- C. The Minister on behalf of the State of Western Australia is authorised by section 91 of the LAA to grant a licence of Crown land for any purpose.
- D. The granting of this Licence by the Licensor may affect native title rights and interests in the Licence Area.
- E. If an approved determination of native title is made under the NTA in relation to land or waters (that includes the Licence Area), and if such determination is that native title exists, the use of the Licence Area for the Permitted Use must discontinue immediately and this Licence will terminate on the date of such determination.
- F. The Licensor has agreed to grant to the Licensee the Licence in respect of the Licence Area on the terms and conditions and for the Permitted Use set out in this Licence.

## OPERATIVE PART

The Parties covenant and agree on the matters set out above and as follows:

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### 1. DEFINITIONS AND INTERPRETATION

#### 1.1. DEFINITIONS

In this Licence the following terms shall have the following meaning:

***approved determination of native title, determination of native title, extinguish, native title, native title rights and interests*** have the same meanings as they have in the NTA.

**Contamination** is the state of being contaminated as that term is defined in the CSA.

**Conditions** means the conditions (if any) referred to in clause 5(g)(iii) and as set out in "Annexure B" to this Licence.

**CSA** means the *Contaminated Sites Act 2003*.

**Date of Commencement** means the date of commencement specified in item 2(b) of the Schedule.

**Date of Expiry** means the date of expiry specified in item 2(c) of the Schedule.

**Department** means the department principally assisting the Minister in the administration of the LAA.

**Environment** has the meaning given by section 3 of the *Environmental Protection Act 1986*.

**Environmental Harm** has the same meaning as that term is defined in the *Environmental Protection Act 1986*.

**Environmental Law** means all planning, environmental, contamination or pollution laws and any regulations, orders, directions, ordinances or all requirements, permission, permits or licences issued thereunder.

**Environmental Notice** means any notice, direction, order, demand or other requirement to take any action or refrain from taking any action from any Governmental Agency, whether written or oral and in connection with any Environmental Law.

**Further Term** means an extension of the Term.

**Governmental Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**LAA** means the *Land Administration Act 1997*.

**Law** includes any requirement of any statute, regulation, proclamation, ordinance or by-law present or future whether State, Federal or otherwise.

**Licence** means this deed including the contractual rights granted to the Licensee under clause 2 and the rights granted under this Licence necessary for the exercise of the rights granted under clause 2.

**Licence Area** means the licence area specified in item 1 of the Schedule.

**Licence Fee** means the licence fee specified in item 3(a) of the Schedule.

**Licensee's Agent** includes the employees, agents, contractors, consultants, invitees and any other person acting with the authority or permission of the Licensee.

**Licensee's Property** means all plant, equipment, materials, and other property brought or placed on the Licence Area by, on behalf of or with the authority of the Licensee.

**Maintenance Document** means the Eco Shark Barrier maintenance plan titled "Cottesloe Shark Barrier Maintenance Plan" dated 30 July 2019, and any revised version of this document.

**Minister** means the Minister for Lands, a body corporate under section 7(1) of the LAA.

**NTA** means the *Native Title Act 1993 (Cth)*.

**Parties** mean the Licensor and the Licensee.

**Party** means the Licensor or the Licensee, as the case may be.

**Permitted Use** means the use specified in item 4 of the Schedule.

**Plan** means the plan annexed to this Licence and marked "Annexure A".

**Pollution** means anything that is Pollution within the meaning of the *Environmental Protection Act 1986*, which is not authorised under any Law.

**Schedule** means the Schedule to this Licence.

**Services** includes water, gas and electricity supply, sewerage, waste disposal, drainage and telecommunications and all facilities pipes, cables, fixtures and fittings associated with those services.

**Shark Barrier** means the shark barrier system designed and patented by the Licensee, in accordance with the designs and specifications as detailed in the design certification titled “Eco Shark Barrier Cottesloe Shark Barrier Design Certification” prepared by MMD Naval Architects dated 30 July 2019, and any revised version of this document.

**Surrounding Area** means any land or water adjacent to or in the vicinity of the Licence Area and the air generally above the Licence Area, and includes an affected site within the meaning of that term as defined in the CSA.

**Term** means the term specified in item 2(a) of the Schedule.

## **1.2. INTERPRETATION**

In this Licence:

- (a) clause headings are for convenient reference only and shall have no effect in limiting or extending the language of the provisions to which they refer;
- (b) a reference to a clause, schedule or annexure is a reference to a clause of or schedule or annexure to the document in which the reference appears;
- (c) a reference to any Law includes consolidations, amendments, re-enactments or replacements of it;
- (d) the singular includes the plural, the plural includes the singular and any gender includes each other gender;
- (e) if a period of time is specified and runs from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (f) the word ‘person’ includes a reference to the person’s personal representatives, executors, administrators, successors and assigns and a reference to a corporation includes a reference to the corporations successors and assigns;
- (g) covenants in this Licence by two or more persons shall be deemed joint and several; and
- (h) a reference to the word “including” is deemed to be followed by the words “but not limited to”.

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## **2. GRANT OF LICENCE**

### **2.1. GRANT OF LICENCE**

Subject to clause 2.2 and in consideration of the matters set out in this Licence and the payment of the Licence Fee by the Licensee to the Licensor, the Licensor hereby GRANTS to the Licensee a non-exclusive right for the Licensee and any of the Licensee’s Agent for the Term to enter upon and remain on and use the Licence Area, with such vehicles, machinery, plant or equipment as is reasonably necessary for the Permitted Use in accordance with the terms and conditions set out in this Licence.

### **2.2. APPROVED DETERMINATION OF NATIVE TITLE**

Notwithstanding any other provision in this Licence providing for the determination, expiration or termination of this Licence, the Licensor and Licensee agree that:

- (a) this Licence will terminate on the date on which an approved determination of native title is made in relation to any part of the Licence Area and the determination is that native title exists in any part of the Licence Area, notwithstanding that neither party to this Licence has given or received notice of such approved determination of native title;

- (b) the Licensee must vacate and deliver up possession of the Licence Area to the Licensor in accordance with the provisions of clause 9 of this Licence as soon as is reasonably practicable after it becomes aware of a determination that native title exists;
- (c) the termination of the Licence under this clause does not give the Licensee any right to damages or compensation other than the refund of any part of the Licence Fee and GST then paid by the Licensee attributable to a period extending beyond the date of the approved determination of native title; and
- (d) the termination of the Licence under this clause does not affect any rights or obligations that are expressed in this Licence to survive determination, expiration or early termination of this Licence and is without prejudice to the rights of the Licensor in respect of any antecedent breach of the terms, covenants and conditions, contained or implied in this Licence, by the Licensee.

### **2.3. NO ESTATE OR INTEREST IN LAND**

The Licensee acknowledges and agrees that:

- (a) The rights conferred by this Licence rest in contract only and do not create in or confer upon the Licensee any tenancy or any estate or interest in or over the Licence Area and the rights of the Licensee will be those of a licensee only.
- (b) This Licence confers no right of exclusive occupation of the Licence Area upon the Licensee and the Licensor including through its officers, employees, contractors and agents may at any time and at all times from time to time exercise all the Licensor's rights as licensor including the Licensor's rights to use possess and enjoy the whole or any part of the same save only in so far as such rights shall not unreasonably:
  - (i) prevent the operation of the rights granted to the Licensee under this Licence; or
  - (ii) be inconsistent with the express provisions of this Licence.
- (c) The rights granted to the Licensee under this Licence are only exercisable during the Term.
- (d) Nothing in this Licence affects or is intended to affect native title rights and interests where they have been determined to exist in the Licence Area.
- (e) If despite sub-clause (d) native title rights and interest are affected, the grant of this Licence is not intended to extinguish native title rights and interests.
- (f) For the purposes of sub-clauses (d) and (e), the term "affect" has the same meaning as defined in the NTA.

### **2.4. EFFECT OF LICENCE**

The Parties acknowledge and agree that this Licence is valid and the terms of this Licence apply for all other purposes, even if it is determined that this Licence is invalid to the extent that it affects native title pursuant to the NTA or otherwise.

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## **3. EXCLUSION OF WARRANTY**

The Licensee acknowledges and agrees that the Licensor makes no warranty or representation that this Licence is or will be validly granted for the purposes of the NTA, and any such warranty or representation is expressly excluded.

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#### **4. TERM AND LICENCE FEE**

##### **4.1. TERM**

The Term shall commence on the Date of Commencement and shall expire on the Date of Expiry.

##### **4.2. FURTHER TERM**

Any application for a Further Term or extension of the rights granted to the Licensee under this Licence must be made to the Licensor, in writing no less than 30 days prior to the expiration of this Licence and may be granted or refused at the Licensor's absolute discretion.

##### **4.3. LICENCE FEE**

The Licensee must pay the Licence Fee to the Department, at the times and in the manner specified in item 3 of the Schedule.

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#### **5. LICENSEE'S COVENANTS**

The Licensee covenants with the Licensor that the Licensee and the Licensee's Agents:

- (a) except where permitted under this Licence, must not undertake nor allow to be undertaken any works within the Licence Area;
- (b) must not construct or erect or permit to be constructed or erected any permanent structure, improvement or other thing that is a fixture on the Licence Area;
- (c) must not cause or permit any damage to the Licence Area or to the Surrounding Area;
- (d) must not cause or permit any Contamination, Pollution or Environmental Harm to occur in, on or under the Licence Area or to the Surrounding Area, and if any Contamination, Pollution or Environmental Harm is caused by the Licensee or the Licensee's Agents, the Licensee must give notice of it to the Licensor and must minimise and remediate any resultant damage and harm to the reasonable satisfaction of the Licensor;
- (e) must keep the Licence Area in good and safe repair and condition, and must take all steps necessary to keep it safe and free from hazard to any property or person on or using the Licence Area or the Surrounding Area, and where required must keep secure the Licence Area;
- (f) must ensure that traffic on all adjoining and surrounding roads is not unduly disrupted due to vehicles entering or leaving the Licence Area;
- (g) must, while using the Licence Area:
  - (i) ensure the safe movement of pedestrians using the Licence Area or adjoining areas, including erecting signs to warn persons likely to be endangered by the Licensee's use of the Licence Area; and
  - (ii) ensure that pedestrians using the Licence Area or adjoining areas are not unduly disrupted;
  - (iii) comply with the Conditions (if any);
- (h) must not dispose and not store on the Licence Area any rubbish or any poisonous, toxic or hazardous substance;
- (i) must not undertake nor allow to be undertaken any excavation or clearing of the Licence Area;

- (j) must pay all outgoings payable in respect of the use of the Licence Area under this Licence;
- (k) must punctually comply with and observe:
  - (i) all relevant Laws; and
  - (ii) all relevant notices received either by the Licensor or the Licensee from, and the requirements of, any relevant Governmental Agency;
- (l) must obtain, keep current and comply with all consents, approvals, permits, licences or other requirements under any Law, if any, to use the Licence Area for the purposes permitted under this Licence;
- (m) must repair or remedy any damage caused or permitted by the Licensee or the Licensee's Agents, to the Licence Area or the Surrounding Area or Services in, on, under or over the Licence Area, including remediating any Contamination, Pollution, Environmental Harm, and erosion or other form of degradation; and
- (n) must reinstate the Licence Area on the expiration of the Term or other termination of this Licence, in accordance with clause 2.

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**6. DUTY TO REPORT AND COMPLIANCE WITH MAINTENANCE DOCUMENT**

- (a) The Licensee must notify the Licensor in writing within 24 hours of receiving notice of any incident arising from the use of the Licence Area for the Permitted Use or from the presence of the Shark Barrier, where that incident affects the health and safety of any persons or marine life, or causes damage to property.
- (b) The Licensee must at all times during the Term observe, perform and comply with all conditions and provisions contained or implied in the Maintenance Document which are to be observed, performed and complied with by the Lessee, and in particular, the Licensee must at all times comply with the schedule for maintenance and inspection of the Shark Barrier as set out in the Maintenance Document.
- (c) The Licensor reserves the right to require that any of the Licensee's Property or any equipment or components associated with the Shark Barrier be removed or relocated at the Licensee's cost and expense at any time to ensure navigational safety and the safety of any persons or marine life.
- (d) During the Term, the Licensee must provide to the Licensor:
  - (i) a copy of any revised version of the Maintenance Document referred to in this clause; and
  - (ii) upon the expiration of the Term and any Further Term, a report in a form agreed with the Licensor as to the operation of the Shark Barrier trial during the Term, including but not limited to details of:
    - (A) any incident arising from use of the Licence Area or from presence of the Shark Barrier, and the resolution of each incident;
    - (B) a record of compliance with maintenance and monitoring requirements for the Shark Barrier during the Term; and
    - (C) relevant evidence to support the continued use of the Shark Barrier in the current location.



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## 7. RISK, INDEMNITY, RELEASE AND INSURANCE

### 7.1. RISK

The Licensee:

- (a) acknowledges that all Licensee's Property brought onto the Licence Area is at the Licensee's sole risk and responsibility at all times and entry onto and use of the Licence Area by the Licensee or any Licensee's Agent is at the sole risk of the Licensee; and
- (b) acknowledges that the Licensor accepts no responsibility or liability for use of the Licence Area by the Licensee or any Licensee's Agent nor for any loss or damage to the Licensee's Property that is brought onto the Licence Area.

### 7.2. INDEMNITY AND RELEASE

- (a) The Licensee hereby releases and indemnifies and agrees to keep released and indemnified the Licensor, the State, the Crown, all Ministers of the Crown, and all officers, servants, agents, contractors, invitees and licensees of any of them (the **Indemnified Parties**) from and against all claims, demands, actions, suits, proceedings, judgments, damages, compensation liabilities, costs, charges, expenses (including legal costs of defending or settling any action, claim or proceeding) and losses of any nature whatsoever whether based in contract, tort or statute or any combination thereof which the Indemnified Parties (or any of them) may suffer or incur or which may at any time be brought maintained or made against them (or any of them) by the Licensee, the Licensee's Agents or any other person in respect of or in connection with:
  - (i) any destruction, loss (including loss of use), injury or damage of any nature or kind of or to property of any person whether or not on the Licence Area and including the property of:
    - (A) any of the Indemnified Parties; or
    - (B) the Licensee or the Licensee's Agents; and
  - (ii) any death of, or injury or illness sustained by, any person and including:
    - (A) the Indemnified Parties; or
    - (B) the Licensee or the Licensee's Agents; and
  - (iii) any affect on or impairment of native title rights and interests, or affect on impairment of the exercise of native title rights and interests of any person in relation to the Licence Area (for the purposes of this sub-clause, the term "affect" has the same meaning as defined in the NTA); and
  - (iv) any effect on the validity, or invalidity, of this Licence or the exercise by the Licensee or the Licensee's Agents of any rights conferred under this Licence;

directly or indirectly caused by arising out of or in connection with:

- (1) the Licensee's or Licensee's Agents use or enjoyment of the Licence Area or any part of the Licence Area pursuant to the terms of this Licence;

- (2) any works carried out by or on behalf of the Licensee under this Licence;
  - (3) the exercise or enjoyment of any rights conferred upon the Licensee under this Licence;
  - (4) any Contamination, Pollution or Environmental Harm of the Licence Area or the Surrounding Area caused or contributed to by the Licensee's or the Licensee's Agents use of the Licence Area;
  - (5) any remediation required to be carried out by the Licensee under this Licence in respect of the Licence Area or the Surrounding Area or otherwise having to comply with any Environmental Notice or any other notice received from any Governmental Agency;
  - (6) any default by the Licensee in the due and punctual performance, observance and compliance with any of the Licensee's covenants or obligations under this Licence;
  - (7) any other act, neglect, default or omission by the Licensee or the Licensee's Agents; or
  - (8) any invalidity of this Licence for the purposes of the NTA or otherwise by reason of the existence of native title rights or interests.
- (b) The obligations of the Licensee under this clause:
- (i) are unaffected by the obligation of the Licensee to take out insurance and the obligations of the Licensee to indemnify are paramount; and
  - (ii) continue after the expiration or earlier determination of this Licence.

### **7.3. INSURANCE**

- (a) The Licensee must during the Term effect, maintain and keep current with an insurer of good repute, a public liability insurance policy for the amount specified in item 7 of the Schedule for any one claim (or any other amount reasonably required by the Licensor from time to time consistent with usual prudent commercial practice) and which policy includes, but is not limited to, coverage in respect of:
- (i) any injury to, illness of, or death of, any person;
  - (ii) any loss, damage or destruction to any property including to the property of any of the Indemnified Parties;
  - (iii) any damages or compensation payable to the holders of or in respect of affects on or impairment of native title rights or interests;
  - (iv) the loss of use of any property, including the property of any of the Indemnified Parties; and
  - (v) liability arising out of any Contamination, Pollution or Environmental Harm of the Licence Area or the Surrounding Area

(including neutralising or clean up costs) of a sudden and accidental nature during the Term caused or contributed to by the Licensee's or the Licensee's Agents' use of the Licence Area, or such other form of insurance coverage as may become readily available from such an insurer;

and such insurance shall include the interests of the Licensor under this Licence.

- (b) The Licensee:
  - (i) must give to the Licensor a copy of the certificate of currency of the policy of insurance referred to in subclause (a) at the Date of Commencement; and
  - (ii) must submit evidence to the Licensor on each anniversary of the Date of Commencement during the Term, or as otherwise requested by the Licensor, which shows that the insurance policy referred to is still current.
- (c) The Licensee shall effect and maintain all insurance required to be effected by it by law. Without limiting the generality hereof, the Licensee shall have all necessary insurance with respect to its employees under the relevant Laws and shall, if required by the Licensor, produce evidence of such insurance at any time.
- (d) The Licensee will not do or omit to do any act or thing or bring onto or keep anything on the Licence Area which might render the insurance on the Licence Area void or voidable.

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## **8. TERMINATION OF LICENCE**

### **8.1. GROUNDS FOR TERMINATION**

- (a) Notwithstanding any other clauses relating to early termination, this Licence and the rights granted to the Licensee pursuant to it, may be terminated by the Licensor by notice in writing to the Licensee:
  - (i) if moneys payable under this Licence are in arrears and unpaid for 14 days after formal demand;
  - (ii) if the Licensee breaches or fails to observe any of the covenants, conditions or terms on the Licensee's part expressed or implied in this Licence, other than the obligation referred to in subclauses (i) and (iii), and the breach has not been remedied by the Licensee within 14 days after service of a notice from the Licensor requiring the Licensee to remedy the breach or non-observance;
  - (iii) if the Licensee breaches or fails to observe any of the covenants, obligations, conditions or terms referred to in clause 5 during the Term;
  - (iv) if the Licensee:
    - (A) becomes bankrupt or enters into any form of arrangement (formal or informal) with any of its creditors, or an administrator or a receiver or a receiver and manager is appointed to any of its assets;
    - (B) being a company or other body corporate, an order is made or a resolution is passed for its winding up except for the purpose of reconstruction or amalgamation;

- (C) being a company, or other body corporate ceases or threatens to cease to carry on business or goes into liquidation, whether voluntary or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed; or
- (D) being a company, is placed under official management under the *Corporations Act 2001* or enters into a composition or scheme of arrangement;

and without limiting the foregoing but for the avoidance of doubt, this subclause (a)(iv) applies to any such event that may occur in relation to the Licensee if it is an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 Cth*; or

- (v) if the Licensee is an Aboriginal and Torres Strait Islander corporation under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 Cth* and a determination is made by the Registrar under that Act that the Licensee is to be under special administration; or
- (vi) if the Licensee abandons or vacates the Licence Area;

and this Licence and rights granted pursuant to it will terminate on expiry of the notice period specified in the notice.

- (b) No compensation or money is payable to, or recoverable by, the Licensee from the Licensor for termination of the Licence under this clause.
- (c) Any termination of the Licence under this clause:
  - (i) does not affect any rights and obligations that are expressed in this Licence to survive expiry or earlier termination of this Licence; and
  - (ii) is without prejudice to the rights of the Licensor in respect of any antecedent breach of the terms, covenants or conditions contained or implied in this Licence by the Licensee.

## **8.2. LICENSOR'S RIGHT TO ENTER AND TO REMEDY**

- (a) If the Licensee has breached or failed to observe any of the terms of this Licence on its part contained or implied in this Licence, and that breach or non-performance has continued for at least 14 days after the service of a written notice on the Licensee requiring it to remedy the same, without affecting its other rights under this Licence, the Licensor may (but is not obliged to) remedy the breach, including the payment of monies.
- (b) For this purpose, the Licensee acknowledges and agrees that:
  - (i) the Licensor, its servants, agents and contractors may enter the Licence Area at any time with all necessary materials and equipment to execute all or any required works as the Licensor thinks fit; and
  - (ii) all debts costs and expenses incurred by the Licensor, including legal costs and expenses, in remedying a default is a debt due to the Licensor, and must be paid by the Licensee to the Licensor on demand.

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## **9. REMOVAL OF PROPERTY ON EXPIRY OR TERMINATION**

### **9.1. OBLIGATION TO REMOVE PROPERTY AND RESTORE**

- (a) The Licensee must upon the expiration of the Term or earlier termination of this Licence yield and deliver up possession of the Licence Area to the Licensor and in doing so must by the end of the Term or within 21 days after the earlier termination of this Licence:
- (i) remove all of the Licensee's Property from the Licence Area, to the Licensor's absolute satisfaction;
  - (ii) reinstate the Licence Area to the state and condition in which it was at the Date of Commencement;
  - (iii) promptly make good to the satisfaction of the Licensor any damage caused by the removal of the Licensee's Property referred to in subclause (a)(i), including filling in, consolidating and levelling off any holes or trenches on the Licence Area; and
  - (iv) remediate any Contamination, Pollution or Environmental Harm to the Licence Area or the Surrounding Area caused by the Licensee or the Licensee's Agents or arising out of the Permitted Use.
- (b) The Licensee's obligations under subclause (a) do not in any way derogate from any of the Licensee's covenants under clause 5 and will survive the expiration of the Term or other termination of this Licence.

### **9.2. FAILURE TO REMOVE**

If the Licensee's Property is not removed in accordance with clause 9.1, its presence on the Licence Area after the expiry of the relevant period referred to in clause 9.1(a) shall no longer be authorised by this Licence and:

- (a) the Minister may treat any structure forming part of the Licensee's Property as an alleged unauthorised structure under section 270 of the LAA;
- (b) sections 270, 271 and 272 of the LAA apply with respect to the removal of any such alleged unauthorised structure;
- (c) the Minister may, but is not obliged to, remove the Licensee's Property from the Licence Area, may store it at the Licensee's expense, and may make good any damage caused by that removal, and may reinstate the Licence Area to the condition provided for in clause 9.1(a)(ii); and
- (d) any costs incurred by the Minister in doing any matter under subclause (c) or section 270(6) of the LAA, are a debt due by the Licensee to the Licensor and may be recovered in a Court of competent jurisdiction.

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## **10. NO ASSIGNMENT**

- (a) The rights granted by this Licence are for the benefit of the party named as "Licensee" in this Licence.
- (b) The Licensee must not:
  - (i) assign or transfer its rights under this Licence, or grant any sub licence or part with the possession, of the Licence Area, to any person; or
  - (ii) mortgage, charge or encumber its rights under this Licence.
- (c) To the extent that sections 80 and 82 of the *Property Law Act 1969* may be applicable, they are expressly excluded.

- (d) For the purposes of subclause (b), where the Licensee is a corporation (not being a corporation where shares are listed on any Stock Exchange in Australia) any intended change in the beneficial ownership or control of the Licensee which will have the consequence of altering the effective control of the Licensee is deemed to be an assignment of the Licensee's rights under this Licence.

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## **11. GENERAL PROVISIONS**

### **11.1. DUTY**

The Licensee will pay duty (if any) payable under the *Duties Act 2008* in respect of any dutiable transaction arising under or in respect of this Licence.

### **11.2. FEES AND CHARGES**

The Licensee will pay all statutory and other fees and charges (if any) relating to this Licence within 30 days of the due date.

### **11.3. NOTICES**

- (a) Any notice that must or may be served under or pursuant to this Licence:
- (i) must be signed by the Party giving the notice or by any solicitor or duly appointed representative of the Party giving the notice; and
  - (ii) will be sufficiently served on:
    - (A) the Licensor, if addressed to the Licensor and left at, or sent by prepaid post to the Minister for Lands c/o Director General of the Department at the address set out at item 5 of the Schedule or such other address as is notified by the Licensor to the Licensee; and
    - (B) the Licensee, if addressed to the Licensee and left at, or sent by prepaid post to the address set out at item 6 of the Schedule or such other address as is notified by the Licensee to the Licensor;
- (b) A notice sent by post will be deemed to be given at the time when it ought to be delivered in the ordinary course of a post whether the contrary is shown or not.
- (c) A notice given by facsimile transmission will be deemed to have been given on the date on which the facsimile transmission report of the machine from which it was sent, shows that it was successfully transmitted in its entirety.

### **11.4. EFFECT OF WAIVER**

No consent or waiver express or implied by the Licensor or its officers, servants, agents, contractors or any of them, to or of any breach of any covenants conditions or stipulations of the Licensee will be construed as a consent or waiver to or of any other breach of the same or any other covenants conditions or stipulations contained or implied in this Licence.

### **11.5. GOVERNING LAW**

- (a) This Licence shall be construed and interpreted in accordance with the laws in force in the State of Western Australia.
- (b) The Parties submit to the non-exclusive jurisdiction of the Courts of Western Australia.

## **11.6. VARIATION**

This Licence cannot be altered or varied by the Parties except by deed.

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## **12. GOODS AND SERVICES TAX**

### **12.1. DEFINITIONS**

In this clause 12 the following terms have the following meanings:

- (a) **GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any legislation substituted for or amending that Act; and
- (b) The terms GST, GST law, Tax Invoice and Taxable Supply have the meaning given in section 195-1 of the GST Act.

### **12.2. LICENCE FEE EXCLUSIVE OF GST**

The Licence Fee and any other amounts payable by the Licensee to the Licensor, under this Licence, are exclusive of GST.

### **12.3. LICENCE TO PAY GST**

The Licensee must pay additional to the Licence Fee and any other amounts payable by the Licensee, any GST payable by the Licensor in respect of a Taxable Supply made under this Licence.

### **12.4. VARIATION OF GST**

Where GST is payable, the amount payable will be the amount specified in the Schedule to this Licence, until varied from time to time consequent upon each review of Licence Fee in accordance with this Licence.

### **12.5. TAX INVOICE**

Where GST is payable, the Licensor will provide to the Licensee, a Tax Invoice in the format and form required as set out in the GST law.

### **12.6. NOTIFICATION IS CONCLUSIVE**

A written notification given to the Licensee by the Licensor of the amount of GST that the Licensor is liable to pay on a Taxable Supply made or to be made under this Licence is conclusive between the Parties except in the case of an obvious error.

### **12.7. TIME FOR PAYMENT**

The Licensee must pay to the Licensor the amount of the GST that the Licensee is liable to pay under this Licence:

- (a) at the same time; and
- (b) in the same manner;

as the Licensee is obliged to pay for the Taxable Supply.

### **12.8. APPORTINMENT OF GST**

Where a Taxable Supply is not separately supplied to the Licensee, the liability of the Licensee for any amount for GST, in relation to that Taxable Supply, is determined on the same basis as the Licensee's proportion of that Taxable Supply is determined.

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## SCHEDULE

ITEM	TERM	DEFINITION
1.	<b>Licence Area</b>	Unnumbered Unallocated Crown Land as depicted in red at Annexure A
2.	(a) <b>Term</b>	6 months
	(b) <b>Date of Commencement</b>	01 October 2019
	(c) <b>Date of Expiry</b>	01 April 2020
3.	(a) <b>Licence Fee</b>	\$500.00
	(b) <b>GST Amount</b>	\$50.00
	(c) <b>Payment Date</b>	
4.	<b>Permitted Use</b>	The construction, installation, operation, maintenance and monitoring of a shark barrier
5.	<b>Licensor's Address for Service of Notices</b>	Minister for Lands Department of Planning, Lands and Heritage 140 William Street PERTH WA 6000 Attention: Manager, Case Management Metro & Peel  <b>Facsimile No:</b> (08) 6552 4417
6.	<b>Licensee's Address for Service of Notices</b>	PO Box 606 Cottesloe WA 6011 Fax:
7.	<b>Insurance Amount</b>	\$20 million



**EXECUTED AS A DEED** on the date set out on page 1 at the commencement of this Licence.

**SIGNED FOR AND ON BEHALF OF THE** )  
**STATE OF WESTERN AUSTRALIA** by )  
an authorised officer for and on behalf of the )  
Minister for Lands by delegation under )  
section 9 of the *Land Administration Act 1997* )  
in the presence of: )

.....  
Department of Planning, Lands and Heritage Officer

.....  
Name of Witness

.....  
Address of Witness

.....  
Occupation of Witness

SIGNED by )  
)

**THE COMMON SEAL** of the **Town of Cottesloe** was affixed by authority of a resolution of the Council in the presence of :

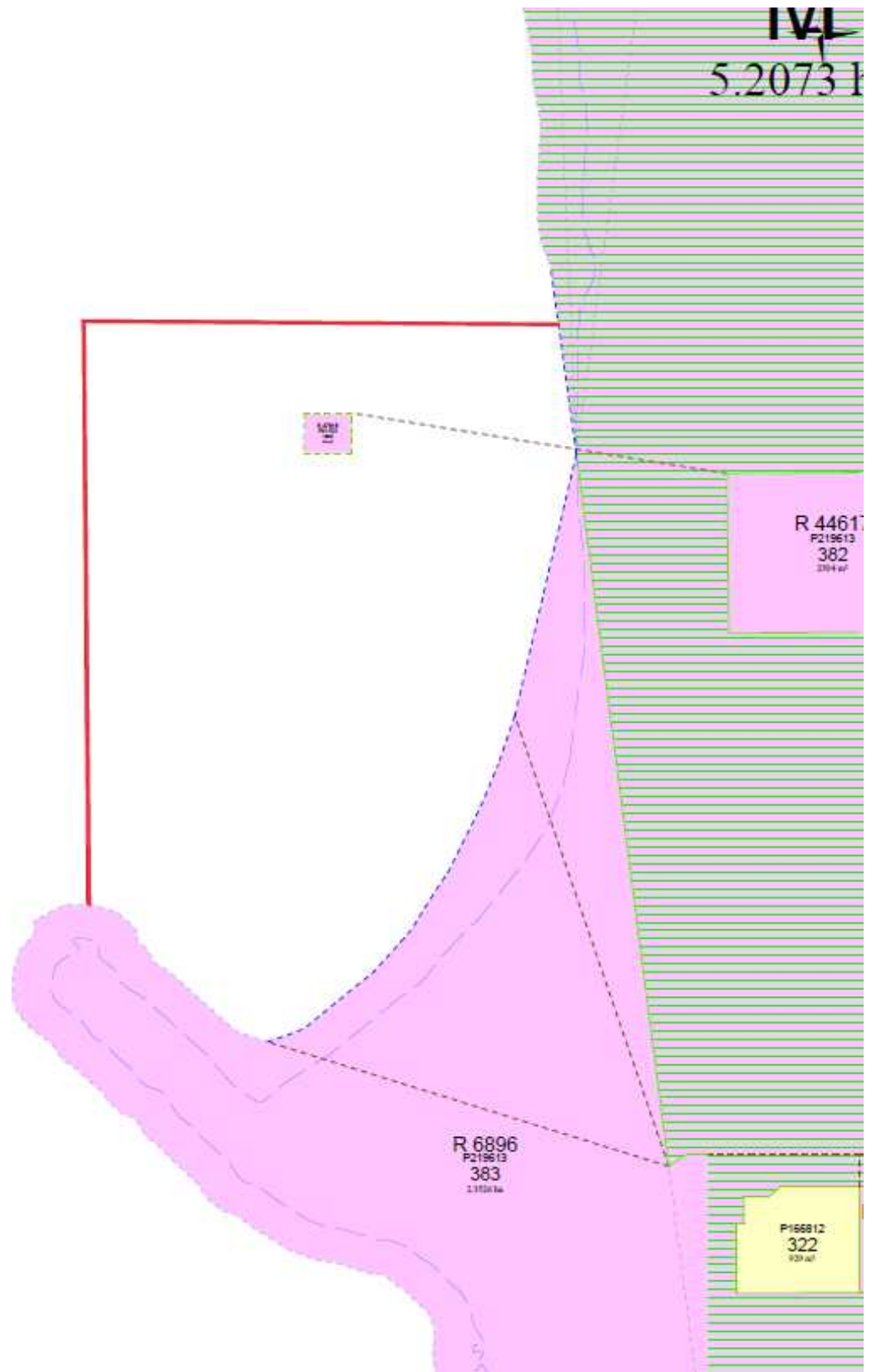
\_\_\_\_\_  
Print Full Name of Mayor

\_\_\_\_\_  
Signature of Mayor

\_\_\_\_\_  
Print Full Name of Chief Executive Officer

\_\_\_\_\_  
Signature of Chief Executive Officer

ANNEXURE A – PLAN



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## ANNEXURE B – CONDITIONS