

LICENCE AGREEMENT

**THIS AGREEMENT** is made the 2 day of June 2017.

**BETWEEN:** **NOAKES GROUP PTY LIMITED** (ABN 36 002 057 294) of 6 John Street, McMahon's Point, New South Wales ('Noakes') of the one part;

**AND: COMMONWEALTH OF AUSTRALIA** as represented by the Department of Defence (ABN 68 786 814 312) and acting through Estate & Infrastructure Group

**WHEREAS:**

- A. Noakes is the lessee and licensee under several agreements with the registered proprietor, namely Stannard Marine Pty Limited (ACN 000 050 537) of the land situated at Berry's Bay and which is known as the North Sydney Marine Centre ('the Centre').
- B. COA has requested Noakes to grant to COA the right to use various areas and facilities within the Centre comprising the hardstand area and ancillary equipment ('the facilities') for servicing and storage of LLC landing craft ('LLCs').
- C. Noakes has agreed to such request subject to the terms and conditions hereinafter appearing.

**NOW IT IS HEREBY AGREED AND DECLARED** as follows:

Term

- 1. The term of this Agreement shall commence on the date stated in Item 1 of the Schedule hereto and unless sooner terminated shall continue for the term stated in Item 2 of the Schedule hereto.

Facilities

- 2. During the continuance of this Agreement COA shall have the use of the following areas within the Centre:

- (a) car-parking space(s) – as determined by Noakes; and
  - (b) parts of the hardstand area and/or slipway to store four (4) LLCs – as determined by Noakes but being approximately 650 sq.m. in area.
3. In addition COA shall be entitled to twenty four (24) lifts/water blasts/launches per calendar year, indicatively being two (2) lifts/water blasts/launches per month and a maximum of no more than four (4) lifts/water blasts/launches in any one month. If COA requires any additional lifts, launches, or water blasting over and above the twenty four (24) per calendar year provided for in this Agreement the additional fees as set out in Item 4 of the Schedule shall apply.
4. COA may from time to time but subject to the general direction of Noakes stand vessels on such parts of the hardstand area as directed by Noakes.
5. In the carrying out of work to vessels within the hardstand area COA shall be subject to the general direction of Noakes as to the nature of the work which may be carried out thereon and as to the manner of so carrying it out and, if considered appropriate by Noakes, as to the hours within which such work may be carried out and in particular Noakes shall have the power in its absolute discretion to prohibit COA from the carrying out of specific classes of work.
6. Noakes will be responsible for the policing of the facilities and the provision of security therefor. COA shall advise Noakes if it has any specific or additional security requirements from time to time, and both parties shall discuss and agree the reasonable provision of related security services, if required, with Noakes' costs directly arising from COA's requirements to be reimbursed by COA to Noakes.

Utility services

7. Noakes shall pay for all gas, electricity and water connected to and servicing the facilities.

Not to cause nuisance etc.

8. COA will not at any time during the continuance of this Agreement knowingly:
- (a) use, exercise or carry on or permit or suffer to be used, exercised or carried on in or upon the facilities or any part thereof any noxious, noisome or offensive act, trade, business, occupation or calling; or

- (b) do, omit or permit or suffer to be done or omitted any act, matter or thing whatsoever in upon or about the facilities which is or shall or may be or grow to the annoyance, nuisance, grievance, damage or disturbance of other tenants or occupiers of the Centre or persons otherwise lawfully therein or occupiers or owners of any adjacent premises PROVIDED THAT where it is alleged that Defence's conduct is or may become an annoyance, nuisance, grievance, damage or disturbance to the other tenants or occupiers of the Centre then Noakes shall give notice of any such conduct to COA whereupon COA shall take immediate steps to remedy such conduct; or
- (c) use, exercise or carry on or permit or suffer to be used, exercised or carried on in or about the facilities or any part thereof any dangerous goods; or
- (d) obstruct or cause or permit obstruction of any kind or description whatsoever to the use of any berth used by any other occupier of the Centre.

Obligations re agreements with third parties

- 9. COA will in respect of the use of the facilities contract with any third parties upon the basis that neither Noakes nor COA will be held liable on any account for any damage howsoever caused to any vessel of such third parties.

Dependence on lease from Stannard Marine Pty Limited

- 10. Notwithstanding any other provision hereof it is acknowledged that in the event that Noakes shall cease to be entitled to occupy the Centre this Agreement shall forthwith be at an end and all rights granted to COA shall thereupon terminate but without prejudice to the rights and liabilities of the parties with respect to any antecedent breach.

Not to assign etc.

- 11. COA will not assign, transfer, charge or otherwise deal with the rights created by this Agreement PROVIDED THAT an assignment shall not be a breach of the foregoing if prior thereto:
  - (a) COA either has not committed any default under this Agreement or has committed a default which has been waived, excused or rectified.



- (b) COA has proved to the satisfaction of Noakes and also Stannard Marine Pty Limited that the proposed assignee is a respectable, responsible and solvent person of a stature and experience not less than that of COA in the conduct of the business authorised by this Agreement to be conducted.
- (c) The assignee has entered into a deed with Noakes and also Stannard Marine Pty Limited where required, in the form required by Noakes and/or Stannard Marine Pty Limited, in which the assignee agrees to duly perform and observe the covenants and agreements on Defence's part herein contained.
- (d) The assignee has furnished Noakes with such guarantee or guarantees of the performance of the assignee's obligations under this Agreement as Noakes shall reasonably require and in particular from the directors and such of the controlling shareholders as Noakes may require to enter into a deed guaranteeing the performance and observance by the assignee of the terms of this Agreement, such guarantees to be in a form acceptable to Noakes and with the reasonable costs incurred by Noakes in the preparation and execution of the guarantee to be paid by Defence.
- (e) COA pays to Noakes a reasonable fee to cover administrative expenses and also Noakes' proper costs and disbursements of and incidental to the giving of its consent, under this clause, including the preparation of any necessary deed or deeds.

Licence fees & other payments

- 12. In consideration of the grant by Noakes to COA of the rights conferred hereunder:
  - (a) COA shall pay to Noakes during the first year of the term hereof the amounts of the licence fees stated in Item 3 of the Schedule hereto such licence fees in each and every case to be payable within thirty (30) days from the date of invoice issued by Noakes.

- (b) The annual licence fees shall be reviewed on each anniversary of the commencement date (being the date stated in Item 1 of the Schedule) by multiplying the annual licence fee for the year prior to the date of review by a fraction whose numerator is the Consumer Price Index Number (All Groups) Sydney for the quarter ending immediately prior to such anniversary date and whose denominator is the said Index Number for the quarter ending immediately prior to the date 12 months before the relevant review date.
  - (c) It is acknowledged and agreed that the grant hereunder constitutes a taxable supply within the meaning of the act entitled *A New Tax System (Goods and Services Tax) Act 1999* (hereafter 'the GST Act') and that consequently all licence fees payable under this Agreement shall be subject to Goods and Services Tax ('GST'). All amounts referred to in this Agreement are except where otherwise shown exclusive of GST. COA will pay the amount of the GST to Noakes at the time of payment of licence fees due under this Agreement. Furthermore Noakes will furnish COA with tax invoices within the meaning of the GST Act for such licence fees.
13. If COA requires any additional lifts, launches, or water blasting over and above the twenty four (24) per calendar year provided for in this Agreement the additional fees as set out in Item 4 of the Schedule shall apply.
- Release, indemnity & insurance
14. COA agrees to occupy and use the facilities at the risk of COA and hereby releases to the full extent permitted by law Noakes, from all claims and demands of every kind and from all liability which may arise in respect of any accident or damage to property or death or injury to any person of whatsoever nature or kind directly caused by COA through COA's use of the facilities for the service and storage of LLCs.
15. Without limiting the generality of the immediately preceding clause COA shall indemnify and keep indemnified Noakes from and against all liability for death or injury to persons or loss or damage to property arising out of anything done or omitted to be done by COA under or pursuant to the rights conferred upon COA under this Agreement (**Indemnity**).

16. COA's liability to indemnify Noakes under the Indemnity shall be reduced proportionately:
  - (a) to the extent that Noakes fails to take reasonable steps to mitigate any loss, damage, cost or expense; and/or
  - (b) for any act or omission of Noakes, or anyone acting through Noakes (other than COA), that causes or contributes to the liability, loss damage, cost or expense.
17. The extent of COA's liability to indemnify Noakes under the Indemnity is limited to a maximum cumulative amount of twenty million dollars (\$20 million)
18. The parties agree that Noakes is only permitted to make a claim under the Indemnity during the term of the Agreement.
19. The parties acknowledge that the Indemnity is not intended to survive any termination or expiration of this Agreement, and COA expressly reserves the right to withdraw the Indemnity should it no longer be required under the Agreement.
20. If a third party claim is made against Noakes or Noakes becomes aware of an intention to make a claim, which could reasonably be considered to give rise to a liability under the Indemnity, Noakes will do all of the following;
  - (a) as soon as reasonably practicable give written notice of the matter to COA;
  - (b) not make any admission of liability, agreement or compromise in relation to the relevant claim without the prior written consent of the COA (such consent not to be unreasonably withheld or delayed);
  - (c) give COA and its professional advisers reasonable access (including the right to take copies at their own expense) to the Centre and facilities, personnel, assets, accounts, documents and records within the power or control of Noakes so as to enable the COA and its professional advisers to assess the merits of the relevant claim; and
  - (d) take such action as the COA may reasonably request to avoid, dispute, resist, compromise or defend the relevant claim.



21. COA shall, prior to the commencement of the term hereof, effect and maintain throughout the term the following insurances:
  - i. public liability insurance in an amount of not less than twenty million dollars (\$20 million); and
  - ii. any such other insurances as reasonably required by Noakes.
22. Upon request by Noakes, COA agrees to produce to Noakes certificates of currency evidencing that the above insurances have been effected and/ or renewed (as the case may be).

Abatement of licence fees & termination

23. If during the continuance of this Agreement the facilities or any part thereof shall be destroyed or damaged by fire or other disabling cause so as to render it or them unfit for use Noakes shall be at liberty within twenty eight (28) days after the happening of such event to terminate this Agreement by notice in writing to COA whereupon this Agreement shall be at an end and neither party shall thereafter have any claim against the other but without prejudice to rights and liabilities arising out of any antecedent breach.
24. During any period that the facilities or any part or parts thereof are unfit for use by reason of damage thereto or destruction thereof then unless the damage or destruction has been caused by negligence or other wrongful act on the part of Defence, its servants or contractors the licence fee shall abate until that part or parts of the facilities which have been damaged have been restored.
25. This Agreement may also be terminated by Noakes on the happening of any of the following events:
  - (a) If COA fails to comply with any provision of this Agreement and does not remedy such non-compliance within fourteen (14) days after written notice has been given to Defence.
  - (b) If COA without complying with the relevant terms and conditions contained in this Agreement (including inter alia obtaining the prior written consent from Noakes and Stannard Marine Pty Limited) assigns or attempts to assign the benefit of this Agreement.

Any such termination shall be without prejudice to the liability of COA arising out of any such breach.

26. Notwithstanding the foregoing either party may terminate this Agreement at any time by giving not less than 60 days' notice in writing to the other.

Use of cradles/stands

27. During the term of this Agreement, Noakes shall supply COA with timber blocks/stands for use by COA for standing Defence's vessels on the hardstand area.

Agency, partnership etc. negatived

28. Nothing in this Agreement shall constitute nor be deemed to constitute any relationship of agency partnership joint venture or similar relationship and COA shall not hold itself out or do or omit to do anything which may result in its holding itself out as in any way representing Noakes or any related company or related entity of Noakes.

Landlord & tenant relationship negatived

29. Nothing in this Agreement shall create or shall be construed as creating any tenancy or create the relationship of landlord and tenant between the parties and any such implication or inference is expressly negatived.

No reliance on any representation etc.

30. COA acknowledges that in entering into this Agreement it has not relied on any promise, representation or warranty by Noakes or any person on behalf of Noakes and that this Agreement covers and comprises the whole agreement between the parties in relation to the facilities and it is hereby expressly agreed and declared that no further or other provisions whether in respect of the facilities or otherwise shall be deemed to be implied or to arise between the parties by way of collateral or other agreement or by reason of any promise, representation, warranty or undertaking given or made by either party hereto.

No waiver by Noakes

31. No failure by Noakes to exercise any power given to it or to insist upon the strict compliance by COA with any obligations or conditions and no customary practice of the parties or variances with the terms of this Agreement shall constitute a waiver of Noakes' right to demand exact compliance with the terms of this



Agreement other than in relation to breaches which have been waived nor shall a waiver by Noakes of any particular default affect or impair Noakes' right in respect of any subsequent default of the same or different nature nor any delay or omission of Noakes to exercise any right arising from default affect or impair Noakes' rights as to the said default or any subsequent default.

Dispute resolution

26. The parties agree to manage any dispute, difference or disagreement ('Dispute') related to this Agreement as follows:
- (a) A party shall not commence court proceedings relating to any Dispute except as permitted under this clause.
  - (b) The parties shall negotiate in good faith and use all reasonable efforts to resolve Disputes as quickly as practicable.
  - (c) If the parties are unable to resolve a Dispute, either party may give a notice ('Dispute Notice') to the other party setting out the nature of the Dispute and the Dispute shall then be referred to the Management Representatives specified in Item 5 of the Schedule.
  - (d) If the dispute is not resolved by the Management Representatives within twenty (20) working days of the Dispute Notice being issued, the Dispute shall be referred to the Senior Representatives specified in Item 6 of the Schedule.
  - (e) If the Dispute is not resolved within twenty (20) working days of the dispute being referred to the Senior Representatives and the parties have not been able to agree on an alternative dispute resolution process (including mediation, arbitration or expert determination) for resolving the Dispute, either party may commence legal proceedings in respect of the Dispute;
  - (f) the parties shall continue to perform under the Agreement when there is a Dispute.
  - (g) Nothing in this clause prevents any party from seeking urgent interlocutory relief in relation to a Dispute.

Legal costs & stamp duty

27. Each party shall pay its own legal costs of and incidental to the preparation

execution and stamping of this Agreement. COA shall pay all stamp duty, where applicable, assessed or assessable hereon.

Further term

28. Should COA wish to renew this Agreement for the further term shown in Item 7 of the Schedule and gives to Noakes not earlier than twelve (12) months and not later than six (6) months prior to the expiration of the term of this Agreement notice in writing, then provided COA shall duly and punctually have paid all licence fees and other moneys payable hereunder and shall have observed and complied with all other conditions and obligations of COA hereunder and PROVIDED FURTHER that the lease between Noakes and Stannard Marine Pty Limited shall not have been terminated, then Noakes shall at the expense of COA grant to COA a new licence for such further term of five (5) years commencing from the date of expiration of the licence granted hereunder on the same terms and conditions as are herein contained (*mutatis mutandis*) except as follows:
- (a) The licence fee during the first year of such renewed term shall be such amount as shall be agreed upon by Noakes and COA and in the event they fail to agree on the amount of such licence fee, then such licence fee shall be the licence fee prevailing for the last year of the term of this Agreement increased in accordance with increases in the Consumer Price Index (All Groups) Sydney; and
  - (b) The provisions of this clause relating to a further term shall be omitted and replaced by the following:
    - Not more than twelve (12) months nor less than six (6) months before the expiration of the term of this Agreement Noakes will by written notice to COA either:
      - i. offer COA a further term on the terms specified in the notice (including terms as to the licence fee); or
      - ii. notify COA that Noakes does not propose to offer COA such further term.

Notices

29. Any notice or any documents in writing required to be served, delivered or given hereunder may be served, delivered or given in any manner mentioned in Section 170 of the *Conveyancing Act 1919* (NSW).

Interpretation

30. Words importing persons shall include corporations and vice versa and words importing the singular number or plural shall be deemed to include the plural number or singular number respectively and words importing any gender shall include all other genders as the case may require.

Observance of rules & regulations

31. COA covenants with Noakes to observe the Site Rules and Regulations for the Centre set out in the Appendix hereto and which may be varied from time to time in any manner not inconsistent with the other terms and provisions of this Agreement by giving notice in writing at anytime and from time to time to COA as licensee.



IN WITNESS WHEREOF the parties hereto have executed this deed on the day and year first hereinbefore written.

**EXECUTED by NOAKES GROUP PTY LIMITED** (ACN 002 057 294) in accordance with its constitution/articles of association in the presence of:

Section 22(1)(b)(ii)

Signature

Section 22(1)(b)(ii)

Sean Langman

PRINT name

Managing Director

Office held

Section 22(1)(b)(ii)

Signature

BEUNDA TAYLOR

PRINT name

GENERAL MANAGER

Office held

**EXECUTED for and on behalf of the COMMONWEALTH OF AUSTRALIA** by a duly authorised officer in the presence of:

Section 22(1)(b)(ii)

) Signature of Authorised Person

) Annette Smith

) Name of Authorised Person (print)

) Asst. Director Property Leasing

) Office/position held

Section 22(1)(b)(ii)

Signature of Witness

Sarah Crawford

PRINT name

National Property Officer

Office/position held

SCHEDULE

- ITEM 1      COMMENCEMENT DATE  
(Clause 1): 2<sup>nd</sup> June 2017
- ITEM 2      TERM  
(Clause 1): Five (5) years
- ITEM 3      BASE LICENCE FEE  
(Clause 12): for the 1<sup>st</sup> year of the term: s47G [REDACTED] per annum (excl. GST)
- ITEM 4      ADDITIONAL FEES  
(Clause 13):  
For each additional lift/launching: s47G [REDACTED] (excl. GST)  
For each additional water blasting: s47G [REDACTED] (excl. GST)
- ITEM 5      MANAGEMENT REPRESENTATIVES  
(Clause 26):  
Noakes - Belinda Tayler  
General Manager Commercial & Defence  
Noakes Group Pty Ltd  
6 John Street  
McMahons Point, NSW 2060  
PH: (02) 9925 0306  
Fax: (02) 9929 6028  
COA C/- Cushman and Wakefield Property Group  
Level 22, 1 O'Connell Street,  
Sydney NSW 2000  
PH: (02) 9224 8000  
Fax: (02) 9224 8055

ITEM 6 SENIOR REPRESENTATIVES

(Clause 26):

Noakes -- Sean Langman

Managing Director

Noakes Group Pty Ltd

6 John Street

McMahons Point, NSW 2060

PH: (02) 9925 0306

Fax: (02) 9929 6028

COA C/- Commonwealth of Australia (Represented by Department of Defence)

Director Property Leasing

Property Management Branch, Infrastructure Division

Estate & Infrastructure Group

Brindabella Business Park

PO Box 7925

Canberra BC ACT 2610

PH: (02) 6266 8257

EMAIL: [dpl.property@defence.gov.au](mailto:dpl.property@defence.gov.au)

ITEM 7 FURTHER TERM

(Clause 28): Five (5) years



APPENDIX – SITE RULES AND REGULATIONS