

# Partnership Service Contract

**BETWEEN**

**TRUST:**

**PARTNERSHIP:**

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# Partnership Services Contract

Dated:

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**BETWEEN:** [TRUSTEE COMPANY] ACN as trustee for [UNIT TRUST] [ABN]  
of [ADDRESS] (Trust Manager)

**AND:** [PARTNERSHIP] [ABN]  
of [ADDRESS] (Partnership)

## Background

- A The Trust Manager is party to the Management and Procurement Contract with Rivotow and has been appointed to provide services under that contract and this Contract to Rivotow.
- B Rivotow has been appointed by the Customer to provide the services to the Customer under the Head Contract (Customer Services).
- C The Trust Manager wishes to appoint the Partnership to provide the Partnership Services on the terms of this Partnership Services Contract.
- D The Partnership agrees to provide the Partnership Services on these terms.

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

Term	Definition
<b>Applicable Anti-Corruption Laws</b>	means any anti-corruption Laws that are applicable to either the Customer, the Trust Manager, the Partnership or this Contract, including the US Foreign Corrupt Practices Act and the UK Bribery Act.
<b>Australian Maritime Safety Authority/ AMSA</b>	means the statutory authority established under the <i>Australian Maritime Safety Authority Act 1990</i> (Cth).
<b>Authority</b>	means any national, state, provincial, regional, territorial, local or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body.
<b>Authorisations</b>	means any licences, permits, qualifications, registrations and other statutory requirements necessary for the provision of the Partnership Services and the performance of the Partnership's obligations under this Contract.
<b>Best Industry Practice</b>	means the most stringent of the practices which are generally engaged in or observed by international towage and ship handling service providers with respect to vessels similar to the Vessel and which, with respect to any objective, may be expected, in the

<b>Term</b>	<b>Definition</b>
	exercise of reasonable judgment, to accomplish that objective in a manner consistent with applicable Laws, Authorisations, reliability, safety, environmental protection, economy and expediency.
<b>Business Day</b>	means a day that is not a Saturday, Sunday, or a public holiday in Perth, Western Australia.
<b>Confidential Information</b>	means the terms of this Contract and information made available to the Partnership at any time together with any information that concerns the business, operations, finances, plans or customers of the Trust Manager or the Trust Manager's Related Entities, Rivtow or Rivtow's Related Entities or the Customer disclosed to or acquired by the Partnership (including any information that is derived from such information), but does not include information which: (a) is or becomes public knowledge other than by a breach of this Contract; or (b) is in the possession of the Partnership without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Partnership.
<b>Consequential Loss</b>	means any special, exemplary or punitive damages, loss of production, loss of revenue, loss of profit or anticipated profit, loss of business reputation, business interruptions of any nature, loss of opportunities, loss of anticipated savings or wasted overheads.
<b>Customer</b>	means Rivtow's customer for whom the services are rendered under this Partnership Service Contract.
<b>Customer Owned and Operated Infrastructure</b>	means all infrastructure owned or operated by the Customer (and not the PPA) including all tug pens, the towage fleet owned or chartered by the Customer, vessels and motor vehicles owned or operated by the Customer, and associated infrastructure installed by the Customer that is not controlled or operated by the PPA and includes the Customer supplied plant and equipment set out in Schedule 3 and their hulls, machinery and equipment and all associated shore facilities plant and equipment.
<b>Customer Services</b>	means the services to be provided by Rivtow to the Customer.
<b>Defects</b>	means any aspect of the Partnership Services not in accordance with this Contract, or any damage, deficiency, fault or inadequacy in design, performance, workmanship, quality or makeup of the Partnership Services
<b>Defects Correction Period</b>	means the period stated as such in Item 8 of Schedule 1, as adjusted in accordance with this Contract
<b>Dispute</b>	means any dispute, controversy or claim arising out of or in relation to this Contract.
<b>Dispute Notice</b>	means a written notice served under clause 12.
<b>Dispute Resolution Representative</b>	means the Trust Manager's Representative or the Partnership's Representative and a reference to Dispute Resolution Representatives is a reference to both of them.
<b>End Date</b>	means: 31 October 2020 or such later date as may be notified to the Partnership under clause 2.2; and the date this Contract is ended under clause 14, subject to any extension in accordance with clause 2.2.

<b>Term</b>	<b>Definition</b>
<b>Extension Notice</b>	has the meaning given in clause 2.2.
<b>Head Contract</b>	Means the services agreement – Port Hedland towage services dated 4 December 2014 between Rivotow and the Customer.
<b>Intellectual Property</b>	means any subject matter, whether tangible or intangible, that attracts, or is susceptible to protection by, Intellectual Property Rights.
<b>Intellectual Property Rights</b>	means all copyright and analogous rights (including moral rights), all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets), know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields. These rights include: (a) all rights in all applications to register these rights; and (b) all renewals and extensions of these rights.
<b>Key Performance Indicators / KPIs</b>	means the criteria set out in Annexure A used to evaluate the performance of the Partnership.
<b>Law</b>	means: legislation including regulations, by-laws, orders, awards and proclamations with which a party is legally required to comply; common law and equity (if applicable); treaties and conventions, and all rules and regulations issued under those treaties and conventions; and Authority requirements, guidelines, consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals) with which a party is legally required to comply.
<b>Trust Manager’s Representative</b>	means the representative of the Trust Manager as notified to the Partnership from time to time.
<b>Maritime Security Card</b>	means any identification card required under the <i>Maritime Transport and Offshore Facilities Security Act 2003</i> (Cth).
<b>Partnership Services</b>	means the services set out in Schedule 1 (including any part of the specified services and any ancillary services) or as otherwise notified by any of: the Trust Manager to the Partnership; by Rivotow simultaneously to the Trust Manager and Partnership; or by the Customer simultaneously to Rivotow, the Trust Manager and Partnership, from time to time.
<b>Partnership Personnel</b>	means any and all personnel engaged by the Partnership, including its directors, officers, administrative employees, agents, invitees, and any director, officer, employee, agent or invitee of any contractor, in performing the Partnership’s obligations under this Contract.
<b>Partnership Representative</b>	means the representative of the Partnership as notified to the Trust Manager from time to time.

<b>Term</b>	<b>Definition</b>
<b>Plant and Equipment</b>	means plant, equipment, tools, spare parts, consumables, appliances or other property and items the Partnership requires to fulfil its obligations under this Contract.
<b>Policies and Procedures</b>	means the policies and procedures approved by the Customer on or before the Start Date and as otherwise notified by the Trust Manager or Rivtow to the Partnership from time to time.
<b>Port Identification Card</b>	means any identification cards required by PPA for security purposes.
<b>PPA</b>	means the Pilbara Ports Authority and, where context permits, includes a reference to the Harbour Master.
<b>Professional Contractor</b>	means a contractor with skill and experience in, and the expertise and resources necessary to complete, the performance of services, the same as or similar to, the Partnership Services in accordance with Best Industry Practice.
<b>Related Entities</b>	<p>means, in relation to a party or other entity, a body corporate which is:</p> <ul style="list-style-type: none"> <li>(a) a controlling company;</li> <li>(b) a controlled company; or</li> <li>(c) a controlled company of a controlling company, of that party or other entity.</li> </ul> <p>For the purposes of this definition, one body corporate controls another when at the relevant time:</p> <ul style="list-style-type: none"> <li>(a) it owns either directly or indirectly or is otherwise in a position to cast, or control the casting of, not less than 50% of the shares entitled to vote at general meetings of that other body corporate; or</li> <li>(b) it controls the composition of a majority of the board of that other body corporate,</li> </ul> <p>and “controlled” and “controlling” will be construed accordingly.</p>
<b>Rivtow</b>	means Rivtow Marine Pty Ltd ACN 601 268 115.
<b>QHSE Management System/ QHSEMS</b>	means the Quality Health Safety Environment System as prescribed by Rivtow to the Trust Manager and Partnership from time to time.
<b>Senior Partner</b>	means the senior partner appointed by the Partnership and notified to the Trust Manager.
<b>Site</b>	means the place identified in Schedule 4, or as otherwise notified to the Partnership.
<b>Site and Operating Standards and Procedures</b>	means the standards, specifications, policies, procedures and matters submitted by Rivtow to the Customer on or before the Start Date and any updates or any other guidelines, rules or requirements notified to the Partnership by the Trust Manager or Rivtow in writing from time to time.
<b>Start Date</b>	means the date set out in Item 1 of Schedule 1, or such other date notified by Trust Manager to the Partnership.
<b>Transfer Period</b>	<p>means the period commencing:</p> <ul style="list-style-type: none"> <li>(a) 12 months prior to the End Date; or</li> <li>(b) where the Contract is terminated, when directed by the Trust Manager; and</li> </ul> <p>ending on the End Date.</p>

<b>Term</b>	<b>Definition</b>
<b>Technical Material</b>	means the models, software (including source code and object code versions), information, design concepts, audio, video, drawings (including "as built" drawings), programmes, schedules, manuals, diagrams, charts, specifications, records, concepts, plans, formulae, designs (including structural, mechanical, electrical and instrumentation designs) in any medium, methods and processes, including all copies of and extracts from them and data stored by any means.
<b>Term</b>	means the period commencing on the Start Date and ending on the End Date.
<b>Towage Fleet</b>	means the tug boats identified in Schedule 3, or otherwise made available to Rivtow for use in the port.
<b>Unsafe</b>	includes unacceptable actual or potential hazards and incidents relating to safety, health or the environment.
<b>Vessel</b>	means the vessel with specifications set out in Item 2 of Schedule 1, or as otherwise notified by Rivtow or the Trust Manager to the Partnership.
<b>Variation</b>	means any change to the Partnership Services, including any addition to, reduction in, omission from or change in the character, quantity or quality of the Partnership Services.

## 1.2 Interpretation

In this document:

- (a) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (b) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (e) a reference to this document includes the contract recorded by this document;
- (f) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- (h) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (i) a reference to 'month' means calendar month;
- (j) a reference to applicable law is to any relevant Law of a jurisdiction in or out of Australia; and

- (k) a reference to 'approved' or 'approval' will be deemed to mean 'approved in writing' or 'approval in writing'.

## **2 DURATION OF AGREEMENT**

### **2.1 Term**

This Contract starts on the Start Date and ends on the End Date.

### **2.2 Extensions of time**

The Partnership acknowledges that the Trust Manager may, in its absolute discretion, extend the End Date by giving the Partnership a written notice to that effect no later than three months prior to the initial End Date (**Extension Notice**) in which case the End Date will be extended as set out in the Extension Notice.

## **3 SUPPLY OF SERVICES**

### **3.1 General**

The Partnership must provide the Partnership Services to the Trust Manager in accordance with, and as specified in, this Contract.

### **3.2 Acknowledgments**

- (a) The Partnership acknowledges receipt of the Policies and Procedures and the Site and Operating Standards and Procedures.
- (b) The parties acknowledge and agree that time is of the essence for the performance of the Partnership Services.

### **3.3 Conditions as to quality of the Partnership Services**

The Partnership must ensure that:

- (a) the Partnership Services match the description of the Partnership Services in this Contract;
- (b) the Partnership Services are performed with a high degree of skill, care, competence, diligence and professionalism expected of a Professional Contractor;
- (c) the Partnership Services are performed in accordance with:
  - (i) Best Industry Practice;
  - (ii) any design limits, including manufacturers' guidelines and specifications;
  - (iii) the terms of all manufacturer's warranties for any Customer Owned and Operated Infrastructure or plant and equipment supplied by the Trust Manager or Rivtow;
  - (iv) the Site and Operating Standards and Procedures and the QHSE Management System;
  - (v) the Authorisations;

- (vi) any applicable Laws and all lawful directions, regulations and notices made or given by any authority having jurisdiction over anything in the Site, including any applicable codes and standards, including:
  - (A) all marine orders promulgated by the Australian Maritime Safety Authority applying to the provision of the Partnership Services; and
  - (B) Directions of the PPA, except where:
    - (1) the Partnership considers that the direction may endanger the life or safety of any person, a vessel, property, the environment or breach any Law; or
    - (2) a direction from the PPA is inconsistent with a direction from Rivtow or the Trust Manager, a provision of this Contract or any part of a document created under this Contract, in which case the Partnership must immediately inform Trust Manager of that inconsistency and take all action necessary to mitigate any deviation from Trust Manager or Rivtow's direction, any provision of this Contract or any part of a document created under this Contract; and
- (vii) any written instructions given by the Trust Manager which are not contrary to the provisions of this Contract;
- (d) the Partnership Services are fit for the purposes set out in, or which a Professional Contractor would infer from, this Contract;
- (e) any items which the Partnership uses or supplies in conjunction with the Partnership Services are:
  - (i) undamaged and of merchantable quality;
  - (ii) comply with the Site and Operating Standards and Procedures and any other standards specified in this Contract; and
  - (iii) are fit for their usual purpose and any purpose described in this Contract.

### **3.4 Performance**

- (a) The Partnership must at all times perform, and ensure that Partnership Personnel perform the Partnership Services and any other obligations under this Contract so that the Partnership Services are conducted and the Vessel is maintained, tested and inspected efficiently, safely, economically and reliably and otherwise to:
  - (i) ensure that the Partnership Services are optimised so as to maximise the Customer's production ability;
  - (ii) avoid any unnecessary costs;
  - (iii) maximise the availability and reliability of the Vessel and as a minimum:
    - (A) meet the availability targets and reliability targets for the Vessel as advised to the Partnership by the Trust Manager from time to time; and
    - (B) meet the requirements of the Customer for the Vessel as notified to the Partnership by Rivtow or the Trust Manager from time to time;

- (iv) minimise environmental impact;
- (v) correct, by appropriate and approved measures and following consultation with the Trust Manager, any damage to or malfunction of the Vessel;
- (vi) avoid or minimise the incidence, severity and duration of any interruption to the supply of towage services and minimise breakdowns.

### **3.5 Continuous improvement**

The Partnership undertakes to maintain a continuous improvement environment with the objective of:

- (a) improving safety
- (b) providing safe on time service;
- (c) in conjunction with the Customer, Rivtow, the Trust Manager and in accordance with the directions of the Harbour Master, achieving optimum scheduling of towage services to assist with improved vessel movements;
- (d) improving technology and training to improve efficiency of vessel movements; and
- (e) the maintenance of the QHSE System and compliance with its quality policy.

### **3.6 Key Performance Indicators**

- (a) The KPIs will be the subject of continuous improvement by Rivtow and the Trust Manager and may be updated by notice in writing by the Trust Manager to the Partnership from time to time.
- (b) The Partnership must meet the target or standard specified for each KPI as set out in, and measured in accordance with Annexure A, as updated by the Trust Manager from time to time under clause 3.6(a).
- (c) The Trust Manager will undertake a monthly assessment of the Partnership's performance based on the KPIs in accordance with the processes set out in Annexure A.

### **3.7 Other obligations**

- (a) In performing the Partnership Services, the Partnership must:
  - (i) not obstruct or cause any interference with the activities of the Trust Manager, Rivtow or the Customer or the activities of any other person at the Site, including the PPA;
  - (ii) be aware of and comply with and ensure that Partnership Personnel are aware of and comply with:
    - (A) any applicable Laws or Authorisations;
    - (B) all Policies and Procedures, Site and Operating Standards and Procedures and PPA standards and procedures; and
    - (C) all lawful directions and orders given by the Trust Manager's Representative or any person authorised by Law or the Site and Operating Standards and Procedures to give directions to the Partnership;

- (iii) ensure that Partnership Personnel entering the Site perform in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
    - (A) safe working practices;
    - (B) safety and care of property; and
    - (C) continuity of work;
  - (iv) be, and ensure that Partnership Personnel are, fully trained in the safety and emergency response procedures set out in the QHSE System;
  - (v) wear, and ensure that Partnership Personnel wear, appropriate personal protective clothing and equipment at all times when engaged in the Partnership Services or when anywhere within the Site; and
  - (vi) not enter, and ensure that Partnership Personnel do not, enter the Site unless he or she holds, carries and clearly displays a valid Port Identification Card and a valid Maritime Security Card or is escorted by a person with an approved Maritime Security Card;
  - (vii) do all things necessary to comply with, implement and enforce the PPA's security plan prepared in compliance with the *Maritime Transport and Offshore Facilities Security Act 2003 (Cth)*;
  - (viii) provide all such information and assistance as the Trust Manager reasonably requires in connection with any statutory or internal health and safety investigation in connection with this Contract or the Partnership Services; and
  - (ix) leave the Site secure, clean, orderly and fit for immediate use having regard to the condition of the Site immediately prior to the performance of Partnership Services.
- (b) If the Partnership has reason to believe that it is or may be unable to provide the Partnership Services in a timely manner for any reason, the Partnership must:
- (i) inform the Trust Manager immediately;
  - (ii) do all that it reasonably can to restore its ability to provide the Partnership Services as quickly as possible; and
  - (iii) keep the Trust Manager informed and up to date as to its progress in restoring its ability to provide the Partnership Services.
- (c) The Partnership will upon becoming aware and as soon as reasonably practicable notify the Trust Manager in writing of any damage to the Vessel, its machinery, fixtures, fittings, containers, spare parts and appurtenances of all kinds.
- (d) The Partnership must not make major repairs, dry dockings, unit replacement for capital purchases, changes or alterations to the Vessel or incur related expenses without first consulting and obtaining the written approval of the Trust Manager.
- (e) The Partnership must not operate any tug with a defect that might adversely impact upon operational capability.
- (f) The Partnership must comply with all reporting obligations as set out in the QHSE System including:

- (i) notify the Trust Manager as soon as reasonably practicable of any accident involving the Vessel or incident which may give rise to an insurance claim either by the Trust Manager or by any other party against the Vessel or the Partnership;
  - (ii) notify the Trust Manager as soon as reasonably practicable and in any event within twenty-four (24) hours after any grounding or accident involving the Vessel or any occurrence which an insurance claim by Manager arising out of and incidental to the operation of the Vessel including cargo, may arise or which a claim by any other party against the Vessel or any member of the Partnership may arise; and
  - (iii) provide a written report to the Trust Manager as soon as is practicable of any incident or circumstance that the Partnership is aware or ought to be aware of which is likely to result in inconvenience to, loss to, or dissatisfaction by the Customer.
- (g) The Partnership must not cause, permit or tolerate an Unsafe condition or activity in relation to the provision of the Partnership Services.
- (h) If there is an Unsafe condition or Unsafe act and additional work is undertaken by the Partnership in order to comply with its obligations under this clause 3, the Partnership must demonstrate to the Trust Manager that it acted reasonably and did not cause the Unsafe condition or perform the Unsafe act.
- (i) The Partnership may use the Vessel to render assistance to a vessel in distress where the Partnership reasonably believes that failure to act would lead to loss of life or damage to property. Without limiting its other obligations under the Contract, in rendering such assistance, the Partnership must:
- (i) comply with any direction or instruction given by the Trust Manager, Rivtow or the Customer;
  - (ii) comply with the requirements of the International Convention for the Safety of Life at Sea (SOLAS), 1974 (as amended);
  - (iii) take such action as the Partnership reasonably considers necessary or desirable in accordance with Best Industry Practice to prevent or minimise injury, damage or loss;
  - (iv) as soon as is reasonably practicable:
    - (A) report to the Trust Manager's Representative the nature of the emergency, the action taken by the Partnership, the expenditures made and any injury, loss or damage suffered; and
    - (B) notify the PPA; and
    - (C) notify any other relevant Authority the Partnership is legally required to notify; and
  - (v) comply with any lawful direction from any relevant Authority (including the PPA) relating to the assistance.

Assistance rendered in accordance with this clause will not constitute a default in the performance of the Partnership's obligations under this Contract.

- (j) The Partnership must, in performing the Partnership Services:

- (i) take all necessary and reasonable precautions in order to ensure the safety and health of all Partnership Personnel performing the Partnership Services;
- (ii) maintain a safe and healthy working environment and exercise all necessary precautions to protect the environment within and outside of the vicinity of the Site;
- (iii) do all things necessary to assist the Trust Manager and refrain from doing anything that may impede the Trust Manager or its agents in discharging its obligations under any Law; and
- (iv) comply with, and ensure that Partnership Personnel comply with, all Laws (including licensing requirements).

#### 4 VARIATION OF SERVICES

The Partnership acknowledges that the Trust Manager may make a Variation to the Partnership Services by notice in writing from time to time following request from the Customer or Rivtow.

#### 5 DEFECTS

- (a) The Partnership must perform the Partnership Services to be free of Defects.
- (b) The Partnership acknowledges that, during the relevant Defects Correction Period, the Customer is entitled to notify the Trust Manager of any Defect that it finds (**Defects Notice**) and either:
  - (i) require the Trust Manager to make good the Defect within a reasonable period stated in the notice; or
  - (ii) make good the Defect itself.
- (c) If the Trust Manager receives a Defects Notice, it must immediately give a copy to the Partnership and the Partnership must make good the Defect in the period stated in the Defects Notice.
- (d) If the Partnership does not make good the Defect within the period stated in the Defects Notice, the Trust Manager or Trust Manager's Representative may make good or engage another service provider to make good the Defect.
- (e) At the request of the Trust Manager or the Trust Manager's Representative the Partnership must reimburse the Trust Manager for any expenses the Trust Manager incurs in making good any Defect.
- (f) Where the Partnership has made good any Defect, those services will be subject to the same Defects Correction Period as the original Partnership Services, from the date the Partnership made good the Defect.
- (g) The Partnership will not be liable for any Defect caused by the negligence of the Trust Manager, Rivtow or the Customer or their personnel.
- (h) The Trust Manager's rights under this clause 5 do not in any way affect:
  - (i) the Partnership's obligations under this Contract; or

- (ii) any of the Trust Manager's other rights under this Contract or at Law, including the right to claim for any damage or loss it may suffer because of the Partnership's failure to fulfil any of its obligations under this Contract.
- (i) The rights and obligations under this clause continue after the End Date.

## **6 OPERATION OF VESSEL**

### **6.1 Certificate of survey and registration**

The Partnership will operate the Vessel in accordance with the limits and conditions of operation specified in any applicable class certification.

### **6.2 Operating obligations**

In addition to carrying out the Partnership Services in accordance with clause 3, the Partnership will:

- (a) allow the Trust Manager to inspect all log books, voyage records and other relevant documents on request;
- (b) not allow or bring cargo on board the Vessel except as reasonably required and approved by the Trust Manager;
- (c) not to use, permit use, or keep anything on the Vessel that may affect insurance premiums in any way concerning any policy of insurance on the Vessel or property on board, except the carriage and disposal of fuel as required or approved by the Trust Manager;
- (d) not use or permit to be used on the Vessel or permit anything to be done on the Vessel or keep anything on the Vessel other than permitted cargo that may in any way make void or voidable or lead to an increased rate of insurance premium being payable in respect of any policy or policies of insurance on the Vessel or on any property kept or carried on board save and except the carriage and disposal of fuel which is required or approved by the Trust Manager;
- (e) supply at its own expense all necessary food, beverages and other provisions for personal consumption;
- (f) handle any goods to be carried on board or adjacent to the Vessel with all due care and in accordance with Best Industry Practice, and in all other respects in such manner as is approved by the Trust Manager; and
- (g) supply all necessary food, beverages and other provisions for personnel carried on the Vessel necessary for the proper victualling of the Vessel during all times of operation, and will also procure lubricants and necessary spares of a mechanical and/or engineering nature as may be required for the efficient operation of the Vessel.

### **6.3 Maintenance of the Vessel**

The Partnership will:

- (a) maintain the Customer Owned and Operated Infrastructure to prevent or minimise any premature deterioration or fair wear and tear and perform maintenance as appropriate; and

- (b) ensure that the policy of the Trust Manager for the requisition of ship's stores, spares, engine room components and maintenance materials is complied with prior to any purchase being undertaken.

#### **6.4 Inspection of Vessel**

Subject to the Site Standards and Procedures and the PPA Standards and Procedures, and at the direction of Rivtow or the Customer,

- (a) The Trust Manager by its servants or agents will have the right at its sole risk to come and remain on board the Vessel at any time and for any reason and to inspect or survey the Vessel. In so doing, it will use best endeavours to cause as little interruption as possible to the normal running and management of the Vessel.
- (b) By written notice to the Partnership at any time during the Term, the Trust Manager may request the hull and machinery of the Vessel to be inspected by an independent marine surveyor (**Surveyor**) appointed by the parties no later than 14 days after receipt of written notice. If the parties cannot agree on the Surveyor, clause 12 applies.
- (c) The Surveyor must carry out the inspection no later than 20 days after its appointment under clause 6.4(b) to ascertain the condition of the Vessel at the relevant time and must provide a written report to the Trust Manager no later than 20 days after the inspection.
- (d) The Trust Manager must promptly provide a copy of the Surveyor's report to the Partnership.

### **7 PROVISION OF PERSONNEL**

#### **7.1 Partnerships Personnel**

- (a) The Partnership must ensure Partnership Personnel are properly qualified and, where appropriate, hold proper and relevant certificates for each position occupied. Certificates of qualification for the master and engineer, and details of relevant experience must be tendered to the Trust Manager for approval prior to Partnership Personnel assuming any position on the Vessel. The Trust Manager has the right to refuse approval where, in its sole discretion, that person is not sufficiently qualified or has the relevant experience for the position.
- (b) The Partnership must:
  - (i) ensure that the Partnership Services are performed under the supervision of appropriately qualified and experienced Partnership Personnel and if directed by the Trust Manager or the Trust Manager's Representative, provide additional personnel;
  - (ii) upon request, provide the Trust Manager with any information reasonably required regarding Partnership Personnel; and
  - (iii) use reasonable endeavours to:
    - (A) supply and retain Partnership Personnel;
    - (B) if it is necessary to replace any Partnership Personnel (for whatever reason), promptly replace the person, at the Partnership's expense, with a person of comparable skill, experience, expertise and qualification, approved by the Trust Manager; and

- (C) ensure that each of the Partnership's Personnel is available at the times set out in this Contract or as otherwise required to ensure the performance of the Partnership Services; and
- (iv) if requested by the Trust Manager, provide to the Trust Manager evidence of the competence of any person, including details of previous experience and qualifications.
- (c) The Partnership will have full rights and control over the manning of the Vessel provided that only Partnership Personnel manage and operate the Vessel.
- (d) The Partnership is wholly responsible for the conduct of the Partnership's Personnel, and will exercise proper discipline, supervision and control in accordance with Best Industry Practice.

## 7.2 Induction procedure

The Partnership will ensure that all of the Partnership's Personnel:

- (a) are fully briefed on the safety procedures on board the Vessel in accordance with those procedures referred to in the QHSE System;
- (b) provide written acknowledgement that they have read and understood the QHSE System; and
- (c) if required by the Trust Manager, will undertake to complete an induction procedure administered by the Customer and or PPA.

## 7.3 Removal of Partnership Personnel

- (a) If the Trust Manager receives notice from Rivtow or the Customer that it is dissatisfied with the performance of the Partnership Services by any of the Partnership Personnel (**Personnel Notice**), the Trust Manager must immediately give a copy of the Personnel Notice to the Partnership's Representative. The Partnership's Representative must provide all assistance requested by the Trust Manager to discuss the issue with the Customer.
- (b) If the Trust Manager receives a further notice from Rivtow or the Customer that it requires the removal of named Partnership Personnel from provision of the Partnership Services (**Personnel Removal Notice**), the Trust Manager must immediately give a copy of the Personnel Removal Notice to the Partnership's Representative and the Partnership must immediately provide a suitable replacement (at the Partnership's cost).
- (c) Despite clause 7.3(a), if the Trust Manager receives notice from Rivtow or the Customer that it requires the immediate removal of Partnership Personnel for any unlawful, riotous or disorderly conduct by that person, the Trust Manager must immediately give a copy of the notice to the Partnership's Representative and the Partnership must immediately remove the relevant person.

# 8 INVOICING AND PAYMENT

## 8.1 Invoicing

The Partnership must invoice ("**Invoice**") and provide to the Trust Manager the information set out in Schedule 2.

## **8.2 Further information**

If the Trust Manager requests in writing, the Partnership must provide the Trust Manager with all relevant records to calculate and verify the amount set out in any Invoice.

## **8.3 Payment**

- (a) The Trust Manager must pay the Partnership Fees by attending to payment of the Invoice in accordance with the processes set out in Schedule 2.
- (b) Unless otherwise agreed between the parties, any money payable under this Contract is to be paid by electronic funds transfer to the Partnership's nominated bank account/s or by such means as the parties agree.

## **8.4 Suspension**

Any payments by the Trust Manager on suspension under clause 15 are to be made in accordance with the processes set out in Schedule 2.

# **9 INSURANCE**

## **9.1 Insurance required**

- (a) During the Term and until the end of the last Defects Correction Period, the Partnership must take out and keep current at its own expense the insurance policies specified in Item 5 of Schedule 1.
- (b) The Partnership must, as soon as practicable following a direction from the Trust Manager, obtain any additional insurance policies or amend existing insurance policies in accordance with the requirements of the Trust Manager.
- (c) The Partnership must not vary or cancel any insurance required under clauses 9.1(a) or 9.1(b) and must not do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse a claim.
- (d) The Partnership must ensure that any insurance required to be taken out under clause 9 (other than statutory insurances) is effected with reputable insurers with a financial security rating of A- or better by Standard & Poors or the equivalent rating with another recognised rating agency.

## **9.2 Partnership to provide documents**

The Partnership must supply the Trust Manager with copies of all schedules or certificates of currency of insurance and policy documents for the insurance policies referred to in clause 9.1 immediately upon request by the Trust Manager.

## **9.3 Notification of Claims**

The Partnership will immediately notify the Trust Manager and keep informed of any claims which fall for consideration under any policy of insurance required by clause 9.1.

# **10 MEETINGS**

The Partnership will:

- (a) attend management meetings monthly or otherwise at times as may be required by the Trust Manager; and
- (b) implement any requirements of the Trust Manager as may be agreed at such meetings to ensure that the Partnership adopts the Best Industry Practice in providing the Partnership Services.

## **11 REPORTING AND RECORD KEEPING**

### **11.1 Reports**

The Partnership will provide to the Trust Manager the reports set out in the KPIs.

### **11.2 Record keeping**

The Partnership will prepare, maintain and provide to the Trust Manager the records set out in the KPIs.

### **11.3 Inspection of records**

- (a) The Trust Manager may itself or through an agent:
  - (i) review, inspect, audit, examine and witness tests of any Partnership Services, or the performance of any Partnership Services or the work performed under the Contract;
  - (ii) inspect any equipment used in measuring the performance of the Partnership Services at any time up to 12 months after the measurement of those services occurs; and
  - (iii) carry out site inspections,  
  
at the Site and/or the Partnership's premises.
- (b) The Partnership must give the Trust Manager access to the Partnership's quality systems to enable monitoring and quality auditing.

## **12 DISPUTE RESOLUTION**

- (a) Until the parties have complied with clause 12, a party must not commence any action, bring any proceedings or seek any relief or remedy in a court, except seeking interlocutory injunctive relief from a court or to preserve for that party its claim against the operation of any Law requiring the proceedings to be commenced within a specified period after the accrual of the cause of action the subject of the Dispute.
- (b) Where any Dispute arises, a party may give a Dispute Notice to the other party's Dispute Resolution Representative setting out the material particulars of the Dispute. Within 20 Business Days after receipt of the Dispute Notice (or any other period agreed in writing between the parties), the Dispute Resolution Representatives (or their nominees) must confer to attempt to resolve the Dispute.
- (c) If the parties have not resolved the Dispute within 20 Business Days after the Dispute Notice (or any other period agreed in writing between the parties), either party may commence court proceedings in relation to the Dispute.

- (d) In the event of a Dispute, subject to any statutory rights, both parties must continue to perform their obligations under this Contract, except in the case of a disputed Invoice, in which case, to the extent that it is permitted to do so by Law, the Trust Manager is not required to pay the amount disputed.

## **13 NON-COMPETE**

For the Term, the Partnership must not, in any capacity, directly or indirectly:

- (a) undertake, carry on or be associated with financially, or be otherwise interested or engaged in or concerned with any business or part of any business which is competitive, in whole or in part, with Rivtow's or the Customer's business;
- (b) undertake, carry on or be associated with financially, or be otherwise interested or engaged in or concerned with any business or part of any business which adversely impacts on the performance of Rivtow's or the Customer's business; and
- (c) approach or accept any approach from any person or entity who is a customer of Rivtow or the Customer with a view to dealing with or doing business with that customer on behalf of themselves or anybody else.

## **14 TERMINATION**

### **14.1 No prejudice to other rights**

If a party breaches or repudiates this Contract, nothing in clause 14 prejudices the right of the other party to recover damages or exercise any other right under this Contract or under any applicable Law.

### **14.2 Termination by Customer**

If the Trust Manager receives notice from Rivtow of the Customer's termination of the appointment of Rivtow or the Trust Manager, the Trust Manager must give a copy of that notice to the Partnership's Representative and this Contract terminates from the date of receipt of that notice.

### **14.3 Termination for breach**

- (a) If the Partnership fails to comply with any part of this Contract, or any operational direction given to it by the Trust Manager, the Trust Manager may serve on the Partnership notice specifying the particular breach complained of and giving seven (7) days within which the Partnership must correct the breach.
- (b) If the Trust Manager fails to comply with any part of this Contract, the Partnership may serve on the Trust Manager notice specifying the particular breach complained of and giving seven (7) days within which the Trust Manager must correct the breach.
- (c) If at the expiration of the seven (7) days, the breach has not been rectified by the responsible party, or the responsible party rectifies the breach but afterwards commits a further breach of the same or of a substantially similar nature, or commits more than three (3) breaches of the Contract in a three (3) month period the other party may at its option immediately terminate this Contract.
- (d) Without prejudice to its rights of action or other remedies in respect of any breach of this Contract, if by such breach the Vessel is endangered, either party may terminate this Contract without further notice.

#### **14.4 Termination for insolvency**

If a receiver is appointed in relation to any property or interest of the Partnership, or if the Partnership is wound up, dissolved or terminated by any lawful means whatsoever, then immediately upon notice being given by the Trust Manager to that effect this Contract will terminate absolutely but without prejudice to the right of action or other remedies of the Trust Manager in respect of any breach of the Partnership's covenants, stipulations or agreements contained or implied within this Contract.

#### **14.5 Termination for change of operation**

- (a) If the Partnership Services are varied by the Trust Manager, Rivtow or by the Customer (as notified to the Partnership) in such manner that, in the sole discretion of the Partnership, it is unviable to continue to carry on the Partnership Services, the Partnership may, on the giving of two months notice in writing to the Trust Manager, terminate this Contract.
- (b) In the event that the Vessel sinks or, in the sole discretion of the Trust Manager, is rendered unusable as a result of damage having been sustained by it by whatever cause the Trust Manager may immediately terminate this Contract by written notice.
- (c) In the event that a Vessel is added or removed from the Trust Manager, the Partnership may be required to
  - (i) take possession of a vessel nominated by Rivtow and incorporate it into the Administrative Services;
  - (ii) relinquish possession of the vessel as directed by Rivtow; and
  - (iii) adjust the number of the Partnership Personnel

#### **14.6 Consequences of termination**

When this Contract is ended pursuant to clauses 14.2, 14.3, 14.4 or 14.5 the Partnership must:

- (a) stop work;
- (b) not place any further orders nor enter into any further contracts or other binding arrangements in respect of any Partnership Services;
- (c) take such action as the Trust Manager directs in writing, or as is otherwise necessary, for the transfer, protection and preservation of any Partnership Services and any property in the Partnership's possession in which the Trust Manager has or may acquire an interest under this Contract;
- (d) if the Trust Manager so directs in writing, remove from the Site all of the Partnership Personnel and any plant and equipment owned by the Partnership as soon as reasonably practicable;
- (e) at the Trust Manager's direction, promptly return to the Trust Manager any of the Trust Manager's, Rivtow's or the Customer's Technical Material, Customer Owned and Operated Infrastructure, Intellectual Property and any other property or documents which the Trust Manager, Rivtow or the Customer owns or in which the Trust Manager, Rivtow or the Customer has an interest;
- (f) take any other action relating to any Partnership Services which the Trust Manager may reasonably require;

- (g) transfer to the Trust Manager (or its nominee) any relevant Authorisations and otherwise do such things as the Trust Manager may require to assist the Trust Manager or its nominee to obtain replacement Authorisations; and
- (h) do its best to minimise the cost to all parties of ending this Contract.

## **15 SUSPENDING THE SERVICES**

- (a) If the Trust Manager or Rivtow receives a notice from the Customer suspending the Partnership Services or any part of the Partnership Services, it must immediately give a copy of that notice to the Partnership's Representative.
- (b) If the Partnership receives a written notice of suspension from the Trust Manager or Rivtow, the Partnership must suspend the performance of the Partnership Services from the earlier of the time and date in the notice and immediately following the conclusion of any current towage movements, until the Trust Manager directs the Partnership in writing to continue, at which time the Partnership must promptly recommence the performance of the Partnership's obligations under this Contract.

## **16 STEP IN**

If the Trust Manager or Rivtow receives a notice from the Customer that the Customer elects to exercise its step-in rights, the Trust Manager must immediately give a copy of that notice to the Partnership's Representative and the Partnership must take all reasonable steps to assist Rivtow and the Customer or their nominees.

## **17 INDEMNITY**

- (a) The Partnership indemnifies the Trust Manager for all claims, costs, expenses, losses and damages incurred by it for personal injury, illness or death in connection with this Contract, to the extent those claims, costs, expenses, losses and damages are recoverable by the Partnership under the insurance policies specified in Item 5 of Schedule 1.
- (b) Neither Party is liable to the other for Consequential Loss.

## **18 CONFIDENTIALITY**

### **18.1 Publicity and media**

- (a) The Partnership must not discuss, comment, advertise or issue any information, publication, document or article (including photographs or film) for publication or media releases or other publicity relating to the Partnership Services, this Contract or the Confidential Information without the prior written approval of the Trust Manager.
- (b) The Partnership must refer to the Trust Manager any enquiries from the media concerning the Partnership Services, this Contract or the Confidential Information.

### **18.2 Contracts and business structure documents**

The Partnership acknowledges that the Unit Trust Deed, Shareholders and Unitholders Agreement, Partnership Agreement, ancillary documents, introductory material, and information packs provided by Rivtow to the Trust Manager and Partnership constitute Intellectual Property of

Rivtow and remain Confidential Information. The Partnership must ensure that the Partnership Personnel do:

- (a) not discuss, comment, share or distribute any of that information or documentation without the prior written approval of Rivtow; and
- (b) refer to Rivtow any enquiries from any party concerning that information or documentation.

### **18.3 Obligation of confidentiality**

The Partnership must not, and must ensure that Partnership Personnel do not, without the prior written approval of the Trust Manager, use Confidential Information other than as necessary for the purposes of fulfilling its obligations under this Contract or, subject to clause 18.4(a), disclose the Confidential Information (other than to Related Entities or Partnership Personnel who need the information to enable the Partnership to perform this Contract).

### **18.4 Exceptions**

- (a) Subject to clause 18.4(c), the Partnership's obligation not to disclose Confidential Information without the Trust Manager's prior written approval does not apply to disclosures to the extent that they are:
  - (i) necessary for collaboration with other Partnerships contracted to provide Partnership Services and operating in the same port;
  - (ii) required by Law (including disclosure to any stock exchange or by any Authority);
  - (iii) made to its legal advisers, accountants or auditors; or
  - (iv) required to enable the Partnership to make or defend any claim under this Contract.
- (b) Even if the Partnership is entitled to disclose Confidential Information without the prior written approval of the Trust Manager, the Partnership must otherwise keep the Confidential Information confidential and ensure that any person to whom the Confidential Information is disclosed keeps the Confidential Information confidential in accordance with this Contract.
- (c) Before making any disclosure pursuant to clause 18.4(a)(i) the Partnership must:
  - (i) give the Trust Manager details of the reasons for the disclosure and a copy of the information the Partnership proposes to disclose;
  - (ii) where reasonably possible, provide the Trust Manager with sufficient notice to enable the Trust Manager to seek a protective order or other remedy; and
  - (iii) provide the Trust Manager with all assistance and co-operation which the Trust Manager considers necessary to prevent or limit that disclosure including by making such amendments (if any) as requested by the Trust Manager to the terms of the disclosure.

### **18.5 Return of Confidential Information**

- (a) The Partnership must, within 10 Business Days (or any other period agreed in writing by the parties) after a direction by the Trust Manager to do so, return or destroy all Confidential Information in the Partnership's possession, custody or control.

- (b) Despite the provisions of clause 18.5(a):
  - (i) the Partnership, its Related Entities and their advisers may retain any Confidential Information which is required to be retained by Law or for the purposes of compliance with any relevant professional standards or insurance policies or where reasonably necessary to support any advice given to the Partnership or a Related Entity;
  - (ii) to the extent that the Partnership's computer back-up procedures or those of its Related Entities and their advisers to whom Confidential Information has been disclosed create copies of Confidential Information, those entities may retain those copies for the period backed-up computer records are normally archived by the relevant entity; and
  - (iii) any Confidential Information retained under clauses 18.5(b)(i) or 18.5(b)(ii) will remain subject to the provisions of clause 18 until it is destroyed.

#### **18.6 Continuing clause**

The rights and obligations under clause 18 continue after the End Date.

### **19 GENERAL**

#### **19.1 Anti-corruption**

Each party, in performing this Contract, must comply with any Applicable Anti-corruption Law and must not give or offer to give, receive, or agree to accept, any payment, gift or other advantage which violates an Applicable Anti-corruption Law.

#### **19.2 Notices**

- (a) Except in the case of the Partnership which must also comply with clause 19.2(b) any direction or notice under this Contract must be in writing and delivered by hand or by prepaid, registered or certified mail to the address, sent to the facsimile number or sent electronically as an attachment to an email or other internet address, set out for Manager and the Partnership in this Contract.
- (b) At the time of delivering any direction or notice required under this Contract to the Trust Manager, the Partnership must also simultaneously deliver a copy of the same direction or notice to Rivtow.
- (c) A Direction or notice is effective:
  - (i) if delivered by hand, on the date it is delivered to the addressee;
  - (ii) if mailed to an address in the city of dispatch, on the date which is 3 Business Days after the date of dispatch;
  - (iii) if mailed to an address not in the city of dispatch, on the date which is 5 Business Days after the date of dispatch;
  - (iv) if sent by facsimile, on the date send-back confirmation of its receipt by the addressee's facsimile is received by the sender; or
  - (v) if sent electronically:

- (A) at the time shown in the delivery confirmation report generated by the sender's email system; or
- (B) if the sender's email system does not generate a delivery confirmation report within 12 hours after the time the email is sent, unless the sender receives a return email notification that the email was not delivered, undeliverable or similar, at the time which is 12 hours from the time the email was sent,

unless a later time is specified in the Direction or notice.

- (d) A Direction or notice received after 5pm (recipient's time) is taken to be received on the next Business Day in the place of receipt.
- (e) A party may, from time to time, notify the other party of any change to its details in this Contract.
- (f) For the purpose of clause 19.2, email includes email whether sent using a network or using a common information system.
- (g) An email does not itself constitute a Direction or notice, but a direction or notice may be sent (transmitted) as an attachment to an email.
- (h) Giving any direction or notice by email will not be effective for the purposes of this Contract, but a Party may send a copy of the communication by email.
- (i) Clause 19.2 does not prevent normal day-to-day communications between the Parties taking place by email.

### **19.3 Relationship**

- (a) Partnership Personnel are not employees of the Trust Manager and the Partnership does not act as agent of the Trust Manager, Rivtow or the Customer in relation to any matters related to engagement and management of Partnership Personnel.
- (b) The rights, duties, obligations and liabilities of the parties under this Contract will be several and not joint or joint and several. Nothing in this Contract will be taken as creating a partnership or any kind of joint association or a trust, each party being individually responsible for its obligations as provided in this Contract.
- (c) Each member of the Partnership warrants that:
  - (i) the Senior Partner is authorised, for and on behalf of the Partnership, to sign this Contract and perform the obligations of the Partnership; and
  - (ii) it has taken all corporate action and holds all Authorisations necessary or desirable to enable its entry into and performance of this Contract, and it is complying with any conditions attached to the Authorisations.

### **19.4 Governing law and jurisdiction**

This Contract will be governed and construed in accordance with the laws of the State of Western Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the Western Australian courts and courts competent to hear appeals from those courts.

### **19.5 Assignment**

- (a) The Partnership must not assign, transfer, charge, subcontract or otherwise deal with its rights or obligations under this Contract without the Trust Manager's prior written consent (which consent must not be unreasonably withheld).
- (b) The Trust Manager may assign, transfer, charge, subcontract or otherwise deal with its rights or obligations under this Contract by notice to the Partnership.

### **19.6 Counterparts**

This document may be executed in any number of counterparts. All counterparts together make one instrument.

### **19.7 Amendments and waivers**

- (a) This Contract may only be amended, or its provisions waived, by written agreement between the Trust Manager and the Partnership.
- (b) The non-exercise of, or a delay in exercising, any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right by a party.
- (c) A power or right of a party may only be waived in writing by that party.

### **19.8 Entire agreement**

To the extent permitted by Law, this Contract constitutes the entire agreement between the parties in respect of its subject matter and supersedes all prior agreements, quotation requests, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter (if any) made or given prior to the date of this Contract.

### **19.9 Severability**

Any provision in this Contract which is invalid or unenforceable in any jurisdiction:

- (a) is to be:
  - (i) read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable; and
  - (ii) severed to the extent of the invalidity or unenforceability; and
- (b) does not affect the remaining provisions of this Contract or the validity or unenforceability of that provision in any other jurisdiction.

### **19.10 Giving effect to this Contract**

Each party must take any reasonable steps (including executing any document), and must ensure that its personnel take any reasonable steps (including executing any document), that the other party may reasonably require to give full effect to this Contract.

## Schedule 1 – Partnership Services

### 1 Key Information

<b>Item 1: Start Date</b>	#
<b>Item 2: Name Of Vessel And Specifications</b>	See Schedule 3
<b>Item 3: Site</b>	See Schedule 4
<b>Item 4: Service Fees</b>	See Schedule 2
<b>Item 5: Insurances</b>	Sickness and Accident cover at least equivalent to WorkCover for Western Australia
<b>Item 6: Partnership Representative</b>	
<b>Item 7: Trust Manager's Representative</b>	
<b>Item 8: Defects Correction Period</b>	12 months commencing on the End Date

### 2 Partnership Services

#### 2.1 All services

The services set out in this Schedule 1 are not an exhaustive list. The Partnership must perform all services that are not specifically mentioned in this Contract but can be reasonably inferred as being required for the proper performance of the Partnership Services as if those services were expressly stipulated in this Contract.

#### 2.2 Compliance with Site and Operating Standards and Procedures

On and from the Start Date, the Partnership must, and must ensure that the Partnership Personnel, do everything reasonably necessary to ensure compliance with the Site and Operating Standards and Procedures including the following:

- (a) Customer Code of Conduct;
- (b) All relevant Customer health, safety and environment standards;
- (c) Rivotow QHSE Management System;
- (d) Towage Licence;
- (e) fitness for work guidelines issued by Rivotow, the Customer or PPA;
- (f) PPA standard towage services agreement for the port;
- (g) any PPA standards and procedures that apply to the Site or the Services from time to time;
- (h) the PPA's security plan prepared in compliance with the Maritime Transport and Offshore Facilities Security Act 2003 (Cth);

- (i) any plans or procedures the Customer is required to comply with from time to time, that are notified to the Trust Manager; and
- (j) if and when required, be available to attend meetings of PPA's occupational safety and health committee.

### 2.3 Towage Services

On and from the Start Date, the Partnership must:

- (a) offer to provide and provide Towage Services to port users as agent for and on behalf of Rivotow using the Vessel;
- (b) enter into Standard Towage Services Agreements with port users as required for the provision of the Partnership Services and in accordance with any schedule of rates published by the Customer from time to time;
- (c) providing all technical, operational, engineering and maintenance services necessary or advisable in order to operate and maintain the Vessel safely and efficiently;
- (d) provide the Emergency Response Services, as directed by the Company or the Harbour Master;
- (e) if any contamination, pollution or environmental harm occurs in the conduct of the Partnership Services:
  - (i) do all things reasonably possible to ensure that the effect is minimised;
  - (ii) in relation to any pollution caused or contributed to by the Partnership, take immediate action to stop the pollution and, as soon as practicable, rectify and repair any loss or damage arising including cleaning up and reinstating the affected areas; and
  - (iii) assist the Customer and the PPA emergency response team, and any other official oil spill or hazard management team or responsible officials to combat the hazard and contain and minimise the environmental risk;
- (f) maintain the Vessel, Plant and Equipment and relevant Customer Owned and Operated Infrastructure to:
  - (i) ensure that the Vessel, its hull, machinery and equipment and all associated shore facilities Plant and Equipment are:
    - (A) in good condition, working order and repair; and
    - (B) in such condition as will the Vessel the highest classification and rating for tugboats of the same age and type and give Rivotow the certificates issued by Lloyd's Register evidencing the maintenance of such classifications;
  - (ii) ensure it is properly and professionally maintained and serviced at regular intervals under appropriate maintenance systems and in accordance with Best Industry Practice;
  - (iii) ensure it is in good, clean and safe condition at all times;
  - (iv) ensure it is in proper working order at all times, except during periods of scheduled or emergency maintenance or repairs;

- (v) ensure that the Vessel is seaworthy and is kept in appropriate survey standard and maintained to survey standard; and
- (vi) ensure that appropriate onboard radio communications systems is maintained at all times;
- (g) as applicable to the Partnership Services, maintain the Customer Owned and Operated Infrastructure, to ensure that the it is always safe and fit for use and ensure performance of the following tasks:
  - (i) monitoring of the condition of Customer Owned and Operated Infrastructure; and
  - (ii) perform minor repairs and preventive maintenance to Customer Owned and Operated Infrastructure;
- (h) do not make or permit to be made, without the prior written approval of Rivtow or the Customer, any:
  - (i) structural changes to the Company Owned and Operated Infrastructure; or
  - (ii) changes to the Vessel inconsistent with or outside the terms of this Contract;
- (i) ensure that any movement of vessels within the port of Port Hedland is done in accordance with the directions of, and meets the vessel movement schedule determined by the Harbour Master;
- (j) ensure that all disruptions or potential disruptions to the Partnership Services, are reported immediately to the Trust Manager Representative and then investigate and identify the cause of the event and make recommendations to avoid recurrence within a reasonable time;
- (k) as applicable to the Partnership Services, manage inventory of all Plant and Equipment and maintain proper records of stock and consumption in accordance with the Trust Manager's or Rivtow's reasonable directions;
- (l) maintain Site security;
- (m) ensure adequate procedures are in place to test responsiveness to emergency situations, for example, grounding drills, collision drills, fire drills etc as reasonably necessary to ensure competency and safety;
- (n) perform and ensure capability to perform, fire-fighting activities as required by the PPA or the Authorisations;
- (o) ensure that emergency situations are promptly and adequately responded to;
- (p) in the event a vessel requires emergency assistance, the Partnership must provide such assistance as necessary having regard to the circumstances of the emergency as directed by the Harbour Master. If the circumstances permit, the Partnership, Rivtow and the Customer will agree the extent of the assistance at the time of the emergency; and
- (q) ensure that all safety incidences are immediately reported to the Trust Manager and investigations in respect of safety are performed as a priority and within the time reasonable required by the Trust Manager Representative.

#### **2.4 Crew, qualifications and training**

On and from the Start Date, the Partnership must do everything reasonably necessary to:

Schedule 1 – Partnership Service

- (a) ensure that an appropriate number of qualified marine crew are available to provide Towing Services 24 hours a day, seven days per week, on one hour's notice (and must endeavour to ensure availability at a lesser notice period than one hour); and
- (b) ensure that an appropriate number of qualified marine crew are available to provide the Emergency Response Services at all times, promptly, and in any event, on a reasonable period of notice not exceeding one hour;
- (c) ensure that all marine crew maintain qualifications and competencies necessary to man the Vessel and provide supporting documentation to the Trust Manager;
- (d) ensure that marine crew are available to attend all training and induction courses as required by Rivtow, the Customer and the PPA, including:
  - (i) periodic simulation based training, situation and emergency training arranged by the PPA, and any other training directed by the Customer;
  - (ii) in respect of any personnel who are likely to provide the Emergency Response Services, emergency training exercises and training situations, including equipment deployment exercises arranged by the PPA, but only in consultation with the Customer so as to avoid any disruption to the provision of the Towing Services;
  - (iii) the PPA's marine induction course and occupational health and safety induction course;
  - (iv) training on the provision of open water towing escort services;
  - (v) induction and training in the Rivtow QHSE Management System; and
  - (vi) any other training required by Rivtow, the Customer or the PPA;
- (e) ensure that at all times all marine crew have and wear personal protection equipment (PPE) compliant with the QHSEMS.

## 2.5 Vessel and spares

The Partnership must, and must ensure that the Partnership Personnel must:

- (a) implement and maintain the currency of the safety management system for the Vessel;
- (b) maintain sufficient inventory of Plant and Equipment on or near the Site to ensure an uninterrupted performance of the Towing Services; and
- (c) advise the Trust Manager of all warranty claims in accordance with manufacturer policies for parts and components which fail, together with any records of transactions regarding such warranties.

## 2.6 Reporting

The Partnership must do all things reasonably requested by the Trust Manager in connection with the Partnership Services. The Partnership must maintain and provide the following information throughout the term of the Contract:

- (a) any information in relation to the Partnership Services to insurers or other advisors when requested;
- (b) anti-corruption-related due diligence responses in compliance with the QHSE Management System;
- (c) all responses required by auditors conducting audits required by Rivotow, the Customer or PPA;
- (d) **daily** reports including the following:
  - (i) vessel logs
  - (ii) all marine crew who worked that day
- (e) **weekly** reports including the following:
  - QHSE Performance including:
    - (i) details of any injuries
    - (ii) safety incidents and near misses
    - (iii) detail of any damage
    - (iv) fourteen (14) hour breaches
    - (v) drug and alcohol testing results
    - (vi) environmental breaches
  - Operational and Technical Performance including:
    - (i) schedule delays
    - (ii) any events on towage
    - (iii) vessel availability percentage (%)
    - (iv) a summary of bunkers taken (fuel)
    - (v) the number of vessels escorted to beacon 15/16
    - (vi) the number of vessel movements and towage jobs completed
    - (vii) service hours
    - (viii) engine hours; and
    - (ix) any notable events

- (x) significant unplanned costs.
- (f) **monthly** reports including the following:
  - (i) KPI review
  - (ii) Vessel condition report
  - (iii) costs incurred on scheduled maintenance
  - (iv) costs incurred on breakdown maintenance
- (g) **annual** reports including the following:
  - (i) responses to personnel satisfaction survey
  - (ii) risk register.

## 2.7 Financial

The Partnership must, and must ensure that the Partnership Personnel must:

- (a) comply with Rivtow's procurement policies and procedures;
- (b) keep full and accurate books and records, in accordance with generally accepted accounting principles, policies, practices and procedures, in respect of its conduct of the Partnership Services.

## 2.8 Transfer Period

During the Transfer Period, the Partnership must, and must ensure that the Partnership Personnel:

- (a) continue to supply the Partnership Services;
- (b) cooperate in all aspects of handing back the Partnership Services to the Trust Manager or nominee, and transferring control of those services, if so directed;
- (c) provide assistance in training nominated personnel in the performance of the Partnership Services;
- (d) bring all manuals, records, plans and other information in relation to the Partnership Services up to date ready for handover prior to the end of the Term;
- (e) hand over to the Trust Manager or nominee, all inventory of spares, tools, equipment and consumables, and all manuals, records and documentation relating to the Partnership Services and the Vessel, in good condition and immediately prior to the end of the Term;
- (f) novate or assign to the Trust Manager or nominee any contracts that are required for the continuation of the performance of the Partnership Services;
- (g) ensure that the Site and the Vessel are in the state and condition as set out in any survey of the Site or Vessel conducted immediately prior to the Start Date, fair wear and tear excepted;

Schedule 1 – Partnership Service

- (h) deliver to the Trust Manager or nominee all manuals, records, plans and other information under the control of the Partnership which are relevant to the operation and maintenance or repair of the Vessel and provide such information in soft copy format; and
- (i) procure the assignment to the Trust Manager or nominee the benefit of any supplier or manufacturer warranties that apply to any part of the Vessel, Plant and Equipment or other property procured or created in connection with this Contract or the Partnership Services.

## Schedule 2 - Service Fees and payments

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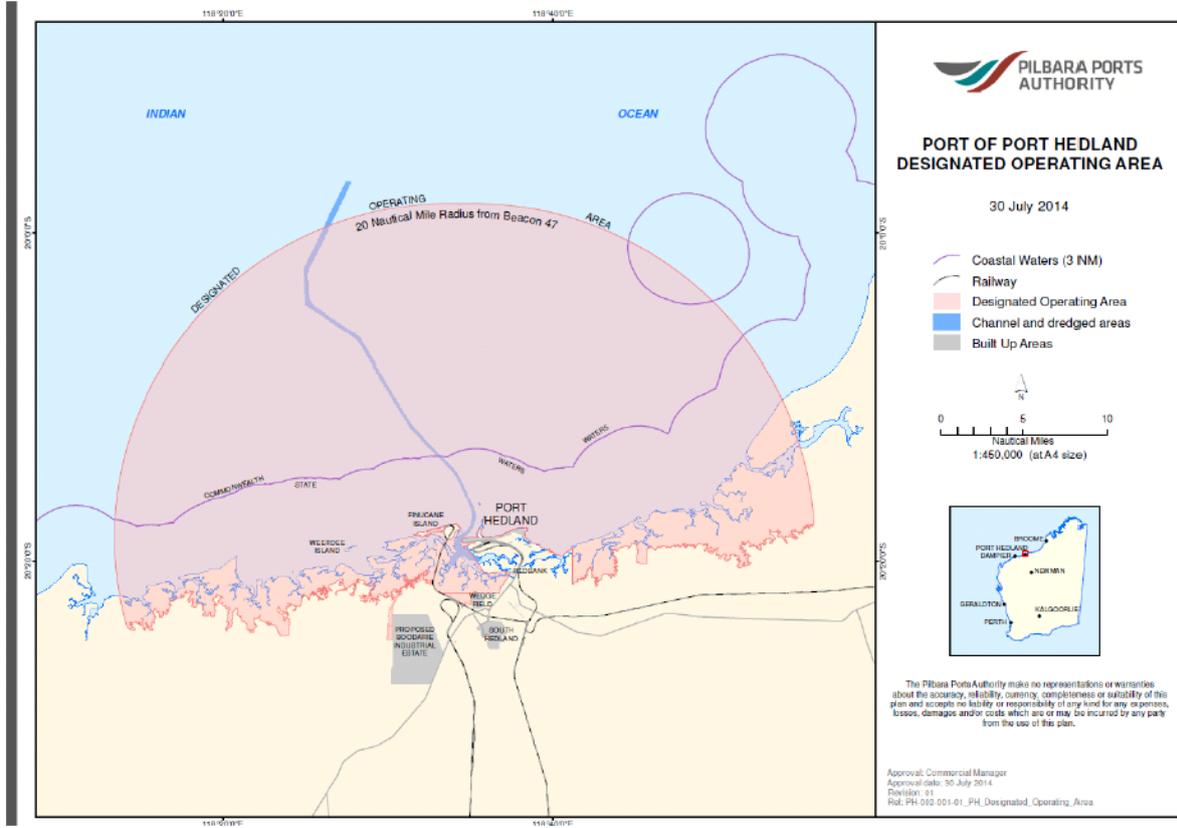
Partnership Services Fee				
Service Fee based on full complement of 10.			Per Annum	Invoiced and Paid Monthly pro rata based on complement appointed.

## Schedule 3 - Customer Owned and Operated Infrastructure

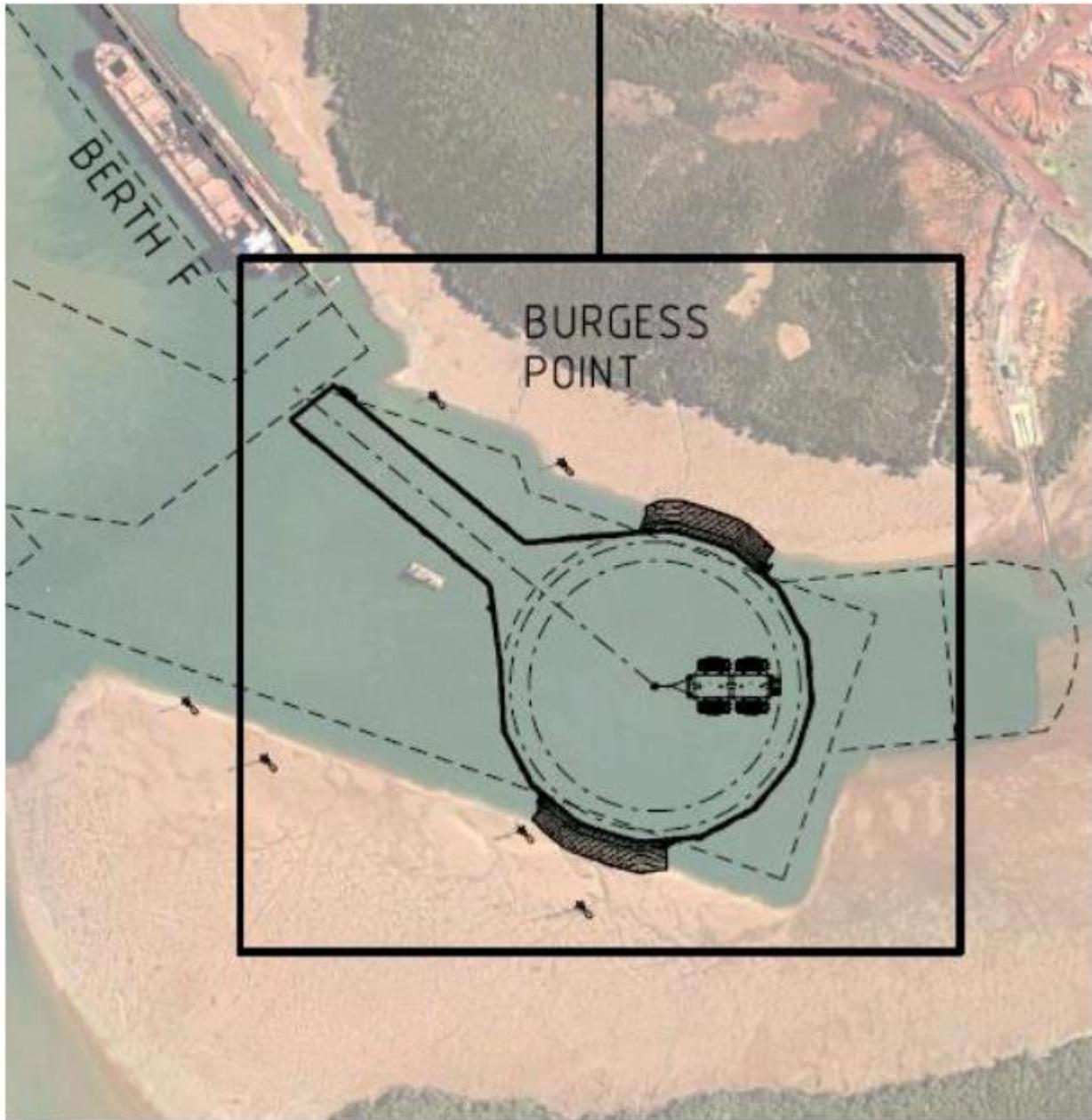
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# Schedule 4 - Site

## Port of Port Hedland Towage Licence Designated Operating Area



Stingray Creek Swing Mooring Facility Area



## Execution

EXECUTED as a an agreement

Executed by

[Trustee Co] Pty Ltd ACN as trustee for the [Entity Name] Unit Trust ABN

on / /20 by:

▲ \_\_\_\_\_  
Director

▲ \_\_\_\_\_  
Director/ Secretary

▲ \_\_\_\_\_  
Full name of Director

▲ \_\_\_\_\_  
Full name of Director/ Secretary

Executed by

[Entity Name] Partnership ABN

on / /20 by:

▲ \_\_\_\_\_  
Senior Partner

▲ \_\_\_\_\_  
Senior Partner

▲ \_\_\_\_\_  
Full name of Senior Partner

▲ \_\_\_\_\_  
Full name of Senior Partner

## Annexure A – KPIs

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\*In the event of a fatality or total or permanent disability occurring during any month, there will be no entitlement to the KPI incentive amount for that quarter.