



Management and Procurement Contract

Rivtow Marine Pty Ltd ACN 601 268 115

TRUST: [Entity Name] ACN as trustee for the [Entity Name] Unit Trust ABN

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Management and Procurement Contract

Dated

Parties

Rivtow **Rivtow Marine Pty Ltd ACN 601 268 115**
of 161 Breakfast Creek Road, Newstead Queensland 4006

Trust Manager
of

Background

- A Rivtow has been appointed under the Head Contract to provide services to the Customer.
- B Rivtow wishes to appoint the Trust Manager to provide the Administrative Services and procure the provision of the Partnership Services.
- C The provision of Administrative Services and procurement of the Partnership Services must be done with discipline, honesty, transparent communication and respect for the interests of all personnel.
- D The Trust Manager accepts the appointment on the terms of this Contract.

Agreed terms

1 **Definitions and interpretation**

1.1 **Definitions**

In this Contract:

Term	Definition
Administrative Services	means the administrative services set out in Schedule 1.
Applicable Anti-Corruption Laws	means any anti-corruption Laws that are applicable to either the Customer, Rivtow, the Trust Manager, the Partnership or this document, including the US Foreign Corrupt Practices Act and the UK Bribery Act.
Authority	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.

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Term	Definition
Business Day	means a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia.
Contract	means this management and procurement contract.
Confidential Information	means the terms of this Contract and information made available to the Trust Manager at any time together with any information that concerns the business, operations, finances, plans or customers of Rivtow or Rivtow's Related Entities disclosed to or acquired by the Trust Manager (including any information that is derived from such information), but does not include information which: <ul style="list-style-type: none"> (a) is or becomes public knowledge other than by a breach of this Contract; or (b) is in the possession of the Trust Manager without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Trust Manager.
Contract Variation Form	means a notice substantially in the form set out in Annexure D – Contract Variation Form under which Rivtow has directed a Variation under clause 15.
Customer	means BHP Billiton (Towage Services) Pty Ltd ACN 107 061 343.
Customer Owned and Operated Infrastructure	means the items set out in Schedule 3 to the Partnership Service Contract.
Drug and Alcohol Policy	as issued by Rivtow Marine Pty Ltd.
Direct Agreement	refers to a contract between the Customer, Rivtow, Trust Manager and Partnership substantially in the form set out in Annexure C.
Directors	means the directors of Rivtow or the Trust Manager.
Dispute	means any dispute, controversy or claim arising out of or in relation to this Contract.
Dispute Notice	means a written notice served under clause 11.
Dispute Resolution Representative	means Trust Manager's Representative or Rivtow's Representative and a reference to Dispute Resolution Representatives is a reference to both of them.
Emergency Response Services	means the provision of assistance during an emergency within the Site or surrounding areas, under the direction of the Harbour Master and in accordance with, and subject to the terms of the Towage Licence and any applicable Laws to: <ul style="list-style-type: none"> (a) move or control a disabled, incapacitated or stranded vessel or a vessel in distress; (b) extinguish a fire on a vessel or other asset on the Site or surrounding areas, including by transporting personnel to and from the area in which the emergency is occurring; (c) assist the primary response team to deal with marine pollution incidents, including oil spillages;

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Term	Definition
	<ul style="list-style-type: none"> (d) deal with a port collision incident in accordance with the Harbour Master's directions; or (e) provide such other services as directed by the Customer.
End Date	<p>means:</p> <ul style="list-style-type: none"> (a) 31 October 2020 or such later date as may be notified to the Trust Manager under clause 2; and (b) the date this Contract is ended under clause 6, subject to any extension in accordance with clause 2.
Extension Notice	has the meaning given in clause 2.
Force Majeure Event	<p>means any situation that has arisen in Port Hedland area due to something beyond the reasonable control of a Party and which unreasonably interferes with or prevents the performance by a Party of any one or more of its obligations under this Contract, including an act of God, an industry-wide strike or lock-out (not being an industrial disturbance limited to a Party), war, act of public enemy, blockade, revolution, riot, insurrection, civil commotion, fire, earthquake, explosion, embargo and unavoidable accident. However the expression shall not include:</p> <ul style="list-style-type: none"> (a) the inability of a Party, for whatever reason, to pay money it is obliged to pay; or (b) the inability of either Party to perform one or more of its obligations due to its negligent act or omission.
Head Contract	means the Deed of Amendment and Restatement (Service Contract – Port Hedland Towing Services) dated 17 September 2015 as amended from time to time between Rivtow and the Customer.
Intellectual Property	means any subject matter, whether tangible or intangible, that attracts, or is susceptible to protection by, Intellectual Property Rights.
Intellectual Property Rights	<p>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:</p> <ul style="list-style-type: none"> (a) all rights in all applications to register these rights; and (b) all renewals and extensions of these rights.
Invoice	means an invoice issued under clause 5.1.
Law	means:

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Term	Definition
	<p>(a) legislation including regulations, by-laws, orders, awards and proclamations with which a party is legally required to comply;</p> <p>(b) common law and equity (if applicable);</p> <p>(c) treaties and conventions, and all rules and regulations issued under those treaties and conventions; and</p> <p>(d) 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.</p>
Management Fee	means the management fees set out in Schedule 2.
Motor Vehicle Insurance	minimum amount not less than \$20,000,000 for any one claim and in the annual aggregate.
Operation Year	means in respect of the first year the period commencing on the Start Date and ending on 30 June 2016 and for each subsequent year of this Contract means the 12 month period which begins on 1 July 2016 until the End Date.
Partnership	means [Partnership name].
Partnership Personnel	means all partners in the Partnership.
Partnership Service Contract	means the Partnership Service Contract between the Trust Manager and Partnership attached as Annexure A.
Partnership Services	means the services to be provided under the Partnership Service Contract to the Trust Manager.
Plant and Equipment	means plant, equipment, tools, spare parts, consumables, appliances or other property and items the Trust Manager requires to fulfil it's obligations under this Management and Procurement Contract.
PPA	means the Pilbara Ports Authority and, where context permits, includes a reference to the Harbour Master.
Public and Products Liability Insurance	minimum amount not less than \$10,000,000 for any one occurrence, unlimited as to the number of occurrences happening during any one period of insurance.
QHSE Management System / QHSEMS	means the quality health safety and environment management system as prescribed by Rivtow to the Trust Manager and Partnership from time to time for use on the vessel engaged in performing services to Rivtow or the Customer.
Related Entities	<p>means, in relation to a party or other entity, a body corporate which is:</p> <p>(a) a controlling company;</p> <p>(b) a controlled company; or</p> <p>(c) a controlled company of a controlling company, of that party or other entity.</p> <p>For the purposes of this definition, one body corporate controls another when at the relevant time:</p>

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Term	Definition
	<p>(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</p> <p>(b) it controls the composition of a majority of the board of that other body corporate,</p> <p>and 'controlled' and 'controlling' will be construed accordingly.</p>
Review Date	means 31 July of each calendar year starting at 31/07/2016.
Site	has the same meaning as contained in the Partnership Services Contract.
Start Date	has the same meaning as contained in the Partnership Services Contract.
Term	means the period commencing on the Start Date and ending on the End Date.
Technical Material	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.
Towage Licence	means the standard services provider's licence for towage services between the PPA and the Customer, dated 31 July 2014.
Towage Services	<p>means the provision of towage services for vessels to the Customer and to port users, and includes the following services for vessels:</p> <p>(a) berthing;</p> <p>(b) unberthing;</p> <p>(c) moving between berths;</p> <p>(d) escorting from anchorage to the berths;</p> <p>(e) escorting from the berths through the channel to Beacons 15/16;</p> <p>(f) such other towage services as the Customer is required to provide under the Towage Licence from time to time; and</p> <p>(g) Emergency Response Services.</p>
Transfer Period	<p>means the period commencing:</p> <p>(a) 12 months prior to the End Date; or</p> <p>(b) where the Management and Procurement Contract is terminated, when directed by Rivotow; and</p> <p>ending on the End Date.</p>
Trust Manager's Personnel	means any and all personnel engaged by the Trust Manager, including its Directors, officers, administrative employees, agents, invitees, and any director, officer, employee, agent or

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Term	Definition
	invitee of any contractor (including a Partnership), in performing the Trust Manager's obligations under this Contract.
Trust Towage Fleet	means any vessel owned, chartered, or otherwise managed by Rivtow (and made available to the Trust Manager) for the Trust Manager to perform the Administration Services.
Variation	means any change to the Administrative Services, including any addition to, reduction in, omission from or change in character, quality or quantity of the Administrative Services.
Vessel	means the vessel or vessels identified in the Partnership Service Contract.

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;
- (k) a reference to 'approved' or 'approval' will be deemed to mean 'approved in writing' or 'approval in writing'; and
- (l) a reference to time is to Western Australian time.

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2 Term

- (a) This Contract shall operate for the Term.
- (b) The Trust Manager acknowledges that Rivtow may, in its absolute discretion, extend the End Date by giving the Trust Manager 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 Appointment and duties of Trust Manager

3.1 Appointment

Rivtow appoints the Trust Manager to provide the Administrative Services and procure the provision of the Partnership Services for the Term and the Trust Manager accepts that appointment.

3.2 Duties

The Trust Manager must do all things necessary to:

- (a) provide the Administrative Services in accordance with this Contract; and
- (b) to procure the provision of the Partnership Services in accordance with the Partnership Service Contract and in a manner which complies with Rivtow's obligations under the Head Contract and otherwise at the direction of Rivtow or the Customer under clause 3.3.

3.3 Performance of duties

- (a) The Trust Manager must perform its duties and obligations in accordance with this Contract and the Partnership Service Contract.
- (b) If requested by Rivtow or the Customer at any time, the Trust Manager must exercise its rights under the Partnership Service Contract as requested and must immediately provide to Rivtow or the Customer (as the case may be) any information or documentation received under the Partnership Service Contract.
- (c) The Trust Manager must exercise its rights under the Partnership Service Contract to ensure that the contractors under the Partnership Service Contract shall:
 - (i) except where it can demonstrate it is impractical to do so, use labour available in Western Australia (using all reasonable endeavours to ensure that as many as possible of its workforce be recruited from the Pilbara);
 - (ii) as far as it is reasonable and economically practicable to do so, use the services of contractors, professional consultants, manufacturers, suppliers and contractors resident and available within Western Australia;
 - (iii) ensure that suitably qualified Western Australian and Australian manufacturers, suppliers and contractors are given fair and reasonable opportunity to tender or quote;

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- (iv) give proper consideration to Western Australian suppliers, manufacturers and contractors when placing orders for works, materials, plant, equipment and supplies where price, quality, delivery and service are equal to or better than that obtainable elsewhere; and
 - (v) ensure proper consideration is given and where possible preference to tenders, arrangements or proposals that include Australian participation, if an order is to be placed with other than a Western Australian or Australian supplier, manufacturer or contractor.
 - (vi) take immediate action to report, in full detail, any accident, incident, near miss or missed scheduled ship movement to Rivotow, according to the Rivotow QHSEMS.
- (d) The Trust Manager warrants that all Trust Manager Personnel performing services under or related to this contract or the Partnership Service Contract:
- (i) are properly qualified and competent for the tasks they are to perform;
 - (ii) hold all appropriate licenses and certifications, and that these will remain current;
 - (iii) exercise the skill, care and diligence in the performance of each activity that would be expected of an expert service provider in projects or activities of a similar nature.
- (e) The Trust Manager warrants that all Trust Manager Personnel performing services under the Partnership Service Contract are members of the Partnership.
- (f) The Trust Manager must advise Rivotow, in writing of any change in circumstance of Partnership Personnel performing services, that in the Trust Managers reasonable opinion, is likely to affect Rivotow's assessment of the person as a person suitable to perform the services.
- (g) The Trust Manager must maintain a register of Partnership Personnel, including records of all licenses and certification held.
- (h) If after being requested by Rivotow, the Trust Manager fails to produce information or documentation requested under clause 3.3 (b), Rivotow 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. If at the expiration of the said seven (7) days the breach complained of has not been rectified to the reasonable satisfaction of Rivotow, Rivotow may at its option immediately terminate this Contract.

3.4 Towage Fleet

Rivotow may at any time in its sole discretion, direct the Trust Manager to add or remove a vessel from the Trust Towage Fleet (including, without limitation, to allocate the vessel to a different contractor). If this occurs, the Trust Manager must do everything reasonably necessary to add or remove a vessel as required by Rivotow. This may include the Trust Manager:

- a) taking possession of a vessel nominated by Rivotow and incorporate it into the Administrative Services performed;
- b) relinquishing possession of the vessel as directed by Rivotow; and
- c) adjusting the number of the Trust Manager Personnel or Partnership Personnel.

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3.5 Continuous improvement

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

- (a) improving safety
- (b) providing safe on time towage services;
- (c) in conjunction with the Customer, Rivotow, the Partnership, 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;
- (e) the maintenance of the QHSE System and compliance with its quality policy; and
- (f) maintaining the trust quality management system.

3.6 Powers

- (a) Subject to clause 3.3, the Trust Manager is responsible for carrying out its duties and procuring the Partnership Services as well as complying with the terms of the Partnership Service Contract.
- (b) Rivotow reserves the right to refuse entry onto Customer Owned and Operated Infrastructure to Trust Manager Personnel and/or Partnership Personnel who breach the QHSEMS or any other reason which effects the safety or performance of service.
- (c) Rivotow reserves the right to grant access to Customer Owned and Operated Infrastructure to all personnel who are members of the Trust and Partnership at any time during this Contract.

4 Key Performance Indicators

- (a) The KPIs will be the subject of continuous improvement and may be updated by agreement with the Trust Manager, when required by the Customer or notice in writing by Rivotow to the Trust Manager from time to time.
- (b) The Trust Manager must meet the target or standard specified for each KPI as set out in, and measured in accordance with Annexure B, as updated from time to time under clause 4(a).
- (c) The Trust Manager must ensure that the Partnership meets the target or standard specified for each KPI as set out in the Partnership Service Contract and measured in accordance with that document as updated from time to time.
- (d) No later than five Business Days after the end of each month, the Trust Manager must submit to Rivotow a progress report that outlines the status of each KPI and must:
 - (i) include details of which KPI has been satisfied and the progress that has been made on the remaining KPIs;
 - (ii) contain the details necessary to permit adequate analysis by Rivotow; and

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- (iii) be in a form and prepared in such a way as to meet the reasonable requirements of Rivtow.
- (e) Rivtow will undertake a quarterly review of the Trust Manager's performance based on the KPIs in accordance with the processes set out in Annexure B and the reports provided by the Trust Manager under clause 4(d).
- (f) The Trust Manager must notify Rivtow and the Trust Manager Personnel if the KPI review results in a shortfall of not less than 10% of the total KPI value.

5 Invoicing and payment

5.1 Invoice

- (a) No later than three (3) Business Days after the end of each month, the Trust Manager must invoice (**Invoice**) and provide to Rivtow the information set out in Schedule 2.
- (b) If any additional expenditure is incurred by the Trust Manager as a result of a written direction given by Rivtow, the Trust Manager can invoice Rivtow, no later than three (3) Business Days after the end of the month for approved additional expenditure.

5.2 Change of residency

The Trust Manager must notify Rivtow, in writing within 3 days, if any Trust Manager Personnel become, or cease being, a resident in Port Hedland. Upon the change of Trust Manager Personnel residency, Rivtow reserves the right to review and change the Management Fee to correctly reflect the cost variation.

5.3 Further information

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

5.4 Management Fee

- (a) In consideration of the performance by the Trust Manager of its duties and obligations under this Contract, Rivtow must pay the Management 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 Trust Manager's nominated bank account or by such other means as the parties agree.
- (c) Any incentive payments received by Rivtow from the Customer as a result of meeting or exceeding Annexure B - Trust Manager KPI's will be paid to the Trust Manager in accordance with the process set out in Annexure B.
- (d) The Management Fee is a yearly fixed fee (paid in equal monthly instalments) set out in Schedule 2.
- (e) Rivtow is only liable to pay the Incentive Fee to the extent that, and at the time, Rivtow determines that the Contractor, based on feedback from the Customer is entitled to an Incentive Amount in accordance with Annexure B – KPIs.

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- (f) The Management Fee for each Operation Year will be adjusted on each Review Date in accordance with the price adjustment formulae specified in Schedule 2.

5.5 Set Off

- (a) Rivotow must pay all invoices, except where Rivotow:
 - (i) exercises any right to retain, withhold, reduce or set-off any amount due to the Trust Manager.
 - (ii) disputes the invoice, in which case:
 - (A) to the extent permitted by law, Rivotow may withhold payment of the disputed part of the relevant invoice pending resolution of the dispute; and
 - (B) if the resolution of the dispute determines that Rivotow must pay an amount to the Trust Manager, Rivotow must pay that amount upon resolution of that dispute.

6 Termination

6.1 No prejudice to other rights

If a party breaches or repudiates this Contract, nothing in clause 6 prejudices the right of the other party to recover damages or exercise any other right under this Contract or under any applicable Law.

6.2 Termination by Customer

- (a) The Customer may, at its absolute discretion, and without being obliged to give any reasons, end the Head Contract at any time by giving not less than 5 Business Days written notice to Rivotow.
- (b) If the Trust Manager receives notice from Rivotow of the Customer's termination of the Head Contract, this Contract terminates from the date set out in the notice.
- (c) Rivotow may terminate this Contract if the Trust Manager, or the Trust Managers Personnel, directly or indirectly cause Rivotow or the Customer to breach a provision of the Towage License; or
- (d) If the Customer exercises their option to remove vessels from the control of Rivotow, Rivotow may terminate this contract.

6.3 Termination for breach

- (a) If the Trust Manager fails to comply with any part of this Contract, or any operational direction given to it by Rivotow, Rivotow may serve on the Trust Manager notice in writing specifying the particular breach complained of and giving seven (7) days within which the Trust Manager must correct the breach.
- (b) If Rivotow fails to comply with any part of this Contract, the Trust Manager may serve on Rivotow notice in writing specifying the particular breach complained of and giving seven (7) days within which Rivotow must correct the breach.

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- (c) If at the expiration of the seven (7) days the breach has not been rectified, the other party may at its sole discretion immediately terminate this Contract by notice in writing.
- (d) Without prejudice to its rights of action or other remedies in respect of any breach of this Contract, if by such breach a vessel is or may become endangered, either party may terminate this Contract without further notice.
- (e) If the Trust Manager rectifies a 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, Rivotow may terminate this contract.

6.4 Termination for insolvency

If a receiver, administrator, liquidator or provisional liquidator is appointed in relation to the Trust Manager or to any property or interest of the Trust Manager, then this Contract may immediately be terminated by notice in writing from Rivotow. Termination by Rivotow will be without prejudice to the right of action or other remedies of Rivotow in respect of any breach of the Trust Manager's covenants, stipulations or agreements contained or implied within this Contract.

6.5 Termination for change of operation

If the Administrative Services are varied by Rivotow or by the Customer in such manner that, in the sole discretion of the Trust Manager it is unviable to continue to carry on the Administrative Services, the Trust Manager may, on the giving of two (2) months' notice in writing to Rivotow, terminate this Contract.

6.6 Consequences of termination

When this Contract is ended pursuant to clauses 6.2, 6.3, 6.4 or 6.5, 7 or 3.3(h) the Trust Manager must procure the Partnership to:

- (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 Rivotow or 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 and 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's Personnel and any plant and equipment as soon as reasonably practicable;
- (e) at the Trust Manager's direction, promptly return to the Trust Manager any of the Trust Manager's, Rivotow's or the Customer's Technical Material, Intellectual Property, plant and equipment and any other property or documents which the Trust Manager, Rivotow or the Customer owns or in which the Trust Manager, Rivotow or the Customer has an interest;
- (f) take any other action relating to any Partnership Services which the Trust Manager may reasonably require;

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- (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 the Parties of ending this Contract.

7 Force Majeure

- (a) If the Trust Manager is affected, or likely to be affected, by a Force Majeure Event in Port Hedland:
 - (i) the Trust Manager must give Rivtow prompt notice of that fact including:
 - (A) full particulars of the Force Majeure Event;
 - (B) an estimate of its likely duration;
 - (C) the obligations affected by it and the extent of its effect on those obligations; and
 - (D) the steps taken to rectify it; and
 - (ii) the Trust Manager is not required to comply with its obligations under this Contract to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event or its effect continues.
- (b) If the Trust Manager is affected by a Force Majeure Event, then it must use its reasonable endeavours (including incurring any reasonable expenditure of funds and rescheduling of Trust Manager Personnel and resources) to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible.
- (c) The Trust Manager must continue to provide Rivtow with all relevant information pertaining to the Force Majeure Event as and when it becomes known to the Trust Manager.
- (d) The Trust Manager is affected by a Force Majeure Event that continues for a period of one month, Rivtow may terminate this Contract by notice in writing.

8 Assignment and Sub-contracting

8.1 Novation

- (a) The Trust Manager must not subcontract its rights or obligations under this Contract to a partnership or unit trust, engage a partnership or unit trust to perform the Services, or take any other action with a similar effect, unless and until the Trust Manager and Partnerships enter into a Direct Agreement with the Customer (unless the Customer otherwise specifies).
- (b) If required by the Customer, the Trust Manager must enter into documentation in a form provided by the Customer to give effect to the assignment, novation or transfer of the Customers rights or obligations under this Contract.

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8.2 Transfer of Rights and Obligations

- (a) The Trust Manager shall not, without the prior written consent of Rivtow, assign or transfer or in any way attempt to assign or transfer any or all of its rights and obligations arising under this Contract.
- (b) The Trust Manager must notify Rivtow in writing of any change, or intention to effect a change, in control of the Trust Manager as soon as practicable after it becomes aware of the change or the intention to effect change but in any case, within 10 days of first becoming aware of any such change in control or intention to effect the change in control.

8.3 Step In

If Rivtow receives a notice from the Customer that the Customer elects to exercise its step-in rights, the Trust Manager must take all reasonable steps to assist Rivtow and the Customer or their nominees.

9 Suspending this Contract

- (a) Rivtow may, at any time and for any reason, suspend this Contract or any part of this Contract;
- (b) When the Trust Manager receives a written notice of suspension from Rivtow, the Trust Manager must suspend the performance of its obligations under this Contract from the earlier of the time and date in the written notice and immediately following the conclusion of any current towage movements, until Rivtow directs the Trust Manager in writing to continue, at which time the Trust Manager must promptly recommence the performance of the Trust Managers obligations under this Contract;
- (c) Where the suspension of this Contract is not a result of any breach of this Contract by the Trust Manager or any act or omission by the Trust Manager, Trust Manager Personnel or Partnership Personnel not authorised by this Contract, Rivtow must reimburse the Trust Manager for the Trust Managers reasonable additional costs provided that those costs are verified and have been incurred as a direct consequence of the suspension of this Contract;
- (d) If the Head Contract is suspended, Rivtow may suspend this Contract or any part of this Contract, by notice in writing, until Rivtow directs the Trust Manager, in writing, to continue performance of Trust Manager obligations under this Contract.

10 Non-compete

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

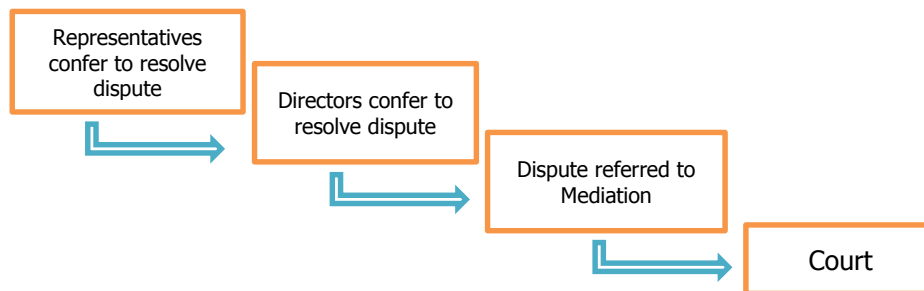
- (a) undertake, carry on or be associated with financially, or be otherwise interested or engaged in or concerned with any business or part of any business which is competitive, in whole or in part, with Rivtow's or the Customer's business;
- (b) undertake, carry on or be associated with financially, 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

Schedule 1 - **Error! Reference source not found.**

- (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.

11 Dispute Resolution

11.1 Procedure to settle disputes



- (a) This clause is to be invoked as a last resort option. Both parties have a commitment to full performance of this contract and intend to take a collaborative and reasonable approach to resolving disputes.
- (b) Until the parties have complied with clause 11, 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.
- (c) Where any Dispute arises, a party must give a Dispute Notice to the other party's Dispute Resolution Representative setting out the material particulars of the Dispute. Within three (3) 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 meet in good faith, act reasonably and use their best endeavours to resolve the Dispute by joint discussions.
- (d) If the parties have not resolved the Dispute under clause 11 (b) within five (5) Business Days after the Dispute Notice (or any other period agreed in writing between the parties), either party must escalate the Dispute to the Directors of Rivtow and the Directors of the Trust Manager.

11.2 Mediation

- (a) If the Directors of Rivtow and the Directors of the Trust Manager have not resolved the Dispute under clause 11.1 (d) within a further five (5) Business Days (or any other period agreed in writing between the parties), both parties agree that the dispute must be referred for mediation in accordance with the Mediation Rules of the Law Society of Queensland at the request of any party to the dispute, to a single mediator nominated by the current President of the Law Society of Queensland, or the Presidents nominee.
- (b) Unless the parties agree otherwise:
 - (i) the mediation will be conducted in Brisbane, Queensland;

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- (ii) each of the parties may appoint persons, including legally qualified persons, to represent or assist them in the mediation; and
- (iii) the costs of the mediator will be borne equally by the parties.
- (c) The parties may, prior to or during the conduct of the mediation, agree to accept the written determination of the mediator as being final and binding, and in such case, the mediator's determination will be final and binding, but not otherwise.

11.3 Continuation of service

- (a) 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, Rivtow is not required to pay the amount disputed until the Dispute is resolved and the Trust Manager must continue to perform its obligations.

12 Insurance

- (a) The Trust Manager must procure and maintain the following minimum insurances:
 - (i) personal accident and sickness insurance to apply to all Trust Manager Personnel;
 - (ii) Public and Products Liability Insurance; and
 - (iii) Motor Vehicle Insurance where applicable.
- (b) The Trust Manager shall produce evidence of the existence of such insurance to Rivtow at the Start Date, on renewal of policies and when requested to do so by Rivtow.
- (c) The Trust Manager must ensure each of the insurances under this clause 12 is effected with reputable insurers, with a financial performance rating of at least A- or better by Standard and Poors or the equivalent rating with another recognised rating agency.
- (d) Rivtow will ensure that the following insurances are maintained for the Customer Owned and Operated Infrastructure as per Schedule 3 of the Partnership Service Contract:
 - (i) marine hull insurance covering each vessel for its full replacement value;
 - (ii) marine liability insurance (or protection and indemnity insurance) in respect to loss of, damage to, or loss of use of, any or personal property and the bodily injury of, disease or illness to, or death of any person

arising out of, or in connection with, the use or operation of any vessel by the Trust Manager.

12.2 Failure of Trust Manager to insure

- (a) If the Trust Manager fails to effect or to keep in force any of the Trust Managers insurances in accordance with this clause 12, Rivtow:
 - (i) may, but will not be obliged to effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose and may recover as a debt due from the Trust Manager the amount so paid; or

Schedule 1 - **Error! Reference source not found.**

- (ii) may refuse payment of any fee due under this Contract until the Trust Manager produces to Rivtow the relevant insurance policies certificates of cover.
- (b) If the Trust Manager fails to effect any of the insurances in clause 12 (a) the Trust Manager indemnifies Rivtow in respect of any claim which would otherwise have been the subject of indemnity under the relevant Trust Managers insurances.

12.3 Period of Insurance

- (a) The Trust Manager must maintain the insurances in this clause 12 until the End Date.

12.4 Limitation

- (a) Nothing contained in this Contract shall be construed or held to deprive the Trust Manager or Rivtow of any right to claim any immunity from liability or limitation of liability provided by an applicable law, statute or convention. Where the Trust Manager or Rivtow may seek an indemnity under the provisions of this Contract or against each other in respect of a claim brought by a third party, the Trust Manager and Rivtow shall seek to limit their liability against such third party.

13 Indemnity

- (a) The Trust Manager indemnifies Rivtow for all claims, costs, expenses, losses and damages incurred by it by reason of personal injury, illness, death or third party property damage, in connection with the Partnership Services.

14 Confidentiality

14.1 Publicity and media

- (a) The Trust Manager 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, the Head Contract or the Confidential Information without the prior written approval of Rivtow.
- (b) The Trust Manager must refer to Rivtow any enquiries from the media concerning the Services, this Contract or the Confidential Information.

14.2 Contracts and business structure documents

The Trust Manager acknowledges that the 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 Trust Manager must, and must ensure that the Trust Manager's Personnel do:

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

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14.3 Obligation of confidentiality

The Trust Manager must not, without the prior written approval of Rivtow, use Confidential Information other than as necessary for the purposes of fulfilling its obligations under this Contract or, subject to clause 14.4(a), disclose the Confidential Information (other than to Related Entities or the Trust Manager's Personnel who need the information to enable the Trust Manager to perform this Contract).

14.4 Exceptions

- (a) Subject to clause 14.4(c), the Trust Manager's obligation not to disclose Confidential Information without Rivtow's prior written approval does not apply to disclosures to the extent that they are:
 - (i) required by Law (including disclosure to any stock exchange or by any Authority);
 - (ii) made to its legal advisers, accountants or auditors; or
 - (iii) required to enable the Trust Manager to make or defend any claim under this Contract.
- (b) Even if the Trust Manager is entitled to disclose Confidential Information without the prior written approval of Rivtow, the Trust Manager 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 14.4(a)(i) the Trust Manager must:
 - (i) give Rivtow details of the reasons for the disclosure and a copy of the information the Trust Manager proposes to disclose;
 - (ii) where reasonably possible, provide Rivtow with sufficient notice to enable Rivtow to seek a protective order or other remedy; and
 - (iii) provide Rivtow with all assistance and co-operation which Rivtow considers necessary to prevent or limit that disclosure including by making such amendments (if any) as requested by Rivtow to the terms of the disclosure.

14.5 Return of Confidential Information

- (a) The Trust Manager must, within 3 Business Days (or any other period agreed in writing by the parties) after a direction by Rivtow to do so, return or destroy all Confidential Information in the Trust Manager's possession, custody or control.
- (b) Despite the provisions of clause 14.5(a):
 - (i) the Trust Manager, 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 Trust Manager or a Related Entity;
 - (ii) to the extent that the Trust Manager's computer back-up procedures or those of its Related Entities and their advisers to whom Confidential Information has been

Schedule 1 - **Error! Reference source not found.**

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 14.5(b)(i) or 14.5(b)(ii) will remain subject to the provisions of clause 14 until it is destroyed.

14.6 Continuing clause

The rights and obligations under this clause 14 continue after this Contract ends.

15 Variation

- (a) Rivtow may direct the Trust Manager in writing to perform a Variation by issuing a Contract Variation Form.
- (b) A direction is not a variation unless a Contract Variation Form has been signed by Rivtow.
- (c) A Variation may include increases in or additions to, reductions in or omissions from, or variations in the character or the quality of the Administrative Services (including any material or anything described in the specification (if any)).
- (d) If a Variation requires the omission of work, Rivtow may have the omitted work carried out by others or not as it sees fit. No omission will constitute a basis to allege that the Rivtow has repudiated the Contract regardless of the extent or timing of the omission
- (e) Rivtow may request the Contractor to provide Rivtow with details of:
 - (i) the effect the Contractor anticipates a proposed Variation will have on:
 - (A) relevant components of the Management Fee supported by a detailed financial breakdown showing the manner of calculation; and
 - (B) any reasonable steps available to the Contractor to avoid or minimise the costs of the proposed Variation.
- (f) If the Parties have agreed on the price for the Variation, the Contractor is entitled to be paid the agreed amount for performing the Variation.

16 General

16.1 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.

16.2 Amendments

This Contract may only be amended by written agreement between the Trust Manager and Rivtow.

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16.3 Assignment

- (a) Except as provided under clause 16.3(b), the Trust Manager must not assign, transfer, charge, subcontract or otherwise deal with its rights or obligations under this Contract without Rivtow's prior written consent (which consent must not be unreasonably withheld).
- (b) Rivtow may assign, transfer, charge, subcontract or otherwise deal with its rights or obligations under this Contract by notice to the Trust Manager.

16.4 Counterparts

This Contract may be signed in any number of identical versions. All identical versions together make one contract.

16.5 No merger

The rights and obligations of the parties under this Contract do not merge on completion of any transaction contemplated by this Contract.

16.6 Entire agreement

- (a) This Contract supersedes all previous agreements about its subject matter. This Contract embodies the entire agreement between the parties.
- (b) To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, is withdrawn and has no effect except to the extent expressly set out or incorporated by reference in this Contract.
- (c) Each party acknowledges and agrees that it does not rely on any prior conduct or representation by the other party in entering into this Contract.

16.7 Further assurances

Each party must do all things reasonably necessary to give effect to this Contract and the transactions contemplated by it.

16.8 No waiver

- (a) The failure of a party to require full or partial performance of a provision of this Contract does not affect the right of that party to require performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under this Contract may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

16.9 Governing law and jurisdiction

- (a) Western Australian law governs this Contract.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the Western Australian courts and courts competent to hear appeals from those courts.

Schedule 1 - **Error! Reference source not found.**

16.10 Severability

A clause or part of a clause of this Contract that is illegal or unenforceable may be severed from this Contract and the remaining clauses or parts of the clause of this Contract continue in force.

16.11 Notice

- (a) Subject to clause 16.11(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 Rivtow and the Trust Manager in this Contract.
- (b) At the time of delivering any direction or notice required under this Contract to the Partnership, the Trust Manager 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 three (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 five (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 16.11, 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.

Schedule 1 - **Error! Reference source not found.**

- (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 16.11 does not prevent normal day-to-day communications between the parties taking place by email.

Schedule 1 - **Error! Reference source not found.**

Schedule 1 - Administrative Services

16.12 All services

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

16.13 Compliance with Site and Operating Standards and Procedures

On and from the Start Date, the Trust Manager must, and must ensure that the Trust Manager's 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.

16.14 Crew, qualifications and rostering

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

- (a) Develop, implement and maintain a Quality Management System for operating the trust and Partnership.
- (b) The Trust Manager must ensure that obligations under this Contract are performed exclusively by members of the [Partnership]. Access to Customer Owned and Operated Infrastructure is permitted to members of the [Partnership] and no one who is not a partner of [Partnership] will be allowed on the Customer Owned and Operated Infrastructure without prior written permission from Rivotow.

Schedule 1 - **Error! Reference source not found.**

- (c) Provide Rivtow with all necessary information, as requested by Rivtow, evidencing due diligence performed by the Trust Manager before access can be granted to any personnel to Customer Owned and Operated Infrastructure.
- (d) identify competent marine crew qualified to man the Customer Owned and Operated Infrastructure in accordance with the QHSE Management System;
- (e) ensure that the required number of qualified marine crew are available to provide:
 - (i) maintenance of Customer Owned and Operated Infrastructure
 - (ii) personnel for uninterrupted Towage Services 24 hours a day, seven days per week, on one hour's notice, or as required by Rivtow (and must endeavour to ensure availability at a lesser notice period than one hour);
- (f) ensure that the required 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;
- (g) prepare and provide to Rivtow a plan for how the Trust Manager will manage prompt crew replacement in the event that any member of crew is unavailable at any time during their roster, for any reason;
- (h) in respect of each marine crew member, collate and provide Rivtow with a current copy of the following:
 - (i) full name, address, contact details, emergency contact and date of birth;
 - (ii) applicable AMSA certifications for seafarers including medical;
 - (iii) certification of qualifications (Master/ Engineer/ both);
 - (iv) local knowledge assessment of PPA;
 - (v) Port identification card;
 - (vi) Maritime security card;
 - (vii) Drivers' Licence; and
 - (viii) confirmation of sickness and accident insurance cover.

16.15 Port Hedland accommodation and travel

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

- (a) identify and advise Rivtow of all marine crew living in Port Hedland with a minimum commitment of three members of the marine crew resident in Port Hedland during the term of this Management and Procurement Contract;
- (b) identify and arrange Port Hedland based accommodation for all non-resident marine crew, and within 30 days from the end of each financial year provide an annual budget and obtain approval from Rivtow for that accommodation and budget; and

Schedule 1 - **Error! Reference source not found.**

- (c) within 30 days from the end of each financial year, arrange and provide an annual budget and obtain approval from Rivtow for travel to and from Port Hedland for all non-resident marine crew.

16.16 Training and PPE

Before marine crew are available for manning or maintenance of the Customer Owned and Operated Infrastructure, the Trust Manager must do everything reasonably necessary to:

- (a) ensure that its personnel 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 Towage Services;
 - (iii) the PPA's marine induction course and occupational health and safety induction course;
 - (iv) training on the provision of open water towage 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;
- (b) develop and implement an annual training plan and budget by 31 May each financial year for all marine crew, and obtain approval of that training plan and budget from Rivtow;
- (c) ensure that at all times all marine crew have personal protection equipment (PPE) compliant with the QHSEMS; and
- (d) provide to Rivtow a plan and annual budget by 31 May each financial year for replacement, laundering and maintenance of PPE.

16.17 Equipment

The Trust Manager is responsible for assessing what equipment is necessary for provision of the Administrative Services (such as motor vehicles, information and communications equipment) and providing to Rivtow a plan and budget for the acquisition, protection (insurance) and maintenance of that equipment, for approval prior to implementation.

16.18 Vessel and spares

The Trust Manager must, and must ensure that the Trust Manager's Personnel:

- (a) implement and maintain the currency of the appropriate safety management systems for the Customer Owned and Operated Infrastructure;
- (b) maintain sufficient inventory of Plant and Equipment on or near the Site to ensure an uninterrupted performance of the Towage Services;

Schedule 1 - **Error! Reference source not found.**

- (c) diligently pursue all warranty claims in accordance with manufacturer policies for parts and components which fail and maintain warranty records for all equipment or facilities covered by the manufacturer's warranties and service guarantees, together with all records of all transactions regarding such warranties.

16.19 Reporting

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

- (a) any information in relation to the Administrative 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 Rivtow, the Customer or PPA;
- (d) **daily** reports including the following:
 - (i) vessel logs;
 - (ii) incidents; and
 - (iii) safety.
- (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; and
 - (vi) environmental breaches.
 - Operational and Technical Performance including:
 - (i) schedule delays;
 - (ii) any requirement for relief personnel;
 - (iii) any events during maintenance of Customer Owned and Operated Infrastructure;
 - (iv) vessel availability percentage (%);
 - (v) a summary of bunkers taken (fuel);

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- (vi) the number of vessels escorted to beacon 15/16;
 - (vii) the number of vessel movements and towage jobs completed;
 - (viii) service hours;
 - (ix) engine hours; and
- any other matter required by Rivtow including but not limited to:
- (i) any notable events; and
 - (ii) significant unplanned costs.
- (f) **monthly** reports including the following:
- (i) KPI review;
 - (ii) mooring barge condition report;
 - (iii) costs incurred on scheduled maintenance;
 - (iv) costs incurred on breakdown maintenance; and
 - (v) any variations against plans or budget.
- (g) **annual** reports including the following:
- (i) budget for services;
 - (ii) budget for hard costs;
 - (iii) responses to personnel satisfaction survey;
 - (iv) risk register;
 - (v) risk management plan;
 - (vi) asset register; and
 - (vii) asset management plan

16.20 Financial

The Trust Manager must ensure that the Trust Manager's Personnel:

- (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 Administrative Services and the Partnership Services.

16.21 Transfer Period

During the Transfer Period, the Trust Manager must ensure that the Trust Manager's Personnel:

Schedule 1 - **Error! Reference source not found.**

- (a) continue to supply the Administrative Services and the Partnership Services;
- (b) cooperate with Rivtow in all aspects of handing back the Administrative Services and the Partnership Services to Rivtow or nominee, and transferring control of those services, if so directed;
- (c) provide assistance to Rivtow in training nominated personnel in the performance of the Administrative Services and the Partnership Services;
- (d) bring all manuals, records, plans and other information in relation to the Administrative Services and the Partnership Services up to date ready for handover prior to the end of the Term;
- (e) hand over to Rivtow or nominee, all inventory of spares, tools, equipment and consumables, and all manuals, records and documentation relating to the Administrative Services and the Partnership Services and the Customer Owned and Operated Infrastructure, in good condition and immediately prior to the end of the Term;
- (f) novate or assign to Rivtow or nominee any contracts that are required for the continuation of the performance of the Administrative Services and the Partnership Services;
- (g) ensure that the Site and the mooring barge and any other applicable Customer Owned and Operated Infrastructure are in the state and condition as set out in any survey of the Site or mooring barge conducted immediately prior to the Start Date, fair wear and tear excepted;
- (h) deliver to Rivtow all manuals, records, plans and other information under the control of the Trust Manager which are relevant to the operation and maintenance or repair of the Customer Owned and Operated Infrastructure, as required from time to time, and provide such information in soft copy format; and
- (i) procure the assignment to Rivtow 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 Management and Procurement Contract or the Administrative Services and the Partnership Services.

Schedule 2 - Management Fees

Table 2.1				
		Complement -		
TRUST				
Management Fee based on full complement.			Per Annum Pro Rata	Invoiced and Paid Monthly pro rata based on complement appointed.
Incentive Fee subject to KPI based reductions. Based on 16% of Partnership fees paid excluding Admin			Per Annum Pro Rata	Invoiced and paid Quarterly after KPI assessment by Rivtow.
	Total			

The Management Fee payable for each Operation Year will only be adjusted on each Review Date in accordance with the following price adjustment formulae or due to changes in required manning levels. The Management Fee may also be adjusted from time to time, as directed by the Customer.

$$A = \frac{B \times C}{D}$$

Where

- A = the Management Fee payable from and including the relevant Review Date;
- B = the Management Fee payable immediately before the relevant Review Date;
- C = the Average Weekly Earnings Index, Western Australia, Catalogue No. 6302.0, last published by the Australian Bureau of Statistics before the relevant Review Date; and
- D = the Average Weekly Earnings Index, Western Australia, Catalogue No. 6302.0 last published by the Australian Bureau of Statistics before the Review Date preceding the relevant Review Date except that in the case of the first Review Date, D = the Average Weekly Earnings Index, Western Australia, Catalogue No. 6302.0 last published 12 months before the Review Date.

If the Average Weekly Earnings Index, Western Australia, Catalogue No. 6302.0 ceases to be published quarterly then the Average Weekly Earnings Index, Western Australia, Catalogue No. 6302.0 is to be replaced by the nearest equivalent index and any necessary consequential amendments to this formula and the employee wages are to be made.

Table 2.2				
Direct Cost Budget				
TRUST				
FIFO			Per Annum Pro Rata	
On-site Resident Cap			Per Annum Pro Rata	
	Total			

On the Review Date, the On-site resident cap will be adjusted by applying the following formula:

$$A = (B \times 52 \text{ weeks}) - (C \times 52 \text{ weeks})$$

Where:

A = the On-site resident cap payable from and including the relevant Review Date;

B = the Housing and Land Snapshot (HALS) Residential & Commercial reports as produced by the Western Australian State Government (currently by the Statutory Authority of the Pilbara Development Commission). The index to be used is the average rental on the advertised residential dwellings for rent for Port Hedland and South Hedland Average for a three (3) bedroom house, quarterly result last published before the Review Date; and

C = the Housing and Land Snapshot (HALS) Residential & Commercial reports as produced by the Western Australian State Government (currently by the Statutory Authority of the Pilbara Development Commission). The index to be used is the Perth average rental cost on the advertised residential dwellings for rent for Port Hedland and South Hedland. Quarterly result last published before the Review Date.

To avoid doubt, the Local Rent Subsidy Cap may be increased or decreased as a result of this adjustment.

FIFO

On the Review Date, and at any other time where the Company considers there has been a material change to the cost of airfares, the Rivtow must review the FIFO budget against the actual costs of commercial flights from Perth to Port Hedland, and adjust the FIFO budget to ensure that it is commensurate with the actual costs (acting reasonably). The FIFO budget may be increased or decreased as a result of that review;

The FIFO budget will be adjusted by applying the on-site resident cap formula on the Review Date.

Execution

EXECUTED as an agreement

Executed by

Rivtow Marine Pty Ltd ACN 601 268 115

on / /20 by:

Director

Director/Secretary

Full name of Director

Full name of Director/Secretary

Executed by

[Trust Manager] as trustee for [Unit Trust]

on / /20 by:

Director

Director/Secretary

Full name of Director

Full name of Director/Secretary

Annexure A - Partnership Service Contract (clause 1.1)

Annexure B - Trust Manager KPIs

Table 1 - Crew Level KPIs

*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.

Annexure B - Trust Manager KPIs

Effectiveness of Partnership Scorecard

1 KEY PERFORMANCE INDICATORS

1.1 Review of KPIs

The Trust Manager agrees that Rivtow may review and amend the KPIs in this Annexure B on an annual basis (including by imposing additional KPIs) prior to the commencement of each Operation Year. The Trust Manager acknowledges and agrees that any amendment to the KPIs will not entitle the Trust Manager to an increase in the Management Fee.

Rivtow will notify the Trust Manager prior to conducting any review of the KPIs and permit the Trust Manager to make submissions in relation to the proposed KPIs, for Rivtow's consideration.

1.2 Assessing KPIs

- (a) The Trust Manager must submit to Rivtow a monthly KPI report with its Invoice, which must address all KPIs set out in Table 1 – Crew Level KPIs.
- (b) Upon receipt of the Trust Manager's Monthly KPI report, Rivtow's Representative must review the Trust Manager's performance against the KPIs. Any assessment by the Trust Manager or Rivtow will be provisional and subject to final assessment by the Customer at the end of each quarter
- (c) Rivtow will take into consideration any submissions of the Trust Manager in the Trust Manager's Monthly KPI review, but the final decision as to the Trust Manager's performance against the KPIs will rest with the Customer on a quarterly basis.
- (d) Rivtow may request any additional information necessary to complete an assessment of the Trust Manager's performance and the Trust Manager must supply that information within the time requested, and otherwise promptly.
- (e) If Rivtow determines that the Trust Manager failed to reach any of the KPIs, Rivtow must record a 'Failed KPI' for the Trust Manager for that relevant month. Where the Trust Manager has a Failed KPI recorded against it, the weighting of that KPI is reduced to zero for the purpose of calculating the KPI incentive amount.
- (f) At the end of the quarter, the Trust Manager must submit to Rivtow a quarterly KPI Assessment Form which must address all KPI's in the format set out in Table 1 – Crew Level KPIs, together with an invoice for the KPI incentive amount calculated in accordance with clause 1.3 below.

1.3 Calculating Incentive Amounts

- (a) The Trust Manager will not be entitled to the KPI incentive amount in respect of any quarter if a fatality occurs on or associated with the Customer Owned and Operated Infrastructure in that quarter.
- (b) The Trust Manager will not be entitled to the KPI incentive amount in respect of any quarter if the Management and Procurement Contract is terminated under clause 6.3 (breach) or 6.4 (insolvency) during that quarter.
- (c) The KPI incentive amount is calculated as follows:
 - (i) the Management Fees invoiced/paid for that quarter
x by .16 (16% incentive amount)
x assessed weighted % of achievement of Table 1 – Crew Level KPIs.

Annexure B - Trust Manager KPIs

- (d) In assessing the Trust Manager's performance for the purposes of determining the KPI incentive amount payable to the Trust Manager (if any), regard will be had to any adverse impact of Rivtow's wilful misconduct, breach of contract or any negligent act or omission of any other person or entity on the Trust Manager's performance of the Administrative Services and Partnership Services in accordance with this Management and Procurement Contract.

1.4 Adjustments

- (a) At the end of each quarter, Rivtow will assess the Trust Manager's performance taking account of the quarterly KPI Assessment Form.
- (b) For each "category" of KPI that Rivtow determines the Trust Manager has not met, the KPI incentive amount is reduced in proportion to the weighting for that category. This is calculated on the basis of:
 - (i) where the KPI is "measured per tug", the KPIs is assessed on the Vessel performance; and
 - (ii) where the KPI is "measured across fleet", the KPI will be assessed across all vessels under Rivtow management and reduced in relation to the performance of all vessels in the fleet, not just the performance of the Vessel.
- (c) Rivtow is only liable to pay to the Trust Manager the KPI incentive amount calculated in accordance with the provisions of this Annexure B.
- (d) 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.

Annexure B - Trust Manager KPIs

Annexure C – Form of Direct Agreement

Annexure B - Trust Manager KPIs

Annexure D – Contract Variation Form

VARIATION DIRECTION – CONTRACT VARIATION FORM

Date

Variation Number

Company:

Contractor:

The Parties to the above Contract agree to vary the Contract as follows, effective from [insert date].

Description of Variation

Executed

Signed for Rivtow

Signature of Authorised Officer

Name of Authorised Officer

Date

Title of Authorised Officer

Signed for the Contractor

Signature of Authorised Officer

Name of Authorised Officer

Date

Title of Authorised Officer